

## Customer Agreement and Usage Policy

By using the internet access offered by **Farmers Telecommunications, Inc.** your ISP Provider (heretofore referred to as **Farmers**) or opening this package, you are consenting to be bound by this agreement. If you do not agree to all the terms of this agreement, do not use internet access offered by **Farmers**.

### NO ASSIGNMENT

The benefits or rights conferred by this agreement are non-transferable and non-assignable. The connectivity provided is expressly limited to you. Resale or use of this connection by another person or persons is prohibited.

### DEFINITION OF SERVICES

Single Dial-up Internet Services provide Internet access to one user on one computer for a single dial-up session. Business Direct Services are Multiple User Internet Services that provide Internet access through a direct connection.

### CHARGES AND BILLING

A valid credit card may be required to open an account. A completed Internet Services Application is required.

You agree to pay **FARMERS** all charges relating to use of your account(s). Charges at the date of invoice will include the month's recurring charges and additional usage charges incurred during the prior month, if any. Your first bill will be prorated according to the days of service left in **FARMERS'** billing period.

You may elect payment by bank draft, credit card, debit card, check or money order. **FARMERS** will send you an invoice setting forth all charges incurred by you at the end of each **FARMERS** billing cycle. You are solely responsible for informing **FARMERS** of new expiration dates and account numbers on your listed credit card, debit card, or bank draft accounts as appropriate. You are responsible for keeping **FARMERS** updated when your listed credit card has no remaining credit.

For payments made by credit card, debit card your account will be charged on the tenth (10<sup>th</sup>) calendar day of each month. For payments made by bank draft, your account will be charged on the twentieth (20<sup>th</sup>) calendar day of each month. For payments made by check or money order, your payment is due on the tenth (10<sup>th</sup>) and past due on the twentieth (20<sup>th</sup>) calendar day of the month.

**FARMERS** will charge \$20 for all returned checks and for bank drafts declined by your bank. If payment is not received by the date due, your account is delinquent and subject to an interest charge of 1.5% per month on the outstanding balance. If you default, you are liable for any and all

attorney fees, court costs and collection agency fees if **FARMERS** has to employ these methods in order to collect debts owed to **FARMERS** under this Agreement. Accounts cancelled due to non-payment may be sent to a collection agency.

#### **OTHER CHARGES**

You are responsible for any local or long distance phone charges accrued in connecting to **FARMERS**. **FARMERS** is not responsible for any phone charges unintentionally incurred by any subscriber for any reason.

#### **LIMITATION OF LIABILITY**

**FARMERS** exercises no control whatsoever over the content of the information accessed through **FARMERS'** Internet Services. **FARMERS'** Internet Services are provided on an "as is, as available" basis, without warranty of any kind, expressed or implied, including, but not limited to, the warranties of performance, merchantability and fitness for a particular purpose. **FARMERS** and/or contributors will have no liability whatsoever to you for any claim(s) relating in any way to (i) your inability or failure to perform research or related work or to work properly or completely, or (ii) any lost profits or consequential, exemplary, incidental, indirect or special damages relating in whole or in part to your rights hereunder or use of, or inability to use **FARMERS'** Internet Services. **FARMERS** will not be responsible for any damage suffered by you, including, but not limited to, loss of data resulting from delays, non-deliveries, mis-deliveries or service interruptions caused by its own negligence or your errors or omissions. Use of any information obtained via **FARMERS'** Internet Services is at your sole risk. **FARMERS** specifically disclaims any responsibility for the accuracy or quality of information obtained through **FARMERS'** Internet Services.

Under no circumstances and under no legal theory, tort, contract or otherwise, will **FARMERS** or its suppliers or resellers be liable to you or any other person for any indirect, special, incidental or consequential damages of any character including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, or for any claim by any other party. This limitation of liability will not apply to liability for death or personal injury to the extent applicable law prohibits such limitation. Furthermore, some states do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to you.

#### **ALLOWABLE USE**

**FARMERS** will publish its Customer Agreement, including the Allowable Use Policy, on its web site. These policies may be revised from time to time. You agree to abide by **FARMERS'** policies concerning use of **FARMERS'** Internet Services as published on line at the time of use.

**FARMERS'** Internet Services may only be used for lawful purposes. Transmission of any material in violation of any federal or state statute or regulation is prohibited. This includes, but is not limited to, copyrighted

material, material legally judged to be threatening or obscene, or material protected by trade secret. You agree to indemnify and hold harmless **FARMERS** from any claims resulting from your use of **FARMERS'** Internet Services.

Commercial advertisements are unwelcome in most Usenet discussion groups and on most e-mail mailing lists. Inappropriate posting may result in account suspension or cancellation. See the newsgroup or mailing list's charter for whether advertising is allowed or not. "Spamming," or sending a message to many different off-topic newsgroups, is not allowed. Sending a message, especially an advertisement, to more than five recipients, is considered by itself spamming unless the individuals have specifically requested to be added to a mailing list on that topic. E-mail is a person-to-person medium, not a broadcast medium. Unsolicited advertisements via e-mail, or via discussion groups whose charter does not explicitly allow advertisements, are not allowable.

#### **UNLIMITED USAGE**

**FARMERS** offers unlimited usage to Single Dial-up Internet Services customers. "Unlimited usage" does not mean "unlimited access." Unlimited dial-up accounts have no hourly charges when the account holder is wholly and exclusively engaged in personal, interactive Internet use. Accounts may not be used for automated, unsupervised use of the Internet or simultaneous connections by multiple people. **FARMERS** may disconnect dial-up connections after extended periods of inactivity or unauthorized use.

#### **RESPONSIBILITY FOR ACCOUNT USE**

You are responsible for all use of your account(s) and confidentiality of password(s). **FARMERS** will suspend or change access upon notification that your password has been stolen, lost or otherwise possibly compromised. **FARMERS** is not responsible for your personal files residing online on **FARMERS** owned and controlled computers. You will be responsible for independent backup of your data stored online. You will be responsible for all access to and use of **FARMERS'** Internet Services by your personnel or by means of your equipment, whether or not you have knowledge of or authorize such access or use.

The subscriber must be at least 18 years of age.

#### **UNAUTHORIZED USE OF ACCOUNT**

**FARMERS** will strongly react to any use or attempted use of an Internet account or computer without the owner's authorization. Such attempts include "social engineering" (tricking other people into releasing their passwords), password cracking, security hole scanning, denial-of-service attacks (ping-flooding, sending packets with an illegal packet size, UDP flooding, half-open TCP connection flooding, etc.) and the like.

Harassment or abusive use of e-mail and other Internet services are not allowed. **FARMERS** will handle incidents of harassment on a case-by-case basis, consulting with all parties involved.

Any unauthorized use of accounts or computers by a **FARMERS** customer, whether or not the attacked account or computer belongs to **FARMERS**, will result in action against the attacker. Possible actions include warnings, account suspension or cancellation, and legal action, according to the seriousness of the attack.

#### **LIMITATIONS ON RESOURCE USAGE**

**FARMERS** reserves the right to impose limits on the total amount of disk space and other resources available for your use on **FARMERS** operated computers. **FARMERS** reserves the right to delete, without notice, personal e-mail files that have not been accessed for more than one month.

Disk space for storage of web pages is available in amounts specific to each Internet service package. Use of excess space will be charged on a monthly basis according to rates and prices published online at the time of use. **FARMERS** reserves the right to remove files that exceed allowed limits.

#### **E-MAIL PRIVACY**

Electronic mail passes through multiple mail servers on the Internet as it passes from source to destination. Privacy can never be guaranteed from every possible mail server; therefore, users seeking total privacy should use some encryption scheme to render messages unreadable.

With regards to **FARMERS'** mail servers, **FARMERS** places a high value on privacy and will only examine users' mail when absolutely required, for example when troubleshooting e-mail delivery problems or being presented with a search warrant for the information.

#### **ILLEGAL MATERIAL**

**FARMERS** bears certain legal liabilities for the use of its computer network and equipment. As such, **FARMERS** prohibits any and all use of **FARMERS'** network for illegal purposes. When presented with a search warrant, **FARMERS** is obligated to release any information named therein, and will cooperate with authorities in any criminal investigation of inappropriate Internet usage.

However, **FARMERS** recognizes that the legal status of the Internet has not yet been resolved satisfactorily, either through legislation or court precedent. Therefore, **FARMERS** must make certain decisions regarding the illegality of various specific actions. Among the actions **FARMERS** considers illegal and therefore will not allow on its network are: unauthorized distribution of copyrighted material; exploitation of minors; and unauthorized use of computer resources. **FARMERS** believes the First Amendment rights of free speech, freedom of the press and freedom of association apply to the

Internet to the same degree as they do to print media and that any attempt to infringe upon those rights is void of legitimacy.

### **WEB SERVICE**

**FARMERS** provides personal web space to customers. In all cases, the web pages reside on **FARMERS'** computer equipment, giving **FARMERS** some ethical responsibility for the content of such pages. **FARMERS** will handle potentially inappropriate web pages on a case-by-case basis. Examples of inappropriate information include downloadable virus code and obscene materials.

Personal web space provided may not be used for purposes that can be deemed as an attempt to sell a product or service.

### **TERM AND TERMINATION**

This agreement will become effective on the date of the service application. **FARMERS**, at its sole discretion, may terminate this agreement immediately or suspend your access to the service upon any breach of this Agreement by you.

You are responsible for notifying **FARMERS** of your wish to terminate your account if desired. Charges will continue to accrue until your notification to **FARMERS** of account termination, or until your account is cancelled due to non-payment as stated in "Charges and Billing." If your account is cancelled due to non-payment, you will be in default and subject to any and all late fees and collection fees payable by you under this Agreement.

### **EXPORT CONTROLS**

None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Yugoslavia, Iran, Syria or any country to which the United States has embargoed goods; or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By downloading or using the Software, you are agreeing to the foregoing and are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list.

In addition, if the licensed Software is identified as a not-for-export product (for example, on the box, media or on the installation process), then the following applies: except for export to Canada for use in Canada by Canadian citizens, the Software and any underlying technology may not be exported outside the United States or to any foreign entity or "foreign person" as defined by U.S. Government regulations, including without limitation, anyone who is not a citizen, national or lawful permanent resident of the United States. By downloading or using the Software, you are agreeing to the foregoing and are warranting that you are not a "foreign person" or under the control of a foreign person.

## **EFFECT OF AGREEMENT**

This Agreement (which will include the current and future Schedules hereto) represents the complete agreement concerning this license between the parties and supersedes all prior agreements and representations between them.

## **MODIFICATION OF TERMS AND CHARGES**

**FARMERS** reserves the right to change rates or otherwise modify provisions of this Agreement by notifying you at least thirty (30) days before the effective date of the change, by written or online notice. Your use of **FARMERS'** Internet Services after such notice will constitute your acceptance of the modifications to this agreement.

## **FORCE MAJEURE**

**FARMERS'** performance hereunder is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor disputes, inability to obtain necessary supplies and the like.

## **SEVERABILITY**

If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable, and all other provisions are unaffected.

## **GOVERNING LAW**

This Agreement will be governed by and construed under the laws of the state of Colorado except as governed by Federal law. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly included. All disputes will be settled in Colorado courts.

## **WAIVER**

Failure of any party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

## **U.S. GOVERNMENT RESTRICTED RIGHTS**

Use, duplication or disclosure of Software and Documentation by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or at 252.211-7015, and in similar clauses in the NASA FAR Supplement.