



Guavabyte, LLC
26 Wilkins Ave, 2nd Floor
Haddonfield, NJ 08033
856.528.3208

Guavabyte, LLC Hosting Terms of Service (TOS)

Guavabyte, LLC provides web hosting services to subscribers around the world. The following terms of service are designed to provide the highest level of service available.

Content: All services provided by Guavabyte, LLC. are to be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of any United States Federal, State or Local law is prohibited. This includes, but is not limited to: copyrighted material, material we judge to be threatening or obscene, material that jeopardizes national security, or material protected by trade secret or other laws. The subscriber agrees to indemnify and hold harmless Guavabyte, LLC, from any claims resulting from the subscriber's use of Guavabyte's services which damages the subscriber or any other party.

Examples of prohibited content or links include (but are not limited to):

- IRC Software
- Pirated software
- Hacking sites, programs or archives
- Warez Sites
- Distribution of music files or any other material in which the account holder does not own the copyright.
- Guavabyte, LLC. will be the sole arbiter as to what constitutes a violation of this provision. Content that does not meet these standards will be removed without prior notice to the subscriber.

Housing of any of the following files is considered a violation of the terms of service:

- IRC - We currently do not allow IRC, Egg Drops, BNC, or IRC bots to be operated on our servers or network. Files with references to IRC or any likeness thereof are prohibited.
- Proxies - We do not allow proxy servers of any kind, whether for personal or business use. Files with references to any proxy or likeness thereof are prohibited.
- PortScanning - We do not allow any kind of portscanning to be done on or from our servers or network.

Commercial Advertising: Email

- Spamming, i.e. the sending of unsolicited email, from any Guavabyte server or any server located on the Guavabyte network is STRICTLY prohibited. Guavabyte will be the sole arbiter as to what constitutes a violation of this provision. This also includes Optin/Optout mail programs and mail that either directly or indirectly references a domain contained within an account at Guavabyte.
- Running Unconfirmed Mailing Lists. Subscribing email addresses to any mailing list without the express and verifiable permission of the email address owner is prohibited. All mailing lists run by Guavabyte customers must be Closed-loop ("Confirmed Opt-in"). The subscription confirmation message received from each address owner must be kept on file for the duration of the existence of the mailing list. Purchasing lists of email addresses from 3rd parties for mailing to or from any Guavabyte, LLC.-hosted domain, or referencing any Guavabyte account, is prohibited.
- Guavabyte defines a hard bounce as an email message that has been returned to the sender because the recipient's address is invalid. A hard bounce might occur because the domain name doesn't exist or because the recipient is unknown. When the recipient's name is known, email



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may be rejected because the sender's mailbox is full or for other reasons. This is known as a soft bounce. All Mailing Lists must delete a subscription if an email hard bounces more than three (3) times and must delete a subscription if an email soft bounces more than five (5) times within a three (3) month time period.

- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this Acceptable Use Policy (AUP) or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send Unsolicited Bulk Email, initiation of ping, flooding, mail-bombing, denial of service attacks is prohibited.
- Email address cultivating, or any unauthorized collecting of email addresses without prior notification of the email address owner is strictly prohibited.
- Operating an account on behalf of, or in connection with, or reselling any service to, persons or firms listed in the Spamhaus Register of Known Spam Operations (ROKSO) database at www.spamhaus.org is prohibited.
- All commercial email marketing companies must adhere to the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act of 2003. In addition such companies are prohibited the sending of bulk mail from "disposable domain names" with whois privacy protection.

Server Abuse: Any attempts to undermine or cause harm to a Guavabyte server or subscriber of Guavabyte is strictly prohibited including, but not limited to:

- Logging into a server or account that you are not authorized to access
- Accessing data or taking any action to obtain services not intended for you or your use
- Attempting to probe, scan or test the vulnerability of any system, subsystem or network
- Tampering, hacking, modifying, or otherwise corrupting or breaching security or authentication measures without proper authorization
- Transmitting material that contains viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines or engines with the intent or effect of damaging, destroying, disrupting or otherwise impairing a computer's functionality or the operation of the System
- Interfering with, intercepting or expropriating any system, data or information
- Interfering with service to any user, host or network including, without limitation, by means of overloading, "flooding," "mailbombing," or "crashing" any computer system

You will be held responsible for all actions performed by your account whether it be done by you or by others. All sub-networks of Guavabyte, LLC. and all dedicated servers must adhere to the above policies.

Bandwidth Measurement and Overage Fees: As of August 11, 2004 all bandwidth listings consist of the sum of incoming and outgoing bandwidth allowance. Incoming and outgoing bandwidth allowances are calculated on a 50/50 split of incoming to outgoing bandwidth based on the total bandwidth, therefore the incoming and outgoing bandwidth allowances are each half of the total listed bandwidth. Any bandwidth usage exceeding either the incoming or outgoing bandwidth total will be billed at the rate of \$2.75 per GB over. Server support and maintenance of dedicated servers is provided at the discretion of Guavabyte, LLC. In the case of erroneous instances or support issues extending beyond what we determine to be within the realm of reasonable assistance, support is priced as follows:

\$85/hour



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Scheduled Maintenance and Downtime: Guavabyte will use its commercially reasonable efforts to provide services 24 hours a day, seven days a week. Subscriber acknowledges that from time to time the services may be inaccessible or inoperable for various reasons, including periodic maintenance procedures or upgrades ("Scheduled Downtime"); or service malfunctions, and causes beyond Guavabyte's control or which are not reasonably foreseeable by Guavabyte, including the interruption or failure of telecommunications or digital transmission links, hostile network attacks, or network congestion or other failures. Guavabyte will provide at least 48 hours advance notice to the subscriber for Scheduled Downtimes, and will use commercially reasonable efforts to minimize any other disruption, inaccessibility and/or inoperability of its web servers. Guavabyte has no responsibility for downtime resulting from a user's actions. Also, the 100% network uptime guarantee does not apply for shared accounts.

Refunds: Refunds will be posted for FULL months only, with the exception of plans including a 30 day money back guarantee (shared hosting only). Virtual Dedicated, Virtual Private, and Dedicated servers are not included for the 30 Day Money Back Guarantee. Notice of cancellation must be given before the month in question begins. Setup fee is NON refundable.

Any violation of Guavabyte, LLC.'s Terms of Service Agreement shall result in no refund.

Account Setup, Termination, and Billing: The account will be charged on the day the order is processed, regardless of the account billing date. The account will not be charged again until the next month's billing cycle. Billing dates are on the first and 15th of every month.

Check Orders: Accounts for subscribers who wish to pay by check will be setup when the check is received by Guavabyte, LLC.

Disabling of accounts due to overdue payment: Accounts will be disabled if payment is not received within 28 days of the invoice date. If your account has been disabled, you may be charged a reconnection fee of up to \$50 in order to re-enable your account.

Termination of accounts due to overdue payment: If the account is not paid within 45 days of the invoice date, the account will be terminated and all information within the account will be deleted.

Cancellation Procedure: Valid proof of account ownership will be required to terminate an account. This includes, but is not limited to, billing information in the form of a partial credit card number or other payment information, or the billing password. Non-secure information, such as the contact email address or account billing address, is not sufficient as a security verification.

Courtesy Services for Customers: All services such as backup and Cpanel are provided for the courtesy of the subscriber. It is the sole responsibility of the subscriber to maintain the subscriber's own backup of any data. Guavabyte, LLC. is not responsible for lost data or for lost data due to third party software that is not maintained by Guavabyte, LLC. programming staff. (Cpanel is not associated with Guavabyte, LLC.)

Limitation of Damages: Recovery of damages from Guavabyte may not exceed the amount of fees it has collected on the account.

General Terms Of Service are subject to change without any prior notification.

These Terms of Service are a legally binding contract between the subscriber and Guavabyte, LLC.

By opening an account, the subscriber agrees to the above-stated terms.

Anything not listed in the Terms of Service is open to interpretation and change by Guavabyte, LLC. administrators without prior notice.

All prices are nonrefundable and nonnegotiable.



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Any violation of these Terms of Service will result in termination of the account. Guavabyte, LLC. maintains the right to terminate accounts without prior notification.

We reserve the right to remove any account with 15 days prior notice.



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Guavabyte, LLC Service Level Agreement (SLA)

Hardware Replacement Service Level Agreement: Guavabyte guarantees that in the event of a dedicated server hardware failure, the faulty hardware will be replaced within 90 Minutes of identifying the problem. In the event that this guarantee is not met, Guavabyte will issue a credit for five (5) times the actual amount of additional downtime. The amount of compensation may not exceed the customer's monthly recurring charge. This guarantee does not include the time it requires to perform additional software related maintenance, including rebuilding web accounts from backups, reloading the operating system, reloading and configuring applications, or rebuilding raid arrays.

Network Uptime Service Level Agreement: Guavabyte guarantees network uptime to be 100%. This guarantee assures that all major routing devices within our network are reachable from the global internet 100% of the time.

Network SLA Exclusions: Many possible situations are completely beyond the control of Guavabyte, and therefore are not in the scope of this SLA. These situations include:

- Scheduled Network Maintenance - occasionally network maintenance will be required. Guavabyte will do everything possible to minimize and avoid downtime during this maintenance. You will receive prior notification of upcoming maintenance at the email address we have on file. Scheduled maintenance periods are not eligible for SLA credits.
- Hardware Maintenance - on rare occasions, the hardware in your Server may need maintenance or replacement. Guavabyte will do everything possible to minimize any downtime in these situations per our hardware replacement SLA. Any downtime incurred as a result of this maintenance will not be counted towards our network SLA.
- Software Maintenance - an important part of managing a server is keeping the software up to date. If you choose to have Guavabyte manage your server, occasional software updates will be required to address security or performance issues. Usually you will experience little or no downtime in these situations, but we cannot guarantee a specific amount of time in all situations.
- Malicious Attacks - if a third party not associated with Guavabyte initiates a "Denial of Service" or other form of disabling attack against your Server or major portions of our network, Guavabyte will do everything in it's power to stop the attack, but cannot guarantee a resolution time.
- CPanel Issues - if you choose to run CPanel and Web Host Manager on your Server, the default install will be configured for automatic updates of CPanel related software. On occasion, one of these automatic updates could adversely affect all or part of the CPanel related software on you server. Guavabyte will do whatever is necessary to fix any Cpanel related problems, but cannot guarantee a resolution time.

Network SLA Remedy: In the event that Guavabyte does not meet this SLA, Dedicated Hosting clients will become eligible to request compensation for downtime. If Guavabyte is or is not directly responsible for causing the downtime, the customer will receive a credit for five (5) times the actual amount of downtime. This means that if your server is unreachable for 1 hour (beyond the 0.0% allowed), you will receive five (5) hours of credit. All requests for compensation must be received within five (5) business days of the incident in question. The amount of compensation may not exceed the customer's monthly recurring charge. This SLA does not apply for any month that the customer has been in breach of Guavabyte's Terms of Service or if the account is in default of payment.