

Thursday, November 16, 2006

This Acceptable Use Policy ("AUP") between you ("Customer", "you" or "your") and Webair Internet Development, Inc. and its affiliates and subsidiaries ("Webair" or "we", "our" or "us") describes the terms and conditions that govern your use of the Webair owned and operated Internet Protocol (IP) routing infrastructure through which Webair provides Internet connectivity and IP routing and transit to its customers and Webair's equipment, technology, services, facilities and websites (including the primary Webair website on the World Wide Web at <http://www.webair.com>, as well as all other websites which are owned, operated and/or controlled by or on behalf of Webair, the web pages within those websites and all equivalent, mirror, replacement, substitute or backup websites and web pages that are associated with the primary Website) (collectively the "Webair Network") and contains the standards of conduct that you must exercise with respect to such use. The terms and conditions of this AUP are in addition to the terms and conditions of your applicable service agreement with Webair ("Service Agreement") and in no event shall the terms and conditions of this AUP supersede, limit or qualify the terms and conditions of your Service Agreement. In the event of any conflict of terms between this AUP and your Service Agreement, the terms and conditions of your Service Agreement shall control. Violation of this AUP may result in the suspension or termination of your Service Agreement and/or your use of the Webair Network. Please read it carefully.

This AUP does not cover any other services, websites, webpages, transactions, relationships, activities nor any transactions or relationships that you may have with any of our customers, suppliers, licensors, operational service providers, sponsors or any other person, firm or enterprise, unless specifically stated. This AUP does not cover your rights or responsibilities with respect to third party content or any links that may direct your users to third party sites or pages, even if they participate in the Webair Network and you should refer to the terms of use and privacy policies that apply to these third parties since they, not us, are responsible for them.

Webair does not monitor or exercise editorial control over the content of any website, electronic mail transmission, news group, or other material created or accessible over or through the Webair Network, except with respect to our own proprietary websites. However, we reserve the right to take down, block, suspend or remove any websites or materials that, in our sole discretion, may be illegal, may subject us to liability, or may violate this AUP.

We have the right, any time and from time to time, for any reason in our discretion, to change this AUP, including the [Service Level Agreement](#), [Intellectual Property Agreement](#), and any additional terms that apply to the Webair Network. We will post notices of material changes on our website and we may also send you an email about any changes. Once we post them, these changes become effective immediately. If you use the Webair Network after we post a notice of any change, you will be bound by the change. Please check frequently and review this AUP so you are aware of the most current terms and conditions of your agreement with us.

RULES OF CONDUCT

General Rules of Conduct

Your use of the Webair Network is subject to all applicable local, provincial, state, national and international laws and regulations and international treaties. You are solely responsible for all activities, acts and omissions that occur in, from, through or under your website(s), services, email addresses or account. You shall not use the Webair Network for the operation of your website(s), the provision or promotion of your services or otherwise in any manner that is, attempts or is likely to:

- be libelous, defamatory, harmful, harassing, intimidating, threatening, hateful, discriminatory, or abusive which may or may appear to impersonate any individual or entity;
- affect adversely or reflect negatively on Webair, the Webair Network, or on our goodwill, name or reputation;
- cause duress, distress or discomfort to us or anyone else or discourage any person, firm or enterprise from using all or any portion of our the Webair Network, from becoming a customer or from advertising, linking or becoming a supplier or licensor to us;
- send or result in the transmission of junk email, chain letters, duplicative or unsolicited messages, "spamming", "spamvertising" or "phishing";
- transmit, display, post, host, distribute or upload programs or material that contain malicious code, such as viruses, time bombs, cancel bots, worms, mail-bombs, denial of service attacks, Trojan horses, spyware, malware, adware or other potentially harmful programs or other material or information;
- forge any TCP/IP packet header or part of the header information for any reason;
- violate any laws, regulations (including, without limitation, laws regarding the transmission of technical data or software exported from the United States), judicial or governmental order, any treaties or violate or infringe upon any intellectual property rights, rights of publicity or privacy or any other rights of ours or of any other person, firm or enterprise;
- gain unauthorized access to the Webair Network or other customers' accounts, passwords, personally identifiable information or other computers, websites or pages connected or linked to the Webair Network;
- use the Webair Network in any manner which violates or is inconsistent with the terms and conditions of this AUP;
- modify, disrupt, impair, alter or interfere with the use, features, functions, operation or maintenance of the Webair Network or the rights or use and enjoyment of the Webair Network by any other customer, individual, firm or enterprise; or
- collect, obtain, compile, gather, transmit, reproduce, delete, revise, view or display any content, material or information, whether personally identifiable or not, posted by or concerning any other customer, individual, firm or enterprise, in connection with their or your use of the Webair Network, unless you have obtained the express, prior permission of such other person, firm or enterprise to do so.

Rules Applicable to Websites Containing Adult Content

To the extent that your website(s) contain(s) any adult, pornographic or sexually explicit content, material or subject matter as determined by Webair in its sole discretion ("Adult Content"), you must comply with the following rules in connection with the operation of your website(s), your provision and promotion of your services and your display of such Adult Content in connection with your use of the Webair Network. Violations of any of the rules set forth below may result in Webair suspending or terminating your account and your use of the Webair Network with or without notice to you. In such event Webair shall have absolutely no liability to you for damages resulting from your inability to operate your website(s) and you will indemnify Webair as set forth in the "Indemnification" section below.

No Child Pornography. You will not exhibit any content containing or involving individuals who are under the age of 18 or, as applicable if over 18, the age of majority in their respective location ("Child Pornography"). You shall ensure that each of your websites containing Adult Content shall include the statement: **"All models were 18 and over at the time of the creation of such depictions"** in a prominent position on the following webpages: warning page, home page, splash page, join/membership page and any other point of access webpage. In the event that the individuals featured in the Adult Content appear to be young, you will include the above disclaimer on all webpages of your website(s) containing Adult Content. You will require any individuals submitting Adult Content to you for display on your website(s) to verify that the submitted content does not contain individuals under the age of 18 or, as applicable if over 18, the age of majority in their respective location. If you know of or suspect any possession, distribution, receipt, or production of Child Pornography, you should report such incident to the National Center for Missing and Exploited Children (NCMEC) by filing out a report at the website [www.cybertipline.com](http://www.cyberline.com) operated by the NCMEC. Your report will be forwarded to the appropriate law enforcement agency for investigation and action.

Preventing Access by Minors. You will on your Index (Warning) webpage: (a) include all appropriate disclaimers and any requisite Adult Content labels to indicate that your website contains Adult Content, (b) implement age verification technology to ensure that your users affirmatively indicate that they are over 18 or the age of majority in their respective place of residence, and (c) exclude images containing Adult Content to prevent children from unknowingly viewing adult material.

Marketing. With respect to all of your marketing conducted over the Internet, including but not limited to on your website, your advertising partners' websites, banner ads, pop-up ads and/or through e-mail, you will prominently label all e-marketing material with the phrase **"Sexually Explicit"** and/or such other phrase as may be required by applicable law or regulation.

Indemnification.

You agree to defend and indemnify us, our parent, subsidiaries and affiliates, as well as our and their officers, directors, employees, agents, licensors, representatives, advertisers, sponsors, business and promotional partners, operational service providers and suppliers against any and all demands, claims, prosecutions and actions (including, without limitation, any claim that you have improperly displayed, posted, distributed, broadcast, adapted, accessed, exported or transmitted any content or material on your website or otherwise) ("Claims") and you will hold us harmless from and against all losses, damages, costs and expenses (including reasonable attorneys' fees) ("Losses") resulting from your breach or violation of this AUP, as well as your violation of any applicable law or regulation or your infringement, misappropriation or any violation of the rights of any other party. We reserve

the right to assume the exclusive defense and control of any such Claims and all negotiations for their settlement or compromise, and you agree to fully cooperate with us.

Miscellaneous

This AUP, including our [Service Level Agreement](#), [Intellectual Property Agreement](#) and any additional separate contract between you and Webair regarding the services you request are legally binding, constitute your agreement with us regarding your use of the Webair Network and cannot be changed orally, by course of dealing or conduct or otherwise. If any term or condition is held illegal, invalid or unenforceable, this will not affect any other provision each of which will continue in effect. Any term or condition which must survive to allow us to enforce its meaning shall survive. Our delay or failure to take any action shall not be or be construed as a waiver of that or any other term, condition or right we may have. You may not transfer, assign, convey or delegate your right to use the Webair Network to anyone else and any attempt by you to do so shall be null and void *ab initio*.

Webair reserves the right to accept or deny any price offered by another comparable hosting offer in regards to Webair Price Match Guarantee offer. This offer does not apply to any comparable hosting companies 'special offers'. Price matching requests must be submitted in writing to info@webair.com and must contain direct links to the comparable host's current offer.

WEBAIR WILL NOT, AS AN ORDINARY PRACTICE, MONITOR THE COMMUNICATIONS OF ITS CUSTOMERS TO ENSURE THAT THEY COMPLY WITH THIS AUP, WEBAIR POLICY OR APPLICABLE LAW. HOWEVER, IF YOU BREACH (OR WE BELIEVE YOU HAVE OR MAY BREACH) THIS AUP OR IF WE ARE NOTIFIED, DETERMINE OR HAVE REASON TO BELIEVE YOU HAVE OR ARE ENGAGING IN CONDUCT THAT VIOLATES ANY OF THE TERMS AND CONDITIONS OF THIS AUP OR ARE ENGAGED IN ANY OTHER CONDUCT WHICH WEBAIR DEEMS TO BE ACTUALLY OR POTENTIALLY HARMFUL OR VIOLATIVE OF ANY APPLICABLE LAW OR REGULATION, WE MAY, IN OUR SOLE DISCRETION, TAKE ANY ACTION WE DEEM NECESSARY TO PREVENT, STOP OR REMEDY ANY SUCH CONDUCT, INCLUDING BUT NOT LIMITED TO, REMOVING INFORMATION, SHUTTING DOWN A WEBSITE, IMPLEMENTING SCREENING SOFTWARE DESIGNED TO BLOCK OFFENDING TRANSMISSIONS, DENYING ACCESS TO THE INTERNET, DEACTIVATING, CANCELING, SUSPENDING OR TERMINATING YOUR ACCOUNT AND ANY OTHER USE OF THE WEBAIR NETWORK, IN WHOLE OR IN PART, WITHOUT NOTICE TO YOU. WE MAY DECLARE ALL MONIES THEN DUE, OWING AND OUTSTANDING IMMEDIATELY DUE AND PAYABLE AND WE WILL HAVE NO LIABILITY OR FURTHER OBLIGATION OF ANY KIND TO YOU OR ANY OTHER PERSON AND YOU WILL NOT BE ENTITLED TO ANY REFUND.

If you have any questions regarding this AUP, please e-mail abuse@webair.com

Revised Thursday, November 16, 2006