

Terms of Service

SouthBay Network (dba southbaynetwork.com) ("The Company") agrees to furnish services to the Subscriber, subject to the following TOS (Terms of Service).

Use of SouthBay Network Service constitutes acceptance and agreement to SouthBay Network's AUP as well as SouthBay Network's TOS (Terms of Service). All provisions of this contract are subject to the TOS (Terms of Service) of SouthBay Network and AUP (Acceptable Use Policy). The AUP may be changed from time to time at the discretion of the Company. Subscriber understands that change to the AUP by the Company shall not be grounds for early contract termination or non-payment. This Agreement shall be construed in all respects in accordance with the laws of the state of California, county of Los Angeles applicable to contracts enforceable in that state. Venue will be Los Angeles, California.

Disclosure to Law Enforcement:

The AUP specifically prohibits the use of our service for illegal activities. Therefore, Subscriber agrees that the Company may disclose any and all subscriber information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to the Subscriber. In addition SouthBay Network shall have the right to terminate all service set forth in this Agreement.

Service Rates:

Subscriber acknowledges that the nature of the service furnished and the initial rates and charges have been communicated to Subscriber. Subscriber is aware that the Company may prospectively change the specified rates and charges from time to time. The promotional offer is contingent upon Company achieving and maintaining its cost of service goals including but not limited to rates charged to company by its suppliers.

Payment:

Establishment of this service is dependent upon receipt by the Company of payment of stated charges. Subsequent payments are due on the anniversary date of the month for that month's service. All accounts and services provided by SouthBay Network are subject to the current tax rate as imposed by the State of California which is currently 8.25%. The above applies to all accounts and services provided by SouthBay Network.

Payments and Fees:

Credit cards that are declined for any reason are subject to a \$10.00 declination fee. Accounts that are more than 10 days past due are subject to disconnection without notice. Service interrupted for nonpayment is subject to a \$75 reconnect charge. Accounts not paid by due date are subject to a \$10.00 late fee. Accounts that are not collectable by SouthBay Network may be turned over to an outside collection agency for collection. If your account is turned over for collection, you agree to pay the company a "Processing and Collection" Fee of not less than \$50 nor more than \$150. If you desire to cancel your account, please follow the proper procedure to do this as outlined in this TOS.

Payment due date:

Payments for collocation, dedicated server rental, bandwidth, hosting services, space and other recurring monthly services are due in advance on the 1st day of beginning of the month. (For example payment for August is due on the 1st day of August.) Accounts that are more than 10 days past due are subject to disconnection without notice. Service interrupted for nonpayment is subject to a \$75 reconnect charge. Accounts not paid by

due date are subject to a \$10.00 late fee.

Refund and Disputes:

All payments to SouthBay Network are nonrefundable. This includes the one time setup fee and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in SouthBay Network's sole discretion is a valid charge under the provisions of the TOS and /or AUP, you agree to pay SouthBay Network an "Administrative Fee" of not less than \$50 and not more than \$150.

Failure to Pay:

The Company may temporarily deny service or terminate this Agreement upon the failure of Subscriber to pay charges when due. Such termination or denial will not relieve Subscriber of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.

Account Cancellation:

All requests for canceling accounts must be made in writing with at least 30 days notice but not more than 60 days prior written notice and sent to SouthBay Network Attn: Cancellations, P. O. Box 6696, Torrance, CA 90504 or you may call 888-672-0005 or fax the cancellation request to 888-672-0005. You must have all account information to cancel.

Subscriber acknowledges that the service provided is of such a nature that service can be interrupted for many reasons other than the negligence of the company and that damages resulting from any interruption of service are difficult to ascertain. Therefore, subscriber agrees that the company shall not be liable for any damages arising from such causes beyond the direct and exclusive control of the company. Subscriber further acknowledges that the company's liability for its own negligence may not in any event exceed an amount equivalent to charges payable by subscriber for services during the period damages occurred. In no event shall the company be liable for any special or consequential damages, loss or injury.

New Domain Accounts:

All new webhosting accounts involving new domains will be set up and entered into our DNS servers within 3 to 5 business days. Due to unforeseen complications, however, this process may sometimes require up to 7 business days. If the new domain is registered by the account holder, there will be no handling fee. If the domain is registered by SouthBay Network on behalf of the account holder a handling fee may be incurred.

Transfer of Domains:

New webhosting accounts which involve the transfer of a domain from another provider to SouthBay Network will require a minimum of seven (7) days to be set up and entered into our DNS servers. In some cases, such transfers may take up to sixty (60) days. Due to the unpredictable nature of the transfer process, no guarantees are made regarding the amount of time a specific transfer may take. If the transfer of the domain is done by SouthBay Network on behalf of the account holder a handling fee may be incurred. If the customer cancels service during the transfer period for any reason, all charges are considered earned.

Support Boundaries:

SouthBay Network, provides 24 x 7 technical support to our subscribers (except for few holidays and short company meetings when we close our center.) We limit our technical support to our area

of expertise. The following is our guidelines when providing support: SouthBay Network provides support related to your server or virtual site physical functioning. SouthBay Network does not offer tech support for application specific issues such as cgi programming, html or any other such issue. SouthBay Network does not provide technical support for YOUR customers. If you can email, we encourage you to email support@southbaynetwork.com for assistance. If you are able to get online and have other questions, the answers may be on our support page at <http://www.SouthBayNetwork.com/support/> - we encourage you to check there first. Lastly, the Help files in the program you are using may have the answer to your question so please do investigate these resources before calling tech support.

SPAM and Unsolicited Commercial Email (UCE):

SouthBay Network takes a zero tolerance approach to the sending of Unsolicited Commercial Email (UCE) or SPAM over our network. Very simply this means that customers of SouthBay Network may not use or permit others to use our network to transact in UCE. Customers of SouthBay Network may not host, or permit hosting of, sites or information that is advertised by UCE from other networks. Violations of this policy carry severe penalties, including termination of service.

a. Violation of SouthBay Network's SPAM policy will result in severe penalties. Upon notification of an alleged violation of our SPAM policy, SouthBay Network will initiate an immediate investigation (within 48 hours of notification). During the investigation, SouthBay Network may restrict customer access to the network to prevent further violations. If a customer is found to be in violation of our SPAM policy, SouthBay Network may, at its sole discretion, restrict, suspend or terminate customer's account. Further, SouthBay Network reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. SouthBay Network will notify law enforcement officials if the violation is believed to be a criminal offense.

b. First violations of this policy will result in an "Administrative Fee" of \$250 and your account will be reviewed for possible immediate termination. A second violation will result in an "Administrative Fee" of \$500 and immediate termination of your account. Users who violate this policy agree that in addition to these "Administrative" penalties, they will pay "Research Fees" not to exceed \$175 per hour that SouthBay Network personnel must spend to investigate the matter. PLEASE, DO NOT SPAM from your account.

c. As our Customers are ultimately responsible for the actions of their clients over the SouthBay Network network, it is advisable that Customers develop a similar, or stricter, policy for their clients.

IMPORTANT

NOTICE:

Anyone hosting websites or services on their server that support spammers or cause any of our IP space to be listed in any of the various Spam Databases will have their server immediately removed from our network. The server will not be reconnected until such time that you agree to remove ANY and ALL traces of the offending material immediately upon reconnection and agree to allow us access to the server to confirm that all material has been COMPLETELY removed. Severe violations may result in immediate and permanent removal of the server from our network without notice to the customer. Any server guilty of a second violation WILL be immediately and permanently removed from our network without notice.

VII. Network

IP Address Ownership:

If SouthBay Network assigns Customer an Internet Protocol address for Customer's use, the right to use that Internet Protocol address shall belong only to SouthBay Network, and Customer shall have no right to use that Internet Protocol address except as permitted by SouthBay Network in its sole

discretion in connection with the Services, during the term of this Agreement. SouthBay Network shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by SouthBay Network, and SouthBay Network reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion. Our allocation of IP addresses is limited by ARIN's new policies. These new policies state that use of IP addresses for IP based virtual hosts will not be accepted as justification for new IP addresses. What this means to you is that you MUST use name-based hosting where possible. We will periodically review IP address usage, and if we find that clients are using IP addresses where name-based hosting could be used, we will revoke authorization to use those IP addresses that could be used with name-based hosting.

Bandwidth and Disk Usage:

Customer agrees that bandwidth and disk usage shall not substantially exceed what is considered "fair and reasonable" for the purpose of normal site operations. SouthBay Network will monitor Customer's bandwidth and disk usage. SouthBay Network shall have the right to take corrective action if Customer's bandwidth or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken in SouthBay Network's sole and absolute discretion. If SouthBay Network takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action. In the event that a customer exceeds the included allocation, SouthBay Network may, at its sole discretion, collect a deposit, in an amount determined by SouthBay Network, against customer's credit card on file with SouthBay Network.

System and Network Security:

Users are prohibited from violating or attempting to violate the security of the SouthBay Network. Violations of system or network security may result in civil or criminal liability. SouthBay Network will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations. These violations include, without limitation: Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access. Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization. Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing". Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting. Taking any action in order to obtain services to which such User is not entitled.

Notification of Violation:

SouthBay Network is under no duty to look at each customer's or user's activities to determine if a violation of the AUP has occurred, nor do we assume any responsibility through our AUP to monitor or police Internet-related activities. First violation: Any User, which SouthBay Network determines to have violated any element of this Acceptable Use Policy, shall receive an email, warning them of the violation. The service may be subject at SouthBay Network's discretion to a temporary suspension pending a User's agreement in writing, to refrain from any further violations. Second Violation: Users that SouthBay Network determines to have committed a second violation of any element of this Acceptable Use Policy shall be subject to immediate suspension or termination of service without further notice. We reserve the right, to drop the section of IP space involved in Spam or Denial-of-Service complaints if it is clear that the offending activity is causing great harm to parties on the Internet. In particular, if open relays are on your network or a customer's network, or if denial of service attacks are originating from your network. In certain rare cases, we may have to do this before attempting to contact you. If we do this, we will contact you as soon as is feasible.

Suspension of Service or Cancellation:

SouthBay Network reserves the right to suspend network access to any customer if in the judgment of the SouthBay Network network administrators the customer's server is the source or target of the violation of any of the other terms of the AUP or for any other reason which SouthBay Network chooses. If inappropriate activity is detected, all accounts of the Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured. In extreme cases, law enforcement will be contacted regarding the activity. The customer will not be credited for the time the customer's machines were suspended. SouthBay Network reserves the right to amend its policies at any time. All Sub-Networks, resellers and managed servers of SouthBay Network must adhere to the above policies. Failure to follow any term or condition will be

grounds for immediate Cancellation. You will be held responsible for the actions of your clients in the matter described on these Terms and conditions. Therefore, it is in your best interest to implement a similar or stricter Terms and conditions or otherwise called Acceptable Terms of use policy.

Indemnification:

SouthBay Network wishes to emphasize that in agreeing to the SouthBay Network Acceptable Use Policy (AUP) and Terms of Service (ToS), customer indemnifies SouthBay Network for any violation of the Acceptable Use Policy (AUP) and Terms of Service (ToS) that results in loss to SouthBay Network or the bringing of any claim against SouthBay Network by any third-party. This means that if SouthBay Network is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against SouthBay Network, plus all costs and attorney's fees.

Miscellaneous Provisions:

You must provide us with, and keep current, good contact information for you. E-mail, fax, and telephone contacts are used, in that order of preference. A waiver by the Company of any breach of any provision of this Agreement by Subscriber shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof. Subscriber shall not transfer or assign this Agreement without the prior written consent of the Company. Company may assign Agreement at anytime without consent from or notice to Subscriber. Company reserves right to cancel customers rights under this contract at anytime without further obligation. SouthBay Network takes no responsibility for any material input by others and not posted to the SouthBay Network Network by SouthBay Network. SouthBay Network is not responsible for the content of any other websites linked to the SouthBay Network Network; links are provided as Internet navigation tools only. SouthBay Network disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy. SouthBay Network is not responsible for any damages your business may suffer. SouthBay Network does not make implied or written warranties for any of our services. SouthBay Network denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by SouthBay Network. It is absolutely forbidden to host pornographic content or IRC servers on Virtual Server Accounts. Virtual Server Accounts found hosting this material will be subject to immediate cancellation without refund.

Responsibilityfor Content:

You, as SouthBay Network's customer, are solely responsible for the content stored on and served by your SouthBay Network server.