

## Enterprise Customer Acceptable Use Policy

### Introduction and Scope

#### General:

This Enterprise Customer Acceptable Use Policy (“AUP”) sets forth acceptable practices relating to the use of the Planet Networks entities’ (collectively, “Planet”) Internet services and corresponding network, equipment and facilities (collectively “Services”). All customers of Planet are required to comply with this AUP. Additionally, all users who gain access to the Planet Network and/or Planet’s Services through Planet’s customers must comply with this AUP. Planet’s customers and any user gaining access to the Internet through Planet’s customers are collectively referred to herein as “Customers,” “Users” or “you.” Planet’s customers who provide services to end users are responsible for such end users’ compliance with the terms of this AUP and must take steps to ensure compliance by their users with this AUP. By using or accessing Planet’s Services, Customers agree to be bound by the terms of this AUP. Planet reserves the right to amend this AUP from time to time and will notify Customers by posting a revised copy of the AUP on the appropriate Planet website. Customers are responsible for monitoring this website for changes. Use of the Planet Network and/or Services after changes to the AUP are posted on the website shall be deemed to constitute Customers’ acceptance of such new or additional terms of the AUP. Planet Network includes, without limitation, Planet’s constructed or leased transmission network, including all equipment, systems, facilities, services and products incorporated or used in such transmission network.

#### Conformance with Policies of Other ISPs:

In situations where data communications are carried across networks of other Internet Service Providers (ISPs), users of the Planet Network must also conform to the applicable acceptable use policies of such other ISPs.

#### Responsibilities of Planet:

Planet does not monitor, verify, warrant, or vouch for the accuracy or quality of the information that Users may acquire over the Internet. For this reason, Users must exercise their best judgment in relying on information obtained from the Internet. Because Planet does not monitor or censor the Internet, and will not attempt to do so, Planet cannot accept any responsibility for injury to its Customers that results from inaccurate, unsuitable, offensive, or illegal Internet communications. Planet does not review, edit, censor, or take responsibility for any information its Users may create on the Internet. While Planet does not control or monitor the content of online communications, Planet may block access to content that it deems to be in violation of the AUP or that it otherwise deems to be unlawful, harmful or offensive, in its reasonable discretion.

Planet will not intentionally monitor private electronic mail messages sent or received by its Customers unless required to do so by law, governmental authority, or when public safety is at stake. Planet may, however, monitor its service electronically to determine that its facilities are operating satisfactorily. Use of the Planet Services by Customers constitutes Customer’s authorization to Planet to monitor its Services consistent with the foregoing sentence.

Planet will cooperate with appropriate law enforcement agencies in investigating claims of illegal or inappropriate activity. Planet may disclose information, including but not limited to, information concerning a User, a transmission made using the Planet Network, or a web site, in order to comply with a court order, subpoena, summons, discovery request, warrant, statute, regulation, or governmental request. Planet assumes no obligation to inform the User that User-specific information has been provided to any person or entity. Planet may disclose User information or information transmitted over the Planet Network where necessary to protect Planet and others from harm, or where such disclosure is necessary to the proper operation of the system. In instances involving child pornography, Planet complies with all applicable federal and state laws including providing notice to the National Center for Missing and Exploited Children or other designated agencies.

Because the Internet is an inherently open and insecure means of communications, any data or information a user transmits over the Internet may be susceptible to interception and alteration. Planet makes no guarantee regarding, and assumes no liability for, the security and integrity of any data or information a user transmits via the service or over the Internet, including any data or information transmitted via any server designated as “secure.” Accordingly, Planet urges its Customers to take appropriate measures to safeguard their Internet communications.

### **Responsibilities of Users:**

Users shall be solely responsible for any material that they maintain, transmit, download, view, post, distribute, or otherwise access or make available using the Services. Users are entirely responsible for maintaining the confidentiality of password and account information, as well as the security of their network. Customers agree to immediately notify Planet of any unauthorized use of their account or any other breach of security. If you become aware of any violation of this AUP by any person, including users that have accessed the Service through your account, you are required to notify Planet. Users are responsible for notifying Planet immediately if they become aware of an impending event that may negatively impact the Planet Network. When Users place information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech. Users violate this AUP when they engage in any activity that violates applicable law, including but not limited to, the following prohibited activities:

**Spamming:** — Sending unsolicited bulk and/or commercial messages over the Internet (known as “spamming”) is prohibited. This includes receiving replies from unsolicited e-mails (i.e., “drop-box” accounts) or configuring any e-mail server in such a way that it will accept third-party e-mails for forwarding (i.e., “open mail relay”). Bulk e-mail may only be sent to recipients who have expressly requested receipt of such e-mail messages through a “verified opt-in” process. Users that send bulk e-mail messages must maintain complete and accurate records of all e-mail subscription requests (verified opt-ins), specifically including the e-mail and associated headers sent by every subscriber, and shall immediately provide Planet with such records upon request. If a site has roaming users who wish to use a common mail server, the mail server must be configured to require user identification and authorization. Users are also prohibited from using the service of another provider to send spam in order to promote a site hosted on or connected to the Services. Users shall not use the Services in order to send e-mail messages that are 1) excessive and/or intended to harass or annoy others, 2) continue to send e-mail messages to a recipient that has indicated that he/she does not wish to receive them, 3) send e-mails with forged TCP/IP packet header information, or 4) send malicious e-mail, including, without limitation, “mailbombing”. Customers may not advertise, distribute, or use software intended to facilitate sending “opt-out” email or harvest e-mail addresses from the Internet for that purpose. In addition, Customers may not sell or distribute lists of harvested email addresses for the purpose of “opt-out” e-mail.

**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 is prohibited. Also, engaging in activity that violates privacy, publicity, or other personal rights of others is prohibited. Planet is required by law to remove or block access to Customer content upon receipt of a proper notice of copyright infringement (see Digital Millennium Copyright Act Policy below). It is Planet’s policy to terminate the privileges of Users who commit repeat violations of copyright laws.

**Obscene Speech or Materials** — Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. Using the Planet Network to advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material is prohibited. Planet does not prohibit any material allowed by law or protected by the First Amendment to the United States Constitution. Planet is required by law to notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through the Planet Network.

**Defamatory or Abusive Language** – Using the Planet Network as a means to transmit or post defamatory, harassing, abusive, or threatening language is prohibited.

**Forging of Headers or Content** — Forging or misrepresenting message headers, whether in whole or in part, to

mask the originator of the message and forging or misrepresenting any data with false or misleading content is prohibited.

**Illegal or Unauthorized Access to Other Computers or Networks** — Accessing illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (known as “hacking”) is prohibited. Also, 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) is prohibited. Attempting to disrupt, degrade, impair, or violate the integrity or security of the Services or the Planet Network or the computers, services, accounts or networks of any other party (i.e., “denial of service” attacks, etc.), including any activity that typically precedes attempts to breach security such as scanning, probing, or other testing or vulnerability assessment activity, or engaging in or permitting any network or hosting activity that results in the blacklisting or other blockage of Planet IP space is prohibited. Executing any form of network monitoring (i.e., using a packet sniffer) or otherwise engaging in any monitoring or interception of data not intended for the User without authorization is prohibited. Also, attempting to circumvent Customer authentication or security of any hosts, network, or account (“cracking”) without authorization is prohibited.

**Exploitation of Vulnerabilities in Hardware or Software for Malicious purposes** – Exploitation of scripts presented on web pages (i.e. forms for answering questions or entering data) is prohibited. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the Planet Network or any connected network, system, service, or equipment by utilizing programs, scripts, or commands to abuse a website (i.e., DDOS, SYN Floods or similar attacks) are prohibited

**Distribution of Internet Viruses, Worms, Trojan Horses, or Other Destructive Activities** — Sending Internet viruses, worms, Trojan horses, flooding, mail bombing, or denial of service attacks, or distributing information regarding the creation of such viruses, worms, etc. for reasons other than mitigation or prevention is prohibited. Also, 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 is prohibited. Transmitting, distributing or storing information or material that, as reasonably determined by Planet, is threatening, abusive, violates the privacy of others, or which violates any applicable law or regulation, that is harmful to or interferes with Planet's provision of Services, the Planet Network, or any third party's network, equipment, applications, services or websites, that is fraudulent or contains false, deceptive or misleading statements, claims or representations (i.e., “phishing”), and deceptive marketing practices including without limitation, practices that violate the United States Federal Trade Commission's guidelines for proper online marketing schemes is prohibited.

**Facilitating a Violation of this AUP** — Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to spam, initiation of pinging, flooding, mail bombing, denial of service attacks, and piracy of software is prohibited.

**Export Control Violations** – Exporting encryption software over the Internet or otherwise in violation of ITAR, to points outside the United States is prohibited.

**Phishing** — Simulating communications from and/or to a website or other service of another entity in order to collect identity information, authentication credentials, or other information from the legitimate users of that entity's service is prohibited.

**Pharming** — Using malware, DNS cache poisoning or other means to redirect a user to a website or other service that simulates a service offered by a legitimate entity in order to collect identity information, authentication credentials, or other information from the legitimate users of that entity's service is prohibited.

**Servers and Proxies** — Customers may not run on Planet's servers any program which makes a service or resource available to others, including but not limited to, port redirectors, proxy servers, chat servers, MUDs, file servers, and IRC bots. Customers are responsible for the security of their own networks and equipment.

**Other Illegal Activities** — Engaging in activities that are determined to be illegal, including advertising, transmitting, pyramid schemes, fraudulently charging credit cards, and pirating software is prohibited.

**Other Activities** – Engaging in activities, whether lawful or unlawful, that Planet determines to be harmful to its Customers, operations, reputation, goodwill, or Customer relations is prohibited. Violating any specific instructions given by Planet for reasons of health, safety or quality of any other telecommunications services provided by Planet or by reason of the need for technical compatibility of equipment attached to the Planet Network or which materially affects the quality of any telecommunications services provided by Planet is prohibited. Also, attempting to circumvent or alter the process or procedures to measure time, bandwidth utilization, or other methods to document “use” of Planet’s products and services is prohibited. Any other inappropriate activity or abuse of service (as determined by Planet in its sole discretion) whether or not specifically listed in this AUP, may result in suspension or termination of the User’s access to or use of the Services. The above listing of prohibited activities is not exhaustive, and Planet reserves the right to determine that any conduct that is or could be harmful to the Planet Network, Planet’s Customers or Internet users is in violation of this AUP and to exercise any or all of the remedies contained in this AUP.

### **Responsibilities of Resellers and Downstream Service Providers:**

Some users may be Customers of Internet Service Providers (ISPs) that receive Internet connectivity through Planet. Such ISPs (also known as resellers or downstream service providers) are responsible for informing their customers of this AUP and for enforcing its restrictions with regard to its customers’ actions. Complaints about customers of any such reseller or downstream service provider shall be forwarded to such reseller or downstream service provider for resolution. If at any time Planet determines that such reseller or downstream service provider is not taking appropriate action in accordance with this AUP, Planet shall work with such reseller or downstream service provider to review their policies and enforcement procedures. If the reseller or downstream service provider continues to fail to take appropriate action, Planet will take any action, as it deems appropriate, up to and including termination of the Services.

### **Additional Terms and Conditions:**

The use of the Planet Network by a Customer is subject to the terms and conditions of any agreements entered into by such Customer with Planet. This AUP is incorporated into such agreements by reference.

### **Complaints/Violations of AUP**

Any complaints regarding prohibited use or other abuse of the Planet Network, including violations of this AUP, should be sent to Planet at [abuse@planet.net](mailto:abuse@planet.net) Please include all applicable information that will assist Planet in investigating the complaint.

Customers permitted to resell IP service under the applicable Customer agreement must affirmatively and contractually pass on the restrictions of this AUP to its users, and take steps to ensure compliance by their users with this AUP, including without limitation, termination of the user for violations of this AUP.

Planet shall not be required to determine the validity of complaints received, or of information obtained from anti-spamming organizations, before taking action under this AUP. A complaint from the recipient of commercial email, whether received directly or through an anti-spamming organization, shall be evidence that the message was unsolicited. Planet has no obligation to forward the complaint to the user or to identify the complaining parties.

### **Consequences of Non-Compliance**

Users shall cooperate with Planet in investigating and correcting any alleged violations of this AUP. Users agree to promptly investigate all complaints and take all necessary actions to remedy any violations of this AUP. Planet may inform the complainant that you are investigating the complaint and may provide the complainant with the necessary information to contact you directly to resolve the complaint. You shall identify a representative for the purposes of receiving such communications.

Violation of this AUP is strictly prohibited. Planet has absolute discretion in determining whether a Customer’s activities

or use of Planet's services are in violation of this AUP. Planet expressly reserves the right, at its discretion, to pursue any remedies that it believes are warranted which may include, but are not limited to, the issuance of written or verbal warnings, filtering, blocking, suspending, or terminating accounts, billing Customer for administrative costs and/or reactivation charges or bringing legal action to enjoin violations and/or to collect damages, if any, caused by Customer violations. Such actions may be taken by Planet without notice to Customer. Planet maintains the right to terminate Customers' Service that violates this AUP. Upon such a termination of Service pursuant to this AUP, Customers will remain financially responsible for any early termination fees that apply. Before taking such action, Planet shall notify Customer in writing and afford Customer a reasonable opportunity to remedy the alleged failure to comply with the AUP, provided only that no cure or notice period shall be required where the failure to so comply represents, in Planet's sole opinion, an immediate and material threat to the integrity or security of the Planet Network or to the services Planet provides to others using the Planet Network. In such circumstances, Planet shall provide Customer with notice of the Service suspension at the same time as such suspension, or as soon afterwards as is reasonably practical. In the case of repeat violations of the same offense, no additional cure period will be afforded.

Planet expects that Customers who provide Internet services to others will comply fully with all applicable laws concerning the privacy of on-line communications. Customers' failure to comply with those laws will violate Planet's AUP. Finally, by using the Planet Network, Users agree to indemnify Planet for any violation of this AUP, law, or Planet policy that results in loss to Planet or the bringing of any claim against Planet by any third-party. That is, if Planet is sued because of a User's activity, the User will pay any damages awarded against Planet, plus costs and reasonable attorneys' fees.

### **Digital Millennium Copyright Act Policy**

Planet will respond expeditiously to process and investigate notices of alleged infringement and will take appropriate actions in accordance with the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws. Upon receipt of notices complying or substantially complying with the DMCA, when it is under its control, Planet will remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and will remove or disable access to any reference or link to material or activity that is claimed to be infringing. Planet will terminate access for Customers who are repeat infringers. Customers permitted to resell IP service under the applicable Customer agreement must adopt and implement a DMCA policy that reserves the necessary rights to remove or disable infringing material. If you believe that a copyrighted work has been copied and is accessible on our site in a way that constitutes copyright infringement, you may notify us by providing our designated agent with the information required by Section 512(c)(3) of the DMCA (17 USCA 512). Notices of claimed infringement should be directed to: Planet Networks, Inc., 4 Park PI, Newton, NJ 07860 ATTN Legal Department – Fiber or [abuse@planet.net](mailto:abuse@planet.net)

When Planet disables access to any material claimed to be infringing, Planet may attempt to contact the Customer who has posted such material in order to give that Customer an opportunity to respond to the notification. Any and all counter notifications submitted by the Customer will be furnished to the complaining party. Planet will give the complaining party an opportunity to seek judicial relief in accordance with the DMCA before Planet replaces or restores access to any material as a result of any counter notification.