

# Terms of Service

Last Updated: 6/12/2013

binadit (herein referred to as "Banzaii") agrees to provide services to the Subscriber, subject to the following Terms of Service. Use of Banzaii's service constitutes acceptance and agreement to Banzaii's Terms of Service.

Banzaii reserves the right to modify the Terms of Service without notice.

## 1. Eligibility & Acceptance

1.1 You may use our services, provided that you are of legal age to form a binding contract and are not barred from receiving such services under the laws of the Netherlands or other jurisdictions. In order to access our services, you are required to provide current and factual identification, contact, and other information as part of the registration process. You are responsible for the confidentiality of your account information and for all activities that occur under your account. You are solely responsible for all content within your account. You agree to immediately notify Banzaii of any unauthorized use of your account or any other breach of security. Banzaii will not be liable for any loss or damage as a result of your failure to provide us with accurate information or to keep your account secure. 1.2 By registering for an account with your email address you are agreeing to the Terms of Service, Privacy Policy, Acceptable Use Policy, and all other clauses listed here forth. If you do not wish to accept these terms you can simply deactivate your account and not continue using it.

## 2. Acceptable Use Policy

### **Lawful use of the Network**

2.1 In using the Network, Users will comply with, and refrain from violations of, all applicable provisions of the Netherlands Code, the Code of Federal Regulations, and the New York Revised Statutes, including but not limited to those statutes forbidding: (a) distribution of child pornography, (b) forgery, identity theft, misdirection or interference with electronic communications, (c) invasion of privacy, (d) violations of the CANSPAM Act, (e) collection of excessive user data from children, or other improper data collection activities, (f) securities violations, wire fraud, money laundering, or terrorist activities, or (g) false advertising, propagating or profiting from frauds and unfair schemes. Users will also comply with the affirmative requirements of law governing Network use, including but not limited to: (a) disclosure requirements, including those regarding notification of security breaches, (b) records maintenance for regulated industries, and (c) financial institution safeguards.

### **Agreed Use of Allotted Network Resources**

2.2 Users shall not use any method to circumvent the provisions of the terms of service, or to obtain services in excess of those for which they contract with Banzaii. Users shall use only those IP addresses that are assigned to them by Banzaii, and shall not use any IP addresses outside of their assigned range. Users shall not use any mechanism to exceed the amount of Network resources assigned to them, or to conceal such activities.

### **Injurious Code**

2.3 Users may not use the Network to distribute, receive communications or data gleaned from, or execute any action directed by any type of injurious code, including but not limited to: (a) trojans, (b) key loggers, (c) viruses, (d) malware, (e) botnets, (f) denial of service attacks, (g) flood or mail bombs, (h) logic bombs, or (f) other actions which Banzaii reserves the sole right to determine to be malicious in intent.

### **Email Violations**

2.4 In addition to being forbidden from performing any acts made illegal by the CAN-SPAM Act, Users may not send bulk email utilizing their Network resources unless they maintain a double-authorized list of subscribed members including IP addresses and relevant contact information, along with following guidelines for including removal links with all sent emails according to the CAN-SPAM act. Users are forbidden from taking any action that would result in their IP addresses, or any IP address associated with Banzaii or other Users, being placed on the Spamhaus.org blacklist.

### **Restrictions**

2.5 You agree that you will NOT use Banzaii's services to: violate any applicable state and federal law and regulation, including, but not limited to, any copyright, trademark, patent, anti-piracy, or other intellectual property law or regulation, or encourage or enable others to violate any such law or regulation. Transmit, distribute, post, store, link, or otherwise traffic in information, software, or materials that is offensive, abusive, inappropriate, malicious, or detrimental, including, but not limited to, those that: Are obscene, fraudulent, or discriminatory. Banzaii permits adult websites that abide by state and federal law and regulation.

2.6 Users are restricted from registering multiple accounts with the same billing details without first notifying Banzaii of that intent to ensure that accounts aren't automatically flagged as possibly fraudulent and without notification accounts may be treated as abuse and/or fraudulent which would lead to suspension of service. Banzaii also reserves the right to terminate a customers account if they are targeted by malicious activity from other parties.

2.7 Grandfathered accounts receive free bandwidth for the life of the account and were instated as a reward for our early adopters. There are additional restrictions for grandfathered accounts as they are intended to provide bandwidth services free to customers for their direct usage, there are several cases which fall outside of direct usage which can lead to an account's grandfathered status being revoked, these include but are not limited to: running Torrents for download or Seed Servers, TOR, services that include content of an Adult or Pornographic nature, reselling services through their account to

provide free bandwidth to other individuals, transferring the account ownership to another individual or entity, or otherwise circumventing the intended fair usage of free bandwidth by distributing it freely to others. Free bandwidth is provided to grandfathered accounts for their own usage and these limitations are in place to ensure that grandfathered accounts that are in keeping with the intended fair usage of the service receive bandwidth for free for the life of the account.

### **Invasion of Privacy, Defamation, or Harassment**

2.8 Users may not use Network resources in a manner that would violate the lawful privacy rights of any person, or to publish or republish defamatory statements, or to harass and embarrass.

### **Violation of Copyright, Trademark, Patent or Trade Secret**

2.9 Users may not use Network resources in violation of the copyrights, trademarks, patents or trade secrets of third parties, nor shall they utilize the Network to publish such materials in a manner that would expose them to public view in violation of the restrictions of law. The provisions of the DMCA will apply to issues presented by allegations of copyright violations by third parties. Banzaii will, in appropriate circumstances, terminate the accounts of repeat infringers.

### **Other Violations**

2.10 The foregoing enumeration of violative acts is not meant to be exclusive, and Banzaii provides notice hereby that it has and will exercise its authority to take whatever action is necessary to protect the Network, Users, and third parties from acts that would be inimical to the purposes of this AUP as set forth above.

### **Acts of Sub-Users**

2.11 Users are responsible for the acts of others utilizing their Network access, and will be held responsible for violations of this AUP by their sub-users or persons who gain access to the Network using the User's access codes. Any activity that a User is prohibited from performing by this AUP is equally prohibited to anyone using the Network-access of the User. Accordingly, Users agree to take the following actions to control the activities of those who connect to the Network by any means.

### **Access Code Protection**

2.12 Users will utilize proper security protocols, such as setting strong passwords and access control mechanisms, safeguarding access to all logins, passwords, and verifying the trustworthiness of persons who are entrusted with account access information.

### **Notification Regarding the AUP**

2.13 Users will notify all persons who receive Network-access of the provisions of this AUP, and will inform them that its terms are binding upon them.

### **Remedial Action**

2.14 Users will notify Banzaii if and when they learn of any security breaches regarding the Network, and will aid in any investigation or legal action that is taken by authorities and/or Banzaii to cure the security breach.

### **Remedies for Violations**

2.15 Banzaii may take any of the following appropriate actions to remedy violations of this AUP:

### **Service Suspension or Termination**

2.16 Banzaii may suspend or terminate any account without refund by a User that violates the provisions of this AUP, as Banzaii may deem appropriate to the circumstances of the violation. Banzaii will provide prior notice of the intent to suspend or terminate service if the provision of notice will not, in Banzaii's judgment, run counter to the purposes of the AUP.

## **3. Master Service Agreement**

### **Term**

3.1 The term of this Agreement shall be monthly, to commence on the date that the User sign-ups electronically for service by creating an account with an email address. Fees are billed by Banzaii on a monthly billing cycle commencing on the first of each month, ending on the last day of the month.

### **Invoicing Policies**

3.2 All invoices are denominated, and User must pay, in U.S. Dollars. User will be billed on or around the first of each month, with payment due no later than the 10 days past the invoice date.

### **Arrearages**

3.3 Payments not made within ten (10) days of invoicing will be deemed in arrears. For accounts in arrears. If any amount is more than ten days overdue, Banzaii may suspend service and bring legal action to collect the full amount due, including any attorneys fees and costs.

### **Suspension for Nonpayment**

3.4 If a customer is past due on their balance, Banzaii will send 3 email notifications within a 15 day period before suspending the customer's account. Servers will be temporarily powered off during the suspension period. Banzaii reserves the right to delete the customer's suspended machines after the final termination notice.

### **User Duties**

3.5 User will: Provide and maintain accurate personal and business identifying information, including Social Security Numbers, EIN Numbers, names, addresses, telephone numbers, and email addresses. Utilize proper security protocols, such as setting strong passwords and access control mechanisms, safeguarding access to all logins, passwords, verifying the trustworthiness of persons who are entrusted with account access information, and notifying Banzaii if and when any security breaches involving data hosted or stored at Banzaii occurs. Make full and timely payment of fees for services as selected pursuant to the terms of service. Provide Banzaii with accurate information relevant to assessing fees. Comply with the terms of this agreement, including the requirements of the terms of service, AUP, and Privacy Policy.

### **Disclaimers and Waiver of Liability**

3.6 BANZAII DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICES PROVIDED HEREUNDER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT REGARDING HARDWARE, SOFTWARE, OR SERVICES, NOR THE STATEMENT OR CONDUCT OF ANY AGENT OF Banzaii, SHALL BE DEEMED A WARRANTY FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY WHATSOEVER. USER ACKNOWLEDGES THAT HE OR SHE HAS RELIED ON NO WARRANTIES OR STATEMENTS OTHER THAN AS MAY BE SET FORTH HEREIN. USER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST Banzaii ARISING OUT OF USER'S PURCHASE OR USE OF THE SOFTWARE, OR ANY CONDUCT OF Banzaii'S OFFICERS, EMPLOYEES, OR AGENTS. Banzaii SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO USER OR ANY THIRD PARTY IN ANY AMOUNT, OR FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REVENUE OR SAVINGS, LOSS OF GOODWILL, OR THE LOSS OF USE OF ANY DATA, EVEN IF Banzaii HAD BEEN ADVISED OF, KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF. NO DISCLOSURE BY Banzaii'S OFFICERS, EMPLOYEES, OR AGENTS, SHALL BE MADE A CAUSE OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL Banzaii'S AGGREGATE CUMULATIVE LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE, EXCEED THE AMOUNT OF ONE (1) MONTH OF SERVICE PROVIDED PURSUANT TO THIS AGREEMENT. USER ACKNOWLEDGES THAT THE FEES PAID BY HIM OR HER REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT Banzaii WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS.

### **Confidentiality**

3.7 User shall keep confidential any Confidential Information to which it is given access, and shall cooperate with Banzaii's efforts to maintain the confidentiality thereof. User shall not publish to third parties or distribute information or documentation that Banzaii provides for purposes of operating and maintaining its systems, including material contained in estimates, invoices, work orders, or other such materials.

### **Backup**

3.8 User is solely responsible for the preservation of User's Data. Even with respect to Data as to which User contracts for backup services, Banzaii shall have no responsibility to preserve Data, the service is provided as is, without warranty.

## **Export**

3.9 User shall comply with all applicable export and import control laws and regulations in its use of Banzaii Services, and, in particular, User shall not utilize Banzaii Services to export or re-export Data or Software without all required Netherlands and foreign government licenses. User assumes full legal responsibility for any access and use of Banzaii Services from outside the United States, with full understanding that the same may constitute export of technology and technical data that may implicate export regulations and/or require export license, and represents that, should such a license be required, it shall be User's responsibility to obtain the same, and in the event of any breach of this duty resulting in legal claims against Banzaii, User shall defend and hold Licensor harmless from all claims and damages arising therefrom.

## **Indemnification**

3.10 User shall defend, indemnify and hold harmless Banzaii from any and all claims or causes of action arising out of User's misuse of Banzaii Services.

## **Termination**

3.11 Either party may terminate this Agreement if the other party fails to cure a material breach of the terms of this Agreement within thirty (30) days after receiving notice thereof. In the event Banzaii terminates this Agreement for User's material breach, any amounts owed to Banzaii hereunder before such termination will be immediately due and payable, any and all rights granted to user this Agreement will immediately be cancelled, and User shall promptly discontinue all use of the Services, relinquish any Confidential Information in User's possession or control. If Banzaii determines that User's failure to abide by the terms and conditions of this Agreement may give rise to unlawful consequences or cause an immediate risk of damage to Banzaii, other Users, or third parties, Banzaii may terminate this Agreement on less than thirty (30) days notice.

## **Legal Compliance**

3.12 Banzaii may suspend or terminate Services and this Agreement immediately upon receipt of any lawfully issued notice from a court having jurisdiction over Banzaii, alleging the use of the Services to accomplish violations of law, pending the resolution of the relevant court proceeding. When subjected to lawful process requiring disclosure, Banzaii may disclose the User's identity and contact information, and Banzaii shall not be liable for damages or results thereof, and User agrees not to bring any action or claim against Banzaii for such disclosure.

## **Survival**

3.13 All terms of this Agreement, which by their nature are intended to survive termination of this Agreement, shall so survive.

## **Force Majeure**

3.14 Either party shall be excused from performing hereunder to the extent that it is prevented from performing as a result of any act or event which occurs and is beyond its reasonable control, including, without limitation, acts of God, war, weather, utility or telecommunications outages, unrest or riot, strikes any action of a governmental entity, etc.; provided that the party experiencing the force majeure provides the other with prompt written notice thereof and uses reasonable efforts to remedy effects of such force majeure.

## **Choice of Law, Venue, Consent to Email Service and Waiver of Hague**

### **Convention Service Formalities**

3.15 Any claim arising under this Agreement shall be construed in accordance with the substantive and procedural laws of the State of New York, without regard to principles of conflict of laws. User consents to the jurisdiction of the State of New York. User consents to service of process via Domestic or International First Class Certified Mail and/or email at the land and email addresses set forth in the signature line below, and waives any requirement under the Hague Convention or other judicial treaty requiring that legal process be translated into any language other than English.

## **Integration and Miscellaneous Provisions**

3.16 This Agreement, including all related agreements and policies incorporated by reference herein, constitutes the entire agreement between the parties related to the subject matter hereof, supersedes any prior or contemporaneous agreement between the parties relating to Banzai's Services and shall not be modified except by a written agreement signed by both parties, specifically recording the intent to amend this Agreement. Any waiver of a provision of this Agreement must be in writing and signed by the party to be charged. A valid waiver hereunder shall not be interpreted to be a waiver of that obligation in the future or any other obligation under this Agreement. If any provision of this Agreement is prohibited by law or held to be unenforceable, the remaining provisions hereof shall not be affected, and this Agreement shall continue in full force and effect as if such unenforceable provision had never constituted a part hereof. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. This Agreement may be signed electronically.

# **4. Privacy-Policy**

## **Personal Data Collected**

4.1 Banzai collects and stores personal information including the full name, company name, billing address, email address, IP address, landing page, referring URL for all customers upon registration and use of our service. We also store cookies for visitors to our websites in order to identify them for relevant advertising through third party websites, also known as retargeting. We also gather anonymous usage information from our visitors via cookies for

usage with Google Analytics. If you have any questions regarding the data that is collected and or stored please contact us via email to [contact@Banzaii.com](mailto:contact@Banzaii.com) or via mail to our address listed below.

## **Security of Personal Data**

4.2 Banzaii is committed to protecting the security of customer collected Personal Data. To do so we employ a variety of industry-standard security technologies and measures to help protect your data from unauthorized access, use, or disclosure which include but are not limited to encrypting any transmission of said information using secure socket layer (SSL), passing of credit card information directly to our PCI compliant Merchant Processor, encryption of any collected credit card information, encryption of passwords and other authentication mechanisms such as API keys, and restricting access to encrypted information to support personnel at Banzaii. We require that customers enter in a password to access their account information and request that customers use a password composed of different characters and of a large length to strengthen security and that they do not disclose this information to others via electronic formats or otherwise. Please note that Banzaii cannot fully eliminate security risks associated with the collection of said data and mistakes and security breaches may happen, please contact us if you have any questions regarding the security of our website, application, or otherwise.

## **Third Party Disclosure of Personal Data**

4.3 Banzaii does not disclose any Personal Data to any third party companies for purposes of partnerships or advertising.

4.4 Banzaii may disclose Personal Data to comply with relevant laws and legal governing bodies of any country in which we do business, or where a customer may reside in order to remain compliant with Dutch and International Laws, whereby mandated by state and or federal agencies for the purposes of criminal investigations or by court order.

4.5 Banzaii for the purposes of billing does disclose personal information such as name, billing address, IP address, and credit card information to third party merchants for processing payments.

## **Access to Personal Data**

4.6 Banzaii customers have access to their personal data including full name, company name, email address, and credit card information. Customers have the ability to delete data related to their full name, company name, and identifiable billing information which will no longer be stored in our databases, with the exception of: email address, network logs, cases where fraudulent or otherwise illegal activity has been deemed to occurred as determined by law enforcement or Banzaii management, in which case the information may remain in our database indefinitely in order to help facilitate the prevention of repeated abuse in the future from the offending party.

4.7 To have your email permanently removed please email us at [contact@Banzaii.com](mailto:contact@Banzaii.com).

## **Server Data**



4.8 Banzaii does not have access to customer's server data. The backend is locked away from customer support staff and only engineering staff has access to the physical servers where customer virtual machines reside. We do not store customer passwords nor private SSH keys and we do not request customer login information to their servers. We do not review or audit any customer data.

## **Advertising**

4.9 Banzaii partners with third party ad networks to display advertising targeted to visitors of our website. To do so we store a cookie for visitors for the purposes of displaying advertising also commonly known as retargeting. The data that is stored and collected is non-identifiable and anonymous.

4.10 Banzaii will send occasional promotional materials through email and customers have the option to opt-out of these emails by either responding directly inside of the email itself or through updating their preferences in our control panel.

## **Opt Out**

4.11 Banzaii customers can opt out of providing and asking that any Personal Data that was collected be removed if they believe it is being used in a manner not consistent with the what was presented in the privacy policy. In the event and at the sole discretion of Banzaii if it is determined that service no longer be provided a pro-rated refund of service will be refunded to the customer and the data will be removed as requested.

## **Government Requests**

4.12 Only in cases where Banzaii is served with a search warrant or a subpoena is any information passed along to any law enforcement entities. Otherwise we do not monitor our customer's servers or data and it is their responsibility to remain compliant within the laws of their own territories as well as the territories from which Banzaii operates.

## **Contact**

4.13 Banzaii provides the following measures for contacting us regarding any issues related to this Privacy Policy:

Email: [support@banzaii.net](mailto:support@banzaii.net)

Address:

- binadit
- Schout Heynricstraat 38
- 3032SX Rotterdam, NL

## **Change**

4.15 This Privacy Policy is subject to occasional revision, and if any substantial changes are made to the way your Personal Data is used, we will notify you by email to the email address that you have provided as being the most current posting the notice of such changes on our website. Any changes to the Privacy Policy will be effective upon the earlier of either thirty

(30) calendar days from the dispatch of the email notice to you or thirty (30) calendar days following our posting of the update terms on our website, or the date on which you accept the terms by clicking "I Accept" or similar means. These changes will be effective immediately for any new users and customers of our website and related products and services. Please note that you are responsible at all times for updating your Personal Data and with providing us with your most recent and current email address. In the event that the email address is no longer valid the date at which the proposed changes were dispatched will still constitute effective notice of any changes to the Privacy Policy. If you do not wish to permit changes in our use of your Personal Data you must notify us prior to the effective date of the changes and that you wish to deactivate your account. Continued use of our website, products, and or related services, following notice of any such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

4.16 This privacy policy was last revised on June 12th, 2013