

1. Definitions.

“Company” means KansasNet (a subsidiary of Fox Computers Inc.), 531 Ft Riley Blvd. Manhattan, KS 66502.

“Subscriber” refers to an individual, corporation or legal entity who is named within the KansasNet Order form, and thereby incurs usage charges for DSL, for its own use and/or on behalf of a third party user.

“Telephone Carrier” refers to the telephone carrier whose telephone network is used as a medium for Company to provide DSL to Subscriber.

“Digital Subscriber Line” (“DSL”) is a technology that provides a dedicated digital circuit between a Subscriber & Company.

“Associated Services” refers to services that Company provides Subscriber as part of Subscriber DSL service, but, which are not the DSL service. Examples of Associated Services include, but, are not limited to Email, FTP/ Web hosting/storage services.

“Customer Premise Equipment” (“CPE”) is the equipment that connects a Subscriber’s Computer/Network Equipment to a DSL circuit. This may include modems, routers, filters, switches, hubs, terminals, servers, set-top boxes, etc. It includes the cabling required to connect and power this equipment.

“Subscriber’s Computer/Network Equipment” refers to the Subscriber’s computers, network components, and all other devices used to access or connect Subscriber to a DSL circuit.

“KansasNet DSL Order Form” refers to the order form the Subscriber submits to order their DSL circuit.

“Agreement” refers collectively to this contract (KansasNet DSL Terms of Access), and the KansasNet DSL Order Form. Part of the Agreement expresses the Term the Subscriber is committing to for DSL service from Company.

“Term” refers to the time period Subscriber has agreed to commit to DSL service from Company. Term is generally expressed in periods of calendar months, but, may also be expressed in periods of calendar years.

“Period of Service” (“Period(s) of Service”) refers to Company’s billing-cycle which shall begin on the first day of each calendar month, and extends to the last day of each calendar month for the selected Term.

“Price” refers to the monies paid to Company by the Subscriber for the purchase of or rental of CPE, and the monthly DSL service fee.

“@kansas.net Email Address” refers to the email address provided by Company to Subscriber as part of the DSL service. The @kansas.net Email Address is provided by Company for Subscriber use, and is one official method that Company will use to send notifications to Subscriber.

“Billing Address” refers to the mailing address that Subscriber provides to Company for the purposes of invoicing, contact, and for sending notifications. The Billing Address is found within the KansasNet DSL Order Form.

“Company’s Equipment” refers to the equipment used by and/or owned by Company and

used to provide DSL or other Associated Services to Subscriber. This includes, but, is not limited to Company's servers and routers.

"Activation of Service" refers to day that Telephone Carrier notifies Company that Subscriber's DSL circuit is complete and should be operational.

## 2. Price.

A. General. The Subscriber shall pay to the Company the charges associated with the CPE and DSL rate plan selected within the KansasNet DSL Order Form, including without limitation, deposits, set-up fees, equipment purchase and/or rentals, service charges, etc., for the Term chosen within the KansasNet DSL Order Form.

B. Subscriber is responsible for provision of, operation of and maintenance of CPE and Subscriber's Computer/Network Equipment. Service interruption due to failure of the Subscriber to provide working CPE will be billable as normal service usage.

C. Changes. Company will give Subscriber 30 days notice in the event of a change in Price. This notice may be sent by Company to Subscriber's @kansas.net Email Address or by Postal mail to the Billing Address. If the Price changes during the Term, the Subscriber will be given opportunity to end the Agreement without penalty prior to the next Period of Service. If Subscriber does not opt to exercise this right to end the Agreement after the 30 days notice, but, before the next Period of Service (i.e. first day of the next calendar month), it will be assumed that Subscriber accepts the new Price for the remainder of the Term.

D. Price for Periods of Service is due to Company on the first day of the month. Subscribers with balances more than 5 (five) days overdue will be temporarily disabled until full payment is received. A \$25.00 reconnect fee will be assessed on all disabled accounts. Returned checks will be charged a fee of \$32.00. Except for the first Period of Service, monthly service is not prorated.

E. Taxes. Taxes and other fees as assessed by Federal, State, or Local Governments may apply. These taxes may begin, cease, or vary at any time during the Term of this Agreement based on changing Government laws/regulations. Company reserves the right to recover these Taxes from Subscriber in the manner defined by any applicable laws/regulations. These taxes and fees are not controlled by Company, and are therefore not considered part of Price for service. Changes to these taxes and fees are not considered to be a change in Price as described in section 2.C. of this document and are therefore not grounds for C. Changes. The prices for this service are found in the document titled "DSL Order Form." 30 days notice will be given in the event of a price change. If the price changes during the term of the agreement, the subscriber will be given opportunity to end the agreement without penalty prior to their next payment.

D. All periods of service shall begin on the first day of the month. Accounts more than 5 (five) days overdue will be temporarily disabled until full payment is received. A \$10.00 reconnect fee will be assessed on all disabled accounts. Returned checks will be charged a fee of \$25.00. Except for the first month of service, monthly service is not prorated.

### 3. Term and Termination.

Agreement commences upon Activation of Service and remains in effect for the selected Term, or until terminated as herein provided. Subscriber may terminate this Agreement upon thirty days advance notice. Advanced notice may be given by Subscriber to Company via an email to [billing@kansas.net](mailto:billing@kansas.net) from Subscriber's KansasNet Email Account, or by filling out a KansasNet Cancellation Form, which can be attained from Company upon Subscriber request. Unless Company has increased Price within a Period of Service prior to Subscriber's notice of termination or Subscriber has completed their Term. Subscriber shall pay to Company upon termination of DSL, an Early Termination Fee equal to the number of Period(s) of Service remaining in the Term multiplied by Price of DSL service as selected in the KansasNet DSL Order Form. Company shall have the right to suspend or terminate Agreement at any time without prior notice to subscriber. Subscriber also agrees that Company has the right to delete all data, files or other information that resides or is stored on the Company's Equipment, if the Subscriber's DSL with Company is terminated, for any reason, by either Company or Subscriber.

### 4. Indemnification.

Subscriber shall indemnify and hold harmless, Company, its agents and employees from and against any loss, cost, claim, liability, damage, or expense (including attorneys' fees) to Subscriber or third parties, relating to or arising from the use of DSL or Associated Services by Subscriber, any of their personnel, or any other persons using Subscriber's DSL service, whether or not Subscriber has knowledge of or has authorized such access or use, including, without limitation, claims for libel, slander, an invasion of privacy, infringement of copyright, patent infringement (where Subscriber has used, connected, or combined the service with the products or services of others), negligence, breach of security, or tortuous behavior. Subscriber agrees to indemnify Company along with any parties from whom the Company obtains network services (including, but, not limited to Telephone Carrier), and to

hold them harmless from any claims resulting from the use of the service by Subscriber or any other persons that damage another party or that violates Local, State, Federal, or International Law(s).

5. Disclaimers of Warranties.

ALL MATERIALS, INFORMATION, SOFTWARE, PRODUCTS, EQUIPMENT, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH COMPANY (THE "CONTENT") ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR SUBSCRIBER USE. THE CONTENT IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON INFRINGEMENT. COMPANY AND ITS LICENSORS, AGENTS AND EMPLOYEES DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR SECURE. THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE CONTENT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOUR USE OF THIS SYSTEM IS SOLELY AT YOUR RISK.

6. Limitation of Liability.

COMPANY SHALL NOT BE LIABLE FOR INTERRUPTIONS CAUSED BY FAILURE OF EQUIPMENT OR SERVICES NOT PROVIDED BY COMPANY, FAILURE OF COMMUNICATIONS, POWER OUTAGES, OR OTHER INTERRUPTION NOT WITHIN THE COMPLETE CONTROL OF COMPANY, NOR SHALL COMPANY BE LIABLE FOR PERFORMANCE DEFICIENCIES CAUSED OR CREATED BY SUBSCRIBER'S OR ITS USERS' EQUIPMENT. SUBSCRIBER AND USER HEREBY RELEASE COMPANY FROM LIABILITY ARISING FROM ANY CONTENT ACCESSED VIA THE SERVICE. COMPANY'S PERFORMANCE UNDER THIS AGREEMENT SHALL BE EXCUSED IN CASE OF LABOR DIFFICULTIES, GOVERNMENTAL ORDERS, CIVIL COMMOTIONS, ACTS OF GOD, OR OTHER CONDITIONS OR CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL. COMPANY SHALL NOT BE LIABLE IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF SUBSCRIBER'S OR ITS USERS' EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, LOSS OF USE, ETC. THE LIABILITY OF COMPANY FOR ACTUAL PROVEN DAMAGES FOR ANY CAUSE WHATSOEVER,

INCLUDING BUT NOT LIMITED TO ANY FAILURE OF OR DISRUPTION OF SERVICE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO AN AMOUNT EQUIVALENT TO CHARGES PAYABLE BY SUBSCRIBER UNDER THIS AGREEMENT FOR THE SERVICE DURING THE PERIOD SUCH DAMAGES OCCUR. COMPANY MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, CONCERNING THE SERVICE, AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR USE OR PURPOSE, THE WARRANTY OF MERCHANTABILITY AND ANY OTHER WARRANTY IMPLIED BY LAW.

#### 7. Use of Service.

COMPANY SHALL NOT BE LIABLE FOR INTERRUPTIONS CAUSED BY FAILURE OF EQUIPMENT OR SERVICES NOT PROVIDED BY COMPANY, FAILURE OF COMMUNICATIONS, POWER OUTAGES, OR OTHER INTERRUPTION NOT WITHIN THE COMPLETE CONTROL OF COMPANY, NOR SHALL COMPANY BE LIABLE FOR PERFORMANCE DEFICIENCIES CAUSED OR CREATED BY SUBSCRIBER'S OR ITS SUBSCRIBERS EQUIPMENT. SUBSCRIBER HEREBY RELEASES COMPANY FROM LIABILITY ARISING FROM ANY CONTENT ACCESSED VIA THE SERVICE. COMPANY'S PERFORMANCE UNDER THIS AGREEMENT SHALL BE EXCUSED IN CASE OF LABOR DIFFICULTIES, GOVERNMENTAL ORDERS, CIVIL COMMOTIONS, ACTS OF GOD, OR OTHER CONDITIONS OR CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL. COMPANY SHALL NOT BE LIABLE IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF SUBSCRIBER'S EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, LOSS OF USE, ETC. THE LIABILITY OF COMPANY FOR ACTUAL PROVEN DAMAGES FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OF OR DISRUPTION OF SERVICE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO AN AMOUNT EQUIVALENT TO CHARGES PAYABLE BY SUBSCRIBER UNDER THIS AGREEMENT FOR THE SERVICE DURING THE PERIOD OF SERVICE SUCH DAMAGES OCCUR. COMPANY MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, CONCERNING THE DSL OR ASSOCIATED SERVICES, AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR USE OR PURPOSE, THE WARRANTY OF MERCHANTABILITY AND ANY OTHER WARRANTY IMPLIED BY LAW.

#### 7. Use of Service.

A. Subscriber shall insure that they themselves, any of their personnel, or any other persons

using Subscriber's DSL service, whether or not Subscriber has knowledge of or has authorized such access or use shall comply with the terms and conditions of this Agreement.

B. This connection cannot be shared with other third parties or devices, including parts of Subscriber's Computer/Network Equipment that are not expressly defined within the KansasNet DSL Order Form.

C. Subscriber shall not use or permit any third parties to use the services in ways that violate laws, infringe the rights of others, interfere with users of our service or other service networks. Subscriber is responsible for the knowledge of and adherence to any and all laws, statutes and regulations pertaining to or in any way connected with the services provided by the Company and all use of any information, data, material or service in violation of any such law, etc., is strictly prohibited.

D. By posting information in or otherwise using any communications service, chat room, message board, news group, software library, or other interactive service that may be available to you on or through this service, Subscriber agrees that they or any other persons using Subscriber's DSL service will not upload, post, or otherwise distribute or facilitate distribution of any content -- including text, communications, software, images, sounds, data, or other information -- that:

1. Is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortuous, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals), or otherwise violates Company's rules or policies;
2. Victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
3. Infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party;
4. Constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (also known as "spamming"), (one site that addresses these issues is <http://www.wa.gov/wwwweb/AGO/junkemail/>); chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling.
5. Contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or other information of any third party; or
6. Impersonates any person or entity, including any employee or representative of the Company.

Subscriber further agrees that you will not knowingly solicit or collect personal information from a minor without appropriate prior verifiable parental consent.

Company generally does not pre-screen, monitor, or edit the content posted by Subscriber, chat rooms, message boards, news groups, software libraries, or other interactive services that may be available on or through this DSL service. However, Company and its agents have the right at their sole discretion to remove any content that, in Company's judgment, does not comply with these rules or is otherwise harmful, objectionable, or inaccurate. Company is not responsible for any failure or delay in removing such content.

E. Subscriber's rights herein granted, cannot be transferred, assigned, shared, sold, or used by anyone other than the Subscriber. No more than one connection to the services provided

by Company can be used at any time by the Subscriber on any system account.

F. Subscriber and/or users shall not establish Internet (inbound) servers of any kind, including without limitation, Web, E-Mail, games, FTP, or the like.

#### 8. Bandwidth Consumption.

Company reserves the right to establish and enforce usage limits, limiting the speed of upload and download of any kind and in all protocols, including without limitation, file downloads, Web browsing, etc., from time to time, for DSL or other Associated Services.

#### 9. Service Calls.

Subscriber is responsible for the entire cost of service calls including labor, materials and equipment for all failures which are not the fault of the Company including without limitation, acts of God, weather phenomena, failure of Subscriber's CPE and/or Subscriber's Computer/Network Equipment, including service calls to reinstall software.

#### 10. Disputes.

In the event the Company is required to engage the services of an attorney because of a breach by the Subscriber of any of the terms herein contained arising out of the Subscriber's or third parties' use of the DSL or Associated Services, whether or not Subscriber has knowledge of or has authorized such access or use, the Subscriber agrees to pay all of the Company's reasonable attorneys fees and court costs. Upon breach of this Contract, all of subscribers' rights and privileges shall be immediately terminated and upon any such termination for breach of the provisions of this Contract, or the breach of any applicable law or statute governing the use of the services provided; All Subscriber fees shall be forfeited as liquidated damages to the Company. In the event of litigation both parties agree that the law of Kansas shall apply and both parties consent to the jurisdiction of the courts of Riley County, Kansas. Both parties expressly waive a jury trial.

11. Contract Amendments.

The Company reserves the right to amend this contract from time to time, in its sole discretion, and any such amendments shall become effective upon promulgations, subject to the terms of this agreement. 12. The Subscriber certifies that he or she is at least 18 years of age.

12. Entire Contract.

This Contract represents the complete understanding between the parties as to the subject matter hereof, and supersedes all prior written or oral negotiations, representations, guaranties, warranties, promises, orders, statements or agreements between the parties or any statement or representation made or furnished by any other person representing or purporting to represent either party.

I have read, and agree to abide by the terms. I realize that failure to operator within these terms will result in the termination of service and/or fines assessed by the Company.

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