

## CROSSCONNECT

### ACCEPTABLE USE POLICY

This Acceptable Use Policy ("AUP") sets forth the policy of CrossConnect ("CrossConnect") with respect to the purposes for which the Services provided by CrossConnect pursuant to the Internet Service Agreement, Internet World Wide Web Site Hosting and Commercial Services Agreement, or any other agreement related to or connected to this AUP between CrossConnect and Customer (the "Agreement"), may or may not be used and also sets forth CrossConnect's policy regarding other prohibited use of the Service and content transmitted via the Service. The provisions of this AUP are incorporated into and intended to be a part of the Agreement. Customer's execution of the Agreement or use of the Service constitutes Customer's acceptance of and agreement to be bound by the terms and conditions of this AUP.

#### I. Definitions

1. "Subscriber" shall mean the end-user of or subscriber to Customer's Internet-based products and services.
2. "Unauthorized Use" means any of the following:
  - (i) use of the Service in connection with pyramid schemes, junk E-mail, spamming or any duplicative or unsolicited messages (commercial or otherwise);
  - (ii) use of the Service to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
  - (iii) use of the Service to publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, photograph, image, material or information;
  - (iv) use of the Service to publish, post, upload, distribute or disseminate any topic, name, material or information that incites discrimination, hate or violence towards one person or group because of their belonging to a race, a religion or a nation;
  - (v) use of the Service to upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, including by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless Customer or Subscriber owns or controls the rights thereto or have received all necessary consents to do the same;
  - (vi) use of any material or information, including images or photographs, which is made available through the Service in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party;
  - (vii) use of the Service to upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or other similar software

or programs that may damage the operation of another's computer or the property of another;

(viii) use of the Service by Customer or a Subscriber to attempt to break security, or in fact, to break security of any computer network, to access an account which does not belong to Customer or the Subscriber;

(ix) use of the Service to cause or to attempt to cause security breaches or disruptions of Internet communications (by example and not by limitation, examples of security breaches include, but are not limited to, accessing data of which the Customer is not an intended recipient, or logging into a server or account that the Customer is not expressly authorized to access and examples of disruptions include, but are not limited to, port scans, flood pings, packet spoofing and forged routing information);

(x) use of the Service to Mail-bomb (*i.e.*, to send mass amounts of email to one recipient or system), with the intent to render the system or recipient dysfunctional;

(xi) use of the Service to engage in Syn-flood attacks, (*i.e.* to overburden a recipient's computer system by sending a high volume of spurious data that effectively impedes functionality, or totally disables the recipient's system(s), and any other methods of denial of service;

(xii) use of the Service to download any file posted by another Subscriber that the downloading Subscriber knows, or reasonably should know, cannot be legally distributed in such manner;

(xiii) falsification or deletion of any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded;

(xiv) violation of any laws or regulations governing or related to the Service or Internet usage in general;

(xv) violation of any code of conduct or other guidelines which may be applicable to any USENET group, message board or other service or online group accessed via the Service;

(xvi) use of unsolicited E-mail originating from within the CrossConnect network or networks of other Internet Service Providers on behalf of or to advertise any service hosted or redirected from the CrossConnect network;

(xvii) sending unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material (e.g., E-mail "Spam"); or distributing, advertising or promoting software or services that have the primary purpose of encouraging or facilitating unsolicited commercial E-mail (e.g., E-mail "Spam");

(xviii) creating or forwarding "chain letters" or other "pyramid schemes" of any type;

(xix) forgery of electronic mail headers (addresses), or any other method used to disguise Customer/Subscriber's identity; and

(xx) non-authorized relays through any third party networks and their elements to include socks and http proxies

3. Capitalized terms not defined herein shall have the meanings assigned to them in the Agreement.

## **II. Customer's Obligations**

1. Customer agrees that Customer will not engage in nor will it allow any of its Subscribers to engage in any Unauthorized Use or to otherwise violate the provisions of this AUP. Customer agrees to strictly enforce all provisions of this AUP with its Subscribers. Should Customer fail to enforce this AUP or be unable to comply with the network guidelines set forth by CrossConnect from time to time, CrossConnect may take such action as it deems necessary to protect the integrity of its network and resolve any AUP violation, including but not limited to, denying further access to particular Subscribers or filtering as needed.
2. Customer agrees to comply with the rules, regulations and policies applicable to any network, server, computer database, web site, newsgroup or ISP that is accessed through CrossConnect Services. Any violation of such rules, regulations or policies may serve as cause for CrossConnect to suspend or terminate Service as provided herein.
3. Customer agrees that its Subscribers must be bound to these same restrictions, and that such violation(s) by its Subscribers may be deemed to be a material breach by Customer.

## **III. CrossConnect's Rights**

1. CrossConnect reserves the right, WITHOUT NOTICE, TO SUSPEND the Services provided upon the first or subsequent occurrence of any Unauthorized Use or any non-compliance with CrossConnect's network guidelines.
2. The determination of whether Customer or a Subscriber (i) has violated the Unauthorized Use provisions of this Agreement; (ii) is in compliance with CrossConnect's network guidelines; or (iii) has violated the rules, regulations or policies applicable to any network, server, computer database, web site, newsgroup or ISP that is accessed through the Services, rests within CrossConnect's sole and absolute discretion.
3. CrossConnect may, but has no obligation to, monitor the use of the Service or any content transmitted via the Service. CrossConnect reserves the right to review materials transmitted via the Service and to remove any materials in its sole discretion.
4. CrossConnect reserves the right at all times to disclose any information transmitted via the Service as CrossConnect deems necessary to satisfy any applicable law, regulation, legal process or governmental request or to edit, refuse to post, or to remove any information or materials, in whole or in part, in CrossConnect's sole discretion.
5. In no event shall any exercise in good faith by CrossConnect of its rights under this AUP be considered or treated as a breach of either this AUP or the Agreement.

**IV. Notice of Violations; Resolution**

1. CrossConnect will communicate AUP violations to Customer via RFC standards relating to electronic email. Notifications may be followed up by phone depending on the severity and nature of the violation. Upon notification of an AUP violation, Customer will begin working toward a resolution. Follow up notifications may be sent depending on the severity and nature of the violation. Customers will resolve AUP violations in an expedited manor. Nothing in this section should be interpreted to derogate CrossConnect's right to suspend or terminate access to the Service by Customer or any Subscriber with or without prior notice to Customer or Subscriber. Customer will report suspected violations of this AUP via e-mail to [abuse@pngusa.net](mailto:abuse@pngusa.net).

**V. Limitation of Liability**

1. CUSTOMER SPECIFICALLY AGREES THAT CROSSCONNECT SHALL NOT BE RESPONSIBLE FOR UNAUTHORIZED ACCESS TO OR ALTERATION OF THE TRANSMISSIONS OR DATA OF CUSTOMER OR ANY SUBSCRIBER SENT OR RECEIVED OR NOT SENT OR RECEIVED, OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. CUSTOMER SPECIFICALLY AGREES THAT CROSSCONNECT IS NOT RESPONSIBLE FOR OR LIABLE FOR ANY THREATENING, DEFAMATORY, OBSCENE, INDECENT, INAPPROPRIATE, OFFENSIVE OR ILLEGAL CONTENT OR CONDUCT OF ANY OTHER PARTY OR ANY INFRINGEMENT OF ANOTHER'S RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS. CUSTOMER SPECIFICALLY AGREES THAT CROSSCONNECT IS NOT RESPONSIBLE FOR ANY CONTENT SENT USING AND/OR TRANSMITTED VIA THE SERVICE BY A THIRD PARTY.
2. IN NO EVENT SHALL CROSSCONNECT AND/OR ITS SUPPLIERS BE LIABLE TO CUSTOMER, ANY SUBSCRIBER OR ANY OTHER THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE SERVICE, WITH THE DELAY OR INABILITY TO USE THE SERVICE OR ANY RELATED SERVICE, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS OBTAINED THROUGH USE OF THE SERVICE, OR OTHERWISE ARISING OUT OF THE USE OF THE SERVICE, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF CROSSCONNECT OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER OR TO CERTAIN SUBSCRIBERS OR OTHER THIRD PARTIES.