



Acceptable Use Policies

1. **Scope.** 123.Net, Inc.'s ("123") Acceptable Use Policies ("Policies") set forth below defines acceptable practices for using any of 123's services that provide access to the 123 network (the "Service").

These Policies are designed to assist in protecting the quality of 123's Service, 123's Users and the Internet community as a whole from improper and/or illegal activity over the Internet. Users are generally expected to behave in a reasonable fashion and to adhere to commonly accepted practices of the Internet community.

For the most part, simply exercising good judgment and common sense while using the Service should enable Users to remain within the purview of acceptable conduct as further described in these Policies. The categories listed below are intended merely to serve as guidelines regarding appropriate and inappropriate conduct.

2. **Definitions.** As used in this Acceptable Use Policy, the terms shall have the respective meanings set forth below:
 - a. 123. Includes 123.Net, Inc. and any division, subsidiary, affiliate, or parent corporation thereof.
 - b. Service. Includes 123's networks (also referred to as, "Network"), systems, services, and products that utilize, or are utilized in connection with, 123's networks, machinery, intellectual property or other instrumentality owned by 123.
 - c. Users. All persons who have gained access to the Service through Customer's account including Customer.
 - d. Customer. Includes all persons who have contracted with 123 for Service.
 - e. Persons. Includes natural persons, corporations and other legal entities within common interpretation.
 - f. Terms not Defined. All other terms not defined in Paragraph 2 should be interpreted with their common meaning within the usage of trade.
3. **Responsibility of Customer.** Customer is responsible for its own violations or Users violations of these Policies. While it is not 123's intent to control or monitor Customer's online experience or content of online communications, 123 may edit or remove content that is deemed to be in violation of the Policies or that it otherwise deems harmful or offensive. The Policies apply to all aspects of the Service, including e-mail, USENET postings, chatting, and browsing.
 - a. Customer is entirely responsible for maintaining the confidentiality of its passwords, account information and security of its network.
 - b. Furthermore, Customer agrees to immediately notify 123 of any unauthorized use or breach of security to Customer's account.
4. **Rights of 123.** If Users engage in conduct while using the Service that is in violation of the Policies or is otherwise illegal or improper, 123 reserves the right to suspend and/or terminate the Service or the User's access to the Service. Where appropriate, 123 will attempt to notify User of any activity in violation of the Policies and request that User cease such activity. However, in cases where the viability of the Service is threatened or cases involving UCE/SPAM, mail relaying, alteration of source IP address information, denial of service attacks, harassment or copyright infringement, nuisance or any other illegal activity, 123 reserves the right to suspend the Service or the User's access to the Service without prior notification.

In addition, 123 may take any appropriate action, legal or otherwise, against User for violations of the Policies or federal or state law. Furthermore, 123 makes no promise, nor alleges any obligation, to monitor or police activity occurring via the Service.

5. **Conformance with Policies of Other ISPs.** In situations where data communications are carried across networks of other Internet Service Providers ("ISPs"), users of the Network must also conform to the applicable acceptable use policies of such other ISPs.
6. **Filters.** Filters against particular networks or traffic types are generally available for Customers and Users from a variety of sources. In addition, in certain circumstances and for an applicable fee, 123 may be able to install other filters upon the customer's request.
7. **Configuration.** Users of the Network are responsible for configuring their own systems to provide the maximum possible accountability. For example, Users should ensure that there are clear "path" lines in news headers so that the originator of a post may be identified. Users should also configure their Mail Transport Agents ("MTA") to authenticate (by look-up on the name or similar procedures) any system that connects to perform a mail exchange, and should generally present header data as clearly as possible. Users should maintain logs of dynamically assigned IP addresses.
8. **Unauthorized Access/Interference.** Users may not attempt to gain unauthorized access to, or attempt to interfere with or compromise the normal functioning, operation, or security of any network, system, computing facility, equipment, data, or information. Users may not use the Service to engage in any activities that may interfere with the ability of others to access or use the Service or the Internet. Users may not use the Service to monitor any data, information, or communications on any network or system without authorization. Users may not attempt to gain unauthorized access to other User accounts or passwords.
 - a. Users of the 123 Network are responsible for educating themselves and configuring their systems with basic security. Should User's security systems be attacked, User is responsible for reporting the violation and then fixing the exploited system.
 - b. Users are prohibited from intentionally or negligently injecting false data into the Internet. Examples may include, User injecting bad routing information (including but not limited to the announcing of networks owned by someone else or reserved by the Internet Assigned Numbers Authority) or incorrect DNS information.
9. **UCE/Spamming/Mailbombing.** Users may not use the Service to transmit excessive volumes of unsolicited commercial e-mail messages or deliberately send excessively large attachments to one recipient. Any unsolicited commercial e-mail messages or a series of unsolicited commercial e-mail messages or large attachments sent to one recipient constitutes Unsolicited Commercial E-mail ("UCE") and is prohibited. In addition, "spamming" or "mailbombing" is also prohibited. Use of the service of another provider to send UCE, spam or mailbombs, to promote a site hosted on or connected to the 123 network, is similarly prohibited. Likewise, Users may not use the Service to collect responses from mass unsolicited e-mail messages.
10. **Spoofing/Fraud.** Users may not attempt to send e-mail messages or transmit any electronic communications using a name or address of someone other than the User for purposes of deception. Any attempt to impersonate someone else by altering source IP address information or by using forged headers or other identifying information is prohibited. Any attempt to fraudulently conceal, forge, or otherwise falsify a User's identity in connection with use of the Service is prohibited.
11. **E-Mail Relay.** Any use of another party's electronic mail server to relay e-mail without express permission from such other party is prohibited.
12. **USENET Postings.** All postings to USENET groups must comply with that group's charter and other policies. Users are prohibited from cross-posting to unrelated news groups or to any news groups where the post does not meet that group's charter. Continued posting of off-topic messages, including commercial messages (unless specifically invited by charter), is prohibited. Disrupting newsgroups with materials, postings, or activities that are (as determined by 123 in its sole discretion) unlawful, obscene, threatening, abusive, libelous, hateful, excessive, or repetitious,

unless such materials or activities are expressly allowed or encouraged under the newsgroup's name, FAQ, or charter, is strictly prohibited.

13. **Illegal Activity.** Users agree to use the Service only for lawful purposes. Use of the Service for transmission, distribution, retrieval, or storage of any information, data, or other material in violation of any applicable law or regulation (including, where applicable any tariff or treaty) is prohibited. This includes, without limitation, the use or transmission of any data or material protected by copyright, trademark, trade secret, patent, or other intellectual property right without proper authorization and the transmission of any material that constitutes an illegal threat, violates export control laws, or is obscene, defamatory, or otherwise unlawful. 123 fully cooperates with any and all federal and state investigatory and prosecutorial government agencies including the National Center for the Missing and Exploited Children or other designated agencies.
14. **Other Prohibited Activities.** The following activities are also prohibited:
 - a. Attempting to intercept, redirect, or otherwise interfere with communications intended for others.
 - b. Intentionally transmitting files containing a computer virus or corrupted data.
 - c. The sale or resale of 123's services or products, without the express written authorization of 123.
 - d. Furnishing false or incorrect data to 123 on written or online applications, contracts, or other materials or information provided to 123, including fraudulent use of credit card numbers or "bill to" telephone numbers.
 - e. Attempting to circumvent or alter the processes or procedures to measure time, bandwidth utilization, or other methods to document use of 123's services.
15. **Privacy.** Because the Internet is an inherently open and insecure means of communication, any data or information a User transmits over the Internet may be susceptible to interception and alteration. 123 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."
16. **Additional Terms and Conditions.** The use of the Network by Customer is subject to the terms and conditions of any agreements entered into by such Customer with 123. This Acceptable Use Policy is incorporated into such agreements by reference.
17. **Limitation of Liability.** 123 SHALL NOT BE LIABLE FOR ANY AND ALL: DIRECT OR INDIRECT, INCIDENTAL, GENERAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY OR LOSS OF USE, EVEN IF CUSTOMER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, TO CUSTOMER FOR A BREACH OF THESE POLICIES, OR AN ORDER OR TERM AND CONDITION BY 123. IN THE EVENT OF A BREACH OF AN OBLIGATION BY 123, CUSTOMER'S DAMAGES SHALL BE LIMITED TO THE AMOUNT BILLED TO CUSTOMER FOR SERVICE OR INSTALLATION.
18. **Risk of Loss.** At all times, the risk of any loss, damage or destruction of any of Customers assets, equipment or property provided or maintained by 123, from fire, water damage, theft or other casualty will be born by Customer at all times. Customer shall be solely responsible for insuring said property and filing insurance claims for losses associated therewith. If 123 is aware of loss or casualty to Customer's property, 123 will immediately notify buyer stating the extent of loss or damage incurred and the cause, if known.
19. **Personal Property Taxes.** Customer shall be solely responsible, where applicable, for paying local and state personal property taxes associated with Customer's equipment stored in a collocation facility rented or owned by 123. In the event that 123 is required by a governmental authority to pay property taxes on behalf of Customer, 123 shall have the right to be reimbursed by customer for such amount. Customer shall reimburse 123 within 30 days of written notice that a tax has been paid on Customer's behalf by 123.

20. **Hold Harmless.** Customer agrees to indemnify, defend, and hold 123 harmless, as well as its subsidiaries, affiliates, officers, directors, employees, agents, licensors, consultants, suppliers, and any third- party Web site provider, from and against all claims, demands, actions, liabilities, losses, expenses, damages, judgments and costs, including attorneys' fees, resulting from Customer's violation of this Policy, misuse or abuse of the Service, or infringement thereof by Customer or Users of Customer's account.
- a. 123 reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer.
 - b. Customer shall not in any event accept a settlement of any dispute relating to this contract without prior written consent of 123.
21. **Billing and Collection of Charges.** 123 shall render a bill during each billing period to every Customer. The billing period shall be monthly. All invoices are due and payable from Customer by the invoice due date.
- a. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods. When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
 - b. Billing of the Customer by 123 will begin on the Service Commencement Date. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
 - c. If service is disconnected by 123 in accordance with these policies and later restored, restoration of service will be subject to all applicable restoration and installation charges.
 - d. If a Customer has an open balance that has not been disputed in accordance with these policies and is past due for a period of 60 days or more, 123, at its sole option, shall:
 - i. apply late charges each month equal to 1.5% of the total outstanding amount "not including current activity";
 - ii. cancel Customer's service and continue to collect on the amount then owing;
 - e. Customers whose accounts are past due for a period of 60 days or more may be charged a 1% fee for all electronic payments received by 123 by them or on their behalf.
 - f. 123 will charge a fee of \$5 per month for the delivery of paper invoices. For Paperless Billing, **E-mail: Ebilling@123.net and include your NAME & ACCOUNT NUMBER.**
22. **Billing Disputes.**
- a. If Customer disputes a term or amount on an invoice, they must do so in writing within 30 days from the invoice date.
 - b. Disputes must be sent to:

<u>E-mail:</u>	DisputeDepartment@123.net
<u>Fax:</u>	586-349-8005
<u>Address:</u>	24275 Northwestern Hwy. Southfield, MI 48075
 - c. Disputes must be reasonable. Frivolous disputes designed to illegitimately or intentionally delay, harass or interfere with the liabilities of Customer or day to day operations and collections of 123 will be prosecuted.
 - d. Customer must pay an amount equal to the part of the bill that is not in dispute. Payment by Customer of the amount of the invoice not in dispute shall not be deemed to constitute acceptance of the portion of the invoice that is in dispute.
23. **Allowances for Interruptions in Service.** Interruptions in service that are not caused by Customer, or during which 123 does not provide a satisfactory replacement service, will be credited to the Customer for the part of the service that the interruption affects.
24. **Credit for Interruptions.**
- a. A credit allowance will be made when an interruption occurs because of a failure of any component furnished by 123. An interruption period begins from the time the Customer's service is reported or is found to be out of service. An interruption period ends when the

service, facility or circuit is operative. If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.

- b. For calculating credit allowances, every month is considered to have 30 days. A credit allowance for fixed recurring fees only is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- c. Credit allowances will only be given for interruptions of 6 hours or more.

25. **Limitations on Allowances.** No credit allowance will be made for:

- a. interruptions due to the cause of, negligence of, or noncompliance with the provisions of the Policies, Terms and Conditions or Order by, the Customer or User;
- b. interruptions of service during any period in which 123 is not given full and free access by the Customer to its facilities and equipment for the purpose of investigating and correcting interruptions;
- c. interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- d. interruptions of service during any period when the Customer has released service to the 123 for maintenance purposes or for implementation of a Customer order for a change in service arrangements; and
- e. interruption of service during a time period in which 123 provides a satisfactory replacement service.

26. **Cancellation for Service Interruption.** Cancellation or termination of service by Customers due to service interruption is permitted only if any circuit experiences a single continuous outage of 7 days or more or cumulatively for 14 days within a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit that has been subject to the outage.

27. **Cancellation of Service.** If Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined above), Customer agrees to pay to 123 termination liability charges, as defined below. These charges shall become due and owing as of the effective date of the cancellation or termination.

- a. Customer's termination liability for cancellation of service shall be equal to:
 - i. all unpaid Non-Recurring charges reasonably expended by 123 to establish service to Customer; plus
 - ii. any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by 123 on behalf of Customer; plus
 - iii. all Recurring Charges incurred prior to disconnection, cancellation or termination; minus
 - iv. reasonable allowance for costs avoided by 123 as a direct result of the Customer's cancellation.

28. **Transfers and Assignments.** Neither 123 nor Customer may assign or transfer its rights or duties in connection with the services and facilities provided by 123 without the prior written consent of the other party, except that 123 may assign its rights and duties:

- a. to any subsidiary, parent company or affiliate; or
- b. pursuant to any sale or transfer of substantially all the assets of 123; or
- c. pursuant to any financing, merger or reorganization of 123.

29. **Notices and Communications**

- a. Customer shall designate on the Service Order an address to which 123 shall mail or deliver all notices and other communications.
- b. All notices sent to 123 (other than disputes) shall be in writing sent to:
24275 Northwestern Hwy. Southfield, MI 48075

30. **Modifications.** 123 reserves the right to modify this Acceptable Use Policy at any time without prior notice. Wherever possible, 123 will attempt to notify Customer of any such modifications either via e-mail or by posting a revised copy of the Policies on our Web site.
31. **Acknowledgment.** By using the Service, Customer acknowledges that Customer and Customer's users that have gained access to the Service through Customer's account (collectively "Users"), have read, understood, and agreed to abide by these Policies.
32. **Waiver.** The waiver or breach of any provision of the Policies shall not operate or be construed as a waiver of any subsequent or similar breach, and the balance of the Policies shall remain enforceable and in full effect.