

FORM OF ACCEPTABLE USE POLICY

PLEASE READ CAREFULLY BEFORE USING OUR SERVICES.

THIS FORM OF ACCEPTABLE USE POLICY CONSTITUTES A LEGAL AGREEMENT BETWEEN YOU AND [CUSTOMER NAME INC.] ("[CUSTOMER NAME]", "WE" OR "US") a provider of retail web hosting, e-mail, electronic commerce, and domain name services ("Services").

A. ACCEPTANCE:

- 1. YOU AGREE TO REFRAIN FROM THE FOLLOWING EXAMPLES OF PROHIBITED CONDUCT;**
- 2. IF YOU ARE ACCEPTING ON BEHALF OF A COMPANY, YOU REPRESENT AND WARRANT TO [CUSTOMER NAME] THAT YOU HAVE FULL AUTHORITY TO BIND SUCH COMPANY; AND**
- 3. IF YOU DO NOT AGREE TO ABIDE BY THIS POLICY PLEASE DO NOT USE OUR SERVICES.**

B. PROHIBITED CONDUCT

You will violate this Policy if you engage in the following examples of prohibited activities while using our Services:

- (a) Spamming
 - (i) Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming")
 - (ii) Maintaining an open SMTP relay
- (b) Facilitating a Violation of this Policy
 - (i) Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this Policy, which includes the facilitation of the means to spam, initiation of ping, flooding, mailbombing, denial of service attacks, and piracy of software
- (c) Infringing Intellectual Property Rights
 - (i) Engaging in any activity that:
 - A 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
 - B violates privacy, publicity, or other personal rights of others
- (d) Obscene Speech or Materials
 - (i) Using [CUSTOMER NAME]'s Services to advertise, transmit, store, post, display, or otherwise make available child pornography or other forms of illegal pornography or obscene speech or material. [CUSTOMER NAME] shall notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through [CUSTOMER NAME]'s Services
- (e) Promoting Violence or Injury
 - (i) Advocating, promoting or providing assistance in carrying out violence or any other unlawful activity against any persons, animals or any governments, businesses or other entities
 - (ii) Describing or displaying a weapon, or parts of weapons, or manuals for assembling any weapon, including but not limited to firearms, ammunition, explosives, grenades, bombs and caustic or other dangerous substances contrary to any laws
 - (iii) Promoting products or services that involve a significant risk of death or injury to any persons, or damage to business or other entities or property
- (f) Defamatory or Abusive Language

- (i) Using [CUSTOMER NAME]'s Services as a means to transmit or post defamatory, harassing, abusive, or threatening language
- (g) Forging of Headers
 - (i) Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message
- (h) Illegal or Unauthorized Access to Other Computers or Networks
 - (i) Accessing illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking")
 - (ii) Engaging in any activity that might be used as a precursor to an attempted system penetration (i.e. port scan, stealth scan, or other information gathering activity)
- (i) Distribution of Internet Viruses, Worms, Trojan Horses, or Other Destructive Activities
 - (i) Distributing information regarding the creation of and sending Internet viruses, worms, Trojan horses, ping, flooding, mailbombing, or denial of service attacks
 - (ii) Engaging in activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment
- (j) Export Control Violations
 - (i) Exporting encryption software over the Internet or otherwise, to points outside Canada or the United States
- (k) Illegal Activities
 - (i) Engaging in activities that are determined to be illegal, including advertising, transmitting, or otherwise making available ponzi schemes, pyramid schemes, fraudulently charging credit cards, and pirating software
- (l) Gambling
 - (i) Engaging in or promoting gambling contrary to any laws
- (m) Promoting Intoxicants
 - (i) Displaying or promoting any type(s) of intoxicant, alcoholic beverage, cigarettes or illegal substance contrary to any laws
- (n) Instructing others in Prohibited Activities
 - (i) Providing instructions with respect to any activities listed in (a) through (n) above
- (o) Other Activities
 - (i) Engaging in any other activity, whether lawful or unlawful, that [CUSTOMER NAME] in its sole discretion determines to be harmful to customers, operations, reputation, goodwill, or customer relations.

4. **LIMITATION OF LIABILITY AND INDEMNITY**

- (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL [CUSTOMER NAME], ITS PARENTS, SUBSIDIARIES, AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUPPLIERS, RESELLERS AND DISTRIBUTORS (COLLECTIVELY, THE "[CUSTOMER NAME] ENTITIES" AND EACH, A "[CUSTOMER NAME] ENTITY") BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY OTHER DAMAGES OR LOSSES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, OPPORTUNITY, EARNINGS, USE OR DATA, ARISING DIRECTLY OR INDIRECTLY FROM OR RELATED TO THIS AGREEMENT OR THE SERVICES, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF ONE OR MORE OF THE [CUSTOMER NAME] ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGES OR LOSSES ARISING FROM OR IN ANY WAY RELATED TO DELAYS, ERRORS, INTERRUPTIONS, MISTAKES, OMISSIONS, NON-DELIVERY, INCORRECT DELIVERY, VIRUSES OR DEFECTS IN THE TRANSMISSION OF ANY INFORMATION, MATERIAL OR DATA OVER OR THROUGH [CUSTOMER NAME]' SYSTEMS OR NETWORKS OR THE SYSTEMS OR NETWORKS OF THIRD PARTIES.

- (b) CIRCUMSTANCES MAY ARISE IN WHICH YOU ARE ENTITLED TO RECOVER DAMAGES FROM ONE OR MORE OF THE [CUSTOMER NAME] ENTITIES. IN SUCH INSTANCE, THE AGGREGATE LIABILITY OF THE [CUSTOMER NAME] ENTITIES FOR DAMAGES IS LIMITED TO THE LESSER OF (A) THE AMOUNT ACTUALLY PAID TO [CUSTOMER NAME] BY YOU UNDER THIS AGREEMENT DURING THE ONE (1) MONTH IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED OR (B) THE SUM OF FIVE DOLLARS (\$5.00). THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY [CUSTOMER NAME] HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU HEREBY RELEASE THE [CUSTOMER NAME] ENTITIES FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIM IN EXCESS OF THE LIMITATION STATED IN THIS PARAGRAPH.
- (c) You hereby acknowledge and agree that [CUSTOMER NAME] and its suppliers will NOT be liable for any delay, outages or interruptions of the Services. Further, [CUSTOMER NAME] shall not be liable for any delay or failure to perform its obligations under this Agreement, where such delay or failure results from any act of God or other cause beyond its reasonable control (including, without limitation, any mechanical, electrical, electronic, communications or third-party supplier failure).
- (d) You hereby release and hold harmless, and agree to indemnify, the [CUSTOMER NAME] Entities against any and all claims, actions, proceedings, suits, liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by the [CUSTOMER NAME] Entities, arising out of or relating to (a) your violation or breach of any term, condition, representation or warranty of this Agreement, or any applicable policy or guideline; (b) your use the Services; or (c) your violation, alleged violation, or misappropriation of any intellectual property right (including, without limitation, trademark, copyright, patent, trade secrets) or non-proprietary right of a third party (including, without limitation, defamation, libel, violation of privacy or publicity).
- (e) You are hereby notified that the [CUSTOMER NAME] Entities are intended third-party beneficiaries of this Agreement, with a right of enforcement of the exclusions and limitations of liability and the indemnities contained in this Agreement.

5. DISCLAIMER

THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. [CUSTOMER NAME] DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SERVICES, INCLUDING ALL WARRANTIES AND CONDITIONS OF MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. Although [CUSTOMER NAME] will use commercially reasonable measures to maintain the security of the Services, [CUSTOMER NAME] assumes no responsibility for the effectiveness of these security measures provided by [CUSTOMER NAME].

6. CONSEQUENCES FOR ENGAGING IN PROHIBITED CONDUCT.

In the event that you engage in any of the activities above, as determined by [CUSTOMER NAME] in its sole discretion, [CUSTOMER NAME] may immediately suspend or terminate access to the Services or terminate our [NAME OF AGREEMENT] agreement with you and recover costs and expenses for any harm caused to the [CUSTOMER NAME] or its suppliers.