

TERMS OF SERVICE

Last Updated: January 21st, 2007

Blue Wave Concepts, LLC (herein referred to as "BWCLLC") is a New Jersey based web design & development business who offers hosting to its clients.

By hosting your web site(s) with Blue Wave Concepts (herein referred to as "BWCLLC"), you (herein referred to as "Client") understand and agree to these Terms and Conditions. Clients who violate these Terms and Conditions are subject to account suspension and/or termination, with or without notice. If for any reason you do not agree with the Terms and Conditions or policies shown on this page, DISCONTINUE USE OF YOUR ACCOUNT AND/OR SERVICE IMMEDIATELY.

BWCLLC reserves the right to modify these policies at anytime; effective upon posting the revised document on our web site @ <http://www.bluewaveconcepts.com/pdfs/TOS.pdf> Clients should check this URL frequently to ensure they are familiar with any changes and/or updates. Clients who have signed and returned a "Dedicated / CoLocation Service Agreement" are bound by the Terms of Service as outlined in their individual agreements.

1. General Terms and Conditions

- BWCLLC SHALL PROVIDE SERVICE, SOFTWARE, AND EQUIPMENT AS SET FORTH IN THIS AGREEMENT. BWCLLC DOES NOT WARRANT THAT SERVICE, SOFTWARE, OR EQUIPMENT SHALL BE INTERRUPTED OR ERROR FREE OR PROVIDE ANY SECURITY OR PRIVACY FOR THE CUSTOMER'S COMPUTER NETWORK OR ANY DATA, OR THAT THE INFORMATION AVAILABLE AND/OR ACCESSED THROUGH THE INTERNET SHALL BE ACCURATE, CORRECT, APPROPRIATE FOR THE CUSTOMER'S NEEDS, FREE FROM VIRUSES OR OTHER DISABLING CODES, OR THAT SUCH INFORMATION SHALL NOT INFRINGE UPON ANY PROPRIETARY OR OTHER RIGHTS OF OTHERS. THE CUSTOMER'S USE OF THE INTERNET AND ANY INFORMATION AVAILABLE AND/OR ACCESSED THROUGH THE INTERNET SHALL BE AT THE CUSTOMER'S SOLE RISK. OTHER THAN ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, BWCLLC DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT ITS USE OF THE BWCLLC SERVICE SHALL NOT VIOLATE OR INFRINGE UPON ANY PROPRIETARY OR OTHER RIGHTS OF OTHERS, BE ABUSIVE, PROFANE OR OTHERWISE OFFENSIVE, OR VIOLATE ANY LAWS OR REGULATIONS. THE CUSTOMER SHALL NOT REPRESENT TO ANY THIRD PARTY THAT BWCLLC HAS MADE ANY WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE BWCLLC SERVICE, SOFTWARE, EQUIPMENT, OR THE INTERNET. BWCLLC SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES SUFFERED BY CLIENT IN CONNECTION WITH USE OF OR INABILITY TO USE BWCLLC SERVICE OR SERVICES INCLUDING, BUT NOT LIMITED TO, DAMAGES FROM LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MIS-DELIVERIES, OR SERVICE INTERRUPTIONS. UNDER NO CIRCUMSTANCES SHALL BWCLLC'S AGGREGATE LIABILITY EXCEED THE AMOUNT PAID BY CLIENT FOR BWCLLC SERVICES. INDIRECT OR ATTEMPTED VIOLATIONS OF THESE POLICIES, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A BWCLLC CLIENT, SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY CLIENT.

- The initial term of this contract shall commence immediately upon installation and setup of Client web site(s). This contract will be renewed on a six or twelve month basis until terminated by Client or BWCLLC.
- BWCLLC reserves to right to change service, including, but not limited to, price structure, access procedures, hours of operation, menu structures, commands, documentation, vendors and services offered, at any time, with or without notice.
- BWCLLC 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 BWCLLC that the Client may be performing activities harmful to BWCLLC or its Clients, employees, vendors, business relationships or any other users of the Internet.

2. Billing Policies and Procedures

- Billing cycles are either semi annually or annually, beginning on either January 1st or July 1st. Clients will be invoiced via Email thirty (30) calendar days prior to the payment past due date. In the event Client does not receive an invoice, it is the responsibility of Client to contact BWCLLC and request payment information or a duplicate invoice. Payment will be considered late fourteen (14) calendar days past the invoice due date and account and/or web site access may be suspended at BWCLLC's discretion. Suspended accounts are subject to a reconnection fee.
- Service may be canceled by BWCLLC or Client without penalty. Upon cancellation, unpaid invoices and/or overdue balances are to be paid immediately.

3. Legal Responsibilities

- BWCLLC agrees to defend or settle any claim against Client and to pay all damages that a court may award against Client in any suit that alleges a service infringes any patent, trademark, copyright or trade secret, except where the claim or suit arises out of or results from: Client's content; modifications to the service or combinations of the service with other services or products, by Client or others; BWCLLC's adherence to Client's written agreements; or, use of service in violation of this agreement. Client agrees to defend or settle any claim against BWCLLC and to pay all damages that a court may award against BWCLLC in any suit that alleges a service infringes any patent, trademark, copyright or trade secret, due to any of the exceptions in the preceding sentence. Whenever BWCLLC is responsible, BWCLLC may at its option either procure the right for Client to continue using, or may replace or modify the alleged infringing service so that the service becomes noninfringing, but if those alternatives are not reasonably achievable, BWCLLC may terminate the affected service without liability. Client shall defend, indemnify and hold harmless BWCLLC from and against all damages arising out of third party claims relating to Client's use of service. The indemnified party under this section: (i) must notify the other party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the other party is prejudiced thereby; (ii) shall have the right to participate in such defense or settlement with its own counsel and at its sole expense, but the other party shall have control of the defense or settlement; and (iii) shall reasonably cooperate with the defense.

4. Privacy and Security

- BWCLLC will not release Client's subscriber information to any third party except upon presentation of a valid court order of a government or entity within our jurisdiction. Client agrees that BWCLLC has final judgment as to the validity of any court order or subpoena considered to be proper and final.
- The Client is responsible for all use of the Client's account(s). BWCLLC 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 BWCLLC believes it

compromises server security. BWCLLC is not liable for any damages, usage, and/or charges incurred due to compromised and/or abused accounts.

- BWCLLC is not responsible for Client files residing on BWCLLC servers. The Client is responsible for independent backup of the Client's data. BWCLLC reserves the right to delete any of Client's personal files after one or both parties terminate the service agreement between BWCLLC and the Client.
- BWCLLC reserves the right to monitor any and all communications through BWCLLC network hardware and/or computer systems. Client agrees that BWCLLC is not considered a secure communications medium, and that no such privacy is guaranteed. It may become necessary for BWCLLC to examine server logs, Email, and/or Client files to determine if violations of our Acceptable Use Policy have taken place.

5. Unlawful Usage

- Client agrees to use the service in a manner consistent with all applicable laws and regulations of the United States of America, the State of New Jersey, and the Client's locality. Reproduction or transmission of any material in violation of any local, state, U.S., or international law or regulation is prohibited. Client agrees that any material to be reproduced or transmitted on BWCLLC's service through Client's account does not violate or infringe any copyright, trademark, patent, statutory, common law or proprietary rights of others. Software intended to facilitate any such violations or infringements may not be stored on BWCLLC servers. Client shall defend, indemnify and hold harmless BWCLLC from and against any claims, liabilities and expenses, including attorney fees, resulting from Client's use of BWCLLC service or a Client's account in an unlawful manner or otherwise in violation of or contrary to the Client's agreement with BWCLLC or BWCLLC's Acceptable Use Policies. At BWCLLC's sole discretion, BWCLLC may revoke Client access to BWCLLC services and/or servers for inappropriate usage.
- Violations of system and/or network security are prohibited, and may result in criminal and civil liability. BWCLLC 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:
 - 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 BWCLLC.
 - Unauthorized monitoring of data or traffic on any network or system without express authorization of BWCLLC.
 - 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.
 - Forging of any TCP-IP packet header or any part of the header information in an Email or a newsgroup posting.
- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send Email SPAM, initiation of pinging, flooding, mail-bombing, denial of service attacks, and piracy of software.

6. Spam, UCE, Mailings, and Newsletters

- BWCLLC has a ZERO TOLERANCE policy for Customers found to be in violation of our Terms and Conditions / Acceptable Use Policy with regards Section 6. Facilitating a Violation of this AUP: Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to SPAM.

- Sending unsolicited mail messages, including, without limitation, commercial advertising and informational announcements, is explicitly prohibited. Using another mail server to promote, advertise, or direct traffic to any site hosted on the BWCLLC Network is also considered SPAM, and direct violation of our AUP. Posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting, also known as "SPAM") is explicitly prohibited. Client's may send out mailings and/or newsletters to DOUBLE OPT-IN mailing lists, provided each Email address has been **FULLY VERIFIED** (see also: <http://mail-abuse.org/nml/unconfirmed.html>). All messages must include a "remove link" to OPT-OUT of future mailings, and clearly identify the recipient Email address used for the mailing.

- **AS REQUIRED BY THE FEDERAL CAN-SPAM ACT, ALL MAILINGS MUST INCLUDE THE FOLLOWING INFORMATION CLEARLY VISIBLE AT THE TOP OR BOTTOM OF EVERY MESSAGE SENT.**

- **<===== BEGIN FOOTER TEXT =====>**

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- The following information is regarding your current mailing list subscription:

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- You are subscribed to the following list:

- List Name (If Applicable)

-

- Using the following email:

- subscriber@email.com

-

- You may automatically unsubscribe from this list at any time by visiting the following URL:

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- <http://www.domain.com/cgi-bin/mail.cgi?unsubscribe-data>

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- If you are unable to click the above URL, please copy and paste the ENTIRE link into your browser. Some mail readers will wrap a long URL and prevent it from working with a single click.

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- You may also change your subscription by visiting the lists main menu:

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- <http://www.domain.com/cgi-bin/mail.cgi?data--if-applicable>

-

- If you're still having trouble, please contact the list owner at:

-

- webmaster@mailing_list.com

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- The following physical address is associated with this mailing list:

-

- Company Name

- 123 Street Address, Suite 1

- City, State, Zip Code

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- **<===== END FOOTER TEXT =====>**

7. Resource Usage

- BWCLLC accounts may limit bandwidth, CPU and/or disk space utilization for certain hosting packages. BWCLLC 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, BWCLLC may determine that a Client is exceeding the bandwidth, CPU and/or disk space utilization limitation for the Client's hosting package. In the event an account exceeds such limitations, the Client will be notified by E-mail and has 24 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 BWCLLC to adversely affect BWCLLC's ability to provide service for all clients, immediate action may be taken by BWCLLC. In such event, the Client will be notified by E-mail.

Service Level Agreement: Policies and Guarantees

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Network Uptime

- BWCLLC guarantees that the network will be available 99.99% of the time in a given month, excluding scheduled maintenance. BWCLLC will refund the customer 5% of the monthly fee for each 30 minutes of downtime (up to 100% of customer's monthly fee). Network uptime includes functioning of all network infrastructure including routers, switches and cabling, but does not include services or software running on your server. Network downtime exists when a particular customer is unable to transmit and receive data and BWCLLC records such failure. Network downtime is measured from the time the failure occurs to the time the server is once again able to transmit and receive data.

Infrastructure Guarantee

- BWCLLC guarantees that the critical infrastructure systems, including power and HVAC, will be available 99.99% of the time in a given month, excluding scheduled maintenance. BWCLLC will refund the customer 5% of the monthly fee for each 30 minutes of downtime (up to 100% of customer's monthly fee). Critical infrastructure includes functioning of all power and HVAC infrastructure including UPSs, PDUs and cabling, but does not include the power supplies on customers' servers. Infrastructure downtime exists when a particular server is shut down due to power or heat problems and BWCLLC records such failure. Infrastructure downtime is measured from the time the failure occurs to the time the problem is resolved and the server is powered back on.

Hardware Guarantee

- BWCLLC guarantees the functioning of all leased hardware components and will replace any failed component at no cost to the customer. Hardware replacement will begin once BWCLLC identifies the cause of the problem. Hardware replacement is guaranteed to be complete within 2 hours of problem identification. In the event that it takes us more than 2 hours to replace faulty hardware, BWCLLC will refund the customer 5% of the monthly fee per additional hour of down time (up to 100% of customer's monthly fee). Hardware is defined as the Processor(s), RAM, hard disk(s), motherboard, NIC card and other related hardware included under the server lease. This guarantee excludes the time required to rebuild a RAID array.