

# Term of Service

This website is owned and operated by Hani IT (ABN: 84 238 676 389) whose registered business address is: PO Box 604, Willunga, SA, 5172.

HANI IT agrees to provide our customer (“SUBSCRIBER”, “CUSTOMER”, “YOU”) products and services (“PRODUCT” or “SERVICE”) subject to the following terms of service.

Use of HANI IT PRODUCTS or SERVICES constitutes acceptance of these terms of service (“TOS”) and HANI ITs Acceptable Use Policy (“AUP”) which is available to view online by clicking here. Both the TOS and AUP may be changed from time to time at the discretion of the COMPANY and YOU are encouraged to check the relevant web pages to keep up to date with those changes. Changes made to the TOS and/or AUP shall not be grounds for early contract termination or non-payment by YOU.

## Term of this agreement

This agreement shall be effective from this date and shall run continually until written notice of cancellation is provided by either party to the other.

## Ownership of content, data, hardware and other assets

All software, hardware, IP addresses and other assets are leased to the CUSTOMER by HANI IT and remain the property of HANI IT or its suppliers. HANI IT reserves the right to change the network infrastructure, software, hardware, IP addresses or other components at its sole discretion.

CUSTOMERS will provide software, data and content by uploading such items to the server(s) which will then be accessed and consumed by the general public via the Internet. Upon cancellation, CUSTOMER agrees to remove all uploaded software, data and content from the server(s) prior to the termination date of this agreement. HANI IT will not be responsible for providing access to or copies of any software, data or content stored on the server(s) after the termination date of this agreement.

## Service levels

- HANI IT may interrupt service in order to perform maintenance tasks. As such interruptions become necessary, HANI IT will use its best efforts to keep downtime to a minimum and to advise affected CUSTOMERS in advance if possible. In the event of system and/or software failure, HANI IT will use its best efforts to restore access and functionality as soon as possible
- In the event that HANI IT suspects that server security has been breached, HANI IT reserves the right to disable any affected server(s) and/or the account(s) in order to fully investigate the suspected breach and aid in recovery in coordination with the CUSTOMER
- CUSTOMER agrees that HANI IT shall not be responsible for any service interruptions

# Adherence to the Acceptable Use Policy (AUP)

- CUSTOMER agrees that any equipment belonging to or used by HANI IT or its technology partners as applicable, for the purpose of providing the CUSTOMER with the PRODUCT(S) and/or SERVICE(S), will not be used in a way or for a purpose that are in contradiction to the regulations set out in the AUP. It is the CUSTOMER'S responsibility to familiarise themselves with the terms of the AUP and to check them regularly for changes which may be made at any time by the HANI IT
- CUSTOMER agrees that HANI IT equipment will not be used for the purposes of sending SPAM e-mail messages or unsolicited commercial e-mails (UCE), the perpetration of security breaches, hacking, network attacks, illegal activities or any reason that can reasonably be described as illegal, unacceptable or nefarious
- CUSTOMER agrees to compensate HANI IT for any expenses that may be incurred resulting from the CUSTOMERS violation of the AUP including, but not limited to, fees, fines, legal expenses and labour. HANI IT labour will be charged as per the table of charges (above). Minimum charge of 1 (one) hour
- CUSTOMER is solely responsible for any activity that occurs on their account including unauthorised access by hackers and others. This includes, but is not limited to, breach of the AUP or incurrance of additional charges for exceeding account allowances. HANI IT will endeavour to assist its CUSTOMERS to prevent unauthorised access to the CUSTOMERS account, but is not responsible for preventing such usage
- HANI IT does not monitor the content or CUSTOMER accounts nor the activities of the CUSTOMER but reserves the right to disable the SERVICE(S) and/or remove the PRODUCT(S) pending investigations of possible breaches of the AUP without first giving notice should HANI IT be made aware of, or discover by any means, the potential for such a breach
- HANI IT does not issue refunds or credit notes for SERVICE or PRODUCT suspensions due to investigations into possible breaches of the AUP

## Backups

HANI IT maintains full server backups images to be restored in the event of an HANI IT system failure. In the event of a system failure, HANI IT will restore the most recent available, known-good backup to ensure system stability. HANI IT makes no guarantee as to the date of such a backup and such backups are not for use by CUSTOMERS. It is the CUSTOMER'S responsibility to maintain their own backup copy of all data that is on their server(s) at all times. CUSTOMERS can request access to the backups held, but access will be granted at HANI IT'S sole discretion subject to availability and will be subject to a service fee as detailed in the table of charges

## Fees and charges

- HANI IT does not advance credit to CUSTOMERS. All PRODUCTS and SERVICES must be paid for in advance of delivery
- Monthly SERVICE fees as well as fees and charges for additional metered SERVICES will be automatically billed to YOUR account. YOU are responsible for monitoring data transfer and disk utilisation amounts and other metered SERVICES and ensuring that they remain within YOUR

allowances, or that YOU inform HANI IT to upgrade YOUR allowances should YOU believe that usages will exceed allowances

- CUSTOMER is responsible for keeping their account up to date
- All invoices will be e-mailed to the CUSTOMER'S designated e-mail address
- Charges for excess usages above CUSTOMER'S allowances will be billed monthly to the CUSTOMER'S account. Excess usage charges for disk space and data transfer are charged per Gigabyte (calculated as 1000 (one thousand) Megabytes) or part thereof
- Domain name renewals will automatically be billed to CUSTOMER'S account unless the CUSTOMER elects to disable auto renew through the billing system
- Payment by bank transfer or cheque must be in full for the PRODUCT(S) and SERVICE(S) for the current billing period and must be submitted prior to the due date. Unpaid cheques will result in the suspension of your SERVICE(S) and/or cancellation of PRODUCT(S) until the outstanding bill is settled in full. Unpaid cheques will also incur a penalty fee as per the table of charges (below) which will be added to YOUR account. Re-connection fees for any PRODUCT(S) and/or SERVICE(S) shall apply as a result of cancellation due to an unpaid cheque
- Payment by cheque is only acceptable by prior arrangement and CUSTOMER must allow at least 5 (five) working days for that cheque to become cleared funds
- All invoices are due upon receipt unless otherwise stated on the invoice. Invoices that are not settled in full within 7 (seven) days shall incur a late payment fee as per our table of charges (below) which will automatically be added to YOUR account
- All fees must be paid in full along with any and all outstanding invoices for PRODUCT(S) or SERVICE(S) in order for HANI IT to create and/or maintain a CUSTOMER account. HANI IT does not issue refunds or credit notes except as specified within this document
- HANI IT may suspend or terminate a CUSTOMER account due to non-payment of outstanding invoices and charges
- Failure to pay outstanding invoices issued for any purpose within 7 (seven) days of their due date may result in the immediate suspension of SERVICE(S) and/or PRODUCT(S) by HANI IT without further notification
- Failure to pay outstanding invoices issued for any purpose within 14 (fourteen) days of their due date may result in the immediate termination of SERVICE(S) and/or PRODUCT(S) by HANI IT without further notification
- Should the CUSTOMER not pay in full all outstanding invoices in a reasonable time, and HANI IT must resort to debt collection methods then the cost of such actions will be passed on to the CUSTOMER

## Table of charges

The following charges shall apply as the conditions for those charges are met. Charges will be multiplied as applicable should such charges become necessary on more than one occasion in a single billing period

*Late payment fee - \$10*

*Dishonoured or declined payment fee - \$30*

*Erroneous chargeback dispute fee - \$35*

*Suspended account re-activation fee - \$30*

*Restore from Hani IT Backup archive (per hour, min 1 hour) - \$100*

## Cancellation of SERVICES or PRODUCTS

- YOU may cancel your PRODUCTS or SERVICES at any time via the Request Cancellation functionality on your service within the Client area.
- Refunds do not include any setup fees, domain name registration fees, SSL certificate fees or any other one time fees that may have been applied.

## Indemnification and Limitation of Liability

- Upon the discovery of facts which would reasonably indicate that HANI IT has breached the terms of this agreement or otherwise failed to discharge its duties under the obligations of this agreement, the CUSTOMER shall notify HANI IT, in writing, of such facts even if such facts were initially notified to HANI IT verbally. Failure of the CUSTOMER to provide such written notification shall constitute an irrevocable waiver of all claims and causes of action
- CUSTOMER must commence legal proceedings against HANI IT within 12 (twelve) months of the incident giving rise to the claim or cause of action regardless of when the incident is discovered or notified of. If proper notification is given to HANI IT as requested by the CUSTOMER within the 12 (twelve) month period following such notification, HANI IT shall at its sole discretion and option:
  - i. I. Revise or repeat free of charge the SERVICE(S) affected by the failure of performance, negligence or breach, or,
  - ii. Terminate this Agreement and pay CUSTOMER for all incidents, problems and/or failures up to a maximum of all sums paid to HANI IT for service fees
- The remedies set forth in this paragraph are the CUSTOMER'S sole and exclusive remedies should HANI IT breach the above express warranty or otherwise fail to perform its obligation under this Agreement, be negligent or in breach of legal duty
- All parties acknowledge and agree that HANI IT shall not be held liable for any consequential damages, including without limitation loss of use or loss of profits, incurred by CUSTOMER, CUSTOMER'S customer or its subsidiaries or successors, regardless of whether such damages are sustained based upon an alleged breach of contract, negligent act, or omission
- HANI IT is not responsible for data or content maintained and distributed by HANI IT facilities. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. HANI IT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXPREED DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE

## Miscellaneous

- The agreement contains the sole and entire agreement of the parties with respect to the SERVICES to be provided by HANI IT and any and all prior and contemporaneous communications, negotiations, commitments and understandings related thereto are hereby merged herein
- HANI IT reserves the right to refuse SERVICE to any CUSTOMER without being required to specify a reason, and also to terminate a CUSTOMER account and/or access to any and all SERVICES if use of server resource is deemed by HANI IT to be excessive
- HANI IT reserves the right to list and link to any CUSTOMER websites hosting on OUR servers for marketing and other purposes
- CUSTOMERS with VPS facilities agree to adhere to security best practices which at minimum requires the changing of administrator passwords on a regular basis and in particular at time of initial provisioning

- VIRTUAL PRIVATE SERVERS provided by HANI IT are monitored for bandwidth usage using the SNMP protocol. CUSTOMERS must ensure that ICMP and SNMP traffic is accessible to HANI IT monitoring services at all times.
- HANI IT reserves the right to amend or otherwise change this agreement by publishing the updated service agreement on the HANI IT website. CUSTOMER may reject the revised agreement and cancel SERVICE within 30 (thirty) days by giving written notice if the amended terms are not acceptable to the CUSTOMER
- If, in the view of HANI IT, a CUSTOMER is repeatedly late with payments on their account(s) and has previously been warned either by e-mail or verbally then HANI IT reserves the right to terminate all PRODUCTS and SERVICES for that CUSTOMER immediately in the event of any future late payment within 12 (twelve) months of such warning. Termination of a PRODUCT or SERVICE involves all data being completely removed from HANI IT's servers without the possibility of recovery.
- This Agreement shall be construed and enforced in accordance with the laws of the State of South Australia with respect to transactions entered into and to be performed entirely within the State of South Australia
- All written communications shall be directed to the CUSTOMER using the contact information provided to HANI IT at the time of order unless otherwise instructed in writing by CUSTOMER
- All fees due to HANI IT should be mailed to PO Box 604, Willunga, SA, 5172

CUSTOMER has reviewed the current AUP and this Terms of Service and CUSTOMER and HANI IT hereby agree by making use of the HANI IT service.