

# Terms of Service

## Modification History

- July 22nd, 2005: Drafted
- December 17th, 2005: Substantial content modifications.
- January 29th, 2009: Removed section 20 discussing SLA due to varying levels of SLA from product to product. Removed section 18.5 dealing with VPS as this product is not offered by our company.
- February 7th, 2009: Edited section 1 to change acceptable use verbiage.
- November 27th, 2009: Changed verbiage of section 19 to improve grammar and readability.

## Agreement

The IRC Company, Inc. ("The Company") agrees to furnish services to the Subscriber, subject to the following TOS (Terms of Service).

Use of The IRC Company, Inc. Service constitutes acceptance and agreement to The IRC Company, Inc.'s AUP as well as The IRC Company, Inc.'s TOS (Terms of Service).

All provisions of this contract are subject to the TOS (Terms of Service) of The IRC Company, Inc. and AUP (acceptable use policy). The AUP may be changed from time to time at the discretion of the Company. Subscriber understands that change to the AUP by the Company shall not be grounds for early contract termination or non-payment.

This Agreement shall be construed in all respects in accordance with the laws of any and all government bodies where The IRC Company, Inc. conducts business. Venue will be determined by The IRC Company, Inc.

**1. Disclosure:** The AUP specifically prohibits the use of our service for illegal activities. The Subscriber is responsible for ensuring that hosted content complies with applicable laws and acknowledges that The IRC Company, Inc. has no responsibility to monitor or enforce content. The IRC Company, Inc. may choose to terminate all services set forth in this Agreement if a validated written request is received from a law enforcement agency having competent jurisdiction. Subscriber information will be released if required by court order. In addition, The IRC Company, Inc. shall have the right to terminate all service set forth in this Agreement for any reason deemed appropriate..

**2. Service Rates:** Subscriber acknowledges that the nature of the service furnished and the initial rates and charges have been communicated to Subscriber. Subscriber is aware that the Company may prospectively change the specified rates and charges from time to time. The promotional offer is contingent upon Company achieving and maintaining its cost of service goals including but not limited to rates charged to company by its suppliers. **2.1.: Bandwidth Billing Method.** All bandwidth services provided by the Company, unless otherwise agreed upon in writing, are billed using the 95th percentile method. For billing purposes the Company takes a five minute estimate on the switch port using SNMP. Each five minute sample taken over the course of the month will be recorded and plotted on a graph. The highest five percent of these samples for the larger of inbound or outbound utilization are discarded and the next highest sample is used for billing purposes.

**3. Payment:** Establishment of this service is dependent upon receipt by the Company of payment of stated charges. Subsequent payments are due on the anniversary date of the month for that month's service. Subscriber agrees that The Company automatically charges subscriber`s credit card every month.

**4. Payments and Fees:** Credit cards that are declined for any reason are subject to a \$1.00 declination fee. Service will be interrupted on account becomes past due, regardless of delinquency. The IRC Company, Inc. may, as a courtesy service, send a warning notice prior to disconnection but shall not be required to do so. Accounts not paid by due date are subject to a late fee of \$35.00 or 10%, whichever is greater. Accounts that are not collectable by The IRC Company, Inc. may be turned over to an outside collection agency for collection. If your account is turned over for collection, you agree to pay the company a "Processing and Collection" Fee of not less than \$50.00 nor more than \$150.00 in addition to any attorney fees necessary for the collection. If you desire to cancel your account, please follow the proper procedure to do this as outlined in this TOS.

**4.1. Reactivation Fees:** In the event that The IRC Company, Inc. deactivates service for non-payment or any AUP/ToS violation, The IRC Company, Inc. reserves the right to charge a reactivation fee of \$35.00 for any dedicated server or single server co-location and \$100.00 for any multi-server or cabinet/rack co-location. If customer has facility access this fee may be increased at up to \$100.00 per badge.

**5. Refund and Disputes:** All payments to The IRC Company, Inc. are non refundable. This includes the one time setup fee and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 30 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in The IRC Company, Inc.'s sole discretion is a valid charge under the provisions of the TOS and /or AUP, you agree to pay The IRC Company, Inc. an "Administrative Fee" of not less than \$50 and not more than \$150.

**6. Failure to Pay:** The Company may temporarily deny service or terminate this Agreement upon the failure of Subscriber to pay charges when due. Such termination or denial will not relieve Subscriber of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.

**7. Account Cancellation:** All requests for canceling accounts must be made via e-mail to [billing@blacklotus.net](mailto:billing@blacklotus.net) with at least 7 days. You must have all account information to cancel.

**8.** Subscriber acknowledges that the service provided is of such a nature that service can be interrupted for many reasons other than the negligence of the company and that damages resulting from any interruption of service are difficult to ascertain. Therefore, subscriber agrees that the company shall not be liable for any damages arising from such causes beyond the direct and exclusive control of the company. Subscriber further acknowledges that the company's liability for its own negligence may not in any event exceed an amount equivalent to charges payable by subscriber for services during the period damages occurred. In no event shall the company be liable for any special or consequential damages, loss or injury.

**9. Invoicing:** The Company does not send invoices via postal mail and is under no obligation to transmit invoices electronically. Customer assumes the responsibility of using the appropriate billing interface provided by The IRC Company, Inc. for purposes of reviewing and satisfying invoices.

**10. Data center public access:** Public access to The IRC Company, Inc. data center is allowed only as determined by management on a case by case basis.

**11. Support Boundaries:** The IRC Company, Inc., provides 24 x 7 technical support to our subscribers as permitted by internal staffing and availability. The IRC Company, Inc. does not offer tech support for application specific issues. Requests for support must be transmitted via the appropriate support interface provided by The IRC Company, Inc. While support may be available by telephone, e-mail, chat, or similar methods of communication as a matter of convenience, only issues submitted using a ticket on the official support interface will be recognized as official requests for service.

**12. SPAM and Unsolicited Commercial e-mail (UCE) :** The IRC Company, Inc. takes a zero tolerance approach to the sending of Unsolicited Commercial e-mail (UCE) or SPAM over our network. Very simply this means that customers of The IRC Company, Inc. may not use or permit others to use our network to transact in UCE. Customers of The IRC Company, Inc. may not host, or permit hosting of, sites or information that is advertised by UCE from other networks. Violations of this policy carry severe penalties, including termination of service.

**12.1.** Violation of The IRC Company, Inc.'s SPAM policy will result in significant consequences. Upon notification of an alleged violation of our SPAM policy, The IRC Company, Inc. will initiate an immediate investigation (within 48 hours of notification). During the investigation, The IRC Company, Inc. may restrict customer access to the network to prevent further violations. If a customer is found to be in violation of our SPAM policy, The IRC Company, Inc. may, at its sole discretion, restrict, suspend or terminate customer's account. Further, The IRC Company, Inc. reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. The IRC Company, Inc. will notify law enforcement officials if the violation is believed to be a criminal offense.

**12.2.** First violations of this policy will result in an "Administrative Fee" of \$250 and your

account will be reviewed for possible immediate termination. A second violation will result in an "Administrative Fee" of \$500 and immediate termination of your account. Users who violate this policy agree that in addition to these "Administrative" penalties, they will pay "Research Fees" not to exceed \$175 per hour that The IRC Company, Inc. personnel must spend to investigate the matter. PLEASE, DO NOT SPAM from your account.

**12.3.** As our Customers are ultimately responsible for the actions of their clients over the The IRC Company, Inc. network, it is advisable that Customers develop a similar, or stricter, policy for their clients.

**IMPORTANT NOTICE:** Anyone hosting websites or services on their server that support UCE or cause any of our IP space to be listed in any of the various Spam Databases will have their server immediately removed from our network. The server will not be reconnected until such time that you agree to remove ANY and ALL traces of the offending material immediately upon reconnection and agree to allow us access to the server to confirm that all material has been COMPLETELY removed. Severe violations may result in immediate and permanent removal of the server from our network without notice to the customer. Any server guilty of a second violation WILL be immediately and permanently removed from our network without notice.

## **13. Network**

**13.1. IP Address Ownership:** If The IRC Company, Inc. assigns Customer an Internet Protocol address for Customer's use, the right to use that Internet Protocol address shall belong only to The IRC Company, Inc., and Customer shall have no right to use that Internet Protocol address except as permitted by The IRC Company, Inc. in its sole discretion in connection with the Services, during the term of this Agreement. The IRC Company, Inc. shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by The IRC Company, Inc., and The IRC Company, Inc. reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion. Our allocation of IP addresses is limited by ARIN's new policies. These new policies state that use of IP addresses for IP based virtual hosts will not be accepted as justification for new IP addresses. What this means to you is that you MUST use name-based hosting where possible. We will periodically review IP address usage, and if we find that clients are using IP addresses where name-based hosting could be used, we will revoke authorization to use those IP addresses that could be used with name-based hosting. All IPs that are allocated to client must be utilized within 48 hours. If allocated IPs are not utilized within this time frame The Company reserves the right to retract IPs that are not being utilized without notifying the client

**13.2. Bandwidth Usage.** The IRC Company, Inc. will monitor Customer's bandwidth. The IRC Company, Inc. shall have the right to take corrective action if Customer's usage negatively impacts other clients.

**13.3. System and Network Security:** Users are prohibited from violating or attempting to violate the security of the The IRC Company, Inc. Network. Violations of system or network security may result in civil or criminal liability. The IRC Company, Inc. will investigate occurrences, which may involve such violations and may involve, and cooperate with, law

enforcement authorities in prosecuting Users who are involved in such violations. These violations include, without limitation:

**13.3.1.** Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access.

**13.3.2.** Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.

**13.3.3.** Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".

**13.3.4.** Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.

**13.3.5.** Taking any action in order to obtain services to which such User is not entitled.

**13.3.6.** Notification of Violation:

**14.1.** The IRC Company, Inc. is under no duty to review each customer's or user's activities to determine if a violation of the AUP has occurred, nor do we assume any responsibility through our AUP to monitor or police Internet-related activities.

**14.2.** First violation: Any User, which The IRC Company, Inc. determines to have violated any element of this Acceptable Use Policy, shall receive an e-mail, warning them of the violation. The service may be subject at The IRC Company, Inc.'s discretion to a temporary suspension pending a User's agreement in writing, to refrain from any further violations.

**14.3.** Second Violation: Users that The IRC Company, Inc. determines to have committed a second violation of any element of this Acceptable Use Policy shall be subject to immediate suspension or termination of service without further notice.

**14.4.** We reserve the right, to drop the section of IP space involved in Spam or Denial-of-Service complaints if it is clear that the offending activity is causing great harm to parties on the Internet. In particular, if open relays are on your network or a customer's network, or if denial of service attacks are originating from your network. In certain rare cases, we may have to do this before attempting to contact you. If we do this, we will contact you as soon as is feasible.

**15.** Suspension of Service or Cancellation: The IRC Company, Inc. reserves the right to suspend network access to any customer if in the judgment of the The IRC Company, Inc. network administrators the customer's server is the source or target of the violation of any of the other terms of the AUP or for any other reason which The IRC Company, Inc. chooses. If inappropriate activity is detected, all accounts of the Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured. In extreme cases, law enforcement will be contacted regarding the activity. The customer will not be credited for the time the customer's machines were suspended.

**16.** The IRC Company, Inc. reserves the right to amend its policies at any time. All Sub-Networks, resellers and unmanaged servers of The IRC Company, Inc. must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate Cancellation. You will be held responsible for the actions of your clients in the matter described on these Terms and conditions. Therefore, it is in your best interest to implement a similar or stricter Terms and conditions or otherwise called Acceptable Terms of use policy.

**17. Indemnification:** The IRC Company, Inc. wishes to emphasize that in agreeing to the The IRC Company, Inc. Acceptable Use Policy (AUP) and Terms of Service (ToS), customer indemnifies The IRC Company, Inc. for any violation of the Acceptable Use Policy (AUP) and Terms of Service (ToS) that results in loss to The IRC Company, Inc. or the bringing of any claim against The IRC Company, Inc. by any third-party. This means that if The IRC Company, Inc. is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against The IRC Company, Inc., plus all costs and attorney's fees.

**18. Miscellaneous Provisions:** You must provide us with, and keep current, good contact information for you. E-mail, fax, and telephone contacts are used, in that order of preference. Servers on the Staminus network are also subject to the Staminus TOS.

**18.1.** A waiver by the Company of any breach of any provision of this Agreement by Subscriber shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof.

**18.2.** Subscriber shall not transfer or assign this Agreement without the prior written consent of the Company. Company may assign Agreement at anytime without consent from or notice to Subscriber. Company reserves right to cancel customers rights under this contract at anytime without further obligation.

**18.3.** The IRC Company, Inc. takes no responsibility for any material input by others and not posted to the The IRC Company, Inc. Network by The IRC Company, Inc.. The IRC Company, Inc. is not responsible for the content of any other websites linked to the The IRC Company, Inc. Network; links are provided as Internet navigation tools only. The IRC Company, Inc. disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy.

**18.4.** The IRC Company, Inc. is not responsible for any damages your business may suffer. The IRC Company, Inc. does not make implied or written warranties for any of our services. The IRC Company, Inc. denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by The IRC Company, Inc.

**19. Responsibility for Content:** You, as The IRC Company, Inc.'s customer, are solely responsible for the content stored on and served by your account.