

## TERMS OF USE FOR BACKPACK GROUP, Inc.'S WEBSITE

Thank you for visiting the internet website at [www.backpacknetworks.com](http://www.backpacknetworks.com) which is owned by Backpack Group, Inc. ("**Backpack**", "**We**", "**Us**" or "**Our**").

Backpack provides these Terms of Use (the "**Agreement**") to notify all Customers of Backpack's policies with regard to the terms and conditions that govern their use of Backpack's Website. Use of the Backpack Website is conditioned on acceptance, without modification, of this Agreement by you as a Customer of the Backpack Website ("**You**" or "**Customer**" or "**Your**").

BY CONTINUING TO USE THIS COMPANY WEBSITE, YOU HEREBY AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE COMPANY'S PRIVACY POLICY (AS SUCH TERM IS DEFINED IN SECTION 4 HEREIN) AS IS PRESENTED TO YOU AS OF THE DATE OF YOUR FIRST USE OF THE COMPANY WEBSITE (THE "EFFECTIVE DATE").

NO CHANGES (ADDITIONS OR DELETIONS) BY YOU TO THIS AGREEMENT OR TO SAID PRIVACY POLICY WILL BE ACCEPTED BY THE COMPANY. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT AND SAID PRIVACY POLICY, THEN YOU SHOULD NOT USE THE COMPANY WEBSITE.

THIS AGREEMENT IS A LEGALLY BINDING CONTRACT. YOU SHOULD DOWNLOAD AND PRINT THIS AGREEMENT FOR YOUR RECORDS

By visiting this Company Website, You agree to the following:

**1. Definitions.** In addition to all other defined terms in this Agreement, the following terms have the following meaning:

1.1 "**Backpack Server**" or "**Server**" means the computer software or hardware that serves and hosts Backpack Website to Customers across the Internet; and

1.2 "**Customer(s)**" mean any Customer of Backpack Website.

### **2. Access; Conditions to Use of the Site.**

**2.1** Subject to all of the terms and conditions of this Agreement, Customer shall be responsible for obtaining and

maintaining any equipment or ancillary services needed to connect to or access Backpack Website, including, without limitation, Internet connections, modems, hardware, software, and long distance or local telephone service.

**2.3** As a condition of Customer's use of Backpack Website, Customer covenants to Backpack that Customer will **not** use Backpack Website for any unlawful purpose or for any purpose that is prohibited by this Agreement. Customer may **not** use Backpack Website in any manner that could damage, disable, overburden, or impair Backpack Website and any Backpack Servers, or interfere with any other party's use and enjoyment of Backpack Website. Customer may **not** obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through Backpack Website.

**2.4** Notwithstanding any assistance that Backpack may provide, the Customer assumes sole responsibility for the uploading and updating of any of the Customer's Content (if any) as may be available through the Website.

**2.5.** Customers further agree as follows:

**2.5.1** Without limiting the generality of the foregoing, Customer agrees to all of the following provisions:

(a) other than Customer Content authorized by Backpack, Customer will not upload to, distribute or otherwise publish through the Website any other data, information, messages, text, works, material or any other content, including, without limitation, any personal identifiable information related to the Customer (collectively, "**Content**") that is unlawful, libelous, defamatory, invasive of privacy or publicity rights, harassing, threatening, abusive, inflammatory, obscene, or otherwise objectionable;

(b) Customer will not upload or transmit any Customer Content or other Content that would violate the rights of any party, would constitute or encourage a criminal offense, or would otherwise create liability or violate any local, state, federal or international law;

(c) Customer will not upload or transmit any Customer Content or other Content that may infringe any patent, trademark, trade secret, copyright, or other intellectual or proprietary right of any party anywhere;

(d) Customer will not impersonate any person or entity or otherwise misrepresent the Customer's affiliation with a person or entity;

(e) Customer will not distribute or publish unsolicited promotions, advertising, or solicitations for any goods, services or money, including junk mail and junk e-mail;

(f) Customer will not use Backpack Website for purposes not authorized by Backpack; and

(g) Customer will not use Backpack Website for any illegal purpose or any fraudulent scheme or transaction.

**2.5.2** Customer hereby grants Backpack a perpetual, worldwide, transferable, fully paid up right to use Customer's Content to:

(a) provide the Customer with any of the services contemplated by Backpack Website, under this Agreement or under any other contract between Customer and Backpack, including without limitation any other uses normally intended for Customers; and

(b) assist or coordinate with any claims arising out of the use of the Backpack Website.

**2.6** Without limiting the generality of any other provisions herein, Customer agrees to all of the following provisions:

(a) Customer is prohibited from violating or attempting to violate the security of Backpack Website or any Backpack Server, including, without limitation, (i) accessing data not intended for such Customer or logging into a server or account which the Customer is not authorized to access; (ii) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (iii) attempting to interfere with service to any Customer, host, or network; or (iv) sending unsolicited e-mail, including promotions and/or advertising of products or services;

(b) any violations of any system or network security (including, but not limited to, that of Backpack Website or any Backpack Server) may result in civil or criminal liability; and

(c) Backpack has the right to investigate occurrences that may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Customer who is involved in such violations. Backpack also reserves the right to cooperate with any and all law enforcement agencies, including complying with warrants, court orders and subpoenas and disclosing to law enforcement agencies any information about any Customer and anything a Customer does with respect to Backpack Website. By Customer's use of the Backpack Website, Customer

authorizes Backpack to take such action.

**2.7** In the event the Backpack Website, now or in the future, allows Customer to upload, transmit, or otherwise contribute any Customer Content or Content to Backpack Website, Customer hereby represents and warrants to Backpack that Customer has the lawful right to distribute and reproduce such Customer Content or Content. Also, Customer is solely responsible for its conduct (and the conduct of its authorized employees) while using the Backpack Website, including, but not limited to, all Customer Content or Content in any folders or web pages (if any), or through any other transactions or interactions Customer generates, transmits, or maintains via Backpack Website. Backpack takes no responsibility for any such online distribution or publication by Customer or by any other party. Backpack cannot and will not review every message or other Customer Content or Content that Customer or any other party may generate or post, and Backpack is not responsible for the Customer Content or Content thereof.

**2.8** In addition to any other right to terminate this Agreement, Backpack hereby has the absolute right to immediately terminate, without warning, any account that it believes, in its sole discretion, breaches any of the provisions of this Section 2.

### **3. Copyrights and Other Intellectual Property Rights; Reservation of Rights.**

**3.1** Backpack's policy is to respect the copyright and intellectual property rights of others. Backpack has the absolute right to (i) immediately terminate, without warning, all rights (including, without limitation, all Access Rights) of any Customer who (in Backpack's determination) appears to infringe upon the copyright or intellectual property rights of others, and (ii) remove any Customer Content or Content from Backpack Website that, in Backpack's determination, may infringe the copyright or other intellectual property rights of any third party.

**3.2** This Agreement shall not be interpreted to transfer any rights in any intellectual property from Backpack to any Customer. Backpack or its licensors shall solely own all Backpack IP Assets provided in, or made available by using, or otherwise contained in, the Backpack Website and otherwise provided in furtherance of this Agreement.

**3.3** Backpack IP Assets may not be used by Customer without the prior written permission from Backpack, and then only with proper acknowledgement. Any rights not expressly granted herein to Customer are reserved to Backpack. In addition to any other conditions on the

Customer's Access Right as set forth in this Agreement, Customer's Access Right is subject to the following additional conditions:

(a) Customer shall *not* modify, disassemble, decompile or reverse translate or create derivative works from any of Backpack IP Assets or otherwise attempt to derive any source code of the same or let any third party do the same;

(b) no copyrighted material, content, or any other Backpack IP Assets may be downloaded, modified, copied, displayed, transferred, distributed, sold, published, broadcast or otherwise used except as expressly stated either in such materials or in this notice without the express prior written permission of Backpack (which Backpack may or may not grant in its sole discretion);

(c) Customer shall not remove, alter, cover or obscure any copyright notices or other proprietary rights notices of Backpack or any other party placed on or embedded in Backpack IP Assets and shall otherwise retain all such notices on all copies of the same; and

(d) use of any of Backpack IP Assets is prohibited unless Customer is an authorized Customer in good standing. Unauthorized use is a violation of copyright and other intellectual property rights and is actionable under law.

**3.4** Customer agrees to keep strictly confidential all Backpack IP Assets that have not been made publically available by Backpack. Customer also acknowledges and agrees that the terms and conditions of this provision shall survive the cancellation, expiration or termination of this Agreement for any reason.

#### **4. Privacy Issues; Consent to Backpack's Privacy Policy.**

**4.1** Customer agrees that: (a) if the Customer has any Customer Content, Content, or any login or password associated with the Backpack Website, then Customer is solely responsible for maintaining the confidentiality of the same; and (b) if the Customer has any login or password associated with the Backpack Website, then Customer (i) is solely responsible for all uses of its login and password regardless of whether these uses are authorized by Customer; and (ii) Customer will immediately notify Backpack of any unauthorized use of the Customer's login and password.

**4.2** The terms and conditions of Backpack's Privacy Policy available on Backpack's website by visiting [www.backpacknetworks.com/privacy](http://www.backpacknetworks.com/privacy) are hereby incorporated into this Agreement and each Customer hereby agrees: (i) that such Privacy Policy governs the Customer;

and (ii) to comply with the Privacy Policy at all times.

**5. Indemnity.** Customer will indemnify and hold Backpack, its parents, subsidiaries, affiliates, officers, directors, employees, agents, and members harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of the Customer's access to the Website, use of the Website, the violation or other breach of this Agreement by the Customer, or the infringement by the Customer, or any third party using the Customer's account, of any intellectual property or other right of any person or entity.

**6. Site Resources; Provided "AS IS".** Backpack Website may provide a wide variety of information, data, facts, and features (collectively, "**Site Resources**") for the Customer's benefit and use. While Backpack endeavors to provide the most current and accurate Site Resources as possible, the Customer acknowledges and agrees (a) the Site Resources may be general in nature, and may not apply to particular factual circumstances; and (b) the Site Resources may contain errors and should not be relied upon or act as a substitution for independent investigation by the Customer. ALL SITE RESOURCES ARE PROVIDED "AS IS". ANY SITE RESOURCES MADE AVAILABLE THROUGH THE BACKPACK WEBSITE MAY BE SUPERSEDED OR MAY INCLUDE INACCURACIES. WHERE A DOCUMENT OR OTHER CONTENT IS OBTAINED FROM ANOTHER SOURCE OTHER THAN DIRECTLY BY BACKPACK, THEN THE OTHER SOURCE (AND ITS WEBSITE, IF APPLICABLE) TAKES PRECEDENCE. BACKPACK MAY MAKE IMPROVEMENTS AND/OR CHANGES TO THE BACKPACK WEBSITE, SITE RESOURCES AND ITS BACKPACK SERVERS AT ANY TIME.

**7. Links to Third Party Sites.** As a convenience to Customers, Backpack Website may now, or in the future, provide links to other Internet web sites that are not owned by Backpack, and are not under Backpack's control ("**Third Party Websites**"). Backpack does not control the Third Party Websites and is not responsible for the Content included in them including, without limitation, any subsequent links contained within a linked web site, or any changes or updates to a linked web site. Any reference from Backpack Website to any entity, product, service or information does not constitute an endorsement or recommendation by Backpack. No Third Party Website is authorized to make any representations or warranties on Backpack's behalf. Your visit to any Third Party Websites are subject to the terms and conditions of such Third Party Websites, and not this Agreement. Customer should refer to each Third Party Website's specific terms.

**8. Disclaimer of Warranties; Disclaimer of Liability.**

**8.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SITE RESOURCES AND ALL OTHER CONTENT, FEATURES OR FUNCTIONALITIES PROVIDED BY BACKPACK THROUGH THIS BACKPACK WEBSITE ARE PROVIDED “AS IS,” “WITH ALL FAULTS” AND “AS AVAILABLE” AND THE ENTIRE RISK OF USE AND PERFORMANCE OF THE FOREGOING REMAINS SOLELY WITH THE CUSTOMER.** BACKPACK MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY OR ACCURACY OF THE SITE RESOURCES CONTAINED IN THE BACKPACK WEBSITE. ALL SITE RESOURCES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. BACKPACK HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. BACKPACK DOES NOT WARRANT THAT BACKPACK WEBSITE AND THE SITE RESOURCES ON BACKPACK WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE

DEFECTS WILL BE CORRECTED, OR THAT ANY BACKPACK SERVER MAKING THIS BACKPACK WEBSITE AVAILABLE IS FREE OF COMPUTER VIRUSES OR OTHER HARMFUL COMPONENTS.

**9. Termination.** In the event Customer, or anyone else using Customer’s privileges, violates these Terms of Use or the Access and Use Agreement (as determined in Backpack’s discretion), Backpack reserves the right to take any action it deems appropriate, including, but not limited to, termination of this Agreement, including all Access Rights (as such term is defined in Section 2.1 in the Access and Use Agreement). In addition to any other right of Backpack to terminate this Agreement, Backpack further reserves the right, without notice, at any time, in its sole discretion, and for any reason, to terminate this Agreement, including all Access Rights. Backpack is not required to provide mail or web page forwarding at termination.

**10. Communications with Backpack.** If You have any questions relating to this Agreement, You should contact Backpack by emailing it at: [contractadmin@backpacknetworks.com](mailto:contractadmin@backpacknetworks.com).