



## Terms of Service

This agreement is part of a Master Service Agreement (MSA) that governs the relationship between Private Layer and its customers. All customers ordering and using Private Layer services must agree to be bound by the MSA. The MSA can be found at:

[http://www.privatelayer.com/pdfs/PL\\_MSA.pdf](http://www.privatelayer.com/pdfs/PL_MSA.pdf)

1. **Term and Termination:** Customer agrees to a month to month contract term for services unless otherwise agreed to in writing. The month to month contract for services is automatically renewed each month in perpetuity subject to written cancellation by the Customer. Please carefully review Private Layer cancellation policy set forth in Paragraph 8 below. Private Layer may terminate this Agreement upon non-payment as set forth in paragraph 10 below. At its sole discretion, Private Layer may terminate this Agreement if Customer violates any terms and conditions of Private Layer's AUP or this agreement.
2. **Monthly Service Fees:** Fees for service(s) ordered by the Customer shall begin on the date of the initial order and that date shall serve as the monthly anniversary date ("Anniversary Billing Date") for all future billings including one time fees, upgrades, additional services, cancellations and service credits. Fees are due in advance of the monthly service cycle and will be billed on the anniversary date of each month.
3. **Upgrade Fees:** Upgrades ordered on the Anniversary Billing Date will be billed for a full month service and will continue each month on the Anniversary Billing Date. Upgrades ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one-time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.
4. **Additional Service Fees:** Additional services ordered on the Anniversary Billing Date will be billed for the full month service and will continue each month on the Anniversary Billing Date. Additional services ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one-time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.
5. **One Time Fees:** One time fees, such as setup fees, administrative fees, and late fees are due and payable at the time they are incurred, and/or agreed upon in writing or via ticket. One time fees, such as bandwidth overages are due and payable upon an invoice following the billing cycle in which they are incurred, and are based on standard rates, or as otherwise agreed upon in writing or via ticket.

The standard rate for bandwidth overages are: USD .10 per GB Used.

6. **Taxes:** Customers located in The Republic of Panama are responsible for sales tax.



7. **Currency Value Changes:** As a convenience to our customers, we provide all services to our customers priced in USD. However, when providing services, Private Layer's purchases several components from vendors (Bandwidth Connectivity, Collocation services, etc.) which are prices in alternate currencies than the United States Dollar. As a result of this situation, Private Layer reserves the right to raise or lower the monthly costs of services provided to our customers based on severe changes in the exchange rates between the United States Dollar, and other major currencies (Such as the European Euro, and Swiss Frank). Private Layer will give the customer 30 days notice of the price change. In the event that the customer does not agree to the price change, the service will be cancelled at the next billing cycle.
8. **Service Credits:** Service credits will be issued to your Customer account and shall be used to offset future billable services. Service credits shall not be issued as cash back to the Customer nor shall the service credits be transferable to other account holders. Service credits shall expire if Customer's account is fully terminated.
9. **Cancellation:** Private Layer requires a written cancellation notice via email to [billing@privatelayer.com](mailto:billing@privatelayer.com), a minimum of 3 days prior to Anniversary Billing Date for discontinuance or downgrades of month to month services. Failure to supply the requisite 3 day written notice of cancellation will result in a full billable monthly cycle prior to cancellation. Any server cancellation prior to the minimum deadline will remain online until the automated process reclaims your server on the Anniversary Billing Date.
10. **Server Data:** All Customer data remaining after the cancellation date will be destroyed for security and privacy reasons.
11. **Server Replacement:** During the course of business Private Layer leases equipment from various leasing companies. In the event an equipment lease is not renewed by our leasing provider, Private Layer will issue a replacement server (dedicated or virtual) of comparable specifications. The client is obligated to move to this equipment within 14 calendar days of receiving the new server information and the old server will remain active for those 14 days.
12. **Shared Web Hosting:** This section refers to our shared web hosting products (cPanel Accounts). Customers may not:
  - a. Use more than 25 percent of the system resources for longer than 90 seconds.
  - b. Run any type of web spider or indexer
  - c. Run any software that interfaces with IRC
  - d. Run any bit torrent application
  - e. Participate in any file sharing / peer to peer activities
  - f. Run any gaming software
  - g. Run CRON entries with intervals of 15 seconds or less
  - h. Run any MYSQL queries lasting longer than 15 seconds

Accounts violating the above conditions will be terminated without notice without refund.



13. Virtual Private Servers: This section refers to our virtual private servers products (VPS Servers).

Customers may not:

- 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.
- Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCd.
- Run any type of web spider or indexer (including Google Cash / AdSpy) on shared servers. Run any software that interfaces with an IRC (Internet Relay Chat) network.
- 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.
- Participate in any file-sharing/peer-to-peer activities
- Run any gaming servers such as counter-strike, half-life, battlefield1942, or any other gaming software similar to these examples.
- Run CRON entries with intervals of less than 15 minutes.
- Run any MySQL queries longer than 15 seconds. MySQL tables should be indexed appropriately.
- 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")
- To help reduce usage, do not force html to handle server-side code (like php and shtml). Only use https protocol when necessary; encrypting and decrypting communications is noticeably more CPU-intensive than unencrypted communications.
- The use of more than 250,000 inodes on any shared account may potentially result in a warning first, and if no action is taken future suspension. Accounts found to be exceeding the 100,000 inode limit will automatically be removed from our backup system to avoid over-usage, however databases will still be backed up. Every file (a webpage, image file, email, etc) on your account uses up 1 inode.

Containers violating the above conditions can be suspended without notice, and can be terminated at the management's discretion without refund.

14. Non-Payment: All payments are due in full on the Anniversary Billing Date. Failure to remit payment for five (5) consecutive days, including the Anniversary Billing Date, shall result in a termination of access to Customer services. Failure to remit payment for services within ten (7) consecutive days, including the Anniversary Billing Date, shall result in complete termination and all services shall be reclaimed. A late fee of \$25 may be incurred for failure to remit payment for services on or before the monthly Anniversary Billing Date.

15. **Data:** Private Layer agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. These services include, but are not limited to: hard drive storage, raid hard drive arrays, network attached storage, storage area networks, operating system installs, operating system reloads, customer portal information, and other situations involving customer data. Customer assumes ultimate responsibility for data integrity, retention, security, backup, and ownership.
16. **Laws:** Private Layer is incorporated in the country of Panama, and provides services from the countries of Switzerland and Panama. Customer agrees to abide by all laws pursuant to services delivered in The Republic of Panama and Switzerland depending on the location that the service is delivered. Regardless of service location, this agreement is made under and will be construed in accordance with the laws of the Republic of Panama without regard to conflict of the law principals. Exclusive venue and jurisdiction for any and all legal remedies arising out of or related to this agreement shall be in the Republic of Panama. Each party irrevocably consents to the foregoing jurisdiction and venue requirements and waives any and all objections to such requirements.
17. **Indemnification:** Customer agrees to indemnify and hold harmless Private Layer, Private Layer's affiliates, and its respective officers, directors, attorneys, agents and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorney's fees) brought by a third party under any theory of legal liability arising out of related to customers content, illegal activity and/or actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.
18. **Limitation of Liability:** Except as described in the SLA, Private Layer shall not be liable to the customer for harm caused by or related to customer's services or inability to utilize the services unless caused by gross negligence or willful misconduct. Private Layer shall not be liable to customer for lost profits, indirect, special or incidental consequential or punitive damages. Notwithstanding anything else in this agreement, the maximum aggregate liability of Private Layer and any of its employees, agents or affiliates, under any theory of law shall not exceed the amount paid by the customer for hosting services for the three months prior to the occurrence of the event(s) giving rise to the claim.
19. **Legal Compliance:** Customer further represents and warrants that he/she has full authority and power to execute this Agreement on behalf of the Company he/she represents, if any. Additionally, Customer warrants that he/she is at least 18 years of age or older and are not otherwise legally incapacitated to execute this Agreement.
20. **Electronic Signature:** Acceptance by Customer of the Agreement incorporating the Terms of Service, Acceptable Use Policy, Service Level Agreement and Privacy Agreement hereby initiates billable services and is deemed complete by agreement to the terms as described on the online signup form(s) and completion of the ordering process.