



## Acceptable Use Policy

### 1. Introduction

- 1.1. Any words in this Acceptable Use Policy that have a special meaning have capital letters and are shown in bold print, and the meanings of those words are set out in the Dictionary at the end of this document.
- 1.2. This Acceptable Use Policy (AUP) applies to the use of any Service.
- 1.3. Your use of the Service is subject to the following rules and guidelines contained in this AUP.
- 1.4. This AUP is intended to ensure that your use of the Service does not break any laws, hinder the efficient operation of the Swoop Network, interfere with the rights of any other customer of Swoop, or interfere with the rights of Internet users.
- 1.5. You must ensure that any use of the Service complies with this AUP.
- 1.6. You are responsible for any use of your Service by any person (for example a friend, family member, guest, employee or your customer) who gains access to your Service by means of the Customer Equipment, even if you did not consent to the use.
- 1.7. If there is any conflict between a provision of this AUP, and a provision of the terms and conditions of the agreement that apply to your use of the Service, the provision of the AUP will prevail.
- 1.8. The consequences of a contravention of this AUP are set out in clause 10 of this AUP, and include the right for Swoop to immediately suspend or terminate the Service.
- 1.9. If you want to complain about a contravention of this AUP by another Swoop user, you should make your complaint to our Customer Service Centre on (02) 4336 2020 or by emailing your complaint to [support@Swoop.com.au](mailto:support@Swoop.com.au).



## 2. Changes to Acceptable Use Policy

- 2.1. Swoop may change this AUP by giving you notice of the change by any of the following means:
  - (a) pre-paid post to the last address that you gave to Swoop; or
  - (b) email to your Primary Email Address; or
  - (c) placing a notice on the Website.
  
- 2.2. You must make sure that you are aware of any changes by regularly checking for notices and emails from Swoop on:
  - (a) the Website; and
  - (b) your Primary Email Address; and
  - (c) any email address to which you have arranged for email to be forwarded from your Primary Email Address.
  
- 2.3. Swoop must give you at least 30 days notice of a change unless:
  - (a) the change must be made immediately in order to act legally, or because the change is required by law, and in these circumstances Swoop will give you as much notice as practicable; or
  - (b) the change will benefit you, in which case Swoop can make the change without giving you notice.
  
- 2.4. If Swoop makes a change to this AUP other than in the circumstances described in clause 2.3, and the change will mean that you are materially worse off, you can choose to terminate your Agreement with Swoop under the Terms and Conditions, and you should carefully read the terms and conditions of the Agreement for details of how to do this, and your rights on termination. (An up-to-date copy of your Agreement with Swoop for the Service is available at our Website.

### 3. Illegal Activities

- 3.1. You must not use the Service for any activity that breaches or violates any a law, order or regulation of any State, Territory, the Commonwealth of Australia, or of any other country, or the lawful requirement of any authority.
- 3.2. Activities that are prohibited under clause 3.1 include:
- (a) the posting, dissemination or accessing of unlawful material, which includes:
    - (i) material that is or would be classified RC or X; and
    - (ii) material that is or would be classified R, where a Restricted Access System, which complies with the criteria determined by the Australian Communications and Media Authority ([www.acma.gov.au](http://www.acma.gov.au)), is not in place;
  - (b) posting or disseminating material which violates the copyright or other intellectual property rights of others, and you assume all risks regarding the determination of whether material is in the public domain;
  - (c) posting or disseminating material that defames, harasses or abuses anyone or violates their privacy;
  - (d) conducting pyramid or other illegal soliciting schemes;
  - (e) the conduct of any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature;
  - (f) engaging in misleading or deceptive marketing practices; and

(g) the conduct of a business that is illegal.

3.3. Paragraph 3.2(a) refers to R, RC and X content which includes material that contains:

- (a) detailed instruction in crime, violence or drug use;
- (b) child pornography; bestiality; excessive violence or sexual violence;
- (c) real depictions of actual sexual activity;
- (d) obscene material; and
- (e) content hosted in Australia which is classified R and not subject to a Restricted Access System.

3.4. R rated Content includes but is not limited to:

- (a) material containing excessive and/ or sexual violence; implied or simulated sexual activity; and
- (b) material which deals with issues or contains depictions that requires an adult perspective.

#### **4. Security**

4.1. Because you are responsible for any misuse of the Service (see clauses 1.5 and 1.6), you must take reasonable steps to ensure that no-one gains unauthorized access to the Service.

4.2. The Service must not be used to:

- (a) obtain, or to attempt to obtain, unauthorized access to;
- (b) carry out any unauthorized activity on, or in relation to;

- (c) do anything which is intended or likely to adversely affect the functionality of; any computer, our Network, or any other system or network.

4.3. The activities that are prohibited under clause 4.2 include any unauthorized:

- (a) access to, monitoring or use of, any data on any system or network;
- (b) probing, scanning, or testing of the vulnerability of any system or network;
- (c) breaching of any security or authentication measure for a system or network;
- (d) accessing of the account or private information of any user of any system or network;
- (e) accessing of any server in violation of any acceptable use policy of that server; and includes any attempt to do any of the things mentioned in paragraphs (a) to (e).

4.4. The Service must not be used for the actual or attempted distribution of:

- (a) tools that are designed, or intended for use, for compromising security (including password guessing programs, cracking tools, packet sniffers or network probing tools); or
- (b) the transmission or dissemination of any information or software, which contains a virus or other malicious or harmful feature.

4.5. You must not use or attempt to use the Service, or allow the Service to be used, in a way that may interfere with, or facilitate

interference with the technical operation of the Service or any other computer, system, network or telecommunications services.

- 4.6. The activities that are prohibited under clause 4.5 include:
- (a) denial of service attacks;
  - (b) flooding of a network;
  - (c) overloading a service;
  - (d) the improper seizing and abuse of operator privileges and attempts to "crash" a host;
  - (e) interfering or attempting to interfere with the regular workings of our Network, Swoops systems or network connections.
- 4.7. You are solely responsible for the security of any device you choose to connect to the Service, and any data stored on that device.
- 4.8. Swoop recommends that you do not enable file or printer sharing, or to make available services on your computer to incoming connections over our Network, but if you choose to do so Swoop recommends that any files or services you do choose to make available should be protected with a password that is very difficult to ascertain or replicate, or as otherwise appropriate, to prevent unauthorized access.
- 4.9. You must notify Swoop immediately of:
- (a) any unauthorized or attempted unauthorized use of the Service; and
  - (b) any other breach or attempted breach of the security of our Network and/or your computer or system.

## 5. Internet Risks

5.1. When you access the Internet, there are a number of activities that you can perform that may be harmful, or cause you loss or damage, or which may allow others to access the Service and/or your equipment, including:

- (a) downloading Content, which may introduce viruses or other harmful features to your computer;
- (b) purchasing goods or services;
- (c) transmitting confidential information, such as your credit card number or other personal information;
- (d) accessing and viewing Content that is hosted on the Internet, or that is otherwise available through the Service and which may be:
  - (i) offensive to some individuals; or
  - (ii) inappropriate for children. (For example, it is possible to obtain access to Content that is pornographic, offensive and/or unsuitable for children.)

5.2. You bear all risk associated with the activities referred to in clause 5.1, and Swoop will be under no liability to you, or to any other person using the Service, for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such activities.

5.3. Parents may minimise the risk of accessing illegal or offensive Content as well as manage children's use of the Internet, by using a Filtering Solution.

5.4. The Internet Industry Association ([www.iiia.net.au](http://www.iiia.net.au)) provides a list of approved Filtering Solutions, and Swoop will make links

available at the Website by means of which you may download, and obtain instructions for the use of, one or more of these Filtering Solutions.

- 5.5. You have the right to complain to the Australian Communications and Media Authority about Internet Content which is or would be rated X or RC, or R and does not have a Restricted Access System in place.

## **6. Content Publishing**

- 6.1. You are solely responsible for any Content that you publish via websites, email, newsgroups or other publishing mediums accessed by means of the Service.
- 6.2. You must not publish via websites, email, newsgroups or other publishing mediums accessible by means of the Service any material that is or would be RC or X (see clause 3.3 above).
- 6.3. You must take appropriate precautions to prevent minors from receiving Content that may be inappropriate for them, including implementing a Restricted Access System on Content that is or would be rated R by the classification Board.
- 6.4. Swoop reserves the right to refuse to post or to remove, in whole or in part, any information or materials that Swoop, in its sole discretion deems to be offensive, indecent, or otherwise inappropriate regardless of whether such material or its dissemination is unlawful.
- 6.5. The information or materials referred to in clause 6.4 includes:
  - (a) obscene material;
  - (b) fraudulent or deceptive statements;
  - (c) threatening, intimidating or harassing statements;





- (d) material that violates or appears to violate the privacy or property rights of others, such as copyright or trade marks;
  - (e) material that is, or that Swoop considers is likely to be, defamatory of another person.
- 6.6. Legislation of the Commonwealth of Australia allows the Australian Communications and Media Authority to direct Swoop to remove certain prohibited or potentially prohibited Content from its servers or to prevent users from accessing certain Internet Content.
- 6.7. Swoop may, at any time and without notice to you, take any steps that it considers necessary to ensure compliance with any relevant industry code of practice, or notification or direction from the Australian Communications and Media Authority, including:
  - (a) removing any Content (including part or all of a website) from Swoop's servers;
  - (b) terminating or suspending the Service;
  - (c) filtering the Internet Content made available to you or restricting access to a particular website.
- 6.8. Swoop reserves the right to discontinue access to any Usenet newsgroup from a Usenet news feed provided by Swoop at any time and for any reason.
- 6.9. You acknowledge that:
  - (a) Swoop is under no obligation to monitor transmissions made, or Content published, by means of the Service; and
  - (b) under the terms and conditions of the agreement that apply to your use of the Service, Swoop and its

agents have the right to monitor and disclose such transmissions and Content from time to time.

- 6.10. By using the Service to reproduce, publish, display, transmit or distribute Content, you warrant that the Content complies with this AUP and you authorise Swoop and its agents to reproduce, publish, display, transmit and distribute that Content as necessary for Swoop to deliver the Content in a timely manner.

## **7. Spam and Email**

7.1. You may not use the Service to:

- (a) send, allow to be sent, or assist in the sending of Spam;
- (b) use or distribute any software designed to harvest email addresses; or
- (c) otherwise breach the Spam Act.

7.2. Activities that are prohibited by clause 7.1 include using the Service to:

- (a) send bulk and/or unsolicited messages, including commercial advertising, informational announcements, charity requests, petitions for signatures, chain letters and political or religious messages, unless the individuals to whom they are sent have explicitly requested them; or
- (b) collect or harvest screen names or email addresses of others for the purpose of sending unsolicited emails or for exchange; or

- (c) send email without reasonable cause, or for the purpose of causing annoyance, inconvenience or needless anxiety to any person; or
- (d) send messages to any individual who has indicated that he/she does not wish to receive messages from you, or from any person using the Service with your permission; or
- (e) collect or redirect responses from unsolicited email sent from accounts on other Internet hosts or email services which violates this AUP or the equivalent AUP or policy of any other Internet service provider or web site; or
- (f) transmit unsolicited messages that direct the recipient to any web site or other resource that uses our Network; or
- (g) send numerous copies of the same or substantially similar messages, or to send very large messages or files, to a recipient with the intent to disrupt a server or account is prohibited ("Mail bombing"); or
- (h) propagate chain letters, whether or not the recipient wishes to receive such mailings; or (i) send messages with forged message headers, or with their source obscured, altered, disguised or deleted.

7.3. We may suspend provision of the Service to you in the following events:

- (a) if the Service provided to you is being used to host any device or service that allows email to be sent between third parties not under your authority and control; or

- (b) if you are in breach of clause 7.1.
- 7.4. Before we suspend your Service under clause 7.3 Swoop will first make reasonable attempts to contact you and give you the opportunity to address the problem within a reasonable time period, and what is reasonable in this context will depend on the severity of the problems being caused by the open service or breach referred to above.
- 7.5. If you request it Swoop will, to the extent that it is reasonably able to do so, provide you with information about the nature of open relays and suggested resolutions to your breach of clause 7.1.
- 7.6. You agree to use your reasonable best endeavours to secure any device or network within your control against being used in breach of clause 7.1 by third parties, including where appropriate:
  - (a) the installation and maintenance of antivirus software;
  - (b) the installation and maintenance of firewall software; and
  - (c) the application of operating system and application software patches and updates.
- 7.7. Our right to suspend your Service applies regardless of whether the open service is provided or the breach is committed intentionally, through misconfiguration, or by other means not authorised by you including but not limited to through a Trojan horse or virus.
- 7.8. We may scan any IP address ranges allocated to you for your use with the Service in order to detect the presence of open or otherwise misconfigured mail and proxy servers.
- 7.9. If the Service is suspended and the grounds upon which it was suspended are not corrected by you within seven days, Swoop may terminate the Service.



- 7.10. If Swoop terminates the Service under clause 7.9, you may apply for a prorate refund of any pre-paid charges for the Service, but Swoop will have the right to impose a reasonable fee for any costs incurred as a result of the conduct that resulted in the suspension.
- 7.11. Swoop is not responsible for the forwarding of email sent to you if your Service has been suspended or terminated for any reason, and Swoop may, at its sole discretion:
- (a) return such email to the sender; or
  - (b) ignore, delete or temporarily store that email.

## **8. Online Forums**

- 8.1 The Service must not be used to post messages to an Online Forum that does not comply with the rules and/or policies for the use of the forum.
- 8.2 Any person using the Service must find out what the rules and policies of an Online Forum are, before posting to it.
- 8.3 A person using the Service must only post a binary file to an Online Forum that is specifically established for that purpose.
- 8.4 The Service must not be used to post or cross-post the same or substantially similar messages to more than eight Online Forums.
- 8.5 The Service must not be used to significantly hinder, or attempt to significantly hinder, normal discussion on an Online Forum by the posting of a large number of messages that contain no substantive content.



- 8.6 The Service must not be used by anyone who has been previously banned from an Online Forum to connect to the forum.

## 9. Automated Programs

- 9.1. You must only use an automated program, or a program that maintains a persistent connection to a remote service in conjunction with the Service, when you are physically present at the computer on which the program is running.
- 9.2. Without limiting the meaning of clause 9.1, that clause applies to automated download of software, IRC “bots”, continuous streaming media and peer-to-peer file sharing applications.

## 10. Contravention of AUP

- 10.1. Subject to clause 7, if your Service is used by you or by someone with access to your Service in a way that Swoop, in its sole discretion, believes contravenes this AUP or a provision of the terms and conditions of the agreement that apply to your use of the Service, Swoop may take any action in relation to that contravention that Swoop deems appropriate.
- 10.2. The action that Swoop may take under clause 10.1 includes:
- (a) temporary or permanent removal of Content;
  - (b) cancellation of newsgroup posts;
  - (c) filtering of Internet transmissions;
  - (d) immediate suspension or termination of all or any part of the Service.



- 10.3. Swoop has no liability for any action it takes under this AUP, and may take any other legal or technical action it deems appropriate, including taking action against offenders to recover the costs and expenses of identifying them.
- 10.4. If your use of the service causes loss or damage to a third party, you must pay compensation to that third party if Swoop directs you, in writing, to do so.
- 10.5. You acknowledge that Swoop does not have any obligation to regularly monitor usage of the Service, or any Content posted, disseminated or accessed by means of the Service, however Swoop reserves the right to do so for the purpose of identifying:
  - (a) contraventions of this AUP and/or a provision of the terms and conditions of the agreement that apply to your use of the Service; and
  - (b) to protect our Network and other users of services provided by Swoop.
- 10.6. Swoop reserves the right to investigate suspected violations of this AUP, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on Swoop's servers and network.
- 10.7. During an investigation, Swoop may suspend the account or accounts involved and/or remove material that Swoop considers, in its absolute discretion, to violate, or potentially violate this AUP.
- 10.8. You authorise Swoop and its agents to cooperate with:
  - (a) any law enforcement authority in the investigation of suspected criminal violations; and
  - (b) the system administrator of any other Internet service provider, or of any other network or computing



facilities; for the purpose of enforcing this AUP, and the equivalent acceptable use policy of any other person providing you with services that are the same as or similar to the Service.

- 10.9. Cooperation under clause 10.9 may include Swoop providing your username, IP address, or other identifying information about you.
- 10.10. You authorise Swoop to delete any files, programs, data and email messages associated with the Service on its termination.
- 10.11. Any failure by Swoop to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time.

## 11. General Provisions

- 11.1. You agree that, if any portion of this AUP is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.
- 11.2. This AUP is governed by the laws of the State of New South Wales, and you agree to submit to the non-exclusive jurisdiction of the courts of that State.

## 12. Dictionary

**Australian Communications and Media Authority** - means the authority established by the Broadcasting Services Act 1992 (Cth). (For information about the regulatory regime applying to online Content go to the Authority's website at [www.acma.gov.au](http://www.acma.gov.au).)

**Content** - means all forms of communication including narrative descriptions, graphics (including photographs, illustrations, images,





drawings and logos), executable programs, video recordings and audio recordings.

**Customer Equipment** - means any customer equipment supplied to you by Swoop for use in connection with the Service, and any other equipment which you have deployed for the purposes of obtaining access to or using the Service.

**Electronic Messaging** - includes all forms of electronic communications to other individuals including email, instant messaging, Web to SMS, Internet chat, and Online Forums.

**Filtering Solution** - means Internet filtering software or system approved for use under the IIA Code. IIA Code means the Internet Industry Codes of Practice registered under the Broadcasting Services Act 1992 (Cth). (For information about the Internet Industry Codes of Practice, go to the Communications Alliance website at [www.commsalliance.com.au](http://www.commsalliance.com.au).)

**Include** - means include without limitation.

**Our Network** - means the telecommunications network operated by Swoop through which the Services are provided, including both the hardware and software comprising that network.

**Online Forum** - means a forum accessible on the Internet that is generally devoted to the discussion of a specific topic area, for example newsgroups, message boards, chat rooms or mailing lists.

**Primary Email Address** - means the email address from time to time set up as the first email address for the Services.

**Restricted Access System** - means a Restricted Access System as referred to on the Australian Communications and Media Authority website at [www.acma.gov.au](http://www.acma.gov.au).

**Service** - means service provided to you by Swoop for Internet access.



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**Spam** - means one or more unsolicited commercial electronic messages with an Australian link for purposes of the Spam Act, and derivations of the word 'Spam' have corresponding meanings.

**Spam Act** - means the Spam Act 2003 (Cth) and the Spam Regulations 2004 (Cth).

**Spam Code** - means the Internet Industry Spam Code of Practice registered by the Australian Media and Communication Authority under the Telecommunications Act 1997 (Cth).

**Website** - means the website maintained by Swoop at [www.swoop.com.au](http://www.swoop.com.au).