

## **General Terms & Conditions**

By signing up for and/or otherwise accessing any of the services or products offered by Cal.net you agree to be bound by the terms and conditions of this Agreement. Please carefully read these terms and conditions as they describe your legal rights and obligations. THESE TERMS & CONDITIONS

### **1. TERM AND TERMINATION.**

2.1. You or Cal.net may terminate this Agreement at any time for any reason, with or without cause. You may terminate by (a) notifying Cal.net via email or by certified mail to PO Box 1041, Shingle Springs CA 95682 which notification shall be effective upon receipt by Cal.net.

### **2. NO WARRANTIES BY CAL.NET.**

THE CAL.NET SERVICES AND CAL.NET SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. YOU EXPRESSLY AGREE THAT THE USE OF THE CAL.NET SERVICES IS AT YOUR SOLE RISK. CAL.NET DOES NOT WARRANT THAT THE CAL.NET SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, THAT YOUR DATA OR ANY FILES STORED BY YOU THROUGH THE USE OF OUR FILE STORAGE SERVICES WILL BE ACCESSIBLE BY YOU AT ALL TIMES, NOR DOES CAL.NET MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE CAL.NET SERVICES. NO WARRANTY IS MADE BY CAL.NET REGARDING ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED THROUGH OR IN CONNECTION WITH THIS AGREEMENT, AND CAL.NET HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION: (1) ANY WARRANTIES AS TO THE AVAILABILITY, QUALITY, QUANTITY, OR CONTENT OF SERVICES OR GOODS PROVIDED TO YOU HEREUNDER; AND (2) ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CAL.NET DOES NOT GUARANTEE THAT ANY CONTENT, INFORMATION, SOFTWARE (INCLUDING WITHOUT LIMITATION THIRD PARTY SOFTWARE) OR OTHER MATERIAL ACCESSIBLE THROUGH THE CAL.NET SERVICES WILL BE FREE OF VIRUSES, "WORMS", "TROJAN HORSES", OR OTHER HARMFUL COMPONENTS.

### **3. CAL.NET LIMITED LIABILITY.**

YOUR SOLE AND EXCLUSIVE REMEDY HEREUNDER SHALL BE FOR YOU TO DISCONTINUE YOUR USE OF THE SERVICES AND TERMINATE THIS AGREEMENT. IN NO CASE SHALL CAL.NET, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS OR CONTRACTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL,

EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF OR OTHERWISE RELATING TO THE CAL.NET SERVICES. SOME COUNTRIES, STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. IN SUCH COUNTRIES, STATES OR JURISDICTIONS, CAL.NET'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. EXCEPT AS EXPRESSLY SET FORTH IN ANY SEPARATE SOFTWARE LICENSE OR IN THIS AGREEMENT, CAL.NET DOES NOT ENDORSE, WARRANT OR GUARANTEE ANY THIRD PARTY PRODUCT OR SERVICE OFFERED OR OTHERWISE ACCESSED USING THE CAL.NET SERVICES, AND CAL.NET WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND ANY THIRD PARTIES. YOU HEREBY RELEASE CAL.NET FROM ANY AND ALL OBLIGATIONS, LIABILITY AND CLAIMS IN EXCESS OF THESE LIABILITY LIMITATIONS. THE TOTAL LIABILITY OF CAL.NET FOR BREACH OF WARRANTY ARISING OUT OF CONTRACT, NEGLIGENCE OR STRICT LIABILITY IN TORT, OR ANY OTHER CLAIM RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL SERVICE FEES PAID BY YOU TO CAL.NET IN THE SIX MONTHS PRECEDING SUCH ALLEGED BREACH, IF ANY.

## **5. USAGE LIMITATIONS AND YOUR ADDITIONAL OBLIGATIONS AND WARRANTIES.**

5.0 You acknowledge that Cal.net limits sending of messages to 10 recipients per minute, 50 recipients per hour, and 250 per day per email account, any messages beyond this limit will be discarded and may result in the temporary or permanent suspension of your email account.

5.1 You acknowledge that only you may use your account and you agree and warrant that you shall not permit anyone else to use your account or authorize any third party to access your account on your behalf. You are responsible for all activity that takes place with respect to your account, and you agree that in the event Cal.net believes or has reason to believe, in its sole discretion, that you have breached this Agreement or any of the warranties in this Section 5, Cal.net may, without prior notice to you and in Cal.net's sole and exclusive discretion, suspend the provision of the Cal.net Services and/or terminate this Agreement, without any liability of any kind. As more completely set forth in Sections 6, 7 and 10, you waive any and all claims you may have, now and forever, against Cal.net relating to any action taken in under this Section 5.1, and agree to indemnify and hold harmless Cal.net from and against any claims brought by third parties as a result of your Data or your use of the Cal.net Services.

5.2. You agree and warrant that you shall not send mass unsolicited or unwanted electronic mail solicitations; that you shall not use your e-mail address for impermissible or abusive news group postings or excessive or

repeated off-topic or commercial postings; that you will not send any form of junk mail; that you will not engage in sending messages that meet the definition of a "commercial electronic mail message" as defined in the CAN-SPAM rule set forth by the Federal Trade Commission; and that you shall not engage in any other form of spamming, spoofing, phishing, or mail bombing. Cal.net reserves the right to block mail from any source, including outgoing mail from or ingoing mail to your account, which Cal.net believes, in its sole discretion, is being used to send such unsolicited e-mail. While Cal.net continues to actively review and implement new technology to ensure that its customers neither send nor receive unsolicited e-mail, there is no currently available technology that will totally prevent the sending and receiving of unsolicited e-mail. You also agree to not engage in automated forwarding of messages from your cal.net email account to any other E-Mail provider.

5.3. You agree and warrant that your use of the Cal.net Services and Cal.net's Equipment, and all sales, distributions, advertisement, or promotion by any and all means, of any type(s) of Content including, but not limited to, executable files (such as .EXE), digitized audio/visual files (such as MP3), or copies of copyrighted works (such as .ZIP), goods, including, but not limited to, videotapes and CD-ROM products, and any type of services by you, which are advertised and/or promoted by, or are in any other way directly or indirectly associated with your use of the Cal.net Services or Cal.net Equipment, shall at all times comply with your warranties under this Section 8, as well as all applicable Laws, including but not limited to CAN-SPAM. You agree and warrant that all message content shall comply with all Laws, and shall not result in consumer fraud, product liability, or damage of any kind to any third party.

5.4. You agree and warrant that all of your Data and any matter you store on or allow to be transmitted by Cal.net's Equipment shall be solely for business, entertainment, and/or educational purposes and that you shall assume the sole responsibility and duty to ensure that all such Data shall be transmitted exclusively to consenting adults and only to places in which such materials comply with contemporary community standards. You shall be liable for any and all damages, harm, or losses caused by your Data.

5.5. You agree and warrant that all of your Data and any matter you store on or allow to be transmitted by Cal.net's Equipment shall not violate any Laws concerning obscenity and shall not contain or link to any pornography, or depictions of bestiality, incest, rape, sexual assault, actual physical violence, torture or disfigurement, or other content deemed objectionable by Cal.net, in its sole discretion. You agree and warrant that you will not use the Cal.net Services to transmit messages which: display, contain or link to any harmful

matter or indecent materials or communications which are available to, or accessible by, minors; display or contain any material that consists of pornography, child pornography, or other obscene content, including but not limited to content involving or by a performer who is portrayed or made to appear as a person under the age of eighteen years of age or which could otherwise result in harm to minors, all as determined in Cal.net's sole discretion. You agree and warrant that you will neither store on nor allow to be transmitted by Cal.net's Equipment any data or other matter which constitutes, contains, or links to child pornography or which involves depictions of sexuality by an age-inappropriate-looking performer (i.e. someone who looks younger than eighteen years of age, regardless of their actual age) or by a performer who is portrayed or made to appear as a person under the age of eighteen years of age by virtue of the advertising, script, make-up, demeanor, costuming, setting, etc., or which could otherwise result from or cause harm to minors.

5.6. You agree and warrant that you shall not damage, disable, overburden, or impair the Cal.net Services or misuse them in any way; use scripts, robots, web crawlers, or similar type of programs or applications; interfere with others use or enjoyment of the Cal.net Services; or interfere with, defame, or abuse Cal.net or its officers, employees, or agents.

5.7. You affirmatively represent, agree and warrant that you have and at all times shall have all necessary intellectual property rights, including, but not limited to, all copyrights, trademark and service mark rights and rights of publicity, both in the United States and throughout the world, to reproduce and disseminate, via the Internet, all data which you store or otherwise promote, advertise, disseminate and/or distribute to anyone by your direct or indirect use of the Cal.net Services or Cal.net Equipment, and that your Data and the use or distribution of your Data does not infringe the intellectual property rights of others, including, but not limited to, copyrights, trademark and service mark rights, patent rights and rights of publicity, both in the United States and throughout the world. You agree that in the event that Cal.net is informed by any party that You are using the Cal.net Services to transmit messages which infringe the copyright of any party, or violate the right of publicity or privacy of any party, or consist of any other claim or violation of intellectual property rights of any kind, then Cal.net may, without prior notice to you and in Cal.net sole and exclusive discretion, suspend the provision of the Cal.net Services and/or terminate this Agreement, without any liability of any kind to Cal.net from either you or any third party. As more completely set forth in Sections 6, 7 and 10, you waive any and all claims you may have, now and forever, against Cal.net relating to any action taken in response to the claim that you have infringed the intellectual property rights of a third party, and agree to indemnify and hold harmless Cal.net from and against any such claims.

5.8. You agree and warrant that your Data shall not constitute or contain or link to material: which is libelous, slanderous, or defamatory; which violates the right of publicity or privacy of any party; or which will violate or infringe upon or will otherwise give rise to any adverse claim with respect to any common law or other right of any person or other entity, including, without limitation, privacy rights and all other personal and proprietary rights.

5.9. You agree and warrant that your Data shall not contain or link to any material which is harmful, violent, threatening, or abusive, in Cal.net's sole discretion.

5.10. You agree and warrant that any and all material(s) of every kind which you store or transmit using the Cal.net Services or Cal.net Equipment shall at all times be free from any and all damaging software defects, including, but not limited to, software "viruses", "worms", "Trojan Horses," and other source code anomalies, which may cause software or hardware disruption or failure, reduced computer operating speed, or compromise any security system. You agree that you will not attempt to access the Cal.net Equipment or web site or another person's web site without authorization, or use the Cal.net Services to carry out, or assist in the carrying out of, any "denial of service" attacks on any other website or internet service.

5.11. You agree and warrant that you shall not engage in any false, deceptive or fraudulent activities in association with your use of the Cal.net Services or the Cal.net Equipment.

5.12. You agree and warrant that you shall not resell or redistribute the Cal.net Services or any part thereof, including but not limited to your Cal.net e-mail address or File Storage account, or use any unauthorized means to modify or reroute the Cal.net Services (or to attempt same).

5.13. You agree and warrant that all applicable taxes have been paid or will be paid in full by you when due regarding all businesses and employees associated with your use of the Cal.net Services and that no taxing authorities shall have any claim against Cal.net or any persons affiliated therewith for the payment of such taxes.

5.14. You represent and warrant that you are over thirteen years of age and are fully competent to enter into this Agreement.

5.15. You represent and warrant that you are not a national or resident of Burma/Myanmar, Cuba, Iran, Iraq, Libya, North Korea, Serbia, Sudan, and Syria or any other country subject to U.S. Treasury Department embargo restrictions, and that you are not listed in the "Entity List" or "Denied Persons List" maintained by the US Department of Commerce or the list of "Specially Designated Nationals and Blocked Persons" maintained by the US Department of Treasury.

5.16. You agree to abide by United States and other applicable export control laws and not to transfer or permit the transfer, by electronic transmission or otherwise, any content or software subject to restrictions under such laws to a destination prohibited under such laws, without first obtaining, and then complying with, any requisite government authorization. You further agree not to upload to your Cal.net account any data or software that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software.

5.17. You agree not to use your account for the storage of files other than in the course of normal e-mail usage or as provided otherwise in the specifications for your Services.

#### **6. NO JOINT VENTURE OR PARTNERSHIP**

Nothing in this Agreement is intended by the Parties to create or constitute an agency, joint or collaborative venture, or partnership of any kind between Cal.net and you, nor shall anything in this Agreement be construed as constituting or creating any such agency, joint or collaborative venture, or partnership between Cal.net and you. Cal.net shall have no control or ownership interests of any kind in your business. Cal.net shall have no direct financial or other interest in, nor in any way "own" any online venture pertaining to your use of the Cal.net Services or Cal.net's Equipment. Cal.net's relationship to you shall be restricted to matters pertaining to the provision of the Cal.net Services as set forth in this agreement.

#### **7. SERVICES RENDERED ON A NON-EXCLUSIVE BASIS.**

Any and all services which are or may be provided to you by Cal.net pursuant to this Agreement, including the licensure of rights herein, are not exclusive and nothing in this Agreement shall limit or restrict Cal.net from providing similar services and granting similar licenses to third parties regardless of whether such third parties are competitors of you. Nothing in this Agreement shall limit or restrict Cal.net from engaging in any activities similar to yours or in competition with you.

#### **8. NO EDITORIAL CONTROL BY CAL.NET.**

Cal.net and you agree that, consistent with the strict policy of Cal.net, and in reliance on your express warranties regarding the substantive content of data, advertisements, communications, messages and other materials which you shall store and/or otherwise disseminate via the use of Cal.net Services or Equipment, Cal.net shall neither have nor exert any editorial or other subjective control over the substantive content of such data, advertisements, communications, message or other materials. Cal.net exercises no control over information which is found on the internet, except for its own web site, and cannot be held responsible for

the accuracy, correctness, or legality of such information. You are solely responsible for verifying the accuracy and suitability of information and services you obtain from third parties via the internet.

## **9. PRIVACY.**

9.1. It is Cal.net policy to respect your privacy. Cal.net will not monitor, edit, or disclose any personal information about you or your account, including its contents, without your prior consent unless Cal.net deems it necessary, in its sole discretion, to:

9.1.1. comply with legal process or other legal requirements, including but not limited to responding to subpoenas or other requests for information from law enforcement officials;

9.1.2. protect and defend the rights or property of Cal.net or its officers, agents, affiliates, and licensees;

9.1.3. carry out its obligations under or enforce this Agreement; or

9.1.4. protect the interests of other Cal.net customers.

9.2. NOTWITHSTANDING THE PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, Cal.net RESERVES THE RIGHT (SUBJECT TO APPLICABLE LAW), IN ITS SOLE DISCRETION, TO DISCLOSE INFORMATION OR MONITOR YOUR ACCOUNT, INCLUDING BUT NOT LIMITED TO THE USE OF A USER'S ACCOUNT, FOR THE PURPOSE OF INVESTIGATING VIOLATIONS OF THIS AGREEMENT OR TO ASSIST WITH CRIMINAL OR CIVIL INVESTIGATIONS.

9.3. Your IP address is transmitted and recorded with each message you send using the Cal.net Services.

9.4. Your personal information, including information regarding nonpayment or other misuse of the Cal.net Services, may be transferred to other affiliated entities, whether in the United States or elsewhere. If you do not consent to this transfer, do not accept the terms and conditions for the Cal.net services.

9.5. INTERNATIONAL CUSTOMERS UNDERSTAND AND AGREE THAT Cal.net MAY DISCLOSE PERSONAL INFORMATION ABOUT THEM AND THEIR ACCOUNT PURSUANT TO THIS SECTION, AND WAIVE ANY RIGHTS TO PRIVACY OR PROTECTION OF PERSONAL DATA RELATING TO SUCH INFORMATION TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE NATIONAL AND INTERNATIONAL LAW.

## **10. SEVERABILITY.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included. The invalidity or un-enforceability of any provision(s) of this Agreement shall not affect the validity or enforceability of any other provision.

## **11. NON-ENFORCEMENT DOES NOT CONSTITUTE WAIVER.**

Failure of Cal.net at any time to enforce any of the specific provisions of this Agreement shall not preclude any other or further enforcement of such provision(s) or the exercise of any other right hereunder. No waiver of a breach of this Agreement shall be valid unless made in writing and signed by duly authorized representative of Cal.net.

## **12. NOTICES.**

12.1. Cal.net may provide notice to you via e-mail sent to the e-mail address associated with your account at the time such notice is sent. Such notice is deemed effective at the date and time of transmission, whether you receive it or not, and shall be deemed written notice for the purposes of this Agreement.

12.2. You may provide notice to Cal.net in one of the following ways:

12.2.1. by personal delivery;

12.2.2. by addressing the notice as indicated above and depositing the same by registered or certified mail, postage prepaid, in the United States mail;

12.2.3. by Federal Express;

12.2.4. by facsimile transmission; or

12.2.5. by email and registered or certified mail.

12.3. Such notice, statement or other document so delivered to Cal.net, except as this Agreement expressly provides otherwise, shall be conclusively deemed to have been given when first personally delivered, on the date of delivery or on the first date of receipt. Notice by email to Cal.net (other than notices sent pursuant to Section 2.1) shall be deemed ineffective, null and void unless a copy of such notice is also sent by registered or certified mail, and postmarked not more than five days subsequent to the giving of email notice. Any such email notice to Cal.net shall be deemed effective as of the date on which Cal.net receives the certified or registered mail notice.

## **13. FORCE MAJEURE.**

13.1. In the event of "force majeure" (as defined below), Cal.net may terminate this Agreement without liability to you. For purposes of the Agreement, "force majeure" shall mean circumstances or occurrences beyond Cal.net reasonable control, whether or not foreseeable at the time of entering into the Agreement, in consequence of which Cal.net cannot reasonably be required to perform its obligations hereunder or otherwise perform its obligations under the Agreement. Such circumstances or occurrences include, but are not limited to: acts of God, war, civil war, insurrection, fires, floods, labor disputes, epidemics, governmental



regulations and/or similar acts, embargoes, termination or temporary unavailability of any computer hardware or software, server, or network on which the Cal.net Services are located or maintained or through which the Cal.net Services are provided, and nonavailability of any permits, licenses and/or authorizations required by governmental authority.

13.2. Cal.net reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Cal.net Services (or any part thereof) with or without notice, including the right to cease all business operations in the United States or elsewhere. You agree that Cal.net shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Cal.net Services.

#### **14. NO ASSIGNMENT BY YOU; ASSIGNMENT BY CAL.NET.**

This Agreement and the rights pertaining hereto may not be assigned, resold, or otherwise transferred in whole or in part by you without Cal.net's prior written consent. In particular, you may not sell accounts or subaccounts to third parties. Notwithstanding the above, this Agreement shall be binding upon your successors and assigns, if any. Cal.net may assign or license any or all of its rights and/or obligations hereunder in its free, sole, and unfettered discretion, without consent by or notice to you.

#### **15. SUCCESSORS AND ASSIGNS.**

This agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, personal representatives, executors, administrators, successors and assigns.

#### **16. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and cancels all other prior agreements, discussion, or representations, whether written or oral. No officer, employee or representative of Cal.net has any authority to make any representation or promise in connection with this Agreement or the subject matter thereof which is not contained expressly in this Agreement, and you hereby acknowledge and agree that you have not executed this Agreement in reliance upon any such representation or promise. This Agreement is solely for the benefit of you and Cal.net.

#### **17. MODIFICATION.**

17.1. This Agreement may be materially altered by Cal.net by posting the new version of the Agreement at [www.Cal.net](http://www.Cal.net) and if posted in this manner, shall be effective immediately upon posting such notice. You accept and shall be bound by such changed terms unless you opt to terminate the Agreement within thirty days of the posting of notice of the new version.

17.2. You may not modify this Agreement, in whole or in part, and any such modification or attempt to modify shall not be enforceable unless reduced to writing and signed by a duly authorized representative of Cal.net. No additional or conflicting term in any other document used by you will have any legal effect.