



Terms of Service

Last Updated: June. 20, 2021

These Terms of Service (the "Agreement") are an agreement between South Metro Web Designs ("SMW" or "us" or "our") and any client of SMW ("User" or "client" or "you" or "your"). This agreement sets forth the general terms and conditions of your use of the products and services made available by SMW and of the southmetroweb.com website (collectively, the "services"). By using the services, you agree to be bound by this agreement. If you do not agree to abide by the terms of this Agreement, you are not authorized to use or access the services. PLEASE BE AWARE THAT THERE ARE CLASS ACTION AND ARBITRATION PROVISIONS THAT MAY AFFECT YOUR RIGHTS.

Account Eligibility

By registering for or using the services, you represent and warrant that:

You are eighteen (18) years of age or older. The services are intended solely for users who are eighteen (18) years of age or older. Any registration, use of or access to the services, by anyone under eighteen (18) is unauthorized and is a violation of this agreement.

If you use the services on behalf of a legal entity or another party you agree that you are authorized to bind such other party to this agreement and to act on such other party's behalf with respect to any actions you take in connection with the services.

If there is ever an abuse issue or we need to contact you, we will use the primary email address we have on file. It is your responsibility to ensure that the contact information for your account, including any domain accounts is accurate, correct and complete at all times. If you need to verify or change your contact information, please contact us via email or phone. Providing false contact information of any kind may result in the termination of your account. In dedicated server purchases or certain other cases, you may be required to provide government issued identification and possibly a scan of the credit card used for verification purposes. Failure to provide the information requested may result in your order being denied.

You agree to be fully responsible for all use of your account and for any actions that take place through your account. It is your responsibility to maintain the confidentiality of your password and other information related to the security of your account.

SMW Content

Except for user content (as defined below), all content available through the services, including designs, text, graphics, images, video, information, software, audio and other files, and their selection and arrangement, and all software used to provide the services (collectively, "SMW content"), are the proprietary property of SMW or SMW's licensors. SMW content may not be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, sold or exploited for any purpose in any form or by any means, in whole or in part, other than as expressly permitted in this agreement. You may not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any SMW content. Any use of SMW content, other than as specifically authorized herein, is prohibited and will automatically terminate your rights to use the services and any SMW content. All rights to use SMW content that are not expressly granted in this agreement are reserved by SMW and SMW's licensors.

User Content

You may be able to upload, store, publish, display and distribute information, text, photos, videos and other content on or through the services (collectively, "user content"). User content includes any content posted by you or by users of any of your websites hosted through the services ("User Websites"). You are solely responsible for any and all user content and any transactions or other activities conducted on or through user Websites. By posting or distributing User content on or through the services, you represent and warrant to SMW that (i) you have all the necessary rights to post or distribute such user content, and (ii) your posting or distribution of such user content does not infringe or violate the rights of any third party.

You may not however use your /home/ directory as a location to place backups. Including cPanel/WHM/Third Party applications. All websites are backed-up monthly in third party locations. SMW reserves the right to remove any files that violate this policy under our sole discretion. Users that violate this policy are subject to immediate suspension and/or termination.

Solely for purposes of providing the services, you hereby grant to SMW a non-exclusive, royalty-free, worldwide right and license to: (i) use, reproduce, publicly perform, publicly display, modify, translate, excerpt (in whole or in part), publish and distribute user content; and (ii) make archival or back-up copies of user content and user Websites. Except for the rights expressly granted herein, SMW does not acquire any right, title or interest in or to the user content, all of which shall remain solely with you.

SMW exercises no control over, and accepts no responsibility for, user content or the content of any information passing through SMW's computers, network hubs and points of presence or the Internet. SMW does not monitor user content. However, you acknowledge and agree that SMW may, but is not obligated to, immediately take any corrective action in SMW's sole discretion, including without limitation removal of all or a portion of the user content or user Websites, and suspend or terminate any and all services without refund if you violate the terms of this Agreement. You hereby agree that SMW shall have no liability due to any corrective action that SMW may take.

Third party products and services

Third party providers

SMW may offer certain third party products and services. Such products and services may be subject to the terms and conditions of the third party provider. Discounts, promotions and special third party offers may be subject to additional restrictions and limitations by the third party provider. You should confirm the terms of any purchase and the use of goods or services with the specific third party provider with whom you are dealing.

SMW does not make any representations or warranties regarding, and is not liable for, the quality, availability, or timeliness of goods or services provided by a third party provider. You undertake all transactions with these third party providers at your own risk. We do not warrant the accuracy or completeness of any information regarding third party providers. SMW is not an agent, representative, trustee or fiduciary of you or the third party provider in any transaction.

SMW as Reseller or Licensor

SMW may act as a reseller or licensor of certain third party services, hardware, software and equipment used in connection with the services ("Non-SMW products"). SMW shall not be responsible for any changes in the services that cause any Non-SMW products to become obsolete, require modification or alteration, or otherwise affect the performance of the services. Any malfunction or manufacturer's defects of Non-SMW products, either sold, licensed or provided by SMW to you will not be deemed a breach of SMW's obligations under this agreement. Any rights or remedies you may have regarding the ownership, licensing, performance or compliance of any Non-SMW product are limited to those rights extended to you by the manufacturer of such Non-SMW product. You are entitled to use any Non-SMW product supplied by SMW only in connection with your use of the services as permitted under this agreement. You shall make no attempt to copy, alter, reverse engineer, or tamper with such Non-SMW product or to use it other than in connection with the services. You shall not resell, transfer, export or re-export any Non-SMW product, or any technical data derived therefrom, in violation of any applicable law, rules or regulations.

Third party websites

The services may contain links to other websites that are not owned or controlled by SMW ("third party sites"), as well as articles, photographs, text, graphics, pictures, designs, sound, video, information, and other content or items belonging to or originating from third parties ("third party content"). We are not responsible for any third party sites or third party content accessed through the services. third party sites and third party content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us. If you decide to access third party sites or to access or use any third party content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the

applicable third party's terms and policies, including privacy and data gathering practices of any website to which you navigate.

Prohibited Persons (Countries, Entities, And Individuals).

The U.S. Department of the Treasury, through the Office of Foreign Assets Control ("OFAC"), prohibits U.S. companies from engaging in all or certain commercial activities with certain sanctioned countries (each a "Sanctioned Country") and certain individuals, organizations or entities, including without limitation, certain "Specially Designated Nationals" ("SDN") listed by OFAC. If you are located in a Sanctioned Country or are listed as an SDN, you are prohibited from registering or signing up with, subscribing to, or using the services. Unless otherwise provided with explicit permission, SMW also does not register, and prohibits the use of any of our services in connection with, any Country-Code Top Level Domain Name ("ccTLD") for any Sanctioned Country.

Account Security and SMW Systems.

It is your responsibility to ensure that scripts/programs that you install under your account are secure and permissions of directories are set properly, regardless of the installation method. When at all possible, set permissions on most directories to 755 or as restrictive as possible. Users are ultimately responsible for all actions taken under their account. This includes the compromise of credentials such as user name and password. You are required to use a secure password. If a weak password is used, your account may be suspended until you agree to use a more secure password. Audits may be done to prevent weak passwords from being used. If an audit is performed, and your password is found to be weak, we will notify you and allow time for you to change or update your password before suspending your account.

The services, including all related equipment, networks and network devices are provided only for authorized customer use. SMW may, but is not obligated to, monitor our systems, including without limitation, to ensure that use is authorized, to facilitate protection against unauthorized access, and to verify security procedures, survivability, and operational security. During monitoring, information may be examined, recorded, copied and used for authorized purposes. By using the services, you consent to monitoring for these purposes.

Any account found connecting to a third party network or system without authorization from the third party is subject to suspension. Access to networks or systems outside of your direct control requires the express written consent of the third party. SMW may, at our discretion, request documentation to prove that your access to a third party network or system is authorized. Any account that is found to be compromised may be disabled and/or terminated. If you do not clean up your account after being notified by SMW of an ongoing issue, we reserve the right to keep your account disabled. Upon your request, SMW may clean-up your account for an additional fee.

SMW reserves the right to migrate your account from one data center to another in order to comply with applicable data center policies, local law or for technical or other reasons without notice.

HIPAA Disclaimer. We are not "HIPAA compliant."

You are solely responsible for any applicable compliance with federal or state laws governing the privacy and security of personal data, including medical or other sensitive data. You acknowledge that the services may not be appropriate for the storage or control of access to sensitive data, such as information about children or medical or health information. SMW does not control or monitor the information or data you store on, or transmit through, the services. We specifically disclaim any representation or warranty that the services, as offered, comply with the federal Health Insurance Portability and Accountability Act ("HIPAA"). Customers requiring secure storage of "protected health information" as defined under HIPAA are expressly prohibited from using the services for such purposes. Storing and permitting access to "protected health information" is a material violation of this agreement, and grounds for immediate account termination. We do not sign "Business Associate Agreements" and you agree that SMW is not a Business Associate or subcontractor or agent of yours pursuant to HIPAA. If you have questions about the security of your data, you should contact contact@SMW.com

Compatibility with the services

You agree to cooperate fully with SMW in connection with SMW's provision of the services. It is solely your responsibility to provide any equipment or software that may be necessary for your use of the services. To the extent that the performance of any of our obligations under this Agreement may depend upon your performance of your obligations, SMW is not responsible for any delays due to your failure to timely perform your obligations.

You are solely responsible for ensuring that all user content and user websites are compatible with the hardware and software used by SMW to provide the services, which may be changed by SMW from time to time in our sole discretion.

Billing and Payment Information

Prepayment.

It is your responsibility to ensure that your payment information is up to date, and that all invoices are paid on time. You agree to pay for the services in advance of the time period during which such services are provided. Subject to applicable laws, rules, and regulations, payments received will be first applied to the oldest outstanding invoice in your billing account.

Autorenewal.

Unless otherwise provided, you agree that until and unless you notify SMW of your desire to cancel the services, you will be billed on an automatically recurring basis to prevent any disruption to your services, using your credit card or other billing information on file with us.

Taxes.

Listed fees for the services do not include any applicable sales, use, revenue, excise or other taxes imposed by any taxing authority. Any applicable taxes will be added to SMW's invoice as a separate charge to be paid by you. All fees are non-refundable when paid unless otherwise stated.

Late Payment.

All invoices must be paid within seven (15) days of the invoice due date. Any invoice that is outstanding for more than seven (15) days may result in the suspension or termination of services. Access to the account will not be restored until payment has been received. If you fail to pay the fees as specified herein, SMW may suspend or terminate your account and pursue the collection costs incurred by SMW, including without limitation, any arbitration and legal fees, and reasonable attorneys' fees. SMW will not activate new orders or activate new packages for customers who have an outstanding balance on their account.

Fraud.

It is a violation of this agreement for you to misuse or fraudulently use credit cards, charge cards, electronic funds transfers, electronic checks, or any other payment method. SMW may report any such misuse or fraudulent use, as determined in SMW's sole discretion, to governmental and law enforcement authorities, credit reporting services, financial institutions and/or credit card companies.

Invoice Disputes.

You have ninety (30) days to dispute any charge or payment processed by SMW. If you have any questions concerning a charge on your account, contact us for assistance.

Cancellations and Refunds

Cancellation Process.

You may terminate or cancel the services at the end of the 12 month term. Please contact us so we may know of your intention to cancel.

Once we receive your cancellation notice and have confirmed all necessary information with you via email, we will inform you in writing (typically email) that your account has been canceled. We require all cancellations to be done through the email in order to (a) confirm your identity, (b) confirm in writing that you are prepared for all of your files and emails to be removed, and (c) document the request. This process aims to reduce the likelihood of mistakes, fraudulent/malicious requests, and to ensure that you are aware that your files, emails, and account will be removed permanently seven (7) days after a cancellation request is processed.

Termination

SMW may terminate your access to the services, in whole or in part, without notice in the event that: (i) you fail to make any payments due; (ii) you violate this Agreement; (iii) your conduct may harm SMW or others or cause SMW or others to incur liability, as determined by SMW in our sole discretion; or (iv) as otherwise specified in this agreement. In such event, SMW shall not refund to you any fees paid in advance of such termination, and you shall be obligated to pay all fees and charges accrued prior to the effectiveness of such termination. Additionally, SMW may charge you for all fees due for the services for the remaining portion of the then current term.

UPON TERMINATION OF THE SERVICES FOR ANY REASON, USER CONTENT, USER WEBSITES, AND OTHER DATA WILL BE DELETED AFTER SEVEN (7) DAYS.

CPU, Bandwidth and Disk Usage

Permitted CPU and Disk Usage.

All use of hosting space provided by SMW is subject to the terms of this agreement and the Acceptable Use Policy. Shared hosting space may only be used for web files, active email and content of user websites. Shared hosting space may not be used for storage (whether of media, emails, or other data), including, as offsite storage of electronic files, email or FTP hosts. SMW expressly reserves the right to review every shared account for excessive usage of CPU, disk space and other resources that may be caused by a violation of this agreement or the Acceptable Use Policy. SMW may, in our sole discretion, terminate access to the services, apply additional fees, or remove or delete user content for those accounts that are found to be in violation of SMW's terms and conditions.

VPS managed services

Please note that manually installing modules and bypassing WHM/cPanel could render your management with us void.

Uptime Guarantee.

If your shared server has a physical downtime that falls short of the 99.9% uptime guarantee, you may receive credits on your account as permitted by us and at our discretion. This uptime guarantee does not apply to planned maintenance. Approval of any credit is at the sole discretion of SMW and may be dependent upon the justification provided. Third party monitoring service reports may not be used for justification due to a variety of factors including the monitor's network capacity/transit availability. The uptime of the server is defined as the reported uptime from the operating system and the Apache Web Server which may differ from the uptime reported by other individual services. To request a credit, please email us at info@southmetroweb.com.

Price Change

SMW reserves the right to change prices, the annual payment amount, or any other charges at any time. We will provide you with at least sixty (60) days' notice before charging you with any price change. It is your sole responsibility to periodically review billing information provided by SMW, including notices sent or posted by SMW.

Limitation of Liability

IN NO EVENT WILL SMW, ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SERVICES, OR ANY USER CONTENT, USER WEBSITES OR OTHER MATERIALS ACCESSED OR DOWNLOADED

THROUGH THE SERVICES, EVEN IF SMW IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SMW'S LIABILITY TO YOU, OR ANY PARTY CLAIMING THROUGH YOU, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, IS LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO SMW FOR THE SERVICES IN THE THREE (3) MONTHS PRIOR TO THE INITIAL ACTION GIVING RISE TO LIABILITY. THIS IS AN AGGREGATE LIMIT. THE EXISTENCE OF MORE THAN ONE CLAIM HEREUNDER WILL NOT INCREASE THIS LIMIT.

Indemnification

You agree to indemnify, defend and hold harmless SMW, our affiliates, and their respective officers, directors, employees and agents (each an "Indemnified Party" and, collectively, the "Indemnified Parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the Indemnified parties arising out of or relating to (i) your use of the services, (ii) any breach or violation by you of this agreement; or (iii) any acts or omissions by you. The terms of this section shall survive any termination of this agreement.

Independent Contractor

SMW and user are independent contractors and nothing contained in this agreement places SMW and user in the relationship of principal and agent, partners or joint venturers. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

Governing Law; Jurisdiction

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of, related to or connected with the use of the services or this agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. Notwithstanding the foregoing, either party may seek equitable relief to protect its interests (including but not limited to injunctive relief), in a court of appropriate jurisdiction, and issues of intellectual property ownership or infringement may be decided only by a court of appropriate jurisdiction and not by arbitration. You agree that any actions and disputes shall be brought solely in a court of competent jurisdiction located within Henry County, GA.

Class Action Waiver

You and SMW agree that any proceedings to resolve or litigate any dispute whether through a court of law shall be solely conducted on an individual basis and waive all trials by jury. You agree that you will not seek to have any dispute heard as a class action, representative action, collective action, or private attorney general action.

Disclaimer

SMW shall not be responsible for any damages your business may suffer. SMW makes no warranties of any kind, expressed or implied for the services. SMW disclaims any warranty of merchantability or fitness for a particular purpose, including loss of data resulting from delays, delivery failures, wrong deliveries, and any and all service interruptions caused by SMW or our employees.

Backups and Data Loss

Your use of the services is at your sole risk. SMW's backup service runs monthly and overwrites the oldest previous backup. Only two month's of backups are kept at a time. This service is provided per the agreement and may be modified or terminated at any time at SMW's sole discretion. Accounts larger than 1GB WILL NOT be included in monthly backups.

Limited Warranty

THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE BASIS." EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, SMW AND OUR AFFILIATES, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, FOR THE SERVICES PROVIDED HEREUNDER. SMW AND OUR AFFILIATES, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES (I) THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR COMPLETELY SECURE; (II) AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES; OR (III) AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION PROVIDED THROUGH THE SERVICES. SMW AND OUR AFFILIATES, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS ARE NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM USERS OR STORED BY USERS ON OR THROUGH THE SERVICES. THE TERMS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

Disclosure to Law Enforcement

SMW may disclose any and all user information that is collected to law enforcement agencies for the purposes of an investigation, request, or otherwise without further consent or notification to the user upon lawful request from such agencies. We cooperate fully with law enforcement agencies. Additionally, your information may be disclosed pursuant to our Privacy Policy

Entire Agreement.

This agreement, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and this Agreement constitutes the sole and entire agreement between the parties with respect to the matters covered hereby.

Headings.

The headings herein are for convenience only and are not part of this Agreement.

Changes to the Agreement or the services

SMW may modify, add, or delete portions of this agreement at any time. If we have made significant changes to this agreement, we will post a notice on the SMW website for at least thirty (30) days after the changes are posted and will indicate in this agreement the date of the last revision. Any revisions to this agreement will become effective when posted unless otherwise provided. You agree to any modification to this agreement by continuing to use the services after the effective date of any such modification.

SMW reserves the right to modify, change, or discontinue any aspect of the services at any time.

Severability

If any provision or portion of any provision of this agreement is found to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions or portions (unless otherwise specified) thereof shall remain in full force and effect.

Waiver

No failure or delay by you or SMW to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of any right or remedy. No express waiver of, or assent to, any breach of or default in any term or condition of this agreement by any party hereto shall constitute a waiver of, or an assent to, any succeeding breach of or default in the same or any other term or condition hereof.

Assignment; Successors

You may not assign or transfer this agreement or any of your rights or obligations hereunder, without the prior written consent of SMW. Any attempted assignment in violation of this agreement shall be null and void and of no force or effect whatsoever. SMW may assign our rights and obligations under this agreement, and may engage subcontractors or agents in performing our duties and exercising our rights hereunder, without the consent of user. This agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and permitted assigns.

Force Majeure

Neither party is liable for any default or delay in the performance of any of its obligations under this agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including,

without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.

California Users

Pursuant to California Civil Code Section 1789.3, any questions about pricing, complaints, or inquiries about SMW must be sent to our agent for notice to: info@southmetroweb.com or SMW. 137 Cedar Ridge Rd, Locust Grove, GA 30248, United States of America.

California Users are also entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

Electronic Notices

The communications between you and SMW use electronic means, whether you visit the platform or send SMW e-mails, or whether SMW posts notices on the platform or communications with you via mobile notifications or e-mail. For contractual purposes, you (1) consent to receive communications from SMW in an electronic form; and (2) agree that all terms, conditions, agreements, notices, disclosures, and other communications that SMW provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

Third-Party Beneficiaries

Except as otherwise expressly provided in this agreement, nothing in this agreement is intended, nor shall anything herein be construed to confer any rights in any person other than the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, user acknowledges and agrees that any supplier of a third-party product or service that is identified as a third-party beneficiary in the service description, is an intended third-party beneficiary of the provisions set forth in this Agreement as they relate specifically to its products or services and shall have the right to enforce directly the terms and conditions of this agreement with respect to its products or services against user as if it were a party to this agreement.