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Subscriber Agreement

Introduction

This Agreement (the "Agreement") sets forth the terms and conditions under which Foundation Telecommunications, Inc. ("FTI"), agrees to provide the FTI High Speed Internet Service (hereinafter the "Service") to you. By completing the registration and using the Service, you (i) agree that your use of the Service is bound by the terms of this Agreement, and (ii) represent and warrant that you are at least 18 years of age. If you do not agree with the foregoing, you may not use the Service and must return the installation software, equipment, and all associated materials to FTI. This Agreement takes effect on the date on which you accept this Agreement, and continues until your subscription is terminated.

FTI reserves the right to modify the terms of this Agreement or prices for the Service and may discontinue or revise any or all other aspects of the Service in its sole discretion at any time by posting changes online. Your continued use of the Service after changes are posted constitutes your acceptance of this Agreement as modified by the posted changes. The updated, online version of this Agreement shall supersede any prior version of this Agreement that may have been included in any software or related materials provided by FTI. The online version of this Agreement is posted at:
<http://www.ftionline.com>

Topical Index

1. [Your Subscription](#)
2. [Payment Terms](#)
3. [Software License](#)
4. [Computer and Equipment Requirements](#)
5. [Installation](#)
6. [Acceptable Use Policy](#)
7. [Posting to Foundation Telecommunications, Inc.](#)
8. [Links to Third Party Web Sites](#)
9. [Monitoring and Removal of Content](#)
10. [Privacy](#)
11. [No Spam or Other Unsolicited Bulk E-mail](#)
12. [Termination and Surviving Obligations](#)
13. [Disclaimer of Warranties and Limitation of Liability](#)

14. [Indemnifications](#)
15. [Management of Network](#)
16. [Damage to and Encumbrances on Equipment, Computer, Software](#)
17. [Copyright and Trademark Notices](#)
18. [Intellectual Property Infringement Claims](#)
19. [Governing Law and Jurisdiction](#)
20. [Miscellaneous](#)
21. [How to Contact Foundation Telecommunications, Inc.](#)

1. **Your Subscription.** Your subscription entitles you to use the Service. Your subscription is personal to you, you agree not to assign, transfer, resell or sublicense your rights as a subscriber unless specifically allowed by this Agreement. You agree that you are solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach results from your use of the Service or by another using your computer or your service. You agree to contact the local FTI office identified on your monthly invoice immediately upon the occurrence of any change in the status of your account (e.g., change in individuals authorized to use your account) for the purpose of updating your account information.
2. **Payment Terms.** You agree to pay all monthly fees and installation charges, including applicable franchise fees, taxes, customer service fees, late fees and door collection fees. Monthly fees will be billed one month in advance. If payment is not received by the due date, late fees and/or collection charges may be assessed and the Service may be terminated. You may incur charges including, without limitation, charges relating to the purchase of "premium" services, such as Personal Web Space, business class services, or access to certain gaming sites in addition to those billed by FTI. All such charges, including all applicable taxes, are your sole responsibility. You may be required to pay a reconnect fee and/or a security deposit in addition to all past due charges before the Service is reconnected.
3. **Software License.** FTI grants to you a limited, nonexclusive, nontransferable and nonassignable license to install and use FTI's access software (including software from third party vendors that FTI distributes, hereinafter referred to as the "Licensed Software"), in order to access and use the Service. FTI may modify the Licensed Software at any time, for any reason, and without providing notice of such modification to you. The Licensed Software constitutes confidential and proprietary information of FTI and FTI's licensors and contains trade secrets and intellectual property protected under United States copyright laws, international treaty provisions, and other laws. All right, title, and interest in and to the Licensed Software, including associated intellectual property rights, are and shall remain with FTI and its licensors. You agree to comply with the terms and conditions of all end user software license agreements accompanying any software or plug-ins to such software distributed by FTI in connection with the Service. You shall not translate,

decompile, reverse engineer, distribute, remarket, or otherwise dispose of the Licensed Software or any part thereof. You acknowledge that the Licensed Software, and any accompanying documentation and/or technical information, is subject to applicable export control laws and regulations of the United States. You agree not to export or re-export the Licensed Software, directly or indirectly, to any countries that are subject to United States export restrictions. Your right to use the Licensed Software terminates upon termination of this Agreement.

4. **Computer and Equipment Requirements.** At the time of initial installation of the Service, your computer equipment must comply with FTI's current minimum computer requirements. The minimum computer requirements may change and FTI will make reasonable efforts to support previously acceptable configurations; however, FTI is not obligated to continue to provide such support. FTI reserves the right to provide service only to users with FTI approved devices for network connectivity. You are strongly urged to check with local FTI Customer Support for the most current list of FTI approved devices for connecting to the network. You agree to only connect FTI approved equipment to the FTI network.

You will not remove any FTI owned equipment (the "Equipment") from the Premises or connect the Equipment to any outlet other than the outlet to which the Equipment was initially connected by the FTI installer. FTI may relocate the Equipment for you within the Premises at your request for an additional charge. If you relocate to a new address, this Agreement shall automatically terminate and you will be required to enter into a new Agreement and may be charged a new installation fee to initiate Service. You will not connect any unauthorized equipment to the FTI provided network interface or interface device. You understand that failure to comply with this restriction may cause damage to the FTI network and subject you to liability for damages and/or criminal prosecution. You may not alter, modify or tamper with the Equipment or the Service, or permit any other person to do the same that is not authorized by FTI.

5. **Installation.** You authorize FTI personnel and/or its agents to enter your premises (the "Premises") at mutually agreed upon times in order to install, maintain, inspect, repair and remove the Service. If you are not the owner of the Premises upon which the Service is to be installed, you represent and warrant that you have obtained the consent of the owner of the Premises for FTI personnel and/or its agents to enter the Premises for the purposes described above. You shall indemnify and hold FTI harmless from and against any claims of the owner of the Premises arising out of the performance of this Agreement.

You acknowledge and agree that installation of the Service (including the Licensed Software) may require FTI personnel and/or its agents to open your computer. You further acknowledge and agree that installation and/or use of the Service (including the Licensed Software) may result in the modification of your computer's systems files. FTI neither represents, warrants, nor covenants that such modifications will not disrupt the normal operations of your computer. FTI shall have no liability whatsoever for any damage resulting from the installation and/or use of the Licensed Software or file modifications. FTI is not responsible for returning your computer to its original configuration prior to installation.

FTI or its agents will supply and install, if required, certain software, subscriber modules, or other network connectivity devices for a fee. FTI will also provide a

"getting started guide" and online instructions on how to use the Service. FTI or its agents shall use reasonable efforts to install the Service to full operational status, provided that your computer fulfills the minimum computer requirements set forth herein.

You may transfer FTI provided Licensed Software to additional computers within the home, but service and support for these additional machines is limited and/or may incur an additional fee. You agree that FTI has no responsibility to provide service and support for in-home networks (you own LAN). If you intend to transfer the software, you must give FTI prior notice of such transfer.

6. **Acceptable Use Policy.** You agree to use the Services strictly in accordance with the Acceptable Use Policy. FTI from time to time and which is incorporated herein by reference and made a part of this Agreement.
7. **Posting to Foundation Telecommunications, Inc.** You are solely responsible and liable for all material that you upload, post, email, transmit or otherwise make available via the Service, including, without limitation, material that you post to any FTI website or the web site of a FTI affiliate, or any third party vendor's service (e.g., newsgroups) that is used by FTI. FTI does not claim ownership of material you submit or make available for inclusion on the Service. However, with respect to material you submit or make available for inclusion on publicly accessible areas of the Service, you grant FTI a world-wide, royalty free and non-exclusive license(s) to: use your material in connection with FTI's businesses including, but not limited to, the rights to: copy, distribute, publicly perform, publicly display, transmit, publish your name in connection with the material, and to prepare derivative works. No compensation will be paid with respect to the use of your material.
8. **Links to Third Party Web Sites.** In your use of the Service and/or FTI web sites, you may encounter various types of links that enable you to visit web sites operated or owned by third parties ("Third Party Site(s)"). These links are provided to you as a convenience and are not under the control or ownership of FTI. The inclusion of any link to a Third Party Site is not (i) an endorsement by FTI of the Third Party Site, (ii) an acknowledgement of any affiliation with its operators or owners, or (iii) a warranty of any type regarding any information or offer on the Third Party Site. Your use of any Third Party Site is governed by the various legal agreements and policies posted at that Web site.
9. **Monitoring and Removal of Content.** FTI is under no obligation to monitor the Services. However, FTI reserves the right at all times and without notice to remove, restrict access to, or make unavailable, any content on its servers that it considers, in its sole discretion, obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, and to monitor, review, retain and/or disclose any content or other information in FTI's possession about or related to you, your use of the Services or otherwise as FTI deems necessary to satisfy any applicable law, regulation, legal process, or governmental request.
10. **Privacy.** You authorize FTI to make inquiries and to receive information about your credit history from others and to utilize such information in its decision regarding its provision of the Service to you. You agree that FTI may collect

and disclose information concerning you and your use of the Service in the manner and for the purposes set forth herein and in FTI's Privacy Policy.

11. No Spam or Other Unsolicited Bulk E-mail. FTI may immediately terminate any subscriber account that it determines, in its sole discretion, is transmitting or is otherwise connected with any "spam" or other unsolicited bulk e-mail. In addition, if actual damages cannot be reasonably calculated, you agree to pay FTI liquidated damages of five dollars (U.S. \$5.00) for each piece of "spam" or unsolicited bulk e-mail transmitted from or otherwise connected with your account. Otherwise you agree to pay FTI's actual damages; to the extent such actual damages can be reasonably calculated. FTI reserves the right to block, reject or remove what it considers in its sole discretion to be "spam" or other unsolicited bulk e-mail from the Service.

12. Termination and Surviving Obligations. Either party may terminate this Agreement at any time without cause by providing the other party with no less than twenty-four (24) hours written notice of such termination. In the event of termination by you, you must notify FTI by telephone or by a non-electronic written submission. E-mail submissions shall not constitute effective notice. In the event of termination by FTI, FTI may notify you of such termination by electronic or other means. In those cases where you elect annual prepayment terms, you agree and understand that the calculation of any refund for unused Service will be based upon the normal rate for the Service and not upon the discounted annual prepayment rate.

You expressly agree that upon termination of this Agreement: (i) You will pay FTI in full for your use of any Equipment and Service up to the later of the effective date of termination of this Agreement or the date on which the Service and any Equipment have been disconnected and returned to FTI. You agree to pay FTI on a pro-rated basis for any use by you of any Equipment or Services for a part of a month. (ii) You will permit FTI to access your premises at a reasonable time to remove any Equipment and other material provided by FTI (iii) You will ensure the immediate return of any Equipment to FTI. You will return or destroy all copies of any software provided to you pursuant to this Agreement. (iv) FTI is authorized to delete any files, programs, data and e-mail messages associated with such account.

13. Disclaimer of Warranties and Limitation of Liability. You expressly agree that FTI is not responsible or liable for any content, act or omission of any third party including, without limitation, any threatening, defamatory, obscene, offensive, or illegal conduct, or any infringement of another's rights including, without limitation, privacy and intellectual property rights. THE SERVICE IS PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND. NEITHER FTI, NOR ITS AFFILIATES OR ANY OF ITS SUPPLIERS OR LICENSORS, EMPLOYEES OR AGENTS WARRANT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR FREE FROM VIRUSES OR OTHER HARMFUL MALICIOUS AGENTS. FTI DOES NOT WARRANT THAT ANY DATA OR ANY FILES SENT BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY EXCLUDED AND DISCLAIMED. FTI AND ITS EMPLOYEES, REPRESENTATIVES AND AGENTS ARE NOT LIABLE FOR ANY COSTS OR DAMAGES, ARISING DIRECTLY OR INDIRECTLY, FROM THE INSTALLATION OR USE, OF THE LICENSED SOFTWARE, THE SERVICE, THE

EQUIPMENT FURNISHED BY FTI, OR FTI'S PROVISION OF TECHNICAL SERVICE AND SUPPORT FOR THE SERVICE; EVEN IF SUCH DAMAGE RESULTS FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE FTI INSTALLER, TECHNICIAN OR CUSTOMER SERVICE REPRESENTATIVE, INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR DAMAGES, REGARDLESS OF WHETHER OR NOT FTI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, FTI'S CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE SERVICE SHALL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD. YOU HEREBY RELEASE FTI FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THIS LIMITATION. FTI IS ALSO NOT LIABLE FOR ANY COSTS OR DAMAGES ARISING FROM OR RELATED TO YOUR BREACH OF THIS AGREEMENT. Your sole and exclusive remedy under this Agreement are as expressly set forth herein. Some states do not allow the exclusion or limitation of implied warranties, so the above exclusions or limitations may not apply to you.

14. **Indemnification.** You agree to indemnify and hold FTI, its parents, subsidiaries, members, affiliates, officers and employees, harmless from any claim, demand, or damage, including costs and reasonable attorneys' fees, asserted by any third party due to or arising out of your use of or conduct on the FTI Network. FTI will notify you within a reasonable period of time of any claim for which FTI seeks indemnification and will afford you the opportunity to participate in the defense of such claim, provided that your participation will not be conducted in a manner prejudicial to FTI's interests, as reasonably determined by FTI
15. **Management of Network.** FTI reserves the right to manage its network for the greatest benefit of the greatest number of subscribers including, without limitation, the following: rate limiting, rejection or removal of "spam" or otherwise unsolicited bulk email, traffic prioritization, establishing byte cap limitations and protocol filtering. You expressly accept that such action on the part of FTI may affect the performance of the Service. FTI reserves the right to enforce limits on specific features of the Service including, without limitation, e-mail storage and web hosting maximums. Please review the FTI Acceptable Use Policy.
16. **Damage to and Encumbrances on Equipment, Computer, Software.** All Equipment will at all times remain the property of FTI. You may not sell, transfer, lease, encumber or assign all or part of the Equipment to any third party. You shall pay the full retail cost for the repair or replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Equipment or part thereof, together with any costs incurred by FTI in obtaining or attempting to obtain possession of any such Equipment. You hereby authorize FTI to charge your Visa, Master Card, other credit card or other payment method authorized by you for any outstanding Service and Equipment charges. FTI may, at its option, install new or reconditioned Equipment, including swapping your existing FTI provided network connectivity equipment, for which you may incur a fee.
17. **Copyright and Trademark Notices.** Materials available on FTI web sites are protected by copyright law. All other trademarks and service marks are the property of their respective owners.

18. **Intellectual Property Infringement Claims.** FTI is registered under the Digital Millennium Copyright Act of 1998. In accordance with Title 17, United States Code, Section 512(c)(3), if you believe that a Web page hosted by FTI is violating your rights under U.S. copyright law, you may file a complaint of such claimed infringement with FTI's designated agent. See Procedure for Making Claims of Copyright Infringement.
19. **Governing Law and Jurisdiction.** This Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of Arkansas, without regard to its conflict of laws provisions. All disputes arising out of or related to this Agreement and the Service must be brought in a federal or state court located in the state of Arkansas. Your consent to the personal jurisdiction of such courts located in the state of Arkansas. You waive all rights to bring any claim, suit or proceeding more than one (1) year after the date the cause of action arose.
20. **Miscellaneous.** This Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes and replaces any and all prior written or oral agreements. In the event that 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 its provisions shall remain in full force and effect. Nothing contained in this Agreement shall be construed to limit FTI's rights and remedies available at law or in equity. FTI'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 the parties nor trade practice shall act to modify any provision of this Agreement. This Agreement may not be assigned or transferred by you. This Agreement is freely assignable by FTI to third parties.
21. **How to Contact Us.** For any questions regarding this Subscriber Agreement, billing or other, please contact Foundation Telecommunications, Inc. at one of the following:

E-mail: admin@ftionline.com

Phone: 800-333-3353

U.S. Mail: Foundation Telecommunications, Inc.
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