



Viper Graphx

LEGAL DETAILS
TERMS & CONDITIONS

Graphic Design, Web Design, and Web Hosting Services



PRIVACY POLICY

VIPER GRAPHX demonstrates its commitment to our customers' privacy by providing this statement. We will do everything in our power to ensure your right to privacy. We are committed to developing long lasting relationships that are built on trust. VIPER GRAPHX will never violate that trust.

VIPER GRAPHX policies and procedures for handling customer information have been created with the understanding that Internet technologies are still evolving and that Internet business methods are continuing to evolve to meet the needs and opportunities of the changing technologies. As a result, VIPER GRAPHX's policies and procedures are subject to change.

In the course of serving its customers, VIPER GRAPHX acquires, stores and transmits customer communications and information that customers may regard as private or sensitive. Some of this information - such as the customer's name, address, telephone number, and credit card data - is provided to VIPER GRAPHX by its customers in order to establish service. Other information - such as the customer's account status, choice of services, and customer logs - is created and maintained by VIPER GRAPHX in the normal course of providing service.

VIPER GRAPHX also uses cookies, which are small pieces of information that a web site can store in a designated file on a user's computer for various reasons. For example, VIPER GRAPHX uses cookies on the landing pages of products sold online which record the customer information that is required on the order form. This information is then forwarded to an internal sales tracking database within VIPER GRAPHX. In addition, VIPER GRAPHX may store customers' electronic mail and other communications as a necessary incident to the transmission and delivery of those communications.

Data Security

VIPER GRAPHX will protect the confidentiality of its customers' information, account information and personal communications to the fullest extent possible and consistent with the law and the legitimate interests of VIPER GRAPHX, its partners, its employees and other customers of VIPER GRAPHX's services. To protect the loss, misuse, and alteration of information that is collected from customers, VIPER GRAPHX has appropriate physical, electronic, and managerial procedures in place.

How is customer information used?

VIPER GRAPHX may share customer information with selected partners, for example, to provide customers with information about products which might be of interest to the customer or to enable the customer to take advantage of special partner programs. VIPER GRAPHX may also use customer information to provide its customers with system information or information about new or upgraded products.

We may use third-party advertising companies to serve ads on our behalf. In addition, VIPER GRAPHX shares its web site usage information about visitors to VIPER GRAPHX's web sites with third-party advertising companies for the purpose of targeting VIPER GRAPHX's Internet banner advertisements on VIPER GRAPHX's sites and other sites. For this purpose, VIPER GRAPHX and such companies may employ cookies and action tags (also known as single pixel gifs or web beacons) to measure

advertising effectiveness. Any information that these third parties collect via cookies and action tags is completely anonymous.

Opt Out & Modifications

Customers may opt out of receiving notices of new or upgraded products from VIPER GRAPHX and VIPER GRAPHX partners by contacting VIPER GRAPHX. However, customers may not opt out of receiving information from Viper Graphx which is essential for maintaining or updating customers' accounts or system information.

Domain name customers who have registered a domain name with Viper Graphx and wish to change the Technical Contact from Viper Graphx to another company, may send a request to support@vipergraphx.com. It is important to note that customer domain name registration information is made publicly available in the registry of domain names.

Disclosure of customer information and communications

VIPER GRAPHX will not otherwise disclose its customers' personal and account information unless Viper Graphx has reason to believe that disclosing such information is legal and necessary to identify, make contact with, or bring legal action against someone who may be causing harm or interfering with the rights or property of VIPER GRAPHX, VIPER GRAPHX's customers, or others, or where VIPER GRAPHX has a good faith belief that the law requires such disclosure. VIPER GRAPHX also will not, except for reasons stated below, disclose to third parties the contents of any electronic mail or other electronic communications that VIPER GRAPHX stores or transmits for its customers. The circumstances under which VIPER GRAPHX will disclose such electronic customer communications are when:

1. It is necessary in order to provide service to the customer;
2. It is necessary to protect the legitimate interests of VIPER GRAPHX and its customers;
3. It is required to cooperate with interception orders, warrants, subpoenas, or other legal process that VIPER GRAPHX determines in its sole discretion to be valid and enforceable; and
4. It is necessary to provide to a law enforcement agency when the contents are inadvertently obtained by VIPER GRAPHX and appear to pertain to the commission of a crime

VIPER GRAPHX disclaims any intention to censor, edit or engage in ongoing review or surveillance of communications stored on or transmitted through its facilities by customers or others. VIPER GRAPHX will, however, review, delete or block access to communications that may harm VIPER GRAPHX, its customers or third parties. The grounds on which VIPER GRAPHX may take such action include, but are not limited to, actual or potential violations of VIPER GRAPHX's Terms of Service or Acceptable Use Policy.

Revised: January 2004 (ver 4.1)

ACCEPTABLE USE POLICY ("AUP")

1. General Information.

As a provider of web site hosting, and other Internet-related services, VIPER GRAPHX offers its customers, the means to acquire and disseminate a wealth of public, private, commercial, and non-commercial information. VIPER GRAPHX respects that the Internet provides a forum for free and open discussion and dissemination of information, however, when there are competing interests at issue, VIPER GRAPHX reserves the right to take certain preventative or corrective actions as they comply with all regulated legalities. In order to protect these competing interests, VIPER GRAPHX has developed this Acceptable Use Policy ("AUP"), which supplements and explains certain terms of each customer's respective service agreement and is intended as a guide to the customer's rights and obligations when utilizing VIPER GRAPHX's services. This AUP will be revised from time to time. A customer's use of VIPER GRAPHX's services after changes to the AUP are posted on VIPER GRAPHX's web site, [HTTP://WWW.VIPERGRAPHX.COM](http://www.vipergraphx.com), will constitute the customer's acceptance of any new or additional terms of the AUP that result from those changes. One important aspect of the Internet is that no one party owns or controls it. This fact accounts for much of the Internet's openness and value, but it also places a high premium on the judgment and responsibility of those who use the Internet, both in the information they acquire and in the information they disseminate to others. When subscribers obtain information through the Internet, they must keep in mind that VIPER GRAPHX cannot monitor, verify, warrant, or vouch for the accuracy and quality of the information that users may acquire. For this reason, the user must exercise his or her best judgment in relying on information obtained from the Internet, and also should be aware that some material posted to the Internet is sexually explicit or otherwise offensive. Because VIPER GRAPHX cannot monitor or censor the Internet, and will not attempt to do so, VIPER GRAPHX cannot accept any responsibility for injury to its users, customers or subscribers that results from inaccurate, unsuitable, offensive, or illegal Internet communications. When users or customers disseminate information through the Internet, they also must keep in mind that VIPER GRAPHX does not review, edit, censor, or take responsibility for any information its users, customers or subscribers may create. When users place information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech. Also, because the information they create is carried over VIPER GRAPHX's network and may reach a large number of people, including but not limited to customers, subscribers and non-subscribers of VIPER GRAPHX, customers' and subscribers' postings to the Internet may affect other customers and subscribers and may harm VIPER GRAPHX's goodwill, business reputation, and operations. For these reasons, customers and subscribers violate VIPER GRAPHX policy and the service agreement when they, their customers, affiliates, or subsidiaries engage in activities described herein.

2. Purpose.

The purpose of this AUP is to enhance the quality of the Services and to protect VIPER GRAPHX's customers, and the Internet community as a whole,

from illegal, irresponsible, or disruptive Internet activities. This AUP applies to each Customer and its employees, agents, contractors or other users of such Customer who obtain Services from VIPER GRAPHX (each such person being a "User"). Each User should use common sense and good judgment in connection with the Services. Parents or guardians should always supervise minors in using the Internet. Parents and guardians should remain aware at all times of what is on the Internet and how the minors under their care are using the Services and the Internet.

3. Prohibited Uses. Customers and Users may not:

a. Utilize the Services to send unsolicited bulk and/or commercial messages over the Internet (known as "spamming"). It is not only harmful because of its negative impact on consumer attitudes toward VIPER GRAPHX, but also because it can overload VIPER GRAPHX's network and disrupt service to its Customers subscribers. Also, maintaining an open SMTP relay is prohibited. When a complaint is received, VIPER GRAPHX has the absolute and sole discretion to determine from all of the evidence whether the email recipients were from an "opt-in" email list.

b. Utilize the Services in connection with any illegal activity. Without limiting the general application of this rule, Customers and Users may not:

- i. Utilize the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization;
- ii. Utilize the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party;
- iii. Utilize the Services to traffic in illegal drugs, illegal gambling, obscene materials or other any products or services that are prohibited under applicable law;
- iv. Utilize the Services to export encryption software to points outside the United States in violation of applicable export control laws;
- v. Utilize the Services to Forge or misrepresent message headers, whether in whole or in part, to mask the originator of the message; or
- vi. Utilize the Services in any manner that violates applicable law.

c. Utilize the Services in connection with any tortious or actionable activity. Without limiting the general application of this rule, Customers and Users may not:

- i. Utilize the Services to publish or disseminate information that (A) constitutes slander, libel or defamation, (B) publicizes the personal information or likeness of a person without that person's consent or (C) otherwise violates the privacy rights of any person. Utilize the Services to threaten persons with bodily harm, to make harassing or abusive statements or messages, or to solicit the performance of acts or services that are illegal under applicable law.
- ii. Utilize the Services in connection with any other disruptive or abusive activity.

4. Without limiting the general application of this rule, Customers and Users may not:

- a. Utilize the Services to cause denial of service attacks against VIPER GRAPHX or other network hosts or Internet users or to otherwise degrade or impair the operation of VIPER GRAPHX's servers and facilities or the servers and facilities of other network hosts or Internet users;
- b. Post messages or software programs that consume excessive CPU time or storage space;
- c. Utilize the Services to offer mail services, mail forwarding capabilities, POP accounts or auto responders other than for the User's own account;
- d. Utilize the Services to resell access to CGI scripts installed on VIPER GRAPHX's servers;
- e. Utilize the Services to subvert, or assist others in subverting, the security or integrity of any VIPER GRAPHX systems, facilities or equipment;
- f. Utilize the Services to gain unauthorized access to the computer networks of VIPER GRAPHX or any other person;
- g. Utilize the Services to provide passwords or access codes to persons not authorized to receive such materials by the operator of the system requiring the password or access code;
- h. Utilize the Services to (A) forge the signature or other identifying mark or code of any other person, (B) impersonate or assume the identity of any other person, or (C) engage in any other activity (including "spoofing") to attempt to deceive or mislead other persons regarding the true identity of the User (excluding the use of anonymous re-mailers or Internet nicknames);
- i. Utilize the Services to distribute or post any virus, worm, Trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment, or disrupt the operation of the Services;
- j. Utilize the Services to conduct port scans or other invasive procedures against any server (except any server for which the User is an authorized system administrator);
- k. Utilize the Services to distribute, advertise or promote software or services that have the primary purpose of encouraging or facilitating unsolicited commercial e-mail or Spam;
- l. Utilize the Services to solicit or collect, or distribute, advertise or promote, e-mail address lists for the purpose of encouraging or facilitating unsolicited commercial e-mail or Spam;
- m. Utilize the Services in any manner that might subject VIPER GRAPHX to unfavorable regulatory action, subject VIPER GRAPHX to any liability for any reason, or adversely affect VIPER GRAPHX's public image, reputation or goodwill, including, without limitation, sending or distributing sexually explicit, hateful, vulgar, racially, ethnically or otherwise objectionable materials as determined by VIPER GRAPHX in its sole discretion; or

n. Utilize the Services in any other manner to interrupt or interfere with the Internet usage of other persons.

5. **Violations**

a. Disclaimer. VIPER GRAPHX expressly disclaims any obligation to monitor its Customers and other Users with respect to violations of this AUP. VIPER GRAPHX has no liability or responsibility for the actions of any of its Customers or other Users or any content any User may post on any Web site.

b. Reporting Non-Copyright Violations. VIPER GRAPHX encourages Users to report violations of this policy by e-mail to: ABUSE@VIPERGRAPHX.COM, including in any such report the name of the offending domain (for example, xyz.com) and the type of abuse (for example, Spam, illegal acts, harassment, etc.) in the "subject" field of the e-mail.

c. Reporting Copyright Violations. VIPER GRAPHX complies with the Digital Millennium Copyright Act ("DMCA"). VIPER GRAPHX encourages Users to report an alleged copyright infringement involving a user by sending a notice that complies with the DMCA which information is located under the Legal section of this website.

d. Remedies. If VIPER GRAPHX learns of a violation of this AUP, VIPER GRAPHX will respond to the applicable Customer and may, in VIPER GRAPHX's sole discretion, take any of the following actions, in accordance with the severity and duration of the violation:

Warning the Customer;

- i. Suspending the offending Customer from the Services;
- ii. Terminating the offending Customer from the Services;
- iii. Imposing fees or charges on the offending Customer account in accordance with the applicable service contract;
- iv. Removing the offending content; and
- v. Taking other action in accordance with this AUP, the applicable service contract or applicable law.

6. **Reservation of Rights.**

VIPER GRAPHX reserves the right to cooperate with appropriate legal authorities in investigations of claims of illegal activity involving VIPER GRAPHX's Services, Customers and other Users. VIPER GRAPHX reserves all other rights to respond to violations of this AUP to the extent of applicable law and in accordance with any applicable contractual obligations. VIPER GRAPHX may utilize technical means to monitor communications into, and out of, its network facilities to prevent the introduction of viruses or other hostile code, to prevent intrusions and otherwise to enforce this AUP and each Customer agrees that VIPER GRAPHX is authorized to monitor its communications through VIPER GRAPHX's network for such purposes.

USER AGREEMENT

This User Agreement ("Agreement") is an agreement between VIPER GRAPHX, a Massachusetts sole proprietorship business, and the party set forth in the related order form and / or written contract ("Customer" or "you") incorporated herein by reference (together with any subsequent order forms and / or written contracts submitted or signed by Customer, the "Order Form" and / or "Contract"), and applies to the purchase of all services ordered and / or contracted by Customer on the Order Form and / or written contract (collectively, the "Services").

PLEASE READ THIS AGREEMENT CAREFULLY.

BY CLICKING ON THE BUTTON ON THE ORDER FORM OR SIGNING A CONTRACTUAL AGREEMENT, CREATES A CONTRACT BETWEEN YOU THE CUSTOMER AND VIPER GRAPHX. THIS CONTRACT CONSISTS OF:

- **THE ORDER AND / OR CONTRACTUAL AGREEMENT.**
- **THE APPLICABLE SERVICE DESCRIPTION.**
- **THIS USER AGREEMENT**
- **THAT YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING VIPER GRAPHX'S USAGE POLICY. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.**

1. Acceptable Use Policy

Under this Agreement, Customer shall comply with VIPER GRAPHX's then current Acceptable Use Policy ("AUP"), as amended, modified or updated from time to time by VIPER GRAPHX, which currently can be viewed under the Legal section of our web site, and which is incorporated in this Agreement by reference. Customer hereby acknowledges that it has reviewed the AUP and that the terms of the AUP are incorporated herein by reference. In the event of any inconsistencies between this Agreement and the AUP, the terms of the AUP shall govern. VIPER GRAPHX does not intend to systematically monitor the content that is submitted to, stored on or distributed or disseminated by Customer via the Service (the "Customer Content"). Customer Content includes content of Customer's customers and/or users of Customer's website. Accordingly, under this Agreement, you will be responsible for your customers content and activities on your website. Notwithstanding anything to the contrary contained in this Agreement, VIPER GRAPHX may immediately take corrective action, including removal of all or a portion of the Customer Content, disconnection or discontinuance of any and all Services, or termination of this Agreement in the event of notice of possible violation by Customer of the AUP. In the event VIPER GRAPHX takes corrective action due to a violation of the AUP, VIPER GRAPHX shall not refund to Customer any fees paid in advance of such corrective action. Customer hereby agrees that VIPER GRAPHX shall have no liability to Customer or any of Customer's customers due to any corrective action that VIPER GRAPHX may take (including, without limitation, disconnection of Services).

2. Term; Termination; Cancellation Policy.
- a. The initial term of this Agreement shall be as set forth in the Order Form and / or written contract (the "Initial Term"). The Initial Term shall begin upon commencement of the Services to Customer. After the Initial Term, this Agreement shall automatically renew. **ADDITIONALLY AFTER THE INITIAL TERM, YOU ACKNOWLEDGE, AGREE AND AUTHORIZE VIPER GRAPHX TO AUTOMATICALLY BILL AND/OR CHARGE ON YOUR CREDIT CARD FOR SUCCESSIVE TERMS OF EQUAL LENGTH AS THE INITIAL TERM, UNLESS TERMINATED OR CANCELLED BY EITHER PARTY AS PROVIDED IN THIS SECTION.** The Initial Term and all successive renewal periods shall be referred to, collectively, as the "Term".
- b. This Agreement may be terminated
- i. by either party by giving the other party thirty (30) days prior written notice
- ii. by VIPER GRAPHX in the event of nonpayment by Customer,
- iii. by VIPER GRAPHX, at any time, without notice, if, in VIPER GRAPHX's sole and absolute discretion and/or judgment, Customer is in violation of any term or condition of the this Agreement and related agreements, AUP, or Customer's use of the Services disrupts or, in VIPER GRAPHX's sole and absolute discretion and/or judgment, could disrupt, VIPER GRAPHX's business operations and/or
- iv. by VIPER GRAPHX in accordance with Sections 1, 9, and 10 of this Agreement.
- c. If you cancel this Agreement prior to the end of the Initial Term or any Term thereafter,
- i. you shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation,
- ii. VIPER GRAPHX shall refund to you all pre-paid fees for basic hosting services (shared, dedicated and/or managed) for the full months remaining after effectiveness of cancellation (i.e., no partial month fees shall be refunded), less any setup fees and any discount applied for prepayment,
- iii. you shall be obligated to pay 100% of all charges for all Services for each month remaining in the Term (other than basic hosting fees as provided in (ii) above). Any cancellation request shall be effective thirty (30) days after receipt by VIPER GRAPHX, unless a later date is specified in such request.
- d. VIPER GRAPHX may terminate this Agreement
- i. if the Services are prohibited by applicable law, or become impractical or unfeasible for any technical, legal or regulatory reason, by giving Customer as much prior notice as reasonably practicable or
- ii. immediately by giving written notice to Customer, if VIPER GRAPHX determines in good faith that Customer's use of the Customer Web site or the

Customer Content violates any term or condition, including the AUP. If VIPER GRAPHX cancels this Agreement prior to the end of the Term for your breach of this Agreement and related agreements, the AUP or Customer's use of the Services disrupts, VIPER GRAPHX shall not refund to you any fees paid in advance of such cancellation and you shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation; further, you shall be obligated to pay 100% of all charges for all Services for each month remaining in the Term and VIPER GRAPHX shall have the right to charge you an administrative fee of \$50.00.

e. Upon termination of this Agreement for any cause or reason whatsoever, neither party shall have any further rights or obligations under this Agreement, except as expressly set forth herein. The provisions of Sections 2(e), 3, 4, 8, 10, 11, 13 and 15 of this Agreement shall survive the expiration or termination of this Agreement for any cause or reason whatsoever, and, notwithstanding the expiration or termination of this Agreement, the parties shall each remain liable to the other for any indebtedness or other liability theretofore arising under this Agreement. Termination of this Agreement and retention of pre-paid fees and charges shall be in addition to, and not be in lieu of, any other legal or equitable rights or remedies to which VIPER GRAPHX may be entitled.

3. Customer's Responsibilities.

a. Customer is solely responsible for the quality, performance and all other aspects of the Customer Content and the goods or services provided through the Customer Web site.

b. Customer will cooperate fully with VIPER GRAPHX in connection with VIPER GRAPHX's performance of the Services. Customer must provide any equipment or software that may be necessary for Customer to use the Services. Delays in Customer's performance of its obligations under this Agreement will extend the time for VIPER GRAPHX's performance of its obligations that depend on Customer's performance on a day for day basis. Customer will notify VIPER GRAPHX of any change in Customer's mailing address, telephone, e-mail or other contact information.

c. Customer assumes full responsibility for providing end users with any required disclosure or explanation of the various features of the Customer Web site and any goods or services described therein, as well as any rules, terms or conditions of use.

d. Because the Services permit Customer to electronically transmit or upload content directly to the Customer Web site, Customer shall be fully responsible for uploading all content to the Customer Web site and supplementing, modifying and updating the Customer Web site. Customer is also responsible for ensuring that the Customer Content and all aspects of the Customer Web site are compatible with the hardware and software used by VIPER GRAPHX to provide the Services, as the same may be changed by VIPER GRAPHX from time to time. Specifications for the hardware and software used by VIPER GRAPHX to provide the Services will be available on VIPER GRAPHX's Web site. Customer shall periodically access VIPER GRAPHX's Web site to determine if VIPER GRAPHX has made any changes thereto. VIPER GRAPHX

shall not be responsible for any damages to the Customer Content, the Customer Web site or other damages or any malfunctions or service interruptions caused by any failure of the Customer Content or any aspect of the Customer Web site to be compatible with the hardware and software used by VIPER GRAPHX to provide the Services.

e. Unless provided otherwise, Customer is solely responsible for making back-up copies of the Customer Web site and Customer Content.

4. Customer's Representations and Warranties.

a. Customer hereby represents and warrants to VIPER GRAPHX, and agrees that during the Initial Term and any Term thereafter Customer will ensure that:

i. Customer is the owner or valid licensee of the Customer Content and each element thereof, and Customer has secured all necessary licenses, consents, permissions, waivers and releases for the use of the Customer Content and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by VIPER GRAPHX to pay any fees, residuals, guild payments or other compensation of any kind to any Person;

ii. Customer's use, publication and display of the Customer Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any person, including, without limitation, any contractual, statutory or common law right or any "moral right" or similar right however denominated;

iii. Customer will comply with all applicable laws, rules and regulations regarding the Customer Content and the Customer Web site and will use the Customer Web site only for lawful purposes; and

iv. Customer has used its best efforts to ensure that the Customer Content is and will at all times remain free of all computer viruses, worms, Trojan horses and other malicious code.

b. Customer shall be solely responsible for the development, operation and maintenance of Customer's web site, online store and e-commerce activities, for all products and services offered by Customer or appearing online and for all contents and materials appearing online or on Customer's products, including, without limitation

i. the accuracy and appropriateness of the Customer Content and content and material appearing in its store or on its products,

ii. ensuring that the Customer Content and content and materials appearing in its store or on its products do not violate or infringe upon the rights of any person, and

iii. ensuring that the Customer Content and the content and materials appearing in its store or on its products are not defamatory or otherwise

illegal. Customer shall be solely responsible for accepting, processing and filling customer orders and for handling customer inquiries or complaints. Customer shall be solely responsible for the payment or satisfaction of any and all taxes associated with its web site and online store.

c. Customer grants VIPER GRAPHX the right to reproduce, copy, use and distribute all and any portion of the Customer Content to the extent needed to provide and operate the Services.

5. License to VIPER GRAPHX. Customer hereby grants to VIPER GRAPHX

a. non-exclusive, royalty-free, worldwide right and license during the Initial Term and any Term thereafter to do the following to the extent necessary in the performance of Services under the Order: (a) digitize, convert, install, upload, select, order, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly display, publicly perform and hyperlink the Customer Content; and (b) make archival or back-up copies of the Customer Content and the Customer Web site. Except for the rights expressly granted above, VIPER GRAPHX is not acquiring any right, title or interest in or to the Customer Content, all of which shall remain solely with Customer.

6. Billing and Payment.

a. Customer will pay to VIPER GRAPHX the service fees for the Services in the manner set forth in the Order Form and / or Written Contract.

b. VIPER GRAPHX may increase the Service Fees (i) in the manner permitted in the service description and (ii) at any time on or after expiration of the Initial Term by providing ten (10) days prior written notice thereof to Customer.

c. The Service Fees do not include any applicable sales, use, revenue, excise or other taxes imposed by any taxing authority with respect to the Services or any software provided hereunder (excluding any tax on VIPER GRAPHX's net income). All such taxes will be added to VIPER GRAPHX's invoices for the fees as separate charges to be paid by Customer. All fees are fully earned when due and non-refundable when paid.

d. Unless otherwise specified, all fees and related charges shall be due and payable within thirty (30) days after the date of the invoice. If any invoice is not paid within forty five (45) days after the date of the invoice, VIPER GRAPHX may charge Customer a late fee of \$15.00 for such invoice; in addition any amounts payable to VIPER GRAPHX not paid when due will bear interest at the rate of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less.

e. If VIPER GRAPHX collects any payment due at law or through an attorney at law or under advice therefrom or through a collection agency, or if VIPER GRAPHX prevails in any action to which the Customer and VIPER GRAPHX are parties, Customer will pay all costs of collection, arbitration and litigation, including, without limitation, all court costs and VIPER GRAPHX's reasonable attorneys' fees.

- f. If any check is returned for insufficient funds VIPER GRAPHX may impose a processing charge of \$25.00.
- g. In the event that any amount due VIPER GRAPHX remains unpaid twenty (20) days after such payment is due, VIPER GRAPHX, in its sole discretion, may immediately terminate this Agreement, and/or withhold or suspend Services.
- h. There will be a \$50.00 charge to reinstate accounts that have been suspended or terminated.
- i. Wire transfers will be assessed a \$30.00 charge.
- j. Customer acknowledges and agrees that VIPER GRAPHX may pre-charge Customer's fees for the Services to its credit card supplied by Customer during registration for the Initial Term.
- k. YOU ACKNOWLEDGE, AGREE AND AUTHORIZE VIPER GRAPHX TO AUTOMATICALLY BILL AND/OR CHARGE ON YOUR CREDIT CARD FOR SUCCESSIVE TERMS OF EQUAL LENGTH AS THE INITIAL TERM, UNLESS TERMINATED OR CANCELLED BY EITHER PARTY AS PROVIDED IN SECTION 2.**
7. VIPER GRAPHX as Reseller or Licensor.
IPOWERWEB is acting only as a reseller or licensor of the hardware, software and equipment used in connection with the products and/or Services that were or are manufactured or provided by a third party ("Non-VIPER GRAPHX Product"). VIPER GRAPHX shall not be responsible for any changes in the Services that cause the Non-VIPER GRAPHX Product to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. Any malfunction or manufacturer's defects of Non-VIPER GRAPHX Product either sold, licensed or provided by VIPER GRAPHX to Customer or purchased directly by Customer used in connection with the Services will not be deemed a breach of VIPER GRAPHX's obligations under this Agreement. Any rights or remedies Customer may have regarding the ownership, licensing, performance or compliance of Non-VIPER GRAPHX Product are limited to those rights extended to Customer by the manufacturer of such Non-VIPER GRAPHX Product. Customer is entitled to use any Non-VIPER GRAPHX Product supplied by VIPER GRAPHX only in connection with Customer's permitted use of the Services. Customer shall use its best efforts to protect and keep confidential all intellectual property provided by VIPER GRAPHX to Customer through any Non-VIPER GRAPHX Product and shall make no attempt to copy, alter, reverse engineer, or tamper with such intellectual property or to use it other than in connection with the Services. Customer shall not resell, transfer, export or re-export any Non-VIPER GRAPHX Product, or any technical data derived therefrom, in violation of any applicable United States or foreign law.
8. Internet Protocol (IP) Address Ownership.
If IPOWERWEB assigns Customer an Internet Protocol ("IP") address for Customer's use, the right to use that IP address shall belong only to VIPER GRAPHX, and Customer shall have no right to use that IP address except as

permitted by VIPER GRAPHX in its sole and absolute discretion in connection with the Services, during the term of this Agreement. VIPER GRAPHX shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by VIPER GRAPHX, and VIPER GRAPHX reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion.

9. Caching.

Customer expressly (i) grants to VIPER GRAPHX a license to cache the entirety of the Customer Content and Customer's web site, including content supplied by third parties, hosted by VIPER GRAPHX under this Agreement and (ii) agrees that such caching is not an infringement of any of Customer's intellectual property rights or any third party's intellectual property rights.

10. CPU Usage.

Customer agrees that Customer shall not use excessive amounts of CPU processing on any of VIPER GRAPHX's servers. Any violation of this policy may result in corrective action by VIPER GRAPHX, including assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken in VIPER GRAPHX's sole and absolute discretion. If VIPER GRAPHX takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action.

11. Bandwidth and Disk Usage.

Customer agrees that bandwidth and disk usage shall not exceed the number of megabytes agreed to in the stipulated measurements outlined on the web site at the time of sign-up (or other measurements of services in the form of gigabytes, terabytes, etc.) per month for the Services ordered by Customer on the Order Form (the "Agreed Usage"). VIPER GRAPHX will monitor Customer's bandwidth and disk usage. VIPER GRAPHX shall have the right to take corrective action if Customer's bandwidth or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken in VIPER GRAPHX's sole and absolute discretion. If VIPER GRAPHX takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action.

12. Property Rights.

a. VIPER GRAPHX hereby grants to Customer a non-exclusive, non-transferable, royalty-free license, exercisable solely during the term of this Agreement, to use VIPER GRAPHX technology, products and services solely for the purpose of accessing and using the Services. Customer may not use VIPER GRAPHX's technology for any purpose other than accessing and using the Services. Except for the rights expressly granted above, this Agreement does not transfer from VIPER GRAPHX to Customer any VIPER GRAPHX technology, and all rights, titles and interests in and to any VIPER GRAPHX technology shall remain solely with VIPER GRAPHX. Customer shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the VIPER GRAPHX.

b. VIPER GRAPHX owns all right, title and interest in and to the Services and VIPER GRAPHX's trade names, trademarks, service marks, inventions, copyrights, trade secrets, patents, know-how and other intellectual property rights relating to the design, function, marketing, promotion, sale and provision of the Services and the related hardware, software and systems ("Marks"). Noting in this Agreement constitutes a license to Customer to use or resell the Marks.

13. Disclaimer of Warranty.

Customer agrees to use all Services and any information obtained through or from VIPER GRAPHX, at Customer's own risk. Customer acknowledges and agrees that VIPER GRAPHX exercises no control over, and accepts no responsibility for, the content of the information passing through VIPER GRAPHX's host computers, network hubs and points of presence or the Internet. **THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS. NONE OF VIPER GRAPHX, ITS PARENT, SUBSIDIARY OR AFFILIATED CORPORATIONS, OR ANY OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, AGENTS, ATTORNEYS, SUPPLIERS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS OR THE LIKE (EACH, AN "VIPER GRAPHX PERSON") MAKE ANY WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, FOR THE SERVICES OR ANY EQUIPMENT VIPER GRAPHX PROVIDES. NO VIPER GRAPHX PERSON MAKES ANY WARRANTIES THAT THE SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE; NOR DO ANY OF THEM MAKE ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICES OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE SERVICES. VIPER GRAPHX IS NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM CUSTOMER OR STORED BY CUSTOMER OR ANY OF CUSTOMER'S CUSTOMERS VIA THE SERVICES PROVIDED BY VIPER GRAPHX. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ANY VIPER GRAPHX PERSON, WILL CREATE A WARRANTY; NOR MAY YOU RELY ON ANY SUCH INFORMATION OR ADVICE. THE TERMS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.**

14. Limited Warranty.

a. VIPER GRAPHX represents and warrants to Customer that the Services will be performed (a) in a manner consistent with industry standards reasonably applicable to the performance thereof; (b) at least at the same level of service as provided by VIPER GRAPHX generally to its other customers for the same services; and (c) in compliance in all material respects with the applicable Service Descriptions. Customer will be deemed to have accepted such Services unless Customer notifies VIPER GRAPHX, in writing, within thirty (30) days after performance of any Services of any breach of the foregoing warranties. Customer's sole and exclusive remedy, and VIPER

GRAPHX's sole obligation, for breach of the foregoing warranties shall be for VIPER GRAPHX, at its option, to re-perform the defective Services at no cost to Customer, or, in the event of interruptions to the Services caused by a breach of the foregoing warranties, issue Customer a credit in an amount equal to the current monthly service fees pro rated by the number of hours in which the Services have been interrupted. VIPER GRAPHX may provision the Services from any of its data centers and may from time to time re-provision the Services from different data centers.

b. The foregoing warranties shall not apply to performance issues or defects in the Services (a) caused by factors outside of VIPER GRAPHX's reasonable control; (b) that resulted from any actions or inactions of Customer or any third parties; or (c) that resulted from Customer's equipment or any third-party equipment not within the sole control of VIPER GRAPHX. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, VIPER GRAPHX MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND VIPER GRAPHX HEREBY EXPRESSLY DISCLAIMS THE SAME. WITHOUT LIMITING THE FOREGOING, ANY THIRD-PARTY SOFTWARE PROVIDED TO CUSTOMER HEREUNDER IS PROVIDED "AS IS" WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. VIPER GRAPHX DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.**

15. Limitation of Liability.

a. **IN NO EVENT WILL VIPER GRAPHX'S LIABILITY IN CONNECTION WITH THE SERVICES, ANY SOFTWARE PROVIDED HEREUNDER OR ANY ORDER, WHETHER CAUSED BY FAILURE TO DELIVER, NON-PERFORMANCE, DEFECTS, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE AGGREGATE SERVICE FEES PAID TO VIPER GRAPHX BY CUSTOMER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.**

b. **VIPER GRAPHX CANNOT GUARANTEE CONTINUOUS SERVICE, SERVICE AT ANY PARTICULAR TIME, INTEGRITY OF DATA, INFORMATION OR CONTENT STORED OR TRANSMITTED VIA THE INTERNET. VIPER GRAPHX WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION OR INADVERTENT DISCLOSURE OF, DATA, INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED ON ITS SYSTEM.**

c. **EXCEPT AS EXPRESSLY PROVIDED BELOW, NEITHER PARTY SHALL BE LIABLE IN ANY WAY TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY LOST PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LICENSES OR SERVICES OR SIMILAR ECONOMIC LOSS, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR**

NOT, UNDER ANY WARRANTY OR OTHER RIGHT HEREUNDER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON- PERFORMANCE OF ANY ORDER, OR FOR ANY CLAIM AGAINST THE OTHER PARTY BY A THIRD PARTY, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES.

d. The limitations contained in this Section apply to all causes of action in the aggregate, whether based in contract, tort or any other legal theory (including strict liability), other than claims based on fraud or willful misconduct. The limitations contained in Section 15(c) shall not apply to Customer's indemnification obligations.

e. Notwithstanding anything to the contrary in this Agreement, VIPER GRAPHX's maximum liability under this Agreement for all damages, losses, costs and causes of actions from any and all claims (whether in contract, tort, including negligence, quasi- contract, statutory or otherwise) shall not exceed the actual dollar amount paid by Customer for the Services which gave rise to such damages, losses and causes of actions during the 12-month period prior to the date the damage or loss occurred or the cause of action arose.

f. Customer understands, acknowledges and agrees that if VIPER GRAPHX takes any corrective action under this Agreement because of an action of Customer or one of its customers or a reseller, that corrective action may adversely affect other customers of Customer or other reseller customers, and Customer agrees that VIPER GRAPHX shall have no liability to Customer, any of its customers or any Reseller Customer due to such corrective action by VIPER GRAPHX.

g. This limitation of liability reflects an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with this Agreement. The terms of this section shall survive any termination of this Agreement.

16. Indemnification. Customer agrees to indemnify, defend and hold harmless VIPER GRAPHX and its parent, subsidiary and affiliated companies, and each of their respective officers, directors, employees, shareholders, attorneys and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to Customer's use of the Services, (ii) any violation by Customer of the AUP, (iii) any breach of any representation, warranty or covenant of Customer contained in this Agreement or (iv) any acts or omissions of Customer. The terms of this section shall survive any termination of this Agreement.

17. Miscellaneous.

a. Independent Contractor. VIPER GRAPHX and Customer are independent contractors and nothing contained in this Agreement places VIPER GRAPHX and Customer in the relationship of principal and agent, master and servant,

partners or joint venturers. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

b. Governing Law; Jurisdiction. Any controversy or claim arising out of or relating to this Agreement, the formation of this Agreement or the breach of this Agreement, including any claim based upon arising from an alleged tort, shall be governed by the substantive laws of the State of Massachusetts. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. **ANY SUIT, ACTION OR PROCEEDING CONCERNING THIS AGREEMENT MUST BE BROUGHT IN A MASSACHUSETTS STATE OR FEDERAL COURT LOCATED IN BARNSTABLE COUNTY, MASSACHUSETTS, AND EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH SUIT, ACTION OR PROCEEDING AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT ANY SUCH SUIT, ACTION OR PROCEEDING WHICH IS BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

c. Headings. The headings herein are for convenience only and are not part of this Agreement.

d. Entire Agreement; Amendments. This Agreement, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and this Agreement constitutes the sole and entire agreement between the parties with respect to the matters covered hereby. In case of a conflict between this Agreement and any purchase order, service order, work order, confirmation, correspondence or other communication of Customer or VIPER GRAPHX, the terms and conditions of this Agreement shall control. No additional terms or conditions relating to the subject matter of this Agreement shall be effective unless approved in writing by any authorized representative of Customer and VIPER GRAPHX. This Agreement may not be modified or amended except by another agreement in writing executed by the parties hereto; provided, however, that these Terms of Service may be modified from time to time by VIPER GRAPHX in its sole discretion, which modifications will be effective upon posting to VIPER GRAPHX's web site.

e. Severability. All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

f. Notices. All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers set forth below the parties' signatures. Either party may change its address or facsimile number for purposes of this Agreement by notice in writing to the other party as provided herein. VIPER GRAPHX may give written notice to Customer via e-mail to the Customer's e-mail address as maintained in VIPER GRAPHX's billing records.

g. Waiver. No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

h. Assignment; Successors. Customer may not assign or transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of VIPER GRAPHX. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. VIPER GRAPHX may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of Customer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

i. Limitation of Actions. No action, regardless of form, arising by reason of or in connection with this Agreement may be brought by either party more than two years after the cause of action has arisen.

j. Counterparts. If this Agreement is signed manually, it may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this Agreement is signed electronically, VIPER GRAPHX's records of such execution shall be presumed accurate unless proven otherwise.

k. Force Majeure. Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.

l. No Third-Party Beneficiaries. Except as otherwise expressly provided in this

Agreement, nothing in this Agreement is intended, nor shall anything herein be construed to confer any rights, legal or equitable, in any Person other than the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, Customer acknowledges and agrees that Microsoft, and any supplier of third-party supplier that is identified as a third-party beneficiary in the Service Description, is an intended third-party beneficiary of the provisions set forth in this Agreement as they relate specifically to its products or services and shall have the right to enforce directly the terms and conditions of this Agreement with respect to its products or services against Customer as if it were a party to this Agreement.

m. Government Regulations. Customer may not export, re-export, transfer or make available, whether directly or indirectly, any regulated item or information to anyone outside the United States in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the United States government and any country or organization of nations within whose jurisdiction Customer operates or does business.

n. Marketing. Customer agrees that during the term of this Agreement VIPER GRAPHX may publicly refer to Customer, orally and in writing, as a customer of VIPER GRAPHX. Any other public reference to Customer by VIPER GRAPHX requires the written consent of Customer.

Revised: January 2004 (ver 4.1)

DIGITAL MILLENNIUM COPYRIGHT ACT

Notice and Procedure for Making Claims of Copyright Infringement

Pursuant to Title 17, United States Code, Section 512(c)(2), all notifications of claimed copyright infringement on the VIPER GRAPHX system or Web site should be sent ONLY to our Designated Agent.

NOTE: THE FOLLOWING INFORMATION IS PROVIDED SOLELY FOR NOTIFYING VIPER GRAPHX THAT YOUR COPYRIGHTED MATERIAL MAY HAVE BEEN INFRINGED.

WE CAUTION YOU THAT UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO HEAVY CIVIL PENALTIES. THESE INCLUDE MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS FEES INCURRED BY US, BY ANY COPYRIGHT OWNER, OR BY ANY COPYRIGHT OWNER'S LICENSEE THAT IS INJURED AS A RESULT OF OUR RELYING UPON YOUR MISREPRESENTATION. YOU MAY ALSO BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY.

DO NOT SEND ANY INQUIRIES UNRELATED TO COPYRIGHT INFRINGEMENT (E.G., REQUESTS FOR TECHNICAL ASSISTANCE OR CUSTOMER SERVICE, REPORTS OF E-MAIL ABUSE, ETC.) TO THE CONTACT LISTED BELOW. YOU WILL NOT RECEIVE A RESPONSE IF SENT TO THAT CONTACT.

Written notification must be submitted to the following Designated Agent:

VIPER GRAPHX

Wayne A. Morea

Owner

P.O. Box 1077

South Dennis, MA. 02660

legal@vipergraphx.com

Under Title 17, United States Code, Section 512(c)(3)(A), the Notification of Claimed Infringement must include the following:

1. Physical or electronic signature of a person authorized to act on behalf of the copyright owner.
2. Identification of the copyrighted work claimed to have been infringed or a representative list if multiple works are involved.
3. Identification of the material that is claimed to be infringing that should be removed or access to disabled and information reasonably sufficient to enable the online service provider to locate the material (usually a URL to the relevant page).
4. Information reasonably sufficient to allow the online service provider to contact the complaining party (address, phone number, e-mail address).
5. Statement that the complaining party has "a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law."

6. Statement that the information in the notice is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the copyright owner.
7. Upon receipt of notification of a claimed infringement, VIPER GRAPHX will respond expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, regardless of whether the material or activity is ultimately determined to be infringing; if selective action is not possible, VIPER GRAPHX will terminate the alleged infringer's Internet access.

VIPER GRAPHX will also take reasonable steps to promptly notify the alleged infringer in writing of the claim against him or her, and that it has removed or disabled access to the material or terminated Internet access (see Sections 512(c)(1)(C) and (g) of the DMCA).

Upon receipt of notice from VIPER GRAPHX that a claim of infringement has been made and that the material has been removed or that access to it has been disabled, the Subscriber may provide a Counter Notification.

To be effective, a Counter Notification must meet the following requirements:

1. It must be a written communication;
2. It must be sent to the Service Provider's Designated Agent;
3. It must include the following:
 - a. A physical or electronic signature of the Subscriber;
 - b. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
 - c. A statement, under penalty of perjury, that the Subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
 - d. The Subscriber's name, address, and telephone number, and a statement that the Subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the Subscriber's address is located, or if the Subscriber's address is outside of the United States, for any judicial district in which the Service Provider may be found, and that the Subscriber will accept service of process from the person who provided notification or an agent of such person.

Upon receipt of a Counter Notification from the Subscriber containing the information as outlined above, VIPER GRAPHX will:

- Promptly provide the Complaining Party with a copy of the Counter Notification;
- Inform the Complaining Party that it will replace the removed material or cease disabling access to it within ten (10) business days following receipt of the Counter Notice;
- Replace the removed material or cease disabling access to the material in not less than ten (10), nor more than fourteen (14), business days following receipt of the Counter Notice, provided Service Provider's Designated Agent

has not received notice from the Complaining Party that an action has been filed seeking a court order to restrain Subscriber from engaging in infringing activity relating to the material on Service Provider's network or system.

CAUTION: Pursuant to Title 17, Section 512(f) of the United States Code, any person who knowingly materially misrepresents that material or activity is infringing, or that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

Revised: September 2004

SPAMMING POLICY

1. VIPER GRAPHX customers, and customers of VIPER GRAPHX customers or any user of bandwidth and/or services on our network (herein described as 'users') are prohibited from sending UBE/UCE (unsolicited bulk email/unsolicited commercial email). Users may be asked to produce records that verify that explicit affirmative permission was obtained from a recipient before a mailing was sent. VIPER GRAPHX may consider the lack of such proof of explicit affirmative permission of a questionable mailing UBE/UCE at its sole discretion.
2. VIPER GRAPHX customers are prohibited from maintaining open mail relays on their servers. Ignorance of the presence or operation of an open mail relay is not and will not be considered an acceptable excuse for its (the open mail relay) operation. Multiple infractions of this policy will result in a discontinuation of service.
3. VIPER GRAPHX customers will be notified in the event that they may be hosting sites listed as violators of the above policy. Again, failure to rectify such situations may be cause for termination.
4. VIPER GRAPHX customers are prohibited from providing hosting services for websites that have been included in UBE/UCE. Hosting includes, but is not limited to, hosting website(s), providing DNS services as well as website redirect services.
5. Valid complaints received by VIPER GRAPHX may lead to immediate termination or suspension of the service. VIPER GRAPHX may block traffic without prior notice to and from the IP address involved in the UBE/UCE complaint until the problem is resolved and preventative measures have been implemented to prevent the violation from recurring.
6. VIPER GRAPHX reserves the right to suspend and/or cancel permanently any and all services provided to the user without a notification. If a Customer is in violation of any term or condition of this Spamming Policy, the Acceptable Use Policy, User Agreement or Customer's use of the Service disrupts or, in VIPER GRAPHX's judgment, could disrupt, VIPER GRAPHX's business operations, VIPER GRAPHX reserves the right to charge Customer an administrative fee equal to the \$100.00.

To report an incidence of abuse, please report it to abuse@vipergraphx.com.

Revised: January 2004 (ver 4.1)

EXHIBIT A
Form of Registration Agreement

1. AGREEMENT. In this Registration Agreement ("Agreement") "you" and "your" refer to the registrant of each domain name registration, "we", "us" and "our" refer to Tucows Inc., "Registry Operator" refers to Neulevel Inc. and "Services" refers to the domain name registration provided by us as offered through Viper Graphx ("RSP"). This Agreement explains our obligations to you, and explains your obligations to us for various Services.

2. .BIZ RESTRICTIONS. Registrations in the .biz top level domain must be used or intended to be used primarily for bona fide business or commercial purposes. For the purposes of the .biz registration restrictions, "bona fide business or commercial use" shall mean the bona fide use or bona fide intent to use the domain name or any content, software, materials, graphics or other information thereon, to permit Internet users to access one or more host computers through the DNS:

- (i) to exchange goods, services, or property of any kind;
- (ii) in the ordinary course of business; or
- (iii) to facilitate (i) the exchange of goods, services, information or property of any kind; or (ii) the ordinary course of trade or business.

For more information on the .biz restrictions, which are incorporated herein by reference, please see <http://www.icann.org/tlds/agreements/biz/registry-agmt-appl-18apr01.htm>.

3. SELECTION OF A DOMAIN NAME. You represent that:

- (i) the data provided in the domain name registration application is true, correct, up to date and complete, and that you will continue to keep all of the information provided correct, up-to-date and complete;
- (ii) to the best of the your knowledge and belief, neither this registration of a domain name nor the manner in which it is directly or indirectly to be used infringes upon the legal rights of a third party;
- (iii) that the domain name is not being registered for nor shall it at any time whatsoever be used for any unlawful purpose whatsoever;
- (iv) the registered domain name will be used primarily for bona fide business or commercial purposes and not (a) exclusively for personal use, or (b) solely for the purposes of (1) selling, trading or leasing the domain name for compensation, or (2) the unsolicited offering to sell, trade or lease the domain name for compensation;
- (v) you have the authority to enter into this Registration Agreement; and
- (vi) the registered domain name is reasonably related to your business or intended commercial purpose at the time of registration.

4. FEES. As consideration for the Services you have selected, you agree to pay the RSP the applicable service(s) fees. All fees payable hereunder are non-refundable. As further

consideration for the Services, you agree to: (1) provide certain current, complete and accurate information about you as required by the registration process and (2) maintain and update this information as needed to keep it current, complete and accurate. All such information shall be referred to as account information ("Account Information"). By submitting this Agreement, you represent that the statements in your Application are true, complete and accurate.

5. TERM. This Agreement shall remain in full force during the length of the term of your domain name registration(s) as selected, recorded, and paid for upon registration of the domain name. Should you choose to renew or otherwise lengthen the term of your domain name registration, then the term of this Registration Agreement shall be extended accordingly. Should the domain name be transferred to another Registrar, the terms and conditions of this contract shall cease.

6. MODIFICATIONS TO AGREEMENT. You agree that we may: (1) revise the terms and conditions of this Agreement; and (2) change the services provided under this Agreement. You agree to be bound by any such revision or change which shall be effective immediately upon posting on our web site or upon notification to you by e-mail or your country's postal service pursuant to the Notices section of this Agreement. You agree to review this Agreement as posted on our web site periodically to maintain an awareness of any and all such revisions. If you do not agree with any revision to the Agreement, you may terminate this Agreement at any time by providing us with notice by e-mail or postal service pursuant to the Notices section of this Agreement. Notice of your termination shall be effective after processing by us. You agree that, by continuing the use of Services following notice of any revision to this Agreement or change in service(s), you shall be bound by any such revisions and changes. You further agree to be bound by the ICANN Uniform Dispute Resolution Policy ("Dispute Policy") as presently written and posted on <http://resellers.tucows.com/opensrs/legal> and as shall be amended from time to time. You acknowledge that if you do not agree to any such modifications, you may request that your domain name be deleted from the domain name database. We will not refund any fees paid by you if you terminate your agreement with us.

7. MODIFICATIONS TO YOUR ACCOUNT. In order to change any of your account information with us, you must use your Account Identifier and Password that you selected when you opened your account with us. You agree to safeguard your Account Identifier and Password from any unauthorized use. In no event shall we be liable for the unauthorized use or misuse of your Account Identifier or Password.

8. DOMAIN NAME DISPUTE POLICY. If you reserved or registered a domain name through us, or transferred a domain name to us from another registrar, you agree to be bound by the Dispute Policy that is incorporated herein and made a part of this Agreement by reference. The current version of the Dispute Policy may be found at <http://resellers.tucows.com/opensrs/legal>. Please take the time to familiarize yourself with this policy.

9. DOMAIN NAME DISPUTES. You acknowledge having read and understood and

agree to be bound by the terms and conditions of the following documents, as they may be amended from time to time, which are hereby incorporated and made an integral part of this Agreement:

- (i) The Uniform Domain Name Dispute Resolution Policy ("Dispute Policy), available at <http://www.icann.org/udrp/>;
 - (ii) The Restrictions Dispute Resolution Criteria and Rules ("RDRP"), available at <http://www.icann.org/tlds/agreements/biz/registry-agmt-appm-27apr01.htm>;
- (collectively, "Dispute Policies").

The Dispute Policy sets forth the terms and conditions in connection with a dispute between a Registrant and any party other than the Registry Operator or Registrar over the registration and use of an Internet domain name registered by Registrant.

The RDRP sets forth the terms under which any allegation that a domain name is not used primarily for business or commercial purposes shall be endorsed on a case-by-case, fact specific basis by an independent ICANN-accredited dispute provider.

10. POLICY. You agree that your registration of the domain name shall be subject to suspension, cancellation, or transfer pursuant to any Tucows, Registry Operator, ICANN or government-adopted policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN or government-adopted policy, (1) to correct mistakes by us or the applicable Registry in registering the name or (2) for the resolution of disputes concerning the domain name.

11. AGENCY. Should you intend to license use of a domain name to a third party you shall nonetheless be the domain name holder of record and are therefore responsible for providing your own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the domain name. You shall accept liability for harm caused by wrongful use of the domain name. You represent that you have provided notice of the terms and conditions in this Agreement to a third party licensee and that the third party agrees to the terms hereof. You acknowledge and agree that the domain name has not been registered solely for the purposes of selling, trading or leasing for compensation and will be used for a business or commercial purpose.

12. ANNOUNCEMENTS. We reserve the right to distribute information to you that is pertinent to the quality or operation of our services and those of our service partners. These announcements will be predominately informative in nature and may include notices describing changes, upgrades, new products or other information to add security or to enhance your identity on the Internet.

13. LIMITATION OF LIABILITY. You agree that our entire liability, and your exclusive remedy, with respect to any Services(s) provided under this Agreement and any breach of this Agreement is solely limited to the amount you paid for such Service(s). Neither we nor our contractors or third party beneficiaries shall be liable for any direct,

indirect, incidental, special or consequential damages resulting from the use or inability to use any of the Services or for the cost of procurement of substitute services. Because some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, in such jurisdictions, our liability is limited to the extent permitted by law. We disclaim any and all loss or liability resulting from, but not limited to: (1) loss or liability resulting from access delays or access interruptions; (2) loss or liability resulting from data non-delivery or data miss-delivery; (3) loss or liability resulting from acts of God; (4) loss or liability resulting from the unauthorized use or misuse of your account identifier or password; (5) loss or liability resulting from errors, omissions, or misstatements in any and all information or services(s) provided under this Agreement; (6) loss or liability resulting from the interruption of your Service. You agree that we will not be liable for any loss of registration and use of your domain name, or for interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if we have been advised of the possibility of such damages. In no event shall our maximum liability exceed five hundred (\$500.00) dollars.

14. INDEMNITY. You agree to release, indemnify, and hold us, the Registry Operator, our contractors, agents, employees, officers, directors, affiliates and third party beneficiaries harmless from all liabilities, claims and expenses, including attorney's fees, of third parties relating to or arising under this Agreement, the Services provided hereunder or your use of the Services, including without limitation infringement by you, or someone else using the Service of any intellectual property or other proprietary right of any person or entity, or from the violation of any of our operating rules or policy relating to the Service(s) provided. You also agree to release, indemnify and hold us harmless pursuant to the terms and conditions contained in the Dispute Policy. When we are threatened with suit by a third party, we may seek written assurances from you concerning your promise to indemnify us; your failure to provide those assurances shall be a breach of your Agreement and may result in deactivation of your domain name. This indemnification obligation will survive the termination or expiration of this agreement.

15. TRANSFER OF OWNERSHIP. The person named as registrant on the WHOIS shall be the registered name holder. The person named as administrative contact at the time the controlling user name and password are secured shall be deemed to be the designate of the registrant with the authority to manage the domain name. You agree that prior to transferring ownership of your domain name to another person (the Transferee") you shall require the Transferee to agree in writing to be bound by all the terms and conditions of this Agreement. Your domain name will not be transferred until we receive such written assurances or other reasonable assurance that the Transferee has been bound by the contractual terms of this Agreement (such reasonable assurance as determined by us in our sole discretion) along with the applicable transfer fee. If the Transferee fails to be bound in a reasonable fashion (as determine by us in our sole discretion) to the terms and conditions in this Agreement, any such transfer will be null and void. You acknowledge that you will not be entitled to change registrars during the first sixty (60) days following the registration of your domain name.

16. BREACH. You agree that failure to abide by any provision of this Agreement, any operating rule or policy or the Dispute Policy provided by us, may be considered by us to be a material breach and that we may provide a written notice, describing the breach, to you. If you fail to provide evidence, which is reasonably satisfactory to us, that you have not breached your obligations under the Agreement, then we may delete the registration or reservation of your domain name. Any such breach by you shall not be deemed to be excused simply because we did not act earlier in response to that, or any other breach by you.

17. NO GUARANTY. You acknowledge that registration or reservation of your chosen domain name does not confer immunity from objection to either the registration, reservation, or use of the domain name.

18. DISCLAIMER OF WARRANTIES. You agree that your use of our Services is solely at your own risk. You agree that such Service(s) is provided on an "as is," "as available" basis. We expressly disclaim all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We make no warranty that the Services will meet your requirements, or that the Service(s) will be uninterrupted, timely, secure, or error free; nor do we make any warranty as to the results that may be obtained from the use of the Service(s) or as to the accuracy or reliability of any information obtained through the Service or that defects in the Service will be corrected. You understand and agree that any material and/or data downloaded or otherwise obtained through the use of Service is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data. We make no warranty regarding any goods or services purchased or obtained through the Service or any transactions entered into through the Service. No advice or information, whether oral or written, obtained by you from us or through the Service shall create any warranty not expressly made herein.

19. INFORMATION. As part of the registration process, you are required to provide us certain information and to update us promptly as such information changes such that our records are current, complete and accurate. You are obliged to provide us the following information:

- (i) Your full name, postal address, e-mail address and telephone number and fax number (if available) (or, if different, that of the domain name holder);
- (ii) The domain name being registered;
- (iii) The name, postal address, e-mail address, and telephone number and fax number (if available) telephone numbers of the administrative contact, the technical contact and the billing contact for the domain name;
- (iv) The IP addresses and names of the primary nameserver and any secondary nameserver(s) for the domain name.

Any other information, which we request from you at registration, is voluntary. Any

voluntary information we request is collected for the purpose of improving the products and services offered to you through your RSP.

20. DISCLOSURE AND USE OF REGISTRATION INFORMATION. You agree and acknowledge that we will make domain name registration information you provide available to ICANN, to the registry administrators, and to other third parties as applicable. You further agree and acknowledge that we may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information you provide, for purposes of inspection (such as through our WHOIS service) or other purposes as required or permitted by ICANN and applicable laws.

You hereby consent to any and all such disclosures and use of information provided by you in connection with the registration of a domain name (including any updates to such information), whether during or after the term of your registration of the domain name. You hereby irrevocably waive any and all claims and causes of action you may have arising from such disclosure or use of your domain name registration information by us.

You may access your domain name registration information in our possession to review, modify or update such information, by accessing our domain manager service, or similar service, made available by us through your RSP.

We will not process data about any identified or identifiable natural person that we obtain from you in a way incompatible with the purposes and other limitations which we describe in this Agreement.

We will take reasonable precautions to protect the information we obtain from you from our loss, misuse, unauthorized accessor disclosure, alteration or destruction of that information.

21. REVOCATION. Your wilful provision of inaccurate or unreliable information, your wilful failure promptly to update information provided to us, or any failure to respond to inquiries by us addressed to the email address of the registrant, the administrative, billing or technical contact appearing in the "Whois" directory with respect to a domain name concerning the accuracy of contact details associated with the registration shall constitute a material breach of this Agreement and be a basis for cancellation of the domain name registration. Any information collected by us concerning an identified or identifiable natural person ("Personal Data") will be used in connection with the registration of your domain name(s) and for the purposes of this Agreement and as required or permitted by the ICANN Agreement or an ICANN/Registry Operator policy.

22. RIGHT OF REFUSAL. We, and/or Registry Operator, in our sole discretion, reserve the right to refuse to register or reserve your chosen domain name or register you for other Services. In the event we do not register or reserve your domain name or register you for other Services, or we delete your domain name or other Services within such thirty (30) calendar day period, we agree to refund your applicable fee(s). You agree that we shall not be liable to you for loss or damages that may result from our refusal to

register, reserve, or delete your domain name or register you for other Services.

We reserve the right to delete or transfer your domain name following registration if we believe the registration has been made possible by a mistake, made either by us or by a third party. We also reserve the right to suspend a domain name during resolution of a dispute.

23. SEVERABILITY. You agree that the terms of this Agreement are severable. If any term or provision is declared invalid or unenforceable, that term or provision will be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties, and the remaining terms and provisions will remain in full force and effect.

24. NON-AGENCY. Nothing contained in this Agreement or the Dispute Policies shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

25. NON-WAIVER. Our failure to require performance by you of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by us of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

26. NOTICES. Any notice, direction or other communication given under this Agreement shall be in writing and given by sending it via e-mail or via postal service. In the case of e-mail, valid notice shall only have been deemed to be given when an electronic confirmation of delivery has been obtained by the sender. In the case of e-mail, notifications must be sent to us at lhutz@tucows.com, or in the case of notification to you, to the e-mail address provided by you in your WHOIS record. Any e-mail communication shall be deemed to have been validly and effectively given on the date of such communication, if such date is a business day and such delivery was made prior to 4:00 p.m. EST, otherwise it will be deemed to have been delivered on the next business day. In the case of regular mail notice, valid notice shall be deemed to have been validly and effectively given 5 business days after the date of mailing and, in the case of notification to us or to RSP shall be sent to:

Our address:

TUCOWS Inc.
96 Mowat Avenue
Toronto, Ontario
M6K 3M1
Attention: Legal Affairs

and in the case of notification to you shall be to the address specified in the "Administrative Contact" in your WHOIS record

27. ENTIRETY. You agree that this Agreement, the rules and policies published by Tucows, ICANN and/or the Registry Operator and the Dispute Policy are the complete and exclusive agreement between you and us regarding our Services. This Agreement and the Dispute Policy supersede all prior agreements and understandings, whether established by custom, practice, policy or precedent.

28. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS. ANY ACTION RELATING TO THIS AGREEMENT MUST BE BROUGHT IN ONTARIO AND YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF SUCH COURTS.

29. INFANCY. You attest that you are of legal age to enter into this Agreement.

30. FOREIGN LANGUAGE: Controlling Language. In the event that you are reading this agreement in a language other than the English language, you acknowledge and agree that the English language version hereof shall prevail in case of inconsistency or contradiction in interpretation or translation.

31. ACCEPTANCE OF AGREEMENT. YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF THE SERVICE AND ARE NOT RELYING ON ANY REPRESENTATION AGREEMENT, GUARANTEE OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

EXHIBIT A

Form of Registration Agreement

1. **AGREEMENT.** In this Registration Agreement ("Agreement") "you" and "your" refer to the registrant of each domain name registration, "we", "us" and "our" refer to TUCOWS Inc. and "Services" refers to the domain name registration provided by us as offered through ("RSP"). This Agreement explains our obligations to you, and explains your obligations to us for various Services. If you are registering your name during the finite period of time when owners of trademarks and service marks issued prior to October 2, 2000 and having national effect will have the exclusive opportunity to register identical domain names ("Sunrise Period"), you agree to comply with the procedures, terms and obligations. You acknowledge and agree that registrations for domain names during the Sunrise Period will only be accepted for a minimum registration term of five (5) years.
2. **SELECTION OF A DOMAIN NAME.** You represent that, to the best of the your knowledge and belief, neither this registration of a domain name nor the manner in which it is directly or indirectly to be used infringes upon the legal rights of a third party and, further, that the domain name is not being registered for nor shall it at any time whatsoever be used for any unlawful purpose whatsoever.
3. **FEES.** As consideration for the Services you have selected, you agree to pay the RSP the applicable service fees. All fees payable hereunder are non-refundable. As further consideration for the Services, you agree to: (1) provide certain current, complete and accurate information about you as required by the registration process and (2) maintain and update this information as needed to keep it current, complete and accurate. All such information shall be referred to as account information ("Account Information"). By submitting this Agreement, you represent that the statements in your Application are true, complete and accurate.
4. **TERM.** This Agreement shall remain in full force during the length of the term of your domain name registration(s) as selected, recorded, and paid for upon registration of the domain name. Should you choose to renew or otherwise lengthen the term of your domain name registration, then the term of this Registration Agreement shall be extended accordingly. Should the domain name be transferred to another Registrar, the terms and conditions of this contract shall cease.
5. **MODIFICATIONS TO AGREEMENT.** You agree that we may: (1) revise the terms and conditions of this Agreement; and (2) change the services provided under this Agreement. You agree to be bound by any such revision or change which shall be effective immediately upon posting on our web site or upon notification to you by e-mail or your country's postal service pursuant to the Notices section of this Agreement. You agree to review this Agreement as posted

on our web site periodically to maintain an awareness of any and all such revisions. If you do not agree with any revision to the Agreement, you may terminate this Agreement at any time by providing us with notice by e-mail or postal service pursuant to the Notices section of this Agreement. Notice of your termination shall be effective after processing by us. You agree that, by continuing the use of Services following notice of any revision to this Agreement or change in service(s), you shall be bound by any such revisions and changes. If you have registered your name during the Sunrise Period, you agree to be bound by the Sunrise Dispute Resolution Policy (?Sunrise Dispute Policy?) found at (<http://www.afilias.com/faq/sunrise-challenge.html>). You further agree to be bound by the ICANN Uniform Dispute Resolution Policy (?Dispute Policy?) as presently written and posted on <http://resellers.tucows.com/opensrs/legal> and as shall be amended from time to time. You acknowledge that if you do not agree to any such modifications, you may request that your domain name be deleted from the domain name database.

6. **MODIFICATIONS TO YOUR ACCOUNT.** In order to change any of your account information with us, you must use your Account Identifier and Password that you selected when you opened your account with us. You agree to safeguard your Account Identifier and Password from any unauthorized use. In no event shall we be liable for the unauthorized use or misuse of your Account Identifier or Password.
7. **DOMAIN NAME DISPUTE POLICY.** If you reserved or registered a domain name through us, or transferred a domain name to us from another registrar, you agree to be bound by the Dispute Policies that are incorporated herein and made a part of this Agreement by reference. The current version of the general registration Dispute Policy may be found at <http://www.opensrs.org/legal/udrp.shtml>. Please take the time to familiarize yourself with this policy.
8. **DOMAIN NAME DISPUTES.** You agree that, if the registration or reservation of your domain name is challenged by a third party, you will be subject to the provisions specified in the Sunrise Dispute Policy or the Dispute Policy, as applicable. You agree that in the event a domain name dispute arises with any third party, you will indemnify and hold us harmless pursuant to the terms and conditions contained in the Sunrise Dispute Policy or Dispute Policy, as applicable.
9. **POLICY.** You agree that your registration of the domain name shall be subject to suspension, cancellation, or transfer pursuant to a Tucows, Registry Operator, ICANN or government-adopted policy, or pursuant to any registrar or registry procedure not inconsistent with a Tucows, Registry Operator, ICANN or government-adopted policy, (1) to correct mistakes by us or the Registry in registering the name or (2) for the resolution of disputes concerning the domain name.

10. **AGENCY.** Should you intend to license use of a domain name to a third party you shall nonetheless be the domain name holder of record and are therefore responsible for providing your own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the domain name. You shall accept liability for harm caused by wrongful use of the domain name. You represent that you have provided notice of the terms and conditions in this Agreement to a third party licensee and that the third party agrees to the terms hereof.
11. **ANNOUNCEMENTS.** We reserve the right to distribute information to you that is pertinent to the quality or operation of our services and those of our service partners. These announcements will be predominately informative in nature and may include notices describing changes, upgrades, new products or other information to add security or to enhance your identity on the Internet.
12. **LIMITATION OF LIABILITY.** You agree that our entire liability, and your exclusive remedy, with respect to any Services(s) provided under this Agreement and any breach of this Agreement is solely limited to the amount you paid for such Service(s). Neither we nor our contractors or third party beneficiaries shall be liable for any direct, indirect, incidental, special or consequential damages resulting from the use or inability to use any of the Services or for the cost of procurement of substitute services. Because some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, in such jurisdictions, our liability is limited to the extent permitted by law. We disclaim any and all loss or liability resulting from, but not limited to: (1) loss or liability resulting from access delays or access interruptions; (2) loss or liability resulting from data non-delivery or data miss-delivery; (3) loss or liability resulting from acts of God; (4) loss or liability resulting from the unauthorized use or misuse of your account identifier or password; (5) loss or liability resulting from errors, omissions, or misstatements in any and all information or services(s) provided under this Agreement; (6) loss or liability resulting from the interruption of your Service. You agree that we will not be liable for any loss of registration and use of your domain name, or for interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if we have been advised of the possibility of such damages. In no event shall our maximum liability exceed five hundred (\$500.00) dollars.
13. **INDEMNITY.** You agree to release, indemnify, and hold us, our contractors, agents, employees, officers, directors, affiliates and third party beneficiaries harmless from all liabilities, claims and expenses, including attorney's fees, of third parties relating to or arising under this Agreement, the Services provided hereunder or your use of the Services, including without limitation infringement by you, or someone else using the Service of any intellectual property or other proprietary right of any person or entity, or from the violation of any of our operating rules or policy relating to the Service(s) provided. You also agree to

release, indemnify and hold us harmless pursuant to the terms and conditions contained in the Dispute Policy. When we are threatened with suit by a third party, we may seek written assurances from you concerning your promise to indemnify us; your failure to provide those assurances shall be a breach of your Agreement and may result in deactivation of your domain name. This indemnification obligation will survive the termination or expiration of this Agreement.

14. **TRANSFER OF OWNERSHIP.** The person named as registrant on the WHOIS shall be the registered name holder. The person named as administrative contact at the time the controlling user name and password are secured shall be deemed the designate of the registrant with the authority to manage the domain name. You agree that prior to transferring ownership of your domain name to another person (the Transferee") you shall require the Transferee to agree in writing to be bound by all the terms and conditions of this Agreement. Your domain name will not be transferred until we receive such written assurances or other reasonable assurance that the Transferee has been bound by the contractual terms of this Agreement (such reasonable assurance as determined by us in our sole discretion) along with the applicable transfer fee. If the Transferee fails to be bound in a reasonable fashion (as determine by us in our sole discretion) to the terms and conditions in this Agreement, any such transfer will be null and void. You acknowledge that you will not be entitled to change registrars during the first sixty (60) days following the registration of your domain name.
15. **BREACH.** You agree that failure to abide by any provision of this Agreement, any operating rule or policy or the Dispute Policy provided by us, may be considered by us to be a material breach and that we may provide a written notice, describing the breach, to you. If within thirty (30) calendar days of the date of such notice, you fail to provide evidence, which is reasonably satisfactory to us, that you have not breached your obligations under the Agreement, then we may delete the registration or reservation of your domain name. Any such breach by you shall not be deemed to be excused simply because we did not act earlier in response to that, or any other breach by you.
16. **NO GUARANTY.** You acknowledge that registration or reservation of your chosen domain name does not confer immunity from objection to either the registration, reservation, or use of the domain name.
17. **DISCLAIMER OF WARRANTIES.** You agree that your use of our Services is solely at your own risk. You agree that such Service(s) is provided on an "as is", "as available" basis. We expressly disclaim all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We make no warranty that the Services will meet your requirements, or that the Service(s) will be uninterrupted, timely, secure, or error free; nor do we make any warranty as to the results that may be obtained from the use of the Service(s) or as to the accuracy or reliability of any information obtained through the Service or that

defects in the Service will be corrected. You understand and agree that any material and/or data downloaded or otherwise obtained through the use of Service is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data. We make no warranty regarding any goods or services purchased or obtained through the Service or any transactions entered into through the Service. No advice or information, whether oral or written, obtained by you from us or through the Service shall create any warranty not expressly made herein.

18. **INFORMATION.** As part of the registration process, you are required to provide us certain information and to update us promptly as such information changes such that our records are current, complete and accurate. You are obliged to provide us the following information:
- i. Your name and postal address (or, if different, that of the domain name holder);
 - ii. The domain name being registered;
 - iii. The name, postal address, e-mail address, and voice and fax (if available) telephone numbers of the administrative contact for the domain name;
 - iv. The name, postal address, e-mail address, and voice and fax (if available) telephone numbers of the billing contact for the domain name.

Any other information, which we request from you at registration, is voluntary. Any voluntary information we request is collected for the purpose of improving the products and services offered to you through your RSP.

19. **DISCLOSURE AND USE OF REGISTRATION INFORMATION.** You agree and acknowledge that we will make domain name registration information you provide available to ICANN, to the registry administrators, and to other third parties as applicable. You further agree and acknowledge that we may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information you provide, for purposes of inspection (such as through our WHOIS service) or other purposes as required or permitted by ICANN and applicable laws.

You hereby consent to any and all such disclosures and use of information provided by you in connection with the registration of a domain name (including any updates to such information), whether during or after the term of your registration of the domain name. You hereby irrevocably waive any and all claims and causes of action you may have arising from such disclosure or use of your domain name registration information by us.

You may access your domain name registration information in our possession to review, modify or update such information, by accessing our domain manager service, or similar service, made available by us through your RSP.

We will not process data about any identified or identifiable natural person that we obtain from you in a way incompatible with the purposes and other limitations which we describe in this Agreement.

We will take reasonable precautions to protect the information we obtain from you from our loss, misuse, unauthorized access or disclosure, alteration or destruction of that information.

20. **REVOCATION.** Your wilful provision of inaccurate or unreliable information, your wilful failure promptly to update information provided to us, or any failure to respond to inquiries by us addressed to the email address of the registrant, the administrative, billing or technical contact appearing in the ?Whois? directory with respect to a domain name concerning the accuracy of contact details associated with the registration shall constitute a material breach of this Agreement and be a basis for cancellation of the domain name registration. Any information collected by us concerning an identified or identifiable natural person (?Personal Data?) will be used in connection with the registration of your domain name(s) and for the purposes of this Agreement and as required or permitted by the ICANN Agreement or an ICANN/Registry Operator policy.
21. **RIGHT OF REFUSAL.** We, in our sole discretion, reserve the right to refuse to register or reserve your chosen domain name or register you for other Services. In the event we do not register or reserve your domain name or register you for other Services, or we delete your domain name or other Services within such thirty (30) calendar day period, we agree to refund your applicable fee(s). You agree that we shall not be liable to you for loss or damages that may result from our refusal to register, reserve, or delete your domain name or register you for other Services.

We reserve the right to delete or transfer your domain name within a thirty (30) day period following registration if we believe the registration has been made possible by a mistake, made either by us or by a third party. We also reserve the right to suspend a domain name during resolution of any dispute.
22. **SEVERABILITY.** You agree that the terms of this Agreement are severable. If any term or provision is declared invalid or unenforceable, that term or provision will be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties, and the remaining terms and provisions will remain in full force and effect.
23. **NON-AGENCY.** Nothing contained in this Agreement or the Dispute Policies shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.
24. **NON-WAIVER.** Our failure to require performance by you of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by us of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

25. **NOTICES.** Any notice, direction or other communication given under this Agreement shall be in writing and given by sending it via e-mail or via postal service. In the case of e-mail, valid notice shall only have been deemed to have been given when an electronic confirmation of delivery has been obtained by the sender. In the case of e-mail, notifications must be sent to us at lhutz@tucows.com, or in the case of notification to you, to the e-mail address provided by you in your WHOIS record. Any e-mail communication shall be deemed to have been validly and effectively given on the date of such communication, if such date is a business day and such delivery was made prior to 4:00 p.m. EST, otherwise it will be deemed to have been delivered on the next business day. In the case of regular mail notice, valid notice shall be deemed to have been validly and effectively given 5 business days after the date of mailing and, in the case of notification to us or to RSP shall be sent to:

Our Address:

TUCOWS Inc.
96 Mowat Avenue
Toronto, Ontario M6K 3M1
CANADA
Attention: Legal Affairs

and in the case of notification to you shall be to the address specified in the ?Administrative Contact? in your WHOIS record.

26. **ENTIRETY.** You agree that this Agreement, the rules and policies published by us and the Dispute Policy are the complete and exclusive agreement between you and us regarding our Services. This Agreement and the Dispute Policy supersede all prior agreements and understandings, whether established by custom, practice, policy or precedent.
27. **GOVERNING LAW.** This Agreement shall be governed by and interpreted and enforced in accordance with the LAWS OF Province of ontario and the FEDERAL LAWS OF canada applicable therein without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in ontario and you irrevocably consent to the jurisdiction of such courts.
28. **INFANCY.** You attest that you are of legal age to enter into this Agreement.
29. **FOREIGN LANGUAGE: Controlling Language.** In the event that you are reading this agreement in a language other than the English language, you acknowledge and agree that the English language version hereof shall prevail in case of inconsistency or contradiction in interpretation or translation.
30. **Acceptance of Agreement.** YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF

THE SERVICE AND ARE NOT RELYING ON ANY REPRESENTATION AGREEMENT, GUARANTEE OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.