

## The Prolexic Terms and Conditions

**1. MONITORING.** Prolexic may monitor Customer's use of the Clean Pipe Service

**2. DISCONTINUANCE; MODIFICATION.** Prolexic reserves for itself the right to, in its sole discretion, discontinue or modify the Clean Pipe Service and/or any of these Terms and Conditions.

In the event of any expiration or termination of the Clean Pipe Service, the Customer's access to the Clean Pipe Service will end and neither Foreshore nor Prolexic will be responsible for assisting the Customer with any transition to an alternative provider.

THE CUSTOMER ACKNOWLEDGES THAT THE CLEAN PIPE SERVICE IS PROVIDED USING A SHARED INFRASTRUCTURE.

**3. OWNERSHIP; LIMITED LICENSE GRANT.** All right, title and interest in and to the Clean Pipe Service, the Prolexic Network or any other the technology utilized by Prolexic to deliver the Clean Pipe Service, and all related technology, computer code, and other related materials and results thereof (including the domain name server, proxy system, Clean Pipe, routing, switching, IP network, software, data and know-how), and all intellectual property embodied therein or derived therefrom (the "Proprietary Materials") shall be the sole and exclusive property of Prolexic and/or its licensors. Prolexic hereby grants to the Customer the limited, revocable, royalty-free, fully-paid, non-sublicenseable, non-assignable, non-transferable, non-exclusive right to use the Clean Pipe Service for its internal business purposes during the term (the "**Authorized Use**"). Neither Customer, nor anyone acting on behalf of Customer may reverse engineer, decompile, modify or create derivative works of any of the Proprietary Materials. Prolexic and its licensors reserve for themselves all rights not granted herein.

**4. WARRANTIES, REPRESENTATIONS AND COVENANTS; DISCLAIMER.** Customer hereby warrants, represents and covenants as follows: (a) in the performance of its obligations and use of the Clean Pipe Service (by Customer and any Customer Representatives (as defined below)), Customer will not violate any applicable laws or infringe the proprietary or privacy rights of any third party; (b) Customer and the Customer Representatives will not use the Clean Pipe Service in a manner which constitutes an Abuse (as described in Section 8 below); (c) the information and other data that it transmits and receives in connection with the use of the Clean Pipe Service complies and will at all times during the term comply with all applicable laws and do not and will not infringe the proprietary or privacy rights of any third parties; (d) when using the Clean Pipe Service (or allowing others to use the Clean Pipe Service including its end users) it will comply with all applicable acceptable use policies and will not cause or allow others to cause the disruption of other parties' use or enjoyment of the Internet; and (f) it does not currently provide services that compete with the Clean Pipe Service and will not at any time in the future use the Clean Pipe Service or any other Proprietary Materials for the provision of any services that compete with the Clean Pipe Service.

The Customer's exclusive remedy and Prolexic's sole obligation for any deficiency in the Clean Pipe Service will be for Prolexic, at its option, either to re-perform the Clean Pipe Service or to offer a credit against future Clean Pipe Services. THE CLEAN PIPE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NEITHER FORESHORE, PROLEXIC NOR ANY OF THEIR RESPECTIVE PROVIDERS, LICENSORS, EMPLOYEES OR AGENTS GIVES ANY OTHER CONDITION OR WARRANTY, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED, TO ANY CONDITIONS OR WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE CLEAN PIPE SERVICE, ANY OTHER PROPRIETARY MATERIALS, OR THE RESULTS TO BE OBTAINED FROM USE BY CUSTOMER, ITS END USERS OR ANY OTHER THIRD PARTY OF THE CLEAN PIPE SERVICE AND ANY OTHER PROPRIETARY MATERIALS. FORESHORE,

PROLEXIC AND THEIR RESPECTIVE SUPPLIERS DO NOT WARRANT THAT THE CLEAN PIPE SERVICE SHALL BE ERROR-FREE, UNINTERRUPTED, SECURE OR PRODUCE PARTICULAR RESULTS. NO ADVICE OR INFORMATION PROVIDED BY FORESHORE, PROLEXIC OR THEIR RESPECTIVE EMPLOYEES OR AGENTS SHALL CREATE A WARRANTY.

**5. LIMITATION OF LIABILITY.** CUSTOMER RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND THEREFORE ARE NOT SUBJECT TO THE CONTROL OF PROLEXIC. MALFUNCTION OR CESSATION OF INTERNET SERVICES BY INTERNET SERVICE PROVIDERS OR OF ANY OF THE NETWORKS THAT FORM THE INTERNET MAY MAKE THE CLEAN PIPE SERVICE TEMPORARILY OR PERMANENTLY UNAVAILABLE. OCCASIONAL TEMPORARY INTERRUPTIONS OF THE CLEAN PIPE SERVICE MAY OCCUR FROM TIME TO TIME. CUSTOMER AGREES THAT PROLEXIC SHALL NOT BE LIABLE FOR DAMAGES INCURRED OR SUMS PAID WHEN THE CLEAN PIPE SERVICE IS TEMPORARILY OR PERMANENTLY UNAVAILABLE, INCLUDING DUE TO MALFUNCTION OR CESSATION OF INTERNET SERVICES BY NETWORK(S) OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO THE CONTROL OF PROLEXIC, OR DUE TO ANY ACCIDENT OR ABUSE BY CUSTOMER. THE INTERNET IS NOT A SECURE NETWORK; CONFIDENTIAL OR SENSITIVE INFORMATION SHOULD NOT BE TRANSMITTED OVER THE INTERNET OR STORED ON COMPUTERS DIRECTLY CONNECTED TO THE INTERNET. PROLEXIC SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY BREACH OF SECURITY ON CUSTOMER'S NETWORK, SYSTEM OR EQUIPMENT, OR FOR ANY LOSS OR THEFT OF INFORMATION TRANSMITTED OVER THE INTERNET OR STORED ON COMPUTERS DIRECTLY CONNECTED TO THE INTERNET. THE LIMITATIONS ON LIABILITY STATED HEREIN SHALL APPLY REGARDLESS OF WHETHER ANY REMEDY PROVIDED IN THESE TERMS AND CONDITIONS FAILS OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF WHETHER THE CLAIM ARISES IN TORT (INCLUDING NEGLIGENCE), CONTRACT, WARRANTY, STRICT LIABILITY OR OTHERWISE. NEITHER PROLEXIC NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING, SUSPENDING OR DISCONTINUING SERVICES, OR SUPPORTING THE CLEAN PIPE SERVICE SHALL BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOST DATA, EQUIPMENT, WEBSITE OR NETWORK DOWNTIME, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER ARISING, WHICH ARE RELATED TO THESE TERMS AND CONDITIONS OR THE PROVISION OF THE CLEAN PIPE SERVICE, EVEN IF PROLEXIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PROLEXIC BE LIABLE FOR ANY DAMAGES INCURRED BY CUSTOMER OTHER THAN DIRECT DAMAGES WHICH ARISES FROM AN INTENTIONAL AND WILFULL ACT OF PROLEXIC. IN NO EVENT SHALL PROLEXIC'S AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES RESULTING FROM THE CLEAN PIPE SERVICE EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE CLEAN PIPE SERVICE DURING THE THREE (3) MONTHS PRECEDING THE FIRST CLAIM. CUSTOMER ACKNOWLEDGES AND AGREES THAT IN THE ABSENCE OF THESE LIMITATIONS OF LIABILITY, THE ECONOMIC TERMS FOR THE CLEAN PIPE SERVICE WOULD BE SUBSTANTIALLY DIFFERENT. NOT ALL JURISDICTIONS PERMIT SUCH LIMITATIONS OF LIABILITY, IN WHICH CASE THESE LIMITATIONS MAY NOT APPLY IN THIS CASE.

**6. INDEMNITY.** Customer, at its own expense, shall indemnify, defend, and hold harmless the Prolexic and its directors, officers, trustees, shareholders, employees, independent contractors, subsidiaries, affiliates, agents, successors and assigns (collectively, the "**Indemnified Parties**") from and against any and all losses, costs, liabilities, judgments, damages and expenses, including without limitation reasonable attorneys' fees and expenses arising out of or relating to any claim, action, investigation, proceeding or suit arising from (a) breach by Customer, its employees, customers, subscribers, business partners, agents, representatives or any other end user of the Clean Pipe Service (but in the case of any such other end user, only to the extent such end user (x) is authorized by Customer or any of the foregoing entities to use the Clean Pipe Service or (y) is using or accessing

the Clean Pipe Service or the Prolexic Network through the facilities or equipment of Customer or any such other entity) (collective, "Customer Representatives") of any of its obligations under these Terms and Conditions; (b) breach by Customer or any Customer Representatives of any of the warranties, representations or covenants made herein including but not limited to any conduct which constitutes an Abuse; (c) the negligence or intentional misconduct of Customer or any Customer Representatives; (d) any liability arising from use of the Clean Pipe Service by Customer or the Customer Representatives.

**7. ACCOUNT MISUSE.** Customer agrees to be responsible for any misuse of Customer's account.

**8. ABUSES.** Customer agrees (on behalf of itself and of any Customer Representatives) to use the Clean Pipe Service for lawful purposes only. Without limiting the foregoing, the following shall be deemed impermissible uses of the Clean Pipe Services ("Abuses") and each shall constitute a breach of these Terms and Conditions by Customer: (a) causing, aiding, encouraging, or facilitating a domain or URL hosted by Prolexic for Customer or any Customer end user to point to or otherwise direct traffic to any material in violation of any applicable law or regulation; (b) for Customer or a Customer Representative to use or encourage, aid or facilitate the use of the Clean Pipe Service to (including by pointing to web sites or locations that) create, transmit, distribute or store material that: violates trademark, patent, copyright, trade secret or other intellectual property laws; violate the privacy, publicity or other personal rights of others; include tools designed for compromising security (including but not limited to password guessing programs, cracking tools or network probing tools); violate U.S. export control, data protection or anti-terrorism laws; impair the privacy of communications; may be obscene, pornographic, harassing, threatening, abusive or discriminatory or which encourage hatred against an identifiable group; are defamatory or knowingly contain viruses; or constitute a criminal offense or give rise to civil liability; (c) use of the Clean Pipe Service in such a manner as to directly or indirectly negatively affect Prolexic or the Prolexic Network (including, without limitation, overloading servers on the Prolexic Network or causing portions of the Prolexic Network to be blocked); (d) any attempt by Customer or any Customer Representatives to penetrate or manipulate, or encourage, aid or facilitate the penetration or manipulation of, the security features of the Prolexic Network or any other system (including but not limited to unauthorized access to or use of data, systems or networks; probing, scanning or testing the vulnerability of a system or network; breaching security authentication measures; unauthorized monitoring of data or traffic; interference with the service of any user, host or network by any means; forging any TCP/IP packet header or any part of a message header); (e) posting article(s) or substantively similar articles(s) to an excessive number of newsgroups using a Prolexic hosted domain or posting such messages through a Service; (f) sending unsolicited and/or mass e-mailings, whether or not such activities provoke complaints from the recipients (Prolexic has a zero tolerance policy on the sending of SPAM, junk e-mail or unsolicited commercial email. Emails may not contain forged headers or fake contact information); (g) not complying with any of the restrictions or prohibitions contained in the then current acceptable use policies of Prolexic's Internet service providers as referenced in [www.Prolexic.com/AUP](http://www.Prolexic.com/AUP). Such acceptable use policies may be revised from time to time; (h) utilizing an excessive amount of Prolexic Network resources without reasonable commercial justification; or (i) breaching any other provision of these Terms and Conditions. If Prolexic determines in its sole discretion that an Abuse has taken or is taking place, Prolexic reserves the right to suspend or terminate the Clean Pipe Service immediately as well as notify the appropriate law-enforcement agencies. Customer agrees to use reasonable efforts to cooperate with Prolexic to resolve any Abuses.

**9. NO CONTROL OVER CUSTOMER OR OTHER INTERNET DATA.** Customer acknowledges that Prolexic has no control over any content or information directly or indirectly delivered to or which passes through the Prolexic Network. Prolexic accepts no responsibility for such content or information.

**10. ACCURATE INFORMATION.** Customer agrees to (a) provide complete, accurate, and current information as requested by Prolexic and (b) to update this information throughout the term as needed to keep all such information complete, accurate, and current.

**11. NOTICES AND MARKETING.** Customer agrees that Prolexic may contact Customer with information that it deems of possible interest to Customer. These notices may include, but are not limited to: commercial emails and direct mailings concerning service changes, service/product upgrades, new services/products, or other relevant information. Customer agrees that Prolexic may use the customer's name on Prolexic's customer lists for marketing purposes.

**12. CONFIDENTIAL INFORMATION.** Each of Customer and Prolexic (the "Receiving Party") receiving the Confidential Information (as defined below) of the other party (the "Disclosing Party") agrees to maintain all Confidential Information of the Disclosing Party in confidence and to use such Confidential Information only as permitted under these Terms and Conditions. For purposes of these Terms and Conditions, "Confidential Information" shall mean information including, without limitation, algorithms, computer programs, inventions (whether patentable or not), techniques, processes, methodologies, schematics, know-how, ideas, analysis and performance information, user documentation, internal documentation and the features, mode of operation and other details of the Disclosing Party's products and services, and technical, business, financial, marketing, customer and product development plans, forecasts, strategies, customer data (individual information) and any other information provided by the Disclosing Party to the Receiving Party or to which the Receiving Party otherwise has access in connection with these Terms and Conditions. These Terms and Conditions and information regarding the Clean Pipe Service and/or the technology utilized by Prolexic to deliver the Clean Pipe Service shall be deemed to constitute the Confidential Information of Prolexic. Each party agrees to take all reasonable precautions to prevent any unauthorized disclosure or use of the other party's Confidential Information, including, without limitation, disclosing such Confidential Information only to its employees or contractors with a need to know and who are parties to appropriate agreements sufficient to comply with this Section. The foregoing restrictions on use and disclosure shall not apply with respect to information of the Disclosing Party which: (a) becomes publicly known through no fault of the Receiving Party, (b) becomes rightfully known to the Receiving Party without restriction from a source that itself had the right to disclose the Confidential Information without any restriction; or (3) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information and without the participation of individuals who have had access to the Disclosing Party's Confidential Information as evidenced by written records. The Receiving Party may make disclosure of the Disclosing Party's Confidential Information if required by court order provided the Receiving Party uses diligent efforts to inform the Disclosing Party (to the extent permitted by applicable law) of the required disclosure in order to allow the Disclosing Party to seek a protective order. The Receiving Party agrees to return the Disclosing Party's Confidential Information upon termination or expiration of the Clean Pipe Service, or upon any request of the Disclosing Party and be prepared to certify in writing regarding such compliance.

Notwithstanding the foregoing, Prolexic reserves the right to release contact information for Customer if Prolexic reasonably believes Customer or any Customer Representative (as defined herein) was involved in violations of system security to system administrators at other sites in order to assist them in resolving security incidents.

**13. MISCELLANEOUS.** The laws of England shall govern the enforcement and interpretation of these Terms and Conditions, without regard to its conflict of laws principles. In the event of litigation or any collection activity arising out of the Clean Pipe Service or these Terms and Conditions, the prevailing party shall be awarded its costs and reasonable expert and attorneys' fees. Customer may not transfer assign its rights or obligations under these Terms and Conditions, any component or its use of the Clean Pipe Service, without the express written permission of Prolexic. If any provision of these Terms and Conditions is deemed invalid or unenforceable under applicable law, such provision will be modified or eliminated to the minimum extent necessary and the remainder of the

provision, as well as the other provisions will continue in full force and effect. Failure to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right. Prolexic shall not be responsible for the performance of its obligations hereunder where delayed or hindered by reason of any occurrence or contingency beyond its reasonable control, including but not limited to acts of God, war, insurrection, sabotage, terrorism, embargo, fire, flood, accident, earthquake, strike or other labor problems, interruption of or delay in transportation or telecommunication service, act of its vendors or suppliers, inability to obtain raw materials, supplies or power used or need in the provision of the Clean Pipe Service, and any governmental requirements ("Force Majeure Events"). The headings in these Terms and Conditions are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. Confidentiality obligations, ownership, warranty disclaimers, limitations on liability, indemnity obligations, and any other provisions that by their terms are intended to survive the expiration or termination of the Clean Pipe Service shall survive such expiration or termination. These Terms and Conditions represent the entire agreement between Prolexic and Customer with respect to their subject matter, and supersede all other representations, understandings, proposals or agreements between Prolexic and Customer regarding such subject matter. No amendment to these Terms and Conditions, or change, waiver or discharge of, any provision of these Terms and Conditions shall be valid unless in writing and signed by Customer and an authorized representative of Prolexic or made by Prolexic under Section 2 above.