

Mendocino Community Network Services Contract

This agreement (this 'Agreement') by and between the individual or entity listed below in the signature block ('Subscriber') and the Mendocino Community Network ('MCN'), a division of the Mendocino Unified School District, governs provision of MCN's Internet services (the 'Services'). MCN may revise this Agreement from time to time by posting a new version hereof on the MCN Website, and such revised terms will become effective thirty (30) days after their Posted/Revised date. Continued use of the Services after such new effective date constitutes acceptance of such revisions to this Agreement.

I. THE SERVICES

A. **Services In General.** MCN will provide the Services to Subscriber pursuant to the terms and conditions of this Agreement and the services plan options selected by Subscriber upon sign-up or renewal and recorded in MCN's database. The parties will in addition be bound by MCN's special provisions applicable to the type of services in question and current at the time of signup or renewal ('Special Provisions'). MCN may change or eliminate any feature of the Services or change any service level or other Special Provision at any time without advanced notice by posting revised Special Provisions; provided that no increase in prices listed in Part 1 of the Special Provisions will become effective as to Subscriber until renewal of this Agreement. The Special Provisions are incorporated into this Agreement by this reference as if set forth in full.

B. **Responsibility for Equipment & Related Services.** Subscriber will bear its own costs for equipment (including without limitation computer hardware and software) and telephone services. Subscriber is responsible for the operation and maintenance of its own computer network (if any), including without limitation any local area network or wide area network.

C. **Service Interruption.** MCN may interrupt the Services from time to time in order to perform maintenance. MCN will exercise reasonable efforts (i) to inform Subscriber before interrupting Services and (ii) to re-initiate Services promptly. MCN will not be liable for service interruptions.

D. **IP Addresses.** All Internet protocol (IP) addresses provided through the Services are licensed at MCN's sole discretion, and Subscriber has no right to use or continued use of any IP address.

E. **No Resale.** Unless otherwise provided in the Special Provisions, Subscriber will not resell the Services or in any other way use them to compete w/ MCN.

II. SUBSCRIPTION FEES

A. **Fees in General.** Subscriber will pay MCN in advance for provision of the Services. Such payments will include, without limitation: (1) fees for enrollment, installation, activation, and monthly access; (2) any fees for over-use (including any overage fees required by the Special Provisions) or hardware purchase; (3) any fees for special services provided to Subscriber's account, including fees for moving circuits and for repair calls caused by Subscriber-error; and (4) any fees imposed by federal universal service rules or laws.

B. **Responsibility for Fees & Taxes.** Subscriber will be responsible for: (1) all fees arising out of its Services account, whether or not Subscriber authorized such use; and (2) any tax, levy, import tariff, or similar governmental charge arising out of or related to Subscriber's use of the Services, except for net income taxes levied on MCN.

C. **Invoices and Timely Payment.** Invoices are issued as a courtesy; Subscriber will maintain

awareness of its usage levels and the fees it owes MCN and will pay them when due. All invoices are due within thirty (30) days of their date of issuance and will be considered overdue if not paid then. MCN may (1) charge a late fee of \$15 per month, starting on the first day after any payment is past due; and (2) charge a \$15 fee for any returned check or declined credit card (collectively, 'Additional Fees'). Such Additional Fees are intended to defray MCN's costs resulting from late payments and from administration and will constitute liquidated damages. The parties agree that such liquidated damages are reasonable in light of the harm delay and administrative burdens will cause and the difficulties of proof of loss and the inconvenience and unfeasibility of otherwise obtaining an adequate remedy. None of the remedies listed in this subsection is exclusive of other remedies.

D. Contact and Credit Card Information. It is the Subscriber's responsibility to inform MCN immediately of any change in Subscriber's billing information, address, or telephone number. If paying by credit card, Subscriber will keep a valid credit card on file with MCN and update credit card information promptly after any change.

III. TERM AND TERMINATION

A. Termination for Convenience. Either party may terminate this Agreement for convenience at any time. If Subscriber terminates for convenience: (1) Subscriber will pay any early termination fees or adjustments set forth in the Special Provisions; and, (2) if Subscriber's plan calls for a one-year term, and unless the Special Provisions provide to the contrary, Subscriber will pay an adjustment equivalent to the difference between the fees Subscriber has paid and the fees (including any administration and start-up fees) Subscriber would have paid for the same period of Services pursuant to a month-to-month plan. If MCN terminates for convenience, it will refund any prepaid fees for access to the Services (and not for startup or other one-time expenses) on a prorated basis.

B. Termination for Breach. In the event that Subscriber breaches this Agreement, MCN may terminate the Services, any portion thereof, or this Agreement, immediately and without advanced notice.

C. Renewal. Unless the relevant Special Provisions provide to the contrary, this Agreement will renew automatically at the end of its term, for a new term of the same duration, unless first terminated by either party.

D. No Refunds. MCN is not required to refund any fees paid or prepaid except as specifically provided in Section III.A above.

ACCEPTABLE USE

A. Acceptable use Policy. Subscriber acknowledges that it has read MCN's Acceptable Use Policy ('AUP'). (The AUP is currently posted at homepage.mcn.org/aup.) Subscriber will adhere to the AUP and will not allow the Services to be used for activities prohibited by the AUP. MCN may revise the AUP from time to time by posting a new version thereof on the MCN Website, and Subscriber is responsible for awareness of and compliance with such revisions. In the event of any conflict between the provisions of the AUP and of this Agreement, this Agreement will govern.

B. Prohibited Conduct. In its use of the Services, Subscriber will not:

- (1) disseminate any unsolicited commercial e-mail messages ('Spam');
- (2) engage in any activity advertised by, promoted by, or otherwise connected to Spam;
- (3) perpetrate any fraud or intellectual property infringement;

- (4) perpetrate any crime or other illegal activity;
- (5) tamper with other MCN accounts or commit unauthorized intrusion into any part of MCN's system;
- (6) perpetrate any security breach, network attack, denial-of-service attack, act of hacking, or distribution of any virus, worm, or other harmful code, or in any other way interfere with any individual's or entity's use or enjoyment of any computer or of the Internet;
- (7) threaten or harass any MCN employee, agent, or representative; or
- (8) disseminate or post any material or information that is or may be abusive, threatening, libelous, harassing, offensive, pornographic, or obscene. MCN may determine, in its sole and unfettered discretion, what material will be considered pornographic or obscene for purposes of this Agreement.

C. Third Party Violations. Subscriber will not permit any third party to use the Services for any of the activities prohibited by this Article IV.

V. SECURITY AND COMPLIANCE

a. Monitoring. MCN has no obligation to monitor the Services but may do so and may disclose information regarding use of the Services for any reason, including: to satisfy laws, regulations, or governmental, legal, or law-enforcement requests; to operate the Services properly; and to protect itself and its customers. MCN may grant law enforcement agencies access to its equipment to monitor Subscriber's use of the Service.

B. Suspension of Services & Removal of Materials. MCN may interrupt or suspend Services, remove any material or information in whole or in part, or terminate Services, immediately and without advanced notice, in the event that:

- (1) the Services or any related MCN equipment has been breached by hackers or other unauthorized third parties;
- (2) use of the Services causes a denial of service or in any other way impedes any individual's or entity's use or enjoyment of the Internet or injures the functioning of services MCN provides to other customers;
- (3) Subscriber's account is involved in a violation of the terms of Article IV (Acceptable Use); or
- (4) continuation of the Services exposes MCN or its affiliates to liability. MCN may furthermore interrupt or suspend services or remove any material or information in whole or in part, without advanced notice, in order to investigate any of the causes or concerns listed in the previous sentence. MCN will have no liability to Subscriber for any such interruption, suspension, or termination of Services or removal of materials, even if hackers or other third party intruders are responsible, even if Subscriber is not at fault, and even if it is later determined that the suspected injury or violation did not occur.

C. Data Loss. Subscriber is responsible for maintaining on its own premises backup copies of any data stored on MCN equipment. MCN is not responsible for providing physical access to or copies of the software, data, or content stored on its equipment under any circumstances and is not required to provide network access

- (1) after any termination or suspension of Subscriber's account or
- (2) in the event of hardware failure, abuse by hackers or other third parties, or other interruption of network access not resulting from MCN's fault. MCN will not be liable for loss of data or for breaches in system integrity.

D. Reporting. Subscriber will inform MCN promptly after discovering that any hacker or other unauthorized third party has accessed the Services through Subscriber's account.

E. Digital Millennium Copyright Policy. In reporting any alleged infringement of intellectual property rights, Subscriber will adhere to MCN's then-current Digital Millennium Copyright Act ('DMCA') policy (posted at <http://homepage.mcn.org/support/dmc/>). If Subscriber is suspected of violating third-party intellectual property rights, Subscriber will fully cooperate with MCN in any investigation thereof, will provide all information requested, and will otherwise adhere to MCN's DMCA policy.

VI. DISCLAIMERS

A. Service Level & Continuity. MCN provides the Services 'as is' and does not guaranty upload or download speeds. MCN may determine after execution of this Agreement that it cannot provide services to Subscriber for technical or other reasons, and in such case, MCN will have no liability other than, if such inability does not result from Subscriber's fault, to refund any fees paid by Subscriber. MCN will not be liable for any damages suffered by Subscriber or any third party resulting in whole or in part from the unavailability, failure to operate, interruption in functioning, delays, or defects in connection or transmission, failure to connect or transmit to or from the Internet, or any other defect in the operation of the Services. In the event that Subscriber is dissatisfied with the Services, including without limitation any new feature or restriction, Subscriber's sole remedy will be termination of this Agreement pursuant to the provisions of Article III above. MCN will not be liable for any failure of networks or facilities provided by third party telecommunications providers, including without limitation SBC, Inc.

B. No Warranty.

MCN DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE FROM HACKERS OR OTHER THIRD PARTY INTRUDERS OR FROM VIRUSES OR OTHER HARMFUL COMPONENTS. MCN MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE PROVIDED BY MCN OR ANY OF ITS REPRESENTATIVES WILL CREATE A WARRANTY.

C. Limitation of Liability.

MCN WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR MULTIPLE DAMAGES, EVEN IF MCN WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. MCN'S MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT OF FEES BILLED TO SUBSCRIBER DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

D. Specific Liabilities Excluded.

MCN WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM:

- (i) OTHER MCN CUSTOMERS OR THIRD PARTIES ACCESSING SUBSCRIBER'S DATA;
- (ii) EAVESDROPPING AND OTHER SECURITY BREACHES;
- (iii) DENIAL OF SERVICE ATTACKS;
- (iv) INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICES;
- (v) SUBSCRIBER'S RELIANCE ON OR USE OF THE SERVICES;
- (vi) MISTAKES, OMISSIONS, INTERRUPTIONS, DELETIONS OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR OTHER FAILURES OF PERFORMANCE OF THE SERVICES;

- (vii) THE ACCURACY, COMPLETENESS, AND USEFULNESS OF THE SERVICES; OR
- (viii) LOSS OF DATA OR LOSS OF ACCESS TO DATA.

E. MCN Affiliates.

MCN's limitations and exclusions of liability set forth in this Article VI and elsewhere in this Agreement apply equally to MCN's officers, employees, agents, contractors, representatives, suppliers, subsidiaries, parents, and affiliated entities, including without limitation the Mendocino Unified School District.

VII. INDEMNITY

A. Notification. Promptly after MCN's request, Subscriber will notify any third party, in writing, that MCN is not responsible for

- (i) any content or materials posted on any Subscriber Web site or otherwise disseminated through the Services or
- (ii) any use or abuse of the Service whatsoever by Subscriber or any third party.

B. Indemnification.

Subscriber will defend and indemnify MCN (including its officers, employees, agents, contractors, representatives, suppliers, subsidiaries, parents, and affiliated companies) from any third party claim arising out of or related to:

- (i) alleged Subscriber conduct that would breach this Agreement, including without limitation alleged infringement of third party intellectual property or privacy rights;
 - (ii) Subscriber's use, misuse, or failure to use the Service;
 - (iii) Subscriber's use of the Internet or the Services; or
 - (iv) the failure outage, unavailability, or malfunction of any kind whatsoever of the Services.
- Such Subscriber obligation includes payment of losses, expenses, damages, and costs, including without limitation attorneys' fees.

VIII. GENERAL PROVISIONS

A. Notices.

All written communications to Subscriber will be deemed delivered if sent to the contact information provided to MCN at the time of signup, unless Subscriber provides some alternate contact information in writing. All written communications to MCN will be deemed delivered if sent to P.O. Box 2445, Mendocino, CA 95460 (USPS) or 10700 Ford Street-MCN Office, Mendocino, CA 95460.

B. Governing Law and Venue for Disputes.

This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. Subject to Section VIII.E below, jurisdiction and venue of any litigation arising out of or related to this Agreement will be exclusively in the federal and state courts of Mendocino, California, and each party hereby consents to personal jurisdiction and service in any such court.

C. Waiver & Construction.

No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under this Agreement will operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. If any provision of this Agreement is held invalid, illegal, or

unenforceable, the validity, legality, or enforceability of the remaining provisions will in no way be affected or impaired thereby.

D. Assignment.

Subscriber will not sell, transfer, assign, delegate, or subcontract any rights under this Agreement.

E. Arbitration. Any controversy or claim arising out of or related to this Agreement, including without limitation any claim based on or arising from an alleged tort, will be determined by arbitration. The arbitration will proceed under the auspices and then-current rules of JAMS/Endispute, in Santa Rosa, California or the next nearest JAMS/Endispute office to Mendocino, California. Judgment upon the decision rendered by the arbitrators may be entered in any court having jurisdiction. Either party may elect to seek provisional relief from a court with jurisdiction without thereby waiving arbitration.

E. Force Majeure.

No failure, delay, or default in performance of any of MCN's obligations will constitute a breach of this Agreement if it arises out of a cause, existing or future, that is beyond MCN's control.

F. Entire Agreement.

This Agreement embodies the final, full, and exclusive statement of the agreement between the parties, and as of its date supersedes all prior agreements, negotiations, representations, and proposals, whether written or oral, relating to the subject-matter hereof. This Agreement may only be modified in a writing executed by each party.

Subscriber

By: _____

signature

Name: _____

print

Title (if applicable) _____

Address:

Mendocino Community Network By: _____

signature

Name: _____

print

Title _____

Address:

10700 Ford Street

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