

nGenx Corporation ("nGenx") is committed to industry best practices concerning security measures to prevent the loss, misuse and alteration of our System and the information in our possession. Accordingly, this Acceptable Use Policy ("AUP") describes prohibited uses of the services offered by nGenx and its affiliates ("Services") and the website located at [www.ngenx.com](http://www.ngenx.com) ("Site"). The examples set forth in this AUP are not exhaustive, and nGenx may modify this Policy at any time by posting a revised version on the Site. By using the Services and/or accessing the Site, you agree to be bound by the latest version of this Policy. Your Services may be suspended if you violate this Policy or authorize anyone else to do so.

### 1. SECURITY VIOLATIONS

You may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network computing device (collectively "System")

Prohibited activities include:

- **Unauthorized Access** – Accessing or using any System without permission, including attempting to probe, scan, or test the vulnerability of a System or to breach any security or authentication measure used by the System.
- **Interception** – Monitoring of data or traffic on a System without permission.
- **Falsification of Origin** – Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route.

### 2. ILLEGAL, HARMFUL, OR OFFENSIVE CONTENT

You may not use, or encourage, promote, facilitate or instruct others to use, the Services, System, or Site for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, or offensive.

Prohibited Activities include:

- **Illegal Activities** – Any illegal activities, including advertising, transmitting, or otherwise making available gambling sites or services or disseminating, promoting or facilitating child pornography.
- **Harmful or Fraudulent Activities** – Activities that may be harmful to others, our operations or reputation, including offering or disseminating fraudulent goods, services, schemes, or promotions or otherwise engaging in deceptive practices.
- **Infringing Content** – Content that infringes or misappropriates the intellectual property or proprietary rights of other.
- **Offensive Content** – Content that is defamatory, obscene, abusive, excessively violent, incites violence, harassing, unfair or deceptive, creates a risk to someone's health and safety, compromises national security, improperly exposes trade secrets or confidential information, promotes illegal drugs, violates export control laws, is invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts.
- **Harmful Content** – Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any System, program, or data, including viruses, Trojan horses, worms, time bombs, or cancel bots.

### 3. NETWORK ABUSE

You may not make network connections to any users, hosts, or networks unless you have permission to communication with them.

Prohibited Activities include:

- **Monitoring or Crawling** – Monitoring or crawling of a System without the express authorization of the System owner. This includes, without limitation, the use or distribution of software designed to covertly gather or transmit information related to third parties.
- **Denial of Service (DoS)** – Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.
- **Intentional Interference** – Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
- **Unintentional Interference** – Using any System in a way that unnecessarily interferes with its normal operation, or that consumes a disproportionate share of the resources of the System.
- **Operation of Certain Network Services** – Operating network services like open proxies, open mail relays, or open recursive domain name services.
- **Avoiding System Restrictions** – Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.
- **Retaliation** – Engaging in any conduct that is likely to result in retaliation against our System, Site, employees, officers, or agents.
- **Vulnerability Testing** – Attempting to probe, scan, penetrate, or otherwise test the vulnerability of a System, whether by passive or intrusive techniques.

### 4. E-MAIL OR OTHER MESSAGE ABUSE

You must comply with the CAN-SPAM Act of 2003, as amended, and all other laws and regulations applicable to bulk or commercial email. Additionally, you must comply with the following:

- You will not distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations, including commercial advertising and information announcements without securing the intended recipients prior consent.
- You must have procedures in place that allow a recipient to revoke their consent, and any such revocation shall be implemented within 72 hours of your receipt.
- You must post an email address for complaints in a conspicuous place on any website associated with the email, you must register that address at [abuse.net](http://abuse.net), and you must promptly respond to any messages sent to that address.
- You will not alter or obscure mail headers or assume a sender's identity without the sender's prior express authorization.

- You may not use our System to send any email or other communications to a person who has indicated that they do not wish to receive it.
- You will not collect email addresses, screen names, or other identifiers without the prior express authorization of the owner of that information.

## 5. COPYRIGHTED MATERIALS

In accordance with the Digital Millennium Copyright Act of 1998, the text of which may be found on the U.S. Copyright Office website at <http://www.copyright.gov/legislation/dmca.pdf>, we will respond expeditiously to any claims of copyright infringement related to our services if such claims are properly reported to our Designated Copyright Agent.

## 6. CONTENT

You are solely and exclusively responsible for any material you distribute, copy, create or otherwise make available through our Services or the System.

## 7. SERVICE LEVEL AGREEMENT

You acknowledge and agree that no credits will be issued under a service level guaranty or agreement for interruptions of service resulting from violations of this AUP.

## 8. MISCELLANEOUS

You must also comply with the following miscellaneous provisions while using our System and Site:

- You must have valid and current information on file with your domain registrar for any domain hosted on our System.
- You agree that if our IP addresses assigned to your account are listed on an abuse database like Spamhaus, you will be in violation of this AUP, and we may take reasonable action to protect our IP addresses, including suspension and/or termination of your service, regardless of whether the IP addresses were listed as a result of your actions.
- You agree that we may quarantine or delete any data stored on a System if the data is infected with a virus, or is otherwise corrupted, and has the potential to infect or corrupt the System or other customer's data.

## 9. MONITORING & ENFORCEMENT

We reserve the right, but do not assume the obligation, to investigate any alleged violation of this Policy or misuse of the Services or Site.

We may do the following:

- Investigate violations, whether alleged or actual, of this Policy or misuse of the Services, the System, or the Site.
- Remove, disable access to, or modify any content or resource that violates this Policy or any other agreement we have with you for use of the Services, the System, or the Site.
- Report any activity that we suspect violates any law or regulation to any law enforcement officials, regulators, or other appropriate third parties. These reports may include disclosing appropriate customer information.
- Cooperate with law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Policy.

## 10. REPORTING

If you become aware of any violation of this Policy, you will immediately notify us and provide assistance as requested, to stop or remedy the violation. To report any violation, please contact us at nGenx Corporation, Attn: Legal, 8837 Bond Street, Overland Park, KS 66214.

## 11. DISPUTE RESOLUTION

You agree to the following dispute resolution procedures for any claim or issue arising from or related to this Acceptable Use Policy. Both parties, you and us, agree to waive any right to a trial by jury in a court of general jurisdiction and any right to participate in a class action or consolidated action regarding a dispute as defined below. Specifically both parties, you and us, agree to waive any right to pursue a dispute by joining a disputed claim with the disputed claim of any other person or entity or to assert a disputed claim in a representative capacity on behalf of anyone else in any lawsuit, arbitration or other proceeding.

Instead, if the parties have a dispute, we agree to use due diligence and use our best efforts to work together to implement this Agreement and amicably resolve any differences. However, both of us understand that issues and conflicts may arise where we reach an impasse. We both acknowledge a desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either of us may start by delivering to the other a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of both parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved 30 days after receipt of the Demand, either of us may start binding arbitration in Overland Park, Kansas. Both parties will use their best efforts to conclude the arbitration as expeditiously as possible but in no event later than 60 days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the parties from resolving the Dispute within such 60 day period. If such interim relief or court action is sought, then both parties will use their best efforts to conclude the arbitration within 60 days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators fail to select an impartial arbitrator, either of us may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication, and the parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in the arbitration or any other hearing. Each party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator. No interest shall be applied to any arbitration award. It is the

intent of the parties to first allow the arbitrators an opportunity to meet and negotiate a decision. However, if an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the parties.

Notwithstanding the foregoing, either of us may resort to a court by applying for interim relief, with the requirement to post a bond or security, if such party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party.

IN THE EVENT ANY OF THE PROVISIONS HEREIN ARE DEEMED UNENFORCEABLE OR VOID AS A MATTER OF LAW, BOTH PARTIES IRREVOCABLY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS POLICY, OR THE SERVICES PROVIDED BY NGENX.

## **12. CHANGES**

We may change this Acceptable Use Policy from time to time, so it is important that you frequently check this policy on our website to verify what, if any, changes have been made. You expressly agree that your continued use of our website or Services shall be deemed conclusive evidence of your acceptance of any such new or modified terms.

## **13. APPLICABLE LAW**

This Policy and your use of our Services shall be subject to and governed by (a) the laws of the State of Kansas, without regard to any conflicts of law provisions therein, and (b) any applicable federal laws including, but not limited to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* In the event of an inconsistency between any governmental requirement and these Terms regarding the provision of a Service that is subject to the governmental requirement, the governmental requirement will apply to the extent necessary to avoid the inconsistency.

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