

# Nebraska Central Telephone Company

## Internet User Agreement

Revised February 1, 2011

### 1. Notice of Agreement.

**THE FOLLOWING DOCUMENT IS A LEGALLY BINDING AGREEMENT. All customers should read this document. You are responsible for complying with the policy, and your account may BE DISABLED WITHOUT WARNING if you violate it.**

### 2. General Terms and Conditions.

- A. The Internet service (the "Service") is provided to you (the "User") by Nebraska Central Telephone Company (the "ISP"), subject to the terms and conditions of this Agreement. Use of the Service constitutes acceptance of these terms and conditions.
- B. Revisions to this Agreement. Only the ISP shall revise this agreement. Any revisions to this Agreement will be in effect immediately after the revision is posted to this document.

### 3. Service Provided To User.

- A. Dial-Up Service. ISP allows User to access the Service by using a standard telephone line and a personal computer with modem that User must provide. User may be assessed communications surcharges in addition to Service fees if the Service is accessed from hotels, motels and other commercial establishments. User is responsible for all charges incurred in connecting to the Service through an available telephone access number including long distance charges regardless of the method of calling. Computer software typically included on computers is merely a guide for Service installation. Any errors made during software installation that result in the User's PC dialing a long distance number are the sole responsibility of the User including all charges associated therein.
- B. Broadband Service (Digital Subscriber Line (DSL) or cable modem services). ISP allows User to access the Service by using broadband specific hardware. User must provide suitable personal computer and/or network hardware to access the Service. User is solely responsible for the provided hardware and incompatibility or non-performance of User owned hardware does not relieve User for paying for the Service.

#### **Warranties and Representations of User for Dial-Up Service.**

- A. USER REPRESENTS AND WARRANTS THAT USER IS AT LEAST NINETEEN YEARS OLD.
- B. Upon User's registration to receive the Service, User must choose a unique user name to identify User to ISP. ISP reserves the right to deny or delete any such user name it deems necessary.
- C. User is responsible for maintaining the confidentiality of User's password and is liable for any harm resulting from disclosing or allowing disclosure of any password or from use by any person of User's password to gain access to User's accounts. User understands that User's password is confidential and is intended solely for the use of User and for no other person's use. ISP recommends that User change User's password regularly.
- D. User understands and agrees that User shall be entirely liable for all activities conducted through use of User's account, whether any third person or entity may also be liable for such activities.
- E. User understands and agrees that User may allow a minor child (under nineteen years of age) to use User's account, subject to the following restrictions:
  - (1) User represents that User understands that the Service and the Internet contain various text, images, and other content that some people consider inappropriate for viewing by children.
  - (2) User shall supervise the minor child's use of the Service directly or through the use of software designed and configured to prevent access to any information that User considers inappropriate for viewing by children.
  - (3) User shall and hereby does forever agree to defend, hold harmless, and indemnify ISP from any harm or damages to any person, including any minor child, User allows to use User's account.

### 5. Warranties and Representations of User for Broadband Service.

- A. USER REPRESENTS AND WARRANTS THAT USER IS AT LEAST NINETEEN YEARS OLD.
- B. User acknowledges that User may use ISP provided owned and maintained broadband hardware, connection path and Internet Protocol Addresses (IP Addresses).
- C. The IP Address assigned either statically or dynamically by the ISP shall remain the sole property of the ISP.

This address is subject to change at any time at the discretion of the ISP without prior notice to the User. The ISP assumes no liability whatsoever for any claims, damages, losses or expenses arising out of or otherwise relating to any change in IP Addressing.

- D. User understands and agrees that User shall be entirely liable for all activities conducted through use of User's connection, whether any third person or entity may also be liable for such activities, including but not limited to any person accessing User's wireless router(s) whether authorized or un-authorized by User. User is solely responsible for locking any wireless access points via password on user's personal network. Any user found sharing wireless access to the service beyond the User's premise, either knowingly or un-knowingly, is subject to immediate service disconnection by ISP.
- F. User understands and agrees that User may allow a minor child (under nineteen years of age) to use User's account, subject to the following restrictions:
  - (1) User represents that User understands that the Service and the Internet contain various text, images, and other content that some people consider inappropriate for viewing by children.
  - (2) User shall supervise the minor child's use of the Service directly or through the use of software designed and configured to prevent access to any information that User considers inappropriate for viewing by children.
  - (3) User shall and hereby does forever agree to defend, hold harmless, and indemnify ISP from any harm or damages to any person, including any minor child, User allows to use User's account.

**6. Information User Provides to ISP.** User agrees to provide ISP with accurate, complete, and current registration and billing information, and failure to do so shall constitute a breach of this Agreement.

**7. Sexually Explicit Content on the Internet.** User understands that the Internet contains unedited materials, some of which are sexually explicit or may be offensive. User accesses such materials at his, her or its own risk. ISP has no control over and accepts no responsibility whatsoever for User's online actions.

**8. Charges and Fees.**

- A. ISP reserves the right to change its fees and billing methods at any time effective thirty (30) days after notice to User. If any such change is unacceptable to User, User may terminate his, her or its subscription to ISP.
- B. User's monthly fee for use of the Service is payable in advance.
- C. Failure to use User's account does not relieve User of payment obligations.
- D. User is responsible for notifying ISP of intent to disconnect on or before the desired disconnect date.

**9. Rights and Duties of ISP and User.**

**A. Content.**

User understands and acknowledges that:

- (1) The Internet and ISP's proprietary content contain information, communications, software, photographs, video images, graphics, music, sounds, and other material and services (collectively referred to throughout this Agreement as "Content");
- (2) Such Content is provided by persons or entities other than ISP, including, but not limited to, other users of the Service;
- (3) ISP does not pre-screen or control Content as a matter of policy, but ISP shall have the right, but not the duty, without prior notice to User or any other person or entity, to remove Content that is deemed, in ISP's sole discretion, harmful, offensive, inappropriate, unsuitable, or otherwise in violation of this Agreement, industry custom, or any applicable federal, state, or local laws or regulations.

User understands and acknowledges that:

- (1) Except for Content, products or services expressly available at ISP's Web site and placed at ISP's Web site by ISP, neither ISP nor any of its parents, subsidiaries, affiliates, agents, or employees controls, provides, operates or is responsible for any Content, goods or services available on the Internet;
- (2) ISP does not guarantee the accuracy, completeness, usefulness, quality, or availability of any Content, goods, or services available on the Internet, which are the sole responsibility of such independent third parties, and User's use thereof is solely at User's own risk;
- (3) Neither ISP, nor any of its parents, subsidiaries, affiliates, agents, or employees shall be held responsible

or liable, directly or indirectly, for any loss or damage caused or alleged to have been caused by User's use of or reliance on any Content, goods, or services available on the Internet or by User's inability to access the Internet or any site, page, or information on the Internet;

- (4) Much of the Content available on the Internet is protected by copyright, trademarks, patents, trade secrets, and other rights of the independent third parties or their licensors who make such Content available on the Internet. User's use or download of such Content will be subject to the terms of this Agreement, the specific restrictions placed on such Content by the owners or licensors of the rights in such Content, and all applicable laws and regulations;
- (5) ISP does not own, operate, manage, or in any way affiliate itself with the Internet. User's use of the Internet is solely at User's own risk and is subject to the terms of this Agreement, the rights of third parties, and all applicable local, state, national, and international laws and regulations.

## 10. User Conduct on the Service.

While using the Service, User may not:

- A. Restrict or inhibit any other user from using and enjoying the Internet;
- B. Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, national or international law, including without limitation the U.S. export control laws and regulations;
- C. Post or transmit any information or software which contains a virus, cancelbot, trojan horse, worm or other harmful content;
- D. Post, publish, transmit, reproduce, distribute or in any way exploit any information, software or other material obtained through the Service for commercial purposes (other than as expressly permitted by the provider of such information, software or other material);
- E. Upload, post, publish, transmit, reproduce, or distribute in any way, information, software or other material obtained through the Service which is protected by copyright, or other proprietary right, or derivative works with respect thereto, without obtaining permission of the copyright owner or rightholder; or upload, post, publish, reproduce, transmit or distribute in any way any component of the Service itself or derivative works with respect thereto, as the Service is copyrighted as a collective work under U.S. copyright laws;
- F. ISP has no obligation to monitor the Service. However, the User agrees that ISP has the right to monitor the Service electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other governmental request, to operate the Service properly, or to protect itself or its subscribers. ISP will not intentionally monitor or disclose any private electronic mail message unless required by law. ISP reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this Agreement. In addition, ISP may terminate the User's use of the Service if, in its sole judgment, User has violated any of these conditions pertaining to User Conduct.
- G. Performance Levels.
  - (1) Internet responsiveness is a function of the bottlenecks experienced upon the wider network architecture of the Internet itself. As such the ISP does not guarantee the advertised Service performance levels but will make commercially reasonable efforts to ensure the highest possible quality of service is always delivered. Internet responsiveness depends upon the User's facilities' capability, which may include but is not restricted to computer memory and processor performance, premise wiring, loop length, line condition, gauge of copper wire, phone company provisioning, antenna placement, natural and artificial transmission blockages. The maximum speeds advertised by the ISP are under optimal conditions and may vary significantly. Minimum speeds (if any) are subject to a 20% overhead. Actual speeds that fit the 80% criteria are considered acceptable. The User understands that any content accessed through the Service may be subject to "caching" at intermediate locations on the Internet.
  - (2) ISP will, at its discretion filter or restrict access to and from specific TCP/UDP ports **deemed as harmful devices** in its network management processes in order to maintain network performance.

## 11. Disclaimers of Warranties.

User expressly acknowledges and agrees that use of the Service is at User's sole risk. The Service is provided on an "as is" and "as available" basis. ISP expressly disclaims all warranties of any kind, whether express or implied, including but not limited to warranties of title or noninfringement and implied warranties of merchantability or fitness for a particular purpose. ISP makes no warranty that the Service will meet User's requirements, that the Service will be uninterrupted, timely, secure or error free, that defects in the software will be corrected or that any information, software or other material accessible on the Service is free of viruses, worms, trojan horses or other harmful components. ISP makes no warranty as to the results that may be obtained from the use of the or as to the accuracy or reliability of any information obtained through the Service. User understands and agrees that any material and/or data downloaded or otherwise obtained through the use of or from the Service is done at User's own discretion and that User is solely responsible for any damage that results from downloading such material and/or data. ISP makes no warranties, express or implied, representations or endorsements, including without limitation warranties of title or non infringement, or the implied warranties of merchantability or fitness for a particular purpose, with regard to any merchandise, information or service purchased or obtained through or from the Service or any transactions entered into through the Service. ISP makes no warranty regarding any information, service or products provided through, in connection with, or located on the computer systems of ISP or other services provided by ISP. No advice or information given by ISP, its affiliates, contractors or respective employees shall create any warranty not expressly stated herein. Some jurisdictions do not allow the exclusion of certain warranties and, accordingly, some of the above exclusions may not apply to User.

**12. Limitation of Liability.**

User agrees that under no circumstances shall ISP, its affiliates, employees or contractors be liable for any direct, indirect, incidental, special, punitive or consequential damages resulting from User's use of or inability to use the Service, including any and all long-distance telephone charges incurred during connection with or to a service telephone access number whether or whether or not such results from an intentional or negligent act, or to access the Internet or any part thereof, or User's reliance on or use of information, services or merchandise provided or purchased on or through the Service, whether arising either directly or indirectly from any such transaction, or that results from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission, or any failure of performance. User further agrees ISP shall not be liable for damages arising from interruption, suspension or termination of Service, including but not limited to direct, indirect, incidental, special, punitive or consequential damages, whether such interruption, suspension or termination was justified or not, negligent or intentional, inadvertent or advertent. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages and, accordingly, some of the above limitations may not apply to User.

**13. Indemnity.**

User agrees to indemnify and hold harmless ISP, its parents, subsidiaries, affiliates, officers, employees, successors and assigns from any and all claims, demands, costs, expenses, judgments, causes of action, attorneys' fees, litigation and court costs resulting from or arising out of (a) User's use of the Service, whether directly, indirectly or by an act of commission or omission, (b) User's connection to the Service, (c) User's violation of this Agreement or (d) User's violation of the rights of another.

**14. Termination of Agreement.**

Either User or ISP may terminate this Agreement at any time. User's sole right with respect to any dissatisfaction with any term of this Agreement or ISP's performance of this Agreement is to terminate the Service by notifying ISP. Any failure to pay predefined billing will be construed as failure to comply with this Agreement and constitutes a breach of this Agreement. ISP holds the right to charge a reconnection fee as it deems necessary.

**15. Choice of Law.**

This Agreement shall be governed by the laws of the State of Nebraska, including its choice of law and conflicts of law rules, and User and ISP each submit to the exclusive jurisdiction of the courts of the State of Nebraska.

**16. Notices Pursuant to this Agreement.**

- A. User agrees to notify ISP if User moves or otherwise changes his, her or its mailing address or phone number, and to list a truthful name, postal address, and telephone number on all forms User supplies to ISP.
- B. User may notify ISP by first class mail at:

Nebraska Central Telephone Company  
P.O. Box 700  
Gibbon, Nebraska 68840-0700

Telephone: (308) 468-6341  
Email: internet-service@nctc.net

**17. Severability of Terms of this Agreement.**

In the event any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect.

**18. No Waiver of Provisions of this Agreement.**

ISP's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between ISP and User nor any trade practice shall act to modify any provision of this Agreement.