



## **Terms Of Service**

### **The Services We Provide**

In exchange for the fees you pay in advance, we will host your website on one or more of our servers, so long as you abide by the terms and conditions that are set out on this page, and in any other agreements that relate to the services we may provide to you. We will provide the services according to the specifications listed for the hosting package you select during the signup process. For clarity, on this page, the term "services" refers to the web hosting services that we will provide to you and, if you are an Affiliate, the services we provide to you in connection with that program. The term "ProWebServe" or "us" or "we" refers to ProWebServe.

### **Permission to Host Your Content**

For us to host your website, it is necessary for you to upload your content to our servers. When you do this uploading, you are creating one or more copies of your content on our system. By purchasing hosting services from us, you acknowledge that these copies are being made, and give us the permission (a license) to maintain these copies and make them available to users of the Internet. You are solely responsible for providing all of the content and other data that make up your website.

### **Personal Information**

When you place an order for our services, your personal information, including your credit card information, is transmitted via the use of Secure Socket Layer technology, the industry standard for encrypting sensitive information. We take your privacy very seriously, and as such, will not sell your personal information to

third party (other than a company that may purchase ProWebServe), and will take reasonable steps to keep it from being disclosed to any third party. By proceeding to use our service you consent that we may process the personal data (including sensitive personal data) that we collect from you in accordance with our Privacy Policy. In particular, we may use information we hold about you for the purposes of [internal review, to improve the content of our website, to customize the content and/or layout of our web page for each individual visitor].

## **Backups**

We will make every attempt to retain nightly backups. However, as with any data storage systems, backups can fail. We encourage you to perform your own backups on a periodic basis.

Because the Services permit Users to electronically transmit or upload content directly to the User Web site, User shall be fully responsible for uploading all content to the User Web site and supplementing, modifying and updating the User Web site, including all back-ups.

1. •Any file over 40MB in size will not be backed up onto our backup servers and in the event of server failure, will not be recoverable.
2. •ProWebServe shall not be responsible for any damages to the User Content, the User Web site or other damages or any malfunctions or service interruptions caused by any failure of the User Content or any aspect of the User Web site.
3. •User is solely responsible for making back-up copies of the User Web site and User Content.
4. •ProWebServe does not maintain backup copies of User Web sites or e-mail. ProWebServe cannot guarantee that the contents of a Web site will never be deleted or corrupted, or that a back-up of a Web site will always be available. Users should always copy all content of a Web site to a local computer and ProWebServe suggest that Users make an additional copy (on tape, CD, multiple floppies, another desktop, or elsewhere) to ensure the availability of the files.

## Acceptable Use/Illegal Activity

ProWebServe strives to maintain a high-level of service, and a lot of customers depend on our high standards of quality. As such, we will not provide services to those that are using our services for:

1. •Hacking, which includes, for example penetrating or attempting to access, without authorization, another computer or network. Port scans, stealth scans, and fraudulent credit card "phishing" techniques are also prohibited.
2. •Hosting of files or other data that infringes on another's copyright or other intellectual property rights.
3. •Spamming, or sending of bulk unsolicited email. We maintain a strict policy on spamming, which includes the sending of unauthorized commercial messages by use of our services, or by maintaining an open SMTP connection. We reserve the right to refuse or terminate service based on reasonable indications that you are engaged in spamming of any sort.
4. •Uploading or linking to any content that violates another's right of publicity or privacy.
5. •Distributing hate speech, or any other content that is obscene, abusing, which could be considered libelous and defamatory.
6. •Hosting, storing, or distributing child pornography. If any such content is found and brought to our attention, the proper law enforcement agencies will be notified.
7. •Hosting large amounts of data not specifically tied ("linked") to your hosting account. ProWebServe. encourages users looking for file storage/ backup solutions to seek other services that specialize in this.

## Content

All services provided by ProWebServe may only be used for lawful purposes. The customer agrees to indemnify and hold harmless ProWebServe 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. If you believe that your copyright or trademark is being infringed upon, please email [abuse@prowebserve.com](mailto:abuse@prowebserve.com) with the information required.

## **Examples of unacceptable material on all Shared servers include:**

IRC Bots, Proxy Scripts / Anonymizers, Pirated Software / Warez, image, filedump, mirror, or banner-ad services (similar to rapidshare, photobucket, or commercial banner ad rotation), affiliate servers, topsites, commercial audio streaming (more than one or two streams), Escrow, High-Yield Interest Programs (HYIP) or related sites, Investment sites (FOREX, egold exchange), sale of any controlled substance without prior proof of appropriate permit(s), AutoSurf sites, Bank Debentures, Bank Debenture Trading Programs, Prime Banks Programs, lottery sites, muds / rpg's, hate sites, hacker focused sites/archives/programs, or sites promoting illegal activities, IP Scanners, Brute Force Programs, Mail Bombers and Spam Scripts. Forums and or websites that distribute or link to warez content are prohibited.

Offering video and/or audio streaming or downloads, MP3 Files, Games and shareware is also not permitted on any ProWebServe server.

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

## **Zero Tolerance Spam Policy**

We take a zero tolerance stance against sending of unsolicited e-mail, bulk emailing, and spam. "Safe lists" and "double opt-in" will be treated as spam. Any user who sends out spam will have their account terminated with or without notice. Sites advertised via SPAM (Spamvertised) may not be hosted on our servers. This provision includes, but is not limited to SPAM sent via fax, 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.

ProWebServe 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. ProWebServe reserves the right to charge the holder of the

account used to send any unsolicited e-mail a clean up fee. This cost of the clean up fee is entirely at the discretion of ProWebServe.

## **Unlimited Bandwidth, Disk Usage, Email and FTP accounts and other Unlimited Resources.**

ProWebServe provides Users with bandwidth, disk space and other resources, such as e-mail, mysql databases, and/or file-transfer-protocol ("FTP") accounts, the amount of which is defined in ProWebServe's web pages describing the package of Services purchased at the time of purchase. In some cases, ProWebServe may not establish a specific amount of bandwidth, disk space and other resources, and refer to that as "Unlimited". In all cases, the Services are intended for normal use only, and any activity that results in excessive usage that is inconsistent with normal usage patterns is strictly prohibited. ProWebServe reserves the right to suspend, discontinue or delete the accounts of Users whose use of disk space, bandwidth or other resources results in or presents the risk of degradation of service to other customers, regardless of the amount of disk space, bandwidth or other resources included in the User's plan. User agrees that such usage shall not exceed the amounts set by ProWebServe for the Services purchased (the "Agreed Usage") and is additionally subject to normal usage guidelines established by ProWebServe as in effect from time to time. These allotments are optimized and dedicated towards serving the Content and User's active electronic mail services related solely to User's web hosting account(s) with ProWebServe.

Hosting space is intended for normal use only, and is limited to Web files, active e-mail and content of the hosted Web sites, not for storage (whether of media, e-mails, or other data). Hosting space further may not be used as offsite storage of electronic files, electronic mail or FTP hosts. You are responsible for removing any files, e-mails or other data which do not meet these requirements, and for adhering to any usage requirements or limits allocated to your account(s). Failure to do so may result in removal and deletion of such materials (including without limitation files and e-mails), and/or in discontinuation of your services or account, which actions we may take in our sole discretion.

ProWebServe will monitor User's use of bandwidth, disk usage and other resources. ProWebServe, in its sole discretion, shall have the right to take any corrective action if User's utilization of bandwidth, disk usage or other resources exceeds the Agreed Usage, resource usage, or is used for other improper storage or usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, removal or

deletion of User's Web site, User Content, User's electronic mail and e-mail services and/or other materials and services or termination the User's account and of this Agreement, which actions may be taken in ProWebServe's sole and absolute discretion.

## **Unlimited Domains**

Unlimited domains refers to subdomains, parked domains and add-on domains. In all cases, the Services are intended for normal use only, and any activity that results in excessive usage that is inconsistent with normal usage patterns is strictly prohibited. ProWebServe reserves the right to suspend, discontinue or delete the accounts of Users whose use of unlimited subdomains, parked domains and add-on domains results in or presents the risk of degradation of service to other customers, regardless of the amount of domains included in the User's plan. User agrees that such usage shall not exceed the amounts set by ProWebServe for the Services purchased (the "Agreed Usage") and is additionally subject to normal usage guidelines established by ProWebServe as in effect from time to time. These allotments are optimized and dedicated towards serving the Content and User's active electronic mail services related solely to User's web hosting account(s) with ProWebServe.

If ProWebServe takes any such corrective action under this section, User shall not be entitled to a refund or credit of any fees paid prior to such action. User will comply with all applicable laws, rules and regulations regarding User's Web site, User Content and/or User's electronic mail services, including use of bandwidth, disk usage and other resources and will use such services and resources only for lawful purposes. User may not utilize: the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization; the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party; the Services to traffic in illegal drugs, gambling, obscene materials or any other products or services that are prohibited under applicable law; the Services to export encryption software to points outside the United States in violation of applicable export control laws; the Services to forge or misrepresent message headers, whether in whole or in part, to mask the originator of the message. If ProWebServe learns or discovers that User is violating any law related to User's Web site, User Content and/or User's electronic mail services, use of bandwidth, disk usage or other resources or Agreed Usage, ProWebServe may be obligated to or may in its discretion inform the necessary law enforcement and/or any related agency(ies) of such conduct and may provide such agency(ies) with information related to User, User's Web site, User Content and/or User's electronic mail. User is responsible for complying with any usage requirements or limits for bandwidth, disk space or other resources, and monitoring such usage to ensure the Web site does not violate such requirements or exceed any such limits

allocated for the account(s) and otherwise complies with this Agreement. ProWebServe will use commercially reasonable efforts to e-mail Users who are at or near their utilization limits, but ProWebServe does not take responsibility if e-mail notification(s) is not received by the User. ProWebServe reserves the right to discontinue service through the beginning of the next month for your account in the event that it exceeds the any such allotment.

## Resource Usage

User may not:

Use 10% 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.

Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD.

Run any type of web spider or indexer (including Google Cash / AdSpy) on shared servers.

Run any software that interfaces with an IRC (Internet Relay Chat) network.

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.

Participate in any file-sharing/peer-to-peer activities

Run any gaming servers such as counter-strike, half-life, battlefield1942, etc

Run cron entries with intervals of less than 15 minutes

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")

While our shared services are suitable for the bulk of our customers, there comes a time for some websites when they are better suited for a larger plan, which allows for more dedicated CPU and memory resources. We reserve the right, in our sole discretion, to discontinue service to any customer with a website or other hosted data that takes up more than 10% of the server resources and/or 10% of the server's CPU. This means that if your website is found to be utilizing more than 10% of the CPU and memory of the service, we reserve the right to take your site offline. If this becomes necessary, you can either upgrade your hosting package, or request a pro-rated refund of the amounts you have paid in advance for the services. Due to the severity of this, and our ability to act quickly to correct these situations to avoid server issues, we will do everything reasonably feasible to provide you with a warning prior to taking your site offline, but we accept no obligation to do so.

## INODES

The use of more than 50,000 inodes on any shared account may potentially result in suspension. Accounts found to be exceeding the 50,000 inode limit will automatically be removed from our backup system to avoid overusage. 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. 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

## **When the Services Will be Available**

We will attempt to provide the services 24 hours a day, 7 days a week for as long as you have paid for them. Sometimes, however, for a number of reasons, the services may be unavailable to you. You must recognize and acknowledge that due to the nature of web hosting technology, occasional unavailability of the services cannot be avoided. Sometimes there are equipment malfunctions. At other times we undertake periodic maintenance procedures or repairs. Still other times, there are causes beyond our control like power failures, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network traffic and other occurrences. We have not promised to provide you with uninterrupted service.

## **Guarantee**

As we explain in this paragraph, we offer you an Anytime Money-Back Guarantee on all shared hosting plans. And here is how our cancellation policy works. It is very simple. If you cancel your account we will provide you with a full refund for the remainder of your term, excluding any setup fees that were charged when you signed up, and excluding domain registration fees. (Even if you received your domain for free through one of our promotional plans)

The domain registration fee we incur on each domain registration is \$20.00. So all refunds are subject to a \$20.00 registration fee charge, but you will own the domain name afterwards. The only way to cancel your account is by emailing our billing team at [billing@prowebserve.com](mailto:billing@prowebserve.com) NOTE: If you sign up in GBP pounds sterling then domain registration charge we incur is £14.95

Please note: Any account upgrades to hosting services such as additional domain registration, Priority Support, Daily Backup, Dedicated IP, Domain Privacy, Private SSL certificates, Search Engine Submission, Platinum Upgrade, Site Transfer, Visitors 2 You and Shell Access are non-refundable. In addition, we do

not offer refunds on dedicated server plans as they are month to month and there are no contracts involved. ProWebServe also reserves the right to cancel your account with 72 hours notice should an event occur in which proper evidence exists that a customer was exceptionally rude or vulgar in communications with our staff.

## Joining ProWebServe

When you sign up, your ProWebServe account will be enabled with autorenewal, which means that when your renewal date arrives, your hosting plan and domain will be renewed. When it is time for renewal, the credit card you have on file with us will also be charged. If you wish to not have this happen, and you would not like to renew your account, you must cancel 14 days prior to your renewal date. If you fail to cancel 14 days prior to renewal, your account will be renewed for a new term.

If more than 30 days pass from the date on which any invoice for the hosting services is issued to you and we have not received payment in full, we will suspend your account, which means that your data, files and website will become in-active and cannot be accessed. If in the following 30 days you pay all amounts due, bringing your account up to date, we will take your account out of suspension and the data will be available again immediately. You must have an active method of payment upon you account for your autorenewal at all times, failure to do so can result in you account being suspended or cancelled automatically.

If, however, 30 days pass from the date on which your account is suspended and you have not made payment in full, ProWebServe shall have the right to delete all data you have uploaded to the servers. To summarize, if you get 60 days behind in making payments, your data will be deleted. You hereby acknowledge that this is ProWebServe's policy when it comes to data retention, and waive all rights in and to your data in these situations.

Due to restraints by our domain registrar and the domain extensions we cannot fully manage domains with the TLD's .eu and .com.au in our registrar's account. We can host these domains, but only by pointing their nameservers to us through your existing registrar.

Invoices for renewals will be issued and charged up to 7 days in advance to ensure the we receive cleared funds for the continued hosting service and domain renewal.

ProWebServe is unable to process orders placed using virtual/pre-paid/gift cards as we are unable to accurately verify them. In such cases it is advised that you pay through a PayPal account if you have no other valid credit card to make the payment from.

## **These Terms of Service May Change**

Due to our evolving business, and the changing nature of the web hosting industry, these terms of service may change. We will post the changes here, and your continued use of the service means you accept the changes we have made.

## **DMCA Copyright Infringement Information**

In accordance with the Digital Millennium Copyright Act, we have adopted a policy to suspend or terminate the accounts of website owners found to be in violation of copyright. We respect the intellectual property of others, and we ask you to do the same. We may, in appropriate circumstances and at our discretion, disable and/or terminate the accounts of users who may be repeat infringers. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide our Copyright Agent (identified below) the following information:

1. •an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. •a description of the copyrighted work or other intellectual property that you claim has been infringed;
3. •a description of where the material that you claim is infringing is located on the site;
4. •your address, telephone number, and email address;
5. •a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
6. •a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

## **Indemnification**

If ProWebServe. is sued or threatened with a lawsuit from a third party because of something you do with the services, or as an affiliate you agree to pick up the tab if ProWebServe. is found liable or pays to settle the dispute. In legal terms, this is called "indemnification." Not only do you agree to reimburse ProWebServe. for what it pays to satisfy a judgment or settle a case, you also agree to pay ProWebServe's reasonable attorney's fees and all other costs ProWebServe incurs in defending itself.

## **Disclaimer of Warranties**

You may have noticed that up to this point these terms of service have been kind of easy to read and understand. But our lawyers tell us that this section, dealing in the disclaimer of warranties, has to retain its legalese style. Sorry about that. ProWebServe. EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ProWebServe. MAKES NO WARRANTY THAT ITS SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. ProWebServe. DOES NOT WARRANT, NOR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR RESULTS OF, ANY OF THE SERVICES IT PROVIDES, IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. Some jurisdictions do not allow the disclaimer of implied warranties, in which event that foregoing disclaimer may not apply to you.

## **Limitation of Liability**

Here is another section that has to retain its legalese. Simply stated, what this section is saying is that if something goes wrong, ProWebServe. cannot be held liable for it. IN NO EVENT SHALL ProWebServe. BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTIES, EITHER EXPRESS OR IMPLIED, ANY BREACH OF THIS AGREEMENT OR ITS INCORPORATED AGREEMENTS AND POLICIES, YOUR INABILITY TO USE THE SOFTWARE OR SERVICES, YOUR LOSS OF DATA OR FILES OR OTHERWISE, EVEN IF ProWebServe. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES. Some states may not allow such a broad exclusion or limitation on liability for damages as contained in these terms of services. In those states, our liability is limited to the full extent permitted by law. You agree that in no event shall our maximum aggregate liability exceed the total amount paid by you for the services in dispute purchased from us, or, in the event of liability of ProWebServe. due to your enrollment in the affiliate program,

## **Governing Law and Choice of Form**

The laws of United States, the State of California will govern this Agreement, without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in the federal or state courts located in California.

### **When These Terms Take Effect**

This agreement becomes effective once you submit your order with us or open an account with us for web hosting services of any kind (dedicated, vps, shared, etc.) or open an affiliate account. If you are an existing customer, and you do not agree with the terms herein, please cancel your account. Otherwise, if you sign up for or continue to use the services, you agree to what is written here. If you have any questions regarding these terms of service, feel free to call us for clarification. By using ProWebServe. you agree to the above terms of service.