

SUPPLIER'S ACCEPTABLE USE POLICY – ACCESS SERVICES

This Acceptable Use Policy – Access Services ("AUP") describes actions by Customer that are prohibited by TailWind Voice & Data, Inc. ("Supplier"). "Customer" for purposes of this AUP includes Customer, the employees of Customer, any intermediary users or entities between Customer and any end users, and any Customer who may use the Internet-related services that are provided by Supplier pursuant to an applicable Customer LOA/agreement (which Customer has agreed to as a condition of receiving services from Supplier).

As specified below, illegal usage, abusive usage and/or use of the services interfere with other Customer's enjoyment of the services and are therefore unacceptable. Customer affirms that, if they are not the end user of the services, that (a) they have in place an acceptable use policy that is substantially similar to this policy requiring adherence to the same basic terms and conditions as set forth herein; and (b) that it is Customer's responsibility to disseminate the acceptable use policy and ensure awareness of and compliance with this AUP.

Illegal Use Prohibited

The services may only be used for lawful purposes and may not be used for any illegal use or any use that may result in civil or criminal liability. Unlawful uses include, without limitation, effecting or participating in any of the following activities via the services provided by Supplier:

- (i) storing, posting or transmitting unlawful materials, e-mail or information;
- (ii) storing, posting or transmitting harassing, threatening or abusive materials, e-mail or information;
- (iii) storing, posting or transmitting defamatory, libelous, or slanderous materials, e-mail or information;
- (iv) storing, posting or transmitting obscene, pornographic, profane or otherwise objectionable information of any kind, including images containing child pornography;
- (v) storing, posting or transmitting materials, e-mail or information that infringe upon the patents, copyrights, trademarks, trade secrets or other intellectual property rights of others;
- (vi) storing, posting or transmitting materials constituting or encouraging conduct that constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, national or international law, including without limitation U.S. export control laws and regulations and/or U.S. sanctions laws and regulations;
- (vii) storing, posting or transmitting materials that would give rise to liability under the Computer Fraud and Abuse Act;
- (viii) storing, collecting, posting or transmitting credit card, debit card, electronic funds transfer numbers or other similar types of data for either a fraudulent or illegal purpose, and
- (ix) collecting, without adequate security and a legitimate purpose (as determined by Supplier), any of the following: (a) information from Users that are children and/or minors, without consent from such Users' parents or legal guardians in violation of applicable U.S. laws and/or regulations; (b) Users' personal health information or personal financial information without informed consent from such User/s, in violation of applicable U.S. laws and/or regulations; or (c) other personal information without the advising the User, in violation of applicable U.S. laws and/or regulations.

Abusive Use Prohibited

The services may not be used for abusive purposes, as determined by Supplier. Abusive purposes include, without limitation, effecting or participating in any of the following activities via the services provided by Supplier:

- (i) Posting ten (10) or more messages similar in content to Usenet or other newsgroups, listservs, forums, e-mail mailing lists or other similar groups or lists;
- (ii) Posting to any Usenet or other newsgroups, listservs, forums, e-mailing lists or other similar groups

or lists articles which are violations of the charter or other owner-published FAQ's, rules, or policies or descriptions of the group or list if such activity either causes complaints from other users or could reasonably be expected to do so;

- (iii) Sending unsolicited e-mailings (including, without limitation, commercial advertising and informational announcements) to more than five (5) e-mail addresses within a forty-eight (48) hour period, if such unsolicited e-mailings either causes complaints from other users or could reasonably be expected to do so;
- (iv) Falsifying Customer information provided to Supplier or to other Customers of the services;
- (v) Engaging in any of the foregoing activities by using the services of another provider, but channeling such activities through an account provided by Supplier, re-mailer, or otherwise through the services or using an account provided by Supplier as a mail drop for responses or otherwise using the services of another provider for the purpose of facilitating the foregoing activities if such use of another party's service could reasonably be expected to adversely affect the provider of services or its supplier; and,
- (vi) Operating a server in connection with the services in an "open relay" configuration (a configuration whereby a mail server processes email messages where neither the sender nor the recipient is a local user). Servers configured in this manner expose both Supplier's network and the Customer's personal account to fraudulent and abusive use by third parties. Customer hereby acknowledges and agrees that it will not operate servers with in an open relay configuration. If a Customer requires assistance in determining the configuration of the Customer's server and/or instructions to secure a server the Customer may contact Supplier.

Interfering With Other Customers Prohibited

No Customer shall interfere with any other person's use of the services or the Internet by effecting or participating in any of the following activities via the services provided by Supplier:

- (i) restricting or inhibiting any other Customer or any other person from using and enjoying services and/or the Internet;
- (ii) posting or transmitting any information or software that contains a virus, worm, or any other form of malware or having any other harmful component contained therein;
- (iii) without permission from the owner of a system or network, doing any of the following: (a) accessing the system or network, (b) monitoring or snooping data or traffic, (c) probing, scanning, testing firewalls, (d) testing the vulnerability of a system or network or (e) breaching the security or authentication routines of a system or network;
- (iv) conducting or forwarding surveys, contests, pyramid schemes, or chain letters;
- (v) relaying e-mail in an anonymous fashion or forging any TCP-IP packet header; or
- (vi) mailbombing, flooding, overloading, attacking, conducting any form of denial of service activity or otherwise interfering with a system or network.

Customer Responsibilities

Customers remain solely and fully responsible for the content of any material posted, hosted, downloaded/uploaded, created, accessed, or transmitted using the services. Supplier has no responsibility for any material created on the Supplier network or accessible using the services, including content provided on third-party websites linked to the Supplier network. Such third-party websites links are provided as Internet navigation tools for informational purposes only, and do not constitute in any way an endorsement by Supplier of the content(s) of such sites.

Investigation and Enforcement of this AUP

All Customers of the services must adhere to the terms of this AUP. Supplier has the right, but is not obligated, to strictly enforce this AUP through self-help, active investigation, litigation and prosecution. Supplier shall not be obligated to monitor or exercise any editorial control over any material stored, copied,

or communicated using its services or network, but reserves the right to do so. Any Customer which Supplier determines in its sole discretion to have violated any terms of this AUP may be subject to an immediate suspension or termination of service on a limited basis, as Supplier determines is reasonably practical, under the circumstances to address the underlying violation. In the event that Supplier becomes aware that any such material or activity may violate the terms of this AUP and/or expose Supplier to any form of civil or criminal liability including, without limitation, under the Digital Millennium Copyright Act (DMCA) or any other applicable law, Supplier reserves the right to, immediately block access to such material and suspend or terminate any Customer creating, storing, copying, or communicating such material, including any Customer whom Supplier becomes aware has engaged in any of the foregoing activity multiple times. Supplier further reserves the right to conduct investigations into fraud, violations of the terms of this AUP or other laws or regulations, and to cooperate with any and all applicable law enforcement authorities and/or other third parties in the investigation of alleged wrongdoing, which cooperation may include disclosing the identity of the Customer that Supplier considers may be responsible for the wrongdoing.

Supplier may also access and disclose any information (including transactional information) related to any Customer's access and use of the network for any lawful reason, including but not limited to: (1) responding to emergencies; (2) complying with the law (e.g., a lawful subpoena); (3) protecting our rights or property and those of our other customers; or (4) protecting Customers of those services and other from fraudulent, abusive, or unlawful use of, or subscription to, such services. INDIRECT OR ATTEMPTED BREACHES OF THIS AUP, AND ACTUAL OR ATTEMPTED BREACHES BY A THIRD PARTY ON BEHALF OF A CUSTOMER MAY BE CONSIDERED BREACHES OF THIS AUP BY SUCH CUSTOMER. Violation of this AUP may result in civil or criminal liability, and Supplier may, in addition to any remedy that it may have at law or in equity, terminate permission for the Customer to use the services and charge Customer any applicable cancellation or termination fees, as set forth in Supplier's and Customer's written agreement. Supplier's failure to enforce this AUP in every instance in which it might have application does not amount to a waiver of Supplier's rights.

DISCLAIMER OF WARRANTIES AND LIABILITY

CUSTOMER UNDERSTANDS THAT THEY ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THEIR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM ANY MATERIAL DOWNLOADED FROM OR ACCESSED FROM OR OTHERWISE PROVIDED THROUGH THE NETWORK. ANY CONTENT OR INFORMATION ACCESSED BY OR PROVIDED TO CUSTOMER THROUGH THE NETWORK IS PROVIDED "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE." SUPPLIER, ITS AGENTS, AND ITS LICENSORS DO NOT WARRANT THE AVAILABILITY, ACCURACY, COMPLETENESS, CURRENTNESS, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY CONTENT OR INFORMATION AVAILABLE THROUGH THE NETWORK. CUSTOMER'S ACCESS SUCH CONTENT OR INFORMATION AT THEIR OWN RISK. SUPPLIER DOES NOT GUARANTEE THAT THE NETWORK WILL BE ERROR-FREE, OR CONTINUOUSLY AVAILABLE, OR THAT IT WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. UNDER NO CIRCUMSTANCES WILL SUPPLIER, ITS AFFILIATES, ITS AGENTS OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR ANY DAMAGES FROM THE USE OF THE NETWORK THAT ARISE UNDER ANY CAUSE OF ACTION, INCLUDING THOSE THAT RESULT FROM CUSTOMER'S USE OF THE NETWORK, ANY SERVICES OFFERED THROUGH THE NETWORK, OR ANY TRANSACTION PERFORMED THROUGH THE NETWORK. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL DAMAGES OF ANY KIND, INCLUDING COMPENSATORY, SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOSS OF DATA, INCOME OR PROFIT, LOSS OF BUSINESS OPPORTUNITY, LOSS OF OR DAMAGE TO PROPERTY AND CLAIMS OF THIRD PARTIES-EVEN IF KNOWN BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT THE AGGREGATE LIABILITY

OF SUPPLIER, IT'S AGENTS, AND IT'S LICENSORS, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM IN ANY WAY CONNECTED TO THE NETWORK WILL NOT EXCEED \$100.00. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CATEGORIES OF DAMAGES OR IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. IN SUCH STATES, THE LIABILITY OF SUPPLIER, AND ITS AFFILIATES, AGENTS AND LICENSORS IS LIMITED TO THE FULLEST EXTENT PERMITTED BY SUCH STATE LAW.

Governing Law

This Policy is governed by and construed under the laws of the State of Minnesota, without regard to its conflict of laws principles. The federal and state courts sitting in the State of Minnesota have exclusive jurisdiction over and venue of any suit that relates to this AUP. Customer is responsible for ensuring that its conduct is at all times in compliance with all applicable laws, rules, and regulations.

Indemnification

Customer agrees to indemnify, defend and hold harmless Supplier, its officers, directors, employees, agents, shareholders, licensors, and suppliers from and against all claims, liabilities, losses, expenses, damages and costs, including reasonable attorneys' fees, that arise from: (1) any violation of this AUP by Customer; (2) any violation of any rights of a third party by Customer; (3) any violation of applicable law; (4) information or content that Customer submit, post, transmit or make available through the network; or (5) Customer's use of the network.