

## Fusix Networks Acceptable Use Policy

This Acceptable Use Policy ("AUP") applies to all persons and entities being a contracted customer and/or a user of the Internet services, IP network, systems, services, Web sites and other existing and new products and services of Fusix Networks BV (collectively, "Users").

The policy is designed to protect the security, integrity, reliability, and privacy of the IP network, systems, services, Web sites and other existing and new products and services of Fusix Networks BV (collectively, "Fusix Network and Services") and to encourage the responsible use of Fusix Network and Services by Users.

Fusix Networks BV ("Fusix" or "we") reserves the right to modify this policy at its discretion at any time without notice, effective immediately upon posting of the modification on the Fusix's web site [www.fusix.nl](http://www.fusix.nl). In most cases, we will attempt to notify our contracted customers, of any such modifications either via e-mail or by posting a revised copy of the AUP on our Web site. For the avoidance of doubt, your use of Fusix Network and Services constitutes your acceptance of the AUP in effect at the time of your use.

This Acceptable Use Policy is incorporated by reference into all agreements of Fusix with its customers.

### What uses are Prohibited?

For the most part, simply exercising good judgment and common sense while using Fusix Network and Services should enable Users to remain within the purview of acceptable conduct as further described in this AUP.

The categories listed below are intended merely to serve as guidelines regarding inappropriate conduct; the list is by no means exhaustive and should not be interpreted as such.

In general, Fusix Network and Services must be used in a manner that is consistent with the intended purpose of the Services and may be used only for lawful purposes. Users are prohibited from facilitating the violation of any part of this AUP or another provider's AUP, including, but not limited to transmitting, re-transmitting, distributing, or otherwise making available any product or service that violates this AUP or another provider's AUP.

### *Unacceptable use includes, but is not limited to, any of the following:*

1. Posting, transmission, re-transmission, or storing material on or through any of Fusix Network and Services, if such material is or in the sole judgment of Fusix might be:
  - (a) in violation of any applicable local, state, federal, country law or regulation, including export or encryption regulations, rights protected by privacy, publicity, or other personal rights and Intellectual Property rights, such as without limitation, copyright, trade secret, trademark, patent or other similar laws or regulations; or
  - (b) intended to adversely affect the Fusix Network and Services or any other User of Fusix Network and Services, or any other provider or User of Internet; or
  - (c) exposing Fusix to criminal or civil liability; or
  - (b) threatening or abusive; or
  - (c) obscene; or
  - (d) indecent; or
  - (e) defamatory.
2. Installation or distribution of "pirated" or other software products that are not appropriately licensed for use by User.
3. Resale of the Fusix Network and Services without the express prior written consent of Fusix.
4. Deceptive marketing practices.
5. Actions that restrict or inhibit any other User in his or her use or enjoyment of Fusix Network and Services, or that generate excessive network traffic through the use of automated or manual routines that are not related to ordinary personal or business use of Internet services.
6. Introduction of malicious programs into the Fusix Network and Services or other products and services provided by Fusix or other provider (e.g., viruses, trojan horses and worms).
7. Causing or attempting to cause security breaches or disruptions of Internet communications. Examples of security breaches include but are not limited to accessing data of which the User is not an intended recipient, or logging into a server or account that the User is not expressly authorized to access. Examples of disruptions include but are not limited to port scans, flood pings, packet spoofing and forged routing information.
8. Executing any form of network monitoring that will intercept data not intended for the User.
9. Circumventing user authentication or security of any host, network or account.
10. Interfering with or denying service to any user of Internet other than your own host (e.g., denial of service attack).
11. Using any program/script/command, or sending messages of any kind, designed to interfere with, or to disable a terminal session of any other user of Internet.
12. Harassment, whether through language, frequency, or size of messages.
13. Unauthorized use or forging of mail header information.
14. Solicitations of mail or any other E-mail address other than that of the poster's account or service, with the intent to harass or collect replies.
15. Creating or forwarding "chain letters" or other "pyramid schemes" of any type.

16. Use of unsolicited E-mail originating from within the Fusix Network and Services or a network of other Internet Service Provider on behalf of or to advertise any service hosted by Fusix or connected via the Fusix Network and Services.

17. Sending unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material, who were not previous customers of the User or with whom the User does not have an existing business relationship (e.g., E-mail "spam");

18. Distributing, advertising or promoting software or services that have the primary purpose of encouraging or facilitating unsolicited commercial E-mail or spam.

19. Failing to comply with any of the terms of (a) Nederland ICT Terms and Conditions (published on the Fusix's web site); or (b) an offer issued by Fusix for Fusix Network and Services; or (c) a contract between you and Fusix.

20. Furnishing false or incorrect data on the order form contract (electronic or paper) including fraudulent use of credit card numbers or attempting to circumvent or alter the processes or procedures to measure time, bandwidth utilization or other methods to document your use of the Fusix Network and Services.

21. Exporting, re-exporting, or permitting downloads of any content in violation of the export or import laws of the United States or without all required approvals, licenses and exemptions of any applicable law.

#### **Abused Resources**

Users are responsible for educating themselves and configuring their systems with at least basic security. Should systems at a User's site be violated, the User is responsible for reporting the violation and then fixing the exploited system. For instance, should a site be abused to distribute unlicensed software due to a poorly configured FTP (File Transfer Protocol) Server, the User is responsible for re-configuring the system to stop the abuse.

Upon notification of the existence of an abusable resource, Users (including every ISP who is a customer of Fusix) shall immediately take all necessary steps to avoid any further abuse of such resource. Any abuse of an open resource that occurs after you, a Customer of Fusix has received such notification shall be considered a violation of this policy and enforced as such.

Further, we will notify you, our Customer, of complaints received by Fusix regarding each incident of alleged violation of this AUP by your Users. You agree to promptly investigate all such complaints and take all necessary actions to remedy any actual violations of this AUP. You agree that Fusix may identify to the complainant that you are investigating the complaint and may provide the complainant with the necessary information to contact you directly to resolve the complaint. You shall identify a representative for the purposes of receiving such communications.

Further, Fusix reserves the right to install and use, or to have you install and use, any appropriate devices to prevent violations of this AUP, including devices designed to filter or terminate your access to the Fusix Network and Services.

#### **For resellers and downstream Internet Service Providers (ISPs):**

Some customers of Fusix Network and Services are Internet Service Providers (ISPs). Such ISPs (also known as resellers or downstream service providers) are responsible for informing their customers of this Acceptable Use Policy and for enforcing its restrictions with regard to their customers' actions. Complaints about customers of any such ISP shall be forwarded to such ISP for resolution. If at any time Fusix determines that such ISP is not taking appropriate action in accordance with this AUP, Fusix shall work with such ISP to review their policies and enforcement procedures. If the ISP continues to fail to take appropriate action, Fusix will take such further action, as it deems appropriate, up to and including termination proceedings. Violations of this AUP by a customer or an end-user of an ISP shall be considered violations of this AUP by such ISP.

#### **Users are solely and entirely responsible for:**

(a) compliance with the terms of AUP posted on the Fusix's website at the time when the User is using or enjoying use of Fusix Network and Services;

(b) any and all acts and omissions that occur during or relating to their use of Fusix Network and Services, and agree and warrant that Users will not engage (or plan, encourage or help others to engage) in use of Fusix Network and Services for any purpose or in any manner that is prohibited by this AUP, law, regulation, or other applicable prohibition;

(c) ensuring that their use of Fusix Network and Services complies with this AUP, law, regulation, or other applicable prohibition;

(d) determining what law, regulation, or other prohibition are applicable to his or her use of the Fusix Network and Services;

(e) maintaining the confidentiality of their password and account information, as well as the security and accountability of the User's network;

and

(f) configuring their systems to provide the maximum possible accountability. Fusix shall not be liable for any damage caused by such system configurations regardless of whether such configurations have been recommended, authorized or requested by Fusix. For example, Users should ensure there are clear "path" lines in news headers so that the originator of a post may be identified. Users should also configure their Mail Transport Agents (MTA) to authenticate (by look-up on the name or similar procedures) any system that connects to perform a mail exchange, and should generally present header data as clearly as possible. As another example, Users should maintain logs of dynamically assigned IP addresses.

#### **Rights of Fusix:**

(a) Fusix does not make any promise, nor do we have any obligation, to monitor or police any activity occurring via

Fusix Network and Services and will have no liability to any party, including its customers, for any violation of this AUP by any User of the Fusix Network and Services;

(b) If User engages in conduct while using Fusix Network and Services that is in violation of this AUP or is otherwise illegal or improper, we reserve the right to suspend and possibly terminate any Service of the User's access to all Fusix Network and Services. In most cases, we will attempt to notify you of any activity in violation of the AUP and request to cease such activity; however, in cases where the viability of the Fusix Network and Services are potentially threatened or cases involving UCE/SPAM, mail relaying, alteration of your source IP address information, denial of service attacks, illegal activities, harassment or copyright infringement, we reserve the right to suspend the Service or access to the Service, at our sole discretion without a prior notification or immediately upon a verbal or a written notice, which notice may be provided by voicemail or E-mail;

(c) Where reasonably possible, prior to suspension or termination, Fusix attempts to work with our contracted customers to cure violations of this AUP and ensure that there is no re-occurrence; however, Fusix reserves the right to suspend or terminate based on a first offense; and

(d) In addition to its other rights, Fusix may take any other appropriate action, legal or otherwise, against a User for violations of the AUP, which may include termination of the Service.

#### Enforcement

No failure or delay in exercising or enforcing this policy shall constitute a waiver of the policy or of any other right or remedy. If any provision of this policy is deemed unenforceable due to law or change in law, such provision shall be disregarded, but all other provisions will remain effective and the balance of the policy shall remain in effect.

#### Cooperation with Investigations

Fusix will cooperate with appropriate law enforcement agencies and other parties involved in investigating claims of illegal or inappropriate activity. Fusix reserves the right to disclose User information to the extent authorized by surveillance statutes.

#### Privacy

Because the Internet is an inherently open and insecure means of communication, any data or information that a User transmits over the Internet may be susceptible to interception and alteration. Fusix makes no guarantee regarding, and assume no liability for, the security and integrity of any data or information that a User transmits via the Fusix Network and Services or over the Internet, including any data or information transmitted via any server designated as "secure."

Further, Fusix makes no guarantee of confidentiality or privacy of any information transmitted through or stored using Fusix Network and Services, and makes no guarantee that any other entity or group of Internet users will be included or excluded from Fusix Network and Services. In addition, Fusix may periodically monitor transmissions over its Network and Services for maintenance, service quality assurance or any other purpose permitted by the EU Privacy and Data Protection regulations, as amended.

#### Limitation of Liability and Indemnification

FUSIX SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, LOSS OF USE, ETC., EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FUSIX SHALL NOT BE LIABLE FOR ANY DIRECT OR ACTUAL DAMAGES, EXCEPT TO THE EXTENT SPECIFIED IN A WRITTEN OR ELECTRONIC AGREEMENT ENTERED INTO BETWEEN FUSIX AND ITS CUSTOMER. OTHER LIMITATIONS OF LIABILITY ARE INCLUDED HERE BY REFERENCE INCLUDING "NEDERLAND ICT TERMS AND CONDITIONS", TERMS OF SERVICE USE AND SERVICE LEVEL AGREEMENTS SPECIFIED IN CUSTOMER CONTRACTS WITH FUSIX.

FUSIX MAKES NO WARRANTIES OR REPRESENTATIONS HEREIN, EITHER EXPRESS OR IMPLIED, CONCERNING THE NETWORK, AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR USE OR PURPOSE, THE WARRANTY OF MERCHANTABILITY AND ANY OTHER WARRANTY IMPLIED BY LAW.

#### Indemnification

You agree to indemnify, defend, and hold Fusix, its subsidiaries, affiliates, officers, directors, employees, agents, licensors, consultants, suppliers, and any third-party providers harmless from and against all claims, demands, actions, liabilities, losses, expenses, damages, and costs, including actual attorneys' fees, resulting from your violation of this AUP, misuse or abuse of the Fusix Network and Services, or your infringement, or infringement by any other user of your account, including your customers, of any intellectual property or other right of any person or entity. You will cooperate as fully as reasonably required in the Fusix defense of any claim in this regard. Fusix reserves the right, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall not in any event settle any matter without the written consent of Fusix. You agree immediately to notify Fusix of any unauthorized use of your account or any other breach of security known to you.

#### Questions?

If you are unsure of whether any contemplated use or action is permitted, please contact Fusix at [abuse@fusix.nl](mailto:abuse@fusix.nl) or call +31 85 401 4441.

#### Abuse report:

You can report abuse of Fusix Network or Service by e-mail to [abuse@fusix.nl](mailto:abuse@fusix.nl) or call +31 85 401 4441.