

Acceptable Use Policy (AUP) and Terms of Service (TOS)

Optimal Performance is an official service marked DBA of Bettencourt Enterprises, LLC. Optimal Performance (OP) services include web hosting, domain registration, onsite and offsite hardware and software repair services and other forms of technology related consulting including systems analysis and training.

The legal policies herein were created to protect OP and its clients. Please view our policies prior to purchasing services from OP. All clients must agree to the terms stated in these policies. Violations to the policies may result in immediate or eventual temporary suspension or termination of services.

Optimal Performance agrees to provide the client web hosting for an annual/bi-annual fee. Optimal Performance will never require clients to advertise for Optimal Performance on their website in any way shape or form unless agreed upon prior to service activation. Clients are allowed to use the service for business/commercial or personal websites or content.

Content: All services provided by Optimal Performance may be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of any United States of America (or any other country) law is prohibited. This includes, but is not limited to: copyrighted material, material that is threatening or obscene, material that is "adult only" content, or material protected by trade secrets and other statute. The subscriber agrees to indemnify and hold harmless Optimal Performance from any claims resulting from the use of the service that damages the subscriber or any other party.

Adult Content: Pornography and sex-related merchandising are prohibited on any server. This includes sexual content, or direct links to adult content elsewhere. This is also true for sites that promote any illegal activity or content that may be damaging to our servers or any other server on the Internet. Links to such materials are also prohibited. Optimal Performance will be the sole arbiter as to what constitutes a violation of this provision.

Examples of other non-acceptable content or links:

1. **Illegal Software Activity:** (pirated software, hacking programs or archives, "warez" sites, pornography applications, unsolicited bulk e-mail (spamming) software)
2. **Background-running Programs:** We do not allow background-running programs. This includes any IRC related software such as bouncers and bots. In certain cases we may allow programs to run continually in the background, these are considered on a one to one basis and an extra charge may be incurred based on system resources used and operational maintenance needed.
3. **Banned Scripts:** You are free to use any scripts you wish provided they do not affect the normal operations of the server and they are not mentioned specifically below. Scripts that are commonly known for causing server disruption include large cgi-based message forums, auctions, and banner exchanges. In the event a script affects normal server and/or administrative operations, Optimal Performance reserves the right to disable the account pending client cooperation and resolution.

Non-acceptable scripts include:

- a. Chat servers/scripts of any kind are strictly prohibited.
- b. Formmail is not allowed on our servers.

You can use formmail scripts but they must be up to date and not running with the filename "formmail". Any files named "formmail" will be deleted without notice.

Distribution and/or Transmission of Obscene or Indecent Speech or Materials: Violation of indecency and obscenity laws can result in criminal penalties.

Intellectual Property Rights: Material accessible to you through Optimal Performance's Services may be subject to protection under United States of America (or any other country) copyright laws, or laws protecting trademarks, trade secrets or proprietary information. Except when expressly permitted by the owner of such rights, you must not use the Optimal Performance Service in a manner that would infringe, violate, dilute or misappropriate any such rights, with respect to any material, which you access or receive through the Optimal Performance Network. If you use a domain name in connection with the Optimal Performance Service or similar service, you must not use that domain name in violation of any trademark, service mark, or similar rights of any third party.

Network Security: Customers may not use the Optimal Performance Network with an attempt to circumvent user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for the customer, logging into a server or account the customer is not expressly authorized to access, password cracking, probing the security of other networks in search of weakness, or violation of any other organization's security policy. Customers may not attempt to interfere or deny service to any user, host, or network. This includes, but is not limited to, flooding, mail bombing, or other deliberate attempts to overload or crash a host or network. Optimal Performance will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations. Users who violate system or network security may incur criminal or civil liability.

Defamation: Defamatory speech distributed over the Internet can result in civil liability for the defamer.

Refusal of Service: Optimal Performance reserves the right at its sole discretion to refuse or cancel service. Violation of any of Optimal Performance's Rules and Regulations could result in a warning, suspension, or possible account termination. Accounts terminated due to policy violations will not be refunded. Domains terminated due to policy violations will not be released to the customer.

Spam Or Unsolicited E-Mail: You must not use the Optimal Performance Network, Optimal Performance equipment or any Optimal Performance email address in connection with the transmission of spam, flames, mail bombs, or substantially similar, unsolicited email messages. Your domain may not be referenced as originator, intermediary, or reply-to address in any of the above. This prohibition extends to the sending of unsolicited mass mailings from another service that in any way implicates the use of the Optimal Performance Network, Optimal Performance

equipment or any Optimal Performance email address. A message is considered unsolicited if it is posted in violation of a newsgroup charter or if it is sent to a recipient who has not requested or invited the message. For purposes of this provision, merely making one's email address accessible to the public will not constitute a request or invitation to receive messages. If you are found to have initiated or participated in spamming activity, Optimal Performance reserves the right to disable your domain without warning. In addition, Optimal Performance may impose a \$100 penalty for each spam policy violation. Optimal Performance solely reserves the right to refuse or cancel service to known spammers. Lastly, Optimal Performance reserves the right to determine what violates this policy. As such, any violation may result in cancellation of services without refund.

Abuse: Any attempts to undermine, slander, libel, threaten, or cause harm to a Optimal Performance server, customer, employee, or the company directly is strictly prohibited and is grounds for immediate termination without refund. In addition, we will pursue all attempts to the fullest extent of the law.

Indemnification: Customer agrees that it shall defend, indemnify, save and hold Optimal Performance (or its employee's/owners) harmless from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against Optimal Performance, 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 Optimal Performance against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Optimal Performance server; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party and (3) copyright infringement. Customer agrees to limit the liability of Optimal Performance to the amount paid for service.

Refunds Policy: You may cancel your account at any time before your annual or bi-annual billing date, and you will not be billed for the next term. If you have more than 6 months remaining on your hosting plan we will issue a pro-rata refund for months not used. Optimal Performance does not offer any kind of "money back" guarantee.

Disclaimer: Optimal Performance will not be responsible for any damages your business may suffer. Optimal Performance makes no warranties of any kind, expressed or implied for services we provide. Optimal Performance disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Optimal Performance and its employees. Optimal Performance makes no "uptime" guarantees. Optimal Performance keeps backups of key server systems only. Optimal Performance can accept no responsibility for any loss of data or consequences arising from this. Optimal Performance always advises clients to back up their site data regularly for its own protection. Optimal Performance wishes to emphasize that in accepting services, customers indemnify Optimal Performance for the violation of any law or Optimal Performance policy, that results in loss to Optimal Performance or the bringing of any claim against Optimal Performance. This means that if Optimal Performance is sued because of activities of the customer that violate any law, or this policy, the customer will pay any damages awarded against Optimal Performance, plus costs and reasonable legal fees.

Failure to comply with any of our terms & conditions will result in grounds for immediate account deactivation. Optimal Performance reserves the right to change, edit, or update the policies contained in this document at any time for any reason without notice. Existing customers of Optimal Performance will be notified via primary contact e-mail of such changes.

Optimal Performance Privacy Policy: Optimal Performance respects your right to privacy. This policy summarizes what personally identifiable information we may collect, and how we might use this information. This policy also describes other important topics relating to your privacy.

If you are interested in removing your email address from our opt-in mailing list, please view the following page for immediate removal:

www.optimalperform.com/emaiiopt.php

Collected Information: Optimal Performance only will collect personally identifiable information (such as name, title, company name, address, telephone number, or e-mail address) that you voluntarily provide through our website or e-mail correspondence. We will collect general information (such as the type of browser you use, the files you request, and the domain name and country from which you request information) to improve our Web site and better meet your needs.

Information Usage: Before we collect any personally identifiable information, we will provide an explanation for the possible use of your data. The information you supply will be used by Optimal Performance to respond to your inquiries, supply you with requested information on Optimal Performance services, or track orders you place with Optimal Performance. If you have submitted personal information to Optimal Performance electronically and would like it removed or modified, please contact us at privacy@optimalperform.com.

Minor Access: Optimal Performance does not intend to collect personally identifiable information from children under age 13 without permission of the child's parent or legal guardian. If your child has submitted personal information and you would like to request that such information be removed, you may do so as indicated above and Optimal Performance will comply with your request.

Additional Information: The Optimal Performance Web site may contain links to other sites. We do not endorse or otherwise accept responsibility for the content or privacy policies of those sites.

It may be necessary, if required by law or if pertinent to judicial or governmental investigations, to release your personally identifiable information. Optimal Performance reserves the right to modify this privacy policy at any time. We will promptly reflect any such modifications in these Web pages. Existing customers of Optimal Performance will be notified via primary contact e-mail of such changes.