

Terms Of Use

This Terms of Use Agreement ("Agreement") is entered into as of the date on which the Customer first uses the Spheriad, Inc. Services (as defined below) ("Effective Date") by and between Spheriad, Inc. ("Spheriad, Inc.") and Customer ("Customer").

RECITALS

WHEREAS, Spheriad, Inc. is a service provider that offers access to, and use of, certain applications including its fully integrated set of web-based modules and implementation support to initiate such access and use.

WHEREAS, Customer wants to retain Spheriad, Inc. to allow Customer to access and use the Spheriad, Inc. Services under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, Customer and Spheriad, Inc. agree to the foregoing and as follows:

ARTICLE 1—GENERAL

1.1 Overview of Agreement. This Agreement represents the terms and conditions under which Spheriad, Inc. shall provide Customer access to and use of the Spheriad, Inc. services or packages subscribed to, which may be amended from time to time to reflect additional or amended Spheriad, Inc. Services ordered by Customer. Spheriad, Inc. Services shall be provided to Customer via the Internet's world wide web. Additional services and/or deliverables may be procured consistent with the terms of this Agreement. Any attempt to alter or amend the terms and conditions contained in this Agreement through conflicting or inconsistent terms in any other document shall be void and of no force and effect.

ARTICLE 2—SPHERIAD, INC. SERVICES

2.1 Equipment. Customer will be responsible for procuring, at Customer's sole expense, all equipment or other software (including licenses necessary to use currently-supported versions thereof) , if any, required to use Spheriad, Inc. Services. For such third party hardware or software, Customer shall only receive the manufacturer's warranty, if any, and shall

receive no warranties from Licensor for any such third party hardware or software.

2.2 Access Rights. During the term of this Agreement, Customer will have a limited, revocable, non-transferable and non-exclusive license for Customer's employees ("Authorized Users") to use the Spheriad, Inc. Services and related documentation solely for Customer's business purposes consistent with the terms and conditions of this Agreement. Spheriad, Inc. will issue to one Authorized User ("Spheriad, Inc. Administrator") an individual logon identifier and password ("Administrator's Logon") for purposes of administering the Spheriad, Inc. Services. Customer acknowledges and agrees that only its Spheriad, Inc. Administrator shall be authorized to bind Customer in connection with any service provided to Customer under this Agreement. Using Administrator's Logon, the Spheriad, Inc. Administrator shall assign each remaining Authorized User a unique logon identifier and password and assign and manage the business rules that control each such Authorized User's access to the Spheriad, Inc. Services. Customer shall use its reasonable efforts to see that each Authorized User will: (a) be responsible for the security and/or use of his or her logon identifier; (b) not disclose such logon identifier to any person or entity; (c) not permit any other person or entity to use his or her logon identifier; (d) use the Spheriad, Inc. Services consistent with the assigned business rules; and (e) use the Spheriad, Inc. Services in accordance with the terms and conditions of this Agreement. Customer will be responsible for: (f) advising each Authorized User of his or her obligations under this Agreement and of the license restrictions set forth in this Agreement; and (g) any and all costs and expenses incurred through the authorized use of Customer's Logon. Spheriad, Inc. reserves the right to deny, suspend or revoke access to the Spheriad, Inc. Services, in whole or in part, if Spheriad, Inc. believes Customer and/or its Authorized Users are in breach of this Agreement or are otherwise using or accessing the Spheriad, Inc. Services inconsistent with the terms and conditions of this Agreement.

2.3 Restrictions. The customer is expected to be familiar with and to practice good Internet etiquette ("Netiquette"). The customer will comply with the rules appropriate to any network to which Spheriad, Inc. may provide access. The customer should not post, transmit, or permit Internet access to information the customer desires to keep confidential. The customer is not permitted to post any material that is illegal, libelous, tortuous, indecently depicts children or is likely to result in retaliation

against Spheriad, Inc. by offended users. Spheriad, Inc. reserves the right to refuse or terminate service at any time for violation of this section. This includes advertising services or sites via IRC or USENET in clear violation of the policies of the IRC channel or USENET group. Customer agrees that Customer and its Authorized Users will not: (a) sell, lease, license or sublicense the Spheriad, Inc. Services; (b) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Spheriad, Inc. Services in any way for any reason; (c) provide, disclose, divulge or make available to, or permit use of the Spheriad, Inc. Services by, any third party; (d) copy or reproduce all or any part of the Spheriad, Inc. Services (except as expressly provided for herein); (e) interfere, or attempt to interfere, with the Spheriad, Inc. Services in any way; (f) engage in spamming, mail bombing, spoofing or any other fraudulent, illegal or unauthorized use of the Spheriad, Inc. Services; (g) knowingly introduce into or transmit through the Spheriad, Inc. Services any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design; (h) remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to or contained within the Spheriad, Inc. Services; or (i) engage in or allow any action involving the Spheriad, Inc. Services that is inconsistent with the terms and conditions of this Agreement.

2.4 Audit Rights. If a customer has PURCHASED the Spheriad, Inc. software or has obtained FTP access to the Spheriad, Inc. software, Spheriad, Inc. shall have the right, during the term of this Agreement and for a period of six (6) months thereafter, upon reasonable notice and at reasonable times, to access Customer's location and files to inspect Customer's use of the Spheriad, Inc. Services, as well as computers and equipment used in connection therewith. Customer shall cooperate fully with any such audit or inspection. In the event that any audit shows any misuse, violation or breach of the Spheriad, Inc. Services or this Agreement, Spheriad, Inc. shall be entitled to pursue any remedies available to it under this Agreement or otherwise at law or in equity.

2.5 Non-Exclusivity. The parties acknowledge and agree that Spheriad, Inc. is providing access to and use of the Spheriad, Inc. Services to multiple customers and that such services are non-exclusive.

2.6 Availability. Spheriad, Inc. shall use commercially reasonable efforts to keep the Spheriad, Inc. Services available on a 24 hour a day, 7 day a week basis, subject to scheduled downtime for maintenance purposes,

unscheduled maintenance and systems outages. The parties acknowledge that since the Internet is neither owned nor controlled by any one entity, Spheriad, Inc. makes no guarantees that any given user will be able to access the Spheriad, Inc. Services at any given time, and Spheriad, Inc. shall not be liable to Customer for failure of accessibility to the Spheriad, Inc. Services.

2.7 Spheriad, Inc.'s Licensors.

2.7.1 Terms and Conditions applicable to services provided by Spheriad, Inc.'s Licensors. Customer acknowledges and agrees that Spheriad, Inc. Services are provided, in some cases, by third party Licensors to Spheriad, Inc. (hereinafter “Third Party Licensors”). For all Spheriad, Inc. Services contained in the Spheriad, Inc. Service Package that are provided by Third Party Licensors to Spheriad, Inc., Customer agrees with and shall abide by all Third Party Licensor terms and conditions, if any. Such Third Party Licensor terms and conditions are available upon request (the “Additional Terms and Conditions”). Any Additional Terms and Conditions are in addition to and supplement the terms and conditions provided in this Agreement. Customer acknowledges and agrees that it will be subject to all Additional Terms and Conditions and that all such Additional Terms and Conditions shall be incorporated into the terms and conditions of this Agreement as if set forth fully herein. Customer further agrees that it will be subject to all Additional Terms and Conditions where Customer elects to add services to its Spheriad, Inc. Services.

2.7.2 Changes to Spheriad, Inc. Licensors. Customer acknowledges that Spheriad, Inc. may, at its sole discretion, change any Third Party Licensors that provide services under this Agreement, or add or delete discrete services from the Spheriad, Inc. Services. Spheriad, Inc. agrees to use reasonable efforts to prevent any service interruptions associated with Spheriad, Inc.'s decision, if any, to change Third Party Licensors. In the event that Spheriad, Inc. changes Third Party Licensors, Spheriad, Inc. may provide Customer with notification of changes in Third Party Licensors and refer Customer to information posted on Spheriad, Inc.'s website relative to that change which shall become Additional Terms and Conditions for the purposes of this Agreement.

ARTICLE 3—FEES; PAYMENT TERMS

3.1 Application and Use Fee. Customer shall pay any application fees, user fees, including but not limited to monthly fees and any taxes according to the Spheriad, Inc.'s then-applicable fee schedule, which can be obtained

upon request from authorized company officers. Fee amounts are subject to change at any time, at Spheriad, Inc.'s sole discretion. Customer shall pay all amounts due under any invoice to Spheriad, Inc. within thirty (30) calendar days of due date.

3.2 Late Payments. If Customer fails to pay any fees by the applicable due date, Spheriad, Inc. will have the right to: (a) assess late charges in an amount equal to the greater of five percent (5%) per month or the maximum allowable under applicable law; and/or (b) suspend access to any or all of the Spheriad, Inc. Services and/or performance of the services provided by Spheriad, Inc. hereunder and/or terminate this Agreement. Any such suspension or termination will not relieve Customer from paying any outstanding fees plus interest and late charges. Customer will be responsible for any costs associated with collecting such fees including, without limitation, legal costs, attorneys' fees, court costs and collection agency fees.

3.3 Taxes. Customer will pay or reimburse Spheriad, Inc. for all sales, use, transfer, privilege, excise and all other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the performance by Spheriad, Inc. under this Agreement, excluding, however, income taxes or gross receipts taxes which may be levied against Spheriad, Inc. Such taxes may be reflected on Customer invoices.

ARTICLE 4—LIMITED WARRANTIES

4.1 Customer Warranty. Customer represents and warrants to Spheriad, Inc. that: (a) Customer has the authority to enter into this Agreement and perform its obligations under this Agreement; (b) Customer and its Authorized Users will only use the Spheriad, Inc. Services for lawful purposes and will not violate any law of any country or the intellectual property rights of any third party; and (c) Customer warrants that it is not located in a country where export or re-export of the contents of information received via the Internet is prohibited. Should Customer receive notice of any claim regarding the Spheriad, Inc. Services, Customer shall promptly provide Spheriad, Inc. with a written notice of such claim.

4.2 Spheriad, Inc. Warranty. Spheriad, Inc. warrants that: (a) Spheriad, Inc. has the authority to enter into this Agreement and perform its obligations under this Agreement; and (b) Spheriad, Inc. will perform the

services required under this Agreement in a professional and workmanlike manner.

4.3 Disclaimer. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPHERIAD, INC. MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY REGARDING OR RELATING TO ANY OF THE SERVICES AND/OR ACCESS TO OR USE OF THE SPHERIAD, INC. SERVICES PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. SPHERIAD, INC. SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

ARTICLE 5—LIMITATION OF LIABILITY

SPHERIAD, INC.'S LIABILITY UNDER THIS AGREEMENT FOR ANY DIRECT DAMAGES OF ANY KIND WILL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT PAID BY CUSTOMER TO SPHERIAD, INC. THROUGH THE DATE SPHERIAD, INC.'S LIABILITY TO CUSTOMER ACCRUES. IN NO EVENT SHALL SPHERIAD, INC. BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS.

ARTICLE 6—INDEMNIFICATION

Customer agrees to indemnify, defend (at Spheriad, Inc.'s sole option and at Customer's sole expense) and hold harmless Spheriad, Inc., its managers, directors, officers, employees, independent contractors and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim arising out of or relating to Customer's use of and/or access to the Spheriad, Inc. Services or services provided hereunder, including but not limited to any claims arising out of the sale or offer for sale of any illegal, infringing, counterfeit products or services or any other misuse of the Spheriad, Inc. Services by Customer or its customers. Customer specifically acknowledges that Spheriad, Inc. shall not be liable to Customer for losses, if any, incurred as a result of fraudulent or unauthorized misuse of Spheriad, Inc. Services.

ARTICLE 7—CONFIDENTIAL INFORMATION

"Confidential Information" will include the terms of this Agreement, any software provided by Spheriad, Inc. under this Agreement, the logon

identifiers and/or passwords provided to Customer and each Authorized User, the prices and fees charged under this Agreement, any other materials marked confidential by Customer or Spheriad, Inc. and any other information conveyed under this Agreement that is identified in writing as confidential at the time of its conveyance. Each party acknowledges and agrees that: (a) the Confidential Information constitutes valuable trade secrets of the party owning such Confidential Information; (b) it will use Confidential Information solely in accordance with the provisions of this Agreement; and (c) it will not disclose, or permit to be disclosed, the Confidential Information of the other party to any third party without the disclosing party's prior written consent. Each party will take all reasonable precautions necessary to safeguard the confidentiality of the other party's Confidential Information including, at a minimum, those precautions taken by a party to protect its own Confidential Information, which will in no event be less than a reasonable degree of care. Confidential Information will not include information that is: (d) publicly available; (e) already in the other party's possession and not subject to a confidentiality obligation; (f) obtained by the other party from any source without any obligation of confidentiality; (g) independently developed by the other party without reference to the disclosing party's Confidential Information; or (h) required to be disclosed by order of a court or other governmental entity; provided no less than ten (10) days written notice is given to the party owning such Confidential Information so that such party may obtain a protective order or other equitable relief.

ARTICLE 8—PROPRIETARY RIGHTS

No right (except for the license granted in Section 2.2), title or interest of intellectual property or other proprietary rights in and to the Spheriad, Inc. Services and/or other products or services made available under this Agreement is transferred to Customer hereunder. Spheriad, Inc. and its Third Party Licensors retain all right, title and interests, including, without limitation, all copyright, trade secret, intellectual property and other proprietary rights in and to the Spheriad, Inc. Services and/or other products or services provided under this Agreement. Customer will retain all right, title and interest to the documents created by Customer using the Spheriad, Inc. Services, subject to any rights of Spheriad, Inc. in underlying works from which such documents were derived.

ARTICLE 9—TERM AND TERMINATION

9.1 Cancellation Procedure. Customer is responsible for all Spheriad, Inc.

Service charges up to and including the day client cancels Spheriad, Inc. Services. To cancel Spheriad, Inc. Service the customer must call our main number (listed on website) and ask for a customer support representative. A representative will verify that the person calling is the owner of the site and will issue a cancellation number to the customer. The cancellation number will serve as proof that the site and service has been cancelled. The customer is responsible for all outstanding charges up to the time the cancellation number is issued. For security purposes, e-mail notice will be disregarded. Cancellation of services does not release client from any long term contracts that client might have signed with Spheriad, Inc.. If client has pre-paid for a year of service, cancellation does not result in a refund.

9.2 Term. This Agreement will commence as of the Effective Date and shall continue thereafter on a month to month basis unless terminated pursuant to Section 2.7.2, 9.2 or 9.3, OR UPON TELEPHONE NOTICE TO THE SPHERIAD, INC. CUSTOMER SERVICE. ANY EMAIL NOTICE WILL BE DISREGARDED. WRITTEN NOTICE MAY BE MAILED DIRECTLY TO SPHERIAD, INC. AT:

**24638 Main St .
Dow, IL 62022**

9.3 Termination by Spheriad, Inc.. Spheriad, Inc. shall have the right, upon written notice to Customer, to terminate this Agreement if: (a) Customer fails to timely pay Spheriad, Inc. any amount due to Spheriad, Inc. under this Agreement; (b) Customer materially breaches any term or condition this Agreement, provided such breach is not cured by Customer within thirty (30) calendar days following Spheriad, Inc.'s notice to Customer of such breach; or (c) Customer (i) terminates or suspends its business activities; (ii) becomes insolvent, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority; or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

9.4 Termination by Customer. Customer will have the right, upon written notice to Spheriad, Inc., to terminate this Agreement if Spheriad, Inc. is in material breach of this Agreement and Spheriad, Inc. fails to remedy such material breach within thirty (30) calendar days of its receipt of such written notice.

9.5 Obligations upon Termination or Expiration and Non-Renewal. Upon

the expiration and non-renewal or termination of this Agreement for any reason: (a) Customer's access to, and use of, the Spheriad, Inc. Services will terminate; (b) Customer will return to Spheriad, Inc. any and all Spheriad, Inc. Services, equipment, software, documentation or other deliverables provided to Customer by Spheriad, Inc. including any copies thereof held by Customer; (c) Spheriad, Inc. will deliver to Customer all Customer documents and other materials (which may be obtained using Spheriad, Inc.'s create export file function) stored by Customer on the Spheriad, Inc. Network; and (d) each party shall return any and all Confidential Information in its possession to the party that disclosed such Confidential Information and provide written verification of same.

9.6 Survival. Any provisions of this Agreement that by their nature should survive termination of this Agreement will survive termination of this Agreement, including but not limited to Section 2.4, and Articles 6, 7, and 8.

ARTICLE 10—MISCELLANEOUS

10.1 Notices. Any written notice required or permitted to be delivered pursuant to this Agreement will be in writing and will be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via telecopier, with a confirmation copy sent via overnight mail; (d) one (1) business day after deposit with a national overnight courier, in each case addressed, in the case of Customer, the address listed in Spheriad, Inc.'s records, or in the case of Spheriad, Inc., to:

**26438 Main St.
Dow, IL 62022**

(or to such other address as may be specified upon notice).

10.2 Assignment . Customer will not assign or otherwise transfer this Agreement, in whole or in part, nor delegate or subcontract any of its rights or obligations hereunder, without Spheriad, Inc.'s prior written consent, which consent may be withheld, delayed or conditioned in Spheriad, Inc.'s discretion. Spheriad, Inc. will have the right to assign this Agreement, in whole or in part, to a third party at any time upon written notice to Customer.

10.3 Force Majeure. Neither party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism, or power, communications, satellite or network failures.

10.4 Waiver. Any waiver or modification of this Agreement will not be effective unless executed in writing and signed by an authorized representative of Spheriad, Inc. and Customer. The parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) any amendments to this Agreement that are not executed by an authorized representative of Spheriad, Inc. and Customer; (b) any oral modifications to this Agreement; and (c) any other amendments that are based on course of dealing, waiver, reliance, estoppel or similar legal theory. The parties expressly disclaim the right to enforce any rule of law that is contrary to the terms of this Section. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement will not be deemed to be a waiver or modification by such party of any of its rights under this Agreement.

10.5 Severability. If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement, unless Spheriad, Inc. in good faith deems the unenforceable provision to be essential, in which case Spheriad, Inc. will have the right to terminate this Agreement in accordance with Section 10.2.

10.6 Public Announcements. Customer grants Spheriad, Inc. the right to use Customer's name in press releases, product brochures, portfolios and financial reports indicating that Customer is a customer of Spheriad, Inc..

10.7 Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

10.8 Third Party Beneficiaries. Customer acknowledges that some Spheriad, Inc. Services may be provided by Third Party Licensors. Third Party Licensors are third party beneficiaries to this Agreement, and there are no other third party beneficiaries to this Agreement.

10.9 Governing Law; Jurisdiction; Dispute Resolution with Third Party Licensors. This Agreement will be interpreted and construed in accordance with the laws of the State of Illinois , without regard to conflict of law principles. All disputes arising out of this Agreement shall be brought only in the district and federal courts located in or for Jersey County, Illinois. EACH PARTY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN OR FOR JERSEY COUNTY , ILLINOIS.

10.10 Non-solicitation. Customer acknowledges and agrees that the employees and consultants of Spheriad, Inc. are a valuable asset to Spheriad, Inc. and difficult to replace. Accordingly, Customer agrees that, during the term of this Agreement and for a period of twelve (12) months after the expiration and non-renewal or termination of this Agreement, Customer will not solicit or attempt to solicit any employee or consultant of Spheriad, Inc. without express written permission of an Officer of Spheriad, Inc.

10.11 Customer Security Responsibilities. The Customer is solely responsible for any breaches of security affecting servers under Customer is involved in an attack on another server control. If a Customer's server or system, it will be shut down and an immediate investigation will be launched to determine the cause/source of the attack. In such event, the Customer is responsible for the cost to rectify any damage done both to the customer's item and any other related area affected by the security breach. The labor used to rectify any such damage is categorized as emergency security breach recovery and is currently charged at \$250 USD per hour. Enquiries regarding security matters may be directed to a member of Spheriad's staff at webmaster@Spheriad.com.

10.12 System And Network Security. Violations of system or network security are prohibited, and may result in criminal and civil liability. Spheriad, Inc. may investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without

express authorization of the owner of the system or network. Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network. Interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks. Forging of any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting. Violators of the policy are responsible, without limitations, for the cost of labor to clean up and correct any damage done to the operation of the network and business operations supported by the network, and to respond to complaints incurred by Spheriad, Inc.. Such labor is categorized as emergency security breach recovery and is currently charged at \$250 USD per hour required. Enquiries regarding security matters may be directed to customer service at webmaster@Spheriad.com. Spheriad, Inc. is concerned with the privacy of online communications and web sites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, Spheriad, Inc. urges its customers to assume that all of their online communications are insecure. Spheriad, Inc. cannot take responsibility for the security of information transmitted over Spheriad, Inc.'s facilities.

10.15 Copyright Infringement - Software Piracy Policy. The Spheriad, Inc. service may only be used for lawful purposes. Transmission, distribution, or storage of any information, data or material in violation of United States or state regulation or law, or by the common law, is prohibited. This includes, but is not limited to, material protected by copyright, trademark, trade secret, or other intellectual property rights.

Making unauthorized copies of software is a violation of the law, no matter how many copies you are making. If you copy, distribute or install the software in ways that the license does not allow, you are violating federal copyright law. If caught with pirated software, you or your company may be liable under both civil and criminal law, and you may be liable for up to \$150,000 per infringement.

In compliance with the Digital Millennium Copyright Act (the "DMCA"), please send DMCA notifications of claimed copyright infringements to: Spheriad, Inc., 24638 Main St., Dow, Illinois 62022.

Spheriad, Inc. will cooperate fully with any civil and/or criminal litigation arising from the violation of this policy.

10.16 Network Responsibility. Customers have a responsibility to use the Spheriad, Inc. service responsibly. This includes respecting the other customers of Spheriad, Inc.. Spheriad, Inc. reserves the right to suspend and or cancel service with any Customer who uses the Spheriad, Inc. service in such a way that adversely affects other Spheriad, Inc. customers. This includes but is not limited to:

Attacking or attempting to gain unauthorized access to servers and services that belong to Spheriad, Inc., Affiliates or its customers (i.e. computer hacking), and/or Participating in behavior, which result in reprisals that adversely effect the Spheriad, Inc. service or other customers' access to the Spheriad, Inc. service. Spheriad, Inc. will react strongly to any use or attempted use of an Internet account or computer without the owner's authorization. Such attempts include, but are not limited to, "Internet Scanning" (tricking other people into releasing their passwords), password robbery, security hole scanning, port scanning, etc. Any unauthorized use of accounts or computers by a Spheriad, Inc. customer, whether or not the attacked account or computer belongs to Spheriad, Inc., will result in severe action taken against the attacker. Possible actions include warnings, account suspension or cancellation, and civil or criminal legal action, depending on the seriousness of the attack. Any attempt to undermine or cause harm to a server, or customer, of Spheriad, Inc. and its affiliates, is strictly prohibited.

Violations of this policy may be reported directly to the FBI's Infrastructure Protection & Computer Intrusion Squad at <http://www.fbi.gov/hq.htm> . Spheriad, Inc. will cooperate fully with any civil and/or criminal litigation arising from the violation of this policy.

10.17 Lawful Purpose . All services may be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of any applicable law, regulation, or AUP is prohibited. This includes, but is not limited to: copyrighted material or material protected by trade secret and other statute or dissemination of harmful or fraudulent content. Using any Spheriad, Inc. service or product for the purpose of participating in any activity dealing with subject matters that are prohibited under applicable law is prohibited. Any conduct that constitutes harassment, fraud, stalking, abuse, or a violation

of federal export restriction in connection with use of Spheriad, Inc. services or products is prohibited. Using the Spheriad, Inc. network to solicit the performance of any illegal activity is also prohibited, even if the activity itself is not performed. In addition, knowingly receiving or downloading a file that cannot be legally distributed, even without the act of distribution, is prohibited. Servers hosted within Spheriad, Inc. network are open to the public. You are solely responsible for your usage of the Spheriad, Inc. network and servers and any statement you make on servers hosted within the Spheriad, Inc. network may be deemed "publication" of the information entered. Acknowledging the foregoing, you specifically agree not to use our service in any manner that is illegal or libelous.

10.18 Child Pornography on the Internet. Spheriad, Inc. will cooperate fully with any criminal investigation into a Customer's violation of the Child Protection Act of 1984 concerning child pornography. Customers are ultimately responsible for the actions of their clients over the Spheriad, Inc. network, and will be liable for illegal material posted by their clients. According to the Child Protection Act, child pornography includes photographs, films, video or any other type of visual presentation that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years or any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years.

Violations of the Child Protection Act may be reported to the U.S. Customs Agency at 1-800-BEALERT

10.19 Unsolicited Commercial Email/Unsolicited Bulk Email (UCE/UBE). Unsolicited commercial email (UCE) is defined by Spheriad, Inc. as any electronic communication (e-mail, ICQ, IRC, Instant Messenger, etc...) sent for purposes of distributing commercial information of any kind, soliciting the purchase or sale of products or services or soliciting any transfer of funds to a recipient who has not agreed to receive such communication. Unsolicited bulk e-mail (UBE) is defined by Spheriad, Inc. as any electronic communication (e-mail, ICQ, IRC, Instant Messenger, etc...) to multiple recipients who have not agreed to receive such communication.

Use of the Spheriad, Inc. network, servers or services to transmit any unsolicited commercial or unsolicited bulk-e-mail is expressly prohibited, as is hosting web sites or services on a server, which are advertised in any UCE/UBE. Spheriad, Inc. also prohibits the sending of any fraudulent, malicious, harassing, false or misleading electronic communications, including, without limitation, chain letters, pyramid schemes, or e-mails with forged headers. Posting off-topic advertisements to Usenet discussion groups, ICQ, Instant Messenger, etc., is also expressly prohibited.

Additionally, Spheriad, Inc. customers are expressly prohibited from sending any UCE/UBE from our network or any email from another network that in any way references a document, image, or Web site that resides on the Spheriad, Inc. network or in one of our data centers. Violations of this type may result in the termination of the offending Spheriad, Inc. account. Our customers are ultimately responsible for any violations of the AUP by their clients, and any violation of the AUP by a client of a Spheriad, Inc. customer shall be deemed a violation of the AUP by such Spheriad, Inc. customer.

Customers whose actions directly or indirectly result in Spheriad, Inc. IP space being listed in any of the various abuse databases may be subject to having the offending domain(s), server(s), or user(s) immediately removed from our service. In addition, if Spheriad, Inc. in its sole discretion determines that a customer is in violation of our AUP, Spheriad, Inc. may, at its sole discretion, restrict, suspend or terminate a customer's account. Spheriad, Inc. will, in most cases, attempt to contact a customer prior to suspension or termination of a server(s), but can not guarantee prior notification.

Any server suspended or terminated for AUP violations will be reconnected only after the customer agrees to cease all activities that violate the Spheriad, Inc. AUP and pays all applicable reconnect fees and related charges. Any server suspended a second time for AUP violations WILL be immediately and permanently removed from our network.

Customers that Spheriad, Inc. determines in its sole discretion to be in violation of the Spheriad, Inc. AUP may be subject to additional fees or fines including, without limitation, any applicable reconnect fees.

Violation of Spheriad, Inc.'s UCE/UBE policy may be reported to

webmaster@Spheriad.com.

10.20 Guidelines for Permission-Based Email. While Spheriad, Inc. prohibits the use of its systems or network to send unsolicited email (UCE/UBE) as described above, customers may send permission-based email marketing, subject to the guidelines provided herein. Permission-based marketing is defined as electronic marketing that an end user agrees to receive. This is often referred to as 'opt-in' electronic marketing. All recipient information for such marketing conducted by Spheriad, Inc. customers must be documented and cataloged by the customer. This information is to include date, time, originating IP and the location from which the email address or other recipient information was obtained. Additionally, a customer must at a minimum comply with the following guidelines, and any additional guidelines established by Spheriad, Inc. from time to time in its sole discretion, to engage in permission-based email marketing without violating the AUP:

- 1. All commercial or bulk email originating from a Spheriad, Inc. customer on the Spheriad, Inc. network must have a working unsubscribe link. The customer must honor all requests to unsubscribe within 72 hours. Additionally, there must be text in the email stating that while all requests to unsubscribe are honored, it may take up to 72 hours to process.**
- 2. All commercial or bulk email originating from a Spheriad, Inc. customer on the Spheriad, Inc. network must clearly list the email address to which the email was originally sent (the intended recipient's email address) in the body of the message OR in the 'TO:' line of the email.**
- 3. All Spheriad, Inc. customers sending commercial or bulk email must have a working abuse@domain.com address from EVERY domain associated with the email campaign. Additionally, the abuse@ address must be prominently posted on the front page of the associated web site. Customers must regularly answer any messages sent to the abuse@address.**
- 4. All Spheriad, Inc. customers sending commercial or bulk email must register the abuse@ address for every domain associated with commercial email they send at abuse.net.**
- 5. All Spheriad, Inc. customers sending commercial or bulk email must have a Privacy Policy/AUP posted for each domain associated with the**

email campaign.

6. All commercial or bulk email sent must include information about where the email address was obtained in the body of the email. For example: "You opted-in to receive this email promotion from our web site or from one of our partner sites."

7. All Spheriad, Inc. customers sending commercial or bulk email must answer all complainants' requests for details regarding where the complainant "opted-in" to receive electronic marketing within 72 hours. This information must include the date, time, originating IP and the location from which the email address or other recipient information was obtained. Instructions on how to get this information must be stated clearly in the body of the email. For example, a statement similar to the following must be present in the body of the email: "If you would like to learn more about how we received your email address, please contact us at abuse@domain.com."

Note: Requests for "opt-in" information must be responded to within 72 hours.

8. All Spheriad, Inc. customers sending commercial or bulk email must be able to track and identify anonymous complainants. There are several software packages (such as RoboMail) that can help accomplish this.

9. If a Spheriad, Inc. customer is using an affiliate program to send commercial or bulk email through the Spheriad, Inc. network and the affiliate program becomes subject to repeated abuse by users, the customer must discontinue use of the affiliate program or be subject to immediate suspension or cancellation.

10. All customers of Spheriad, Inc. are required to have up-to-date and valid contact information on file with their registrar for any domain hosted on the Spheriad, Inc. network.

Disclaimer

Spheriad, Inc. reserves the right to test portions of any customer's email list in response to complaints and request opt-in information from a random sample of that list at any time. Spheriad, Inc. reserves the right to determine in its sole discretion the validity of any customer's email list.

Any list Spheriad, Inc. determines in its sole discretion to be in violation of this AUP must be removed immediately or the customer will be subject to immediate suspension or termination. Repeated violations will result in permanent suspension. Spheriad, Inc. reserves the right to test and otherwise monitor customer's compliance with the above guidelines and requirements at any time during the customer's term of service at Spheriad, Inc.

If Spheriad, Inc. determines in its sole discretion that the customer is not in strict compliance with the guidelines for permission-based e-mail marketing, then Spheriad, Inc. may immediately suspend or terminate the customer's service.

10.21 IP Address Overlap. Midphase administers the network on which customer servers reside. The customer cannot use IP addresses, which were not assigned to them by Spheriad, Inc. staff. Any server found using IPs, which were not officially assigned, will be suspended from network access until such time as the IP addresses overlap can be corrected.

10.22 Suspension. If Spheriad, Inc. in its sole discretion determines that a Customer's server has become the source or target of any violation concerning the Spheriad, Inc. Acceptable Use Policy (AUP), Spheriad, Inc. reserves the right to suspend network access to that server. While Spheriad, Inc. will attempt to contact the Customer before suspending network access to the customer's server(s), prior notification to the Customer is not assured. In certain cases, Spheriad, Inc. will contact law enforcement and other agencies regarding these activities. Customers are responsible for all charges, as well as any fees relating to the investigation, suspension, administration and handling of their servers before, during and after the suspension period.

10.23 Headings . The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

10.24 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

Trademark and Copyright Legal Notices

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