



HostMist  
C/O: Legal  
18 Centennial Drive  
Poland, OH 44514  
United States of America  
[management@hostmist.com](mailto:management@hostmist.com)

# Service Agreement

---

This Service Agreement ("SA") shall constitute a binding contractual agreement between HostMist, a Mahoning County private company, ("HostMist"), and the subscriber of services ("Customer"). The SA shall include the Terms of Service ("TOS"), Privacy Policy ("PP"), Acceptable Use Policy ("AUP"), and Service Level Agreement ("SLA"). Customer agrees to be bound to all agreements in this SA.

## 1. Terms of Service ("TOS")

### 1.1 Term

The Customer agrees to a contract for the term based on the selection on the order form. This contract for services is automatically renewed each term in perpetuity subject to written cancellation by the Customer. HostMist may terminate this Agreement upon non-payment as set forth in paragraph 1.4 below. At its sole discretion, HostMist may terminate this Agreement if Customer violates any terms and conditions of HostMist's SA.

### 1.2 Personal Details

The Customer agrees to provide HostMist with accurate information upon signup. HostMist reserves the right to suspend, limit or terminate any services on its sole discretion, if HostMist believes that the Customer provided wrong personal information. HostMist may request additional documents to verify that the Customer's information, given on signup, is accurate.

### 1.3 Fees

#### 1.3.1 Monthly, Quarterly and Annual Fees

Fees for service(s) ordered by the Customer shall begin on the date of the initial order and that date shall serve as the anniversary date ("Anniversary Billing Date") for all future billings including one time fees, upgrades, cancellations and service credits. Fees are due in advance of the monthly, quarterly or annual service cycle and will be billed on the anniversary date of the respective billing cycle.

#### 1.3.2 Upgrade Fees

Upgrades ordered on the Anniversary Billing Date will be billed for a full service term and will continue each payment term on the Anniversary Billing Date. Upgrades ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one-time pro-rata charge. Future charges will appear as full fees added to your existing Anniversary Billing Date.

### **1.3.3 Additional Fees**

Additional services will be billed for the full billing cycle and will continue on the Anniversary Billing Date. Additional services ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one-time pro-rata charge. Future charges will appear as full fees added to your existing Anniversary Billing Date.

### **1.3.4 One-Time Fees**

One time fees, such as setup fees, administrative fees and late fees are due and payable at the time they are incurred, and/or agreed upon in writing or via ticket with HostMist's approval.

### **1.3.5 Service Credits**

SLA credits will be issued to your Customer account and shall be used to offset future billable services. SLA credits shall not be issued as cash-back to the Customer nor shall the service credits be transferable to other account holders. SLA credits shall expire if the Customer's account is fully terminated.

### **1.3.6 Taxes**

The Customer is responsible for paying all foreign, federal, state, and local sales, use, value added, excise duty and any other taxes assessed with respect to any services, other than those taxes based on HostMist's net income.

## **1.4 Non-Payment**

All payments are due in full on the Anniversary Billing Date. Failure to remit payment for services on the Anniversary Billing Date is a violation of the TOS. Failure to remit payment for one ("1") day, after the Anniversary Billing Date, shall result in a suspension of the services. Failure to remit payment for services within seven ("7") consecutive days, excluding the Anniversary Billing Date, shall result in termination of access to the service and all services shall be reclaimed. A late fee of ten percent ("10%") of the service will be incurred for failure to remit payment for services, one ("1") day after the monthly Anniversary Billing Date. All Customer data remaining after seven ("7") days of nonpayment will be destroyed for security and privacy reasons, unless otherwise required by law.

## **1.5 Refunds**

All services rendered by HostMist are non-refundable unless otherwise described. This includes, but is not limited to: setup fees, one time fees, recurring service fees, upgrade fees, additional service fees, administrative fees, late fees, and license fees. Customers seeking to resolve billing errors are instructed to open a ticket with the billing department inside the Customer portal.

## **1.6 Disputes, Chargebacks & Reviews**

Customer agrees not to chargeback any credit card payments for services rendered or dispute payments with other payment vendors. A chargeback of payment for services rendered will result in an additional charge of fifty dollars ("50") and will be subject to collection by an authorized collection agency. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by HostMist in enforcing collection.

Payment Vendors may review payments made by the customer. This payment will be on hold until we proofed that the customer authorized the payment. HostMist may temporarily disable the services which have been paid with this transaction.

## 1.7 Cancellation

Because cancellation is mostly automated, HostMist requires a cancellation notice via the customer portal, at latest on the Anniversary Billing Date for discontinuance of any services. Failure to supply the notice of cancellation on the Anniversary Billing Date will result in a full billable cycle prior to cancellation. Any server cancellation prior to the minimum deadline will remain online until the automated process reclaims your service on the Anniversary Billing Date. All Customer data remaining after the cancellation date will be destroyed for security and privacy reasons, unless otherwise required by law.

For Dedicated Servers, HostMist requires a cancellation notice via the customer portal, a minimum of forty-eight ("48") hours prior to 00:00:01 EST (GMT-5) on the Anniversary Billing Date for discontinuance of Dedicated Server services. Failure to supply the requisite forty-eight ("48") hours' notice of cancellation will result in a full billable monthly cycle prior to cancellation. Any server Cancellation prior to the minimum deadline will remain online until the automated process reclaims your server on the Anniversary Billing Date. Notice All Customer data remaining after the Cancellation date will be destroyed for security and privacy reasons, unless otherwise required by law.

## 1.8 Permitted Use

By accepting the SA, Customer agrees to use HostMist's services solely for their intended purposes. CUSTOMER SPECIFICALLY AGREES NOT TO TAMPER WITH, MAKE DERIVATIVE WORKS OF, REVERSE COMPILER, REVERSE ENGINEER AND/OR DISASSEMBLE ANY OF HOSTMIST'S SOFTWARE OR FILES. If Customer violates or exceeds the Permitted Use, HostMist reserves the right to immediately terminate Customer's account and will pursue any and all legal remedies available.

## 1.9 Laws

CUSTOMER AGREES TO ABIDE BY ALL LOCAL, STATE, AND FEDERAL LAWS PURSUANT TO SERVICES DELIVERED FROM HOSTMIST. THIS AGREEMENT IS MADE UNDER AND WILL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. EXCLUSIVE VENUE AND JURISDICTION FOR ANY AND ALL LEGAL REMEDIES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE MAHONING COUNTY, POLAND, OHIO. EACH PARTY IRREVOCABLY CONSENTS TO THE FOREGOING JURISDICTION AND VENUE REQUIREMENTS AND WAIVES ANY AND ALL OBJECTIONS TO SUCH REQUIREMENTS. FOR ANY AND ALL LEGAL REMEDIES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE SERVED IN MAHONING COUNTY; COMMON PLEAS COURT IN YOUNGSTOWN, OHIO.

## 1.10 Indemnification

CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS HOSTMIST, HOSTMIST'S AFFILIATES, AND ITS RESPECTIVE OFFICERS, DIRECTORS, ATTORNEYS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, FINES, PUNITIVE DAMAGES, AMOUNTS IN INTEREST, EXPENSES AND DISBURSEMENTS OF ANY KIND AND NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEYS' FEES) BROUGHT BY A THIRD PARTY UNDER ANY THEORY OF LEGAL LIABILITY ARISING OUT OF OR RELATED TO CUSTOMER'S CONTENT, ILLEGAL ACTIVITY AND/OR ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF A THIRD PARTY'S COPYRIGHT, TRADE SECRET, PATENT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.

## 1.11 Limitation of Liability

EXCEPT AS DESCRIBED IN THE SLA, HOSTMIST SHALL NOT BE LIABLE TO CUSTOMER FOR HARM CAUSED BY OR RELATED TO CUSTOMER'S SERVICES OR INABILITY TO UTILIZE THE SERVICES UNLESS CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. HOSTMIST SHALL NOT BE LIABLE TO CUSTOMER FOR LOST PROFITS, INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THIS SA, THE MAXIMUM AGGREGATE LIABILITY OF HOSTMIST AND ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW

SHALL NOT EXCEED THE AMOUNT PAID BY THE CUSTOMER FOR HOSTING SERVICES FOR THE SIX MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE CLAIM.

### **1.12 Arbitration**

Any controversy or claim arising from service or related to this SA or breach therein in excess of five hundred dollars (“\$500”) shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The venue and jurisdiction requirements set forth above apply to any arbitration proceedings. The resulting judgment rendered by a licensed arbitrator may be entered in any court having valid jurisdiction.

### **1.13 Legal Compliance**

By accepting this SA, Customer represents and warrants that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties. Customer further represents and warrants that he/she has full authority and power to execute this Agreement on behalf of the Company he/she represents, if any. Additionally, Customer warrants that he/she is at least eighteen (“18”) years of age or older and are not otherwise legally incapacitated to execute this Agreement.

### **1.14 Electronic Signature**

Acceptance by Customer of the SA incorporating the TOS, AUP, SLA, and PA hereby initiates billable services and is deemed complete by agreement to the terms as described on the online signup form(s) and completion of the ordering process.

### **1.15 Marketing Rights**

Customer agrees that HostMist may refer to Client, and/or Client’s business/company, in HostMist marketing materials, the HostMist website, and communication to HostMist current/potential Customers. Customer grants HostMist a limited license and permission to use any Customer trade name and/or trademark for such, and only for such purposes, unless Customer notifies HostMist otherwise. HostMist customer, including HostMist Resellers, are granted permission to utilize/copy any HostMist advertising/promotional material, and any content from HostMist websites, in order to promote the usage/resale of the HostMist service specifically, as long as the customer remains a HostMist customer with at least one active service on their account.

## 2. Privacy Policy (“PP”)

This site is owned and operated by HostMist. Your privacy on the Internet is of the utmost importance to us. We want to make your online experience satisfying and safe. Because we gather certain types of information about our users, we feel you should fully understand the terms and conditions surrounding the capture and use of that information. This privacy statement discloses what information we gather and how we use it. We invite you to contact us if you have questions about this policy. You may contact us by mail at the following address:

[management@hostmist.com](mailto:management@hostmist.com).

### 2.1 Types of Data collected

HostMist collects data related to our users through the following methods:

- ❖ Automated means such as communication protocols and cookies
- ❖ Online registration and online signup forms
- ❖ Sales inquiries and transactions
- ❖ Online Customer communications
- ❖ Offline communications and interactions
- ❖ Third party sources of information

Depending upon the method of collection and use, the data collected may include information about the user from forms, registrations and transactions (such as name, title, address, company, phone number and e-mail address), financial/transaction information (such as credit card, cvv, and payment information), information about use of HostMist web sites (such as electronic communications protocols, web pages visited, and cookies) and user preferences and privileges.

### 2.2 Electronic Communications Protocols & Cookies

HostMist may receive data from you as part of the communication connection itself through the standard electronic greeting between your computer and our servers. This information often consists of network routing (where you came from), equipment information (browser type), internet protocol address, date and time. At this time our server will also query your computer to see if there are "cookies" previously set by HostMist.com to facilitate log in or other site navigation procedures. A "cookie" is a small piece of information sent by a web server to store in a web browser so it can later be read back from that browser.

Some parts of the HostMist site use cookies (including signup forms) to collect information about visitors' use of the web site and to facilitate return visits. The information collected from cookies is tracked to enhance security and/or to improve the functionality of the web site by avoiding duplicate data entry, facilitating navigation, and increasing the relevance of content.

Cookies on the site may collect the following information: a unique identifier, user preferences and profile information used to personalize the content that is shown, and user information to access HostMist's user forums. Some cookies used by HostMist.com may remain on the user's computer after they leave the web site, but the majority is set to expire within thirty (“30”) – three hundred sixty five (“365”) days. There may be some cookies on certain tools that are of longer duration. Cookies may also be of benefit to you by creating a more streamlined login process, keeping track of shopping cart additions or preserving order information between sessions. In the future, as we enable further customization of the site, cookies will help in ensuring that information provided to you will be the most relevant to your needs.

While we do not offer an opt-out on the site for cookies, browsers provide you with information and control over cookies. You can set your web browser to alert you when a cookie is being used. You can also get information on the duration of the cookie and what server your data is being returned to. You then have the opportunity to accept or reject the cookie. Additionally, you can set your browser to refuse all cookies or accept only cookies returned to the originating servers. Users can generally disable the cookie feature on their browser without affecting their ability to use the site, except in some cases where cookies are used as an essential security feature necessary for transaction completion.

## 2.3 The Data We Collect and How We Use It

HostMist collects data from users for the following purposes:

- ❖ To prevent Fraud: Information such as Addresses, E-mails and IP Addresses will be transmitted to an third party fraud monitor for fraud scoring. HostMist may request additional information to proof your identity and address; this information will be stored on secure servers and will be deleted if the customer does not have any active services with us.
- ❖ To provide future service and support: Information collected for this purpose is both contact data and information related to products and service/support requested. This information is also used to provide service, product update, and similar notices.
- ❖ To select content: Data may be collected to help create web site content and navigation that is most relevant and user friendly. This includes data collected as a result of site navigation, as well as data provided in forms.
- ❖ To respond to user inquiries and requests for information: This data includes registrations for online newsletters, opt-in mailing lists and specific requests for further information.
- ❖ To respond to law enforcement organizations, government officials, or third parties when compelled by subpoena, court order, or applicable law, or to report or prevent suspected fraudulent or illegal activity in the use of HostMist's services: HostMist will notify Customer of the information request or submission as, and if, allowed.
- ❖ To provide various HostMist communities, such as resellers, with relevant product alerts and updates: These updates are related to product releases, prices, terms, special offers and associated campaigns. This data is sent when the program member signs up for the relevant program or online account.
- ❖ To better tailor marketing to user needs: We may use information from user purchases and user-specified requirements to provide you with timely and pertinent notices of HostMist product releases and service developments that address your needs and specified requirements and/or which are similar to products and services previously purchased by the user from HostMist.
- ❖ To better respond to requests for service or quotes for product and equipment purchase: HostMist will pass contact information to the appropriate HostMist sales person, or reseller for follow-up related to HostMist products or services.
- ❖ From referral "tell a friend" function: If a user elects to use our referral service for informing a friend about our site, we ask them for the friend's name and email address. HostMist will automatically send the friend a one-time email inviting them to visit the site and send a copy of said e-mail to the user. The e-mail(s) sent shall clearly identify the sender of such email(s). HostMist uses this data for the sole purpose of sending this one-time email. Such email sent to a friend at user's request will not be stored for additional processing.

- ❖ There are parts of the web site that permit you to participate in interactive discussions: Some of these are moderated; all are subject to access for technical reasons. HostMist does not control the content that users post and some may serve as public discussion forums. As in any interactive forum open to many users, you should carefully consider whether you wish to submit data and should tailor any other content submitted accordingly.

## **2.4 Customer Portal, Customer Customization, Preferences and Opt-Out**

New Customers are automatically registered for access at <https://clients.hostmist.com>. The Customer portal allows Customers the ability to create users, add/delete users, add/delete user privileges and opt in (or out) of services and mailing lists. The Customer portal provides the Customers with control over their preferences for electronic information delivery.

HostMist has also provided the Customer's master user the ability to manage the Customer's account or profile information. We maintain the data and allow the Customer's master user to update it at any time. To change this information, you must be a current Customer and login with a user ID and password and follow the prompts to "update my profile." We continue to expand the profile of services and information that you may access and update.

Please note that some email communications are not subject to general opt-out. These include communications related to downloads; communications about sales transactions; information about software updates, patches and fixes; disclosures to comply with legal requirements; and network upgrades or other related service maintenance.

If an individual's personal information is to be (a) disclosed to a third party who is not an Agent; or (b) used for a purpose that is incompatible with the purpose(s) for which it was originally collected or subsequently authorized by the individual, then the individual will be notified prior to such disclosure and may opt out of having the information disclosed by responding to the email and/or author of the notification, where such information shall be clearly set forth.

## **2.5 Security**

HostMist is concerned with the security of the data we have collected and utilizes commercially reasonable measures to prevent unauthorized access to that information. These measures include policies, procedures, employee training, physical access and technical elements relating to data access controls. In addition, HostMist uses standard security protocols and mechanisms to facilitate the exchange and the transmission of sensitive data, such as credit card details. HostMist does not process personal information in a way that is incompatible with the purposes for which it has been collected or subsequently authorized by the individual.

In the event that individual personal data is acquired, or is reasonably believed to have been acquired, by an unauthorized person and applicable law requires notification, HostMist will notify the affected individual of the breach by email or fax or, if HostMist is unable to contact the individual by email or fax, then by regular mail. Notice will be given promptly, consistent with the legitimate needs of law enforcement and any measures necessary for HostMist or law enforcement to determine the scope of the breach and to ensure or restore the integrity of the data system. HostMist may delay notification if HostMist or a law enforcement agency determines that the notification will impede a criminal investigation, and in such case, notification will not be provided unless and until HostMist or the agency determines that notification will not compromise the investigation.



### 3. Acceptable Use Policy (“AUP”)

An Acceptable Use Policy (“AUP”) is necessary to ensure our hosting services are used fairly and our services operate reliably and stable for all customers. Resources provided on all our hosting services including but not limited to Reseller Accounts, Web Hosting Accounts, Virtual Private Servers and Dedicated Servers are all governed by this Acceptable Use Policy.

HostMist understands the challenges of hosting companies, resellers, businesses, organizations and other customers who may have third party violations occur due to the nature of their business. The goal of our Methods of Resolution is to mitigate service interruptions while resolving potential violations under this AUP. Our sales, support and abuse staffs are dedicated to working with the Customer in resolving potential violations, and are available via phone, ticket, or email.

#### 3.1 General Acceptable Use Policy

The following list represents per se direct violations of this AUP using any service and will be subject to immediate redress under one or more of the Methods of Resolution as described in this AUP and as set forth below in Table A.

- 1) Unsolicited Email: The sending or receiving of mass unsolicited email (SPAM) is a direct violation of HostMist’s AUP. This includes the direct sending and receiving of such messages, support of such messages via web page, splash page or other related sites, or the advertisement of such services.
- 2) Email Bombing: The sending, return, bouncing or forwarding of email to specified user(s) in an attempt to interfere with or over flow email services is a direct violation of HostMist’s AUP.
- 3) Proxy Email (SPAM): The use of our services to proxy email unsolicited users is a direct violation of HostMist’s AUP. Proxy email is defined as the use of services to act in concert with other services located inside and outside the network to achieve mass unsolicited email (SPAM) to unrelated third parties.
- 4) UseNet SPAM: The use of services to send, receive, forward, or post UseNet unsolicited email or posts is a direct violation of HostMist’s AUP. This includes UseNet services located within the HostMist network or unrelated third party networks.
- 5) Peer-To-Peer: The use of services to upload or download files using the peer-to-peer protocols (such as eDonkey, Emule etc.) is a direct violation of HostMist’s AUP.
- 6) Internet Relay Chat (“IRC”) applications: The use of services for any IRC applications is a direct violation of HostMist’s AUP.
- 7) Network Scanning: The use of services to scan other networks or IP-Addresses is a direct violation of HostMist’s AUP.
- 8) MAC-Address Modification: The modification of an MAC-Address of any device or service is a direct violation of HostMist’s AUP.



- 9) Copyright and Trademark Infringement: Direct copyright infringement (as defined and noted under Title 17, Section 512 of the United States Code) and trademark infringement are direct violations of HostMist's AUP.
- 10) Illegal Use: Any use of services in a manner which is defined or deemed to be statutorily illegal is a direct violation of HostMist's AUP. This includes, but is not limited to: death threats, terroristic threats, threats of harm to another individual, multi-level marketing schemes, "ponzi schemes", invasion of privacy, credit card fraud, racketeering, and other common illegal activities.
- 11) Child Pornography: HostMist has a zero-tolerance policy on child pornography and related sites. The hosting of child pornography or related sites or contact information is in direct violation of federal law and HostMist's AUP.
- 12) Threats & Harassment: The HostMist network can be utilized for any type of individual, organizational or business use. This does not include threats to or harassment of individuals, organizations or businesses, unless it falls within the bounds of protected free speech under the First Amendment of the United States Constitution. HostMist seeks to serve only as the medium of exchange for information and refrains from decisions on freedom of speech.
- 13) Fraudulent Activities: HostMist prohibits utilizing hosting services or network services for fraudulent activities. Participation in fraudulent activities is in direct violation of state and federal law and HostMist's AUP.
- 14) Denial of Service: HostMist absolutely prohibits the use of services for the origination or control of denial of service attacks or distributed denial of service attacks. Any relation to DOS or DDOS type activity is a direct violation of HostMist's AUP.
- 15) Terrorist Websites: HostMist prohibits the use of services for the hosting of terrorist-related web sites. This includes sites advocating human violence and hate crimes based upon religion, ethnicity, or country of origin.
- 16) Distribution of Malware: HostMist prohibits the storage, distribution, fabrication, or use of malware, including without limitation, virus software, root kits, password crackers, adware, key stroke capture programs and other programs normally used in malicious activity. Programs used in the normal ordinary course of business are deemed acceptable. (Example: Security Company hosting at HostMist analyzes the latest root kit for new security analysis/software.)
- 17) Phishing: HostMist strictly prohibits any activity associated with Phishing or systems designed to collect personal information (name, account numbers, usernames, passwords, etc.) under false pretense. Splash pages, phishing forms, email distribution, proxy email or any relation to phishing activities will result in immediate removal.

- 18) HYIP or Ponzi Schemes: High Yield Investment Plans or Ponzi schemes with the intent to defraud end users are illegal and not allowed on the network. This includes hosting, linking and or advertising via email websites or schemes designed to defraud.
- 19) Network disruptions and unfriendly activity: Use of services for any activity which affects the ability of other people or systems to use HostMist Services or the Internet. Interference with or disruption of other network users, services or equipment is prohibited. It is the Member's responsibility to ensure that their network is configured in a secure manner. A Subscriber may not, through action or inaction, allow others to use their network for illegal or inappropriate actions. A Subscriber may not permit their network, through action or inaction, to be configured in such a way that gives a third party the capability to use their network in an illegal or inappropriate manner. Unauthorized entry and/or use of another company and/or individual's computer system is a direct violation of HostMist's AUP. HostMist will not tolerate any subscriber attempting to access the accounts of others, or penetrate security measures of other systems, whether or not the intrusion results in corruption or loss of data.

### **3.2 Web Hosting & Reseller Hosting**

The following list represents additional per se direct violations of this AUP when the customer is using any Webhosting or Reseller Webhosting services and will be subject to immediate redress under one or more of the Methods of Resolution as described in this AUP and as set forth below in Table B.

- 1) Rapidleech Scripts: Server transfer script for use on various popular upload/download sites such as megaupload.com, Rapidshare.com is a direct violation of HostMist's AUP.
- 2) Proxy Scripts: Proxy software that acts as an intermediary for requests from clients seeking resources from other servers is a direct violation of HostMist's AUP.
- 3) Warez Hosting: Distributing copyrighted work without fees or royalties is a direct violation of HostMist's AUP.
- 4) File Sharing: Distributing or providing access to digitally stored information, such as computer programs, multimedia (audio, images, & video), documents, or electronic books to a wide audience (no private use) is a direct violation of HostMist's AUP.
- 5) Mass Mailing: HostMist does allow occasional mass mailing but any constant mass mailing or mass mailing without any set limit per hour and a delay between the sent out e-mails is a direct violation of HostMist's AUP.
- 6) Game Servers: Running Game Server applications are a direct violation of HostMist's AUP.
- 7) CPU & RAM Usage: Using more than 10% of the total CPU/RAM resources for more than 90 seconds is a direct violation of HostMist's AUP.

## **Guidelines of Resolution for Violations of HostMist's Acceptable Use Policy**

Step 1: Notification	A ticket will be generated in the Customer Portal to provide the Account's master user with information regarding the potential violation of HostMist's AUP. This is often a fact-finding email requiring further information or notifying Customer of the potential violation and the required actions to resolve the issue.
Step 2: Acknowledgement	Customer acknowledges the Violation within 24 hours and is trying to resolve the situation.
Step 3: Failure to address Violation	The responsible Service may be temporarily or permanently disabled if the Customer fails to address the Notification.

## **Guidelines of Resolution for direct Violations of HostMist's Acceptable Use Policy**

Step 1: Notification	A ticket will be generated in the Customer Portal to provide the Account's master user with information regarding the potential violation of HostMist's AUP. This is often a fact-finding email requiring further information or notifying Customer of the potential violation and the required actions to resolve the issue.
Step 2: Temporary Service suspension	The responsible Service will be temporarily disabled until the customer acknowledges and agrees to resolve the violation.
Step 3: Acknowledgement	Customer acknowledges the Violation within 48 hours and resolves the situation.
Step 4: Failure to address Violation	The responsible Service may be temporarily or permanently disabled if the Customer fails to address the Notification. HostMist may remove the offending content.

Note: HostMist retains the right, at its sole discretion, to refuse new service to any individual, group, or business. HostMist also retains the right to discontinue service to Customers with excessive and/or multiple repeated violations.

## **4. Acceptable Use Policy (“SLA”)**

The SLA is incorporated into the SA and applicable to all services delivered directly to Customers of HostMist. The SLA is not applicable to unrelated third parties or third parties lacking privity of contract with HostMist. The uptime guarantees and the resulting SLA credits are applied in monthly terms unless specified otherwise. All SLA guarantees and information listed below are made in good faith and are subject to standard contract remedies.

### **4.1 Public Network Connectivity**

HostMist guarantees ninety-nine point eight (“99.8”) percent (“%”) uptime on all Public Network services to Customers located in our data centers. Except for service downtimes resulting from Customer’s fault, and provided Customer follows the proper procedures for service credit claims as set forth in this SLA, for each continuous, uninterrupted hour (60 min) interval of Public Network service downtime that Customer experiences during an applicable month, HostMist agrees to grant to Customer a SLA credit equal to five percent (“5%”) of the Customer’s monthly service fees for that month on the specific server. Public Network service downtimes of less than thirty (“30”) continuous, uninterrupted minutes do not qualify for this service credit, and the Customer cannot combine or augment Public Network or other service-related downtimes to satisfy such downtime requirement. All Public Network services include redundant carrier grade internet backbone connections, traffic analysis, and bandwidth graphs. To ensure that HostMist is providing optimal services to its Customers, HostMist is required to perform scheduled maintenance, from time to time, on the network, customer portal, and hardware. Any downtime resulting from any such scheduled maintenance does not qualify for SLA credit(s).

### **4.2 Hardware Replacement**

HostMist guarantees the replacement of failed hardware and hardware components located within our data centers. HostMist guarantees a failed hardware component will be replaced within two (“2”) hours of Customer notification in the trouble ticketing system and successful problem diagnosis as confirmed by HostMist’s Staff. Replacement of failed hardware does not include time required to reload the operating system or applications.

### **4.3 30 Days Money Back Guarantee**

HostMist agrees to provide the customer who signed up for any web hosting or reseller hosting service with a thirty (“30”) days money back guarantee. HostMist specifically excludes to refund any License fees, IP fees and Usage fees with the thirty days money back guarantee. HostMist reserves the right to refuse to refund the customer, if the customer violated HostMist’s SA.

### **4.4 SLA Credit Claim**

To properly claim an SLA credit due, the Customer’s master user must open a billing ticket located inside the Customer portal within five (“5”) days of the purported outage. Customer must include service type, IP Address, contact information, and full description of the service interruption including logs, if applicable. The SLA claim will be researched by the appropriate HostMist department manager and any credit issued will be issued to accounting and the ticket will be updated. SLA credits are issued as service credits on future billing cycles. SLA credits shall not be bartered or traded with other HostMist customers. Please allow up to fourteen (“14”) days for the process of SLA claims. Customer acknowledges that the maximum amount of SLA credit that may be used for any particular month cannot exceed the total monthly service fee amount for such month.