

## END USER AGREEMENT

### THIS AGREEMENT IS YOUR CONTRACT FOR INTERNET SERVICE. PLEASE READ CAREFULLY.

An NEP Internet customer ("Customer") enters into a service agreement ("Agreement") by virtue of using the products and/or services of NEP Internet. Continued use of the products and/or services of NEP Internet will confirm acceptance by Customer of this Agreement and any revisions that may periodically be made to the Agreement and Customer agrees to be bound by the terms of this Agreement. This Agreement is being posted on the NEP Internet website at [www.nep.net](http://www.nep.net) and is also available to Customer upon request. Should Customer have any questions about this Agreement, Customer should refer to the contact information at the end of this Agreement.

#### Terms and Conditions

THIS AGREEMENT is entered into between The North-Eastern Pennsylvania Telephone Company d/b/a NEP Internet ("NEP Internet" or "Company") and the person or entity that subscribes to and/or makes use of NEP Internet services and/or products ("Customer") and is subject to acceptance by Company. Customer's acceptance is limited to the terms and conditions of the Agreement. No additions to or deletions from the terms and conditions of this Agreement by Customer are acceptable unless and until expressly and mutually agreed upon in writing by both Company and Customer.

1. PROVISION OF SERVICE. Company shall provide and Customer shall accept Internet Service (all Internet related services, whether dial-up or Digital Subscriber Line ("DSL"), and equipment provided by Company offered herein and hereinafter defined as "Service") at the applicable rates and charges, subject to the terms and conditions specified in this Agreement. Company shall, at its discretion, provide Customer with an Internet access account ID(s) and phone number(s) and equipment, where needed, by which the Customer may use Company's Service. Customer shall not have any proprietary right to the Internet access account ID(s) and phone number(s) provided to it by Company. The Service and charges related thereto under the terms and conditions of this Agreement are related solely to Internet access and do not include services or charges associated with the provision of telephone service, including long distance charges, if any, which are the separate responsibility of Customer. **For dial-up customers, it is the responsibility of Customer to determine the appropriate local dial-up access number to use in order to avoid toll usage charges being assessed by the telephone company when using Service. A dial-up access number that results in a local call for one user may result in a toll call - and significant charges from the telephone company - to another user depending on where the user is located. Questions regarding whether your dial-up access number results in a local call or a toll call should be directed to your local telephone company.** The terms and conditions contained herein supersede all previous representations, understandings or agreements and shall supersede any other terms and

conditions of any order submitted or prior price quoted. Except as otherwise agreed by Company in writing, Company reserves the right to revise, in its sole discretion, the rates, terms, and conditions of this Agreement with Customer upon at least 30 days' written notice to the Customer, such notice to be given at least 30 days prior to the end of the then current contract term. See numbered Paragraph 21 herein. Customer agrees to pay for Service pursuant to such revised rates, terms and conditions, unless Customer terminates this Agreement in accordance with the terms and conditions of this Agreement. Company reserves the right to assign, designate or change access account ID(s) and phone number(s), where applicable, when, in its sole discretion, such assignment designation or change is reasonable or necessary in the conduct of its business. Service is subject to transmission limitations caused by atmospheric, topographical and any other like conditions. Actual DSL speeds may vary. Throughput speeds can vary based on operating system or internet congestion among other factors. Additionally, Service may be temporarily refused, limited, interrupted or curtailed due to government regulations or orders, system capacity limitations, limitations imposed by an underlying communication carrier, or because equipment modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of Company's Service.

2. USE OF SERVICE AND EQUIPMENT. Service and equipment are furnished by Company for use by Customer for any lawful purpose and any such equipment is to be used solely in conjunction with the provision of Service. Customer warrants Customer is at least 18 years of age. Should Company find that Customer is not at least 18 years of age, Company may terminate Service without notice to said Customer.
3. CUSTOMER SERVICE REQUESTS. Applications for activation of Service may be initiated by telephone and will be accepted in writing via facsimile transmission, U.S. mail, or in person at the Company office. Requests for change of Service will be accepted by telephone as well as by fax, mail or in person.
4. PRIVACY RIGHTS. Customer acknowledges and agrees that there are limited technical means available to provide privacy and security on the Internet. NEP Internet will not intentionally disclose customer identity or the contents of private files to third parties without Customer's written permission or court order, subpoena or as may otherwise be required by law. NEP Internet maintains no obligation to monitor the Service, but may do so and may disclose information regarding the use of the Service by a Customer for any reason if NEP Internet, at its sole discretion, determines that it is reasonable to do so, including but not limited to: satisfy laws, regulations or governmental or legal requests; operate the Service properly; or protect itself and its members. However, NEP Internet reserves the right to inspect electronic mail ("e-mail") if necessary to debug electronic mail software or to reroute electronic mail that has been misaddressed or misrouted. System administration tasks may also expose the contents of Customer's files to NEP Internet personnel. For its part, Customer recognizes that there are unscrupulous people who know how to circumvent system security. Accordingly, Customer agrees to guard its password(s) carefully by treating it as

private and confidential information, move private and important files to its own system if possible, and not send by e-mail or keep online anything that it does not want read by others.

5. COOPERATION WITH LAW ENFORCEMENT. NEP Internet will cooperate with other system administrators and with law enforcement officials in the legitimate investigation of suspicious activity. Intentional violations of privacy of other users by Customer, whether on the NEP Internet system or at another site, will be grounds for immediate termination of Customer's Service and may make Customer subject to civil or criminal penalties.
6. RESALE AND SHARING RESTRICTIONS. The sharing of passwords or accounts is strictly prohibited and violators are subject to the cancellation of such Customer's Service without prior notice. The resale of the Service or any other associated services by any and all means is restricted unless approved in advance in writing by NEP Internet. All NEP Internet Service accounts, whether for individual or business customers, are single user/station accounts. Sharing the account with persons other than family members residing in an individual Customer's household, whether for compensation or otherwise, is strictly prohibited.
7. LIMITATION OF COMPANY'S LIABILITY.
  - (a) Customer understands that alternative and competing Internet communications carriers may be available to Customer; occasional interruption or irregularities in the Service may occur; any potential harm from interruptions or irregularities in the Service is speculative in nature; Company cannot offer the Service at rates which reflect its value to each Customer; and Company assumes no responsibility other than that contained in this Agreement. Accordingly, Customer agrees that except as limited by law, Company's sole liability for loss or damage arising out of mistakes, omissions, interruptions, delays, errors, or defects in the Service or transmission of Service provided by Company or any underlying communications carrier, or for losses or damages arising out of the failure of Company or any underlying communications carrier to maintain proper standards of maintenance and operation, including any indirect, incidental, exemplary, multiple, special, punitive, or consequential damages, whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Company has been advised of the possibility of such damage, shall be as follows:
    - (i) A credit allowance as described in subsection 7(a)(iii) below, will be made at the Customer's request in the form of a pro-rata adjustment of the fixed monthly charges billed to the Customer. Fixed monthly charges are the monthly charges for access and optional features per access account ID, all as described in the schedule of rates and charges in effect at the time of interruption.

- (ii) Such credit allowance will be based upon the period of the time which such mistakes, omissions, delays, errors or defects in the Service or its transmission caused interruptions in the rendering of the Service. Any such period of time an interruption occurs will be measured from the time it is reported to Company. In the event Customer is affected by such interruption for a period of less than 24 hours, no such adjustment shall be made. When an interruption exceeds 24 hours, the length of the interruption will be measured in 24 hour days, a fraction of a day consisting of less than 12 hours will not be credited, but a period of 12 hours or more will be considered an additional day.
  - (iii) The credit allowance will be computed by dividing the length of the service interruption by a standard 30-day month and then multiplying the result by Company's fixed monthly charges for each interrupted access account ID. In no case will the credit exceed the fixed monthly charges.
  - (iv) A credit allowance will not be given for mistakes, omissions, interruptions, delays, errors or defects, or curtailments in the Service caused by the negligence or willful act of Customer or other parties, or mistakes, omissions, interruptions, delays, errors or defects caused by failure of equipment or service not provided by Company.
  - (v) The Service furnished by Company, in addition to the limitations set forth preceding, is also subject to the following limitation: the liability of Company for loss or damage arising out of mistakes, omissions, interruptions, delays, errors or defects in the Service, its transmission or failures or defects in facilities of the underlying communications carrier, occurring in the course of furnishing Service and not caused by the negligence of the authorized user, or the underlying communications carrier in the failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision, shall in no event exceed an amount equivalent to the proportionate fixed monthly charge to the authorized user for Service during the period of time in which such mistakes, omissions, interruptions, delays, errors, or defects in Service, its transmission, or failures or defects in facilities furnished by Company or the underlying communications carrier occurred.
- (b) Company shall in no event be liable for Service or equipment interruptions or delays in transmission, errors or defects in Service or equipment, when caused by acts of god, fire, riots, government authorities, default of supplier, or other causes beyond Company's or any underlying communication carrier's control.

- (c) Customer acknowledges that Internet systems, including Company's Service, use public access facilities to transmit voice and data communications and that the Service may not be completely private. Company is not liable to Customer for any claims, loss, damages or costs which may result from lack of privacy on the system.
- (d) Customer acknowledges that Internet systems, including Company's Service, may carry material which may be considered abusive, profane or sexually offensive and that Company is not liable to Customer for any claims, loss, damages, or cost which may result from such material.
- (e) Because some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, Company's liability in such jurisdictions shall be limited to the extent permitted by law.
- (f) Customer hereby agrees to indemnify and save Company harmless against claims for libel, slander, or infringement or copyright from the material in any form over its facilities by Customer or those using Customer's equipment; against claimed for infringement of patents arising from combining or using apparatus or systems of Customer with the facilities of Company or any communication carrier; and against all other claims arising out of any act or omission of Customer in connection with the facilities or service provided by Company.

8. DISCLAIMER OF WARRANTIES AND LIMITATION OF REMEDIES.

- (a) Customer acknowledges and agrees that Company is not the manufacturer of equipment and Internet package software, and Company hereby disclaims all representations and warranties, direct or indirect, express and implied, written or oral, in connection with the equipment or Service or internet package software (whether purchased or leased by Customer from Company or another), including but not limited to any and all express and implied warranties of suitability, durability, merchantability, and fitness for a particular purpose. Company to the extent permitted by law assigns to Customer any and all manufacturers' warranties relating to equipment or Internet package software purchased by Customer, and Customer acknowledges receipt of any and all such manufacturers' warranties.
- (b) Customer acknowledges and agrees that its sole and exclusive remedy in connection with any defects in the equipment or software including manufacture or design, shall be against the manufacturer of the equipment or software under the manufacturer's warranties and that Company shall have no liability to Customer in any event for any loss, damage, injury, or expense of any kind or nature related directly or indirectly to any equipment or software or service provided hereunder, without limiting the above, Company shall have no liability or obligation to Customer, in either contract or tort, for special, incidental, or consequential

damages of any kind incurred by Customer, such as, but not limited to, claims or damages for personal injury, wrongful death, loss of use, loss of anticipated profits, or other incidental or consequential damages or economic losses of any kind incurred by Customer directly or indirectly resulting from or related to any equipment or service or software described hereunder, whether or not caused by Company's negligence, to the full extent same may be disclaimed by law. Any references to equipment or software in this package shall be deemed to apply to all equipment or software purchased by Customer or leased by Customer from Company or another lessor. Some states do not allow the exclusion or limitation of incidental or consequential damages so the above exclusion may not apply. You may also have other legal rights, which vary from state to state.

- (c) Except for certain products and service specifically identified as being offered by Company, Company does not control any material, information, products, or service on the Internet. The Internet contains unedited materials, some of which are sexually explicit or may be offensive to Customer. Company has no control over and accepts no responsibility for such materials. The Company is not responsible for any content transmitted via the Service. Customer assumes full responsibility and risk for use of the Service and the Internet and is solely responsible for evaluating the accuracy, completeness, and usefulness of all service, products, and other information, and the quality and merchantability of all merchandise provided through the Service or the Internet.
  - (d) The Service is provided on an "AS IS" and "AS AVAILABLE" basis. Company does not warrant that the Service will be uninterrupted, error-free or free of viruses, or other harmful components. Company makes no express warranties and waives all implied warranties including, but not limited to, warranties of title, non-infringement, merchantability and fitness for a particular purpose regarding any merchandise, information or service provided through Company or the Internet generally. No advice or information given by Company or its representatives shall create a warranty.
9. **INDEMNIFICATION AND RELEASE.** Customer agrees to release, defend, indemnify and hold harmless Company, its officers and employees, to the full extent permitted by law from and against any and all claims, damages, liabilities and expenses, including legal and attorney fees, of any nature arising directly or indirectly out of this Agreement, including, without limitation, claims for personal injury or wrongful death to Customer or users of the equipment, products or services provided by Company or sued in conjunction with such equipment, products or services provided by Company and arising out of the manufacture, purchase, operation, condition, maintenance, installation, return or use of the equipment or service, or arising by operation of law, whether the claim is based in whole or in part on negligent acts or omissions of Company, its agents or employees. Company reserves the right, at its own expense to assume the

exclusive defense and control of any matter otherwise subject to indemnification by Customer, in which event Customer will cooperate with Company in asserting any available defenses.

10. CUSTOMER INFORMATION. Customer acknowledges that by its nature, use of the Internet means that certain information about Customer and its activities may be visible to other users through well known system commands. Accordingly, such information will be treated as public information. This includes Customer's name, the fact that Customer has an account, when and for how long Customer is logged in, and the commands Customer runs.
11. CONTENT. NEP Internet, by providing the Service does not, in any way, control or edit the content of any material placed on the Internet by its Customers or any third parties, nor does it in any way control, limit or edit the material or its content which Customer may access or become exposed to on the Internet. Customer is solely responsible for any information which it places on the Internet, which it accesses on the Internet or which it uses through the Service; in particular, Customer is solely responsible for the legality of any such information or the access or use thereof. Customer agrees to fully comply with the **Acceptable Use Policy**, attached hereto as Schedule A. Customer also agrees not to publish, on or over the Internet, content which violates or infringes upon the rights of any other. Customer agrees not to send unsolicited electronic mail to Company's subscribers without Company's explicit written permission for each instance of communication. If Company is challenged by any third party regarding the suitability of Customer's content Company may, at its sole discretion, delete Customer's content from its Service. NEP Internet may immediately remove Customer's material or information from NEP Internet's servers, in whole or in part, which NEP Internet, in its sole and absolute discretion, determines to infringe another's property rights or to violate the Company's Acceptable Use Policy. Some information accessible on the Internet may be offensive either because of its content (including sexually explicit material), or the language used in expressing ideas. Customer is solely responsible for choosing to view or not view any material it accesses on the Internet. In addition, some content may not be appropriate for minors. Customer is solely responsible for overseeing use of Service by minors or for taking such action as may be deemed appropriate by Customer to restrict, in full or in part, access to Service. NEP Internet, its employees and agents expressly disclaim any and all liability from all claims for damages arising out of, or claimed to arise out of, encountering any such material.
12. INTELLECTUAL PROPERTY RIGHTS.
  - (i) Company grants to each Customer a limited, non-exclusive, non-transferable and non-assignable license to install and use the Company's access software (including software from third-party vendors that Company distributes)(in object code format), its associated documentation, and any updates thereto ("Licensed Programs") in order to access and utilize the Service. Each Customer agrees to use the

Licensed Programs solely in conjunction with the Service and for no other purpose. Company may modify the Licensed Programs at any time, for any reason, and without providing notice of such modification to Customer.

- (ii) The Licensed Programs constitute confidential and proprietary information of Company and/or Company's licensors and embody trade secrets and intellectual property protected under United States copyright laws, other laws, and international treaty provisions. All right, title, and interest in and to the Licensed Programs, including associated intellectual property rights, are and shall remain with Company and/or Company's licensors. Customer shall not translate, decompile, reverse engineer, distribute, remarket or otherwise dispose of the Licensed Program or any part thereof. Customer may not download, use or otherwise export, or re-export the Licensed Programs or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations. By installing or downloading the Licensed Programs, Customer represents and warrants that Customer is not located in, under the control of or a national or resident of any country on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders.
  - (iii) Some material available on the Internet may be copyrighted or constitute a trade secret, and some material may have been placed on the Internet in violation of U.S. or other copyright laws. Customer is solely responsible for determining the legal status of any intellectual property it uses or duplicates using the Service. Any use by Customer of the Service for unlawful purposes will constitute grounds for NEP Internet to immediately terminate Customer's Service.
13. **RATES.** Current rates for Service and related fees, including setup fees, can be accessed by telephone at (570) 785-3131 or on-line at [www.nep.net](http://www.nep.net). **Basic rates for Service are billed and payable in advance.** Charges for usage, if not included in basic rates, are billed in arrears.
14. **BILLING.** Customer's billing period begins on the first day of each month and ends on the last day of each month. The Company will furnish a bill to Customer on a monthly basis by U.S. mail to Customer's last known address as stated in the Company's records. Customer agrees to provide NEP Internet with any change of Customer's billing address. All charges billed will be considered valid unless disputed in writing within twenty (20) days of the date of the bill.
15. **PAYMENT.** Customer is responsible for all charges related to Customer's Service account. Customer payments of monthly bills are due within twenty (20) days from the date of mailing of said bill. Payments in the form of business or personal check may be made payable to "NEP Telephone Company". Payment should be mailed to: The North-Eastern Pennsylvania Telephone Company, P.O.

Box D, Forest City, PA 18421 or made in person at the Company's office located at 720 Main Street, Forest City, Pennsylvania. Customer will include Service account number with payment. Customer will be charged a returned check charge for each check returned by a bank for non-sufficient funds. See Paragraph 13, Rates. All NEP Internet charges not paid in full by the due date of the bill may be subject to a monthly late payment charge of the lesser of 1.25% or the highest rate permitted by law of the outstanding balance. If any amount remains unpaid for a period of more than twenty (20) days after the due date of the bill, NEP Internet shall have the right to suspend or terminate Service. Such suspension or termination of Service does not relieve Customer of the obligation to pay all of Customer's account charges. Customer further agrees to pay all charges for all products and services furnished by Company, including all service fees, connection charges, sales and use taxes, duties, or levies which are required by law as well as all attorney and collection fees arising from efforts to collect any unpaid balance on Customer's account. In the event that equipment furnished to Customer by Company is lost, stolen or otherwise absent from Customer's possession and control, Customer shall nonetheless be liable for all use and other charges attributable to the Internet access account ID until such time as Company is notified of the loss, theft, or other occurrence. Unless otherwise agreed by the Company, Customer shall be responsible for all outstanding charges for Service rendered and shall be responsible for all charges through the end of the billing cycle within which termination occurs, without proration of any such charge.

16. **SUSPENSION.** If Company has failed to pay any underlying service provider all amounts owing for Customer's account - whether or not Customer has paid Company - Customer's account will be subject to suspension or cancellation until Customer or Company has paid all amounts due.
17. **REACTIVATION.** If Customer's Service is terminated for any reason and Customer subsequently meets the credit/deposit requirements for reactivation as set by NEP Internet, Customer may reactivate Service for the first time at no charge. In case of any subsequent reactivation, NEP Internet may charge Customer a reactivation fee. See Paragraph 13, Rates.
18. **INVOLUNTARY TERMINATION FOR MISUSE OR NONPAYMENT.** NEP Internet reserves the right to immediately terminate Service of any Customer who jeopardizes the efficiency of the system by sending unsolicited commercial e-mail or posting commercial messages to inappropriate newsgroups, for the unlawful tracking of access codes, credit card numbers or similar information or for nonpayment of amounts due as stated in Paragraph 15. All use of the Service must conform to the restrictions associated with Customer's account as set forth herein and as set forth in the attached Acceptable Use Policy. NEP Internet reserves the right to terminate the Service if Customer violates such restrictions. NEP Internet may terminate Service at any time upon any violation by the Customer of any of the terms and conditions contained herein. Otherwise, NEP Internet may terminate Service upon thirty (30) days prior written notice to

Customer. If Customer's account includes space on NEP Internet's server, Customer acknowledges that anything stored in this space will be deleted upon termination of Service.

19. VOLUNTARY TERMINATION. Customer may cancel Service at any time by calling (570) 785-3131 or by providing written notice to NEP Internet of Customer's intention to terminate Internet access service (Service) by e-mail to [nep@nep.net](mailto:nep@nep.net) or by U.S. Mail to The North-Eastern Pennsylvania Telephone Company, P.O. Box D, Forest City, PA 18421. Customer will be responsible for paying the cost of the Service incurred on a prorated basis.
20. DEFAULT AND WAIVER.
  - (a) In the event that Customer shall default in the payment when due of any sum due hereunder, or in the event of any default or breach of the terms and/or conditions of this Agreement, or if any proceeding in bankruptcy, receivership or insolvency or petition for receivership shall be instituted by or against Customer, Company, at its option, may:
    - (i) Proceed by appropriate court action or actions to enforce performance by Customer of the applicable covenants and terms of this Agreement or to recover damages for the breach thereof; and/or
    - (ii) Terminate this Agreement, whereupon all rights and interests of Customer shall terminate and Customer shall remain liable for all Services provided.
  - (b) Customer shall pay to Company on demand any and all past due amounts which Company may sustain by reason of such default or breach by Customer, together with all other charges as provided by this Agreement, reasonable attorney's fees incurred by Company in connection with such breach or default and all other costs and expenses incurred by Company in collecting such amounts. All amounts shall be payable by Customer without set off or deduction of any kind.
  - (c) The remedies provided in favor of Company in the event of default shall not be deemed to be exclusive but shall be in addition to all other remedies in its favor existing at law.
  - (d) No failure on the part of Company to exercise any right or remedy arising directly or indirectly under this Agreement shall operate as a waiver of any right or remedy it may have nor shall an exercise of any right or remedy by Company preclude any other right or remedy Company may have.
21. CHANGES IN TERMS. NEP Internet reserves the right to change the rates and otherwise modify the terms and conditions of this Agreement by notifying Customer thirty (30) days in advance of the effective date of such proposed

changes by written notice, e-mail or by posting on the Company's website. If Customer does not request its Service to be terminated, it will be conclusively presumed that Customer consents to the new terms, conditions and rates as so notified.

22. VIRUS PROTECTION. The Internet may contain viruses which, if not eliminated, may destroy all or part of the data contained in Customer's computer. NEP Internet has no control over the existence or elimination of any such viruses. Specifically, NEP Internet is not obligated to provide any filtering or checking of data to eliminate viruses. Customer agrees to provide its own mechanism for checking its computer system for viruses obtained through the Service. Further, Customer agrees not to introduce, knowingly or unknowingly, any virus onto the Internet system or NEP Internet's hosts. Customer will hold NEP Internet, its officers, board members, employees and agents harmless from, and indemnify NEP Internet, its officers, board members, employees and agents for, any damages resulting from any viruses introduced by Customer onto the Internet or into NEP Internet systems.
23. ENTIRE AGREEMENT AND GOVERNING LAW. Customer acknowledges that this Agreement, the Acceptable Use Policy and any other user policies posted on Company's Website constitute the entire Agreement between the parties relating to the services and/or equipment described in this Agreement and that Company and its employees have not made orally or in writing any representations, warranties or agreements inconsistent with the terms of this Agreement. This Agreement supercedes all prior agreements and understandings; both oral and written, with respect to the subject matter hereof. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania. Customer consents to the personal jurisdiction of such courts sitting in said state with respect to such matters between Customer and Company, and Customer waives its rights to removal, or consent to removal.
24. THIRD PARTY BENEFICIARY. Customer agrees that any underlying service provider of Company's Service is a third-party beneficiary of this Agreement and as such is entitled to all the rights and protections afforded by this Agreement to NEP Internet.
25. SEVERABLE PROVISIONS. If any part of this Agreement is contrary or prohibited by or deemed invalid under applicable laws and regulations of any applicable jurisdiction, the remaining provisions and parts thereof shall remain and be construed in full force and effect to the extent permitted by law.
26. RENEWAL AND TERMINATION. Unless Customer and/or Company terminates this Agreement as provided herein, and except as otherwise agreed, upon completion of any initial term of this Agreement, this Agreement shall renew on a month-to-month basis. **Notice of Customer's intent to terminate this Agreement shall be made to Company by phone call or in writing to the**

