

Xoopa Terms of Service Agreement

1) Service Agreement. Xoopa agrees to provide to Customer the products and services described in the Order Form submitted in connection with this transaction relating to email list services, web hosting services and/or dedicated servers (the "Service") under the terms this Agreement. By using the Services, Customer agrees to be bound by all the terms set forth herein. Xoopa may also perform additional technical, supplemental, or professional services for the Customer at either Xoopa's published pricing rates or at rates mutually agreed to in writing between Customer and Xoopa. Xoopa may also perform remedial services as provided for in the published pricing rates without obtaining the Customer's consent in advance. Any other or prior agreements between Xoopa and Customer with respect to the subject matter of this Agreement are hereby superseded.

2) Right to Modify. This Agreement and the rules set forth in the Acceptable User Policy may be supplemented, modified or amended (each a "Revision") by Xoopa at any time at its sole discretion, and each such Revision will be effective 2 business days after it has been sent to Customer by Xoopa pursuant to the Notices provision set forth herein. If any Revision is not acceptable to Customer, Customer may terminate this Agreement in the manner provided in the termination provision below. Customer's continued use of Xoopa's Service under this Agreement after the effective date of such Revision shall be deemed to constitute acceptance of the Agreement as so supplemented, modified or amended.

3) Activation and Use of Xoopa's System

(a) Following activation by Customer, Xoopa shall provide Customer with an account name and a password that will allow access to Xoopa's System (the "Xoopa System"). Customer will use Xoopa as an Independent Content Provider ("ICP"). As an ICP, Customer shall be solely liable and responsible for any and all activities conducted through its account by Customer or, if applicable, by Customer's users, whether or not such activities have been authorized by Customer.

(b) Xoopa's services are only to be used for lawful purposes. Any transmission or re-transmission of material in violation of any Federal or State laws and/or regulations is expressly prohibited. This transmission or re-transmission of material extends to and includes, but is not limited to: any copyrighted materials, materials or communications judged to be threatening or obscene, and any material or communications prohibited by trade secret. Xoopa does not censor or monitor use of its network(s) and represents that it has no liability to censor and/or monitor the data transmitted on its network(s). Customer agrees to indemnify Xoopa from any claims or torts arising out of Customer's use of Xoopa's services.

(c) Upon Xoopa's request, Customer shall provide Xoopa with accurate and complete registration information with respect to Customer's use of the Xoopa System (including the identity, email addresses, and passwords of Customer's authorized list administrators) and to promptly update such information as changes occur. Customer's failure to provide or update such information shall constitute a breach of this Agreement and this shall be grounds for Xoopa to terminate this Agreement or the right of any person associated with Customer to use the Xoopa System (including any person using the Xoopa System through Customer's account with or

without Customer's authority). In such case, Customer shall also be liable to Xoopaa for any and all additional remedies that may be available under law.

(d) Customer agrees to use a "double opt-in" subscription method for all new list members. For the purpose of this Agreement, a "double opt-in" method shall mean that when Customer adds a new member's email address to the list, that email address shall not be activated unless and until the new member receives a single confirmation e-mail from Customer requesting member's consent to be added to the list and Xoopaa receives from the new member a confirmation action (such as a confirming e-mail from the new member's email address) approving such action. The confirmation e-mail sent by the Customer to new members may not include advertising or calls-to-action other than an appeal to confirm the member's subscription.

4) Charges and Payment

(a) Customer will be charged for the use of the Xoopaa System in accordance with the price package selected by Customer for services on the Xoopaa.com website ("Prices"). The Prices may be modified by Xoopaa upon thirty (30) days notice to the Customer. Notice may be sent by way of e-mail to the Customer. Payment shall be due in advance on the first of each month. Xoopaa may impose a monthly service charge on the overdue amount at the greater of (i) 1.5% per month or (ii) the maximum non-usurious rate. Monthly fees are non-refundable except as specifically provided in this Agreement. If payments are not made by the fifth of the month, without limiting any other rights of Xoopaa under this Agreement, Xoopaa may immediately (i) discontinue or disable Customer's service or (ii) hold and prevent the copying or export of Customer's list membership data. In the event this Agreement is terminated, Xoopaa reserves the right to hold and prevent the copying or export of Customer's list membership data until all outstanding invoices and the balance of Customer's minimum term of service are paid in full. In the event Xoopaa exercises its right to discontinue or disable Customer's service as provided in this Paragraph 4, Xoopaa shall then have the further right to delete any of Customer's membership data then on the Xoopaa System without any notice.

(b) Customer is responsible for all charges arising out of its use of the Xoopaa System whether or not such use is authorized by Customer.

(c) If services are suspended or interrupted for non-payment (in default), there will be a restoration charge of \$750.00 and all overdue charges must be paid prior to reinstatement to the Xoopaa System. Customer will not be restored to the Xoopaa System until all amounts are paid in full. This policy will be strictly enforced. If Customer's check or payment is returned to Xoopaa unpaid or dishonored then Customer is immediately in default and you are liable for a returned check charge of \$75.

5) Use of Xoopaa System Content.

(a) Customer may charge its users under separate agreements for use of the Xoopaa System and any information, communications, software, photos, video, graphics, music, sounds and other material and services provided by Customer or other users of Customer's account (collectively referred to as "Content").

(b) Customer acknowledges, and shall also notify its authorized users, that Xoopaa is not responsible for and does not give any assurance to any person with respect to the validity, value, usefulness or accuracy of

Content. Customer and any person using Customer's account shall bear any risk associated with the Content. Xooopa has the right to monitor the use of the Xooopa System, including the Content that may be transmitted across it from time to time. However, Xooopa does not prescreen or attempt to censor or review any Content prior to its appearance on the Xooopa System. Xooopa has the right (but not the obligation) to require Customer to remove, prohibit or discontinue any Content on the Xooopa System which Xooopa, in its sole discretion, determines to be harmful, offensive or otherwise in violation of the Rules or this Agreement.

6) Intellectual Property Rights.

(a) Content Subject to Rights - Customer acknowledges that Content on the Xooopa System, whether provided by Customer or others may include material which is the subject of and protected by copyrights, trademarks, service marks and other proprietary rights ("Rights"). Customer acknowledges that such Rights are valid and valuable and are protected and apply to all media which now exists or may in the future exist. Unless specifically provided elsewhere in this Agreement, Customer's ability to use any Content which is protected by such Rights shall be governed by applicable law including relevant patent and trademark law.

(b) Customer Warranty - Customer agrees, and will require each and every one of its users to agree, (i) that it will transmit on the Xooopa System only Content that is not subject to any Rights in favor of any other party or Content in which the holder of any Rights has given express consent to such transmission and (ii) that by transmitting or allowing the transmission of any Content on the Xooopa System, Customer or Customer's users automatically warrant that Xooopa has the royalty-free, irrevocable, nonexclusive worldwide right to transmit and display such Content in whole or in part on the Xooopa System for the duration of the performance of the Service. Customer may obtain the consent of its users to the covenants provided in this Paragraph by requiring such persons to perform sign-on procedures which will confirm their agreement to and acceptance of these conditions.

(c) Lawful Use - Customer agrees to use the Xooopa System only for lawful purposes. Customer recognizes and agrees that Xooopa at its sole discretion may monitor any and all areas of the Xooopa System to oversee compliance with this Agreement and the Rules and Customer will so inform its users that their use of the Xooopa System will constitute consent to such monitoring. If Customer or any of its users restricts or inhibits any other customer or user of the Xooopa System, Xooopa may, at its discretion, terminate or limit the right of Customer or Customer's user to use the Xooopa System.

7) International Usage. Customer acknowledges that its use of the Xooopa System allows access to Content originating from other customers, ICPs and third parties located in countries other than the United States. Customer agrees that its access to and use of such Content may be governed (in addition to this Agreement and the Rules) by separate terms and operating policies which conform to appropriate and applicable national laws and customs.

8) No Warranty. CUSTOMER EXPRESSLY AGREES THAT USE OF THE XOOOPA OUTSOURCING SYSTEM, SERVICES AND SOFTWARE ARE AT THE CUSTOMER'S SOLE RISK. XOOOPA'S SERVICES AND SOFTWARE ARE PROVIDED ON AN "AS IS", "AS

AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE PERFORMANCE OF, OR ARISING OUT OF THE USE OF XOOA'S SERVICES ARE BORNE SOLELY BY THE CUSTOMER. THIS INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, OR SERVICE INTERRUPTIONS CAUSED BY XOOA'S OWN NEGLIGENCE OR YOUR ERRORS OR OMISSIONS. USE OF ANY INFORMATION OBTAINED VIA XOOA'S SYSTEM IS AT YOUR OWN RISK. XOOA SPECIFICALLY DENIES ANY RESPONSIBILITY FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED THROUGH ITS SERVICES. XOOA'S LIABILITY TO CUSTOMER FOR BREACH OF THIS AGREEMENT IS LIMITED SOLELY TO THE AMOUNT PAID BY CUSTOMER TO ACCESS AND USE THE XOOA OUTSOURCING SYSTEM AND XOOA'S SOFTWARE AND SERVICES FOR THE PERIOD OF TIME DURING WHICH THE XOOA OUTSOURCING SYSTEM FAILED TO OPERATE AS A RESULT OF XOOA'S ACT OR OMISSION. THE REFUND OF FEES PAID TO XOOA FOR THE PERIOD DURING WHICH THE XOOA OUTSOURCING SYSTEM MAY HAVE FAILED TO OPERATE AS A RESULT OF XOOA'S ACT OR OMISSION SHALL BE CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF THE XOOA OUTSOURCING SYSTEM AND XOOA'S SOFTWARE AND SERVICES. IN NO EVENT SHALL XOOA BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF DATA, ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE). IN THE EVENT ANY JURISDICTION DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF ANY WARRANTY OR LIABILITY UNDER THIS AGREEMENT, XOOA'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW.

9) Indemnification and Termination.

(a) Indemnity and Hold Harmless of Xooa. As a customer of Xooa, and as a user of Xooa's services, Customer agrees to indemnify and to hold harmless Xooa from ANY and ALL claims resulting from Customer's use of the Service which causes damage to Customer or any other party. Customer agrees to defend and indemnify Xooa and hold Xooa harmless from any and all claims made by and/or arising from a third party claim for Damages resulting from among other things and not limited to: (i) breach of this Agreement or the Rules by Customer or any of Customer's users, (ii) the transmission by Customer or its users of any Content of the Xooa Outsourcing System, whether or not such use was authorized by Customer; or (iii) the negligence or misconduct of Customer or its agents. Xooa shall not be liable, neither in contract nor in tort, to the Customer.

(b) Termination. Either Customer or Xooa may terminate this Agreement at any time and for any reason, with or without cause, by delivering written notice of the termination to the other party, such termination to be effective upon receipt of the notice. Xooa may immediately terminate this Agreement at any time, and without liability, upon the occurrence of any of the following events: (i) Customer's failure to pay any overdue amount within five (5) days of it becoming due; (ii) Customer's breach or violation of any provision of this Agreement; (iii) Customer ceasing to do business in the normal course, becoming or being declared insolvent or bankrupt, being the subject of any proceeding relating to liquidation or insolvency which is not dismissed within thirty (30) days, or making an assignment for the benefit of creditors; (iv) Customer's violation of Xooa's Usage Policy; or (iv) Xooa determines in its sole discretion that Customer continues to host content or send content which may subject Xooa to legal liability. Subject to the "No Warranty" Section of this

Agreement, if Customer is dissatisfied with any term of this Agreement or any Rule, policy or practice of Xooopa in operating the Xooopa System, or in the Content appearing on the Xooopa System or the amount or type of fees or billing methods, or any change therein, Customer may terminate this agreement by delivering written notice to Xooopa in the manner provided in Paragraph 11 and in such instance this will be Customer's sole remedy. Xooopa shall not be liable for any third party termination of the Service. If Customer terminates this Agreement, Customer shall be responsible for and shall pay to Xooopa all amounts due and owing under this Agreement as of the date of termination.

10) Notices. Notices to the parties shall be sent by personal delivery or by certified mail, return receipt requested or by recognized overnight courier with a printed confirmation of receipt or by email. Emails to Xooopa must be sent to contact@xooopa.com.

11) Delays. Xooopa shall not be liable for failure to perform hereunder due to the inability of Customer, Xooopa or any other person to connect to the Internet, or any other failure or unavailability of the Internet for any cause whatsoever, acts of God, or of the public enemy, or of any government or agency thereof, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, severe weather, differences with workmen, restrictions imposed by governmental agencies, war, hostilities, riot, rebellion, delay in or lack of transportation facilities, inability to secure materials, power failure or fluctuation or any other cause beyond the control of Xooopa, or Xooopa's exercise of its rights under this Agreement. In the event of delay by Xooopa due to any such cause, the date of performance of any act by Xooopa will be postponed by such length of time as may be reasonably necessary to compensate for such delay.

12) IP Allocation. Xooopa owns each IP address that it assigns to a Customer. A Customer shall not use IP Addresses that were not assigned to it by Xooopa. Xooopa reserves the right to suspend the network access of any server utilizing IP addresses outside the assigned range.

13) Privacy.

(a) Xooopa shall exercise reasonable efforts to make the Xooopa System secure. Xooopa shall not make Customer's passwords available to anyone who is not (i) an authorized agent or employee of Xooopa or (ii) a list administrator who has been so designated to Xooopa by Customer in writing.

(b) Xooopa acknowledges that membership lists provided to Xooopa by Customer in connection with this Agreement are the property of Customer. Unless Xooopa receives specific instructions from Customer to the contrary, Xooopa will not sell, license, share, transfer or otherwise disclose Customer's membership lists or Customer's list administrator's login information to any third party except as otherwise specifically provided in this Agreement or the Rules or as required by law or a court order. (c) Xooopa may access Customer's membership lists in order to unsubscribe a member who has sent to Xooopa a request that it do so or a complaint to the effect that such member is unable or unwilling to unsubscribe themselves, or if such member violates the Rules or the terms of this Agreement. (d) Customer agrees that Xooopa may refer to Customer by trade name and trademark, and may briefly describe Customer's

Business, in Xooopa's marketing materials and web site. Customer hereby grants Xooopa a license to use any Customer trade names and trademarks solely in connection with the rights granted to Xooopa pursuant to this Section.

14) Applicable Law. To the extent of any conflict between this Agreement and the Rules, this Agreement shall take precedence. If any portion of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that portion shall be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties and the remaining portions shall remain in full force and effect. This Agreement shall be governed by the laws of the State of New Jersey. The Customer and Xooopa each agrees to submit to the exclusive jurisdiction of the courts of the State of New Jersey for the any action brought under, arising out of, or in connection with this Agreement, or any alleged breach hereof, the sole forums shall be the United States Federal Court sitting in Newark, New Jersey, or the Superior Court of New Jersey, Middlesex County, sitting in New Brunswick, New Jersey, and that any action commenced in such courts shall not be transferred or removed to any other state or federal court. The Customer agrees to personal jurisdiction and venue of such courts. This Agreement shall bind and be for the benefit of the parties hereto and their respective successors and assigns.

ACCEPTABLE USAGE POLICY

Compliance with Xooopa's Acceptable Usage Policy in this User Agreement is a condition for use of the Xooopa System.

Spamming Prohibited

Xooopa has zero tolerance for those who use Xooopa's System (also known as Xooopa.com) in conjunction with spamming. Xooopa's System are strictly permission-based, and customers may not use their account to distribute any unsolicited email ("spam"), opt-out lists, or illegal material. List owners may not restrict the ability of their list subscribers to unsubscribe from their list, or refuse to unsubscribe any subscriber who has requested it. List subscribers are the source of our information about whether or not they requested to receive your list, so treat them right.

You (i.e., the Customer) may not use the Xooopa System to send spam whether it be commercial or non-commercial. Your email will be considered unsolicited if your membership addresses are not 100% opt-in by your members. If your email addresses came from harvesting, a purchased email list, another mailing list (even with the approval of the other list owner), or were compiled by any method other than by direct subscription from your members, for the purposes of this Agreement and these Rules they will be considered unsolicited (non-opt-in) email (that is, "spam").

If Xooopa receives complaints that you are sending unsolicited commercial or non-commercial e-mail ("spamming"), in addition to any other rights that Xooopa may have under this Agreement or under applicable law, Xooopa may at its sole option suspend your service pending a reconfirmation of

your entire membership list. This reconfirmation may be required by Xooopa in any reasonable manner it determines in its sole judgment including, without limit, sending a single e-mail to all of your list members requesting confirmation of their wish to maintain their subscription to such list. Members who do not reconfirm within a reasonable time established by Xooopa may be deleted from the list in question. Xooopa agrees to use reasonable commercial efforts to contact your designated list administrator by e-mail or phone before suspending service. Your consent will be requested before Xooopa contacts your list members for the purposes of reconfirmation, however, if you do not consent to Xooopa contacting your list members for the purposes of reconfirmation, Xooopa may terminate this Agreement.

If Xooopa determines in good faith that you have been spamming, in addition to any other rights under this Agreement and applicable state or federal law, (i) Xooopa will issue a one-time warning to your primary contact's email address to cease such activity, after which if your spamming continues (ii) Xooopa may bring an action in any court of competent jurisdiction to enjoin such activity, it being understood that such activity may cause irreparable harm to Xooopa which may not be fully compensable by monetary damages and (iii) Xooopa may recover from Customer monetary losses caused to Xooopa by such activity in an amount equal to (a) \$500 for each such item of unsolicited e-mail which Customer has sent to each separate and identifiable e-mail address in violation of this Rule, which amount the parties agree is a fair and reasonable estimate of Xooopa's losses which would be occasioned by such violation; or (b) if Xooopa can establish a greater amount of monetary loss, the amount of such actual monetary loss suffered by Xooopa as a result of such violation including, but not limited to, any damage or loss (including attorney's fees) resulting from any claim made against Xooopa as a result of Customer's conduct in violation of this Rule. In addition to the foregoing, Customer shall be responsible for reasonable costs incurred by Xooopa in bringing such actions, including reasonable attorney's fees.

Other Unacceptable Uses

You may not use the Xooopa System to

- 1) Send email with an invalid "From:" or "Reply-to:" address. All messages posted to your list must contain valid email addresses and you must be responsive to all replies from members of your list, including unsubscribe requests. You may not refuse or ignore unsubscribe requests from members of your list.
- 2) Harass, threaten, embarrass or cause distress, unwanted attention or discomfort to a person or entity.
- 3) Post or transmit sexually explicit images or other content that is deemed by Xooopa to be offensive.
- 4) Post, transmit or store data or content on or through the Xooopa System or its physical infrastructure which, in Xooopa's sole discretion and determination, constitutes a violation of any federal, state, local or international law, regulation, ordinance, court order or other legal process ("Applicable Law"). Customer shall be responsible for determining which Applicable Laws are applicable to their use of the Xooopa System. Prohibited content includes, without limitation, (a) content or code that

facilitate any violation of, or describe ways to violate, this Agreement or (b) "harvested" addresses or information; (c) "phishing" websites, or (d) "spamvertising" sites.

5) Transmit any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, or hateful content or content which is racially, ethnically or otherwise objectionable, or which infringes upon the rights of any third party, as determined by Xooopa.

6) Impersonate any person, including but not limited to, an official of Xooopa or an information provider, or communicate under a false name or a name that you are not entitled or authorized to use.

7) Host or transmit, either knowingly or unknowingly, any material believed by Xooopa to constitutes child pornography. In addition to any other actions it may take under this Agreement, Xooopa reserves the right to cooperate fully with any criminal investigation of content located on a server that constitutes alleged child pornography or an alleged violation of Applicable Law.

8) Transmit, distribute, copy, cache, host, or otherwise store on the Xooopa System, or its physical infrastructure any information, data, material or work that infringes the intellectual property rights of others or violates any trades secrets of any other person. Xooopa has the right to disable access to, or remove, infringing content to the extent required under any law or regulation, including the Digital Millennium Copyright Act of 1998.

Membership Confirmation

You will use a "double opt-in" (signup plus confirmation) subscription method for all new list members, as provided in Paragraph 3(c) of the Agreement. The confirmation e-mail you send to new members may not include advertising or calls-to-action other than an appeal to confirm the member's subscription. If you import unconfirmed (single opt-in) members directly into your list, or include advertising or other unsolicited calls-to-action in the confirmation message, be advised that you do so at your own risk, and that, in case of complaints of spamming, Xooopa reserves the rights described in the section entitled "Spamming Prohibited".

Unsubscribing

All list messages must include the Xooopa unsubscribe instructions in the body or footer of the message, so that members can unsubscribe themselves from the list. List owners should respond to member requests for manual removal from the list with courtesy and timeliness. Please do not discard personal email messages you receive asking to be removed from your list. Even if the user request for removal is aggressive, unfriendly or otherwise rude, you should nonetheless make every attempt to help the user get off your list and to resolve the situation.

Customer's Security Obligation

Customer must use reasonable care to ensure the security of the Xooopa System and its physical infrastructure. Customer is solely responsible for any intrusions into, or security breaches of, any of its servers,

except as otherwise covered by a security system service package ordered by Customer.

Membership List

You may not use the Xooopa System for one-time mailings to a list of members after which you delete substantially all of the membership and create a new list. Your membership must be a static, permanent list to which you add or delete new members and/or members subscribe or unsubscribe themselves in the ordinary course. In the event you violate these Rules, Xooopa may, in its sole discretion, remove your list from its server and terminate your right to use the Xooopa Outsourcing System. List owners should be aware that they are responsible for the behavior of their list members.

Privacy

Xooopa is committed to maintaining your privacy and that of your list members.

1. Xooopa treats private communications on or through the Xooopa System as strictly confidential.
2. For your protection, we strongly recommend you do not give your membership list to anyone, ever.

Violations

In addition to Xooopa's rights as set forth in the Service Agreement, Xooopa may also enforce these Rules, with or without notice to a Customer, by any action it deems reasonable in its sole discretion. In addition to the remedial provisions provided elsewhere, Xooopa may:

1. Disable access to a Customer's content that violates the Service Agreement or Rules;
2. Suspend or Terminate a Customer's access to the Xooopa System;
3. Remove DNS records from Xooopa's servers and infrastructure;
4. Block mail or any other networking services;
5. Effect IP address null routing; and
6. Take legal action against the Customer to enforce the Service Agreement and/or Rules.

First Name _____

Last Name _____

Address _____

Signature _____ Date _____

By signing, you agree to all our Terms of Services.

Please sign and email back to us at admin@xoops.com. Your account will not be setup until we receive your signed Terms of Service agreement.