

F2 New Media, Inc. Shared Web Hosting Terms of Service

By hosting your web site(s) with F2 New Media, Inc. (herein referred to as "F2 New Media"), you (herein referred to as "Client") understand and agree to these Terms and Conditions. F2 New Media reserves the right to modify these policies at any time. Clients who violate these Terms and Conditions of service are subject to account suspension and/or termination.

F2 New Media may amend these Terms and Conditions at any time by posting the amended Terms and Conditions to its web site and the effective date of any such amendments will be the date on which the amended Terms and Conditions are so posted. Client agrees that it has read and understands the Terms and Conditions set forth herein and acknowledges a duty to periodically check these Terms and Conditions. Clients should check the F2 New Media's web site (www.f2newmedia.com) frequently to ensure they are familiar with any changes and/or updates.

1. The initial term of this contract shall commence immediately upon installation and setup of Client's account. This contract will be renewed on a monthly, quarterly, semiannual, or annual basis, as selected by Client at time of activation until terminated by Client, or F2 New Media.
2. Billing cycles are monthly, quarterly, semiannual, or annual as selected by Client at time of activation. Billing begins on the first day of account activation. Account will be considered late one (1) calendar days past the invoice due date and login access may be suspended at F2 New Media's discretion. Account will be considered in default seven (7) calendar days past the invoice due date and all services may be terminated at F2 New Media's discretion. Suspended accounts are subject to a reconnection fee. If Client has not received an invoice via E-mail, it is the responsibility of each Client to contact F2 New Media and request payment information or a duplicate invoice.
3. All requests for change in service must be sent from the original Email address provided by Client at time of activation, or as modified by Client in Client's password protected Control Panel.
4. Service may be canceled in writing by F2 New Media or Client without penalty.
5. F2 New Media's services may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, but is not limited to: copyrighted or trademarked materials, pornographic material that violates United States law, and any material that could be classified as hate material.
6. Violations of system and/or network security are prohibited, and may result in criminal and civil liability. F2 New Media will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following: a) Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of F2 New Media. b) Unauthorized monitoring of data or traffic on any network or system without express authorization of F2 New Media. c) Interference with service to any user, host or network including,

without limitation, mail bombing, flooding, deliberate attempts to overload a system, denial of service attacks, and broadcast attacks. d) Forging of any TCP-IP packet header or any part of the header information in an Email or a newsgroup posting.

7. Sending unsolicited mail messages, including, without limitation, commercial advertising and informational announcements, is explicitly prohibited. A user shall not use another site's mail server to relay mail or direct traffic to any site hosted on the F2 New Media Network.

Posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting, also known as "SPAM") is explicitly prohibited. Users may send out mailings to targeted OPT-IN mailing lists, provided users on that mailing list have confirmed their subscription requested by clicking a link in an "initial" Email. All OPT-IN messages must include a remove link to OPT-OUT of such mailings.

8. The Client is responsible for all use of the Client's account(s) and confidentiality of password(s), including choosing safe passwords and ensuring file permissions are set correctly. F2 New Media may change access passwords if Client's password is stolen, lost or otherwise compromised. In addition, Client's password and/or file permissions may be changed if F2 New Media believes it compromises server security. It is always recommended that an alphanumeric password with special characters be used. F2 New Media is not liable for any damages, usage, and/or charges incurred due to compromised accounts.

9. F2 New Media is not responsible for Client files residing on F2 New Media servers. The Client is responsible for independent backup of the Client's data. F2 New Media reserves the right to delete any Client's personal files after one or both parties terminate the service agreement between F2 New Media and the Client.

10. Use of services provided by F2 New Media are nontransferable. Use of F2 New Media accounts is expressly limited to the individual or business whose name appears on the account. Resale of any part of the account is prohibited without written authorization from F2 New Media.

11. All network address assignments issued by F2 New Media (i.e., IP addresses and Class C address space) are the property of F2 New Media and are "loaned" to F2 New Media clients. In the event service with F2 New Media is discontinued for any reason, such addresses will remain the sole property of F2 New Media. The Client will retain ownership of any Domain Names that are registered to them through the appropriate authorities, but not the IP address to which it was assigned by F2 New Media.

12. All physical equipment used by Client (i.e., Servers, Routers, Switches, Racks, etc.) are the property of F2 New Media and are "loaned" to F2 New Media clients. In the event service with F2 New Media is discontinued for any reason, such equipment will remain the sole property of F2 New Media. The Client will retain ownership of data stored on equipment. F2 New Media reserves the right to delete any Client's personal files after one or both parties terminate the service agreement between F2 New Media and the Client.

13. F2 New Media accounts may limit bandwidth, CPU and/or disk space utilization for certain hosting packages. F2 New Media reserves the right to determine what constitutes excessive bandwidth, CPU, and/or disk space utilization. In order to maintain a high level of service for all clients, F2 New Media may determine that a Client is exceeding the bandwidth, CPU and/or disk space utilization limits for the Client's hosting package. In the event an account exceeds such limitations, the Client will be notified by E-mail and has 48 hours after such notification to upgrade their hosting package or resolve excessive account activity issues. If excessive bandwidth, CPU and/or disk space utilization is determined by F2 New Media to adversely affect F2 New Media's ability to provide service for all clients, immediate action may be taken to alleviate the problem. In such event, the Client will be notified by E-mail.

14. F2 New Media reserves the right to monitor any and all communications through F2 New Media computer systems. Client agrees that F2 New Media is not considered a secure communications medium, and that no such privacy is guaranteed. It may become necessary for F2 New Media to examine system accounting logs and other records to determine if privacy violations or other network unfriendly activities have occurred. F2 New Media also reserves the right to access a Client's mailbox or other files stored on F2 New Media servers to resolve system problems or mail system errors.

15. F2 New Media reserves the right to refuse, suspend or cancel service to a Client at any time and without notice, for any reason, including, but not limited to, refusal or failure to pay for services provided or by sole judgment of F2 New Media that the Client may be performing activities harmful to F2 New Media or its Clients, employees, vendors, business relationships or any other users of the Internet.

16. The Client will be responsible for any damages done to F2 New Media property caused by misuse of said property. Damages may include hardware, software and man-hours for repair and/or reconfiguration.

17. INDIRECT OR ATTEMPTED VIOLATIONS OF THE POLICY, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF AN F2 NEW MEDIA CLIENT, SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY SUCH CLIENT.

18. Complaints regarding illegal use, system or network security issues, or Email/USENET abuse should be sent to support@f2newmedia.com.

19. Warranty Disclaimer: ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. F2 NEW MEDIA DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. F2 NEW MEDIA DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.

20. Limitation on Liability: IN NO EVENT SHALL F2 NEW MEDIA BE LIABLE TO CLIENT, CLIENT'S USERS OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR NONCONTRACTUAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR

ANY SERVICES, EVEN IF F2 NEW MEDIA HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. F2 NEW MEDIA'S LIABILITY, IF ANY, TO CLIENT OR TO ANY THIRD PARTY HEREUNDER SHALL IN NO EVENT EXCEED THE TOTAL AFTER TAX PROFITS EARNED BY F2 NEW MEDIA UNDER THIS AGREEMENT IN THE LAST TWELVE MONTHS. THE PARTIES ACKNOWLEDGE THAT F2 NEW MEDIA HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

IN NO EVENT SHALL F2 NEW MEDIA BE LIABLE FOR FAILURE OR DELAY IN PERFORMING ITS OBLIGATIONS HEREUNDER IF SUCH FAILURE OR DELAY IS DUE TO CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF GOD, ACTS OF ANY GOVERNMENTAL BODY, WAR, INSURRECTION, SABOTAGE, EMBARGO, FIRE, FLOOD, STRIKE OR OTHER LABOR DISTURBANCE, INTERRUPTION OF OR DELAY IN TRANSPORTATION, UNAVAILABILITY OF OR DELAY IN TELECOMMUNICATIONS OR THIRD PARTY SERVICES, FAILURE OF THIRD PARTY SOFTWARE OR INABILITY TO OBTAIN RAW MATERIALS, SUPPLIES OR POWER USED IN OR EQUIPMENT NEEDED FOR PROVISION OF THE SERVICES.

21. Client will indemnify, defend and hold F2 New Media and its officers, directors, employees, agents and affiliates (each, and "Indemnified Party") harmless from and against any and all costs, liabilities, losses and expenses, including, but not limited to, reasonable attorney's fees (collectively, "Losses") resulting from or arising out of any claim, suit, action, arbitration or proceeding (each, an "Action") brought by a third party against Indemnified Party relating to: a) a breach or alleged breach by Client of any of its representations, warranties, covenants or obligations hereunder, b) infringement or misappropriation of any intellectual property rights, including but not limited to rights of privacy, patent, copyright, trade secret, trademark rights and/or licenses, c) injury caused by any negligence or willful misconduct of Client, or d) use of the Services, including use of the Services without the consent of Client.

22. Client may not assign these Terms and Conditions of service in whole or in part without our prior written consent.

23. Any notice required by these Terms and Conditions of service shall be given in writing at the primary address of each party.

24. F2 New Media does not undertake any duty to monitor, and shall have no liability or responsibility for, the content of any communications transmitted via the Service, or for or any data, information, or software hosted on the Space or exchanged via the Services. Client agrees to hold F2 New Media harmless from any and all claims (including claims by governmental entities seeking to impose criminal or penal sanctions) related to such content, data, information, or software attributable to you or your agents, employees, customers or end users. F2 New Media may, at our discretion, impose additional terms of use for the Services.

25. These Terms and Conditions of service, along with the Acceptable Use Policy shall be the entire agreement among the parties with respect to the transactions contemplated among them and, except as otherwise provided, supersede all previous negotiations, commitments and writings. This Agreement shall be governed and construed in accordance with the laws of the state of Kansas.

26. Any additions, amendments or modifications to these Terms and Conditions of service shall be made in writing and signed by all parties.

27. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument. No Waiver. No failure or delay by either party in enforcing any right or remedy under this Agreement shall be construed as a waiver of any existing or future right or remedy.

28. Both parties agree that with respect to providing Services under these Terms and Conditions, We are an independent contractor.

29. These Terms and Conditions of service shall be binding upon both parties and their agents, successors and assigns.