

## FLEXISCALE ACCEPTABLE USE POLICY

### IMPORTANT LEGAL NOTICE

This document sets out the Acceptable Use Policy (the “**Acceptable Use Policy**” or “**AUP**”) which applies to and governs any services used by you (“**you**”, the “**user**”) and marketed by us under the brand name ‘FlexiScale’ including any services provided through any website with a domain name ending ‘flexiscale.com’ (the “**Website**”), and to any email and other correspondence between us relating to such a service. It is to be read in conjunction with our terms and conditions (the “**Terms and Conditions**”) for FlexiScale, into which this document is incorporated by reference. You can find a copy of the Terms and Conditions on the web at:

<http://www.flexiscale.com/terms.php>

### Variations to the Acceptable User Policy

We have the right and entitlement to revise or vary the AUP at any time in our absolute discretion. Such revisions or variations will become valid and binding on you on the occurrence of the earlier of: when such updated AUP is notified to you via email, when you reconfirm your acceptance of the Terms and Conditions (and therefore the AUP which is incorporated into them by reference) by re-ticking the box headed ‘Please tick to confirm you agree to our terms and conditions’, or when you next purchase Units or use our Control Panel to provision new Services. Consequently we would suggest that you should regularly and carefully review the AUP. If you do not accept any revision or variation of the AUP you must not take up any of the services offered by the Website.

### Reasons for the Acceptable User Policy

While it is impossible to define exhaustively what constitutes “acceptable use” and “unacceptable use” or “abuse” of the internet, or of our network and services, the AUP gives examples of the types of use which we consider unacceptable. Note that the fact that an activity is not specifically stated in the AUP to be unlawful or unacceptable, or otherwise in breach of this AUP, does not automatically mean that such activity complies with the AUP.

Our relationship with other networks, and accordingly our ability to connect to the rest of the internet, depends to a significant extent upon proper behaviour by our customers. We therefore cannot tolerate any behaviour by customers which is detrimental to our equipment, network, or services, or indeed to our reputation. Nor do we permit any such behaviour which has a negative impact upon other users of the internet.

It is crucial that when activity which might constitute abuse occurs, we are entitled to take appropriate action; otherwise we would lose the confidence of the wider internet community, which in turn would significantly reduce our customers’ freedom to use the internet.

## 1 DEFINITIONS

In this Acceptable Use Policy, terms defined in the Terms and Conditions shall have the same meaning here. Additionally:

- 1.1 “**Intellectual Property Rights**” means any intellectual property rights, including (without limitation) trade secrets, database rights, know-how, patents, copyrights, registered design rights, unregistered design rights, and trade marks, all whether recorded in any manner or otherwise, and including all applications for any rights which are registrable.
- 1.2 “**Prohibited Material**” means material which violates any applicable law or regulation of any country in the world, or is defamatory, threatening, malicious, offensive, abusive, indecent, blasphemous, obscene, or otherwise objectionable in any way, or in breach of confidence, privacy, trade secrets, or of any third party rights (including Intellectual Property Rights), including without limitation:
  - 1.2.1 any material the possession, reception, transmission, publication, export, duplication, disclosure or hosting of which constitutes, or encourages the commission of, a criminal offence;
  - 1.2.2 hardcore, extreme or child pornography;
  - 1.2.3 programs containing viruses or trojan horses or any tools designed to compromise the security of other websites;
  - 1.2.4 material protected by Intellectual Property Rights, and other proprietary material, if such materials are used without proper authorization.
- 1.3 “**Unsolicited Bulk Email**” means any electronic mail sent to a list of addresses unless each addressee has given express permission for your use in mass communication.

## **2 GENERAL**

- 2.1 Our network and services may be used for lawful purposes only and in compliance with all relevant legislation in force from time to time. You should be aware that the internet is a global communications network and what may be legal in the United Kingdom may be illegal elsewhere and render you liable to prosecution in another country. You should be aware that the storage, distribution or transmission of unlawful materials could lead to civil liability or criminal prosecution, in addition to any action we may take under the AUP or under the Terms and Conditions.
- 2.2 You shall not use our network or services to send, receive or store any Prohibited Material.
- 2.3 You shall not post, upload or otherwise distribute material protected by Intellectual Property Rights using the Services without the consent of the owner of the Intellectual Property Rights.
- 2.4 Your traffic over the internet may cross other networks, or use other services which are not owned or operated by us. You must abide by the acceptable use policies and other terms and conditions imposed by the operators of those networks and services.
- 2.5 You may not remove or impede our access to the Services. We shall have the right to regain root or administrative access by any means necessary without liability for the consequences of regaining access should you remove such access.
- 2.6 You take responsibility for your actions on our network, and any systems accessed via the Services. This includes, but is not limited to, statements made through electronic mail, chat and discussion forums, and news groups. Irresponsible behaviour (whether intentional or not) that endangers our network is a breach of this AUP.
- 2.7 You must not use the Services to run services or software related to Internet Relay Chat or for Peer To Peer File Sharing.
- 2.8 We have a policy of no censorship, either from or to our systems unless the information transmitted is illegal in nature, is clearly used to commit fraudulent activity, or is otherwise in breach of the Terms and Conditions or this AUP.

## **3 SECURITY**

- 3.1 We actively and automatically monitor use of our Services for attempts at breaching its security, or attempts to access systems or resources that are not available for you to use or access. Any unauthorized attempt to access or modify computer systems information or to interfere with normal system operations (commonly known as 'hacking'), whether via our Services or of any other computer system or network that is accessed as part of the delivery of the Services, will result in immediate and permanent termination of the Agreement.
- 3.2 Any violation by you of systems or network security (whether of our systems or networks, or those of a third party) is prohibited, and may result in you incurring criminal or civil liability. We shall investigate incidents where such violations are alleged and will inform and co-operate with the relevant law enforcement organisations if we are requested by them to do so. Violations may include, but are not limited to the following:
  - 3.2.1 unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network;
  - 3.2.2 unauthorised monitoring of data or traffic on any network or system without express authorisation of the owner of the system or network;
  - 3.2.3 Interfering with any user, host or network, including mailbombing, flooding, or launching denial of service attacks, deliberate attempts to overload a system, or broadcast attacks.

## **4 EMAIL**

- 4.1 You shall not use the Services to send Unsolicited Bulk Email.
- 4.2 You may not send (using the Services or otherwise) any Unsolicited Bulk Email which:
  - 4.2.1 promotes or refers to the Services;
  - 4.2.2 promotes or refers to or any web site, product or service you are using the Service to provide; or

4.2.3 contains (whether in the header, the body or any attachment) a URL, hostname or email address which is hosted using the Services;

4.2.4 refers in any other way to the Services;

4.3 You shall not use the Services to send any email which contains any Prohibited Material.

4.4 You shall not use the Services to operate an open relay, or configure the services in any other form which risks allowing third parties to send Unsolicited Bulk Email.

## **5 WEB USAGE**

5.1 We cannot and do not proactively monitor content on any web space maintained by you, and we cannot and do not guarantee that such sites are free of illegal content or other materials that may be considered unacceptable by any person.

5.2 You undertake sole responsibility for the content of web pages owned or operated by you, whether on your own web sites, on web space hosted by you, or on co-located servers. You shall accordingly ensure that all materials on any web site owned, operated or hosted by you do not infringe any third party rights, including Intellectual Property Rights, and shall bear sole responsibility for any dispute in this connection.

5.3 You may not use the Services to host any web site which links to or embeds Prohibited Material, whether or not the Prohibited Material is stored using the Services.

## **6 COMPLAINTS**

6.1 We have in place a procedure for handling your complaints about material stored and/or accessed via our services, or about the behaviour of other users of our services. If you wish to make such a complaint, please ensure that you do so by e-mail to [abuse@flexiscale.com](mailto:abuse@flexiscale.com).

## **7 INVESTIGATION**

7.1 We reserve the right to investigate suspected violations of this Policy. When doing so we shall endeavour to act reasonably and fairly at all times.

7.2 An investigation may include gathering information from the user involved and the complaining party, if any, and examination of material on our servers.

7.3 During an investigation, we may (without prejudice to any other rights we may have in our Terms and Conditions of Provision of Service, or elsewhere) suspend the account involved, and/or remove the material involved from our servers. Such action may include temporary or permanent removal of material from our servers, warnings to the user responsible, and the suspension or termination of the account responsible, in accordance with the Terms and Conditions. We will determine what action will be taken in response to a violation on a case-by-case basis.

## **8 ACTION WE MAY TAKE IF YOU BREACH THIS POLICY**

8.1 If you are found to have breached this policy, we reserve the right (without prejudice to any other rights we may have in the Terms and Conditions or elsewhere) to take whatever measures we (acting reasonably) deem appropriate and proportionate to the breach, including (without limitation) giving you a formal warning, suspending or terminating your Agreement with us, making an additional charge for our reasonable costs of investigating and dealing with the misuse, blocking access to any component of the service, and removing any web page of yours on our servers.

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