

# **ZIRRUS ACCEPTABLE USE POLICY FOR BROADBAND INTERNET SERVICES**

Zirrus has adopted this Acceptable Use Policy (“AUP”) to outline the acceptable use of Zirrus’ Broadband Internet service (“Broadband Service”). This AUP is in addition to any restrictions contained in the Zirrus service agreement for Internet service (the “Subscriber Agreement”). Please also refer to the Network Management [Frequently Asked Questions \(“FAQs”\)](#), which includes explanations of how Zirrus will enforce this AUP in the context of network management. All capitalized terms used in this AUP that are not defined here have the meanings given to them in the Subscriber Agreement.

You, the customer, must comply with this AUP. Your failure to do so could result in the suspension or termination of your Broadband Service account. If you do not agree to comply with this AUP, you must immediately stop all use of the Broadband Service and notify Zirrus so that we can close your account.

Zirrus may revise this AUP from time to time and will have the latest version posted on its website. Zirrus will use reasonable efforts to make customers aware of any changes to this AUP, which may include sending e-mail announcements or posting additional information on the Zirrus website. Revised versions of this AUP are effective immediately upon posting. Accordingly, customers of the Zirrus Broadband Internet Broadband Service should read any Zirrus announcements they receive and regularly visit the Zirrus web site and review this AUP to ensure that their activities conform to the most recent version. You can send questions regarding this AUP to, and report violations of it, at 336-463-5047. To report illegal content on the Internet go to [www.ftc.gov](http://www.ftc.gov).

## **I. Prohibited Uses and Activities**

In general, this AUP prohibits uses and activities involving the Broadband Service that are illegal, infringe the rights of others, or interfere with or diminish the use and enjoyment of the Broadband Service by others.

### **A. Network and Usage Restrictions**

No user of the Broadband Service, Customer Equipment, or the Zirrus Equipment may, individually or in combination with another:

1. restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Broadband Service (except for safety and security functions such as parental controls, for example), including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating

levels of traffic sufficient to impede others' ability to use, send, or retrieve information;

2. restrict, inhibit, interfere with, or otherwise disrupt performance of the Broadband Service or cause a performance degradation,
3. regardless of intent, purpose or knowledge, to the Broadband Service or any Zirrus (or Zirrus supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any Zirrus (or Zirrus supplier) facilities used to deliver the Broadband Service;
4. resell the Broadband Service or otherwise make available to anyone outside the Premises the ability to use the Broadband Service (for example, through wi-fi or other methods of networking), in whole or in part, directly or indirectly. The Broadband Service is for personal and non-commercial residential use only and you agree not to use the Broadband Service for operation as an Internet service provider or for any business enterprise or purpose (whether or not for profit);
5. connect the Zirrus Equipment to any computer outside of your Premises;
6. interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to "crash" a host; and
7. accessing and using the Broadband Service with anything other than a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). You may not configure the Broadband Service or any related equipment to access or use a static IP address or use any protocol other than DHCP unless expressly permitted to do so by Zirrus.

## **B. Conduct and Information Restrictions**

No user of the Broadband Service, Customer Equipment, or the Zirrus Equipment may, individually or in combination with another:

1. avoid incurring charges for or otherwise being required to pay for usage of the Broadband Service;
2. invade another person's privacy, stalk, harass, or otherwise violate the rights of other persons;
3. undertake or accomplish any unlawful purpose. This includes, but is not limited to, posting, storing, transmitting or disseminating information, data or material which is libelous, obscene, unlawful, threatening or defamatory, or which infringes the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal offense, or otherwise violate any local, state, federal, or non-U.S. law, order, or regulation;
4. post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be unlawful;
5. upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through the Broadband Service or otherwise that is protected by copyright or other proprietary right, without obtaining any required permission of the owner;

6. collect, or attempt to collect, personal information about third parties without their consent;
7. transmit unsolicited bulk or commercial messages commonly known as “spam;”
8. send voluminous copies of the same or substantially similar messages, empty messages, or messages which contain no substantive content, or send very large messages or files that disrupts a server, account, blog, newsgroup, chat, or similar service;
9. initiate, perpetuate, or in any way participate in any pyramid or other illegal scheme;
10. participate in the collection of voluminous amounts of e-mail addresses, screen names, or other identifiers of others (without their prior consent), a practice sometimes known as spidering or harvesting, or participate in the use of software (including “spyware”) designed to facilitate this activity;
11. collect responses from unsolicited bulk messages;
12. falsify, alter, or remove message headers;
13. falsify references to Zirrus or its network, by name or other identifier, in messages;
14. impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity (for example, “phishing”);
15. violate the rules, regulations, terms of service, or policies applicable to any network, server, computer database, service, application, system, or Web site that you access or use;

### **C. Technical Restrictions**

No user of the Broadband Service, Customer Equipment, or the Zirrus Equipment may, individually or in combination with another:

1. use the Internet service or facilities for web-hosting, e-mail hosting, or other unusually high-bandwidth consumption unless you have made special subscription arrangements with Zirrus and the usage does not otherwise violate law or regulation;
2. access any other person's computer or computer system, network, software, or data without his or her knowledge and consent; breach the security of another user or system; or attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other hosts, networks, or accounts without express permission to do so;
3. use or distribute tools or devices designed or used for compromising security or whose use is otherwise unauthorized, such as password guessing programs, decoders, password gatherers, keystroke loggers, analyzers, cracking tools, packet sniffers, encryption circumvention devices, or Trojan Horse programs. Unauthorized port scanning is strictly prohibited;

4. copy, distribute, or sublicense any proprietary software provided in connection with the Broadband Service by Zirrus or any third party, except that you may make one copy of each software program for back-up purposes only;
5. distribute programs that make unauthorized changes to software (cracks);
6. use or run dedicated, stand-alone equipment or servers from the Premises that provide network content or any other services to anyone outside of your Premises local area network ("Premises LAN"), also commonly referred to as public services or servers. Examples of prohibited equipment and servers include, but are not limited to, e-mail, Web hosting, file sharing, and proxy services and servers;
7. use or run programs from the Premises that provide network content or any other services to anyone outside of your Premises LAN, except for personal and non-commercial residential use;
8. service, alter, modify, or tamper with the Zirrus Equipment or Broadband Service or permit any other person to do the same who is not authorized by Zirrus;

## **II. Customer Conduct and Features of the Broadband Service**

### **A. Customer Obligations**

In addition to being responsible for your own compliance with this AUP, you are also responsible for any use or misuse of the Broadband Service that violates this AUP, even if it was committed by a friend, family member, or guest with access to your Broadband Service account. Therefore, you must take steps to ensure that others do not use your account to gain unauthorized access to the Broadband Service by, for example, strictly maintaining the confidentiality of your Broadband Service login and password. In all cases, you are solely responsible for the security of any device you choose to connect to the Broadband Service, including any data stored or shared on that device. It is also your responsibility to secure the Customer Equipment and any other Premises equipment or programs not provided by Zirrus that connects to the Broadband Service from external threats such as viruses, spam, bot nets, and other methods of intrusion.

### **B. Zirrus' Rights**

Zirrus reserves the right to refuse to transmit or post, and to remove or block, any information or materials, in whole or in part, that it, in its sole discretion, deems to be in violation of Sections I or II of this AUP, or otherwise harmful to Zirrus' network or customers using the Broadband Service, regardless of whether this material or its dissemination is lawful so long as it violates this AUP. Neither Zirrus nor any of its affiliates, suppliers, or agents have any obligation to monitor transmissions or postings (including, but not limited to, e-mail, file transfer, blog, newsgroup, and instant message transmissions) made on the Broadband Service. However, Zirrus and its affiliates, suppliers, and agents have the right to monitor these transmissions and postings from

time to time for violations of this AUP and to disclose, block, or remove them in accordance with this AUP, the Subscriber Agreement, and applicable law.

### **C. Service Restrictions**

All of Zirrus' network and system services are provided according to scheduled fees for each type of service. You agree to use such services in accordance with the terms set forth below.

#### **1. Email and Web-Hosting Services**

- (i) Unsolicited Email Prohibited** - You may not use Zirrus-hosted email addresses for the purpose of sending unsolicited email. You may not use or cause to be used Zirrus' equipment, network connectivity, or other resources to originate, deliver, relay or otherwise transmit unsolicited email messages. You may not engage in any of the foregoing prohibited activities by using the service of any other provider, third-party agent, remailing service or address forwarding service, in such a way that Zirrus' network addresses or Zirrus-hosted web or email services are in any way identified as being associated with the sending of unsolicited email.
- (ii) Unauthorized use, or forging, of mail header information** (e.g. "spoofing") is prohibited.
- (iii) Fraudulent Activity Prohibited** – You may not use the Zirrus email and web-hosting services to make fraudulent offers to sell or buy products, items, services, or to advance any type of financial scam such as "pyramid schemes", "Ponzi schemes", or "chain letters." You may not use techniques to hide or obscure the source of any e-mail or other communications.
- (iv) Zirrus reserves the right to suspend or delay delivery of email to Customer** utilizing the Zirrus email services and/or the virtual domain email if the volume of email being redirected, stored, or delivered on the Customer's behalf is deemed excessive. Excessive traffic is defined as any amount of email that consumes more than 10MB of disk storage space per individual mailbox or any volume of email traffic that noticeably degrades performance on the server in question, in the sole discretion of Zirrus. Stored mail exceeding these limits may be transferred to a compressed file at Zirrus' discretion. Zirrus will attempt to notify the account holder via the account contact information on record; however Zirrus reserves the right to delete the contents of such email boxes upon thirty (30) days after attempted notification.

- (v) The Broadband Service may not be used to communicate or distribute e-mail or other forms of communications in violation of Section I of this AUP. As described below in Section III of this AUP, Zirrus uses reasonable network management tools and techniques to protect customers from receiving spam and from sending spam (often without their knowledge over an infected computer).
- (vi) Zirrus is not responsible for deleting or forwarding any e-mail sent to the wrong e-mail address by you or by someone else trying to send e-mail to you. Zirrus is also not responsible for forwarding e-mail sent to any account that has been suspended or terminated. This e-mail will be returned to the sender, ignored, deleted, or stored temporarily at Zirrus' sole discretion.
- (vii) In the event that Zirrus believes in its sole discretion that any subscriber name, account name, or e-mail address (collectively, an "identifier") on the Broadband Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, Zirrus (i) reserves the right to block access to and prevent the use of any of these identifiers and (ii) may at any time require any customer to change his or her identifier. In addition, Zirrus may at any time reserve any identifiers on the Broadband Service for Zirrus' own purposes. In the event that a Broadband Service account is terminated for any reason, all e-mail associated with that account (and any secondary accounts) will be permanently deleted as well.

## 2. Instant, Video, and Audio Messages

Each user is responsible for the contents of his or her instant, video, and audio messages and the consequences of any of these messages. Zirrus assumes no responsibility for the timeliness, mis-delivery, deletion, or failure to store these messages. In the event that a Broadband Service account is terminated for any reason, all instant, video, and audio messages associated with that account (and any secondary accounts) will be permanently deleted as well.

## 3. Personal Web Pages and File Storage

You are solely responsible for any information that you or others publish or store on the any personal web page or in any storage files. You are also responsible for ensuring that all content made available through personal web pages is appropriate for those who may have access to it. For example, you must take appropriate precautions to prevent minors from receiving or accessing inappropriate content. Zirrus reserves the right to remove, block, or refuse to post or store any information or materials, in whole or in part, that it, in its sole discretion, deems to be in violation of Section I of this AUP. For purposes of this AUP, "material" refers to all forms of communications including text,

graphics (including photographs, illustrations, images, drawings, logos), executable programs and scripts, video recordings, and audio recordings.

### **III. Network Management and Limitations on Data Consumption**

Zirrus manages its network with the goal of delivering a fast, safe and uncompromised broadband Internet experience to all of its customers. But, high-speed bandwidth and network resources are not unlimited. Managing the network is essential for the promotion of best possible Broadband Internet experience by all of Zirrus' customers. The company uses reasonable network management practices that are consistent with industry standards. Zirrus tries to use tools and technologies that are minimally intrusive and, in its independent judgment guided by industry experience, among the best in class. Of course, the company's network management practices will change and evolve along with the uses of the Internet and the challenges and threats on the Internet.

If Zirrus didn't manage its network, its customers would be subject to the negative effects of spam, viruses, security attacks, network congestion, and other risks and degradations of service. By engaging in responsible network management, including enforcement of this AUP, Zirrus can deliver the best possible broadband Internet experience to all of its customers.

Please see Zirrus' [Network Management Policy](#) for more information.

#### **A. Network Usage and Data Consumption Restrictions**

You acknowledge that all of the Zirrus Internet services are intended for periodic, active use of email, user newsgroups, transfers via FTP, Internet chat, Internet games, and browsing of the Internet. You must comply with all current bandwidth, data storage, and other limitations on the Zirrus Internet services that have been established by Zirrus and Zirrus suppliers. You agree not to intentionally use the Zirrus Internet service on a standby or inactive basis in order to maintain a connection. The excessive use or abuse of Zirrus' network resources by one Customer may have a negative impact on all other Customers. Accordingly, in addition to the Prohibited Uses and Activities provided in Section I, you may not use the Zirrus Internet service or take any action, directly or indirectly, that will result in excessive consumption or utilization of the system or network resources, or which may weaken network performance, as determined in Zirrus' sole discretion. Such prohibited actions include, but are not limited to: using the Zirrus Internet Services to host a web server site which attracts excessive traffic at your location, continuously uploading or downloading streaming video or audio, use net hosting, continuous FTP uploading or downloading, or acting in a manner that negatively effects other users' ability to engage in real time exchanges and use of the Zirrus Internet Services.

The Broadband Service is for personal and non-commercial residential use only. Therefore, Zirrus reserves the right to suspend or terminate Broadband Service accounts where data consumption is not characteristic of a typical residential user of the Broadband Service as determined by Zirrus in its sole discretion.

Common activities that may cause excessive data consumption in violation of this AUP include, but are not limited to, numerous or continuous bulk transfers of files and other high capacity traffic using (i) file transfer protocol ("FTP"), (ii) peer-to-peer applications, and (iii) newsgroups. You must also ensure that your use of the Broadband Service does not restrict, inhibit, interfere with, or degrade any other person's use of the Broadband Service, nor represent (as determined by Zirrus in its sole discretion) an overly large burden on the network. In addition, you must ensure that your use of the Broadband Service does not limit or interfere with Zirrus' ability to deliver and monitor the Broadband Service or any part of its network.

If you use the Broadband Service in violation of the restrictions referenced above, that is a violation of this AUP. In these cases, Zirrus may, in its sole discretion, suspend or terminate your Broadband Service account or request that you subscribe to a version of the Broadband Service (such as a commercial grade Internet service, if appropriate) if you wish to continue to use the Broadband Service at higher data consumption levels. Zirrus may also provide versions of the Broadband Service with different speed and data consumption limitations, among other characteristics, subject to applicable Broadband Service plans.

Zirrus' determination of the data consumption for Broadband Service accounts is final.

#### **IV. Violation of this Acceptable Use AUP**

Zirrus reserves the right to immediately suspend or terminate your Broadband Service account and terminate the Subscriber Agreement if you violate the terms of this AUP or the Subscriber Agreement.

Zirrus does not routinely monitor the activity of individual Broadband Service accounts for violations of this AUP, except for determining aggregate data consumption in connection with the data consumption provisions of this AUP. However, in the company's efforts to promote good citizenship within the Internet community, it will respond appropriately if it becomes aware of inappropriate use of the Broadband Service. Zirrus has no obligation to monitor the Broadband Service and/or the network. However, Zirrus and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content in order to, among other things, operate the Broadband Service; identify violations of this AUP; and/or protect the network, the Broadband Service and Zirrus users.

Zirrus prefers to inform customers of inappropriate activities and give them a reasonable period of time in which to take corrective action. Zirrus also prefers to have customers



directly resolve any disputes or disagreements they may have with others, whether customers or not, without Zirrus' intervention. However, if the Broadband Service is used in a way that Zirrus or its suppliers, in their sole discretion, believe violates this AUP, Zirrus or its suppliers may take any responsive actions they deem appropriate under the circumstances with or without notice. These actions include, but are not limited to, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Broadband Service (including but not limited to newsgroups). Neither Zirrus nor its affiliates, suppliers, or agents will have any liability for any of these responsive actions. These actions are not Zirrus' exclusive remedies and Zirrus may take any other legal or technical actions it deems appropriate with or without notice.

Zirrus reserves the right to investigate suspected violations of this AUP, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on Zirrus' servers and network. During an investigation, Zirrus may suspend the account or accounts involved and/or remove or block material that potentially violates this AUP. You expressly authorize and consent to Zirrus and its suppliers cooperating with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) and system administrators at other Internet service providers or other network or computing facilities in order to enforce this AUP. Upon termination of your Broadband Service account, Zirrus is authorized to delete any files, programs, data, e-mail and other messages associated with your account (and any secondary accounts).

The failure of Zirrus or its suppliers to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this AUP is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect. You agree to indemnify, defend and hold harmless Zirrus and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) resulting from any violation of this AUP. Your indemnification will survive any termination of the Subscriber Agreement.

## **V. Redress and Governing Law**

### **a. Governing Law / Resolution of Disputes - Arbitration**

Any dispute or claim between you, the Customer, and Zirrus arising out of or relating to the service provided in connection with this Acceptable Use Policy or the Subscriber Agreement shall be resolved by arbitration ("Arbitration"), unless otherwise specified in Customer's individual Subscriber Agreement. To the extent that there is a conflict regarding this Arbitration provision, the Customer's individual Subscriber Agreement supersedes the Terms and Policies of the individual Services.

The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. The parties agree that no arbitrator has the authority to: (i) award relief in excess of what the Subscriber Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in Arbitration. CUSTOMER ACKNOWLEDGES THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL.

**b. Governing Law / Resolution of Disputes - Governing Law**

The Agreement and the relationship between you and Zirrus shall be governed by the laws of the state of North Carolina without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with the Arbitration provision herein, you and Zirrus agree to submit to the personal and exclusive jurisdiction of the courts located within the state of North Carolina and waive any objection as to venue or inconvenient forum. The failure of Zirrus to exercise or enforce any right or provision of this AUP or the Subscriber Agreement shall not constitute a waiver of such right or provision. If any provision of this AUP or the Subscriber Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this AUP or the Subscriber Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the service, this AUP or the Subscriber Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**VI. Copyright and Digital Millennium Copyright Act Requirements**

Zirrus is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Broadband Service to comply with these laws. Accordingly, you may not store any material or content on, or disseminate any material or content over, the Broadband Service (or any part of the Broadband Service) in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged

infringements. It is Zirrus' policy in accordance with the DMCA and other applicable laws to reserve the right to terminate the Broadband Service provided to any customer or user who is either found to infringe third party copyright or other intellectual property rights, including repeat infringers, or who Zirrus, in its sole discretion, believes is infringing these rights. Zirrus may terminate the Broadband Service at any time with or without notice for any affected customer or user. Please see Zirrus' DMCA policy for additional information.