

# Internet acceptable use policy

This internet acceptable use policy (Policy) applies to all users (Customers) of an internet service (Service) provided by NIKO Computers Pty Ltd ABN 35790556154 (“NIKO”) who have entered into an agreement (Agreement) with NIKO for such service.

Under the Agreement, the Customers have agreed to comply with this Policy.

This Policy outlines certain prohibited uses of the Service and the NIKO network and the consequences which may flow from a violation of this Policy.

All terms used in the Policy which are not expressly defined shall have the same meaning as in the Agreement.

## 1. No resale of Service

- 1.1 The Service provided by NIKO is for the personal use of the Customer or a Business End User in the manner described in the Agreement only and may not be used for any resale purposes whatsoever without the prior written consent of NIKO.

In the event that a Service is used for resale purposes without NIKO’s prior written consent, NIKO will immediately cancel the Service.

## 2. Illegal Use

- 2.1 The Service and the NIKO network may not be used:
  - a. To break any law or to infringe another person’s rights;
  - b. To transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
  - c. In any way that may expose NIKO to liability; or
  - d. In any way which or which may damage, interfere with or interrupt the Service, the NIKO network or a supplier’s network used to supply the Service.
- 2.2 NIKO reserves the right to suspend without prior notice any Service that, in its reasonable opinion, is being used in breach of clause 2.1. The matter will then be referred to the appropriate authority for further investigation or action.

## 3. Security

- 3.1 The Customer:
  - a. Is responsible for any misuse of the Service or the NIKO network that is in breach of the Agreement (including this Policy) and must take reasonable steps to ensure that others do not gain unauthorised access to the Service or the NIKO network;

- b. Must not use or permit the use of the Service or the NIKO network to obtain or attempt to obtain unauthorised access to any computer, system or network or to carry out any unauthorised or unlawful activity; and
- c. Must notify NIKO immediately of any breach of clause 3.1(a) or (b).

- 3.2 The Customer acknowledges that when accessing the internet through using the Service and the NIKO network there is a possibility that other parties may gain unauthorised access to:
  - a. The Service or the NIKO network; or
  - b. The Customer’s equipment connected to the NIKO network (including any software used in conjunction with such equipment); or
  - c. The Customer’s confidential or personal information

Thereby causing harm, damage or loss to the Customer. The Customer agrees to bear all risks of such harm, damage or loss occurring through the Customer’s use of the Service and the NIKO network under the Agreement.

- 3.3 NIKO is not responsible for any content that the Customer may publish via websites, email, newsgroups, online forums or other publishing mediums accessed through the Service or the NIKO network. The Customer:
  - a. Acknowledges that NIKO may take such action as it may deem appropriate to block access to, remove or refuse to post any content:
    - i. In order to comply with any law or any directions of a regulator or other authority; and
    - ii. That NIKO in its sole discretion considers to be defamatory, offensive, abusive, indecent, menacing or otherwise inappropriate regardless of whether such content is unlawful; and
    - iii. Agrees to indemnify NIKO against any claims, loss, actions, damages, suits or proceedings against NIKO arising out of or otherwise related to such activities.

#### 4. Copyright protection

- 4.1 Downloading copyright material or making copyright material available to others on the internet is illegal unless specific permission is granted by the copyright owner.
- 4.2 NIKO will forward any copyright infringement notices received in relation to a Customer's account to the Customer or the contact person nominated by the Customer for the Customer's account. A copyright infringement notice is a serious allegation made by the copyright owner or their representative which should not be ignored and the Customer must contact the issuer of the notice as soon as possible or send a specific denial of the allegation to NIKO.
- 4.3 If NIKO reasonably suspects that a Customer is infringing a third party's copyright or if three (3) or more copyright infringement notices have been received in relation to a Customer's account and the Customer fails to provide a valid defence for such notice in writing to the issuer of the notice or a categorical denial of the offence to NIKO that

is satisfactory to NIKO, NIKO may request the Customer to arrange for an equivalent service to the Service supplied by another carrier or carriage service provider within fourteen (14) days failing which the Service will be cancelled in accordance with the Agreement.

#### 5. Email

- 5.1 A Customer using the Service or the NIKO network to run an email subscription service must observe the following requirements:
  - a. A subscriber of the subscription service must nominate their own email address to the Customer;
  - b. The Customer must then send an email to the subscriber seeking confirmation that the subscriber wants to be added to the Customer's mailing list;
  - c. The subscriber's email address is only to be added to the Customer's mailing list if the subscriber replies to the Customer's email confirming that the subscriber wants to be added to the Customer's mailing list;
  - d. If the subscriber fails to reply within fourteen (14) days, the Customer must remove the subscriber's email address from the Customer's email mailing list; and
  - e. The Customer's functional unsubscribe facility must allow for immediate removal of an email address from the Customer's mailing list when requested by a subscriber and for a reply confirming removal to be sent to the subscriber.
- 5.2 The following activities carried out using the Service or the NIKO network are prohibited:
  - a. Sending emails, or causing emails to be sent, to or through the NIKO network that hides or obscures the source of the email, that contains invalid or forged headers or domain names or deceptive addresses;
  - b. Receiving or collecting responses from bulk unsolicited emails whether or not the original emails were sent using the NIKO network;
  - c. Hosting a website to which recipients of bulk unsolicited emails are directed;
  - d. Relaying emails from a third party's mail server without permission or which employs similar techniques to hide or obscure the source of the email;
  - e. Collecting or harvesting screen names or email

- f. Sending large or numerous emails for the purpose of disrupting another party's computer or account;
- g. Sending emails that may damage or affect the performance of an email recipient's computer (including any emails which contain viruses or other harmful components);
- h. Persistently sending emails without reasonable cause or for the purpose of causing nuisance, annoyance, inconvenience or needless anxiety to any person; or
- i. Connecting the NIKO network to an open relay mail server or any other device which may allow third parties, whether connected to the NIKO network or to another service provider's network, to use that mail server or device for the purposes of sending electronic messages, solicited or otherwise, with or without the Customer's prior knowledge or consent.

#### 6. SPAM

- 6.1 When using the Service or the NIKO network the Customer must at all times comply with the Spam Act 2003 (Cth) and the regulations made thereunder including the Spam Regulations 2004 (Cth) (together Spam Legislation).
- 6.2 In particular, the Customer:

addresses of others for the purpose of sending unsolicited emails or for exchange;

- a. Must not use or permit the use of the Service or the NIKO network to accept, transmit or distribute bulk and/or unsolicited commercial electronic messages, including messages of an advertising or promotional nature (Spam); or
  - b. Supply, acquire or use or permit the supply, acquisition or use of any software designed to harvest email addresses through the Service or the NIKO network or any electronic email address list produced using such address-harvesting software.
- 6.3 The only circumstances in which the Service or the NIKO network may be used to send unsolicited emails of an advertising or promotional nature are where such emails are sent:
- a. To persons with whom the Customer has a pre-existing business, professional or personal relationship; or
  - b. To persons who had previously indicated to the Customer their consent to receive such emails from the Customer from time to time, for example by ticking a box to that effect on the Customer's website.
- 6.4 Unless clause 6.3 (a) or (b) is complied with, the Customer must not send unsolicited bulk emails using the Service or the NIKO network. Even if clause 6.3 (a) or (b) is complied with, such emails must:
- a. Include information about the individual or organisation who authorised the sending of the emails; and
  - b. Contain a functional unsubscribe facility made known to the recipients who may exercise an option to be removed from the Customer's emailing list.

- 6.5 NIKO may suspend the Service in the following events:
- a. If the Service or the NIKO network is being used to host any device or service that allows email to be sent between third parties not under the Customer's authority and control; or
  - b. The Customer is in breach of clause 6.1

Whether or not the same occurs with the Customer's knowledge, through misconfiguration of the Customer's equipment or network or by other means not authorised by the Customer such as through a Trojan horse or computer virus.

- 6.6 If it comes to NIKO's notice that Spam is being transmitted through a Customer's account using the Service or the NIKO network, NIKO may take the following action to blocking the Customer's account from which, in NIKO's reasonable opinion, the Spam originates:
- a. NIKO will apply a 'Spam Portal Block' which will limit the internet access of that Customer's account to the NIKO Spam Portal web page which has further information about Spam and allows the Customer to address the Spam issue and resolve it.
  - b. The Customer's account will be released from the Spam Portal Block not less than two (2) hours AFTER NIKO is satisfied that Spam is no longer being transmitted through the Customer's account.

Notwithstanding the above actions by NIKO, the Customer remains liable for all costs and charges relating to their internet access under the Agreement regardless of the length of time and the number of times a Spam Portal Block is applied to its account.

- 6.7 The Customer must use its best endeavours to secure all equipment, devices and networks within its control against being used by third parties in breach of clause 6.1, including where appropriate:
- a. Installation and maintenance of appropriate up-to-date antivirus software;
  - b. The installation and maintenance of an appropriate and adequate firewall software;
  - c. The application of operating system and application software patches and updates.
- 6.8 NIKO may scan any IP address ranges allocated for a Customer's use with the Service in order to detect the presence of open or otherwise mis-configured mail and proxy servers.
- 6.9 If a Service is suspended and the grounds upon which it was suspended are not corrected by the Customer within seven (7) days, NIKO may terminate the Service under the Agreement.

## 7. Newsgroups

- 7.1 The Customer must not use the Service or the NIKO network or allow the Service or the NIKO network to be used to:
- a. Engage in mass posting of messages to newsgroups;
  - b. Post advertisements other than in newsgroups that specifically encourage or permit advertising;
  - c. Post binary files other than in newsgroups that specifically encourage or permit such postings;
  - d. Post large or numerous messages with purpose of disrupting a newsgroup; or
  - e. Send messages that contain invalid or forged headers or domain names or deceptive addresses.

## 8. Viruses, worms, trojans, denial of service attacks, etc

- 8.1 The Customer must take steps to protect its computer and any equipment or networks that are connected to the NIKO network against higher level computer programs (such as viruses, worms, Trojans and other malicious programs) and lower-level denial of service attacks that can be distributed or propagated through the internet, including electronic mail.
- 8.2 The Customer must ensure that it has in place appropriate and adequate protection for its systems to prevent circulation of such computer programs and attacks from the Customer's computer, equipment or networks through the NIKO network. Such protection methods should include firewalls and an appropriate user policy regarding email attachments, the most up to date virus scanning software, etc.
- 8.3 While NIKO makes reasonable efforts to ensure the security of its network, it cannot and does not guarantee that viruses and other detrimental programs will not be distributed via the NIKO network. Under the Agreement, NIKO is not liable for any degradation in Service or any increased download or damage suffered by a Customer as a result of any program received by or sent to the Customer over the NIKO network.

## 9. Violation of Policy

- 9.1 Like other network providers, NIKO is serious about taking action to eliminate inappropriate use of newsgroups and preventing spam from being transmitted through the NIKO network whether or not originating from a Customer. If NIKO, at its complete discretion, considers that this Policy has been violated in any way whatsoever, NIKO will take all appropriate steps available under the Agreement to enforce compliance with this Policy including suspending or disconnecting a Customer's Service.

## 10. NIKO's Acceptable Use Policy

- 10.1 This policy aims to ensure NIKO are able to provide quality Broadband services to all of our customers and that no customers are disadvantaged by the behavior of others (including usage patterns that cause significant network congestion, disruption or otherwise adversely affect the NIKO network, a supplier's network or adversely affect another person's use of or access to the Broadband services, the NIKO network or a supplier network). We provide this offer for residential customers only in good faith. Under the NIKO Residential Acceptable Use Policy, if NIKO detects non-residential usage patterns that suggest commercial use or non-ordinary use of the Service (subject to investigation and in NIKO's exclusive opinion), NIKO will request that you reduce your usage. Persistent (two or more) breaches of our Residential Acceptable Use Policy may result in NIKO terminating your service.
- 10.2 From time to time, there are instances that the local Exchange Backhaul and/or Network Infrastructure used by NIKO's wholesale supplier is congested. This happens when our wholesale supplier is required to increase Backhaul and/or Network Infrastructure capacity but may not be able to immediately or in the short term. If there is congestion, and as you share Backhaul and/or Network Infrastructure with other NIKO customers and other Broadband providers, your service will be slower or much slower, for this period of time until Backhaul and/or Network Infrastructure has been upgraded.

- 10.3 Very high usage can be caused by a virus or other external exploitation that is unknown to the user, and in some cases can cause the users network to be utilised for illegal activity. While the user remains solely responsible for the use, security and maintenance of their own equipment, NIKO employ an automatic detection system for virus and 'bot-net' activity, which, when such activity is detected, will block the user traffic from the Internet and redirect the user to a warning screen to alert them to the possible danger. For the avoidance of doubt, the automatic detection system cannot be relied upon in any way and is not suitable as a replacement for normal virus protection and responsible use of the service.

#### **11. Unlimited - Data Use**

- 11.1 'Unlimited' means that the amount of data you download or upload is not limited and will not be counted and you will not be billed for any data usage. While NIKO will provide a data usage meter for both peak and off-peak periods, this is for information purposes only to illustrate the amount of upload and download data we have recorded on your service.
- 11.2 For the avoidance of doubt, whilst this is an unlimited data service, there may be factors outside the control of NIKO that will have an effect of altering user experience. For example, if there are any capital works by our wholesale supplier, your service may be restricted to a lower speed. There may also be localised congestion (of the wholesale supplier backhaul) in which our wholesale supplier may not be able to provide the same speed at all times of the day. Other factors beyond the control of NIKO and our wholesale supplier is international bandwidth availability, the destination you're trying to reach may have its own traffic management per site visitor to a specific download rate (this is very common to ensure one visitor to their web site does not limit the ability for others to download from or access their web site).