

PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY

CITY OF BUFFALO INTERNET SERVICES ACCESS AGREEMENT

This City of Buffalo Services Access Agreement ("Agreement") is entered into by the subscriber ("you") and the City of Buffalo ("City"). This Agreement sets forth the terms and conditions under which you agree to use the City Service and under which the City agrees to provide the services to you. THESE TERMS AND CONDITIONS IMPOSE IMPORTANT REQUIREMENTS ON YOU REGARDING YOUR USE OF THE CITY SERVICE AND YOU SHOULD READ THEM CAREFULLY. You and the City agree to the following terms and conditions:

1. SCOPE OF SERVICE

The City will provide you with a modem to service as Customer Premise Equipment (herein after referred to as "CPE") for the purposes of connecting to the City's high speed Internet connection (the "Service") in accordance with the terms of this Agreement. The Service consists of: (a) one CPE unit; and (b) access to the Internet.

2. AUTHORIZED USER

- A. You warrant that the information for your registration with the Service is correct and complete, and you agree to contact the City to update your information promptly. The City will provide you with an Email User Identification code ("UserID") and password for each Email account.
- B. You warrant that you are eighteen years of age or older and that you are responsible for all usage of the Service and any other services accessed through the Service on your account. You further agree that your use of the Service will only be from the United States.
- C. You may only use your account for one log-on session per connection type at a time. You may not use more than one IP address for each log-on session.
- D. You may not resell the Service or engage in similar activities, commercial or non-commercial, which constitute resale, use the Service for high volume or commercial purposes, or as a dedicated or quasi-dedicated line. An account session may be deemed to be idle if there appears to be no interactive, human generated data received from the remote user's computer system within a prescribed amount of time. Automated data is not considered interactive or human generated; automated data includes but is not limited to data generated by an automatic re-dialer, script or other program that runs on a computer system for the purpose of avoiding inactivity disconnects.

3. PAYMENT AND BILLING

- A. You agree to pay the City current listed rates for the CPE modem and access to the Internet. You agree to lease or rent the CPE in equal monthly payments according to the standard monthly rate as determined by City, commencing on the 1st day of the first month after this agreement is signed and continuing up to and until the lease or rental agreement is fulfilled.
- B. In the case of entering into a lease purchase agreement with the City for the CPE modem, you agree and understand that this is a lease to own agreement and that the CPE modem provided to you in accordance with the terms and condition herein, will remain the property of the City until the full payment has been received as provided for in Section 3(A) is received by the City. Upon receipt of full payment by the City, the CPE will transfer to your ownership.
- C. You agree that if the CPE is damaged through your own actions, you will pay the City damages for the full replacement cost of the CPE, or the remaining balance in your account at the time of the damage, whichever is less.
- D. The City is not responsible for any additional charge(s) or fee(s) applied to your billing account, for any reason, including but not limited to, interest, insufficient credit or insufficient funds.
- E. If any portion of your bill is not paid by the due date, the City may charge you a late fee on unpaid balances and may also terminate your Service, and repossess the CPE modem without notice. The late fee will be the lesser of one and one-half percent (1.5 %) per month, or the highest rate permitted by law. In the event the City utilizes a collection agency or resorts to legal action to recover monies due, you agree to reimburse the City for all expenses incurred to recover such monies, including attorney's fees.
- F. The waiver of any fees or charges lies solely in the discretion of the City.

4. TERM AND TERMINATION

- A. This Agreement goes into effect upon the date of your signature, subject to the terms of this section, until terminated by either party as permitted by this Agreement or upon full payment as proscribed in the above section 3. Billing for your Service will automatically begin upon registration of your account. Registration may be accomplished either by you or by the City. Registration by the City will occur if you have not registered your account within ten (10) days after your Service has been activated. Unless otherwise noted, the service is provided on a month-to-month contract. If you have contracted for service for a specified period of time, upon

expiration of that time your contract for service shall become month-to-month.

- B. Either party may terminate this Agreement without cause by giving notice to the other. Termination by you will be effective immediately upon your notice to the City and is subject to your payment of the remaining balance of the charges applicable to your Service for the month in which termination occurs or through the date your contract for service expires and return of the CPE modem. Failure to return the modem will result in accrual of your account and payment in full will be demanded and pursued. In the event of termination by the City, you will be required to pay the remaining balance of the charges applicable to your Service through the effective date of termination.
- C. All obligations of the parties under this Agreement which, by their nature, would continue beyond the termination, cancellation or expiration of this Agreement, including by way of illustration and not limitation those clauses relating to Limitation of Liability and Remedies (Section 9) and Indemnification (Section 10), shall survive such termination, cancellation or expiration.
- D. If, in the sole discretion of the City: (a) you are in breach of any of the terms of this Agreement (including all policies regarding abuse and acceptable use of the Service), (b) your use of the Service is disruptive or causes a malfunction of the Service, or (c) the City receives an order from a court of competent jurisdiction to terminate your service, then the City may terminate or suspend your Service immediately without notice, and/or impose fines as adopted by the City. For termination in accordance with this Section 4(D), you shall be liable for the applicable fees for any unreturned Modem charges set forth in 3(C), and any outstanding balance left in your account. The foregoing notwithstanding, the City reserves the right to pursue any and all legal and equitable claims against you pertaining to your use or misuse of the Service. The City, in its sole discretion, may refuse to accept your application for renewal or re-subscription following a termination or suspension of your use of the Service.
- E. In the event there is a ruling, regulation, or order issued by a judicial, legislative or regulatory body causes the City to believe that this Agreement may be in conflict with such rules, regulations, and orders, the City may terminate this Agreement immediately without notice.
- F. You agree that if your Service is terminated for any reason, the City has the right to delete all data, files and other information stored in or for your account.

5. REVISIONS

You agree that the City may revise the terms and conditions of this Agreement (including any of the policies which may be applicable to your use of the Service) from time to time, without notice (except as required by law). By continuing to use the Service after revisions are in effect, you accept the revisions and agree to abide by them.

6. MANAGEMENT OF YOUR DATA

- A. You are solely responsible for obtaining, installing, configuring, and maintaining suitable equipment and software, including any necessary system or software upgrades, patches or other fixes, which are or may become necessary to access the Service and to operate your computer.
- B. You are responsible for management of your information, including but not limited to back-up and restoration of data, erasing data from disk space you control and changing data on your router. You are responsible for development and maintenance of any security procedures you deem appropriate, such as logon security and encryption of data, user ID and password on your router and firewalls, to protect your information. The City is not responsible for back-up and restoration of your information. If at any time during the period you use the Service the City provides free or for-fee software or peripheral equipment, including without limitation, client and/or network security software, you agree that your sole right to recourse, including but not limited to damages for failure of such software to perform, is against the manufacturer of such software or peripheral equipment.
- C. For the purposes of back-up and maintenance, the City may use, copy, display, store, transmit, translate, rearrange, reformat, view and distribute your information to multiple City servers. The City does not guarantee that these procedures will prevent the loss of, alteration of, or the improper access to, your information.

7. ACCEPTABLE USE AND YOUR RESPONSIBILITIES

You agree to comply with the terms set forth in Attachment A, Acceptable Use and Your Responsibilities, which is attached hereto and incorporated herein.

8. LIMITATIONS ON USE AND WARRANTIES

- A. The Internet is an international computer network of both government and non-government inter-operable packet switched data networks. The Internet is not owned, operated or managed by, or in any way affiliated with the City and the City is not responsible and has no control over the information or materials accessible via the Internet through use of the Service. The City does not own or control all of the various facilities and communications lines through which access may be provided.

- B. You agree and acknowledge that through your use of the Service, you may have access to information, which may be sexually explicit, obscene or offensive, or otherwise unsuitable or objectionable, especially for children under the age of eighteen (18) years old. You agree to supervise usage of the Service by any minors who use your Service. The City is not responsible for access by any users, you or minors, to objectionable or offensive information or data.
- C. You agree that your use of the Service and the Internet, without limitation, is your sole responsibility, is solely at your own risk and is subject to all applicable local, state, national and international laws and regulations.
- D. You agree that the reliability, availability and performance of resources accessed through the Internet or other services connected or linked to the City's Service are beyond the City's control and are not in any way warranted or supported by the City.
- E. You agree that the City cannot and does not guarantee or warrant that files available for downloading through the Service will be free of viruses, worms, Trojan horses or other code that manifests contaminating or destructive properties. You are responsible for implementing adequate procedures to satisfy your particular requirements for accuracy of data input and output and for maintaining a means external to the Service for the reconstruction of any lost data.
- F. You agree that the Internet is not a secure network and that third parties may be able to intercept, access, use or corrupt the information you transmit over the Internet. The City is not responsible for invalid destinations, transmission errors, or corruption or security of your data.
- G. You understand and agree that the City does not warrant the Service to be uninterrupted or error-free. You further understand and agree that the City has no control over third party networks or web sites that you may access in the course of your use of the Service, and that delays and disruptions of other network transmissions are completely beyond the control of the City. The City cannot and will not guarantee that the Service will provide Internet access that meets your needs.

- H. You are not authorized to use the City name or mark as a hypertext link to any Web site or in any advertising, publicity or in any other commercial manner without the prior written consent of the City. You understand that your ability to link to a Web site through the Service does not, in any way, represent or imply the City's approval of, or its determination of the quality of that product or service. The links provided through the Service are maintained by their respective organizations, who are solely responsible for their content.
- I. No warranty is given that the Service is error-free. The City makes no warranty regarding any transactions executed through the Service.

9. LIMITATION OF LIABILITY AND REMEDIES

- A. THE SERVICE IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS. DO NOT USE THE SERVICE IN ANY HIGH RISK ACTIVITIES WHERE DAMAGE OR INJURY TO PERSON, PROPERTY, ENVIRONMENT OR BUSINESS MAY RESULT IF AN ERROR OCCURS. YOU EXPRESSLY ASSUME ALL RISK FOR SUCH USE. THE CITY DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY IT WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.
- B. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT PROVIDED BY THE CITY (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH EQUIPMENT), THE CITY, ITS THIRD PARTY LICENSORS AND THIRD PARTY PROVIDERS, INCLUDING GPSS, DISCLAIM ANY AND ALL WARRANTIES FOR THE SERVICE AND CITY-PROVIDED EQUIPMENT OR SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, THOSE ARISING FROM THE COURSE OF DEALING, COURSE OF TRADE, OR THOSE ARISING UNDER STATUTE.
- C. IN NO EVENT SHALL THE CITY, ITS THIRD PARTY LICENSORS OR THIRD PARTY PROVIDERS BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, AND ANY CITY-PROVIDED EQUIPMENT PROVIDED UNDER THIS AGREEMENT, AND WITH REGARD TO

ANY MERCHANDISE, INFORMATION OR SERVICE PROVIDED THROUGH THE INTERNET OR ANY TRANSACTIONS CONDUCTED ON THE INTERNET, EVEN IF VIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

- D. THE CITY, ITS THIRD PARTY LICENSORS AND THIRD PARTY PROVIDERS DISCLAIM ANY LIABILITY OR RESPONSIBILITY ARISING FROM ON ANY CLAIM THAT YOUR ACCESS OR USE OF THE SERVICE PROVIDED UNDER THIS AGREEMENT INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- E. This Paragraph applies to all claims by you irrespective of the cause of action underlying your claim, including, but not limited to: (a) breach of contract, even if in the nature of a breach of condition or a fundamental term or a fundamental breach, or (b) tort, including but not limited to the City's negligence or misrepresentation.
- F. All limitations and disclaimers stated also apply to City' third party licensors and third party providers as third party beneficiaries of this Agreement. Any rights or limits stated herein are the maximum for which the City, its third party licensors and providers are collectively responsible.
- G. The remedies expressly set forth in this Agreement are your sole and exclusive remedies.

10. INDEMNIFICATION

- A. You agree to defend, indemnify and hold harmless the City from and against all liabilities, costs and expenses, including reasonable attorney's fees, related to or arising from: (a) any violation of this Agreement by you (or any parties who use your account, with or without your permission, to access the Service); (b) the use of the Service or the Internet or the placement or transmission of any message, information, software or other materials on the Internet by you (or any parties who use your account, with or without your permission, to access the Service); (c) negligent acts, errors, or omissions by you (or any parties who use your account, with or without your permission, to access the Service); (d) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the active negligence or willful misconduct of the other party; or (e) claims for infringement of any intellectual property rights arising from the use of the Service, software, or the Internet.

11. GENERAL PROVISIONS

- A. The City will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, or an inability to obtain necessary equipment or services.
- B. The City's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future.
- C. You agree not to assign or otherwise transfer, this Agreement in whole or in part, including the Software or your rights or obligations under it. Any attempt to do so shall be void.
- D. You may have additional rights under certain laws (such as consumer laws) which do not allow the exclusion of implied warranties, or the exclusion or limitation of certain damages. If these laws apply, our exclusions or limitations may not apply to you.
- E. Notices required under this Agreement by you shall be sufficient if mailed, certified mail to the City of Buffalo at the following address:

Notices by the City to you shall be deemed given: (a) when deposited in the United States mail addressed to you at last-known address or (c) when hand delivered to your home, as applicable. Notice of changes to these Terms of Service will be deemed given upon posting to the City of Buffalo Web sites set at the following address:

With regard to electronic communications, you and the City further agree:

- F. An electronic communication (e.g., 'email') sent containing your UserID establishes you as its originator and has the same effect as a document with your written signature on it.
- G. An electronic communication (e.g., 'email'), or any computer printout of it, is a valid proof of the validity of the original content of the electronic communication.
- H. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.
- I. You and the City agree that the substantive laws of the State of Minnesota, without reference to its principles of conflicts of laws, will be applied to govern, construe and enforce all of the rights and duties of the parties

arising from or relating in any way to the subject matter of this Agreement.

- J. YOU AND THE CITY AGREE THAT ANY CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, SHALL BE SETTLED BY ARBITRATION, AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION. IF POSSIBLE, THE ARBITRATOR WILL BE AN EXPERT IN THE FIELD OF INTERNET SERVICES. THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.
- K. This Agreement, including all Attachments hereto, which are fully incorporated into this Agreement, constitutes the entire agreement between you and the City with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. This Agreement may be revised by the City as set forth herein. Any terms varying from this Agreement in any order, written or electronic communication from you are void. In the event of a conflict between this Agreement and any Attachments, the terms of the Attachments shall prevail.

ATTACHMENT A

ACCEPTABLE USE AND YOUR RESPONSIBILITIES

1. This Attachment, "Acceptable Use and Your Responsibilities" sets forth the BWIG policy on the acceptable use by you of the Service, which includes your optional Personal Web Space. It is designed to help protect the Service, BWIG customers and the Internet community, from irresponsible or illegal activities.
2. BWIG reserves the right to decline to provide Service to you, or immediately to terminate your Service for material breach, if your use of the Service or your use of an alias or the aliases of additional users on your account, whether explicitly or implicitly, and in the sole discretion of BWIG: (a) is obscene, indecent, pornographic, sadistic, cruel or racist in nature, or of a sexually explicit or graphic nature; (b) espouses, promotes or incites bigotry, hatred or racism; (c) might be legally actionable for any reason, (d) is objectionable for any reason, or (e) in any manner violates the terms of this Acceptable Use Policy.
3. You may not use the Service as follows: (a) for any unlawful, improper or criminal purpose or activity; (b) to post or transmit information or communications that, whether explicitly stated, implied, or suggested through use of symbols, are obscene, indecent, pornographic, sadistic, cruel, or racist in content, or of a sexually explicit or graphic nature; or which espouses, promotes or incites bigotry, hatred or racism; or which might be legally actionable for any reason; (c) to attempt to access or access the accounts of others, to spoof or attempt to spoof the URL or DNS address of the City or any other entity, or to attempt to penetrate or penetrate security measures of the City or other entities' systems ("hacking") whether or not the intrusion results in corruption or loss of data; (d) to bombard individuals or newsgroups with uninvited communications, data or information, or other similar activities, including but not limited to "spamming", "flaming" or denial or distributed denial of service attacks; (e) to transmit unsolicited voluminous emails (for example, spamming) or to intercept, interfere with or redirect email intended for third parties using the Services; (f) to introduce viruses, worms, harmful code and/or Trojan horses on the Internet; (g) to post information on newsgroups which is not in the topic area of the newsgroup; (h) to interfere with another person's usage or enjoyment of the Internet or this Service; (i) to post or transmit information or communications that are defamatory, fraudulent, obscene or deceptive, including but not limited to scams such as "make-money-fast" schemes or "pyramid/chain" letters; (j) to damage the name or reputation of the City, its parent, affiliates and subsidiaries, or any third parties; (k) to transmit confidential or proprietary information, except solely at your own risk; (l) to violate the City's or any third party's copyright, trademark, proprietary or other intellectual property rights, including trade secret rights; (m) to use more than one IP address or use an IP address which you were not assigned; (n) to generate excessive amounts (as determined by the City in its sole discretion) of Internet traffic, or to disrupt net user groups or email use by others; (o) to engage in activities designed to or having the effect of degrading or denying Service to the City users or others (including activities that compromise a server, router, circuit or software; (p) to use any name or mark of the City as a hypertextlink to any Web site or in any advertising publicity or other commercial

manner; (q) to use your City account for the purpose of operating a server of any type; (r) to use the Service or the Internet in a manner intended to threaten, harass, intimidate; (s) to cause the screen to "scroll" faster than other subscribers or users are able to type to it, or any action that has a similar disruptive effect, on or through the Service; (t) to use the Service to disrupt the normal flow of online dialogue, (u) to use the Service to violate any operating rule, policy or guideline of any other online services provider or interactive service; (v) to attempt to subvert or to aid third parties to subvert, the security of any computer facility or system connected to the Internet; (w) to impersonate any person or using a false name while using the Service; (x) to install "auto-responders," "cancel-bots" or similar automated or manual routines which generate excessive amounts of net traffic, or disrupt net user groups or email use by others; (y) to make false or unverified complaints against the City or otherwise abusing any of the City complaint response procedures; (z) to use software or any other device that would allow your account to stay logged on while you are not actively using the Service, (aa) to export software or any information in violation of US export laws.

4. Copyright Infringement/Repeat Infringer Policy. The City respects the intellectual property rights of third parties, including those granted under the US copyright laws, and the interests of its subscribers and content providers on the Internet. You may not store material on, or disseminate material over, the City's systems or servers in any manner that constitutes an infringement of third party intellectual property rights, including rights granted under the US copyright laws. In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, it is the policy of the City to terminate, in appropriate circumstances, the Service provided to any subscriber or account holder who is deemed to infringe third party intellectual property rights, including repeat infringers. Appropriate circumstances may exist where (i) a subscriber or account holder has been found by a court of competent jurisdiction to have infringed the copyrights of a third party on two or more occasions, i.e., a repeat infringer, (ii) where a valid, effective and uncontested notice has been provided to the City alleging facts which are a violation by the subscriber or account holder of The City's Policy prohibiting infringing activity involving The City's systems or servers, or (iii) in other cases of repeated flagrant abuse of access to the Internet (e.g., willful commercial piracy or malicious attempts to destroy the value of copyrighted works). In addition, the City expressly reserves the right to terminate or suspend the service of any subscriber or account holder if the City, in its sole judgment, believes that circumstances relating to the infringement of third party intellectual property rights warrant such action.
5. You shall comply with all applicable local, state, national and international laws and regulations, including those related to data privacy, international communications, and exportation or technical or personal data. You represent that you are not a specifically designated individual or entity under any US embargo or otherwise the subject, either directly or indirectly (by affiliation, or any other connection with another party) to any order issued by any agency of the US Government limiting, barring, revoking or denying, in whole or in part your US export privileges. You agree to notify the City if you become subject to any such order.

6. You shall not delete any proprietary designations, legal notices or other identifiers belonging to third parties from any information obtained or sent using the Services and shall not impersonate any person or use a false name while using the Services. You agree to obtain all required permissions if you use the Service to receive, upload, download, display, distribute, or execute Software or perform other works protected by intellectual property laws including copyright, trademark, trade secret and patent laws. You agree to cooperate with the City and provide requested information in connection with all security and use matters.

You agree to promptly notify the City if you suspect unauthorized use of the Service or of your UserID. You remain liable for unauthorized use until your notification to BWIG. You agree that your name, UserID and other identifying information may be placed in our user directory.

7. The City reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong.
8. The City reserves the right, but shall be under no obligation, to monitor your compliance, or the compliance of other subscribers, with the terms, conditions or policies of this Agreement.