

TERMS OF SERVICES

1.) Account Setup / Email on file

SMIHOST will setup your account after we have received payment and we and/or our payment partner(s) have screened the order(s) in case of fraud. It is your responsibility to provide us with an email address which is not @ the domain(s) you are signing up under. If there is ever an abuse issue or we need to contact you, the primary email address on file will be used for this purpose. It is your responsibility to ensure the email address on file is current or up to date at all times. If you have a domain name registered with SMIHOST, it is your responsibility to ensure that the contact information for your domain account and your actual domain name(s) is correct and up-to-date. SMIHOST is not responsible for a lapsed registration due to outdated contact information being associated with the domain. If you need to verify or change this information, you should contact our sales team via email. Providing false contact information of any kind may result in the termination of your account. In dedicated server purchases or high risk transactions, it will be necessary to provide government issued identification and possibly a scan of the credit card used for the purchase. If you fail to meet these requirements, the order may be considered fraudulent in nature and be denied.

Dedicated IP Address Allocation

Any dedicated IP order in addition to ones provided with a hosting package may be subject to IP Justification. Justification practices are subject to change to remain in conformity with policies of American Registry for Internet Numbers (ARIN). We reserve the right to deny any dedicated IP request based on insufficient justification or current IP utilization.

2.) Content

All services provided by SMIHOST may only be used for lawful purposes. The laws of the State of Florida, the State of Texas, and the United States of America apply. The customer agrees to indemnify and hold harmless SMIHOST from any claims resulting from the use of our services.

Use of our services to infringe upon any copyright or trademark is prohibited. This includes but is not limited to unauthorized copying of music, books, photographs, or any other copyrighted work. The offer of sale of any counterfeit merchandise of a trademark holder will result in the immediate termination of your account. Any account found to be in violation of another copyright will be expeditiously removed, or access to the material disabled. Any account found to be in repeated violation of copyright laws will be suspended and/or terminated from our hosting.

Using a shared account as a backup/storage device is not permitted, with the exception of one cPanel backup of the same account. Please do not take backups of your backups.

Examples of unacceptable material on all Shared servers include:

- Topsites
- IRC Scripts/Bots
- Proxy Scripts/Anonymizers

- Pirated Software/Warez
- Image Hosting Scripts (similar to Photobucket or Tinypic)
- AutoSurf/PTC/PTS/PPC sites
- IP Scanners
- Bruteforce Programs/Scripts/Applications
- Mail Bombers/Spam Scripts
- Banner-Ad services (commercial banner ad rotation)
- File Dump/Mirror Scripts (similar to rapidshare)
- Commercial Audio Streaming (more than one or two streams)
- Escrow/Bank Debentures
- High-Yield Interest Programs (HYIP) or Related Sites
- Investment Sites (FOREX, E-Gold Exchange, Second Life/Linden Exchange, Ponzi, MLM/Pyramid Scheme)
- Sale of any controlled substance without prior proof of appropriate permit(s)
- Prime Banks Programs
- Lottery/Gambling Sites
- MUDs/RPGs/PBBGs
- Hacker focused sites/archives/programs
- Sites promoting illegal activities
- Forums and/or websites that distribute or link to warez/pirated/illegal content
- Bank Debentures/Bank Debenture Trading Programs
- Fraudulent Sites (Including, but not limited to sites listed at aa419.org & escrow-fraud.com)
- Push button mail scripts
- Broadcast or Streaming of Live Sporting Events (UFC, NASCAR, FIFA, NFL, MLB, NBA, WWE, WWF, etc)
- Tell A Friend Scripts
- Anonymous or Bulk SMS Gateways
- Bitcoin Miners
- PayDay Loan Sites, (including any site related to PayDay loans, PayDay loan affiliate programs, etc)

Examples of unacceptable material on all Dedicated servers include:

- IRCD (irc servers)
- IRC Scripts/Bots
- Pirated Software/Warez
- IP Scanners
- Bruteforce Programs/Scripts/Applications
- Mail Bombers/spam Scripts
- Escrow
- High-Yield Interest Programs (HYIP) or Related Sites
- Investment Sites (FOREX, E-Gold Exchange, Second Life/Linden Exchange, Ponzi, MLM/Pyramid Scheme)
- Sale of any controlled substance without prior proof of appropriate permit(s)
- Prime Banks Programs
- Lottery/Gambling Sites
- Hacker focused sites/archives/programs
- Sites promoting illegal activities
- Forums and/or websites that distribute or link to warez/pirated/illegal content
- Bank Debentures/Bank Debenture Trading Programs

- Fraudulent Sites (Including, but not limited to sites listed at aa419.org & escrow-fraud.com)
- Mailer Pro
- Broadcast or Streaming of Live Sporting Events (UFC, NASCAR, FIFA, NFL, MLB, NBA, WWE, WWF, etc)

SMIHOST services, including all related equipment, networks and network devices are provided only for authorized customer use. SMIHOST systems may be monitored for all lawful purposes, including to ensure that use is authorized, for management of the system, to facilitate protection against unauthorized access, and to verify security procedures, survivability, and operational security. During monitoring, information may be examined, recorded, copied and used for authorized purposes. Use of SMIHOST system(s) constitutes consent to monitoring for these purposes.

Any account found connecting to a third party network or system without authorization from the third party is subject to suspension. Access to networks or systems outside of your direct control must be with expressed written consent from the third party. SMIHOST may, at its discretion, request and require documentation to prove access to a third party network or system is authorized.

We reserve the right to refuse service to anyone. Any material that, in our judgment, is obscene, threatening, illegal, or violates our terms of service in any manner may be removed from our servers (or otherwise disabled), with or without notice.

Failure to respond to email from our abuse department within 48 hours may result in the suspension or termination of your services. All abuse issues must be dealt with via email and will have a response within 48 hours.

Your services will be terminated with or without notice.

Violations will be reported to the appropriate law enforcement agency.

It is your responsibility to ensure that scripts/programs installed under your account are secure and permissions of directories are set properly, regardless of installation method. When at all possible, set permissions on most directories to 755 or as restrictive as possible. Users are ultimately responsible for all actions taken under their account. This includes the compromise of credentials such as user name and password. It is required that you use a secure password. If a weak password is used, your account may be suspended until you agree to use a more secure password. Audits may be done to prevent weak passwords from being used. If an audit is performed, and your password is found to be weak, we will notify you and allow time for you to change/update your password.

3.) Zero Tolerance Spam Policy

We take a zero tolerance stance against sending of unsolicited e-mail, bulk emailing, and spam. "Safe lists", purchased lists, and selling of lists will be treated as spam.

Any user who sends out spam will have their account terminated with or without notice.

4. Mail Policy

Limits

There is a 500 outgoing email hourly limit per domain. This limit is also applied towards Mailman. If you send over this amount in any hour, most of the e-mails will bounce back with an undeliverable error. If this occurs, it will then take some time for your account to be able to send again so we recommend waiting at least 1 hour after this issue occurs to begin sending email again.

Many of our servers have a limit of 30 POP3/IMAP checks per hour per each user's connecting IP address. If you go over this you're likely to get a wrong password error message or an error stating "login incorrect". If this occurs, please wait an hour and it will automatically unblock you. To prevent this from happening again, please make sure to disable auto checking or at least set it to something higher such as once every 10 minutes.

Any mailing list larger than 5,000 addresses are prohibited. Note: Dividing one large list into smaller lists to get below this limit is not allowed.

Mailing Lists Rules

1. Any time you're sending a message no matter how large your e-mail list is you must throttle it. We recommend you throttle it to at the very least sending 1 email every 8 seconds. (Sending 1 every 8 seconds would send 450 emails within 1 hour, keeping you below the 500 outgoing email limit.) If the mailing list software you're using does not allow you to throttle you must switch to an application or script that will. We recommend PHPList, which can be found in your CPanel under Fantastico.

IMPORTANT: If you do not throttle and you try sending 500 emails, the server will try sending all 500 in 1 second which is not possible on our shared servers. This will cause a very high load on the server and the entire server will be sluggish, potentially affecting your sites and service, until this sending process is completed. It is our job to keep the server up and running without being sluggish or experiencing issues. Anyone who causes the server's load to go high will be suspended and the process will be terminated. If you choose not to throttle, you will most likely be suspended for crashing the server.

2. The list must be a Double Opt-In list. This means a user has subscribed for a newsletter or other email marketing messages by explicitly requesting it and confirming the email address to be their own. Confirmation is usually done by responding to a notification/confirmation email sent to the email address the end user specified. The double opt-in method eliminates the chance of abuse where somebody submits someone else's email address without their knowledge and against their will. You will not be permitted to mail any mailing list that you were given or purchased. In doing so, this will also be considered spamming and may result in termination of the offending account.

Email Scripts must be able to handle and document all information from a double opt-in list. This includes processing opt-outs (via web or email) and list removal on bounce backs. All opt-outs or bounce back removals must be handled in a timely manner, and outbound mail must be throttled on shared packages to a maximum of five hundred (500) emails per hour. If your account is found to be using a script that does not meet these requirements, SMIHOST reserves the right to suspend, terminate, or deactivate your script or account.

3. Any unsolicited e-mail being sent will result in suspension or termination of the offending account. We take a zero tolerance stance against sending of unsolicited e-mail and other forms of spam.

4. Any mailing list **MUST** comply with all guidelines set forth by the United States government. These can be found at:

<http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus61.shtm> .

5. No direct SMTP mailers are allowed. An example of this would be a Darkmailer or The Bat!. Any mail should be sent through the local mail server/MTA for further delivery by the server and not done directly by scripts.

Sites advertised via SPAM (Spamvertised) may not be hosted on our servers. This provision includes, but is not limited to SPAM sent via fax, phone, postal mail, email, instant messaging, or usenet/newsgroups. No organization or entity listed in the [ROKSO](#) may be hosted on our servers. Any account which results in our IP space being blacklisted will be immediately suspended and/or terminated. SMIHOST reserves the right to require changes or disable as necessary any web site, account, database, or other component that does not comply with its established policies, or to make any such modifications in an emergency at its sole discretion.

SMIHOST reserves the right to charge the holder of the account used to send any unsolicited e-mail a clean up fee or any charges incurred for blacklist removal. This cost of the clean up fee is entirely at the discretion of SMIHOST.

5.) Backups and Data Loss

Your use of this service is at your sole risk. Our backup service runs once a week, overwrites any of our previous backups made, and only one week of backups are kept. This service is provided to you as a courtesy. SMIHOST is not responsible for files and/or data residing on your account. You agree to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on SMIHOST servers.

6a.) Resource Usage

User may not:

- 1) Use 25% or more of system resources for longer than 90 seconds. There are numerous activities that could cause such problems; these include: CGI scripts, FTP, PHP, HTTP, etc.
- 2) Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD.
- 3) Run any type of web spider or indexer (including Google Cash / AdSpy) on shared servers.
- 4) Run any software that interfaces with an IRC (Internet Relay Chat) network.
- 5) Run any bit torrent application, tracker, or client. You may link to legal torrents off-site, but may not host or store them on our shared servers.
- 6) Participate in any file-sharing/peer-to-peer activities
- 7) Run any gaming servers such as counter-strike, half-life, battlefield1942, etc
- 8) Run cron entries with intervals of less than 15 minutes.
- 9) Run any MySQL queries longer than 15 seconds. MySQL tables should be indexed appropriately.
- 10) When using PHP include functions for including a local file, include the local file rather than the URL. Instead of `include("http://yourdomain.com/include.php")` use `include("include.php")`
- 11) To help reduce usage, do not force html to handle server-side code (like php and shtml).
- 12) Only use https protocol when necessary; encrypting and decrypting communications is noticeably more CPU-intensive than unencrypted communications.

6b.) INODES

The use of more than 250,000 inodes on any shared account may potentially result in a warning first, and if no action is taken future suspension. Accounts found to be exceeding the 100,000 inode limit will automatically be removed from our backup system to avoid over-usage, however databases will still be backed up. Every file (a webpage, image file, email, etc) on your account uses up 1 inode.

Sites that slightly exceed our inode limits are unlikely to be suspended; however, accounts that constantly create and delete large numbers of files on a regular basis, have hundreds of thousands of files, or cause file system damage may be flagged for review and/or suspension. The primary cause of excessive inodes seems to be due to users leaving their catchall address enabled, but never checking their primary account mailbox. Over time, tens of thousands of messages (or more) build up,

eventually pushing the account past our inode limit. To disable your default mailbox, login to cPanel and choose "Mail", then "Default Address", "Set Default Address", and then type in: :fail: No such user here.

6c.) Backup Limit

Any shared account using more than 20 gigs of disk space will be removed from our off site weekly backup with the exception of Databases continuing to be backed up. All data will continue to be mirrored to a secondary drive which helps protect against data loss in the event of a drive failure.

7.) Bandwidth Usage

You are allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package you purchase. Should your account pass the allocated amount we reserve the right to suspend the account until the start of the next allocation, suspend the account until more bandwidth is purchased at an additional fee, suspend the account until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for the overages. Unused transfer in one month cannot be carried over to the next month.

8a.) Indemnification

Customer agrees that it shall defend, indemnify, save and hold SMIHOST harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against SMIHOST, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless SMIHOST against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with SMIHOST; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customers from SMIHOST's server.

8b.) Arbitration By using any SMIHOST services, you agree to submit to binding arbitration. If any disputes or claims arise against SMIHOST or its subsidiaries, such disputes will be handled by an arbitrator of SMIHOST's choice. An arbitrator from the American Arbitration Association or the National Arbitration Forum will be selected in the state of Texas. Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. All decisions rendered by the arbitrator will be binding and final. The arbitrator's award is final and binding on all parties. The Federal Arbitration Act, and not any state arbitration law, governs all arbitration under this Arbitration Clause. You are also responsible for any and all costs related to such arbitration.

9.) Disclaimer

SMIHOST shall not be responsible for any damages your business may suffer. SMIHOST makes no warranties of any kind, expressed or implied for services we provide. SMIHOST disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, no deliveries, wrong delivery, and any and all service interruptions caused by SMIHOST and its employees.

10.) Disclosure to law enforcement

SMIHOST may disclose any subscriber information to law enforcement agencies

without further consent or notification to the subscriber upon lawful request from such agencies. We will cooperate fully with law enforcement agencies.

11.) Changes to the TOS

SMIHOST reserves the right to revise its policies at any time without notice.