

NICHEWARES & CONSULTING, LLC

Internet Service Acceptable Usage Policy

Sep 14, 2009

In order to begin service, you must review the following terms and conditions governing Nichewares' Internet Access Service (Service). These terms and conditions will constitute a binding contract (Agreement) between you (also referred to herein as "client") and Nichewares Internet (Nichewares). They explain Nichewares' obligations to you and your obligations to Nichewares when you use the Service. You agree that your use of the Service constitutes your consent and agreement to all of the following terms and conditions. Any breach of this Agreement by you shall be considered a material breach and allow Nichewares the right to terminate this Agreement with three days' notice.

I) The Service

- A.** Nichewares & Consulting, LLC (hereafter "Nichewares") agrees to provide the undersigned (hereinafter "you") with a nonexclusive, non-transferable, limited license to access the Internet through Nichewares' wireless and wired network facilities.
- B.** Nichewares makes no representation, warranty or promise other than as specifically set forth in this Agreement. All agreements between you and Nichewares are hereby merged herein.
- C.** You agree to pay Nichewares an installation fee of \$100.00.
- D.** You also agree to pay Nichewares a monthly service charge in advance for the monthly period in which those changes are incurred pursuant to the terms of the statement you receive from Nichewares. Said service charge shall be based on the following packages:

	<u>Monthly Fee</u>	<u>Package</u>	<u>Speed (download/upload)</u>
<input type="checkbox"/>	\$50/mo	Standard	2 Mbps/512 Kbps
<input type="checkbox"/>	\$40/mo	Basic	1 Mbps/512 Kbps
<input type="checkbox"/>	\$30/mo	Minimal	768 Kbps/256 Kbps
<input type="checkbox"/>	\$0	Complimentary	_____

Mbps = megabits per second; Kbps = kilobits per second

E. Client Premise Equipment (CPE) Fees

Customer must purchase required CPE as detailed in Exhibit A. CPE purchase may be refunded based on prorated value at time Service is terminated. Prorated value is based on a 1 year period. For example, if initial CPE purchase was \$126, CPE value would decline \$5.25 each month. In this scenario, after 6 months, CPE prorated value would be \$94.50.

F. Support. Nichewares will be responsible for maintaining Internet connectivity from installed client premises equipment (CPE) to the Internet. Connectivity problems originating from the customer's equipment behind or inside of CPE is not the responsibility of Nichewares, but can be supported with a separate consulting service agreement.

G. Optional Services – optional services include static IP and/or email accounts (limit 3).

II) Customer Rights and Responsibilities

A. By completing enrollment and accepting all terms of the Agreement, you become an authorized user of the Service. Continued acceptance of this Agreement is a condition of the Service. You are responsible for complying with all of the terms and conditions of this Agreement, and with all policies and guidelines posted on the Service Website.

B. You agree that Nichewares may: (1) revise the terms and conditions of this Agreement; (2) revise its billing rates and account surcharges; and (3) revise the services provided under this Agreement at any time. Any such revisions will be binding and effective immediately upon posting the revised Agreement on Nichewares' home page, or upon notification to you by e-mail or United States mail.

(i) You agree to review the Agreement periodically. If any revision to this Agreement is unacceptable to you, you may terminate this Agreement at any time by contacting Nichewares through the following means: (1) E-mail to isp@nichewares.com; or (2) U.S. mail to Nichewares & Consulting, LLC, P.O. Box 168, Canon City, CO 81215.

(ii) Continued use of the Service following notice of any revision of the Agreement constitutes your acceptance of any and all such revisions.

C. You are personally responsible for all use of the Service under your ID and/or IP address, even if someone else utilizes them. Illegal, fraudulent, or abusive use of any ID or of the Service is grounds for immediate account termination, and said activity may be referred to the appropriate law enforcement authorities. Enrolling or using any ID on the Service under a name other than your own is prohibited.

D. You are personally responsible for keeping any and all IDs or passwords for Nichewares' services private, including all personal information such as social security number, credit card numbers and PINs. You must promptly inform Nichewares if you suspect any breach of security, such as loss, theft, or unauthorized disclosure or use of your ID or password. Until Nichewares is notified of a breach of security, you will remain responsible for any unauthorized use of the Service occurring under your ID, IP address, and/or password.

(i) The benefits or rights conferred by this Agreement are nontransferable and nonassignable. The connectivity provided is expressly limited to you. Resale or use of this connection by another person or persons is prohibited without prior written consent of Nichewares.

(ii) Use or attempted use of a Service to improperly disrupt any of the Nichewares' Service accounts or the Nichewares' Service network may result in account termination and referral to enforcement authorities. Such use or attempted use includes, but is not limited to, "social engineering" (tricking other people into releasing their passwords), password cracking, security hole scanning, denial-of-service attacks, ping-

flooding, sending packets with an improper packet size, UDP flooding, half-open TCP connection flooding, arp poisoning, man-in-the-middle attacks, etc.

E. You agree that the Service may only be used for lawful purposes. Any transmission (whether an upload or download) outlawed by state, federal, or international law is strictly prohibited, including, but not limited to, transmission of unauthorized transactions, copyrighted materials, misappropriated trade secrets, and threatening, harassing, or obscene materials. Nichewares reserves the right (but is not obligated) to review and edit any material submitted for display or placed on the Service, excluding private e-mail messages. Nichewares may refuse to display or may remove for the Service material that Nichewares believes violates this Agreement or any policies or guidelines posted by Nichewares on the Service. Nichewares may also remove any material it deems harmful and/or offensive to other subscribers, merchants, information providers, the Service or the business interests of Nichewares. You agree to indemnify and hold Nichewares harmless from any and all losses and liabilities arising from unlawful use of the Service.

(i) Nichewares bears certain legal liabilities for the use of its computer network and equipment. Nichewares prohibits any and all use of its network for illegal purposes. When presented with a valid search warrant, subpoena, or similar legal document, you agree that Nichewares may be obligated to release information associated with your account and use of the Service and that Nichewares will cooperate with authorities in any criminal investigation of inappropriate Internet usage.

(ii) Any unauthorized use of Nichewares' accounts or computers or Nichewares' customer accounts by you, whether or not the target account or computer belongs to a Nichewares Internet customer, will result in action against you. Possible actions include warnings, account suspension or cancellation, and legal action, according to the seriousness of the unauthorized use.

F. Harassment or abusive use of e-mail and other Internet services is not allowed. Nichewares will handle incidents of harassment or abusive use on a case-by-case basis.

(i) Nichewares is subject to the provisions of the *Electronic Communications Privacy Act, 18 U.S.C. '2701 et seq.*, which prohibits an electronic communications service from producing the contents of electronic communications, except in limited circumstances. Nichewares' e-mail retention is not time-based but rather based on user quotas. Each user has 50 megabytes of storage space, and it is the responsibility of the end user to maintain and remove old messages. If you delete any e-mail, that e-mail is deleted immediately from Nichewares' e-mail system. You may download e-mail to your computer. Such e-mail is not preserved on Nichewares' mail system.

(ii) Nichewares reserves the right to request a copy of the complaint and any supporting documentation to indicate how Nichewares' e-mail address is related to the pending litigation which underlies a subpoena.

(iii) Commercial advertisements are unwelcome in most Usenet discussion groups and on most e-mailing lists. Inappropriate posting may result in account suspension or cancellation. "Spamming," or sending a message to many different off-topic newsgroups, is not allowed. Sending a message, especially an advertisement, to more than five recipients is considered by itself spamming unless the individuals have specifically requested to be added to a mailing list on that topic. E-mail is a person-to-person medium, not a broadcast medium. Unsolicited advertisements via e-mail, or via discussion groups whose charter does not explicitly allow advertisements, are not permitted.

(iv) Electronic mail passes through multiple mail servers on the Internet as it passes from source to destination. Privacy can never be guaranteed from every possible mail server; therefore, users seeking additional privacy should use an encryption scheme to render messages unreadable by eavesdroppers. Nichewares places a high value on privacy and will only examine users' e-mail when absolutely required; for example, when troubleshooting e-mail delivery problems or being served with a valid search warrant for the information.

G. Client will purchase required CPE, and CPE will be the property of the client. However, during the term of Service, Nichewares reserves the right to secure access to CPE to ensure proper configuration and operation. Under no circumstance will Nichewares be responsible for damage to CPE caused by lightning, vandalism, intentional or unintentional acts, or any other cause including but not limited to acts of God. If CPE becomes damaged and non-functional, it is at the discretion of the client to purchase new equipment to continue service. Software installation and configuration of client-owned equipment, with the exception of required CPE, is solely the responsibility of the client.

H. Client must pay in full for monthly service charges within 30 days of billing date. If client fails to pay in full within 45 days of billing date, service will be terminated. Once service is terminated, client has 15 additional days (equates to 60 days after unpaid invoice's billing date) to pay account balance in full, or Nichewares has the right to permanently terminate service.

III) Copyright and Trademarks

A. Except for public domain material, all material contained on the Service is copyrighted. The Nichewares name and logo and all related product and service names, design marks and slogans are the trademarks, service marks or registered trademarks of Nichewares. All other products and service marks contained herein are the trademarks of their respective owners. You may not reproduce or redistribute such material, in whole or in part, in any manner, without prior consent of the copyright or trademark owner, which must be via written and witnessed documentation.

(i) You agree not to post or transmit works that are subject to another party's rights, on or through the Service, without that party's express permission. Such posting or transmitting:

(a) will result in termination of this Agreement; and

(b) may result in civil or criminal liability.

B. Federal and state law prohibit the unauthorized use of materials that are the subject of copyright, trademarks, trade secrets and other rights of third parties. Accordingly, you may be subject to liability due to uploading, downloading, or use of such materials in violation of applicable laws and regulations. Use of the Internet is solely your responsibility. To minimize potential liability, Nichewares recommends that you practice common sense and net etiquette when using the Internet. Review carefully what is posted and what is uploaded or downloaded. The rules of Internet etiquette are straightforward and useful in determining what may be posted or copied.

(i) The *Digital Millennium Copyright Act* outlines what act(s) constitute copyright infringement.

(ii) Use, duplication or disclosure of Software and Documentation by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the *Commercial Computer-Restricted Rights clause at FAR 52.227-19* when applicable, or in subparagraph (c)(1)(ii) of the *Rights in Technical Data and Computer Software clause at DFARS 252.227-7013*, or at 252.211-7015, and in similar clauses in the NASA FAR Supplement.

C. Nichewares is under no obligation to monitor the information residing on or transmitted to Nichewares servers. However, anyone using this service agrees that Nichewares may monitor its network or server contents periodically to (1) comply with any necessary laws, regulations or other governmental requests; and/or (2) to operate the server properly or to protect itself and its users. Nichewares reserves the right to modify, reject or eliminate any information residing on or transmitted to Nichewares Internet that it, in Nichewares' sole discretion, believes is unacceptable or in violation of these terms and conditions.

D. Should any user of information on Nichewares Internet provide Nichewares with information, including but not limited to feedback, data, answers, questions, comments, suggestions, plans, ideas or the like, such information shall be deemed to be non-confidential and Nichewares assumes no obligation to protect such information from disclosure.

E. Pursuant to Title II of the Digital Millennium Copyright Act, all claims of copyright infringement for material that is believed to be residing on Nichewares' system or network, should be promptly sent in the form of written communication to Nichewares' Designated Agent:

Nichewares & Consulting, LLC
P.O. Box 168
Canon City, CO 81215
E-mail address: support@nichewares.com

Claims must include the following information:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single on-line site are covered by a single notification, a representative list of such works at that site;
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
- (iv) Information reasonably sufficient to permit Nichewares Internet to contact the Complaining Party, such as an address, telephone number, and if available, an electronic mail address at which the complaining party may be contacted;
- (v) A statement that the Complaining Party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the Complaining Party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

F. Reference herein to any products, services, processes, hypertext links to third parties or other information by trade name, trademark, manufacturer, supplier or otherwise does not necessarily constitute or imply its endorsement, sponsorship or recommendation by Nichewares.

IV) Warranty

A. You acknowledge and consent that Nichewares exercises no control or censorship of third party content. Use of any information obtained via the Service is at your own risk. Parents should take necessary precautions to monitor and supervise the use of the Service by minors.

B. Nichewares expressly disclaims and in no event shall be liable for any special, indirect, or consequential damages or any damages whatsoever resulting from, but not limited to: (1) loss of use, data or profits; (2) loss of hardware or software; (3) access delays or access interruptions; (4) computer viruses or other harmful components; (5) data nondelivery or data misdelivery; (6) negligent acts and/or omissions of Nichewares or Nichewares' affiliated companies; (7) errors, omissions, or misstatements in any and all information, goods, or services obtained on or through the Service; and (8) acts of God, whether in an action of contract, negligence or other tortious action, arising out of or in connection with the use or performance of the information on Nichewares Internet or the Internet generally.

C. Nichewares' performance is subject to interruption and delay due to causes beyond its reasonable control, such as: acts of God; acts of any government; war or other hostility; civil disorder; the weather; fire; explosion; power failure; equipment failure; industrial or labor disputes; inability to obtain necessary supplies; denial-of-service and/or hacker attacks and circumstances in the vein of those listed above.

D. Customer expressly agrees that use of the Service, which includes the contents thereof and any storage or use of information, is at Customer's sole risk. Neither Nichewares nor any of its employees or agents warrants that the Service will be uninterrupted or error-free; the Service is distributed on an "as is" basis without guarantees of any kind, either expressed or implied. Neither Nichewares nor anyone else or entity involved in creating, producing, and delivering the Service shall be liable to any direct, indirect, incidental, or consequential damages arising out of use of the Service or inability to use the Service, or out of any breach of any warranty. No advice or information given by Nichewares, its affiliates or their respective employees shall create any warranty. The provisions of this paragraph will survive any termination of this Agreement.

E. Customer agrees that Nichewares' entire liability, and customer's exclusive remedy, with respect to use of the service, service software, and any breach of this agreement is strictly limited to a prorated portion of the amount paid to Nichewares for monthly charges. Some states do not allow the limitation or exclusion of liability for incidental consequential damages. In such states, Nichewares' liability is limited to the extent permitted by law.