



**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.**

**BY USING THE SERVICE OR CLICKING "AGREE" CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF CUSTOMER IS AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF THEIR EMPLOYER, THEN CUSTOMER REPRESENTS AND WARRANTS THAT THEY HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR EMPLOYER'S BEHALF.**

## **Terms of Service**

### **1. OVERVIEW**

This agreement is entered into by and between Cloudnexus Inc. a Delaware (**Cloudnexus**) and the customer agreeing to these terms (**Customer**), and is made effective as of the date of electronic acceptance by Customer. This agreement covers Customer's use and access of VNOc service specified on an electronic order (**Service**).

### **2. DESCRIPTION OF SERVICES**

- a. **Web Hosting.** The site is placed within one or more servers that runs its own operating system, and Customer's site is given a unique address (**DNS**).
- b. **WordPress Hosting.** Web Hosting with the addition of WordPress software. WordPress software is governed by this license: <https://wordpress.org/about/license/>
- c. **Magento Hosting.** Web Hosting with the addition of Magento software. Magento software is governed by this license: <https://magento.com/legal/licensing>
- d. **WordPress and Magento.** WordPress/Magento Hosting may only be used to host a WordPress or Magento website. Only a single WordPress/Magento installation is allowed per website. Any WordPress/Magento hosting account found to be hosting a non-WordPress/Magento website may be issued a network violation warning and will be required to remove the non-WordPress/Magento website, or may be temporarily or permanently suspended, in Cloudnexus's sole discretion.
- e. **AWS Terms.** Customer's use of the Service is subject to the AWS terms of service located at: <http://aws.amazon.com/service-terms/> Customer agrees to abide by these terms.
- f. **DNS Migrations.**
  - If Customer has its DNS provided by a third-party, Cloudnexus may, at Customer's request and in its sole discretion, attempt to assist Customer to move the DNS Hosting for its domain name to Cloudnexus (**DNS Migration**). DNS Migrations are available for DNS record sets with less than 25 records
  - DNS Migrations are provided as a courtesy and are provided AS IS.
  - Customer is solely responsible for reviewing the functionality and accuracy of migrated content in its new location following a DNS Migration.
  - Cloudnexus will not perform website backups or archives in connection with a DNS Migration, and Cloudnexus recommends that Customer back up its DNS records before migration to ensure that no data is lost.
  - Customer must not make any changes or revisions to its DNS configuration during the migration process.
  - Cloudnexus is not liable for any delay in website resolution or loss of data related to a DNS Migration.
- g. **Custom Services.** Cloudnexus may provide custom environment building and support services (**Custom Services**) for a fee, or on a per service basis, which Cloudnexus will quote to you before providing such services.
  - Custom Services fees are non-refundable.

- Customer must, within 15 days of any delivery of Custom Services, notify Cloudnexus if there are any issues. Cloudnexus is not responsible for and will not provide assistance with any issues after 15 days of delivery of the Custom Services.

### 3. LIMITATIONS

- Non Persistent IP Addresses.** It may be necessary for Cloudnexus to migrate its servers. If Customer has a persistent IP address, it may be assigned a different IP number. Cloudnexus does not warrant that Customer will be able to consistently maintain its provided IP numbers.
- SSL Certificates.** Cloudnexus will not release Customer's public or private key.

### 4. CUSTOMER OBLIGATIONS.

#### a. Abusive Activities.

- Customer may not use Cloudnexus servers or Customer's website as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, denial of service, or other abusive activities.
- Server hacking or other perpetration of security breaches is prohibited and Cloudnexus reserves the right to remove sites containing information about hacking or links to such information. Use of Customer's website as an anonymous gateway is prohibited.
- Cloudnexus prohibits the use of software or scripts run on its servers that cause the server to load beyond a reasonable level, as determined by Cloudnexus.
- Cloudnexus may remove Customer's website temporarily or permanently from Cloudnexus servers if Customer is in violation of this agreement or there are activities that threaten the stability of Cloudnexus's network.
- Customer understands that all websites associated with its hosting account may be removed if one website is in violation of this agreement.
- Customer may not engage in any harmful use of the Services, which includes, without limitation, use of the Services to:
  - disseminate or transmit any material that, to a reasonable person may be grossly offensive, vulgar or malicious;
  - attempt to mislead any person as to the identity, source or origin of any communication;
  - interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which Customer does not have authorization to access or at a level exceeding its authorization; or
  - use Customer's server as an "open relay" or for similar purposes.
- Cloudnexus prohibits the running of a public recursive DNS service on any of its servers; push button mail scripts that allow the user to specify recipient email addresses; anonymous or bulk SMS gateways; backups of content from another computer or website; Bit torrent trackers; or any script that causes a degradation in the performance of Cloudnexus's server or network environment.

#### b. Storage, Security and Compliance

- Customer is solely responsible for undertaking measures to:
  - prevent any loss or damage to its website or server content;
  - maintain independent archival and backup copies of its website or server content; and
  - ensure the security, confidentiality and integrity of all its website or server content transmitted through or stored on Cloudnexus's servers.
- Customer must keep its passwords secure and confidential and use multi-factor authentication with the Service.
- Customer must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Cloudnexus promptly of any such unauthorized access. Cloudnexus servers

are not an archive and Cloudnexus has no liability to Customer or any other person for loss, damage or destruction of any of Customer's content.

**c. Compliance**

- The Services are not designed to provide a PCI (Payment Card Industry) or HIPAA (Health Insurance Portability and Accountability Act) compliant environment and should not be used as one unless otherwise stated.
- Cloudnexus adheres to the GDPR guidelines for data processing. Please see our DPA policy at: [Data Privacy Addendum](#)

**d. Website/Server Content**

- Customer is solely responsible for providing, updating, uploading and maintaining its website or server and any and all files, pages, data, works, information or materials on, within, displayed, linked or transmitted to, from or through its website or server.
- As part of providing technical support, it may be necessary for Cloudnexus's support staff to modify, alter or remove content of Customer hosted Service.

## 5. FEES AND PAYMENTS

- a. **General Terms.** Customer must pay all fees due for Services purchased or obtained at the Site at the time its order the Services. All prices and fees are non-refundable unless otherwise expressly noted in the Refund Policy section below, even if the Services are suspended, terminated, or transferred prior to the end of the Services term. Cloudnexus expressly reserves the right to change or modify its prices and fees at any time, and such changes or modifications will be posted online at the Site and effective immediately without need for further notice to you. If Customer has purchased or obtained Services for a period of months or years, changes or modifications in prices and fees will be effective when the applicable Services are renewed. CUSTOMER IS SOLELY RESPONSIBLE FOR MAINTAINING ITS ACCOUNT SETTINGS, INCLUDING BUT NOT LIMITED TO (I) SETTING ITS RENEWAL OPTIONS AND (II) ENSURING ITS ASSOCIATED PAYMENT METHODS ARE CURRENT AND VALID
- b. **Currency.** Transaction processing is supported only in U.S. dollars. If the transaction is processed in a currency that differs from the currency of Customer's bank account, Customer may be charged exchange rate conversion fees by its bank. Cloudnexus makes no representations or warranties that (i) the amount submitted to its bank for payment will be the same as the amount posted to its bank statement (in the case of an unsupported currency) and Customer agrees to waive any and all claims based upon such discrepancies (including any and all claims for a refund based on the foregoing).
- c. **Tax.** Customer may be charged Value Added Tax, Goods and Services Tax, or other localized fees or taxes, based on Customer's bank or the country indicated in Customer's billing address section.
- d. **Refund Policy.** Where refunds are issued to Customer's payment method, Cloudnexus's issuance of a refund receipt is only confirmation that Cloudnexus has submitted the refund to the payment method charged at the time of the original sale. The payment provider or individual issuing bank associated with Customer's payment method establish and regulate the time frames for posting the refund, and that such refund posting time frames may range from 5 business days to a full billing cycle, or longer. Cloudnexus also has the right, but not the obligation, to offer an in-store credit for customers seeking refunds, even if there are no limitations on refunds imposed by the payment method.
- e. **AWS ISSUED CREDITS ARE FOR THE EXCLUSIVE USE OF AWS SERVICES RESOLD BY CLOUDNEXA AND ARE NOT TRANSFERABLE.**

## 6. TERM AND TERMINATION

- a. **Term.** This lasts for so long as there is an order for the Services. No refunds are provided.

**b. Termination**

- Customer may cancel with one Month's Notice
- If a party materially breaches this agreement or an order and does not cure the breach after a 10-day cure period provided by the other party, then the other party may terminate this agreement and the order upon email notice to the breaching party.
- Upon termination by Cloudnexus for material breach by Customer, Customer forfeits any unused Services.
- Upon expiration or termination of Services, Customer must discontinue use of the Services and relinquish use of any IP addresses, cnames, and server names assigned to it in connection with Services, including pointing the domain name system (**DNS**) for its domain names away from Cloudnexus servers. Prior to termination of the Services, Customer is responsible for moving its website or server content off of Cloudnexus servers. Cloudnexus will not transfer or FTP Customer's website or server content to another provider. If Customer fails to move its website or server content off of Cloudnexus servers prior to cancellation, then all such content will be deleted.
- **AWS Issued Credits are non-transferrable and unused credits are forfeited upon Termination.**
- To request termination of services please email [Cancellation@cloudnexus.com](mailto:Cancellation@cloudnexus.com) or leverage the self service cancellation tool in vNOC for hosting customers.

- c. Free Services.** Upon termination of the Services, all free services provided as part of the Services will be cancelled.

**7. SERVICE UPTIME GUARANTEE**

- a. Cloudnexus offers a Service uptime guarantee of 99% (**Service Uptime Guarantee**) of available time per month.
- If it fails to maintain this Service Uptime Guarantee in a particular month (as solely determined by Cloudnexus), Customer may contact us and request a credit of 5% of its monthly hosting fee for that month. If Customer does not request a credit from Cloudnexus within 30 days of the end of the impacted month of Service, the credit is waived by Customer.
  - The Service Uptime Guarantee does not apply to service interruptions caused by: (i) scheduled maintenance; (ii) interruptions caused by you from custom scripting, coding or the installation of third-party applications; (iii) outages that do not affect the appearance of Customer's website but merely affect indirect access, such as FTP and email; (iv) causes beyond Cloudnexus's control; or (v) outages related to the reliability of certain programming environments.

**8. THIRD PARTY SOFTWARE.** Cloudnexus may modify, change, or discontinue any Third-Party Software at any time, and Customer agrees to cooperate with Cloudnexus as may be necessary to install any updates to the Third-Party Software. Third-Party Software is neither sold nor distributed to Customer, and Customer may use the Third-Party Software solely as part of the Services. Customer may not use the Third-Party Software outside of the Services. Customer may not download, install, or use any Third-Party Software that is accompanied by or requires consent to a service or license agreement from a third-party provider unless Customer first agrees to the terms of such service or license agreement. Customer may not remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that are contained on the Third-Party Software.

- **Third Party Software** means any software or application developed and owned by a third party provider that Cloudnexus may contract with.

**9. LIMITATION OF LIABILITY.** IN NO EVENT WILL CLOUDNEXA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND ALL THIRD PARTY SERVICE PROVIDERS, BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING ANY THAT MAY RESULT FROM (I) THE CONTENT OF THE SITE, (II) THE CONTENT OF ANY SITES LINKED (THROUGH HYPERLINKS, BANNER ADVERTISING OR OTHERWISE) TO THE SITE, (III) THE SERVICES FOUND AT THE SITE OR ANY SITES LINKED (THROUGH HYPERLINKS, BANNER ADVERTISING OR OTHERWISE) TO THIS SITE, (IV) PERSONAL INJURY OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER, (V) THIRD-PARTY CONDUCT OF ANY NATURE WHATSOEVER, (VI) ANY UNAUTHORIZED ACCESS TO OR USE OF CLOUDNEXA SERVERS OR ANY AND ALL CONTENT OR INFORMATION OR DATA STORED THEREIN, (VII) ANY INTERRUPTION OF SERVICES TO OR FROM THIS SITE OR ANY SITES LINKED (THROUGH HYPERLINKS, BANNER ADVERTISING OR OTHERWISE) TO THE SITE, (VIII) ANY VIRUSES, WORMS, BUGS, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR FROM THIS SITE OR ANY SITES LINKED (THROUGH HYPERLINKS, BANNER ADVERTISING OR OTHERWISE) TO THIS SITE, (IX) ANY USER CONTENT OR CONTENT THAT IS DEFAMATORY, HARASSING, ABUSIVE, HARMFUL TO MINORS OR ANY PROTECTED CLASS, PORNOGRAPHIC, "X-RATED", OBSCENE OR OTHERWISE OBJECTIONABLE, OR (X) ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF CUSTOMER'S USE OF THIS SITE OR THE SERVICES FOUND AT THIS SITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND WHETHER OR NOT CLOUDNEXA IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL CLOUDNEXA'S TOTAL LIABILITY ARISING UNDER OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER TO CLOUDNEXA WITHIN THE 12 MONTHS PRIOR OT THE EVENT WHICH GAVE RISE TO THE CLAIM.

**10. INDEMNITY.** Customer must defend, indemnify and hold harmless Cloudnexa and its officers, directors, employees, agents, and third party service providers from and against any and all claims, demands, costs, expenses, losses, liabilities and damages of every kind and nature (including, without limitation, reasonable attorneys' fees) imposed upon or incurred by Cloudnexa directly or indirectly arising from (i) Customer's use of and access to the Site or the Services found at the Site; (ii) Customer's violation of any term of this agreement or the policies or agreements which are incorporated herein; or (iii) Customer's violation of any third-party right, including without limitation any intellectual property or other proprietary right.

#### **11. DISCONTINUED SERVICES; END OF LIFE POLICY**

- a. **General.** Cloudnexa reserves the right to cease offering or providing any of the Services at any time, for any or no reason. Although Cloudnexa makes great effort to maximize the lifespan of all its Services, there are times when a Service it offers will be discontinued or reach its End-of-Life (**EOL**).
- b. **No Liability.** Cloudnexa is not liable to Customer or any third party for any modification, suspension, or discontinuance of any of the Services it may offer.

#### **12. OTHER.**

- a. **Entire Agreement and Changes.** This agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it or the modification is agreed to as provided by an online process designated by Cloudnexa.
- b. **Changes and Revisions.** We may, in our sole and absolute discretion, change or replace this agreement and any referenced policies, and such changes are effective at the renewal of Customer's Service, or as otherwise specified in the notice to Customer regarding the change or replacement agreement. If Customer does not agree to be bound by the changed or replaced agreement, then Customer may discontinue the Service on the renewal date. Cloudnexa has no liability for Customer's

failure to receive an email notification if such failure results from an inaccurate email address provided by Customer.

- c. **Law and Location.** This agreement is governed by the laws of the State of Delaware (without regard to conflicts of law principles) for any dispute between the parties arising out of or relating to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for the State of Delaware, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.
  - **Optional Arbitration for Claims Less than \$10,000.** Notwithstanding the foregoing, for any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may choose to resolve the dispute in a more cost effective manner through binding non-appearance-based arbitration. If a party elects arbitration, they must initiate such arbitration through an established alternative dispute resolution (**ADR**) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (i) the arbitration will be conducted by telephone, online and be solely based on written submissions, the specific manner will be chosen by the party initiating the arbitration; (ii) the arbitration will not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator is final and may be entered in any court of competent jurisdiction.
- d. **Transfer of Data Abroad.** If Customer accesses a site on Cloudnexa's servers from a country other than the country in which the servers are located, its communications with Cloudnexa may result in the transfer of information across international boundaries. By visiting the site and communicating electronically with Cloudnexa, Customer consents to such transfers.
- e. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
- f. **Independent Contractors.** The parties are independent contractors with respect to each other.
- g. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Cloudnexa is not responsible for events beyond its reasonable control, including without limitation, any acts or omissions of its subcontractors or hosting providers.
- h. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- i. **No Additional Terms.** Cloudnexa rejects additional or conflicting terms of any Customer form-purchasing document.
- j. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- k. **Survival of Terms and no CISG.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.

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