

Bitnimbus

Terms of Service

June 30th, 2024: Initial version

October 19, 2024: Updated

Welcome to Bitnimbus! Thank you for visiting us at bitnimbus.io. The following information constitutes the Terms of Service for the Cloud Services delivered by Bitnimbus.

These Terms of Service ("Agreement") are a legal agreement between You and/or the company You represent (collectively, "You" or "Your"), and any of Your affiliates, and Stackville, LLC, dba Bitnimbus ("us," "we," or "our"). This Agreement governs Your access to use of our services and by registering to use Bitnimbus' Services and accepting the Terms, you confirm that you have carefully read and agree to be bound by the Terms (as they may be updated by Company from time to time), that you agree to comply with all applicable laws, rules and regulations and that you have the legal authority to accept the Terms on behalf of yourself or any party or company you represent. If You do not have such authority, or do not agree with this Services Agreement, You must not accept this Agreement and may not use the Cloud Services. Your continued use of the Website and Services constitutes a continued agreement to be bound to the Terms. If You register for a free trial of Services, the applicable provisions of these Terms of Service will also govern that free trial.

1. Definitions

- a) The **"Service"** or **"Cloud Services"** refers to the applications, software, products, and services provided by Bitnimbus.
- b) The **"Website"** refers to Bitnimbus' website located at bitnimbus.io, and all content, services, and products provided by Bitnimbus at or through the Website. It also refers to Bitnimbus owned domains and subdomains such as console.bitnimbus.io and docs.bitnimbus.io.
- c) **"User"** or **"Customer"** refers to an individual or individuals who represents Your organization or affiliate who has visited or is using Our Website or is using our Services.
- d) **"Content"** refers to content featured or displayed through the Website, including without limitation text, data, articles, images, photographs, graphics, software, applications, designs, features, and other materials that are available on the Website or otherwise available through the Service.
- e) **"User-Generated Content"** or **"Customer Data"** is Content, written or otherwise, created or uploaded by Users. **"Your Content"** is Content that You create or own.
- f) **"Data Controller"** is the role under the General Data Protection Regulation (GDPR) that makes material decisions relating to the processing of personal data, such as determining the purposes for which personal data is collected, stored, used, altered and disclosed.
- g) **"Affiliate"** of a Party refers to any legal entity that is (a) directly or indirectly owning or controlling the Party, or (b) under the same direct or indirect ownership or control as the Party, or (c) directly or indirectly owned or controlled by the Party, for so long as such ownership or control lasts. Ownership or control shall exist through direct or indirect ownership of more than fifty percent (50%) of the nominal value of the issued equity share capital or more than fifty percent (50%) of the shares.
- h) **"Authorized User"** means Customer and Customer's employees, consultants, contractors, and agents, clients that engage or work for Customer ("Clients") to create, host (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.

- i) **"Documentation"** means Provider's user manuals, handbooks, and guides relating to the Services provided by Provider to Customer either electronically or in hard copy form.
- j) **"Intellectual Property"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- k) **"Open Source Components"** means any software component that is subject to any open source license agreement, including any software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

2. Account Terms

Subject to the term of the free trial or conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement Bitnimbus hereby grants Customer a non-exclusive, non-transferable right to access and use the Services by Authorized Users in accordance with the terms and conditions herein:

- a) **Required Information**
You must provide a valid phone number and email address to complete the signup process for a trial account. Legal Name, address and payment information is required for a paid account.
- b) **Account Requirements**
 - i) You must be a human to create an account. Accounts registered by "bots" or other automated methods are not permitted.
 - ii) One person or legal entity may maintain no more than one free account.
 - iii) Your login may only be used by one person — i.e., a single login may not be shared by multiple people.
- c) **User Account Security**
 - i) You are responsible for keeping Your account secure while using Bitnimbus.
 - ii) You are responsible for maintaining the security of Your account. If You are the administrator for your Account or have elevated access privileges, You are responsible for reviewing and maintaining any additional users to your account. Bitnimbus cannot and will not be liable for any loss or damage from Your failure to comply with this security obligation.
 - iii) You will promptly notify Bitnimbus if You become aware of any unauthorized use of, or access to, our Service through Your account, including any unauthorized use of Your password or account.

3. Fees

Your fees will be charged monthly to the credit card you have input into your account. Your monthly cost by instance configuration and size will be indicated on our console and in your account. You will be billed monthly. In the event of your resource consumption projected to be large or a previous payment issue or for any other reason, Bitnimbus reserves the right to seek a deposit in advance of services to be provided.

4. Acceptable Use

You shall use and ensure that You and Your authorized users use the Cloud Services in accordance with the following acceptable use policy ("Acceptable Use Policy"):

a) Compliance with Laws and Regulations

Your use of the Website and Services must not violate any applicable laws, including copyright or trademark laws, export control laws, or other laws in Your jurisdiction. You are responsible for ensuring that You and Your users' use of the Service complies with laws and any applicable regulations.

b) Content Restrictions

You agree that under no circumstances will You or Your Users upload, post, host, or transmit any Content that:

- i) Is unlawful or promotes unlawful activities;
- ii) Contains personally sensitive information;
- iii) Is or contains sexually obscene content;
- iv) Is libelous, defamatory, or fraudulent;
- v) Is discriminatory or abusive toward any individual or group;
- vi) Contains or installs any active malware or exploits, or uses our platform for exploit delivery (such as part of a command and control system); or
- vii) Infringes on any proprietary right of any party, including patent, trademark, trade secret, copyright, right of publicity, or other rights.

c) Conduct Restrictions

While using Bitnimbus' Service, You agree that under no circumstances will You or Your users:

- i) Harass, abuse, threaten, or incite violence towards any individual or group, including Bitnimbus employees, officers, and agents, or other Bitnimbus Users;
- ii) Use our servers for any form of excessive automated bulk activity (for example, spamming), or relay any other form of unsolicited advertising or solicitation through our servers, such as get-rich-quick schemes;
- iii) Attempt to disrupt or tamper with Bitnimbus' servers in ways that could harm our Website or Services, to place undue burden on Bitnimbus' servers through automated means, or to access Bitnimbus' Services in ways that exceed Your authorization;
- iv) Impersonate any person or entity, including any of our employees or representatives, including through false association with Bitnimbus, or by fraudulently misrepresenting Your identity or site's purpose; or
- v) Violate the privacy of any third party, such as by posting another person's personal information without consent.

d) Excessive Bandwidth Use

If we determine Your bandwidth usage to be significantly excessive in relation to Your selected Service plan, we reserve the right to suspend Your account or throttle Your hosting until You can reduce Your bandwidth consumption. We reserve the right to shut down or limit any activities that are creating an unreasonable burden on our Services, infrastructure, and/or business operations.

e) Other Terms

- i) The Services may only be used for lawful purposes.

- ii) You shall not attempt to undermine the security or integrity of computing systems or networks of Bitnimbus, its partners, or any other person, and must not attempt to gain unauthorized access.
- iii) You must not introduce software or automated agents or scripts into Bitnimbus' website in order to produce multiple accounts, generate automated searches, requests, or queries, or to strip or mine content or data from Bitnimbus's website.
- iv) You must not access Bitnimbus's website through automated methods, including any use of robots or other computer code which calls Bitnimbus' website.
- v) You shall not send unsolicited messages or use the Services to send unsolicited messages (also known as junk mail or SPAM).
- vi) You shall not use the Services as a remote storage server or for the primary purpose of providing downloadable content.
- vii) You may not rent, lease, loan, or sell access to, or otherwise attempt to transfer any right in Bitnimbus's Website (which includes its software and documentation) to a third-party, through framing or any other method.
- viii) You must not perform any benchmark tests or analyses relating to Bitnimbus' Website or Services without explicit permission from Bitnimbus.

5. User-Generated Content

a) **Responsibility for User-Generated Content:**

Customer Data consists of all data and information that You or Your Users provide or input to the Cloud Services. Your use of the Bitnimbus Services will not affect Your ownership rights of any Customer Data. Customer Data remains Your data at all times and You are solely responsible for ensuring that Your data, and Your use of it, complies with this Agreement and applicable law.

b) **Data Controller**

To the extent the Customer inputs any personal data into the Cloud Services and is subject to the EU General Data Protection Regulation (the GDPR), the Customer acts as the Data Controller.

c) **Data Processing and Protection**

We may need to make design choices to technically administer the Bitnimbus Services, for example, how to replicate, store, scale, cluster, compress, decompress or backup Your Customer Data. You hereby give us full permissions to make any such design choices and use of Your Customer Data and User-Generated Content. You are solely responsible for obtaining all necessary rights and permissions to enable, and grant us such rights, and such use of Customer Data will not violate any law or any rights of any third party (including, but not limited to, intellectual property rights).

d) **License Grant**

By posting or uploading Customer Data and other User-Generated Content, You are granting Bitnimbus a license to access, store, and process that Content for the purpose of providing the Services to You. You are responsible for ensuring that the Customer Data does not violate any rights of third parties, and You shall indemnify Bitnimbus for any claims regarding infringement of third-party rights.

e) **Feedback**

Any suggestions, ideas, enhancement requests, feedback, or recommendations provided by You to

Bitnimbus shall be owned by Bitnimbus and You agree that Bitnimbus may use, disclose, reproduce, and otherwise exploit such feedback without any restriction or compensation to you.

6. Open Source Software

- a) Open Source Licence(s): The Services provided by Bitnimbus to its Customers and in running Bitnimbus' backoffice operations include Open Source Components licensed under Apache Software Foundation, a copy of which can be found at

<https://apache.org/licenses/LICENSE-2.0>

Any use of the Open Source Components by Licensee is governed by, and subject to, the terms and conditions of the Open Source License(s).

- b) Use Restrictions. Except as this Agreement expressly permits with respect to Open Source Components, Customer shall not, and shall not permit any other person or entity to:
- i) use any Open Source Components in any manner or for any purpose or application not expressly permitted by the controlling Open Source License.

7. Intellectual Property

a) **Bitnimbus' Rights to Content**

Bitnimbus retains ownership of all rights, title, and interest in and to the Cloud Services, the Website, and all other technology and software provided by Bitnimbus under this Agreement, including all intellectual property rights therein. You may not copy, modify, distribute, or reverse engineer any part of Bitnimbus's Cloud Services or Website without our written permission.

b) **Bitnimbus Trademark Rights**

Bitnimbus' trademarks, logos, service marks, and trade names are the property of Bitnimbus. You are not authorized to use any such marks for any purpose without our express written permission.

8. Limitation of Liability and Indemnification

a) **Limitation of Liability**

IN NO EVENT WILL BITNIMBUS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE SIX MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE

CLAIM.

b) Indemnification

Customer shall indemnify, hold harmless, and, at Bitnimbus' option, defend Bitnimbus, its contractors and respective directors, officers, employees and agents from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's Intellectual Property Rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Bitnimbus or authorized by Bitnimbus in writing; or (iv) modifications to the Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

9. Termination

a) Termination by Bitnimbus

- i) Bitnimbus shall always have the right to suspend Your Services if the User is in default with payment of fees due under this Agreement and does not pay such fees despite a request to pay within fourteen (14) days from the date of such request.
- ii) Bitnimbus services are hosted on cloud providers chosen by You from the options provided on the Web Site. Cloud providers may reserve rights to discontinue their hosting at any time. Bitnimbus shall not be liable in any way for any discontinuation of such services by cloud providers. Bitnimbus shall inform You of such discontinuation without delay after having become aware of any third party plans to discontinue the provision of hosting services affecting the Customer.
- iii) Bitnimbus reserves the right to terminate products and our business and will make efforts to provide adequate notice to its users.

b) Termination by Customer

- i) If You wish to terminate this Agreement or Your Bitnimbus account, You may simply discontinue using the Service by terminating all instances. Your fees will be charged until the time your instances have been terminated.

c) Survival

- i) All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

10. Disclaimer of Warranties

The Cloud Services are supplied on an "AS IS" and "AS AVAILABLE" basis without any guaranteed service levels and without warranties of any kind, either express or implied. To the fullest extent possible under applicable law, Bitnimbus disclaims and excludes all warranties, express or implied, including, but not limited to, any implied warranties of fitness for a particular purpose, non-infringement or other violation of rights, irrespective of any course of dealing or performance, custom or usage of trade. A failure to comply with any service level shall not be construed to be a breach of this Agreement.

11. Changes to These Terms and Modifications to Services

Bitnimbus reserves the right, at our sole discretion, to amend this Agreement at any time and will update this Agreement in the event of any such amendments. If we modify this Agreement: We will post the modification on the Website or provide You with notice of the modification. We will also indicate the last update date at the top of this Agreement.

By continuing to access or use the Services and/or the Website after we have posted a modification on the Website or have provided You with notice of a modification, You are indicating that You agree to be bound by the modified Agreement. If the modified agreement is not acceptable to You, please cancel our service and website immediately.

12. Miscellaneous

a) Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to its conflict of law provisions.

b) Entire Agreement

This Agreement constitutes the entire agreement between Bitnimbus and You concerning the subject matter hereof and may only be modified by a written amendment signed by an authorized executive of Bitnimbus, or by the posting by Bitnimbus of a revised version.

c) Waiver and Severability

If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and the remaining portions will remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.

d) Assignment

This Agreement will be binding upon and will be to the benefit of the parties, their successors, and permitted assigns. You may not assign this Agreement without Bitnimbus's prior written consent. Bitnimbus may assign this Agreement without restriction.

e) Force Majeure

In no event shall Bitnimbus be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Bitnimbus' reasonable control, including but not limited to acts of God, flood, fire, earthquake, government declared pandemic or epidemic, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.