

## 1. Introduction

This AUP applies to any customer ("Customer") using SIMETRY services that provide (or include) access to the Internet, including hosting services (software applications and hardware), or are provided over the Internet or wireless data networks (collectively the "Services"). This AUP is in addition to any restrictions or conditions contained in any contract agreed to between SIMETRY and Customer as well as any restrictions or conditions contained in SIMETRY STANDARD CUSTOMER TERMS found at <https://www.simetry.com/terms-conditions/>.

### A. Scope of the AUP

This AUP applies to any customer ("Customer") using SIMETRY services that provide (or include) access to the Internet, including hosting services (software applications and hardware), or are provided over the Internet or wireless data networks (collectively the "Services"). This AUP is in addition to any restrictions or conditions contained in any contract agreed to between SIMETRY and Customer as well as any restrictions or conditions contained in SIMETRY STANDARD CUSTOMER TERMS found at <https://www.simetry.com/terms-conditions/>.

**B. By using the Service(s), as defined below, Customer agrees to comply with this AUP and to remain responsible for its users. SIMETRY reserves the right to change or modify the terms of this AUP at any time by posting a new version on SIMETRY's web site at <https://www.simetry.com/terms-conditions/>. Revised versions of this AUP are effective immediately upon posting. Accordingly, Customers using the Services should regularly visit SIMETRY's web site and review this AUP to ensure that their activities conform to the most recent version. Customer's use of the Service(s) after changes to the AUP are posted shall constitute acceptance of any changed or additional terms.**

**C. Customer and all others who use the Services must comply with this AUP.** As further described herein, Customer's failure, or others' using the Customer's Services failure, to comply with this AUP could result in suspension or termination of Customer's Services. Therefore, Customer should take steps to ensure that any individuals Customer permits to use the Services are aware of this AUP and agree to abide by it. If Customer is unwilling to comply with this Policy, Customer must immediately stop all use of the Services.

### 2. Prohibited Activities

**A. General Prohibitions:** SIMETRY prohibits the use of the Services in any way that is unlawful, harmful to or interferes with the use or operation of SIMETRY's network or systems, or the network of any other provider, interferes with the use or enjoyment of the Services by others, infringes intellectual property rights, results in the publication of threatening or offensive material, or constitutes Spam/E-mail/Usenet abuse, a security risk or a violation of privacy. Failure to adhere to the rules, guidelines or agreements applicable to search engines, subscription Web services, chat areas, bulletin boards, Web pages, USENET, applications, or other services that are accessed via a link from the SIMETRY-branded website or from a website that contains SIMETRY-branded content is a violation of this AUP.

**B. Unlawful Activities:** The Services shall not be used in connection with any criminal, civil or administrative violation of any applicable local, state, provincial, federal, national or international law, treaty, court order, ordinance, regulation or administrative rule.

**C. Violation of Intellectual Property Rights:** The Services shall not be used to publish, submit/receive, upload/download, post, use, copy or otherwise reproduce, transmit, re-transmit, distribute or store any content/material or to engage in any activity that infringes, misappropriates or otherwise violates the intellectual property rights or privacy or publicity rights of SIMETRY or any individual, group or entity, including but not limited to any rights protected by any copyright, patent, trademark laws, trade secret, trade dress, right of privacy, right of publicity, moral rights or other intellectual property right now known or later recognized by statute, judicial decision or regulation.

**D. Threatening Material or Content:** The Services shall not be used to host, post, transmit, or re-transmit any content or material (or to create a domain name or operate from a domain name), that harasses, or threatens the health or safety of others. In addition, for those Services that utilize SIMETRY provided web hosting, SIMETRY reserves the right to decline to provide such services if the content is determined by SIMETRY to be obscene, indecent, hateful, malicious, racist, defamatory, fraudulent, libelous, treasonous, excessively violent or promoting the use of violence or otherwise harmful to others.

**E. Child Pornography:** The Services shall not be used to publish, submit/receive, upload/download, post, use, copy or otherwise produce, transmit, distribute or store child pornography. Suspected violations of this prohibition may be reported to SIMETRY at the following e-mail address: [abuse@simetry.com](mailto:abuse@simetry.com). SIMETRY will report any discovered violation of this prohibition to the National Center for Missing and Exploited Children and take steps to remove child pornography (or otherwise block access to the content determined to contain child pornography) from its servers.

**F. Spam/E-mail/Usenet Abuse:** Violation of the CAN-SPAM Act of 2003, or any other applicable law regulating e-mail services, constitutes a violation of this AUP. Spam/E-mail or Usenet abuse is prohibited using the Services. Examples of Spam/E-mail or Usenet abuse include but are not limited to the following activities:

- (i) sending multiple unsolicited electronic mail messages or "mail-bombing" – to one or more recipient;
- (ii) sending unsolicited commercial e-mail, or unsolicited electronic messages directed primarily at the advertising or promotion of products or services;
- (iii) sending unsolicited electronic messages with petitions for signatures or requests for charitable donations, or sending any chain mail related materials;
- (iv) sending bulk electronic messages without identifying, within the message, a reasonable means of opting out from receiving additional messages from the sender;
- (v) sending electronic messages, files or other transmissions that exceed contracted for capacity or that create the potential for disruption of the SIMETRY network or of the networks with which SIMETRY interconnects, by virtue of quantity, size or otherwise;

(vi) using another site's mail server to relay mail without the express permission of that site;

(vii) using another computer, without authorization, to send multiple e-mail messages or to retransmit e-mail messages for the purpose of misleading recipients as to the origin or to conduct any of the activities prohibited by this AUP;

(viii) using IP addresses that the Customer does not have a right to use; (ix) collecting the responses from unsolicited electronic messages; (x) maintaining a site that is advertised via unsolicited electronic messages, regardless of the origin of the unsolicited electronic messages;

(xi) sending messages that are harassing or malicious, or otherwise could reasonably be predicted to interfere with another party's quiet enjoyment of the IP Services or the Internet (e.g., through language, frequency, size or otherwise);

(xii) using distribution lists containing addresses that include those who have opted out;

(xiii) sending electronic messages that do not accurately identify the sender, the sender's return address, the e-mail address of origin, or other information contained in the subject line or header;

(xiv) falsifying packet header, sender, or user information whether in whole or in part to mask the identity of the sender, originator or point of origin;

(xv) using redirect links in unsolicited commercial e-mail to advertise a website or service;

(xvi) posting a message to more than ten (10) online forums or newsgroups, that could reasonably be expected to generate complaints;

(xvii) intercepting, redirecting or otherwise interfering or attempting to interfere with e-mail intended for third parties;

(xviii) knowingly deleting any author attributions, legal notices or proprietary designations or labels in a file that the user mails or sends;

(xix) using, distributing, advertising, transmitting, or otherwise making available any software program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, including, but not limited to, the facilitation of the means to spam.

**G. Interconnected Voice Use:** To the extent that the Services are being provided by SIMETRY for data use, then Customer shall be prohibited from using the Services for 2-way interconnected voice use.

**3. Security Violations:** Customers are responsible for ensuring and maintaining security of their systems and the machines that connect to and use the Services, including implementation of necessary patches and operating system updates. The Services may not be used to interfere with, gain unauthorized access to, or otherwise violate the security of SIMETRY's (or another party's) server, network, network access, personal computer or control devices, software or data, or other system, or to attempt to do any of the foregoing. Examples of system or network security violations include but are not limited to:

(i) unauthorized monitoring, scanning or probing of network or system or any other action aimed at the unauthorized interception of data or harvesting of e-mail addresses;

(ii) hacking, attacking, gaining access to, breaching, circumventing or testing the vulnerability of the user authentication or security of any host, network, server, personal computer, network access and control devices, software or data without express authorization of the owner of the system or network;

(iii) impersonating others or secretly or deceptively obtaining personal information of third parties (phishing, etc.);

(iv) using any program, file, script, command or transmission of any message or content of any kind, designed to interfere with a terminal session, the access to or use of the Internet or any other means of communication;

(v) distributing or using tools designed to compromise security (including but not limited to SNMP tools), including cracking tools, password guessing programs, packet sniffers or network probing tools (except in the case of authorized legitimate network security operations);

(vi) engaging in the transmission of pirated software;

(vii) using manual or automated means to avoid any use limitations placed on the Services;

(viii) providing guidance, information or assistance with respect to causing damage or security breach to SIMETRY's network or systems, or to the network of any other IP Service provider;

(ix) using the Service for operation as an Internet service provider or otherwise resell the Services;

(x) restrict, inhibit, or otherwise interfere, regardless of intent, purpose or knowledge, with the ability of any other person to use or enjoy the Services or to impede others' ability to use, send, or retrieve information (except for tools for safety and security functions such as parental controls, for example), including, without limitation, uploading, posting or transmitting any information, file, program, or software which contains a worm, virus, spyware, Trojan horses, worms, time bombs, cancel bots, corrupted files, root kits or other harmful feature that may damage the operation of another's computer, network system or other property, or be used to engage in modem or system hi-jacking;

(xi) restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Services or any SIMETRY (or SIMETRY supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any SIMETRY (or SIMETRY supplier) facilities used to deliver the Service;

(xii) failure to take reasonable security precautions to help prevent violation(s) of this AUP.

**4. Customer Responsibilities:** Customers remain solely and fully responsible for the content of any material posted, hosted, downloaded/uploaded, created, accessed or transmitted using the Services. SIMETRY has no responsibility for any material created on the SIMETRY's network or accessible using the Services, including content provided on third-party websites linked to the SIMETRY network. Such third-party website links are provided as Internet navigation tools for informational purposes only, and do not constitute in any way an endorsement by SIMETRY of the content(s) of

such sites. Customers are responsible for taking prompt corrective action(s) to remedy a violation of AUP and to help prevent similar future violations.

**5. AUP Enforcement and Notice: Customer's failure to observe the guidelines set forth in this AUP may result in SIMETRY taking actions anywhere from a warning to a suspension or termination of Customer's Services.** When feasible, SIMETRY may provide Customer with a notice of an AUP violation via e-mail or otherwise allowing the Customer to promptly correct such violation. **SIMETRY reserves the right, however, to act immediately and without notice to suspend or terminate affected Services in response to a court order or government notice that certain conduct must be stopped, or when SIMETRY reasonably determines that the Customer's use of the affected Services may: (1) expose SIMETRY to sanctions, prosecution, civil action or any other liability; (2) cause harm to or interfere with the integrity or normal operations of SIMETRY's network or networks with which SIMETRY is interconnected; (3) interfere with another SIMETRY Customer's use of the Services or the Internet; (4) violate any applicable law, rule or regulation; or (5) otherwise present an imminent risk of harm to SIMETRY or SIMETRY Customers.**

### 6. Copyright Infringement & Digital Millennium Copyright Act

**A. SIMETRY respects the intellectual property rights of others.** Pursuant to the Digital Millennium Copyright Act of 1998 (the "DMCA") (17 U.S.C. § 512), copyright owners may report alleged infringements of their works by sending SIMETRY's authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon SIMETRY's receipt of a satisfactory notice of claimed infringement for these works, SIMETRY will respond expeditiously to either directly or indirectly (i) remove the allegedly infringing work(s), if applicable or (ii) disable access to the work(s). SIMETRY will also notify the affected Customer or user of the Services of the removal or disabling of access to the work(s). SIMETRY has adopted and reasonably implemented a policy that provides for the termination in appropriate circumstances of subscribers and account holders of SIMETRY's system or network who are repeat copyright infringers.

**B. Copyright owners may send SIMETRY a notification of claimed infringement to report alleged infringements of their works under the DMCA to:**  
Designated Agent: DMCA Notifications

Legal Department  
950 Corbindale, Ste 400  
Houston, TX 77024-2849  
Telephone: 713.528.5544  
[webmaster@simetry.com](mailto:webmaster@simetry.com)  
Subject Line: DMCA Notifications

**C. Copyright owners may use their own notification of claimed infringement form that satisfies the requirements of Section 512(c)(3) of the U.S. Copyright Act. The notification must be a written communication provided to SIMETRY's designated agent that includes substantially the following:**

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

(iv) Information reasonably sufficient to permit SIMETRY to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

**D. Under the DMCA, anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to SIMETRY, the alleged infringer, and the affected copyright owner for any damages incurred in connection with the removal, blocking, or replacement of allegedly infringing material.**

**7. Incident Reporting:** Any complaints (other than claims of copyright infringement) regarding violation of this AUP by a SIMETRY Customer (or its user) should be directed to [abuse@simetry.com](mailto:abuse@simetry.com). Where possible, include details that would assist SIMETRY in investigating and resolving such complaint (e.g., expanded headers, IP address(s), a copy of the offending transmission and any log files).

**8. Contact Information:** Any notification that SIMETRY sends to its Customers pursuant to this AUP will be sent via e-mail to the e-mail address on file with SIMETRY, or may be in writing to Customer's address of record. It is the Customer's responsibility to promptly notify SIMETRY of any change of contact information.