

plitoX TERMS OF SERVICE

Version 1.3
Dated:18/01/2023

Introduction

These Terms of Service (together with the rest of our Agreement) govern our relationship with you.

They include:

- the duration of our Agreement;
- fees to be paid to plitoX;
- when plitoX is authorised to monitor communications and content;
- the appropriate and reasonable measures plitoX takes to protect the security of your data and our systems;
- when plitoX is authorised to suspend or terminate your services; and
- the process followed when resolving disputes.

Summary of our Agreement

Addresses for service: We will use the address you give us as the address to serve legal notices and documents to you.

Acceptance of electronic invoicing: By placing an order through our website, you agree to accept electronic invoices from plitoX for the purpose of claiming input tax.

Acceptable Use Policy: You must read and comply with the Acceptable Use Policy that relates to your use of our Services.

Changing of service: We may change the features or functionality of any Service over time.

Commencement: The Agreement will start when plitoX provides you with a username and password.

Governing law: Namibian law governs our Agreement.

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Intellectual property rights: You accept that you will get no rights to our intellectual property on our systems.

Restriction of access to services: If you breach our Agreement, plitoX may restrict your access to the Services.

Specific Terms: Our Specific Terms go into more detail and address specific issues around our products and are an extension of our Terms of Service. The Specific Terms will apply if there is any conflict of meaning with these Terms of Service. Read the full text of our Specific Terms and Conditions.

plitoX's liability to you is limited. This means that we will not be liable to you for any damages or loss that you may suffer as a result of the fulfilment of the obligations under our Agreement.

Your Content: You will retain all your intellectual property rights to any of your content you host with us.

Your Personal Data: plitoX may keep your Personal Data and use it, for specified purposes. For example: to enable us to collect your debit order payment; as well as our internal marketing and contract administration, unless you specifically tell us that we may not do this. For details see our Privacy Policy.

1. Introduction

plitoX is a leading Namibian web hosting service provider that provides a range of web hosting Services to its Customers. The Services are given subject to our Agreement.

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2. Definitions

We have given the meanings of some words to be consistent. These words usually begin with a capital letter. Singular words include the plural (and vice versa):

Word	Meaning
Agreement	These Terms of Service, the Specific Terms, the Acceptable Use Policy, and Privacy Policy.
Customer	Is any natural person or legal entity identified on the application form for Services or in any addendum. A natural person must be the age of 18 (Eighteen) years or older to make use of our Services;
Customer Data	Any username, password or email address we give the Customer as part of the Services. This excludes Customer Domains we manage as part of the Services;
Data Protection Laws	All data protection and privacy laws and regulations applicable to the processing of Personal Data / Information under our Agreement, including: <ul style="list-style-type: none">• the Protection of Personal Information Act 4 of 2013 (POPIA) in South Africa (effective from 1 July 2020);• Regulation (EU) 2016/679 ('General Data Protection Regulation' or 'GDPR');• while it remains in force, the Privacy and Electronic Communications Directive 2002/58/EC on Privacy and Electronic Communications (also known as the ePrivacy Directive or ePD);• any other applicable laws and regulations relating to the processing of Personal Data / Information and privacy; and• if applicable, the guidance and codes of practice issued by any relevant data protection commissioner or supervisory authority.
Terms of Service	These general terms of service governing us providing Services to you

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Personal Data Information	Any information about an identified or identifiable natural person ('Data Subject') which is processed in terms of any applicable Data Protection Law.
Process or processing	Any operation which is performed on Personal Data including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
Processor Operator	A Processor is a person or organisation who processes personal data on behalf of a Controller.
Specific Terms	The terms and conditions which supplement the Terms of Service and govern the use of individual Services.
Sub-processor Sub-operator	Any Processor / Operator we use to assist us in fulfilling our obligations in providing the Services.
you or your	The Customer, including a legal entity (such as a company), who enters into an Agreement with plitoX.

3. Our Agreement

3.1. Our Agreement governs the contractual relationship between us.

3.2. Unless expressly provided to the contrary in our Agreement, if there is a conflict in meaning, the following precedence ranking will apply (from highest to lowest):

- the Specific Terms;
- these Terms of Service;
- the Acceptable Use Policy;
- the Privacy Policy;
- other policies that may be introduced by us from time to time which we notify you of; and
- any documents incorporated by reference in our Agreement.

4. Amendment to our Agreement

4.1. plitoX reserves the right to make changes to the Agreement at any time without notice. An updated version of the Agreement will be posted on the website.

4.2. It is your responsibility as a diligent user to check any amendment posted on the website.

4.3. If you object to any amendment, you may terminate your relationship with us under clause 14.

5. Customer Status

5.1. The Customer may be an incorporated entity (such as a company or close corporation), trust, partnership, or individual.

5.2. If a person enters into our Agreement:

- in a representative capacity on behalf of a Customer who is an incorporated entity;
- on behalf of an unincorporated entity; or
- in any other representative capacity recognised in Namibian law, the person warrants that:- they are legally authorised to do so and indemnifies plitoX against any loss or damage that we may sustain resulting from the person's lack of authority; and- all the information supplied to plitoX at any time relating to the entity, trust, partnership, association or other person who they represent is true, accurate, and complete.

5.3. We reserve the right to treat all misrepresentations by you or the person representing you as fraud. The person representing you indemnifies us against any loss or damage that we may sustain resulting from the person's lack of authority.

5.4. If we discover that you have fraudulently contracted to receive Services or that your representative has contracted without contractual capacity to do so, we may end our Agreement or Services immediately without any

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further notice to you and you may not claim any restitution or refund of any amount you have already paid, regardless of whether you have used the Services or not.

5.5 When requested, you must give us sufficient proof of the authority of the person who takes any action or executes documents on your behalf for our Agreement. This includes providing proof that the authorised signatory of your bank account has permission to debit your account.

5.6. If there is a dispute between individuals or entities you are involved with (including partners, shareholders, trustees, employees), we may act on the representation of a person claiming to be duly authorised to represent you, without having to independently verify the authority.

5.7. You indemnify us from any action or inaction based on the representation in 5.6. If however we ask you to give plitoX independent verification of the authority of any individual, you must provide it to us in a format we find reasonably acceptable.

6. Commencement and Duration

6.1. Your application is an offer by you to accept Services from plitoX. The terms relating to the acceptance of the offer are as follows:- Although the website is configured to confirm receipt of any offer ("Confirmation"), technical or other problems may delay or prevent the Confirmation.

- We will only have accepted your offer once you have received confirmation.
- Although the website is configured to confirm receipt of any offer ("Confirmation"), technical or other problems may delay or prevent the Confirmation.
- You must contact us if you do not receive Confirmation from us within a reasonable time period.
- Confirmation will not mean that a transaction has been concluded. It merely confirms that we have received the application.
- You can accept that we have sent confirmation to you as soon as this is reflected in our log files.

6.2. We will conclude the agreement in Elisenheim Estate, Windhoek, Namibia.

7. Service fees

7.1. You must pay all service fees, as soon as they become due.

7.2. You must pay the service fees, according to the frequency of payment you select, as described on the website.

7.3. Where applicable, we will give you a VAT invoice in electronic format. You agree that by submitting an application form to us when making an application for Services, that the application is seen as your confirmation to accept electronic invoices for claiming input tax.

7.4. If you pay your service fees by debit order, you authorise us to make the necessary transfers from your designated bank account at the beginning of the month as per your preferred frequency of payment for the duration of our Agreement. You must put the debit order in place within seven days of the Commencement Date. Failed debit orders incur an administration fee by our third-party debit order administrators, which we pass onto our customers.

7.5. We reserve the right to amend or vary the service fees and any amendment or variation of the service fees will be seen as an amendment of our Agreement. If we amend the service fees, plitoX will give you at least 30 days prior notice. If you object to any amended service fees, you may terminate your relationship with us under clause 14.

7.6. You will not withhold any payment of any amount you owe us for any reason, (except for an actual breach by plitoX of our Agreement). In addition, you may not demand any discount, refund (other than under clause 7.8), or reduction in respect of any service fees you owe us.

7.7. The service fee includes Value Added Tax. You agree to pay any increase in Value Added Tax.

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7.8. You may terminate the Service within:

- seven days after the Commencement Date if you decide not to continue subscribing to the Service; or
- within 30 days after the Commencement Date if we fail to meet the service levels for hosting services and email services as specified in the Specific Terms, provided that you exercise your right to end the agreement by giving us notice by email to billing@plitoX.com.

7.9. If you terminate the Service for one of the above reasons, plitoX will refund you any service fees. However you are still liable for any third party costs incurred during this period e.g. domain registration costs (please refer to clause 5 of the Specific Terms and Conditions).

8. Monitoring

8.1. We monitor our hosting facilities, but not your specific activities. Where we have to intercept communications in accordance with the Regulation of Interception and Provision of Communication-Related Act, 70 of 2003 ("the Monitoring Act"), we will do this according to the requirements of the Monitoring Act.

8.2. With specific regard to the monitoring of content that is found on a website that belongs to you and which is hosted by plitoX, we have no knowledge of, nor interest in, Customer content hosted by us on your behalf using the Services and further we do not in any way contribute to or approve the content.

8.3. If however we determine that any content is in violation of any law (including the Films and Publications Act 65 of 1996) or of the Acceptable Use Policy, or if we receive a takedown notice from ISPA, as contemplated in section 77 of the Electronic Communications and Transactions Act 25 of 2002, we may

- ask you to remove, amend, or modify the content;
- terminate access to any Services or suspend or terminate any Services without notice;
- delete the offending content without notice;

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- notify the relevant authorities of the existence of any content, make any back-up, archive, or other copies of any content; or
- take any further steps as required or requested by any authorities without notice.

8.4. We may disclose any content, material, or data (including any of your data) if:

- required by law;
- lawfully asked to do so by any authorities, including the Namibian Police Services pursuant to a subpoena under section 205 of the Criminal Procedure Act 51 of 1977; or
- according to a judicial, administrative or governmental order. We do not have to give you notice.

8.5. You will have no recourse against us if we act under this clause and you accordingly waive your right to make any claim or demand, or to institute any legal proceedings against us.

9. Security

9.1. All Customer Data allocated to you is personal to you and you will be liable for any loss or damage you or third parties have suffered because of your actions or the actions of a person to whom you have disclosed your Customer Data.

9.2. You authorise us to act on any instruction given by or purporting to originate from you even if it becomes clear that both parties have been defrauded by someone else, unless you have notified us under clause 9.4 before we acted on a fraudulent instruction.

9.3. If any security violations are reasonably believed to have occurred in connection with your account, we will investigate and, if necessary, change the relevant Customer Data, including access codes and passwords, and notify you immediately.

9.4. You must tell us immediately if any other person gains access to your Customer Data by following the procedures relating to reporting

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misuse Reporting Abuse – plitoX and give us your full cooperation in any investigation we carry out.

9.5. You indemnify us (hold us harmless) against any claim arising from:

- your disclosure of your Customer Data to a third person;
- the use of the Customer Data by a third person; or
- any resulting action by you or a third party.

9.6. We reserve the right to take any action we find necessary to preserve the security and reliable operation of our infrastructure. You may not do anything (or permit anything to be done) that will compromise our security.

9.7. We have systems in place to assist our critical technical infrastructure to recover from a natural or human induced disaster. However, we do not specify any recovery time and are not liable for any loss or damage you suffer as a result of a disaster. You must make backups of your data. Nothing contained in our Agreement will be seen as representation that any backups of data we have implemented will be successful or in any way will assist with disaster recovery.

10. Warranties

10.1. We warrant that plitoX has the facilities, infrastructure, capacity, and capability to provide the Services.

10.2. Despite this warranty, the Services are provided “as is” and “as available”. No warranty of any kind is given, whether express or implied, including warranties of merchantability, title, or non-infringement, except where such a warranty is specifically required by law.

11. Intellectual Property Rights

11.1. You must comply with all laws that apply to any intellectual property.

11.2. You must get our prior written approval before using any of our marks.

11.3. You grant us non-exclusive licence to use your marks so that we may exercise our rights or fulfil our obligations under our Agreement.

11.4. Other than as specifically provided for in our Agreement, we retain all Intellectual Property Rights employed in or otherwise related to our network infrastructure, business and the provision of any of the Services under our Agreement.

12. Customer Indemnities

12.1. You indemnify (hold us harmless) from any liability arising from civil or criminal proceedings instituted against us or for any loss or damage you or a third party have suffered because of any interruption or unavailability of the Services.

12.2. You indemnify us and hold us harmless against all losses you have suffered or actions against us as a result of:

- the use of the Services, or any downtime, outage, degradation of the network, interruption in or unavailability of the Services. This includes software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services,
- non-performance or unavailability of any of the services given by an electronic communications network or service provider, including, line failure, or in any international services or remote mail Servers,
- non-performance or unavailability of external communications networks to which you or our network infrastructure is connected, and
- repairs, maintenance, upgrades, modifications, alterations or replacement of any hardware forming part of the Services, or any faults or defects in the hardware.

12.3. If we are sued for something that you have indemnified us for, you will take our place in the lawsuit or be liable to pay us back for any costs, damages and expenses including attorneys' fees on the attorney and own client scale (you will be liable to pay our attorney's fees finally awarded against us by a court or agreed to in a written settlement agreement, provided that:

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- we notify you in writing as soon as we become aware of the indemnified claim so you can take steps to contest it;
- you may assume sole control of the defence of the claim or related settlement negotiations; and
- we will give you, at your expense, with the assistance, information, and authority necessary to enable you to perform your obligations under this clause.

12.4. You must pay us any amount due under clause 12.3 as soon as we demand payment. If you contest the amount, you must pay the amount into your attorney's trust or give us security to cover the amount, until we have resolved the dispute.

12.5. You indemnify us against any claim, loss or damage that plitoX may suffer because of your actions.

13. Suspension of the Services

plitoX may temporarily suspend its Service to repair, maintain, upgrade, modify, replace or improve any of its Services. Where circumstances permit, plitoX will provide prior notice of any service suspension to Customers. However, plitoX will not be held liable for any resulting loss or damage suffered as a result of the service suspension.

14. Termination

14.1. plitoX may terminate any Services on five days' written notice to you.

14.2. You may terminate any Services on 30 days written notice to plitoX in one of these ways:

- via the plitoX Control Panel; or
- via email to billing@plitoX.com from an authorised email address.

We will confirm your request for termination via return email.

14.3. If you give plitoX notice of termination in any manner other than as specified above you may find that the notice was invalidly given and will not have any effect.

14.4. **Breach:** If you breach our Agreement, we may, without prejudice to any other rights that plitoX may have and without notice to you:

- claim immediate payment of all outstanding charges due to us;
- terminate or suspend your use of the Services, (which may include the deletion of your data);
- terminate our relationship with you; or
- list you with any credit bureau, internet service provider list, or the South African Fraud Prevention Service and/or the Namibian Police.

By agreeing to our Terms of Service, you expressly consent to this.

In all instances, we may retain all Services Fees you have already paid and recover all of our costs associated, including legal costs on an attorney and own client scale (you will be liable to pay our attorneys fees) with your breach.

14.5. **Return of hardware or software:** Where you have in your possession any of plitoX's hardware or software as a result of using the Service and the related Service ends, you must immediately return the hardware or software to us.

15. Force Majeure

We will not be responsible for any breach of our Agreement caused by circumstances beyond our control, including fire, earthquake, flood, civil strike, compliance with government orders, failure of any supplier of electricity as well as no electronic communication service etc.

16. Resolving disputes

16.1. Any dispute concerning our Agreement (including interpretation and application) exists once a party notifies the other in writing, detailing the nature of the dispute and requesting that it be resolved as per this clause. The parties will first try to resolve the dispute informally by email, phone or other methods.

16.2. If informal dispute resolution negotiation fails, we may refer the dispute to conciliation (talks in which an agreed neutral third party tries to help the parties agree on how to end the dispute), failing which we may refer the dispute to arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

16.3. Either party may only bring a claim against the other in their individual capacity and not as a member of any class.

17. Exclusion and Limitation of Liability

17.1. plitoX will not be responsible for any indirect, incidental, special, or consequential damages or losses arising from our Agreement. This includes loss of profits, revenue, anticipated savings, business transactions, goodwill or other contracts. It is irrelevant if this is due to negligence (carelessness) or breach of contract.

- Our total liability to you is for direct damages up to a maximum amount of:
 - three months of your base hosting fee; or
 - N\$ 2 500.00; whichever is less.

17.2. Our liability for direct damages under clause 17.2 will be excluded where we are held liable because of your use of any third party services or products which you accessed together with the Services, but which we did not provide to you.

17.3. This clause will apply even if you advised plitoX of the possibility of loss of damage prior to its occurrence.

18. Notices

18.1. You must send all notices to plitoX, whether for court process or other documents or communications to Po Box 98191, Pelican Square, Windhoek, Namibia or legal@plitoX.com.

18.2. We may give all notices to you by email to the email address you provided to us on the application form when you first subscribed for the Services.

18.3. Any notice or communication required or permitted to be given under our Agreement will be valid and effective only if in writing.

18.4. All notices you sent to us which are:

- sent by prepaid registered post will be deemed to have been received 14 days after date of postage; or
- delivered by hand during ordinary business hours at the physical address or via email, will be deemed to have been received on the day of delivery.

19. Data Processing

Roles of the parties under Data Protection Law

19.1. Depending on the particular activity, we act as both a Processor | Operator and a Controller | Responsible Party.

19.2. We act as the Controller | Responsible Party of your Personal Data | Information when you sign-up to use our Services. We collect and store your Personal Data | Information for specific purposes including improving our service offering and increasing service efficiency. Please refer to our Privacy Policy for more information.

19.3. We act as the Processor | Operator and you are the Controller | Responsible Party of the Personal Data | Information that we process on your behalf when we provide Services to you in terms of the Agreement. You are solely responsible for determining the purpose for which, and the manner in which Personal Data | Information is processed. Please refer to our Data Processing Agreement for more information.

20. Refund & Cancellation Policy

Customers may be entitled to a refund under the following circumstances:

- Cancellation of service
- Service credits issued
- Goodwill gestures
- Adjustments to invoices

In the instance where a customer has paid in advance for their hosting service for more than one month:

- Should the customer cancel the service before the full invoice period is complete, we will refund the customer for the unused period, less the 30-day cancellation notice period and any third party costs incurred on behalf of the customer.

Refunds are issued in one of three ways and subject to the customer's payment method and payment interval:

- the hosting period (date of next invoice) will be extended, or
- a credit note is issued on the next invoice generated, or
- the customer account is credited via EFT (only applies to cancellations)

The refund method applied remains at plitoX's sole discretion.

21. General

20.1. **Entire agreement:** The Agreement constitutes the entire agreement between the parties.

20.2. **No Variation:** No changes to our Agreement made by you are effective unless in writing and signed by the authorised signatories of both parties.

20.3. **Waiver** (giving up rights): Any favour we may allow you will not affect (or substitute) any of our rights against you.

20.4. **Severability:** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of our Agreement if it does not change its purpose.

20.5. **Applicable Law:** Namibian law governs our Agreement.

20.6. **Survival:** Despite termination of our Agreement, any clause, which, from the context, contemplates on-going rights and obligations of the parties, will survive the termination and continue to be of full force and effect.