

Infraworx Terms of Service

Contents

1. Introduction
2. Commencement of the Agreement
3. Service Availability
4. Passwords and content
5. Customer's Warranties, Liabilities and Undertakings
6. Our Warranties and Liabilities
7. Suspension and Termination of the Service
8. Fees, Charges and Payments
9. Archiving and Backup of Your Data
10. The use of Spam and Virus Filters
11. Ownership of Equipment
12. Intellectual Property
13. Severability
14. Assignment
15. Changes to Terms
16. Entire Agreement
17. Governing Law
18. Notifications & Communications
19. Privacy Policy
20. General Disclaimer
21. The Personal Information We Hold
22. Security of Personal Information
23. Disclosure of Personal Information
24. Accessing and Correcting Your Personal Information
25. Personal Information on Children and Young People
26. Complaints
27. Other Links
28. Acceptable Use Policy (AUP)
29. Who does this AUP apply to?
30. Changes to this AUP
31. The services covered by this AUP
32. Our responsibilities
33. What is unacceptable use?
34. Spam
35. Content
36. Complaints process
37. What we may do about unacceptable use
38. Liabilities and indemnities

1. Introduction

1.2 In this document, 'we', 'our' and 'us' means Infracorx Pty Ltd A.B.N. 95 119 297 488;

1.3 This agreement outlines the terms and conditions that apply to your use of our services.

1.4 The Services we are to provide to you (herein referred to collectively as "Services") and the initial period we are to provide them to you for are identified in the emails we send you after we accept your order for service. The specifics of the services are detailed on our website ('the Services').

1.5 The Services and this agreement will be automatically renewed for the same period as the initial period unless this agreement is terminated by you or us in accordance with these terms and conditions.

1.6 In addition, you must also comply with our Privacy Policy and our Acceptable Use Policy detailed in this agreement.

2. Commencement of the Agreement

2.1 This agreement commences on the date we accept your order for Services.

3. Service Availability

3.1 In these terms and conditions 'Service' primarily refers to our provision of space and/or software on one of our Servers, domain name registration services, and a connection to and from the Internet for web-based services to the level specified in the package you select. 'Services' also refer to services provided by third parties which we resell to our customers.

3.2 We use due care and skill in providing the Services in accordance with this agreement. There may also be statutory guarantees, conditions or warranties imposed by consumer-protection laws that apply to Services we supply, and which cannot be excluded. However, given the nature of IT systems (including our Services' reliance on systems and services that we do not control or own), we cannot promise that our Services will be continuous or fault-free.

3.3 We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If scheduled maintenance requires the Service to be offline for more than 30 minutes we will post details of the scheduled maintenance at least 48 hours in advance of the maintenance. If we need to perform unscheduled maintenance that requires the Service to be offline for more than 30 minutes, we will post details of the event after the maintenance has been completed.

3.4 Our liability to you is governed by clause 8 of this agreement.

4. Passwords and content

4.1 You will keep any passwords or log-in details used in connection with the Service secure and you are totally responsible for when and how your account with us is used and the actions of any people you give your password and log-in details to.

4.2 You are solely responsible for your data and any content you use or store in connection with your Service. You must hold, and continue to hold, all intellectual property rights in your data and contents (including, without limitation, copyright and trade mark rights), or be licensed to do so. The terms under which you hold or license your data and content must permit us to carry out our obligations to you in providing the Service. You grant us a licence to use and reproduce all your data and content in order to fulfil our obligations under this agreement.

4.3 You must ensure that you comply with our Acceptable Use Policy terms in clause 31 in relation to any data or content you use or store in connection with your Service.

4.4 You will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by you onto or downloaded by you from the server does not contain any computer virus and will not in any way, corrupt the data or systems of any person.

4.5 You are solely responsible for dealing with persons who access your data and you will not refer complaints or inquiries in relation to such access to us.

4.6 You agree that if, in our sole discretion, you are using the Services in a way which is not legitimate, is not in compliance with this agreement or any law that we may suspend, disable, limit or terminate the Services or deny you access to the Service without notice, including taking down any of your data or content.

5. Customer's Warranties, Liabilities and Undertakings

5.1 You indemnify us against, and must pay us for, any loss or damage we suffer relating to:
a) the provision of the Service to you; and
b) your use, or attempted use, of the Service.
You indemnify us against (and must pay us for) any costs, including legal costs, relating to your breach of this agreement.

However you are not liable to us for any loss to the extent it is caused by us (for example, through our breach of this agreement or our negligence).

5.2 At the time of entering into this agreement you are not relying on any representation made by us which has not been stated expressly in this agreement, or on any descriptions or specifications contained in any other document, including any catalogues, web site or publicity material which we have produced.

5.3 You indemnify us against all claims arising out of your registration and use and renewal of registration of your chosen domain name, unless and to the extent that the claim arises out of our breach of this agreement, or our negligent act or omission.

6. Our Warranties and Liabilities

6.1 We accept liability for the supply of the Services to the extent provided in this agreement.

6.2 We do not warrant that the Services:

- (a) provided under this agreement will be uninterrupted or error free;
- (b) will meet your requirements, other than as expressly set out in this agreement;
- (c) will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or systems of ours; or
- (d) will produce any particular results, data, sales or other return.

6.3 Subject to clause 6.4:

- (a) we exclude all liability for indirect, incidental, special and consequential loss or damage of any kind, loss or corruption of data, loss of use, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this agreement and/or its subject matter;
- (b) the Services are provided on an 'as is' and 'as available' basis;
- (c) we make or give no express or implied warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any goods or services provided under or incidental to this agreement;
- (d) no oral or written information or advice given by us, our resellers, agents, representatives or employees shall create a warranty or in any way increase the scope of the express warranties hereby given, and you may not rely on any such information or advice;
- (e) our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services will be limited to the charges paid by you in the 12 months preceding the claim in respect of the Services which are the subject of any such claim. Any claim must be notified to us within one year of it arising.
- (f) In the event that this agreement constitutes a supply of goods or services to a consumer as defined in the Competition and Consumer Act 2010 (Cth) nothing contained in this agreement excludes, restricts or modifies any remedies or guarantees where to do so is unlawful. To the full extent permitted by law, where the benefit of any such remedy or guarantee is conferred upon you pursuant to the Competition and Consumer Act 2010 (Cth) our sole liability for breach of any such remedy or guarantee shall be limited to the remedies available under that Act.

6.4 We specifically exclude any warranty as to the accuracy or quality of information received by any person via your server and in no event will we be liable for any loss or damage to any data stored on the server. You are responsible for maintaining insurance cover in respect of any loss or damage to your data stored on the Server.

7. Suspension and Termination of the Service

7.1 We may suspend or terminate your account if:

- (a) you breach this agreement and fail to rectify any remediable breach within 7 days of us notifying you to do so;
- (b) you become insolvent;
- (c) you are declared bankrupt; or
- (d) we are ordered to do so by a court or pursuant to an arbitration award.

7.2 In addition to any other rights we may have under this agreement, you agree that we may, without notice to you and without any liability to us, amend, alter or take down your data or content if we:

- (a) receive an order from a court or other competent body requiring us to do so;
- (b) are directed to do so by the Australian Communications and Media Authority, any other regulatory body or authority or industry association;
- (c) consider in our sole discretion that you are breaching this agreement including without limitation, by infringing third party intellectual property rights, or because your data or content is defamatory, illegal, obscene or breaches a person's privacy.

7.3 From time to time we may have to suspend or disconnect the service without notice or deny your access to the Service during any technical failure, modification or maintenance involved in the Service. We will use reasonable endeavours to procure the resumption of the services as soon as reasonably practicable. In these circumstances you will remain liable for all charges due throughout the period of suspension.

7.4 If your account has been suspended or terminated due to your breach, reactivation of your account will be at our discretion. If we agree to reactivate your account, we will require payment in full of all outstanding amounts and payment of a reactivation fee.

7.5 You may terminate your account or any individual Service with us for any reason at any time by doing so in writing to accounts@infraworx.com. Unless you are terminating your account due to a breach of this agreement by us, refunds for monies paid in advance are provided as follows:

(a) For one-time Services such as digital certificates no refunds are available.

(b) No refunds are available for Services with 30 days or less of time to run. For Services with more than 30 days of time to run the refund of unused credit will be a whole month pro-rata of the time to run less an early cancellation fee set by us and notified on our website.

7.6 If we wish to terminate your Service for reasons other than a breach of these conditions, we can do so by giving you 30 days written notice. In this circumstance, we will refund any remaining unused credit on your account.

7.7 If your account is closed for whatever reason you must pay all outstanding charges immediately.

7.8 We are under no obligation to provide you with a copy of your data or content if we have suspended or terminated your access to the Service for your breach. If we provide you with a copy of your data or content in such circumstances, we are entitled to charge a fee for doing so. If we terminate your account or any Service in such circumstances we may also at our discretion destroy your data or content. If your data or content is destroyed it may not be recoverable.

8. Fees, Charges and Payments

8.1 All charges payable by you to us for the Services will be in accordance with the relevant scale of charges and rates published from time to time by us on our website and will be due and payable within 14 days of receipt of our invoice, or on other terms separately agreed with us by you. The price of the Services we provide you will remain fixed for the period covered by the payment; that is, monthly, quarterly or annually. After that time you will be billed at the rates current on our website at the time the Service is renewed.

8.2 If you exceed our 14 day credit terms, we may charge you a late fee (the greater of \$20 or other amount agreed with you).

8.3 Prices published on our web site are exclusive of any government taxes or charges unless otherwise noted.

8.4 We will only provide the Services to you where you have paid for the Services in full. Without prejudice to our other rights and remedies under this agreement, if any sum payable is not paid on or before the due date, we reserve the right, at our discretion, to suspend the provision of Services to you until we receive the required payment (including any late payment fees, interest, debt recovery charges and reactivation fees) in full.

8.5 If you fail to make payment in accordance with the terms of this agreement, you will become liable for any reasonable costs incurred by us in recovering the debt (including any legal fees, collection agency charges or any other reasonable costs) and interest on the outstanding amount, calculated at the daily rate of 10% per annum, from the due date of the payment.

8.6 If you elect to pay your fees on a yearly basis, and fail to make payment within 14 days of invoice, you will not be entitled to receive any (otherwise applicable) yearly fee discount where a yearly discount is offered.

8.7 Upon registration of a credit card account, you give us authorisation to debit your credit card for all charges. If you are billed on a monthly basis, the billing cycle begins from the date you register.

8.8 You consent to us obtaining a report from a credit reporting agency on your credit worthiness if you choose to pay by credit card.

8.9 If we receive notice of a chargeback, declined or reversed payment from a credit card company in connection with payments made by you for the Services, we reserve the right to suspend the provision of Services to you until we receive the required payment (including any bank charges we incur, late payment fees, interest, debt recovery charges and reactivation fees) in full.

8.10 Subject to clause 10.11, no refunds will be given for unused portions of payments in advance (including payment of yearly contracts) unless the account has been terminated due to our breach of these terms and conditions, we exercise our rights under clause 9.6, or you exercise your rights under clause 18.1.

8.11 In the event this agreement constitutes a supply of goods or services to a consumer as defined in the Competition and Consumer Act (Cth) ('Act'), and you cancel your Service because we have failed to meet one or more of the consumer guarantees under the Act, we will refund to you any unused portion of your Service fee and any other amount you have prepaid, as well as any Service fee where the Services provided did not meet the consumer guarantees.

9. Archiving and Backup of Your Data

9.1 You are solely responsible for the back-up of your data (including email files). You must maintain a recent copy of your data at your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data recovered from our backups.

9.2 We will archive your data on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, you should be prepared to upload your data to your web site.

10. The use of Spam and Virus Filters

10.1 We can use spam and virus filters and, to the maximum extent permitted by law, this may require us to use third party equipment or services to monitor and filter email traffic between our equipment and the Internet. To the maximum extent permitted by law, we will not be liable for any loss or damage resulting from the use of spam or virus filters.

11. Ownership of Equipment

11.1 Unless otherwise agreed, you obtain no rights to the hardware and other infrastructure and facilities used by us to deliver the Services.

11.2 If we supply you with any equipment as part of our provision of the Services to you, unless the law otherwise requires, we do so on the following terms:

- (a) you acknowledge that we are only acting as a reseller of the equipment which was manufactured by a third party;
- (b) you will not resell, export or otherwise transfer the equipment;
- (c) we are not obliged to keep the equipment current, up-to-date, in good working order or to alter or modify the equipment in any way;
- (d) any malfunction or manufacturer's defect in the equipment must be remedied by you directly with the manufacturer and we are not liable for any such malfunction or defect or any consequences arising from them.

12. Intellectual Property

12.1 All right, title and interest in any technology, techniques, software or trade mark that is used in, or provided by us, as part of the Services is owned by us or will vest in us on creation, or is licensed to us. You may use the technologies, techniques, software and trade marks as permitted by this agreement. We otherwise reserve all rights in relation to them.

13. Severability

13.1 If any clause of these terms and conditions is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording may be severed from this agreement and the remaining terms of this agreement continue in force.

14. Assignment

14.1 You must not assign or otherwise transfer your rights or obligations under this agreement without our prior written consent, which we will not unreasonably withhold. Any request to assign or transfer must:

- (a) be in the form we require, and include details of the assignee or transferee; and
- (b) be accompanied by the transfer fee specified in the form.

14.2 We may assign or otherwise novate or transfer our rights and obligations under this agreement to:

- (a) a related body corporate, including without limitation as part of a change in how we provide the Services or as part of a partial or full restructuring of our business; and
- (b) another person as part of the sale, or restructuring, of all or part of our business, and you agree that, if we do this, we may transfer all necessary information (including, without limitation, personal information and credit card details) to the related body corporate or other person, and they may use that information, in order for them to be able to continue providing the Services to you. If you do not agree to the assignment, novation or transfer, you may terminate this agreement and we will refund any remaining unused credit on your account.

15. Changes to Terms

15.1 We may change the terms and conditions of this agreement (including the Acceptable Use Policy and Privacy Policy) at any time. Details of our current terms will always be available on our website. Changes to this agreement other than price changes will become effective upon their publication on our website and your use of the Services following publication of any amended version of this agreement will constitute acceptance of the amended terms. If you do not wish to accept the amended terms and conditions, you may terminate this agreement by giving us notice. In these circumstances we will refund any remaining unused credit on your account.

16. Entire Agreement

These terms and conditions constitute the entire agreement between us and you. It supersedes all prior agreements, understandings and representations whether oral or written.

17. Governing Law

These terms and conditions are governed by the laws in force in the Australian Capital Territory. Both parties agree to submit to the non-exclusive jurisdiction of the Courts of that Territory.

18. Notifications & Communications

21.1 All notifications under this agreement will be by email to your nominated internet address. By entering into this agreement you agree to receive other email communications of a marketing and promotional nature unless you opt out of our mailing list. You will not be able to opt-out of critical service notifications, renewal, billing and account notifications, scheduled downtime notifications or any other communications deemed to be an essential part of our Service to you.

Privacy Policy

19. Privacy Policy

19.1 This document is a summary of the way Infracorx Pty Ltd manages personal information it collects on:

19.1.1 people who access its website; and

19.1.2 people who contract with the company for the provision of services ('customer').

19.2 Until 1 March 2014, the Policy is based on the National Privacy Principles that apply to private businesses under the Privacy Act, 1988 (Commonwealth). The National Privacy Guidelines can be accessed at www.privacy.gov.au/business/guidelines/index. From 12 March 2014, this Policy will be provided in accordance with the Australian Privacy Principles contained in the Privacy Act 1988 (Cth). This Policy describes how Infracorx Pty Ltd and its subsidiaries and associates manages personal information.

19.3 In summary, our Policy is to:

19.3.1 collect only as much personal information on you as we require to provide you with an effective service and meet our legal obligations;

19.3.2 hold the information in a secure manner;

19.3.3 give you access to the information if you request it and the means to change it if it is incorrect; and

19.3.4 destroy or de-identify personal information when it is no longer required.

19.4 This Policy statement may be amended from time to time. Our website will always display the up-to-date version.

20. General Disclaimer

20.1 There are inherent risks in transmitting information across the Internet. We can give no absolute guarantee that all data, including personal information, provided via the Internet is secure from unauthorised use.

20.2 Personal details you provide via chat rooms and similar forums, whether sponsored or endorsed by us or by web sites we host, are in the public domain and as such are not covered by this privacy Policy.

20.3 Infracorx Pty Ltd hosts web sites owned and operated by other people. This privacy Policy does not necessarily extend to any personal information they might collect in the course of their operations. We cannot be held responsible for breaches of privacy on their web sites. The owner of each web site is responsible for the privacy of any personal information collected through their web site and for complying with relevant privacy laws.

21. The Personal Information We Hold

21.1 If you are, or intend to be, a customer of Infracorx Pty Ltd, we collect basic data that includes your name, address, age, gender, telephone and facsimile numbers, domain name, email address and credit card details (if you choose to pay online).

21.2 If you make inquiries about our products and services we collect some or all of the above data. We may also record telephone conversations as an aid to training our staff. We will seek your agreement before any voice recording is made. We also hold copies of any correspondence that passes between us.

21.3 From time to time we may survey our customers to assist us in planning and delivering better services. The provision of this information will be voluntary and our intended use will be clearly identified at the time of collection.

21.4 We will not sell or otherwise make available the personal details of our clients to third parties, other than a limited number of providers we contract to supply support services to Infracorx Pty Ltd in the normal course of our business. We require such providers to comply with our privacy Policy when dealing with our clients' information and we only provide as much information as is necessary for them to provide their services to us.

22. Security of Personal Information

22.1 We store most of your personal information on servers which are housed in a secure environment with 24 hour surveillance. Access is restricted to authorised staff only. We have computer and network security on our remote peripherals. Billing data is encrypted and access to your personal data by non staff members is password protected.

22.2 We will take all reasonable steps to delete or permanently de-identify personal information we hold on you if you cease to be our client and we no longer need the information to finalise any outstanding matters.

23. Disclosure of Personal Information

23.1 In the normal course of business we will not disclose your personal information to any other party (other than contracted support services) without your consent. However, circumstances may arise where we will disclose your personal information without your consent. The circumstances include but are not limited to situations where disclosure is:

23.1.1 required or authorised by or under an Australian law or court/tribunal order, or we reasonably believe that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body;

23.1.2 reasonably necessary for the establishment, exercise or defence of a legal or equitable claim;

23.1.3 enforce crucial terms of our agreements with you;

23.1.4 sell our business or part of it; and

23.1.5 necessary (in our reasonable belief) to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety, and it is unreasonable or impracticable to obtain the individual's consent to the disclosure.

24. Accessing and Correcting Your Personal Information

24.1 Under Australian Privacy Principles 12 and 13, you have a right to ask us to provide you with the personal information we hold on you and to ask us to correct that personal information. We will require you to provide identification to ensure you are who you say you are. We undertake to provide the information in a reasonable time and to correct any errors where the information is not accurate, up-to-date or complete. If you need to update your online billing details you can access your account details through our control panel.

24.2 To request access to, or to correct, your personal information, please contact our Privacy Officer at support@infraworx.com. Our telephone number is 1300 277 211.

25. Personal Information on Children and Young People

25.1 As a general principle, we do not target children in our marketing communications and would only communicate with a child with a parent or guardian's consent. To the extent that young people use our services our privacy Policy extends fully to them.

26. Complaints

26.1 If you require further information or you have a complaint about our privacy Policy or the way we put it into practice, please contact our Privacy Officer at support@infraworx.com. Our telephone number is 1300 277 211. If we cannot resolve the complaint to your satisfaction within a reasonable time, you or we may refer the complaint to the Privacy Commissioner.

27. Other Links

27.1 If you are the registrant of an .AU domain name, [AUDA WHOIS Policy](#) contains important privacy information relevant to you, including how some of your personal information will be disclosed on the WHOIS service.

Acceptable Use Policy (AUP)

28. Acceptable Use Policy (AUP)

28.1 In this document: (a) 'we', 'our' and 'us' means Infracorx Pty Ltd; (b) 'customer' means a user of our services; and (c) 'complainant' means a person who complains of or alleges unacceptable use by a customer.

28.2 This Acceptable Use Policy (AUP) outlines what we deem to be unacceptable use of the services we provide to our customers.

29. Who does this AUP apply to?

29.1 This AUP governs how our customers may use our services. It also details how complainants may make complaints about our customer's use of our services.

29.2 When a customer signs up for services with us, they agree to comply with our Terms and Conditions. It is a condition of those Terms and Conditions that all our customers comply with the terms of this AUP. A customer's decision to purchase any of our services signifies their acceptance of the terms of this AUP.

29.3 A customer's obligation to comply with this AUP includes their obligation to ensure that any person who they allow to use our services also complies with this AUP.

30. Changes to this AUP

30.1 We may change the terms and conditions of this AUP at any time. Details of our current AUP will always be available on our website. Changes to this AUP will become effective upon their publication on our website and a customer's use of the Services following publication of any amended version of this agreement will constitute acceptance of the amended terms. If a customer does not wish to accept the amended terms and conditions, they may terminate this agreement by giving us notice. In these circumstances we will refund any remaining unused credit on their account.

31. The services covered by this AUP

31.1 This AUP covers all services hosted by us.

31.2 If we provide a customer with access to a network outside our network the customer is responsible for complying with the AUP for that network.

32. Our responsibilities

32.1 We will take reasonable measures to ensure that the owners and operators of the services we host will comply with this AUP.

32.2 We reserve the right to monitor a customer's compliance by any lawful means and to take action if we (in our sole discretion) deem it necessary. We will also investigate and, if appropriate, act on any complaint from a complainant. We will cooperate fully with law enforcement agencies if required by law.

33. What is unacceptable use?

33.1 You must comply with all applicable Commonwealth, State and Territory laws. You must not act or fail to act in a way that would place us in breach of any applicable law, including those that regulate the provision of internet and telecommunications-related services.

33.2 We impose additional restrictions on the use of our services to ensure that our services operate fairly for all customers and to safeguard our name, goodwill and reputation.

33.3 A customer must not use our services, attempt to use a service, or allow a service to be used in any way that:

(a) Breach of law:

(i) results in the customer or us breaching, or being involved in a breach of law, order, code, instrument or regulation;

(ii) stores, sends or distributes any content or material which is restricted, prohibited, or is otherwise unlawful under any applicable Commonwealth, State or Territory law;

(b) is obscene, defamatory, offensive, abusive; sends, displays, accesses, makes available, publishes, or distributes or otherwise is involved in making material available that a reasonable person would consider obscene, defamatory, threatening, abusive, inciting of violence or hatred, or offensive;

(c) The rights of others:

(i) violates a person's privacy;

(ii) infringes on any person's rights (including intellectual property rights and moral rights);

(iii) constitutes a misuse of any person's confidential information;

- (iv) results in a breach by a customer of any obligation that the customer owes to any person;
- (d) Prohibited and Restricted content:
 - (i) sends, displays, accesses, makes available, publishes or distributes or otherwise is involved in material that is likely to be considered unsuitable for minors;
 - (ii) sends, displays, accesses, makes available, publishes or distributes or otherwise is involved in material which is classified RC or X by the Australian Classification Board;
- (e) Protection of minors: enables a minor to access material inappropriate for a minor or to establish (or try to establish) contact with a minor not otherwise known to the customer;
- (f) Illegal business practices and gambling:
 - (i) engages in any misleading or deceptive business or marketing practice;
 - (ii) involves providing or promoting illegal pyramid selling schemes or unlawful gambling or gaming activities;
- (g) Damage to property or people:
 - (i) results, or could result, in damage to property or injury to any person;
 - (ii) harasses, menaces or stalks people;
 - (iii) accesses, monitors or uses any data, system or network of another person without authority or attempts to probe, scan or test the vulnerability of any data, system or network;
 - (iv) accesses, downloads, stores, sends or distributes any viruses or other harmful programs or material;
- (h) Our service:
 - (i) manipulates or bypasses our usage limits;
 - (ii) undertakes any activity which impedes or interferes with our ability to provide our services;
 - (iii) damages our commercial well being, reputation or brand;
- (i) Excessive Resource Usage:
 - (i) would result in an excessive load being generated on our servers, network, or other resources; and would create any undue burden on other our customers or the service in general.

33.4 To the extent permitted by law, we reserve the right to decide whether any action or omission constitutes unacceptable use and our decision will be final.

34. Spam

In addition to the requirements set out above, this AUP also applies to SPAM email.

34.2 Customers must comply with the Spam Act 2003 (Cth) ('Spam Act') and otherwise not engage in practices which would result in a breach of the Spam Act or Spam Regulations 2004.

34.3 In using our services customers must not:

- (a) indiscriminately send or cause to be sent or assist in the sending of unsolicited, unwanted, or inappropriate messages, especially commercial advertising in mass quantities;
- (b) provide capability which permits third parties to send SPAM;
- (c) cause an adverse effect on any computer, network, or data belonging to any party;
- (d) access anyone else's systems, networks or data without consent, regardless of whether or not such access or use has any adverse effect on the system, network, or data;
- (e) create, send, or alter in any way the contents of an electronic message for the purpose of hiding, obscuring or deleting the source of the message or making the message appear to come from someone other than themselves;
- (f) use or distribute any software designed to harvest email addresses.

34.4 Customers agree to use their best endeavours to secure any device or network within their control against being used in breach of this AUP by third parties, including where appropriate by:

- (a) the installation and maintenance of up-to-date antivirus software;
- (b) the installation and maintenance of firewall software; and
- (c) the application of operating system and application software patches and updates.

34.5 If a customer breaches this AUP's prohibition against SPAM, we may suspend or terminate their service.

34.6 We subject all email to and from customers to Spam filter by default. This service is provided free. The settings for our Spam filtering is via an online portal, the internet address of which will be emailed to you.

34.7 Filtering services are an effective means of reducing the amount of Spam customers receive. However, they will not eliminate all Spam and there is a risk that legitimate email might occasionally be incorrectly classified as Spam and therefore lost.

35. Content

35.1 In addition to the requirements set out above, this AUP also applies to the content customers make available and information customers choose to access on the internet.

35.2 When making information or content available using the services we provide, customers must ensure:

- (a) that it is classified, labelled and distributed in accordance with the Classification (Publications, Films and Computer Games) Act 1995 (Cth) or any industry code that applies to a customer's use or distribution of that content;
- (b) that the content is not provided if it has not been classified by the Classification Board and would, if it were classified by the Classification Board, be substantially likely to be classified RC, x 18+, R 18+ or MA 15+.

36. Complaints process

36.1 Subject to clauses 7.2 and 7.3, complaints about a customer of ours should be sent to support@infracorx.com.

36.2 If a complainant is receiving Spam from a customer of another service provider, they should contact the other service provider.

36.3 If a customer has a complaint about content accessible using our service, they may contact the Australian Communications and Media Authority in accordance with the complaints process detailed on their website: <http://www.acma.gov.au>.

36.4 If we receive a complaint about a customer, we may refer it to the appropriate government agency or authority for action (which may include the Australian Federal Police, the Office of the Australian Information Commissioner (Privacy Commissioner), Australian Competition and Consumer Commission, or Australian Communications and Media Authority).

36.5 Customers agree that they will cooperate and comply with any corrective or preventative action that we deem necessary to ensure compliance with this AUP.

36.6 Where we receive a complaint, the complaint will be acknowledged within 1 business day. The acknowledgement may be verbal (via telephone) or in writing (via email or letter) at our discretion.

36.7 Where we receive notice of a complaint from a government agency or authority, we will, where appropriate and lawful, follow the procedures or take the actions we are required to take in that notice, including suspending or terminating your account, removing or disabling access to content or material, or providing the information requested by the agency or authority.

36.8 Where we receive a complaint about content:

- (a) we will record the detail of the complaint;
- (b) we will assess the nature of the complaint and determine whether it requires immediate referral to a government agency or authority. Where we deem referral is required, we will refer the complaint and will take all steps necessary to comply with any direction from, or assist any investigation conducted by, the relevant government agency or authority;
- (c) if we determine that it does not require referral, we will advise the customer(s) whom the complaint concerns of the complaint and attempt to negotiate a resolution to the issues which are the subject of the complaint to the satisfaction of our customer(s) and the complainant;
- (d) if that is unsuccessful we will advise the complainant of their right to lodge a formal complaint with the Australian Communications and Media Authority;
- (e) we reserve the right to make a final decision (which may involve suspension or termination of a customer's service) that will bind our customer.

36.9 If the complaint is about service interference created by a customer:

- (a) we will investigate the allegations and attempt to resolve the matter. If our service is seriously compromised we may choose to suspend a customer's service immediately pending an investigation.
- (b) our decision regarding service interference will be final. It may involve suspension or termination of a customer's service.

36.10 We aim to resolve all complaints within 5 business days from the date of our acknowledgement of receipt of the complaint. However, it is not always possible to resolve complaints within this timeframe and timeframes will vary depending on the nature of the complaint. We will keep complainants and relevant customers advised of progress in resolving any complaint raised with us and we will advise both parties either verbally or in writing of the outcome of the complaint.

37. What we may do about unacceptable use

At our absolute discretion, we reserve the right to suspend or terminate a customer's access to any or all services provided by us if we form the view that a customer has breached this AUP.

37.2 Our right to suspend or terminate a customer's account applies regardless of whether the breach is committed intentionally, through misconfiguration, or by other means not authorised by a customer including, but not limited to, through a Trojan horse or virus.

37.3 We will generally operate on the basis that an allegation of unacceptable use against a customer is not proven until we assess the facts or a law enforcement agency or other relevant government authority requires us to act immediately. Nevertheless, we reserve the right to suspend or terminate a customer's account without notice to that customer if the circumstances dictate (in our sole discretion) that immediate action is required.

37.4 The types of action we make take where we form the view that a customer has breached this AUP include:

- (a) for a serious breach of this AUP, immediately terminating or suspending a customer's service;
- (b) for a non-serious breach where the consequences are serious, immediately terminating or suspending a customer's service;
- (c) for all other breaches, immediately suspending a customer's service and then terminating the service if that customer does not remedy the breach within the timeframe we have given to that customer to rectify it (such timeframe to be determined by us in our absolute discretion having regard to the severity and consequences of the breach);
- (d) removing or disabling access to content or material if we are directed to do so by the Australian Communications and Media Authority under a takedown notice in accordance with its obligations under the Broadcasting Services Act 1992 (as amended);
- (e) reporting a customer's conduct or activities to relevant government agencies or authorities;
- (f) complying with requirements detailed in any law, order, regulation or applicable industry code;
- (g) giving a customer a warning regarding their conduct or activity or a notice to rectify a breach; or
- (h) any combination of the above.

37.5 We may remove any content or information a customer makes available using our services where we are directed to do so by the Australian Communications and Media Authority, Australian Securities and Investments Commission, Australian Competition and Consumer Commission, the Office of the Australian Information Commissioner (Privacy Commissioner), or any other government agency or authority with the legal authority to require us to do so.

37.6 We may comply or cooperate with law enforcement and security agencies through any means we consider lawful, including in relation to court orders for the interception or monitoring of our services.

37.7 We may monitor or review a customer's use of our services, including content and information, but we are not obliged to do so.

38. Liabilities and indemnities

38.1 To the maximum extent permitted by law, we will not be liable for any loss a customer might incur if we suspend or terminate a customer account under the terms of this AUP where:

- (a) a customer has breached the terms of this AUP;
- (b) we are required to do so by law;
- (c) we are directed to do so by the Australian Communications and Media Authority under a takedown notice in accordance with its obligations under the Broadcasting Services Act 1992 (as amended);
- (d) we acted reasonably in exceptional circumstances; or
- (e) we are not able to reach a mutually acceptable outcome.

38.2 Each customer agrees to indemnify us against any claim a complainant might make for any loss or damages the complainant incurs as a result of a breach of this AUP by that customer.

38.3 Each complainant agrees to indemnify us against any claim a customer might make for any loss or damages the customer incurs as a result of a complaint made by the complainant and the action we take as a consequence of that complaint, except to the extent that the acts or omissions of the customer contributed to the customer's loss or damages.