

## Appendix E

### Acceptable Use Policy

**Introduction:** This acceptable use policy (the "Policy") defines acceptable practices for the use of ION's services (the "Service"). By using the Service, Customer acknowledges that they and their users that have gained access to the Service through Customer account ("Users") are responsible for compliance with the Policy. Customer is responsible for violations of this Policy by any User that accesses the Services through their account. While it is not ION's intent to control or monitor online experience or the content of online communications, ION may edit or remove content that ION deems to be in violation of the Policy or that ION otherwise deems unlawful, harmful or offensive. The Policy applies to all aspects of the Service. "ION" means Empire State Independent Network, LLC, and all of its affiliates (including direct and indirect subsidiaries and parents). "ION Network" includes, without limitation, ION's constructed or leased transmission network, including all equipment, systems, facilities, services and products incorporated or used in such transmission network.

This Policy is designed to assist in protecting the ION Network, the Service, our Users and the Internet community as a whole from improper and/or illegal activity over the Internet. In situations where data communications are carried across networks of other Internet Service Providers (ISPs), Users of the ION Network must also conform to the applicable acceptable use policies of such other ISPs.

#### Rights of ION

**Suspension or Termination of Service:** If Users engage in conduct while using the Service that violates the Policy, or is otherwise illegal or improper, ION reserves the right to suspend and/or terminate the Service or the User's access to the Service. ION will generally attempt to notify Customer of any activity in violation of the Policy and request that the User cease such activity; however, in cases where the operation of the ION Network is threatened or cases involving unsolicited commercial email/SPAM, mail relaying, alteration of Customer's source IP address information, denial of service attacks, illegal activities, suspected fraud in connection with the use of Service, harassment or copyright infringement, ION reserve the right to suspend or terminate Customers Service or the User's access to the Service without notification. In addition, ION may take any other appropriate action

against a User for violations of the Policy. ION does not make any promise, nor does ION have any obligation, to monitor or police activity occurring using the Service and will have no liability to any party, including Customer, for any violation of the Policy.

**Cooperation with Investigations:** ION will cooperate with appropriate law enforcement agencies and other parties involved in investigating claims of illegal or inappropriate activity. ION reserves the right to disclose Customer information to the extent authorized by federal or state law. In those instances involving child pornography, ION complies with all applicable federal and state laws including providing notice to the National Center for the Missing and Exploited Children or other designated agencies.

**Modifications to Policy:** ION reserves the right to modify this Policy at any time without notice. ION will attempt to notify Customer of any such modifications either via e-mail or by posting a revised version of the Policy on our Web site, [www.I-O-N.com](http://www.I-O-N.com).

**Filters:** ION reserve the right to install and use, or to have you install and use, any appropriate devices to prevent violations of this Policy, including devices designed to filter or terminate access to the Service.

#### Prohibited Uses

**Illegal Activity:** The Service shall not be used for any unlawful activities or in connection with any criminal or civil violation and the Services shall in all cases be used in compliance with applicable law. Use of the Service for transmission, distribution, retrieval, or storage of any information, data or other material in violation of any applicable law or regulation (including, where applicable, any tariff or treaty) is prohibited. This includes, without limitation, the use or transmission of any data or material protected by copyright, trademark, trade secret, patent or other intellectual property right without proper authorization and the transmission of any material that constitutes an illegal threat, violates export control laws, or is obscene, defamatory or otherwise unlawful.

**Unauthorized Access/Interference:** A User may not attempt to gain unauthorized access to, or attempt to interfere with or compromise the normal functioning,

operation or security of, any portion of the ION Network. A User may not use the Service to engage in any activities that may interfere with the ability of others to access or use the Service or the Internet. A User may not use the Service to monitor any data, information or communications on any network or system without authorization. A User may not attempt to gain unauthorized access to the user accounts or passwords of other Users.

**Unsolicited Commercial Email Spamming/Mailbombing:** A User may not use the Service to transmit unsolicited commercial e-mail messages or deliberately send excessively large attachments to one recipient. Any unsolicited commercial e-mail messages or a series of unsolicited commercial e-mail messages or large attachments sent to one recipient is prohibited. In addition, "spamming" or "mailbombing" is prohibited. Use of the service of another provider to send unsolicited commercial email, spam or mailbombs, to promote a site hosted on or connected to the ION Network, is similarly prohibited. Likewise, a User may not use the Service to collect responses from mass unsolicited e-mail messages.

**Spoofing/Fraud:** Users are prohibited from intentionally or negligently injecting false data into the Internet, for instance in the form of bad routing information (including but not limited to the announcing of networks owned by someone else or reserved by the Internet Assigned Numbers Authority) or incorrect DNS information. A User may not attempt to send e-mail messages or transmit any electronic communications using a name or address of someone other than the User for purposes of deception. Any attempt to impersonate someone else by altering a source IP address information or by using forged headers or other identifying information is prohibited. Any attempt to fraudulently conceal, forge or otherwise falsify a User's identity in connection with use of the Service is prohibited.

**USENET Postings:** All postings to USENET groups must comply with that group's charter and other policies. Users are prohibited from cross posting to unrelated news groups or to any news groups where the post does not meet that group's charter. Continued posting of off-topic messages, including commercial messages (unless specifically invited) is prohibited. Disrupting newsgroups with materials, postings or activities that are (as determined by ION in its sole discretion) frivolous, unlawful, obscene, threatening, abusive, libelous, hateful, excessive or repetitious, unless such materials or activities are expressly allowed or encouraged under the newsgroup's name, FAQ or charter.

**Complaints:** ION receives complaints directly from Internet users, through Internet organizations and through other parties. ION shall not be required to determine the validity of complaints received before taking action under this AUP. A complaint from the recipient of commercial email, whether received directly or through an anti-spamming organization, shall be evidence that the message was unsolicited. ION has no obligation to forward the complaint to the User or to identify the complaining parties.

The following activities are also prohibited:

- Intentionally transmitting files containing a computer virus or corrupted data.
- If ION has specified bandwidth limitations for Customer account, use of the Service shall not be in excess of those limitations. If a User is accessing the Service via a dial-up connection, ION may terminate the user session if the User is connected for more than 7 days in order to protect ION Network resources and maintain Service availability for others.
- Attempting to circumvent or alter the processes or procedures to measure time, bandwidth utilization, or other methods to document use of ION's services.
- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to deliver unsolicited commercial email.
- Any activity that disrupts, degrades, harms or threatens to harm the ION Network or the Service.
- Any use of another party's electronic mail server to relay email without express permission from such other party is prohibited.
- Any other inappropriate activity or abuse of the Service (as determined by us in our sole discretion), whether or not specifically listed in this Policy, may result in suspension or termination of the User's access to or use of the Service.

This listing of prohibited activities is not exhaustive and ION reserves the right to determine that any conduct that is or could be harmful to the ION Network, ION's customers or Internet users is in violation of this Policy and to exercise any or all of the remedies contained in this Policy.

**Responsibilities of Customers:** Users are entirely responsible for maintaining the confidentiality of password and account information, as well as the security of their

network. Customer agrees immediately to notify ION of any unauthorized use of their account or any other breach of security known to Customer. If Customer becomes aware of any violation of this Policy by any person, including Users that have accessed the Service through their account, Customer is required to notify ION.

**Impending Security Event Notification:** All Users of the ION Network are responsible for notifying ION immediately if they become aware of an impending event that may negatively affect the ION Network. This includes extortion threats that involve threat of “denial of service” attacks, unauthorized access, or other security events.

**Configuration:** All Users of the ION Network are responsible for configuring their own systems to provide the maximum possible accountability. ION shall not be liable for any damage caused by such system configurations regardless of whether such configurations have been authorized or requested by ION. For example, Users should ensure there are clear "path" lines in news headers so that the originator of a post may be identified. Users should also configure their Mail Transport Agents (MTA) to authenticate (by look-up on the name or similar procedures) any system that connects to perform a mail exchange, and should generally present header data as clearly possible. As another example, users should maintain logs of dynamically assigned IP addresses. Users of the ION Network are responsible for educating themselves and configuring their systems with at least basic security. Should systems at a User's site be violated, the user is responsible for reporting the violation and then fixing the exploited system. For instance, should a site be abused to distribute unlicensed software due to a poorly configured FTP (File Transfer Protocol) Server, the user is responsible for re-configuring the system to stop the abuse.

**Complaints:** In most cases, ION will notify Customer of complaints received by ION regarding an alleged violation of this Policy. Customer agrees to promptly investigate all such complaints and take all necessary actions to remedy any violations of this Policy. ION may inform the complainant that Customer is investigating the complaint and may provide the complainant with the necessary information to contact them directly to resolve the complaint. Customer shall identify a representative for the purposes of receiving such communications.

**Privacy:** Because the Internet is an inherently open and insecure means of communication, any data or information a User transmits over the Internet may be susceptible to interception and alteration. Subject to our Online Privacy

Policy, ION makes no guarantee regarding, and assume no liability for, the security and integrity of any data or information a User transmits via the Service or over the Internet, including any data or information transmitted via any server designated as "secure."

**Claims of Copyright Infringement:** It is ION's policy to terminate, in appropriate circumstances, the rights of subscribers who are repeat infringers to access or use of this service. By entering into this contract, Customer agrees not to post, host, transmit, or store on ION servers any software, audio or video files, photographs, images, documents, text or other material (“Content”) that infringes any third-party's copyrights. Customer further expressly agree that ION may disable access to or remove any Content from ION servers (including, but not limited to, Content that Customer has posted, hosted, transmitted or stored) that ION believes to be infringing (whether or not ION is in fact correct in its assessment) or that is subject of a notification duly sent to ION pursuant to the Digital Millennium Copyright Act (“Notification”). If Customer believes that ION has mistakenly disabled access to or removed Content that is non-infringing, Customer may contact ION at [support@I-O-N.com](mailto:support@I-O-N.com), in which case ION will provide Customer with a copy of the Notification or the basis for ION's action so that Customer may resolve the matter directly with the copyright owner. Under no circumstances may ION be held liable for removing or disabling access to Content.

**Additional Terms and Conditions:** The use of the ION Network by a customer of ION is subject to the terms and conditions of any agreements entered into by such customer and ION. This Policy is incorporated into such agreements by reference.

**Complaints and Contact Information:** Any complaints regarding prohibited use or other abuse of the ION Network, including violations of this Policy, should be sent to ION. Please include all applicable information that will assist ION in investigating the complaint, including all applicable headers of forwarded messages. Sites experiencing live attacks from ION customers should contact ION (telephone 518-689-4550) to submit a complaint as quickly as possible. Describe the urgency of the situation should Customer need immediate attention. If Customer is unsure whether any contemplated use or action is permitted, please submit questions or comments to ION at [support@I-O-N.com](mailto:support@I-O-N.com).