



## CyberExpressWay's Terms of Service Agreement

Hosting fees cover web space and bandwidth for your web page files and email, as set by your plan. Hosting fees do not cover web site updates, modifications, corrections or repairs.

You agree to abide by the restrictions made below. In the event of any violation of the below terms and conditions of using our service, we reserve the right to suspend or terminate your account immediately, without notice. If you do not wish to be bound by the below terms and conditions of using our service, then you may not access the service.

### **Warranty Disclaimer**

No warranties are made regarding the service. We do not guarantee that the service will be uninterrupted or error free. We exercise no control whatsoever over the content of information that is passed through our system. The service is provided on an "as is" basis.

### **Responsibility of Use**

User shall assume all responsibility for all content distributed, accessed, or viewed while connected to our service. Under no circumstance shall we be held liable for your actions while you are using the service. In the event of a court order or law enforcement request, we may provide any and all information that they request.

### **Limitation of Liability**

Under no circumstances shall we, our agents, our providers, or employees be liable for any damages, that result in any way from users use or inability to use the service or any part thereof. This includes all direct and indirect damages, special, punitive or consequential damages that may result from busy signals, errors, delays in the service, deletion of files, viruses, theft, alteration of a user's computer or any reasons beyond our control. In the event that we are found liable under any circumstance under the terms of this agreement, our liability shall be limited to the unused balance of user's subscription payment pro-rated to reflect the current term.

### **Software**

There are several software programs available to CyberExpressWay customers through the c-Panel either free of charge or very low cost. CyberExpressWay isn't responsible for this software. For terms of service or support for these programs please refer to the company's website.

### **Age Limit**

User represents to us that he or she is 18 years of age or older. User understands that certain materials available from Service provided under the terms of this Agreement may not be suitable for individuals under the age of 18.

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### **Sexually Explicit Materials**

User understands that the Internet contains unedited materials some of which are sexually explicit or may be offensive. User accesses such materials at his or her own risk. We have no control over and accept no responsibility whatsoever for such materials.

### **Restrictions of Use**

User understands that the following restrictions are applied to the service:

#### User May Not:

POST offensive, threatening or illegal materials.  
Post or transmit viruses or any harmful components.  
Post anything that is protected by copyright without permission.  
Post anything that is protected by Trademark.  
Attempt to violate the security of any computer network.  
Engage in any illegal activity.

The right to use the Service is not transferable. Accounts are for User's use only. User shall be responsible for the confidentiality of User's password.

#### Email Restrictions

User agrees to use the outgoing email server (SMTP) provided by their I.S.P.  
User may not send to more than 25 recipients at a time.  
User may not send more than 100 emails per hour period.  
User may not send from an email address that is not their own.  
User may not send an email that is over 10 MB in size.  
User may not forge message headers to hide the origin of their email.  
User may not send viruses or any harmful components.  
User may not send offensive, threatening or illegal material.  
User may not send SPAM, or bulk email.

#### Bandwidth or website size restrictions:

We allow websites 1 GB of bandwidth per month for each 100 MB of storage space. 100MB - 1 Gig, 250MB - 2.5 Gig, 500MB - 5 Gigs, 1 Gig - 10 Gigs

#### Other restrictions:

You agree to monitor any posts made to discussion groups, blogs, bulletin boards or other type of posting applications on your website. You agree not to post any of the following restricted contents: Illegal, Abusive or Unethical Activities include, but are not limited to, child pornography, pornography, nudity, sexual material of any sort, obscenity, violations of privacy, hacking, computer virus, gambling, or promotion of gambling, and any threatening, harassing or harmful materials or uses, as determined by us. You agree to indemnify and hold us harmless from any claim resulting from your publications or use of Illegal, Abusive or Unethical materials.

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We reserve the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole and absolute discretion, are unacceptable, undesirable, or in violation of this Agreement.

User may not run any daemons on the server.

User may not run any program that sends out bulk email through the hosting server.

Unsolicited commercial advertisements are not allowed in e-mail, and will likely result in account suspension or cancellation.

Commercial advertisements are unwelcome in most Usenet discussion groups and on most e-mail mailing lists. Inappropriate posting may result in account suspension or cancellation. See the newsgroup or mailing list's charter for whether advertising is allowed or not. "Spamming," or sending a message to many different off-topic newsgroups, is particularly unethical and will be treated as such. Sending a message, especially an advertisement, to more than five or six recipients, is by itself spamming unless the individuals have specifically requested to be added to a mailing list on that topic. E-mail is a person-to-person medium, not a broadcast medium.

User may not run any formmail.pl program earlier than version 1.92.

The intention of CyberExpressWay is to provide a large space to serve web documents, not an offsite storage area for electronic files. All web pages (html) must be 'linked' with all files (.gif, .jpeg, .exe, etc.) stored on our server. Web sites that are found to contain no html documents or a number of unlinked files are subject to warning, suspension or cancellation at the discretion of our management. CyberExpressWay will not host music archive sites that violate any copyright laws in any file format. Any sites that are found to contain this content will be warned, suspended or cancelled at the discretion of our management.

You agree not to post any material that would constitute a copyright or trademark infringement.

You agree not to post any material that would infringe on proprietary rights of a third party.

You agree not post any items that may have been illegally obtained.

You agree not post any fraudulent items for sale.

Customer agrees that it shall defend, indemnify, save and hold CyberExpressWay harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against CyberExpressWay, 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 CyberExpressWay against liabilities arising out of;

(1) any injury to person or property caused by any products sold or otherwise distributed in connection with CyberExpressWay's server;

(2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party;

(3) copyright or trademark infringement

(4) any defective products sold to customer from our server and

(5) any fraudulent items being sold.

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Examples of unacceptable material include but are not limited to:

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 Sites  
MUDs/RPGs/PPBGs  
Hateful/Racist/Harassment oriented 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  
Mailer Pro  
Fraudulent Sites (Including, but not limited to sites listed at aa419.org & escrow-fraud.com)

Resource Usage

User may not:

- a) 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.
- b) Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD.
- c) Run any type of web spider or indexer (including Google Cash / AdSpy) on shared servers.
- d) Run any software that interfaces with an IRC (Internet Relay Chat) network.
- e) 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.
- f) Participate in any file-sharing/peer-to-peer activities
- g) Run any gaming servers such as counter-strike, half-life, battlefield1942, etc
- h) 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")`.

INODES

The use of more than 50,000 inodes on any account may potentially result in a warning first, and if no action is taken future suspension. Every file (a web page, image file, email, etc) on your account uses up 1

Customer Initials \_\_\_\_\_



inode. Over time, tens of thousands of email messages may build up, eventually pushing the account past our inode limit. So please do not store email messages on the server. Also it is important that the default mailbox remain disabled. 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.

### **Right to Cancel**

We reserve the right to cancel Service for any reason without prior notice. In the event that a users service is cancelled for a reason outside of this TOS, we will refund the user the unused portion of that months service at the time of cancellation.

User must notify [CyberExpressWay] via telephone or in writing to cancel Service. Cancellations shall not be honored by electronic mail. Requests to cancel service must be received five days prior to the cancellation date. Cancellations will take place on the first date of each month. Fees for any setup and monthly service charges placed by [CyberExpressWay] are non-refundable.

### **System Backups**

We do not and will not perform system backups on any User's E-mail account(s). We shall not be held responsible for any lost E-mail data, email attachments, or any E-mail message contents, regardless of the reasoning for data loss or system causes. Except as otherwise set forth herein, We will not provide historical data, to any party for any reason, regarding any system or Internet activity.

Although we may perform system backups on hosting content, we shall not be held responsible for any lost web data, web files, or any website contents, regardless of the reasoning for data loss or system causes. User should always keep their own backup of their website. Except as otherwise set forth herein, We will not provide historical data regarding any system or Internet activity.

We do not perform backups on the mysql databases. We shall not be held responsible for any lost data. User should always keep their own backup of their database content.

### **Hacking**

You agree that CyberExpressWay is not liable in anyway for loss of income, damages or problems that may result from third parties hacking the website or software.

### **No Confidentiality**

Information transmitted through us and through the Internet in general is not confidential. We can not and shall not guarantee privacy or protection of any User. We reserves the right to monitor any User's transmissions when deemed necessary for providing proper service and/or to protect the rights and property of our company.

### **Privacy Policy**

You must provide CyberExpressWay with your correct name, address and telephone (you may use your home or work address and telephone number).

Customer Initials \_\_\_\_\_



It is your responsibility to notify us of any change in the above information.

CyberExpressWay values your right to privacy. CyberExpressWay does not sell your personal information. CyberExpressWay does not provide you personal information for any advertising purpose. CyberExpressWay will not contact you in the attempt to sell you any additional services.

### **Billing Policies**

Payment due within 15 days of the invoice date. Dishonored checks are subject to a collection fee of \$25.00 and the User's account may be suspended until the account is current. If payment is not received, service may be suspended and a reconnection fee of \$15.00 may be added to charges for reactivate of service.

CyberExpressWay maintains the right to terminate Service for any unpaid accounts. Accounts in default are subject to an interest charge of 2.5% per month on the outstanding balance. Termination of Service shall not relieve User from the obligation to satisfy outstanding invoices. In the event CyberExpressWay utilizes an attorney or collection agency to collect any unpaid amounts, User shall be responsible for the payment of all of CyberExpressWay's attorneys' or collection agency fees and costs in the collection of these sums.

CyberExpressWay reserves the right to change prices at any time without prior notice to it's customers or the public. Price changes will not be retroactive for existing customers, regardless of the length of their existing service subscription.

### **Failure to Comply With Terms and Conditions**

We may deny User access to all or part of the Service without notice if User engages in any conduct or activities that we in our sole discretion believes violates any of the terms and conditions in this Agreement. If we deny User access to the Service because of such a violation, User shall not have the right

- (1) to access through us any materials stored on the Internet,
- (2) to obtain any credit(s) otherwise due to User, and such credit(s) shall be forfeited,
- (3) to access third party services, merchandise or information on the Internet through us, and we shall have no responsibility to notify any third-party providers of services, merchandise or information nor any responsibility for any consequences resulting from lack of notification.

### **Miscellaneous**

In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect.

Our failure to insist upon or enforce strict performance of any provisions of this Agreement shall not be construed as a waiver of any

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provision or right. neither the course of conduct between parties nor trade practice shall act to modify any provision of this Agreement.

We may modify this Agreement from time to time by placing a notice of such modification on our website, and User's continued use of the Service following notice of such modification shall be deemed to be User's acceptance of any such modification. It is User's responsibility to check this online area regularly to determine whether this Agreement has been modified. If User does not agree to any modification of this Agreement, User must immediately stop using the Service.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of law provisions. Any cause of action User may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.

We shall not be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, dire, explosions, earthquakes, floods, the elements, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation or any cause beyond our reasonable control.

Venue for litigation of any dispute, controversy, or claim arising out of, in connection with, or in relation to this Agreement, or the breach thereof, naming us as the defendant, shall be proper only in a venue determined by us. In any action between us and User to enforce any of the terms of this Agreement, we shall be entitled to recover expenses, including reasonable attorney's fees.

This Agreement constitutes the entire agreement between User and us with respect to the Service.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_

PHONE: \_\_\_\_\_

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