

# SamuelLevy.com Hosting Terms & Conditions

## Introduction

Web hosting is a complicated business involving many complex roles and responsibilities. In many cases the service I can provide is dependant on "upstream" providers or unrelated networks over which I have no control.

The servers and networks I manage may be shared by many users and the traffic on and to servers comes from sources I have no control over.

With this in mind, it is understandable that I am unable to offer any form of guarantees of an uninterrupted or error free service. Naturally, however, I strive to protect and support my services as is possible.

It is also important to understand that Your actions, as my customer, play an important part in protecting our networks and servers. Activities such as spamming, placing insecure forms on Your website or placing software with vulnerabilities on Your website can potentially put Your site and all of our networks at risk, and possibly blacklisted or banned. Thus, in order to protect all of my customers, I have no tolerance for any activities that put my servers and networks at risk.

The Terms of Service (ToS) have been developed and are constantly revised with the objective of fostering a community of considerate users who can share and respect the services provided.

Please read this document carefully and contact me if You require clarification on any of the issues. If You do resell my services, then You must understand that You are entirely responsible for the actions of Your customers and that I will take action against You if any of Your customers violate these ToS. Thus I would recommend that You develop similar agreements with Your customers.

## Terms of Service - Plain English

When You agree to my Terms And Conditions, You are also agreeing to my Acceptable Use Policy.

### Introduction

If You have any questions regarding our Terms of Service, please contact us.

- I do not allow Adult, Warez, illegal file sharing sites or IRC Bots.
- You may not store more data in Your account than Your allotted virtual server space.
- I shall not be held liable for any loss or damages caused by the use or misuse, unavailability or removal of services.
- You may not run server processes (eg. talkers/IRC Bots) from Your virtual server.

I reserve the right to change these terms and conditions without notice. I also have the right to change the prices of my packages without prior notice.

### Late Payments

All late payments may incur an administration fee of \$15 to deal with time spent recovering overdue fees.

### Refunds

Any client that cancels their account within 30-days of initial account creation is due for a full refund. However, I will not refund money on any extra features such as more space, bandwidth and so on. Another note, I will not refund to any client who has been deleted because they violated my Terms of Service.

### Support

I provide technical management of my servers for the purpose of maintaining a continuous stable service. I monitor all servers and aim to respond to technical problems within 30 minutes of notification of a problem. However due to the fact that some problems may be beyond my control, I am unable to offer any guaranteed resolution times.

I also limit my technical support to my area of expertise. The following are my guidelines when providing support: I provide support related to Your server or virtual site physical functioning. I do not offer technical support for application specific issues such as cgi programming, html or any other such issues, unless covered in a separate application support agreement. I do not provide technical support for YOUR customers. If You can email, I encourage You to email sam@samuellevy.com for assistance.

## **Bandwidth**

If Your bandwidth reaches the points where it has an adverse affect on other clients I reserve the right to disable Your site until You can reduce Your bandwidth usage, or until you change your plan to support more bandwidth.

Accounts using excessive bandwidth on a regular basis will be asked to leave my network unless an agreement has been made with me.

## **Webpage Contents**

Commercial use of web and ftp space is permitted.

You will be responsible for the content of Your pages, including obtaining the legal permission for any works they include and ensuring that the contents of these pages do not violate Australian or US laws.

You will be held responsible for and accept responsibility for any defamatory, confidential, secret or other proprietary material available via Your page(s).

I reserve the right to remove material deemed inappropriate from Your web pages, without prior notice.

## **Backups**

My servers are set to backup all web files, databases and emails to another server. These backups are designed and intended for internal data centre disaster recovery purposes only. They are not designed for customer use and can not be used to retrieve data lost during the normal course of business. If You intend to place valuable data on my servers then You must arrange Your own backup policy and procedures. I can assist with customer data backup and can offer data backup solutions specific to Your needs, but such solutions are not offered as part of standard hosting arrangements.

I cannot be held responsible for the loss of data on anyone's website. As I do perform backups, I will try to restore Your data, however at times it may not work as the backup files may be corrupted or compromised.

## **Cancellation**

Cancellation must be made in writing or by email to sam@samuellevy.com. 30 days notice is required. For hosting paid in advance a pro-rata refund will be calculated based on the cancellation date minus an administration fee of \$50. If cancellation is made within the first 30 days of service all hosting fees will be refunded. This does not include fees for domain registration or fees on additional features such as more space or bandwidth. I will not refund any client who has been deleted because they violated my Terms of Service.

# **Standard Terms And Conditions**

SamuelLevy.com (ABN 603 135 790 93)

These are the Standard Terms And Conditions of Supply of web hosting and other services offered from time to time ("the Service"). These terms cover the agreement made by Samuel Levy ("me", "myself", "I"), and apply to You as a user of the Service ("client" or "You"). Please read these terms and conditions carefully. It is a condition of Your use of the Service that You accept and comply with these terms and conditions.

## **1. Terms And Amendment Procedure**

1.1 These are the terms upon which I agree to provide the Service to the Client. The agreement made between us with these terms commences on the date listed on the hosting agreement as the start date.

1.2 Please look out for any amendments to these Terms and Conditions that I might make in the future.

1.3 I may vary these terms, the amount I charge for any Service, or the terms of the operation of the Service, at any time by general notice to you via email. The changes will become effective upon sending of the notice. Where I vary the prices for Services, I will give at least 14 days notice of the change by the same means, and the new prices will apply at the end of that period.

1.4 If You use the Service after that publication, Your use will constitute an acceptance of the amended terms.

1.5 These terms constitute the agreement in its entirety and supersede prior agreements.

1.6 I may from time to time run promotions and make special offers of limited time duration ("Promotions"). All Promotions are offered subject to their terms and may be withdrawn or altered at my discretion. The terms of a promotion will override these terms to the extent of any inconsistency.

## **2. Service**

2.1 I will assign the client a logon name and password which will provide You with access to the server Web Host Control Panel (which is used by You to configure various features of Your Web Site/Email Service). I will provide the client with Web Services as per the Web Host service level You have selected upon signup.

2.2 Where necessary I will advise the client of correct operational procedures.

2.3 Scheduled Maintenance - I must perform scheduled maintenance to servers from time to time. I will attempt to perform all scheduled maintenance at times which will affect the least amount of customers. If scheduled maintenance requires the service to be off-line for more than 30 minutes I will post details of the scheduled maintenance to the Web Host System News at least 48 hours in advance of the maintenance.

2.4 Unscheduled maintenance may need to be performed. If unscheduled maintenance requires the service to be off-line for more than 30 minutes, I will post details of the event to the Web Host System News after the maintenance has been completed.

2.5 Archiving of Data - I will archive Your data onto backup mechanisms on a regular basis for the purposes of disaster recover. In the event of equipment failure or data corruption, I will restore from the last known good archive. In the event of corruption of all of my archives, or in the event that an old archive is used to restore data, You should be prepared to upload Your data to Your Web Site. You should maintain a recent copy of Your data at Your premises at all times. I will not be liable for incomplete, out of date, corrupt or otherwise deficient Client Data recovered from my backups.

2.6 I will determine in my absolute discretion from time to time the data centre location from which Your Service is provided.

2.7 In contracting with myself for the Services, the Client obtains no rights to the hardware and other infrastructure and facilities used by me to deliver the Service.

2.8 In the absence of any additional written agreement, these terms (as varied from time to time) will apply to any further Services You acquire from me.

## **3. Payment**

3.1 You must pay for the Service as notified to You by myself in accordance with the prices in force for Services from time to time.

3.2 You must pay all Service time charges, minimum charges and other amounts incurred by You or any designated users or incurred as a result of any use of Your password (whether authorised or not) in accordance with the billing option selected and in advance.

3.3 Prices are inclusive of any government taxes or charges unless otherwise noted, and exclusive of any registration or delegation charges imposed by domain name authorities.

3.4 In addition You must provide and pay for all government taxes, duties and levies (if any) imposed on either You or myself in respect of the Services or any other service or goods supplied.

3.5 You must pay all amounts billed in accordance with Your billing option. Billing period is on a monthly cycle beginning when You register. If You register after the 28th of each month, Your billing date becomes the first of the next month.

## **4. Warranties And Liabilities**

4.1 I do not warrant that:

- a. the services provided under this agreement will be uninterrupted or error free;
- b. the services will meet Your requirements, other than as expressly set out in this agreement or
- c. the Services will be free from external intruders (hackers) or other persons having unauthorised access to my services or systems.

4.2 Except as expressly provided to the contrary in this agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement, are excluded. Where any statute implies any term into this agreement, and that statute avoids or prohibits provisions in a contract excluding or modifying the application of or liability under such a term, then the term will be taken to be included in this agreement. However, my liability for any breach of the term will, if permitted by that statute, be limited, at my option, to the resupply of the services again; or payment of the cost of having the services supplied again.

4.3 Except under clause 4.2, I will not be liable to the Client for:

- a. any loss or damage in respect of the provision of the Services,
- b. any costs, claims, loss or damage of any kind resulting from the fraudulent, negligent or otherwise unlawful behaviour of the Client,
- c. any costs, claims loss or damage arising from any information, data or other material provided to myself by or on behalf of the Client.

4.4 You warrant that

- a. at the time of entering into this agreement You are not relying on any representation made by myself which has not been stated expressly in this agreement, or on any descriptions or specifications contained in any other document, including any catalogues or publicity material which I have produced;
- b. You will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by You onto or downloaded by You from the Server does not contain any computer virus and will not, in any way, corrupt the data or systems of any person;
- c. You will keep secure any passwords used to upload data to the Server and You hold and will continue to hold the copyright in the Client Data or that You are licensed and will continue to be licensed to use the Client Data.

4.5 You accept responsibility for all information and material You issue over any Service, and indemnify me and hold me harmless against any liability in relation thereto. In particular You undertake that You shall not publish or issue any information which is illegal or defamatory. You also acknowledge that I do not vet or approve any information or material available through the Service and that I do not accept any liability. To the full extent permitted by law You access and use such information and material at Your own risk.

4.6 You are solely responsible for dealing with persons who access the Client Data, and must not refer complaints or inquiries in relation to such data to me.

4.7 Except as provided in clause 4.2. I am not liable to You or any other person for:-

- a. any cost, loss or liability (including loss of profit or other consequential damage) arising from my supply or failure or delay in supplying the Service;
- b. the content, context or confidentiality of any communications made using the Service;
- c. loss or damage caused by third party software applications forming part of the Service.

4.8 You indemnify me against all costs, expenses, loss or liability that I may suffer (directly or indirectly) resulting from -

- a. Your breach of these terms,
- b. Your use or misuse of the Service and
- c. the use or misuse of the Service by any person using Your account,
- d. publication of defamatory, offensive or otherwise unlawful material on any website forming part of Your Service.

## 5. Suspension And Termination Of Service

5.1 I may from time to time without notice suspend the Service or disconnect or deny Your access to the Service:-

- a. during any technical failure, modification or maintenance involved in the Service provided that I will use reasonable endeavours to procure the resumption of the Services as soon as reasonably practicable; or
- b. if the Customer fails to comply with any agreement (including failure to pay charges due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in our opinion may have the affect of jeopardising the operation of the Service.

Notwithstanding any suspension of any Service under this clause You shall remain liable for all charges due throughout the period of suspension.

5.2 I may without notice to You remove, amend or alter Your data upon being made aware of:

- a. any claim or allegation; or
- b. any court order, judgement, determination or other finding of a court or other competent body, that the data is illegal, defamatory, offensive or in breach of a third party's rights.

5.3 I may end my agreement with You and cease providing Services for any reason, on 30 days notice to You. You may close Your account with myself on 30 days notice to me.

5.4 If Your account is closed You must pay all outstanding charges immediately. You will be given a 24 hour period to retrieve all data before all Client Data is deleted from any storage media.

## 6. Domain Names

6.1 If You have requested that I register a .com, .net or .org domain name on Your behalf, You agree that You have read and accept the TLD (Top Level Domains) Policy applicable to .com, .net or .org domain names issued by the registrar namecheap.com. You agree that You are aware of the consents, warranties and indemnity You are required to give to register, maintain, transfer and renew Your domain name.

6.2 If You have requested that I register a .com.au domain name on Your behalf, You agree that You have read and accept the Domain Name Allocation Policy applicable to .com.au domain names issued by the registrar namecheap.com.

6.3 You agree that in the event of a dispute in registering a domain name or about a domain name after registration, namecheap.com's Dispute Policy and the Dispute Policy procedures, and any variations to them from time to time bind myself. You agree that by maintaining the registration of a domain name after changes or modifications to the Dispute Policy become effective, constitutes Your continued acceptance of these changes and modifications. You agree that in the event of a dispute You will submit to the jurisdiction of the courts as provided in the Dispute Policy.

6.4 You agree that You must pay for any registration or delegation charges imposed by namecheap.com or any other domain name authorities in advance. You understand that You cannot register a domain name without paying for it in advance.

6.5 I make no representation and give no warranty about Your chosen domain name being available for registration or use by You.

6.6 You indemnify me against all claims arising out of Your registration and use of Your chosen domain name.

## 7. Network

7.1 IP Address Ownership: If I assign You an Internet Protocol address for Your use, the right to use that Internet Protocol address shall belong only to myself, and You shall have no right to use that Internet Protocol address except as permitted by me in my sole discretion in connection with the Services, during the term of this Agreement. I shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to You by myself, and I reserve the right to change or remove any and all such Internet Protocol numbers and addresses, in my sole and absolute discretion. My allocation of IP addresses is limited by ARIN's new policies. These new policies state that use of IP addresses for IP based virtual hosts will not be accepted as justification for new IP addresses. What this means to You is that You MUST use name-based hosting where possible. We will periodically review IP address usage, and if we find that clients are using IP addresses where name-based hosting could be used, we will revoke authorisation to use those IP addresses that could be used with name-based hosting.

7.2 Bandwidth and Disk Usage: You agree that bandwidth and disk usage shall not exceed the number of megabytes per month for the Services ordered by You on the Order Form (the "Agreed Usage"). I will monitor Your bandwidth and disk usage. I shall have the right to take corrective action if Your bandwidth or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken in my sole and absolute discretion. If I take any corrective action under this section, You shall not be entitled to a refund of any fees paid in advance prior to such action. Bandwidth usage is measured on a calendar month basis. Both incoming and outgoing traffic are counted. In the event that a customer exceeds the included allocation, I may, at my sole discretion, invoice you in the amount of \$10.00 per GB or part thereof. Data transfer in excess of each server's monthly allowance is automatically billed on or around the 5th of each month, for the previous calendar month. Unused bandwidth allocations cannot be carried over to future months, or applied to other servers.

7.3 System and Network Security: Users are prohibited from violating or attempting to violate the security of my Network. Violations of system or network security may result in civil or criminal liability. I will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations. These violations include, without limitation:

- a. Accessing data not intended for such User or logging into a server or account, which such User is not authorised to access.
- b. Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorisation.
- c. Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".
- d. Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.
- e. Taking any action in order to obtain services to which such User is not entitled.

## 8. SPAM and Unsolicited Commercial Email (UCE/SPAM)

8.1 I take a zero tolerance approach to the sending of Unsolicited Commercial Email (UCE) or SPAM over my network. Very simply this means that You may not use or permit others to use my network to transact in UCE/SPAM. You may not host, or permit hosting of, sites or information that is advertised by UCE/SPAM from other networks. In addition, it is not acceptable to transmit bulk email through remote SOCKS, HTTP or other similar proxies who in turn make a SMTP (TCP port 25) connection to the destination mail servers. This technique may result in account suspension or termination. Violations of this policy carry severe penalties, including termination of service. In order to prevent unnecessary blacklisting due to spam I reserve the right to occasionally sample bulk email being sent from servers.

- a. Violation of my UCE/SPAM policy will result in severe penalties. Upon notification of an alleged violation of our SPAM policy, I will initiate an immediate investigation (within 48 hours of notification). During the investigation, I may restrict Your access to the network to prevent further violations. If You are found to be in violation of our SPAM policy, I may, at my sole discretion, restrict, suspend or terminate Your account. Further, I reserve the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. I will notify law enforcement officials if the violation is believed to be a criminal offence.
- b. First violations of this policy will result in an "Administrative Fee" of \$250 and Your account will be reviewed for possible immediate termination. A second violation will result in an "Administrative Fee" of \$500 and immediate termination of Your account. Users who violate this policy agree that in addition to these "Administrative" penalties, they will pay "Research Fees" not to exceed \$175 per hour that I must spend to investigate the matter. PLEASE, DO NOT SPAM from Your account.

c. As You are ultimately responsible for the actions of Your clients over my network, it is advisable that You develop a similar, or stricter, policy for Your clients.

## **9. Miscellaneous**

9.1 You grant to me a license to use and reproduce all Client Data in order to fulfil my obligations under this agreement. In this agreement "Client Data" means all information, data, text, logos, images, audio, movie clips and/or content in any form that forms part of the Client's web sites or emails.

9.2 A provision of, or a right created under this agreement, may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

9.3 The law in force in Queensland, Australia governs this agreement and the transactions contemplated by this agreement.

9.4 You may not resell Services or assign Your rights and obligations under this agreement without my prior written consent.

## **Acceptable Use Policy - Plain English**

All services provided by me may be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of any Australian or United States Federal, State or City law is prohibited. This includes, but is not limited to: copyrighted material, material we judge to be threatening or obscene or material protected by trade secret and other statute, and invasion of privacy. The subscriber agrees to indemnify and hold harmless myself from any claims resulting from the use of the service which damages the subscriber or any other party.

All pornographic content and sex-related merchandising is prohibited on all of my servers. This includes sites that may infer sexual content or links to adult content elsewhere. I will be the sole arbiter in determining violations of this provision.

Also prohibited are sites that promote any illegal activity or present content that may be damaging to my servers or any other server on the Internet. Links to such materials are also prohibited.

Examples of unacceptable content or links:

- Pirated software
- Hacker programs or archives
- Warez sites

I will be the sole arbiter as to what constitutes a violation of this provision.

## **Unsolicited commercial e-mail / Unsolicited bulk e-mail (SPAM)**

Use of my service to transmit any unsolicited commercial or unsolicited bulk e-mail is expressly prohibited. Violations of this type will result in the immediate penalties and termination of the offending account.

### **IMPORTANT NOTICE:**

Anyone hosting websites or services on their server that support spammers or cause any of my IP space to be listed in any of the various Spam Databases will have their server immediately removed from my network. The server will not be reconnected until such time that You agree to remove ANY and ALL traces of the offending material immediately upon reconnection and agree to allow me access to the server to confirm that all material has been COMPLETELY removed. Severe violations may result in immediate and permanent removal of the server from my network without notice to the customer. Any server guilty of a second violation WILL be immediately and permanently removed from my network without notice.

## **Intellectual Property Violations**

Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities. Also, engaging in activity that violates privacy, publicity, or other personal rights of others. I am required by law to remove or block access to customer content upon receipt of a proper notice of copyright infringement. It is also my policy to terminate the privileges of customers who commit repeat violations of copyright laws

## **Misuse of System Resources**

Any attempt to undermine or cause harm to a server, or customer, of mine is strictly prohibited. This includes, but is not limited to: using programs that consume excessive CPU time; allowing the use of mail services, mail forwarding capabilities, or auto responders other than for the customer's own account; resale of disk space without an appropriate reseller agreement; use of servers for backup of files unrelated to the web site of the account; or resale or remote access to CGI scripts installed on my

servers. Operation of IRC servers or IRC bots on my servers will result in an immediate suspension of service.

## Other Activities

Engaging in activities, whether lawful or unlawful, that I determine to be harmful to my subscribers, operations, reputation, goodwill, or customer relations.

## Suspension

Activity which results in a suspension or deactivation of an account will result in a forfeiture of fees paid. Complaints made regarding abuses of an account will be grounds for suspension.

## Refusal of Service

I reserve the right to refuse, cancel, or suspend service at my sole discretion. All sub-networks, distributive hosting sites, and dedicated servers of mine must adhere to the above policies. Please direct any reports of violations of the above policies to sam@samuellevy.com.

Failure to follow any term or condition will be grounds for immediate account deactivation.

## Acceptable Use Policy

This is my Acceptable Use Policy (AUP). It applies to You if You are my Customer or User ("You"). It is intended to ensure that Your use of my service is trouble free and that You have due regard to the law and the needs of other users.

Please read it carefully. It is a condition of Your use of my service that You comply with the terms of this Policy. Use of my Service constitutes acceptance and agreement to my AUP as well as my ToS (Terms of Service)

Please look out for any amendments to the Policy that I might make in the future. From time to time we will make amendments to it by giving You notice of the change and You will then be obliged to comply with the policy as amended.

In this policy we use the following definitions:

- Customer means the person or company which has entered into an agreement with me for supply of Services whether via my web site or otherwise.
- Potentially Prohibited Content means that content so defined by the Broadcasting Services Act, 1992 (as amended).
- Prohibited Content means that content so defined by the Broadcasting Services Act, 1992 (as amended).
- Service means all products and services offered by me from time to time, which You use;
- Users means users of the Service who have not obtained it as a Customer, but via a Customer who is authorised to resell the Services.
- "Me", "my", "myself", and "I" means Samuel Levy (ABN 603 135 790 93)

## 1. SOME GENERAL PRINCIPLES

1.1 I am not responsible for the content of traffic:-

- (a) I exercise no supervision or control whatsoever over the content of the information passing through my network.
- (b) I do not assume any responsibility for information not sent or expressly authorised by me.
- (c) The responsibility for traffic that does not conform with this policy and all possible consequences lie with the sender of the traffic;
- (d) I accept no responsibility for the consequences of unauthorised breach of my system security such as hacking or denial of service attacks;

1.2 Your Legal Responsibilities. You can view Your legal responsibilities in relation to:

- (a) supervising and controlling children's access to Internet content;
- (b) procedures which parents can implement to control children's access to Internet content, including availability, use and appropriate application of Internet content filtering software; and
- (c) obligations which may exist in relation to Your content under the Broadcasting Services Act 1992 (as amended) or other applicable state legislation: at either of the following web sites [www.iaa.net.au](http://www.iaa.net.au); or [www.aba.gov.au](http://www.aba.gov.au).

1.3 You are responsible for use of Your account. If You permit others to use my service, You are responsible for making users of the service aware of this policy and obtaining compliance of Your users with this policy.

1.4 You are responsible for complying with conditions of use of other networks. If I provide You with access to a network outside my service You must comply with any acceptable use conditions which apply to that network.

## 2. ACCEPTABLE USES

2.1 You have responsibilities. It is Your responsibility for Yourself and for others whom You permit or enable to use my service to:

- (a) use my service and services in a manner which does not violate any applicable laws or regulations;
- (b) respect the conventions of the newsgroups, lists and networks that You use;
- (c) respect the legal protection afforded by copyright, trade marks, license rights and other laws to materials accessible via my service;
- (d) respect the privacy of others
- (e) use the service in a manner which does not interfere with or disrupt other network users, services or equipment;
- (f) refrain from acts that waste resources or prevent other users from receiving the full benefit of our services; and
- (g) comply with my Terms and Conditions of supply.

2.2 Use must be ethical. Your use of my services should be ethical and in accordance with accepted community standards.

## 3. UNACCEPTABLE USES

3.1 You must comply with the Law. It is not acceptable to use my service for any purpose which violates local, State, Federal or international laws. You should obtain independent legal advice about Your potential liability for the consequences of the publication of material on a web site or content database.

3.2 Specific kinds of use are not allowed. It is not acceptable to use my service to do any of the following ("Unacceptable Conduct"):

- (a) send any unsolicited Comm messages or Comm in any form ("SPAM")
- (b) violate copyright or other intellectual property rights;
- (c) illegally store, use or distribute software; to transmit threatening, libellous, obscene or offensive materials;
- (d) engage in electronic 'stalking' or any other form of harassment such as using abusive or aggressive language;
- (e) misrepresent or defame others;
- (f) commit fraud; gain unauthorised access to any computing, information, or communications devices or resources, including but not limited to any machines accessible via the Internet;
- (g) damage, modify or destroy the files, data, passwords, devices or resources of myself, other users or third parties;
- (h) engage in misleading or deceptive on-line marketing practices;
- (i) conduct any business or activity or solicit the performance of any activity that is prohibited by law;
- (j) make an unauthorised transmission of confidential information or material protected by trade secrets;
- (k) intentionally omit, forge, delete or misrepresent transmission information including headers, return mailing addresses, Internet protocol addresses;
- (l) engage in any activity intended to withhold or mask Customer's, or if You are an authorised reseller, its User's corporate identity or contact information; or
- (m) place on the Internet, obtain through the Internet or transmit using the Internet, Prohibited Content or Potentially Prohibited Content;
- (n) place on the Internet, obtain through the Internet or transmit using the Internet any of the following:
  - (i) Content which is (or would be) classified RC or X by the Classification Board. Such content includes:
    - material containing detailed instruction in crime, violence or drug use;
    - child pornography;
    - bestiality;
    - excessively violent or sexually violent material;
    - real depictions of actual sexual activity;
  - or
  - (ii) Content hosted in Australia which is classified R and not subject to a restricted access system which complies with criteria determined by the ABA. Content classified R is not considered suitable for minors and includes:
    - material containing excessive and/or strong violence or sexual violence;
    - material containing implied or simulated sexual activity;
    - material which deals with issues or contains depictions which require an adult perspective.
- (o) E-mail / News Bombing: Malicious intent to impede another person's use of electronic mail services or news will result in the immediate termination of the offending account.
- (p) E-mail / Message Forging: Forging any message header, in part or whole, of any electronic transmission, originating or passing through my service is in violation of this AUP.
- (q) Usenet SPAMing: I have a zero tolerance policy for the use of my network for the posting of messages or commercial advertisements, which violate the rules, regulations, FAQ or charter of any newsgroups or mailing list. Commercial messages that are appropriate under the rules of a newsgroup or mailing list or that are solicited by the recipients are permitted.
- (r) Unauthorised access: Use of my service to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of my or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data, is expressly prohibited and the offending account is subject to immediate termination.
- (s) Copyright or trademark infringement: Use of my service to transmit any material (by e-mail, uploading, posting, hot linking, directly linking or otherwise) that infringes any copyright, trademark, patent, trade secret or other proprietary rights of any third party, including, but not limited to, the unauthorised copying of copyrighted material, the digitisation and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorised transmittal of copyrighted software.
- (t) Collection of personal data: Use of my service to collect, or attempt to collect, personal information about third parties without their knowledge or consent.
- (u) Distribution of Viruses: Intentional distributions of software that attempts to and/or causes damage, harassment, or annoyance to persons, data, and/or computer systems are prohibited. Such an offence will result in the immediate termination of the offending account.
- (v) Infringement of Copyright, Patent, Trademark, Trade Secret, or Intellectual Property Right: Distribution and/or posting of



copyrighted or the aforementioned infringements will not be tolerated.

(w) Peer to Peer Software (File Sharing): The use of Peer to Peer or file sharing software to permit the sharing, copying or distribution of unauthorised copyrighted material on my service is prohibited. Use of such software could result in suspension of service.

(x) attempt to do any of these things.

3.3 Disruption of the network is not allowed. In particular, for example, You must not:

- (a) distribute messages to inappropriate or unrelated forums, newsgroups or mailing lists ('spamming');
- (b) send unsolicited commercial messages;
- (c) propagate computer worms, viruses and other types of malicious programs;
- (d) make transmissions of any type or quantity which adversely affect my operation or jeopardise the use of my service, or its performance for other subscribers;
- (e) harass or impersonate myself or other users; and
- (f) You may not use the service to interfere with or disrupt other network users, services or equipment.

3.4 Soliciting subscribers to other services is not allowed. It is also not acceptable to use my service to solicit subscribers to become subscribers of other competitive services.

3.5 Resale of my services is allowed. However, any agreements You may form with Your clients, must include all of my current Terms of Service and Acceptable Use Policy conditions and must not violate any of these terms.

## 4. THIRD PARTY COMPLAINT PROCESS

4.1 I receive from time to time complaints from third parties ("Complaints") regarding Unacceptable Conduct, allegedly being conducted by Customers or their Users. I will make reasonable endeavours to resolve such complaints by working with Customers. The complaint process set out here does not apply to complaints subject of court order or proceedings, or where I reasonably believe that it must take urgent action without reference to the Customer.

4.2 My policy is to put the complaining party in direct contact with the party best able to answer the complaint. Therefore, my Customers authorise and direct me to provide to third party complainants the relevant Customer's email contact details.

4.3 I will take the following steps to deal with third party complaints received by me in relation to a Customer or a User:

(a) First Notification:

(i) Upon receipt of first notification by a third party of alleged Unacceptable Conduct by a Customer or its User ("First Complaint"), I will email the Customer notifying them of the complaint and a brief summary of the particulars ("First Notice")

(ii) I will also send a letter or email to the complainant notifying it of my policy and procedures in respect of the Unacceptable Conduct complained of, along with direct contact details for the Customer or its User subject of the complaint.

(b) Second Notification

(i) If a second complaint is received by me in respect of the same or similar Unacceptable Conduct described in the First Complaint, which indicates to me that the conduct complained of in the First Complaint is continuing ("Second Complaint"), I will send a letter or email to the Customer enclosing a copy of the Second Complaint and request a written explanation to be provided within seven business days as to the Customer's explanation for the complaint and proposed course of action to resolve it.

(ii) If a Customer fails to respond to the second notification within the period stipulated or if I am not satisfied with the response, I may (1) bill the Customer \$750 for its ongoing administrative costs of the dispute; and (2) if I considers the Complaint to be material, suspend or terminate the Customer's service (or the service of the User subject of the complaints) without further notice.

(c) Third Notification

(i) If I receive a third notification after the Second Notice, which indicates to me that the activity complained of in the Second Complaint is continuing, I will send a letter or email to the Customer ("Third Notice") and require that the activity complained of cease forthwith.

(ii) If within two business days after the date of the Third Notice the Customer has not ceased the activity or shown me to my satisfaction that the dispute has been resolved, I may without further notice to the Customer terminate or suspend provision of the Service to the Customer until further notice and bill the Customer \$1,500 to cover my administrative costs of the dispute.

4.4 Your right to complain to the ABA about content. If You become aware that a Web Site hosted by me contains Prohibited Content or Potentially Prohibited Content, You can make a formal complaint to the Australian Broadcasting Authority by contacting them at: ABA, Head Office, Level 15 Darling Park, 201 Sussex Street, Sydney NSW 2000, or through their Web Site at URL [www.aba.gov.au](http://www.aba.gov.au).

## 5. WHAT I MAY DO TO ENSURE THAT THIS POLICY IS BEING FOLLOWED

5.1 I may monitor Your account but will respect Your privacy. I may monitor the conduct of Your account to determine whether this policy is being followed.

5.2 If I monitor the conduct of Your account I will safeguard Your privacy.

5.3 I may suspend or terminate Your account and/or notify the authorities. If I believe that Your use of the service may break the law or that You have not complied with this policy I may:

- (a) warn You by email (but I am not obliged to do so);
- (b) suspend Your access to the service;

- (c) terminate Your account without notice; and/or
- (d) notify and provide relevant information to the authorities, as appears appropriate in the circumstances.

5.4 In the event of taking action under 5.3 I reserve the right to delete any or all of Your information, material, software or other content stored on my system in my sole discretion.

5.5 I may in my absolute discretion and without notice to You suspend or terminate Your access to the service:

- (a) where I am made aware that a court order, judgement, decree, determination or otherwise has been made to the effect that the Customer data is illegal, offensive, objectionable or in breach of a third party's rights; and
- (b) if I am directed to do so by the ABA under a take-down notice in accordance with its obligations under the Broadcasting Services Amendment (Online Services) Act 1999 (as amended).

5.6 You agree that You will have no claim against me in respect of any action reasonably taken by myself in my implementation of the terms of this Acceptable Use Policy, and You indemnify me against any claim by a User arising out of the same.

## **6. SECURITY**

6.1 You are responsible for any misuse of Your account, even if the inappropriate activity was committed by a friend, family member, guest or employee. Therefore, You must take steps to ensure that others do not gain unauthorised access to Your account. In addition, You may not use Your account to breach security of another account or attempt to gain unauthorised access to another network or server.

- (a) Your password provides access to Your account. It is Your responsibility to keep Your password secure.
- (b) Sharing Your password and account access with unauthorised users is prohibited. You should take care to prevent others from using Your account since You will be held responsible for such use.
- (c) Attempting to obtain another user's account password is strictly prohibited, and may result in termination of service.
- (d) You must adopt adequate security measures to prevent or minimise unauthorised use of Your account.
- (e) You may not 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 You, logging into or making use of a server or account You are not expressly authorised to access, or probing the security of other networks. Use or distribution of tools designed for compromising security is prohibited. Examples of these tools include, but are not limited to, password guessing programs, cracking tools or network probing tools.
- (f) You may not attempt to interfere with service to any user, host or network ("denial of service attacks"). This includes, but is not limited to, "flooding" of networks, deliberate attempts to overload a service, and attempts to "crash" a host.
- (g) Users who violate systems or network security may incur criminal or civil liability. I 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.

## **7. NETWORK PERFORMANCE**

7.1 My accounts operate on shared resources. Excessive use or abuse of these shared network resources by one customer may have a negative impact on all other customers. Misuse of network resources in a manner which impairs network performance is prohibited by this policy and may result in termination of Your account.

7.2 You are prohibited from excessive consumption of resources, including CPU time, memory, disk space and session time. You may not use resource-intensive programs which negatively impact other customers or the performances of my systems or networks. I reserve the right to terminate or limit such activities.