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## Acceptable Use Policy

Everstream uses various upstream providers to provide subscribers with direct access to the Internet via Everstream network services. Therefore, Everstream Subscribers use of Internet resources falls within the scope of the Acceptable Use Policies defined by our primary upstream carriers. These policies may change periodically and Everstream will provide updates as required or requested by Subscribers.

### 1. GENERAL TERMS OF USE

#### 1.1 Subscriber Responsibilities

All Everstream subscribers are responsible for reviewing and complying with this Acceptable Use Policy. Everstream subscribers who provide services to their own subscribers or other end users are responsible for compliance with the terms of this Policy by their end users and must take steps to ensure compliance by their users with this Policy. For the purposes of this Policy, "Subscriber" means each Everstream subscriber to whom Everstream provides services, and all employees, agents, and third parties to whom Subscriber makes Everstream services available. Everstream reserves the right to deny or terminate service to a Subscriber based upon the results of a security/abuse confirmation process used by Everstream. Such confirmation process uses publicly available information to primarily examine Subscriber's history in relation to its prior or current use of services similar to those being provided by Everstream and Subscriber's relationship with previous providers.

#### 1.2 Network Abuse

The actions described below are defined by Everstream as "network abuse" and are strictly prohibited under this Acceptable Use Policy. The examples named below are not exhaustive and are provided solely for guidance to Subscribers. If any Subscriber is unsure of whether a contemplated use or action is permitted, it is the Subscriber's responsibility to determine whether the use is permitted by contacting Everstream via electronic mail. The following activities are expressly prohibited, and Everstream expressly reserves the right, at its discretion, to pursue any remedies that it believes are warranted which may include, but are not limited to, the issuance of written or verbal warnings, filtering, blocking, suspending, or terminating accounts, billing Subscriber for administrative costs and/or reactivation charges or bringing legal action to enjoin violations and/or to collect damages, if any, caused by Subscriber violations. Such actions may be taken by Everstream without notice to Subscriber. In general, Everstream Subscribers may not use Everstream's network, machines, or services in any manner which:

- violates any applicable law, regulation, treaty, or tariff, including but not limited to data privacy laws;
- violates the acceptable use policies of any networks, machines, or services which are accessed through Everstream's network;
- infringes on the intellectual property rights of Everstream or others;
- violates the privacy of others; involves the resale of Everstream's products or services, unless specifically documented in a separate written agreement or in the initial Subscriber contract with Everstream;
- involves deceptive online marketing practices including, without limitation, practices that violate the United States Federal Trade Commission's guidelines for proper online marketing schemes;
- violates any specific instructions given by Everstream for reasons of health, safety or quality of any other telecommunications services provided by Everstream or by reason of the need for technical compatibility of equipment attached to the Everstream Network;
- materially affects the quality of any telecommunications services provided by Everstream; or otherwise violates this Acceptable Use Policy.

### **1.3 Other Prohibited Activities**

- Prohibited activities also include, but are not limited to, the following:
- unauthorized use (or attempted unauthorized use) or sabotage of any computers, machines or networks;
- attempting to interfere with or denying service to any user or host (e.g. denial of service attacks and/or DNS spoofing attacks);
- falsifying user identification information;
- introduction of malicious programs into the network or Server (e.g. viruses, worms, Trojan horses, etc.);
- scanning the networks of others for vulnerabilities without authorization;
- executing any form of network monitoring (e.g. using a packet sniffer) or otherwise engaging in any monitoring or interception of data not intended for the Subscriber without authorization;
- attempting to circumvent Subscriber authentication or security of any host, network, or account ("cracking") without authorization;
- using any program/script/command, or sending messages of any kind, designed to interfere with a third party subscriber terminal session, via any means, locally or via the Internet;
- "phishing", that is simulating communications from and/or the website or other service of another entity in order to collect identity information, authentication credentials, or other information from the legitimate users of that entity's service;
- "pharming", that is using malware, DNS cache poisoning or other means to redirect a user to a website or other service that simulates a service offered by a legitimate entity in order to collect identity information, authentication credentials, or other information from the legitimate users of that entity's service transmitting or receiving, uploading, using or reusing material which is
- abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or similar third party rights;
- furnishing false or incorrect data on the signup form;
- attempting to circumvent or alter the process or procedures to measure time, bandwidth utilization, or other methods to document "use" of Everstream's products and services.

## 1.4 Digital Millennium Copyright Act Policy

It is the policy of Everstream to respond expeditiously to claims of intellectual property infringement. Everstream will promptly process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws. Upon receipt of notices complying or substantially complying with the DMCA, when it is under its control, Everstream will act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and will act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. Everstream will terminate access for Subscribers who are repeat infringers. For our IP transit, dedicated Internet access and collocation Subscribers, you must adopt and implement a Digital Millennium Copyright Act policy that reserves the necessary rights to remove or disable infringing material. If you believe that a copyrighted work has been copied and is accessible on our site in a way that constitutes copyright infringement, you may notify us by providing our registered copyright agent with the following information:

- electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- a description of the copyrighted work that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the site;
- your address, telephone number, and e-mail address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

## 1.5 Reporting Infringement

Notices of claimed infringement should be directed to [abuse@everstream.net](mailto:abuse@everstream.net). When Everstream removes or disables access to any material claimed to be infringing, Everstream may attempt to contact the Subscriber who has posted such material in order to give that Subscriber an opportunity to respond to the notification. Any and all counter notifications submitted by the Subscriber will be furnished to the complaining party. Everstream will give the complaining party an opportunity to seek judicial relief in accordance with the DMCA before Everstream replaces or restores access to any material as a result of any counter notification.

## 2. ADDITIONAL TERMS APPLYING TO IP TRANSIT, DEDICATED INTERNET AND IP SERVICES

### 2.1 Prohibited Activities

In addition to the General Terms of Use above, the terms set out in this section 2 apply to the use of Everstream IP Transit, Dedicated Internet Access and IP Services. Prohibited activities include, but are not limited to, the following:

- falsifying header information or user identification information;
- attempted or successful security breaches or disruption of Internet communication including, but not limited to, accessing data of which Subscriber is not an intended recipient or logging into a Server or account that Subscriber is not expressly authorized to access;
- hijacking of IP space;
- sending unsolicited ("opt-out") bulk email;

- maintaining an open mail relay and/or an open proxy; and
- collecting email addresses from the Internet for the purpose of sending unsolicited bulk email or to provide collected addresses to others for that purpose.

## **2.2 Subscriber Responsibilities**

Everstream IP transit, dedicated Internet access and collocation Subscribers who provide those services to their own users must affirmatively and contractually pass on the restrictions of this Acceptable Use Policy to its users, and take steps to ensure compliance by their users with this Acceptable Use Policy including, without limitation, termination of the user for violations of this policy. Everstream IP transit, dedicated Internet access and collocation Subscribers who provide services to their own users also must maintain valid postmaster and abuse addresses for their domains, comply with all applicable Internet RFCs, maintain appropriate reverse DNS information for all hosts receiving connectivity through Everstream's network for which DNS responsibility has been delegated to the Subscriber, maintain accurate contact information with the InterNIC and any other appropriate domain, IP and AS registrars, take reasonable steps to prevent IP spoofing by their users and downstream subscribers, provide a 24/7 contact address to Everstream for dealing with security and abuse issues, and act promptly to ensure that users are in compliance with Everstream's Acceptable Use Policy. Reasonable steps include, but are not limited to, using IP unicast reverse-path forwarding ("uRPF") wherever appropriate and using IP address filtering wherever appropriate.

## **2.3 Email Generally**

The following actions are prohibited:

- using email to engage in harassment, whether through language, frequency, or size of messages. Continuing to send someone email after being asked to stop is considered harassment;
- using email to disrupt (e.g., mail bombing, "flashing," etc.) is prohibited;
- originating email with falsified header information;
- originating email with falsified or obscured information (e.g., encoded or "obfuscated URLs") designed to hinder identification of the location of what is advertised;
- originating chain letters, pyramid schemes, and hoaxes;
- using the Everstream or Subscriber account to collect replies to messages sent from another provider which violate these rules or those of the other provider; and
- using Everstream services in connection with or in support of the running of a mail server in China without an appropriate license to run such a server.

## **2.4 Bulk Email**

Subscribers sending bulk email, using Everstream services, may only engage in such activity through the use of "closed-loop opt-in" lists. Such Subscribers who send bulk email through "closed-loop opt-in" lists must have a method of confirmation or verification of subscriptions and be able to show evidence of subscription for users who complain about receiving unsolicited email. Sending unsolicited ("opt-out") bulk email is prohibited and is grounds for termination of those services to Subscribers who engage in the practice. Sending "opt-out" bulk email from another provider advertising or implicating, directly or indirectly, the use of any service hosted or provided by Everstream, including without limitation, email, web, FTP, and DNS services, is prohibited. Subscribers may not advertise, distribute, or use software intended to facilitate sending "opt-out" email or harvest email addresses from the Internet for that purpose. In addition, Subscribers may not

sell or distribute lists of harvested email addresses for the purpose of “opt-out” email. Subscribers who provide or make use of a service employing referral IDs will be considered responsible for unsolicited bulk email sent by members of the referral ID service that makes reference to services hosted by Everstream. Subscribers listed on an industry recognized spam abuse list, will be deemed to be in violation of this Policy.

## **2.5 Routing Protocols and Route Exchange**

In the event Everstream identifies the Subscriber is sending excessive or unnecessary route publications, Everstream reserves the right to limit the number or routes that will be accepted.

## **2.6 Internet Relay Chat**

Using IRC bots is prohibited. Flooding, cloning, spoofing, harassment, or otherwise hindering the ability of others to properly use IRC is prohibited. Impersonating other users, advertising, and spamming via IRC are prohibited. IRC services which are serving as command and control channels for bots are prohibited and any violation shall subject Subscriber to filtering and blocking by Everstream within 24 hours of Everstream learning of such violation. Everstream is not obligated to provide notice of such action to Subscriber.

## **2.7 Servers and Proxies**

Subscribers may not run on Everstream servers any program which makes a service or resource available to others, including but not limited to, port redirectors, proxy servers, chat servers, MUDs, file servers, and IRC bots. Subscribers may not run such programs on their own machines connected through a Everstream dialup account in order to make such services or resources available to others; a dedicated access account is required for such purposes. Subscribers are responsible for the security of their own networks and machines. Everstream will assume neither responsibility nor accountability for failures or breach of Subscriber-imposed protective measures, whether implied or actual. Abuse that occurs as a result of a compromised Subscriber's system or account may result in suspension of services or account access by Everstream, for example, if a system is abused after becoming infected with a worm or trojan horse program as a result of an Internet download or executing an email attachment. (See [www.microsoft.com/security/articles/virus101.asp](http://www.microsoft.com/security/articles/virus101.asp)) Any programs, scripts, or processes which generate excessive server load on Everstream servers are prohibited and Everstream reserves the right to terminate or suspend any such program, script, or process.

## **2.8 Storing Files**

The storage of any program, utility or file on Everstream's servers, the use of which would constitute a violation of this Acceptable Use Policy, is prohibited. For example, it is a violation to store hacker scripts, IRC bots, or spamming software on Everstream's servers.

# **3. VIOLATIONS AND CONTACT DETAILS**

## **3.1 Violations**

Everstream has absolute discretion in determining whether a Subscriber's activities or use of Everstream services are in violation of this Policy. Everstream reserves the right to suspend or terminate the provision of a Everstream service or services for Subscriber's breach of, or

failure to comply with the Policy, which suspension or termination (i) may be immediate and (ii) may have a fixed or indefinite duration. Before taking such action, Everstream shall notify Subscriber in writing and afford Subscriber a reasonable opportunity to remedy the alleged failure to comply with the Policy, provided only that no cure or notice period shall be required where the failure to so comply represents, in Everstream's reasonable opinion, an immediate and material threat to the integrity or security of the Everstream Network or to the services Everstream provides to others using its Network. In such circumstances, Everstream shall provide Subscriber with notice of the service suspension at the same time as such suspension, or as soon afterwards as is reasonably practical. Everstream agrees that any suspension of services pursuant to this paragraph will be as narrow in scope and duration as reasonably necessary for Everstream to protect its Network, rights, property, personnel and other subscribers.

### **3.2 Information Accuracy**

This Policy is subject to change with notice by publication on this web site; Subscribers are responsible for monitoring this web site for changes. This Policy was last updated on February 19, 2009. While Everstream uses reasonable efforts to provide accurate and up-to-date information on this Web site, Everstream makes no warranty or representation as to its accuracy. Moreover, information that may have been accurate at the time of posting may have changed and therefore may no longer be accurate or in effect. Everstream undertakes no duty to update such information.

### **3.3 How to Contact Us**

To contact us with questions or comments regarding this Policy, please email [crm@everstream.net](mailto:crm@everstream.net). To contact us regarding claimed violations of this Policy, please email [abuse@Everstream.net](mailto:abuse@Everstream.net).