

smooshyLab Terms of Use

smooshyLab Services

smooshyLab's services include, but are not limited to:

1. any act of preparing, setting up, connecting, maintaining, terminating, or reconnecting customers' account (including all billing data and the space on the particular Web server that smooshyLab provides to customers);
2. any use by customers, or any access provided to customers by smooshyLab, of computing, telecommunications, software, information, hardware, and equipment;
3. any act, or provision of any service, by smooshyLab to customers, related to Web hosting, virtual desktops, domain name registrations and domain name transfers (including server usage and technical support), regardless of duration and whether paid for or not;
4. any provision by smooshyLab to customers, of any space, Internet connectivity, or electrical power;
5. any access or use related to the smooshyLab's Web site, including the Web site itself;
6. any other service mentioned in the TOU;
7. any other service provided by smooshyLab to customers, whether used or not;
8. any other smooshyLab services that are used by customers, whether offered or provided by smooshyLab to customers.

Domain Name Renewal And Expiration

smooshyLab makes every reasonable effort to make sure you know your domain name registration is coming due. We do NOT pick up the phone and call clients and we do not try and track clients down to let them know their domain name registration is expiring. It is solely the responsibility of the client to ensure that all the information is up to date on their domain name registration. Your website and email will be off the internet once the domain name expires and you could potentially loose business. If you don't receive a renewal message then it is most likely caused by not having the correct email address in the domain name registration system or the message is caught by your spam filter. They require a substantial amount of money to pull the name out of redemption. smooshyLab is NOT in any way responsible for clients that let their domain name(s) expire.

Ownership of Web Site

The legal owner of customers' Web sites and accounts with smooshyLab will be the individual or organization whose name is listed in smooshyLab's database as the owner. Customers will fully cooperate with and abide by any and all of smooshyLab's security measures and procedures in the event of any dispute over ownership of customers' Web sites and accounts with smooshyLab.

Illegal Use

smooshyLab servers may be used for lawful purposes only. Transmission, storage, or distribution of any information, data, or material in violation of any applicable law or regulation, or that may directly facilitate the violation of any particular law or regulation is prohibited. This includes, but is not limited to: copyrighted material; trademarks; trade secrets or other intellectual property rights used without proper authorization; material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws. Additionally, in purchasing smooshyLab services, all smooshyLab customers certify that they and/or the organization they represent in procuring services from smooshyLab are not, nor have been designated, a suspected terrorist as defined in Executive Order 13224; are not owned or controlled by a 'suspected terrorist' as defined in Executive Order 13224; and are not on, are not a member of, related to, associated with, or controlled by any organizations on the list contained in the Annex to Executive Order 13224 and all updates thereto.

Spamming

Sending unsolicited bulk and/or commercial messages ("UCE") over the Internet (known as "spamming") is prohibited, regardless of whether or not it overloads a server or disrupts service to smooshyLab's customers. The term "spamming" also includes, but is not limited to, maintaining an open SMTP policy, engaging in spamming using the service of another ISP or IPP and referencing in the spam a Web site hosted on a smooshyLab server, and selling or distributing software (on a Web site residing on a smooshyLab server) that facilitates spamming. Violators will be assessed a non-refundable minimum fine of \$200 US and will face immediate suspension. smooshyLab reserves the right to determine, in its sole and absolute discretion, what constitutes a violation of this provision.

System and Network Abuse

Violations of system and/or network security are prohibited and may result in criminal and civil liability, and/or reduction and/or restriction of network or server resources. Examples of system or network security violations include, without limitation the following: 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 the owner of the system or network; interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks; forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting. You are responsible to report any weakness you discover in the security of smooshyLab's computing resources to smooshyLab. You are not to explore a weakness on your own as this may be interpreted as intentionally tampering with smooshyLab's resources and be treated as a violation of criminal law. If you wish to assist in resolving a security weakness in the system, you should contact smooshyLab for authority to act and for further instruction.

Viruses and Other Destructive Activities

Use of smooshyLab's services or equipment for creating or sending Internet viruses, worms or Trojan horses, or for ping, flooding or mail bombing, or engaging in denial of service attacks is prohibited. It is also prohibited for any customer to engage in other activity that is intended to disrupt or interfere with, or that results in the disruption of or interference with, the ability of others to effectively use smooshyLab's services and equipment (or any connected network, system, service or equipment) or conduct their business over the Internet.

Copyright Violations

The Digital Millennium Copyright Act ("DMCA") sets forth the law regarding the use of copyrighted materials on the Internet. All smooshyLab customers are subject to the requirements of the DMCA. Individuals or entities submitting notifications of copyright infringement by a smooshyLab customer (per the DMCA) to smooshyLab must follow the below procedures. Copyright infringement notifications submitted to smooshyLab according to these procedures will be processed within 21 days of receipt. Customers who are the subject of a DMCA notification that meets the below criteria may be subject to account termination at smooshyLab's sole discretion.

DMCA Copyright Infringement Notification Requirements

- Signature of the copyright owner or a person authorized to act on the copyright owner's behalf (the "Claimant").
- Identification of the copyrighted work(s) claimed to have been infringed.
- Identification of the material claimed to infringe the copyright(s), and enough information for smooshyLab to locate it including URLs and specific descriptions of the infringing material at each URL.
- The Claimant's name, address, and telephone number(s).
- A statement that the Claimant has a good faith belief that use of the disputed material is not authorized by the copyright owner or his agent.

- A statement, under penalty of perjury, that the information in the notification of copyright infringement is accurate and that the Claimant is authorized to act on behalf of the copyright owner.
- Mail the notification to:

smooshyLab
Legal Department
13011 10th Ave S
Burien, WA 98168
abuse@smooshylab.com

Adult Content

Pornography and sex-related merchandising are prohibited on smooshyLab servers. This includes sites that may infer sexual content or provide links to adult content elsewhere. This is also true for sites that promote any illegal activity or content that may be damaging to our servers or any other server on the Internet, or provide links to such sites.

Child Pornography

The use of smooshyLab's services to store, post, display, transmit, advertise or otherwise make available child pornography is prohibited. smooshyLab is required by law, and will, notify law enforcement agencies when it becomes aware of the presence of child pornography on, or being transmitted through, its services.

Privacy

smooshyLab is concerned with the privacy of on-line communications and Web sites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, smooshyLab urges its customers to assume that all of their on-line communications are insecure. smooshyLab has taken every step in securing its servers and network, although we cannot take any responsibility for the security of information transmitted over smooshyLab's facilities. Additional details on privacy and smooshyLab's use of customer information can be found in smooshyLab's Privacy Policy located here.

Customer Responsibility

Customers are required to use the smooshyLab network and/or servers responsibly. This includes respecting the other customers of smooshyLab. smooshyLab reserves the right to suspend and/or cancel service with any customer who uses the smooshyLab network in such a way that adversely affects other smooshyLab customers. While smooshyLab may monitor its service electronically to determine that its facilities are operating satisfactorily, as a general practice, smooshyLab does not monitor its customers' communications or activities to determine whether they are in compliance with the TOS. However, when smooshyLab becomes aware of any violation of the TOS or other user agreements, smooshyLab may take any action to stop or correct such violation, including, but not limited to, denying access to smooshyLab's services and equipment or to the Internet. In addition, smooshyLab may take action against a customer or a customer of such customer because of the activities of such customer. smooshyLab anticipates that customers who offer Internet services will cooperate with smooshyLab in any corrective or preventive action that smooshyLab deems necessary. Failure to cooperate with such corrective or preventive measures is a violation of smooshyLab policy and smooshyLab reserves the right to take any such action even though such action may affect other customers of the smooshyLab customer. You are responsible for retrieving your e-mail, web site files, and all other information stored on our servers that is owned by you, prior to canceling your account. You are responsible to report any weakness you discover in the security of smooshyLab's computing resources to smooshyLab.

Actions Taken by smooshyLab

The failure by a customer to meet or follow any of the TOS is grounds for account deactivation. smooshyLab will be the sole arbiter as to what constitutes a violation of the TOS. smooshyLab reserves the right to remove any account without prior notice and to refuse service to anyone at any time. When smooshyLab becomes aware of an alleged violation of its TOS, smooshyLab will initiate an investigation. During the investigation, smooshyLab may restrict a customer's access in order to prevent further potentially unauthorized activity. Depending on the severity of the violation, smooshyLab may, at its sole discretion, restrict, suspend, or terminate a customer's Web hosting account and/or pursue other civil remedies. If such violation is a criminal offense, smooshyLab will notify the appropriate law enforcement authorities of such violation. An unlisted activity may also be a violation of the TOS if it is illegal, irresponsible, or constitutes disruptive use of the Internet. smooshyLab does not issue credits for outages incurred through service disablement resulting from TOS violations. Violators of the policy are responsible, without limitations, for the cost of labor to rectify any damage done to the operation of the network and business operations supported by the network, and to respond to complaints incurred by smooshyLab. Websites found in violation of this TOS policy are subject to account termination without notice and any refunds are void. Violations of system or network security are prohibited and may result in criminal and civil liability.

Indemnification

smooshyLab customers agree to protect, defend, hold harmless, and indemnify smooshyLab, any third party entity related to smooshyLab (including, without limitation, third party vendors), and smooshyLab's executives, directors, officers, attorneys, managers, employees, consultants, contractors, agents, parent companies, subsidiaries, and co-subsidiaries with the same parent company as smooshyLab, from and against any and all liabilities, losses, costs, judgments, damages, claims, or causes of actions, including, without limitation, any and all legal fees and expenses, arising out of or resulting in any from the customer's use of smooshyLab's services.

Disclaimer

The smooshyLab service is provided on an as is, as available basis without warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose or non-infringement. smooshyLab expressly disclaims any representation or warranty that the smooshyLab service will be error-free, secure or uninterrupted. No oral advice or written information given by smooshyLab, its employees, licensors or the like, will create a warranty; nor may you rely on any such information or advice. smooshyLab and its partners and suppliers will not be liable for any cost or damage arising either directly or indirectly from any transaction or use of the service.

Termination for Bankruptcy or Insolvency

If a customer becomes insolvent or any bankruptcy petition is filed by the customer, or any third party against the customer, smooshyLab may immediately terminate provision of smooshyLab's services to the customer without prior notice or penalty. Such customer consents to the grant of relief from any automatic stay of proceedings against smooshyLab in such event.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT, AND UNDER NO THEORY OF LAW OR EQUITY, WILL smooshyLab (INCLUDING, WITHOUT LIMITATION, smooshyLab'S EXECUTIVES, DIRECTORS, OFFICERS, ATTORNEYS, MANAGERS, EMPLOYEES, CONSULTANTS, CONTRACTORS, AGENTS, PARENT COMPANIES, SUBSIDIARIES, CO-SUBSIDIARIES WITH THE SAME PARENT COMPANY AS smooshyLab, AFFILIATES, THIRD-PARTY PROVIDERS, MERCHANTS, LICENSORS, OR THE LIKE) OR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING smooshyLab'S SERVICES, BE LIABLE FOR THE

LOSS OF A DOMAIN NAME, OR ANY BUSINESS OR PERSONAL LOSS, REVENUES DECREASE, EXPENSES INCREASE, COSTS OF SUBSTITUTE PRODUCTS AND/OR smooshyLab SERVICES, OR ANY OTHER LOSS OR DAMAGE WHATSOEVER, OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF ANY USE OF, OR ANY INABILITY TO USE, ANY smooshyLab SERVICES EVEN IF smooshyLab HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. smooshyLab'S TOTAL CUMULATIVE LIABILITY, IF ANY, TO CUSTOMER, OR ANY THIRD PARTY, FOR ANY AND ALL DAMAGES, RELATED TO THE TOS OR smooshyLab'S SERVICES, INCLUDING, WITHOUT LIMITATION, THOSE FROM ANY NEGLIGENCE, ANY ACT OR OMISSION BY smooshyLab OR smooshyLab'S REPRESENTATIVES, OR UNDER ANY OTHER THEORY OF LAW OR EQUITY, WILL BE LIMITED TO, AND WILL NOT EXCEED, THE ACTUAL DOLLAR AMOUNT PAID BY THE CUSTOMER FOR THE SERVICES WHICH GAVE RISE TO SUCH DAMAGES, LOSSES AND CAUSES OF ACTIONS DURING THE 1-MONTH PERIOD PRIOR TO THE DATE THE DAMAGE OR LOSS OCCURRED OR THE CAUSE OF ACTION AROSE.

Modifications

smooshyLab may discontinue, upgrade, replace, modify, or change in any way, without limitation, any software, service, application, program, data, hardware, equipment, or portions or components thereof, used to provide customers with smooshyLab's services. Certain changes to smooshyLab's services may affect the operation of customers' personalized applications and content. Each customer is solely responsible, and smooshyLab is not liable, for any and all such personalized applications and content, except as expressly agreed to by smooshyLab.

Backup of Data

Except where smooshyLab has expressly agreed in writing to the contrary, customers are solely and entirely responsible, and smooshyLab is in NO way responsible, for the management and backup of all customer data, and all updates, upgrades, and patches to any software that customers use in connection with smooshyLab services. You are responsible to make any back-ups of electronically stored data which you have created or maintain. smooshyLab assumes no responsibility for lost or corrupted data.

Third Party Licenses

smooshyLab makes a reasonable effort to provide customers with technologies, developments, and innovations (collectively "Technologies"), part of which may be licensed, or co-branded, from or by, third party entities. However, smooshyLab makes NO warranty of any kind, either express or implied, regarding the quality, accuracy, reliability, validity, or continued existence of any or all aspects of such Technologies. Moreover, smooshyLab specifically disclaims all warranties of merchantability and fitness for a particular purpose for such Technologies. Furthermore, no customer will hold smooshyLab liable in any way for the revocation of any license, which has been licensed to smooshyLab. The use of the Technologies obtained from or through smooshyLab, or any other referred third party, whether directly or indirectly, is at the sole risk of customers.

Non-smooshyLab Products

Any mention of non-smooshyLab products by smooshyLab, its employees, or any third party entity related to smooshyLab is for information purposes only and does not constitute an endorsement or recommendation by smooshyLab. smooshyLab disclaims any and all liabilities for any representation or warranty made by the vendors of such non-smooshyLab products or services.

smooshyLab's Intellectual Property

Customers will not, without smooshyLab's express written consent, copy, reproduce, republish, or otherwise use any material, in whole or in part, that is located on smooshyLab's Web site, smooshyLab related documents, media, and/or publishing's; and customers will not

use any of smooshyLab's trademarks, service marks, copyrighted materials, or other intellectual property without smooshyLab's express written consent. Customers will not, in any way, misrepresent their relationship with smooshyLab, attempt to pass themselves off as smooshyLab, or claim that customers are smooshyLab.

Assignment

Customers may not assign or delegate their rights or obligations under the TOS or other agreement for smooshyLab's services, either in whole or in part, without the prior written consent of smooshyLab.

Minimum Age Requirement

smooshyLab customers must be at least 18 years of age. Any individual under the age of 18 years ("Minor") must have a parent or guardian accept the TOS in order for the Minor to become a smooshyLab customer. A parent or guardian who accepts the TOS on behalf of a Minor will be primarily liable for ensuring complete and proper compliance with the TOS, including the timely and full payment of the charges for smooshyLab services, and such primary liability will continue even when the Minor has attained the age of 18, unless the parent or guardian obtains smooshyLab's express written consent to the contrary. Any acceptance of the TOS or any other agreement for smooshyLab's services will be deemed null and void to the extent that smooshyLab will not be liable in any way as a result of the Minor's age or legal incapacity or the Minor's use of smooshyLab's services.

Governing Law and Severability

The TOS, and any other agreement for smooshyLab services, will be governed by and construed in accordance with the laws of the State of Washington, USA without reference to its conflicts of laws principles. Any litigation or arbitration between a customer and smooshyLab will take place in Washington, County of King and the customer will consent to personal jurisdiction and venue in that jurisdiction. If any provision or portion of the TOS or other smooshyLab agreement is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of the TOS or the agreement will continue in full force and effect.

Force Majeure

smooshyLab will not be liable for delays in its performance of the TOS or smooshyLab services caused by circumstances beyond smooshyLab's reasonable control, including acts of God, wars, insurrection, civil commotions, riots, national disasters, earthquakes, strikes, fires, floods, water damage, explosions, shortages of labor or materials, labor disputes, transportation problems, accidents, embargoes, or governmental restrictions (collectively "Force Majeure"). smooshyLab will make reasonable efforts to reduce to a minimum and mitigate the effect of any Force Majeure. Notwithstanding anything contained elsewhere herein, lack of finances will not be considered an event of Force Majeure nor will any event of Force Majeure suspend any obligation of customers for the payment of money due. Waiver and Amendment Any waiver, modification, or amendment of any provision of the TOS or other agreement for smooshyLab services, initiated by a customer, will be effective only if accepted in writing and signed by an authorized representative of smooshyLab.

Independent Contractors

Nothing in this Agreement will be construed as creating a partnership or relationship of employer and employee, principal and agent, partnership or joint venture between smooshyLab and its customers. Each of smooshyLab and its customers will be deemed an independent contractor at all times and will have no right or authority to assume or create any obligation on behalf of the other, except as may be expressly provided herein.

Construction and Interpretation

Wherever in this TOS the masculine, feminine, or neuter gender is used, it will be construed as including all genders, and wherever the singular is used, it will be deemed to include the plural and vice versa, where the context so requires. The division of the TOS into sections/paragraphs, and the insertion of headings/captions, are for convenience of reference only and will not affect the construction or interpretation of the TOS. Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the construction or interpretation of the TOS.

Complete Agreement and Exclusivity

The TOS, and/or any other specific agreement for smooshyLab services, constitutes the complete understanding and agreement between smooshyLab and its customers. Except when expressly agreed to the contrary in signed writing by an authorized representative of smooshyLab, the TOS supersedes any other written (including digitized/computerized) agreement, oral agreement, and/or agreement by conduct. This TOS, and/or any other specific agreement for smooshyLab services is between smooshyLab and its customers only and will not confer any rights in any third party except as otherwise expressly provided by smooshyLab.

Trademarks

smooshyLab's company, brand and product identifiers are trademarks or registered trademarks of smooshyLab. All Rights Reserved.

These trademarked terms must be identified as trademarks of smooshyLab. using the appropriate symbol (® or ™) at the first occurrence in any published communications, printed or electronic, including advertising, promotions, packaging, technical documentation, sales and marketing collateral, and product labels. In addition, the terms must also be listed, identified and attributed as the property of smooshyLab.

If you have questions regarding the use and identification of smooshyLab trademarks, please contact smooshyLab's support department at support@smooshylab.com.

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smooshyLab, and the smooshyLab are trademarks and/or registered trademarks of smooshyLab. Other trademarks, registered trademarks, brands, services and product names are the properties of their respective owners.

smooshyLab Web Hosting Customer Restrictions

The following Terms Of Service apply only to smooshyLab's Web Hosting and Ecommerce customers, and supplement the terms above that apply to all smooshyLab customers:

Server Resources

Any Web site that uses a high amount of server resources (such as, but not limited to, CPU time, memory usage, and network resources), as measured by smooshyLab, will be given the option to either pay additional fees (which will depend on the resources required) or reduce the resources used to an acceptable level. smooshyLab will be the sole arbiter of what is considered to be a high server usage level. Any Web Hosting and E-commerce account deemed to be adversely affecting server performance or network integrity will be shut down without prior notice. If your site is shut down, you will not be eligible for the uptime agreement.

Spamming

Sending unsolicited bulk and/or commercial messages ("UCE") over the Internet (known as "spamming") is prohibited, regardless of whether or not it overloads a server or disrupts service to smooshyLab's customers. The term "spamming" also includes, but is not limited to, maintaining an open SMTP policy, engaging in spamming using the service of another ISP or IPP and referencing in the spam a Web site hosted on a smooshyLab server, or selling and/or distributing software (on a Web site residing on a smooshyLab server) that facilitates spamming. Violators will be assessed a non-refundable minimum fine of \$200 and will face immediate suspension. smooshyLab reserves the right to determine, in its sole and absolute discretion, what constitutes a violation of this provision.

Mailing Lists and/or High Volumes Of E-mail

Any Web site that sends out a high amount of e-mails (more than 500 per month), as measured by smooshyLab, to networks outside of smooshyLab's network will be given the option to either pay additional fees by moving their mailing list to our mailing list software, reduce the amount of e-mails sent to an acceptable level, or upgrade its service to a Dedicated Server plan. smooshyLab will be the sole arbiter of what is considered to be a high e-mail sending usage. Any Web Hosting and E-commerce account deemed to be adversely affecting SMTP e-mail sending server performance or e-mail sending integrity will be either have e-mails deleted, access denied, suspended, and/or shut down without prior notice. If your site is shut down, you will not be eligible for the uptime agreement.

CGI Scripts

Any scripts, in any programming language that pose a potential security risk or are deemed to be adversely affecting server performance or network integrity will be shut down or will be automatically removed without prior notice. smooshyLab does not permit CGI script sharing with domains not hosted by smooshyLab or any scripts that may be abused for UCE purposes.

Chat Rooms

smooshyLab does not allow Web Hosting and E-commerce customers to install their own chat rooms. Chat rooms tend to require significant system resources and therefore cannot be permitted as an account option. However, for a small charge, smooshyLab provides Java chat rooms that meet most users' needs and run without hindering system performance.

Background Running Programs and Cron Jobs

smooshyLab may allow programs to run in the background. These programs will be considered on an individual basis and Web Hosting and E-commerce customers will incur extra charges based on system resources used and operational maintenance needed. If you wish to run

background programs please contact smooshyLab at support@smooshylab.com so that we can arrange set-up.

IRC

smooshyLab does not allow IRC or IRC bots to be operated by Web Hosting and E-commerce customers.

Other

smooshyLab does not allow you to: run any bit torrent application, tracker, or client; Use 25% or more of system resources for longer than 60 seconds. There are numerous activities that could cause such problems; these include: CGI scripts, FTP, PHP, HTTP, etc; Run any gaming servers such as counter-strike, half-life, battlefield, etc; Participate in any file-sharing/peer-to-peer activities; Run cron entries with intervals of less than 15 minutes or a cron job that last more than 5 minutes.

Software Distribution

smooshyLab's Web Hosting accounts are NOT configured for the purposes of distributing software and/or multimedia products.

E-commerce accounts ARE configured for the purposes of distributing software and/or multimedia products. You can install any e-commerce software on your web hosting account you wish, but it is not supported by smooshyLab.

Multimedia Files

Multimedia files are defined as any graphics, audio, and video files. smooshyLab Web Hosting and Ecommerce accounts are can be used for the purposes of distributing and storing unusual amounts of multimedia files as long as the space of your web hosting plan has not been exceed.

Databases

Any database stored on smooshyLab's Web Hosting and E-commerce servers will be limited in size to 10% of the total disk space allotted for that particular domain's plan/web hosting account except for access databases.