

## **Rainbow Communications Internet Acceptable Use Policy**

You are accessing the Internet through a connection ("Internet") operated on behalf of Rainbow Communications, a provider of dial-up and high speed internet access (the "Service"). You may use the Service only if you agree to the following terms of service ("Agreement") each time you access the Service. If you agree with and accept the Agreement, then you are allowed to use the connection ("Internet"). If you do not agree with what you read below, then you will not be able to use the Service and you may not connect to the network again until such time that you do agree with the following terms and conditions. This Agreement was last revised on November 22, 2006.

### **Access to the Service**

The Service is provided by Rainbow Communications who provide Internets and bandwidth ("Rainbow Communications"). Your access to the Service is completely at the discretion of Rainbow Communications, and your access to the Service may be blocked, speed downgraded, suspended, or terminated at any time for any reason including, but not limited to, violation of this Agreement, actions that may lead to liability for Rainbow Communications, disruption of access to other Users or networks, and violation of applicable laws or regulations. Rainbow Communications may revise this Agreement at any time. You must accept this Agreement each time you use the Service and it is your responsibility to review it for any changes each time.

### **Acceptable Use of the Service**

Rainbow Communications supports the free flow of information and ideas over the Internet. Although Rainbow Communications has and accepts no obligation to monitor your use of the Service nor edit or censor content transmitted (via e-mail, downloading, uploading, posting, or otherwise) through the Service, your access to the Service is conditioned on legal and appropriate use of the Service. Your use of the Service and any activities conducted online through the Service shall not violate any applicable law or regulation or the rights of Rainbow Communications, or any third party.

### **The use of the Service for the following activities is prohibited:**

**Spamming and Invasion of Privacy:** Sending of unsolicited bulk and/or commercial messages over the Internet using the Service or using the Service for activities that invade another's' privacy. **Intellectual Property Right Violations:** Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including patents, copyrights, trademarks, service marks, trade secrets, or any other proprietary right of any third party. **Obscene or Indecent Speech or Materials:** Using Rainbow Communications network to advertise, solicit, transmit, store, post, display, or otherwise make available obscene or indecent images or other materials. Rainbow Communications will notify and fully cooperate with law enforcement if it becomes aware of any use of the Service in any connection with child pornography or the solicitation of sex with minors. **Defamatory or Abusive Language:** Using the Service to transmit, post, upload, or otherwise making available defamatory, harassing, abusive, or threatening material or language that encourages bodily harm, destruction of property or harasses another. **Forging of Headers:** Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message. **Hacking:** Accessing illegally or without authorization computers, accounts, equipment or networks belonging to another party, or attempting to

penetrate security measures of another system. This includes any activity that may be used as a precursor to an attempted system penetration, including, but not limited to, port scans, stealth scans, or other information gathering activity. Distribution of Internet Viruses, Trojan Horses, Spyware, or Other Destructive Activities: Distributing information regarding the creation of and sending Internet viruses, worms, Trojan Horses, pinging, flooding, mail bombing, or denial of service attacks. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the Internet or any connected network, system, service, or equipment. Facilitating a Violation of this Agreement of Use: Advertising, transmitting, or otherwise making available any software product, product, or service that is designed to violate this Agreement, which includes the facilitation of the means to spam, initiation of pinging, flooding, mail bombing, denial of service attacks, and piracy of software. Export Control Violations: The transfer of technology, software, or other materials in violation of applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations and Executive Orders. Other Illegal Activities: Using the Service in violation of applicable law and regulation, including, but not limited to, advertising, transmitting, or otherwise making available ponzi schemes, pyramid schemes, fraudulently charging credit cards, pirating software, or making fraudulent offers to sell or buy products, items, or services. Resale: The sale, transfer, or rental of the Service to customers, clients or other third parties, either directly or as part of a service or product created for resale. Notice of Violations of the AUP. Rainbow Communications requests that anyone who believes that there is a violation of the AUP direct the information to: <mailto:abuse@rainbowtel.net> Agent to Receive Notification of Copyright Infringement Claims. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material posted on Internet sites infringes their rights under U.S. copyright law. If you believe in good faith that items, information or other materials appearing on the Service infringes your copyright, you (or your agent) may send Rainbow Communications Designated Agent a notice requesting that the item, information or material be removed, or access to it blocked. You can contact Rainbow Communications Designated Agent at: [abuse@rainbowtel.net](mailto:abuse@rainbowtel.net)

### **Disclaimer**

You acknowledge (i) that the Service may not be uninterrupted or error-free; (ii) that viruses or other harmful applications may be available through the Service; (iii) that Rainbow Communications does not guarantee the security of the Service and that unauthorized third parties may access your computer or files or otherwise monitor your connection; (iv) that Rainbow Communications ability to provide the Service without is based on the limited warranty, disclaimer and limitation of liability specified in this Section and it would require a substantial charge if any of these provisions were unenforceable. **THE SERVICE AND ANY PRODUCTS OR SERVICES PROVIDED ON OR IN CONNECTION WITH THE SERVICE ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND. ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE CONTENT OR SERVICE AND THE OPERATION, CAPACITY, SPEED, FUNCTIONALITY, QUALIFICATIONS, OR CAPABILITIES OF THE SERVICES, GOODS OR PERSONNEL RESOURCES PROVIDED HEREUNDER, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY RAINBOW COMMUNICATIONS, OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF**

SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

**No Consequential Damages**

UNDER NO CIRCUMSTANCES WILL RAINBOW COMMUNICATIONS, THEIR SUPPLIERS OR LICENSORS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND AFFILIATES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF CUSTOMER, ITS APPOINTEES OR ITS OR THEIR CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, UNAUTHORIZED ACCESS, DAMAGE, OR THEFT OF YOUR SYSTEM OR DATA, CLAIMS FOR LOSS OF GOODWILL, CLAIMS FOR LOSS OF DATA, USE OF OR RELIANCE ON THE SERVICE, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, OR DAMAGE CAUSED TO EQUIPMENT OR PROGRAMS FROM ANY VIRUS OR OTHER HARMFUL APPLICATION), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY THAT RAINBOW COMMUNICATIONS MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED \$100. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS SECTION WILL NOT APPLY ONLY IF AND TO THE EXTENT THAT THE LAW OR A COURT OF COMPETENT JURISDICTION REQUIRES LIABILITY UNDER APPLICABLE LAW BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS.

**Indemnity**

You agree to indemnify and hold harmless Rainbow Communications and its and their suppliers and licensors, officers, directors, employees, agents and affiliates from any claim, liability, loss, damage, cost, or expense (including without limitation reasonable attorney's fees) arising out of or related to your use of the Service, any materials downloaded or uploaded through the Service, any actions taken by you in connection with your use of the Service, any violation of any third party's rights or an violation of law or regulation, or any breach of this agreement. This Section will not be construed to limit or exclude any other claims or remedies that Rainbow Communications may assert under this Agreement or by law.

**Arbitration**

You agree to submit any and all controversies or claims arising out of or relating to this Agreement or the existence, validity, breach or termination thereof, whether during or after its term, to the American Arbitration Association ("AAA") for final disposition by compulsory arbitration under AAA's Commercial Arbitration Rules and Supplementary Procedures for Commercial Arbitration. The arbitrator may, at either party's request, grant injunctive relief. The arbitral award will be the exclusive remedy of the parties for all claims, counterclaims, issues or accountings presented or plead to the arbitrator. Judgment upon the arbitral award may be entered in any court that has jurisdiction thereof. Any additional costs, fees or expenses incurred

in enforcing the arbitral award will be charged against the party that resists its enforcement. Nothing in this Section will prevent the parties from seeking interim injunctive relief against one another.

**Interpretation**

This Agreement shall not be construed as creating a partnership, joint venture, agency relationship or granting a franchise between the parties. This Agreement will be governed by and interpreted in accordance with Kansas law, excluding its conflict of law principles. Except as otherwise provided above, any waiver, amendment or other modification of this Agreement will not be effective unless in writing and signed by the party against whom enforcement is sought. If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement. Rainbow Communications performance of this Agreement is subject to existing laws and legal process, and nothing contained in this Agreement shall waive or impede Rainbow Communications right to comply with law enforcement requests or requirements relating to your use of this Service or information provided to or gathered by Rainbow Communications with respect to such use. This Agreement constitutes the complete and entire statement of all terms, conditions and representations of the agreement between you and Rainbow Communications with respect to its subject matter and supersedes all prior writings or understanding.