# Acceptable Use Policy

This Acceptable Use Policy applies to all aspects of the services provided by Masergy.

1. This Acceptable Use Policy (“Policy”) applies to all aspects of the services provided by Masergy (“Services”). You must maintain a User policy containing restrictions substantially similar to this Policy, and take steps to ensure compliance by Users including, without limitation, termination of Users who violate this Policy. By using the Services, you acknowledge that you and users that have gained access to the Services through your account (individually, collectively, and interchangeably, “Users” or “Users”), have read, understood, and agree to this Policy. YOU ACKNOWLEDGE AND AGREE THAT YOU ARE RESPONSIBLE FOR VIOLATIONS OF THIS POLICY BY YOU AND USERS.

2. Masergy reserves the right, in its sole discretion, to change or modify this Policy at any time by posting changes on its Web site. Masergy will notify you of any such modifications either via email or by posting a revised copy of this Policy on Masergy’s Web site. You and Users are responsible for monitoring Masergy’s Web site for changes to this Policy. This Policy was last changed on January 18, 2010.

3. You agree to immediately notify Masergy of any unauthorized use of your account or any other breach of security known to you. Masergy does not make any promise, nor does Masergy have any obligation or intention, to monitor or police activity arising in connection with the Services; however, Masergy reserves the right to edit or remove content that Masergy deems to be in violation of this Policy or that Masergy, in its sole discretion, otherwise deems harmful or offensive. You agree to promptly investigate all complaints received by Masergy regarding any activity relating to you that appears to be in violation of this Policy, and you agree to take all necessary actions to remedy any actual violations of this Policy. If you or Users engage in conduct while using the Services that is in violation of this Policy or is otherwise illegal or improper, Masergy reserves the right, in addition to all other remedies available at law and equity, to suspend and possibly terminate the Services or the violating party’s access to the Services. Masergy may disclose to 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.

4. Masergy will not be responsible for failures or breach of User-imposed protective measures, whether implied or actual. Abuse that occurs as a result of a compromised Users’ system or account may result in suspension of services or account access by Masergy. YOU AND USERS ARE RESPONSIBLE FOR THE SECURITY OF YOUR AND USERS’ OWN NETWORKS AND MACHINES AND MAINTAINING THE CONFIDENTIALITY OF YOUR AND USERS’ PASSWORD AND ACCOUNT INFORMATION.

5. Because the Internet is an inherently open and insecure means of communication, any data or information you or Users transmit over the Internet may be susceptible to interception and alteration. SUBJECT TO Masergy’S PRIVACY POLICY, Masergy MAKES NO GUARANTEE REGARDING, AND ASSUMES NO LIABILITY FOR, THE SECURITY AND INTEGRITY OF ANY DATA OR INFORMATION YOU OR USERS TRANSMIT VIA THE SERVICES OR OVER THE INTERNET.

6. Masergy WILL NOT BE LIABLE TO YOU, USERS, OR ANYONE ELSE FOR ANY USE OF THE SERVICES BY YOU OR USERS THAT VIOLATES THIS POLICY, OR FOR ANY FAILURE BY YOU TO ENFORCE ANY OF YOUR OBLIGATIONS UNDER THIS POLICY. YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD Masergy, ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, CONSULTANTS, SUPPLIERS, AND ANY THIRD PARTY WEB SITE PROVIDERS HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LOSSES, EXPENSES, DAMAGES, AND COSTS, INCLUDING ACTUAL ATTORNEYS’ FEES, RESULTING FROM A VIOLATION OF THIS POLICY BY YOU OR USERS, MISUSE OR ABUSE OF THE SERVICES BY YOU OR USERS, OR INFRINGEMENT BY YOU OR USERS OF ANY INTELLECTUAL PROPERTY OR OTHER RIGHT OF ANY PERSON OR ENTITY. You and Users agree to cooperate (at your own cost) as fully as Masergy reasonably requires in Masergy’s defense of any claim. Masergy reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall not in any event settle any matter without the written consent of Masergy.

7. The actions described below are defined as “System Abuse” and are strictly prohibited under this Policy. The categories listed below are intended merely to serve as guidelines regarding appropriate and inappropriate conduct; the list is by no means exhaustive and should not be interpreted as such. If you or a User are/is unsure of whether a contemplated use or action is

permitted, it is the unsure party's responsibility to determine whether the use is permitted by contacting Masergy via electronic mail at aup-violations@Masergy.com. Masergy expressly reserves the right, in its discretion, to pursue any remedies that it believes are warranted which may include, but is not limited to, filtering, suspending, or terminating accounts and/or Users that engage in System Abuse or who refuse to address user abuse.

## a. Unauthorized Access/Interference

You and Users shall not use the Services to:

**i.** Transmit unwanted or offensive content or interfere with others' use or enjoyment of the Services or the Internet in general;
**ii.** 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;
**iii.** Attempt to intercept, redirect, or otherwise interfere with communications intended for others;
**iv.** Attempt to interfere with or deny service to any user or host (e.g., denial of service attacks);
**v.** Falsify header information or user identification information;
**vi.** Introduce malicious programs into the network or Server (e.g., viruses, worms, Trojan horses, disabling devices, etc.); or
**vii.** Intentionally transmit files containing a computer virus or corrupted data.

## b. System/Network Security Violations

You and Users shall not use the Services to:

**i.** Attempt to or actually access or use data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or breach security or authentication measures, without the owner's express prior written authorization;
**ii.** Monitor data or traffic on any network or system in any way (including but not limited to "packet sniffing") without the system or network owner's express prior written authorization;
**iii.** Attempting to circumvent user authentication or security of any host, network, or account ("cracking");
**iv.** Attempt to gain unauthorized access to other User accounts or passwords;
**v.** Engage in "hacking," misuse or share User accounts or passwords with any other party, attempt to violate security at Masergy or elsewhere, or attempt to infiltrate any network, without express prior written authorization of the owner thereof;
**vi.** Attempt to (or successfully) breach or disrupt Internet communication including, but not limited to, accessing data of which you or the User is not an intended recipient or logging into a Server or account that you or the User is not expressly authorized to access; or
**vii.** Violating the acceptable use policies of any networks, machines, or services which are accessed through Masergy's network.

## c. UCE/Spam/Mailbombs/Newsbombs

You and Users shall not use the Services to:

**i.** Use another party's mail server to relay mail without the express prior permission from that other party;
**ii.** Send Spam or Unsolicited Commercial email ("UCE"), defined as sending any unsolicited commercial or informational email messages or a series of unsolicited commercial email messages or large attachments to one recipient, or use the Services to collect responses from mass unsolicited email messages;
**iii.** Send unsolicited email which could reasonably be expected to provoke complaints from its recipients;
**iv.** Use Spam to drive visitors to your site hosted through the Services;
**v.** "Mailbomb" (i.e., transmit excessive volumes of unsolicited commercial email messages, deliberately send excessively large attachments to one recipient, or send multiple similar mail messages to the same email address);
**vi.** Use the service of another provider to send UCE, Spam or Mailbombs, or to promote a site hosted on or connected to the Services; or
**vii.** Send, advertise, distribute, or use software intended to facilitate sending unsolicited ("opt-out") bulk email, or harvest email addresses from the Internet for that purpose. You and Users shall not sell or distribute lists of harvested email addresses for that purpose. You and Users who send unsolicited bulk email from Masergy accounts will be charged the cost of labor to respond to complaints, with a minimum charge of $200 (USD). You and Users who send bulk email to "opt-in" lists must have a method of confirmation or verification of subscriptions and be able to show evidence of subscription for users who complain about receiving unsolicited email;
**viii.** Provide or make use of a service employing referral IDs. You will be considered responsible for unsolicited bulk email

sent by you or Users of the referral ID service that makes reference to services hosted by Masergy. You and Users must be able to provide visible evidence from the UBE-advertised link that a member of their referral ID service has had their membership terminated; or

**ix.** Use the Masergy or User account to collect replies to messages sent from another provider which violate these rules or those of the other provider.

## d. Usenet Postings

**i.** You and Users should be familiar with the workings of Usenet by reading FAQs regarding Usenet athttps://www.faqs.org/faqs/by-newsgroup/news/news.announce.newusers.html before becoming active participants.

**ii.** All postings (including but not limited to cross postings) to Usenet newsgroups must comply with each newsgroup's charter and other policies, conventions, guidelines and local culture found in each respective newsgroup and Usenet as a whole.

**iii.** You and Users shall not engage in continued posting of off-topic messages, including commercial messages (unless specifically invited by charter).

**iv.** You and Users shall not post 20 or more copies of the same article in a 45-day period (hereby defined as a specific example of Spamming) or continued posting off-topic articles after being warned. Users who engage in Spamming using Masergy accounts will be charged the cost of labor to issue cancellations and respond to complaints, with a minimum charge of $200 (USD).

**v.** You and Users shall not engage in excessive cross-posting. Crossposting articles to newsgroups where they are off-topic is prohibited.

**vi.** You and Users shall not post articles with falsified header information. "Munging" header information to foil email address harvesting by Spammers is acceptable, provided that a reasonable means of replying to the message originator is given.

**vii.** You and Users shall not issue cancellations for postings except those which were originally posted by the canceling party, those which have headers falsified so as to appear to come from them, or in newsgroups where the canceling party is the official moderator.

## e. FTP

**i.** The Web space and public FTP space included with a dialup account may not be resold or used for adult-oriented material.

**ii.** Masergy reserves the right to require that sites using Web or FTP space which receive high amounts of traffic be moved to other servers.

**iii.** Web pages and FTP files may not contain any material, text, or images, whether hosted on Masergy servers or "transclusioned" (images from another site displayed on the page) which violate or infringe any copyright, trademark, patent, statutory, common law, or proprietary rights of others. Web pages and FTP files may not contain links that initiate downloads of copyright-infringing or other illegal material.

## f. Exessive Usage

**i.** Masergy reserves the right, upon thirty (30) days' written notice, to increase the charges for Service(s) provided under a Service Order Form or Sales Agreement upon your improper usage of the Service(s) for two (2) consecutive months. Improper usage patterns include, but are not limited to, calling patterns where your aggregate minutes of usage per monthly billing cycle resemble usage patterns of predictive dialing equipment, call center environments, or telemarketing businesses.

**ii.** If Masergy has specified bandwidth limitations for your account, use of the Services shall not be in excess of those limitations.

**iii.** Any programs, scripts, or processes which generate excessive server load on Masergy servers are prohibited and Masergy reserves the right to terminate or suspend any such program, script, or process.

**iv.** If a User is accessing the Services via a dial-up connection, Masergy may terminate the user session after a period of inactivity or if the User is connected for an extended period of time (both of which periods shall be determined by Masergy in its sole discretion) in order to protect Masergy's network resources and maintain Services availability for others. The use of any automated method to avoid inactivity disconnects or to automatically reinstate an inactive connection is prohibited. You and Users shall not run programs or configure machines in such a way as to keep a dialup connection active when not in use or otherwise bypass automatic disconnection for inactivity, unless you or the User has a dedicated Masergy access account. You and Users shall not have multiple simultaneous connections with a single dialup account. Masergy reserves the right to impose restrictions on or terminate accounts deemed to be in violation of these conditions.

## g. Other Prohibited Activities

The following activities are also prohibited System Abuses:

**i.** Storing any program, utility or file on Masergy's servers, the use of which would constitute a violation of this Policy (e.g., storing hacker scripts, IRC bots, or Spamming software on Masergy's servers is prohibited);
**ii.** Any activity involving the resale of Masergy's products or services, unless specifically documented in a separate written agreement or in the initial contract executed with Masergy;
**iii.** Any activity involving deceptive online marketing practices including, including without limitation practices that violate the United States Federal Trade Commission's guidelines for proper online marketing schemes; or
**iv.** Any other inappropriate activity or abuse of the Services (as determined by Masergy in its sole discretion, which discretion Masergy shall exercise reasonably). Whether or not specifically listed in this Policy, such inappropriate activity or abuse of the Services authorizes Masergy to suspend or terminate the User's access to and use of the Services.

## 8. Illegal Activity

a. The Services may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws. You and Users agree to use the Services only for lawful purposes, and you and Users agree not to use the Services in a manner that violates the laws of any applicable jurisdiction.

## 9. Dedicated and Webhosting Customers.

Masergy dedicated Internet and Web hosting customers who provide services to their own users also must maintain valid postmaster and abuse addresses for their domains, comply with all applicable Internet RFCs, maintain appropriate reverse DNS information for all hosts receiving connectivity through Masergy's network for which DNS responsibility has been delegated to the customer, maintain accurate contact information with the InterNIC and any other appropriate domain and IP address registries, take reasonable steps to prevent IP spoofing by their users and downstream customers, provide a 24/7 contact address to Masergy for dealing with security and abuse issues, and act promptly to ensure that users are in compliance with this Policy.

## 10) Enforcement

**a.** Masergy will cooperate with appropriate law enforcement agencies and other parties involved in investigating claims of illegal or inappropriate activity. Violations of system or network security are prohibited, and may result in criminal and civil liability. Masergy will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected.

**b.** Digital Millennium Copyright Act. Masergy responds expeditiously to claims of intellectual property infringement. Masergy will promptly process and investigate notices of alleged infringement and will take appropriate actions under 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, Masergy will act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and will act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. Masergy will terminate access for you and Users who are repeat infringers. For Masergy's Webhosting customers, you must adopt and implement a Digital Millennium Copyright Act 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 Masergy's site in a way that constitutes copyright infringement, you may notify us by providing Masergy's registered copyright agent with the following information:

> **i.** an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
> **ii.** a description of the copyrighted work that you claim has been infringed;
> **iii.** a description of where the material that you claim is infringing is located on the site;
> **iv.** your address, telephone number, and email address;
> **v.** a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
> **vi.** a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

**c)**Masergy may electronically monitor the Services and access and disclose any information transmitted or stored thereon. Masergy may investigate any suspected violation of this Policy and you agree to cooperate fully with any such investigation. You recognize that Masergy may cooperate with any government or law enforcement agency, including reporting possible violations of law. Masergy reserves its legal rights to seek criminal and civil liability against users who violate Masergy's security. Notwithstanding the foregoing, Masergy does not agree to monitor the use of the Services and you bear full responsibility for transmitting information, screening unwanted transmissions, reporting offensive or illegal communications and backing up any data stored on Masergy's systems.

## 11. Notices

**a)** Masergy's designation of agent to receive notification of claimed infringement can be sent to aup-violations@Masergy.com.

**b.** Complaints regarding illegal use or System or network security issues should be sent to aup-violations@Masergy.com.

**c.** Complaints regarding Usenet abuse or Spam or other email abuse should be sent to aup-violations@Masergy.com.

**d.** In most cases, Masergy will attempt to notify you of complaints received by Masergy regarding any activity relating to you that appears to be in violation of this Policy, and request that the violating party cease such activity; however, in cases where the viability of the Masergy network is threatened or cases involving UCE/Spam, mail relaying, alteration of your source IP address information, denial of service attacks, illegal activities, harassment or copyright infringement, Masergy reserve the right to suspend your Services and/or any Users' access to the Services without notification. In addition, Masergy may take any other appropriate action, legal or otherwise, against you or Users for violations of this Policy, which may include termination of the Services.

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

**12.** In addition to this Policy, the Services may be subject to contract provisions, laws and tariffs or other documents on file with appropriate government agencies.