

# **LOMPOCNET SERVICE AGREEMENT AND USE POLICY**

THIS SERVICE AGREEMENT AND USE POLICY ("Agreement"), governs access to and use of facilities, services or resources ("Services", as hereinafter defined) owned and operated by LompocNet ("Lompoc") and this Agreement is considered to be entered into and binding upon Lompoc and any User (as User is hereinafter defined) by accessing and/or using the Services User acknowledges and assents to be bound by the policies, terms and conditions set forth herein in their entirety, without limitation or qualification, as well as all applicable laws and regulations, in the same manner as if User had handwritten User's name on a contract.

## **DEFINITIONS**

"Agreement" means this Service Agreement and Use Policy in its entirety.

"Lompoc" means LompocNet, which is a division of the City of Lompoc, or the City of Lompoc depending upon how the word is used.

"Service or Services" shall mean any data connection to the Internet, e-mail account, web hosting space and any other Internet-related or network-related items.

"User" means any person, company, employee, agent, officer, director, member, successor or assign of any company accessing or using the services contemplated by this Agreement and under the terms of this Agreement may be referred to as User, You, Your, etc.

"Facilities" means any device, transmission method, equipment location, center, transmission towers and access points owned and operated by Lompoc.

"Account or Subscription" means either a "Business Account" or a "Personal Account".

"Business Account" is an account held at a business address for the purpose of conducting business.

"Personal Account" is an account for use by an individual for purposes other than business.

"Processes" means bots, server processes such as ftp, telnet, http, ssh, smtp, pop3, etc. running on an automatic or manual basis, or any activity that involves the provision of data, computing services or communications services by one User to another User on an automatic or manual basis.

"Commercial Web Pages" are web pages promoting or advertising a service, product or an entity for sale or hire.

"Modem" means a wireless bridge, PCMCIA card or any other device used to gain access to service.

## **DISCLAIMER**

It is possible that users will experience problems, including but not limited to slow or intermittent connections, service outages, unreliable connections, and issues related to configuration, security and LompocNet-provided equipment.

No warranties as to quality, fitness for purpose or otherwise are given and under no circumstances should the User assume the service itself or any particular level or quality of service will be available.

The User expressly agrees that use of the service is at the User's sole risk. The service is provided on an "as is" and "as available" basis.

Lompoc exercises no control over the content of the information passing through Lompoc. As a User, User is fully responsible for the privacy of, content of and liability of User's own communications. Persons or organizations, including Users who publish materials and information which are accessible through Lompoc are solely responsible for the content of such material and information and are solely responsible to know and comply with all laws applicable to the publication of such materials and information. Lompoc does not accept responsibility for the content of materials and information published by others which are accessible through the Lompoc networks and Lompoc will not and shall not be responsible for the violation of any laws resulting from such publication.

With the exception of information specifically authorized by or created by or on behalf of Lompoc, Lompoc does not develop or publish, nor does Lompoc review, censor or edit the materials and information which are accessible through Lompoc, or the materials and information which are accessible through other computer networks which may be connected to Lompoc. Lompoc does not censor, limit or control the information that comes in or out of Lompoc's system, except in accordance with the provisions of this Agreement and applicable law.

An Account shall be held in the name of a User identified on the Lompoc utility bill or identified on the credit card or other financial instrument tendered for the purpose of payment for Service.

If User is dissatisfied with the Service or with any terms, conditions, rules, policies, guidelines or practices of Lompoc in operating the Service, User's sole and exclusive remedy is to discontinue using the Service.

Your Account may be used by yourself, members of your immediate family or an Authorized Representative of your company. Use of your Account by someone other than yourself, your family members or an Authorized Representative of your company may cause your service to be terminated.

Processes run by your Account must be run interactively. Unattended processes will be terminated.

Operation of bots, port scanners or denial of service (DOS) tools and spamming are also strictly prohibited.

## **LOMPOC SERVICES**

Lompoc Services are provided on an available basis and Lompoc makes no warranties of any kind, whether express or implied, in connection with the products or Services provided hereunder. LOMPOC SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Neither Lompoc nor any of its officers, employees, directors, agents or staff shall be responsible for or liable for any damages you may suffer or others may suffer, which arise out of or relate in any way to this Agreement or the use of services of others provided hereunder. This includes, but is not limited to, any liability for lost profits, loss of opportunity, loss of data, or any other loss including that which may result from any use, misuse, delay, non-deliveries, missed deliveries, service

interruptions, negligence, errors or omissions. Use of any information obtained via Lompoc's network is at User's own risk. Lompoc specifically denies any responsibility for the accuracy or quality of information obtained through Services.

## **SYSTEM USE POLICIES**

It is the responsibility of all Lompoc Users and their family members or Authorized Representatives or any others who have access to Lompoc and the Services provided pursuant to this Agreement and to the networks of other providers, to comply with the Lompoc Service Agreement and Acceptable Use Policy and the acceptable use policies governing those networks. It is the responsibility of all Users and others who have access to Lompoc to:

1. Use Lompoc's Facilities, Services or resources in a manner which does not violate any applicable laws or regulations;
2. Respect the privacy of other Users and to not intentionally seek information on, obtain copies of or modify files, other data or passwords belonging to other Users without permission;
3. Respect the legal protection provided by copyright, trademark, licenses and other laws to programs, data and documents. Users may not upload by means of Lompoc any data or software that is subject to distribution or copyright limits. Users have the sole liability for any data or software uploaded by means of Lompoc;
4. Minimize un-authenticated or anonymous access accounts and, the transmission or distribution of messages or articles from those accounts;
5. Use Lompoc's Facilities, Services or resources in a manner which does not interfere with or disrupt other network users, services or equipment. Such interference or disruption includes, but is not limited to:
  - a. Wide-scale distribution of messages or unsolicited e-mail (spam) to inappropriate forums, mailing lists or e-mail addresses through Lompoc or another provider.
  - b. Using an account on Lompoc as a mail drop for responses to spam, or using spam to draw attention to a web site housed within Lompoc's networks or on a server connected to Lompoc's networks;
  - c. Propagation of computer worms or viruses;
  - d. Use of the network to make unauthorized entry to other computational, information or communications devices or resources. This includes unauthorized security probing activities or other attempts to evaluate the security integrity of a network or host system without permission.
  - e. Knowingly or unknowingly maintaining an open proxy server or mail server connected to Lompoc's networks which allows unauthenticated access or an open mail relay; or any server process such as http, httpd, https, ftp, telnet, ssh and any other such processes; or any other such Processes as defined above and

LompocNet will conduct regular scans to detect these processes and will take steps to terminate the process if found.

- f. Knowingly or unknowingly allowing someone other than yourself, members of your immediate family or an Authorized Representative of your company to access Services or Facilities provided by Lompoc or otherwise redistributing Services provided by Lompoc anywhere outside of the address of record for an Account.
- g. Use of excessive bandwidth as determined by Lompoc in its sole discretion.

## **ACCOUNT SUSPENSION, TERMINATION AND CONDITIONS**

Unless under contractual obligation, Lompoc Users have the right to cancel their Accounts at any time, for any reason.

Lompoc reserves the right to suspend and/or cancel any Lompoc Account in accordance with the provisions of this Service Agreement and Acceptable Use Policy or for any reason not prohibited by law.

User agrees to allow Lompoc to bill his or her credit card on each successive billing date without obtaining User's permission after the initial charge. A credit card User shall notify Lompoc of any changes in credit card number or expiration date. If the card is not honored for any reason, Lompoc will attempt to notify the cardholder by E-mail or by other information provided by the cardholder at signup. Lompoc will attempt to contact the cardholder, and if alternative billing has not been established, the account will be terminated.

If your Account is suspended or interrupted, you are not relieved of the obligation to pay the monthly account charges. Only a written notice to cancel this Agreement relieves you of future charges. If you send us written notice via e-mail we may contact you or your Authorized Representative by phone to confirm your decision to cancel this Agreement. If you cancel this Agreement, payments for pre-paid Service shall not be refunded.

## **BILLING AND PAYMENT FOR SERVICES**

User may be provided with a modem at Service inception which modem shall remain the property of Lompoc. Upon termination of Services for any reason, modem must be returned to Lompoc within ten (10) days of termination of Services. Failure to return modem in working order or with all included items and packaging materials, or damaging the modem will result in a charge of \$95.00 per modem fee, or such other fee as Lompoc may set.

All Accounts will be billed monthly for service in advance and same shall be billed with the monthly Lompoc Utility Bills or credit card or other financial instrument provided by User. All invoices are due and payable as set forth on the Lompoc Utility Bill statement. The billing cycle shall be monthly. Service may be terminated for non-payment.

Lompoc may terminate unattended or inactive connections. The User shall be responsible for any connection overage charges resulting from extended usage or failure to disconnect.

## **ENFORCEMENT AND VIOLATIONS**

It is acknowledged that Lompoc does not review, censor or edit the materials and information which is accessible on Lompoc's network or other networks which may be connected to the Lompoc network; and, if Lompoc becomes aware that a User is in violation of any law or this Service Agreement and Acceptable Use Policy, Lompoc reserves the right to terminate service and any evidence of illegal or prohibited activities by User may be disclosed to the proper law enforcement authorities.

## **MISCELLANEOUS**

This Agreement is strictly confidential and is not transferable or assignable without prior written consent of Lompoc. User agrees that any change in liability for any debts incurred to Lompoc due to a change in User's form of business shall not be effective as to Lompoc unless and until Lompoc receives actual notice of the change by certified mail.

In the event Lompoc should commence any action or actions or otherwise seek to enforce this Agreement against User, User agrees to pay reasonable attorney(s) fees, court costs, collection fees and other expenses incurred by Lompoc, whether or not suit is actually filed.

## **REQUESTING SERVICE**

Service by any User may be requested in the following manner: (i) execution of an order form; (ii) completion of an order entry web page; or (iii) submission of another form of oral or written request for service; and any such request, regardless of form, will be confirmed upon Lompoc's acceptance of such request, by a Service confirmation statement provided to User by Lompoc. The following terms and conditions govern all dealings between Lompoc and the User with respect to all products and services furnished or to be furnished to User by Lompoc. Additional terms and conditions applicable to particular products and Services may appear on any corresponding order form, order entry web page, or service confirmation statement. The term "this Agreement" refers to and includes the terms and conditions contained in this sheet along with any applicable order form, order entry web page or Service confirmation statement.

By signing the order form, clicking the I ACCEPT button on the order entry web page or by keeping and/or using the Services, User acknowledges and agrees to the terms and conditions contained in this Agreement. If User does not agree to all of these terms and conditions, it must discontinue use of the Services and promptly notify Lompoc of its rejection of the terms and conditions. Lompoc reserves the right to change, modify and/or remove portions of these terms and conditions at any time. Lompoc may, at its discretion, provide User with a written notice of any such changes, and post the changes on Lompoc's web site (Currently accessible at <http://www.LompocNet.com>). For accounts of a term other than month-to-month, the version of this Agreement in effect as of the date of initiation of the initial term or any renewal term shall apply to the applicable term and this Agreement may be modified only upon the separate acknowledgement of such modifications by User.