

Mobius Communications Company

Internet User Agreement

1. Notice of Agreement.

THE FOLLOWING DOCUMENT IS A LEGALLY BINDING AGREEMENT.

PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY BEFORE YOU ACCESS THE INTERNET SERVICE. BY ACCESSING THE INTERNET SERVICE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS STATED BELOW. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS AND CONDITIONS, YOU MAY NOT ACCESS OR USE THE INTERNET SERVICE.

2. General Terms and Conditions.

A. Service to be Provided by ISP to User. The Internet service (the "Service") is provided to you (the "User") by Mobius Communications Company (the "ISP"), subject to the terms and conditions of this Agreement.

B. Revisions to this Agreement. User may not revise any of the terms of this Agreement. ISP reserves the right to, and may, revise this Agreement at any time, and such revisions shall become effective thirty (30) days after ISP posts the revised Agreement for public viewing. You may access the most recent version of this Agreement by clicking on User Agreement.

3. Service Provided To User.

A. ISP allows User to access the Service by using a standard telephone line, a modem, and a personal computer that User must provide. If User is accessing the Service from outside the 48 contiguous United States, User may be assessed communications surcharges. Regardless of the place from which User accesses the Service, User is responsible for all telephone charges incurred in connecting to the Service through an available telephone access number.

B. ISP grants to User a limited license to use ISP's software to connect to the Service from authorized locations. This license is subject to the restriction, that, except to the extent expressly permitted by law, User may not translate, reverse engineer or reverse compile or decompile, disassemble or make derivative works from ISP's software. User may not modify ISP's software in any manner or form, or use it in any way which is not expressly authorized by ISP, other than to access the Service, including, without limitation, for the purpose of obtaining unauthorized access to the Service (also known as "hacking"). User agrees to abide by the United States and other applicable export control laws and regulations and not to transfer, by electronic transmission or otherwise, any information, including ISP's software in either source, object, or executable form, which is subject to restrictions under such laws to a nation or destination restricted under such laws without first obtaining and then complying with any requisite government authorization or licensing requirements and without first providing ISP with a certified copy of said license or written government authorization, evincing compliance with all applicable export control laws and regulations.

4. Warranties and Representations of User.

A. USER REPRESENTS AND WARRANTS THAT USER IS AT LEAST NINETEEN YEARS OLD.

B. User acknowledges that User will receive a user name and a password to access the Services provided by ISP.

C. Upon User's initial access to the Service, User will select a unique password. 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.

D. For security purposes, ISP recommends that User change User's password regularly.

E. Upon User's registration to receive the Service, User must choose a unique user name to identify User to ISP's system and to the Internet. ISP expects User to be reasonable and responsible in selecting a user name. Vulgar or otherwise offensive user names may offend the sensibilities of other users to the Service or to other Internet users. User may not select or use a user name that is the real name of another person, or a user name that violates a trademark right, copyright, or any other proprietary right, or which ISP deems in its sole discretion to be vulgar or otherwise offensive. ISP reserves the right to delete any such user name, or to request deletion.

F. User understands that User's password is confidential and is intended solely for the use of User and for no other person's use.

G. User understands that ISP will rely on User's agreement to keep User's password secret and confidential and that User will not reveal User's password to any other person or entity, except as required by law.

H. User understands that disclosure of User's password to any other person or entity, except as required by law, could cause irreparable damages to ISP, including, but not limited to compromise of ISP's confidential and proprietary business information and trade secrets, compromise the integrity of the information and communications of other users to the Service, interruption of the Services, lost profits to ISP, and damages to ISP's business reputation and good will.

I. User understands and agrees that disclosure of User's password to any other person or entity, except as required by law, is a MATERIAL BREACH of this Agreement, and MAY VIOLATE LOCAL, STATE and FEDERAL LAW.

J. User understands that disclosure of User's password to any other person or entity, except as required by law, could cause irreparable damages to User, including, but not limited to compromise of User's confidential and proprietary business information and trade secrets, lost profits, and damages to User's reputation and good will. In the event that User discloses User's password to any other person or entity, User shall and hereby does forever agree to defend, hold harmless, and indemnify ISP from any harm or damages whatsoever resulting directly or indirectly from User's disclosure of User's password to any other person or entity.

K. User understands and agrees that User shall be entirely liable for all activities conducted through use of User's password, whether any third person or entity may also be liable for such activities.

L. 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. Information User Provides to ISP. User agrees to provide ISP with accurate, complete, and updated registration information, and failure to do so shall constitute a breach of this Agreement and unauthorized access to the Service, and may result in immediate termination of User's account and subject User to civil and/or criminal liability.

6. 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 such materials.

7. 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 as provided below. User's continued use of the Service following any such change shall be deemed acceptance of such change.

B. User's monthly fee for use of the Service is payable in advance and is not refundable in whole or part.

C. User is responsible for all charges associated with connecting to the Service.

D. User shall be responsible for any and all fixed and accumulative charges resulting from User's connection to or use of the Service.

E. The first month service fee is due upon account setup. Each month thereafter, User's account shall be charged the monthly access and any other fees for the new month plus any accumulated charges for prior months.

F. Failure to use User's account does not relieve User of payment obligations.

8. 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) User and any user of User's account must evaluate, and does bear and assume the risk associated with, the accuracy, completeness, or usefulness of any Content; and

(4) 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 expressly disclaims responsibility for any Content placed at ISP's Web site by unauthorized parties;

(3) All such Content, good and services are made accessible on the Internet by independent third parties and are not part of ISP or controlled by ISP;

(4) ISP neither endorses nor is responsible for the accuracy or reliability of such Content, goods or services;

(5) 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;

(6) 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; and

(7) The foregoing provisions shall apply with equal force even where ISP features or displays a link with or to any particular site or page on the World Wide Web or to any information of any kind on any other part or protocol used to access the Internet.

User understands and acknowledges that

(1) 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 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;

(2) 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;

(3) ISP retains the right, but not the duty, in its sole discretion and without prior notice or liability, to restrict or terminate User's access to the Internet through the Service if User violates the rights of third parties, the terms of this Agreement, or any applicable federal, state, local, or international laws or regulations.

B. Online Conduct, Including Internet Access and Conduct.

(1) Chain Letters. User shall not send, forward, or otherwise distribute any chain letters via electronic mail, downloading, or other means available for file transmission on the Service.

(2) Commercial Communications. User shall not use the Service to solicit or conduct any commerce or business in any Internet newsgroups, mailing lists, or chat facilities, without the express prior consent of the owner, moderator, or director of such newsgroups, mailing lists, and chat facilities.

(3) Inappropriate Communications to Newsgroups, Mailing Lists, Chat Facilities, and Other Internet Forums. User acknowledges that the Internet contains a large number of newsgroups, mailing lists, and chat facilities. User further acknowledges that many of those newsgroups, mailing lists, and chat facilities are dedicated to a specific purpose, topic, or interest to the participants of that communication forum. Therefore, User agrees that User will not knowingly post or communicate any information to any forum on the Internet that is inappropriate to that communication forum. User further agrees that User will not engage in any "spamming" or "mailbombing" of any e-mail address, Web site, newsgroup, mailing list, or chat facility, for any reason. ISP reserves the right to terminate immediately and without notice User's access to the Service at any time is User violates or attempts to violate this term of this Agreement.

(4) Respect for Intellectual Property and Proprietary Materials. User acknowledges that much of the Content on the Internet is protected by copyrights, patents, trademarks, and service marks, and may contain proprietary information. User agrees that User shall not transmit to or disseminate from the Internet any material that is subject to the protection of the copyright, patent, trademark, service mark, or trade secret of any other person, organization, or entity, without the prior express provision of the owner of said copyright, patent, trademark, service mark, or trade secret.

(a) ISP reserves the right to terminate immediately and without notice User's access to the Service at any time if User violates or attempts to violate this term of this Agreement.

(b) User agrees to defend, hold harmless, and indemnify ISP from any claims for damages of any and all kinds by any third parties resulting from User's violation of this term of this Agreement.

C. Restrictions on Conduct and Communications.

User may not:

(1) Restrict or inhibit any other user from using and enjoying the Service or the Internet;

(2) Upload, post, mail, display, or otherwise transmit in any manner any Content, communication, or information that is unlawful, harmful, harassing, threatening, abusive, hateful, libelous, defamatory, obscene, pornographic, profane, vulgar, indecent, sexually explicit, intended to offend any person based on a person's race, ethnic heritage, nation origin, sex, sexual orientation or preference, age, physical or mental illness or disability, marital status, employment status, housing status, religion, or other characteristics as may be defined by applicable civil rights laws, or that is otherwise objectionable to ISP. Said prohibited communications include, but are not limited to, otherwise objectionable information of any kind, any transmissions constituting, encouraging, soliciting, or aiding or abetting any 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;

(3) Upload, post, mail, display, or otherwise transmit in any manner any Content, communication, information, or software that contains a virus, cancelbot, Trojan horse, logic bomb, worm or other harmful component;

(4) Upload, post, mail, 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);

(5) Upload, post, mail, publish, transmit, reproduce, distribute, or in any way exploit any information, software, or other material obtained through the Service that is protected by copyright, patent, or other proprietary right, or derivative works with respect thereto, without obtaining permission of the copyright or patent owner or rightholder;

(6) Upload, post, mail, publish, transmit, reproduce, or distribute in any way any component of the Service itself or derivative works with respect thereto;

(7) Send unsolicited advertising or promotional materials to other ISP users or Internet users;

(8) Run or allow any other person to run Maillist, LISTSERV or any form of auto-responds from User's account;

(9) Run or activate processes while User is not logged in to the Service;

(10) Violate the security of any computer network, or crack passwords or security encryption codes;

(11) Transfer or store illegal material including that deemed threatening or obscene, or engage in any kind of illegal activity;

(12) Defeat, circumvent, or attempt to defeat or circumvent any idle timer or system tool intended to enforce the part-time and personal nature of User's access to the Service, including, but not limited to, any automated methods of avoiding timing disconnection;

(13) Impersonate any person living or dead, organization, business, or other entity, or use any name or communicate under any false name that User is not authorized to use;

(14) Post or transmit sexually explicit images or other Content that is deemed by ISP to be offensive;

(15) Post or transmit any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, hateful, or racially, ethnically or otherwise objectionable Content;

(16) Solicit other users to become customers of other competitive information services;

(17) Use the Service to attempt to transfer any files not specifically permitted, or access FTP hosts that do not permit anonymous transfers (unless the transfer is to or from an account User is authorized to access on the remote host); or

(18) Violate any of the rules, regulations and policies of those networks and computer systems accessed via User's account.

D. Increasing Network Usage and Traffic. User agrees not to attempt to cause traffic levels to the Service or other networks to rise without reason or for malicious purposes, including, but not limited to, transmitting large files to people for malicious purposes, "mailbombing," transmissions intended to raise the cost of another network provider's access through excessive traffic levels, or repeatedly sending the same Content to another person for the purpose of harassment.

E. Attempting to Circumvent or Bypass System Security Measures.

(1) User agrees to remain signed into the network only when actually making use of the same, and to disconnect when idle for significant periods of time (more than ten (10) minutes). User authorizes ISP to enforce this restriction by appropriate software and network measures, automated or manual. (2) User agrees not to obstruct the systems identification procedures or to forge communications in any form. Anonymous services may be used provided that User complies with all the terms and conditions of this Agreement and any agreement required by the anonymous service.

(3) User agrees not to attempt to cause, or actually cause, any disruption of service on the Service or any other network or user, including but not limited to malicious traffic generation, attempted or actual violation of any security system in place on the Internet and its resources, or any unauthorized access to any computer or resource on the Internet.

(4) User agrees not to abuse the system and resources of the Service, including any quota on disk usage, e-mail, or the World Wide Web that may be imposed by this Agreement or that may be imposed on the use of resources (such as USENET) which reach beyond the Service.

(5) User agrees not to attempt to violate the security of the authentication and accounting procedures of the Service.

(6) User agrees not to attempt to undermine, hinder, damage, or disrupt the hardware, software, or security of the Service or the Internet and its systems. Expressly prohibited activities include putting any software on the Service enabling the User or any other person to do so or running any programs while not actively using the Service.

F. ISP's Right to Monitor and Communications Privacy Policy.

(1) ISP shall have the right, but not the duty, to monitor communications occurring through its system and to disclose such communications from time to time as may be necessary to operate the Service properly, administer and manage ISP's business, provide all of ISP's users with the highest quality service, offer all of ISP's users with opportunities ISP thinks will be of interest to its users, verify compliance with the law, verify compliance with this Agreement, protect ISP and its users, and satisfy any law, regulation, or other governmental request.

(2) User acknowledges said right of ISP and consents to the reasonable and periodic monitoring and disclosure of on-line communications occurring on the Service.

9. Disclaimer of Warranties.

USER EXPRESSLY AGREES THAT USE OF THE SERVICE, ISP'S SOFTWARE, ISP'S E-MAIL SERVICES AND THE INTERNET ARE AT USER'S SOLE RISK. THE SERVICE, ISP'S SOFTWARE, AND ISP'S E-MAIL SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. ISP'S ENTIRE LIABILITY AND USER'S EXCLUSIVE REMEDY WITH RESPECT TO USE OF THE SERVICE, ISP'S SOFTWARE, AND ISP'S E-MAIL SERVICES SHALL BE THE REPLACEMENT OF ANY DISKETTE OR CD-ROM FOUND TO BE DEFECTIVE. ISP'S LIABILITY TO USER FOR BREACH OF THIS AGREEMENT IS LIMITED SOLELY TO THE AMOUNT PAID BY USER TO ACCESS AND USE THE SERVICE.

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, LIMITED INCLUDING BUT NOT TO WARRANTIES OF TITLE. NONINFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION GIVEN BY ISP, ITS AFFILIATES, ITS LICENSORS, ITS CONTRACTORS, OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY OF ANY KIND. NEITHER ISP NOR ITS AFFILIATES, ITS LICENSORS, ITS CONTRACTORS, OR THEIR RESPECTIVE EMPLOYEES WARRANTS THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE ON THE SERVICE IS FREE OF VIRUSES, CANCELBOTS, WORMS, LOGIC BOMBS, TROJAN HORSES, OR OTHER HARMFUL CONTENTS OR COMPONENTS.

THE FOREGOING WARRANTIES SET FORTH ARE EXCLUSIVE AND NO OTHER WARRANTY IS EXPRESSED OR IMPLIED.

10. Limitation of Liability.

UNDER NO CIRCUMSTANCES SHALL ISP, ITS AFFILIATES, ITS LICENSORS, ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES BE LIABLE FOR ANY DIRECT. INDIRECT. INCIDENTAL, SPECIAL, PUNITIVE. OR CONSEQUENTIAL DAMAGES THAT RESULT IN ANY WAY FROM USER'S USE OF OR INABILITY TO USE THE SERVICE OR TO ACCESS THE INTERNET OR ANY PART THEREOF. OR USER'S RELIANCE ON OR USE OF INFORMATION. SERVICES, OR MERCHANDISE PROVIDED ON OR THROUGH THE SERVICE, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION, ANY FAILURE OF PERFORMANCE, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION. OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF USER'S ACCOUNT, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR UNDER ANY OTHER CAUSE OF ACTION. IN THE EVENT ISP IS FOUND LIABLE UNDER ANY CIRCUMSTANCE UNDER THE TERMS OF THIS AGREEMENT. ISP'S LIABILITY SHALL BE LIMITED TO THE LIABILITY AS STATED IN THIS AGREEMENT.

11. Indemnification of ISP by User.

A. Upon request of ISP, User agrees to defend, indemnify, and hold harmless ISP, its affiliated companies, licensees, agents, employees, and all their respective successors and assigns from all liabilities, claims, losses, judgments, damages, and expenses, including, without limitation, attorney's fees and costs of litigation, arising from breach of this Agreement by use of, or in connection with, the transmission by or through User's account of any Content or communications.

B. ISP reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by User hereunder, and in such event, User shall have no further obligation to provide indemnification for such matter.

C. User shall promptly notify ISP in writing of any claim arising or potentially arising under this indemnity.

12. 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 this Agreement by notifying ISP in writing.

13. 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.

14. 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 regular first class mail at:

Mobius Communications Company 523 Niobrara Street P.O. Box 246 Hemingford, NE 69348 or via telephone at: (308) 487-3311

or via email at:

15. 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.

16. 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.

17. Notice Required Pursuant to the Child Online Protection Act (COPA) and the Internet Tax Freedom Act (ITFA).

The following is provided for your information, as required by law, under the applicable provisions of the federal Child Online Protection Act (47 U.S.C. § 230 (d)) and the federal Internet Tax Freedom Act (S. 442, 105th Cong. (1998) (enacted)).

Please note:

A. The information provided in this Section is solely for the general information of User and is provided because it is required by law.

B. ISP does not endorse any of the providers listed in this Section of this Agreement.

C. ISP is not affiliated with and does not have any connection with any of the providers listed in this Section of this Agreement.

D. ISP does not make any warranties of any kind or nature with respect to the products or services supplied by the providers listed in this Section of this Agreement.

E. Under no circumstances shall ISP be liable for any harm or injury to any person or property related to User's use of any information provided in this Agreement or related to User's use of any product or service provided by any provider listed in this Section of this Agreement.

F. User assumes all risk for any harm or injury to any person or property related to User's use of any information provided in this Agreement or related to User's use of any product or service provided by any provider listed in this Section of this Agreement.

G. The following list provides information about some of the parental control protections that are commercially available and that may assist User in limiting access to material that is harmful to minor children. The list below includes the Uniform Resource Locators

(URLs) of the protections listed, which URLs identify places on the World Wide Web at which User can find more information about how to obtain and use the parental control protections listed.

H. The following list is not exhaustive; User may find other parental control protections available either online or at retail computer stores. The list provided below is provided strictly for User's convenience and ISP does not warrant that any of the information in the list is complete, the most up-to-date, or accurate.

Name of Parental Control Protection

Web Site Where You Can Find More Information About This Product

- 1. Bess ® Internet Filtering Service
- 2. CrossingGuard TM
- 3. Cyber Patrol ®
- 4. Cyber Sentinel
- 5. CYBERsitter TM
- 6. Cyber Snoop
- 7. FamilyCAM®
- 8. MudCrawler TM
- 9. Net Nanny ®
- 10. Searchopolis Filtered Search Engine for K – 12
- 11. SurfWatch ®
- 12. WatchDog
- **13.** WebChaperone TM
- 14. X-Stop

http://www.n2h2.com/bess.html http://www/crosswalk.com/crossingguard http://www.cyberpatrol.com http://www.securitysoft.com http://www.solidoak.com ht

http://www.surfwatch http://www.sarna.net/watchdog http://www.webchaperone.com http://www.xstop.com