

This Agreement is your contract for VIP Internet Service.

1. Introduction.

1. **Terms of Service.** This Agreement (also found at: <http://www.volcanocommunications.com/internet-agreement>) governs the terms and conditions under which Volcano Internet Provider (“VIP”), with the assistance of certain vendors (“Vendors”), provides you, its customer (“you”), broadband Internet access service including email addresses (referred to in this Agreement as “VIP Internet Service”). By using VIP Internet Service, you acknowledge and agree to the terms and conditions of this Agreement (“Terms”) and the ISP Network Policies (found at <http://www.volcanocommunications.com/network-policies>)

2. **Changes in Terms and Policies.** VIP may change the Terms on not less than thirty (30) days’ written notice to you by email, bill message, or by United States mail. Policies may be changed without notice. Your use of or payment for VIP Internet Service after the effective date of any change in the Terms or a change in policies shall constitute your acceptance of and agreement to such change.

Every time you use or pay for VIP Internet Service, you are agreeing to VIP’s Terms and policies. If VIP changes the Terms in a way that you do not accept, you may terminate the service within 30 days as provided in Section 13 below. Early termination fees may apply (contact us to find out).

3. Charges, Billing, and Payment.

1. **Rates.** You can learn the current rates for VIP Internet Service and related fees by telephoning (209) 296-7502, or by going on-line to <http://www.volcanocommunications.com>. Charges for usage, if any, are billed in arrears. The basic rates and usage rates do not include taxes or governmental required or allowed fees or surcharges, for which you are also responsible.

2. **Billing.** VIP will bill you monthly for all services you buy from VIP. The fixed monthly rate is payable in advance on or before the first day of VIP’s monthly billing cycle. Usage charges, if any, are billed in arrears.

3. **Payment.** You shall pay upon demand all amounts as and when due. Checks for payment should be made payable to “Volcano” If you pay by credit card, your agreement with the card issuer, and not this Agreement, governs your rights and liabilities as a card holder.

4. **Billing Disputes.** Except as may be otherwise provided by law, unless you notify VIP of an error in VIP’s billing within sixty (60) days after it first appears on your account statement, the statement will be deemed accepted by you for all purposes, including resolution of inquiries made by or through your credit card issuer. You release VIP from all liabilities and claims

resulting from any billing error not reported to VIP within sixty (60) days after the date of the statement on which it appears.

5. **Late Payment; Non-Payment.** If VIP does not receive the full amount you owe for VIP Internet Service and related fees within fifteen (15) days after the date of VIP's statement, you shall owe VIP interest at the rate of 1.5% (or the highest amount allowed by law, whichever is less) per month on the outstanding balance until paid. You shall also be liable for all costs of collecting any unpaid balance on your Internet service account(s) with VIP, including attorneys' fees. If any amount remains unpaid for more than thirty (30) days, VIP shall have the right to terminate your VIP Internet Service.

6. **Credit Check.** You authorize VIP to do any credit verification VIP deems necessary, and such verification may be done at any time while you are receiving VIP Internet Service. Credit verification may include a review of credit reports received from any commercially available credit bureau. You agree to provide VIP with such personal information as may be required by VIP in order to determine your creditworthiness, and you represent and warrant that all of such information is true and correct. You acknowledge that credit privileges, if granted, may be withdrawn at any time.

Any telephone charges incurred are your responsibility, including long distance charges, if any.

7. **Charges Not Included.**

Customer Charges. You may incur charges while using the Internet, for example, for using on-line information services and shopping on-line. You are solely responsible for those charges.

4. **Content.** As used in this Agreement, "Content" means the information, software, graphics, photographs, video, speech, sounds, music, and other material and services communicated through VIP Internet Service.

1. **No Liability.** VIP makes no representations, warranties, or promises as to, and you must bear the risk of relying on, the accuracy, completeness, or usefulness of any Content. As a matter of policy, VIP does not screen or filter any Content and has no obligation to monitor Content. Accordingly, neither VIP nor any of its Vendors shall have any liability whatsoever for any action or inaction by VIP or any of its Vendors with respect to Content.

2. **Third Party Conditions of Use.** Content is provided by persons and entities not under the control of VIP, and such other Internet service providers have their own terms and conditions of use. VIP does not endorse, warrant, or guarantee any product or service offered through VIP Internet Service and shall not be a party to or in any way monitor any transaction between you and third-party providers of products or services.

3. **Content Rights.** VIP and its Vendors reserve the right (but shall have no obligation) to monitor Content and to remove Content that VIP or any of the Vendors deems in violation of this

Agreement. VIP and its Vendors reserve the right to disclose any Content and to identify the responsible customer as may be required by law, or to operate VIP Internet Service properly, or to protect itself or its other subscribers.

4. **Parental Guidance.** Internet content may include material inappropriate for minors; VIP recommends that you guide your minors' use of the VIP Internet Service directly and/or consider using commercially-available tools that enable you to restrict access to certain Internet areas and other features of the VIP Internet Service that may be inappropriate for minors, at your sole cost and risk. VIP makes no warranties with respect to such tools.

5. **Appropriate Use; Characteristics of Service; Termination by VIP.** You agree to use VIP Internet Service in a non-harmful and lawful manner and consistent with the "Volcano Communications ISP Network Policies" in the Volcano Communications ISP Network Policies, which can be found here <http://www.volcanocommunications.com/network-policies>. If you violate any term of this Agreement or the ISP Network Policies, VIP may suspend, restrict, or terminate your service without notice. The ISP Network Policies also contains important and useful information about the characteristics and limitations of Internet Service, equipment, and the network.

6. **Internet Protocol Address.** You shall have no ownership interest in any Internet Protocol address provided by VIP. VIP shall retain ownership of all such addresses and, upon termination of this Agreement, you shall no longer have access to or use of any such address.

7. **VIP Broadband Service Availability.**

1. **Geographic Availability.** Due to the nature of the Broadband service technology, VIP reserves the right to terminate this Agreement without liability to you if VIP at any time is not reasonably able to provide, repair, or maintain VIP Broadband Internet Service to your premises; provided, however, that VIP shall refund any pre-paid charges for the VIP Broadband Internet Service that it terminates.

8. **Security.** Because the Internet is a resource shared among many users, there is a risk that you could be subject to a variety of security breaches, including but not limited to eavesdropping, denial of service attacks, and receipt of corrupted files or viruses. This means that other people may be able to access, monitor, and/or alter your files, data, or other traffic sent or received using VIP Internet Service, or negatively affect your ability to use the service, or both. Any information sent by you over VIP Internet Service is sent at your sole risk, and VIP shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise related to such actions.

Your use of VIP Internet Service and the Internet is solely at your own risk.

9. **Related Telephone Service.**

1. **Existing Line.** VIP may provide VIP Broadband Internet Service over your existing telephone line. VIP and its agents, contractors, and representatives shall have no liability for interference with or degradation of service on your telephone line.

2. **911 Service.** You shall instruct everyone in your household to use the telephone and not your computer to call 911 for emergency help. Your computer, even with voice communication, will not deliver necessary emergency information to the 911 dispatcher.

3. **Local and Toll Carrier Charges.** This Broadband Addendum in no way changes or supersedes your relationship with your current provider(s) of local and long-distance telephone service. You will continue to be charged separately for those telephone services.

10. **No Service Warranty.** VIP shall use commercially reasonable efforts to provide you high quality VIP Internet Service and equipment, but VIP does not guarantee that you will be able to access the VIP Internet Service at a particular speed, time, or location or that VIP will have adequate capacity for the VIP Internet Service as a whole or for particular purposes. Interruptions in VIP Internet Service may occur due to scheduled maintenance or failure of hardware or software, as well as acts of God. VIP does not warrant that any data or files sent by or to you will be transmitted in uncorrupted form. **All representations, warranties, endorsements and conditions of any kind, express or implied, including, without limitation, fitness for a particular purpose, merchantability, and those arising from a course of dealing or usage of trade, are hereby excluded.** VIP will endeavor to give you at least 48-hours' advance notice by email of scheduled maintenance that could interrupt all or some of VIP Internet Service.

11. **Limitations of Service and Liability.** The following limitations apply to the Service and any equipment supplied by Volcano related to any alleged acts, omissions, negligence, and gross negligence of VIP, its officers, employees, agents, contractors, or representatives, which acts, omissions, negligence, or gross negligence, but for this provision, would give rise to a cause of action against VIP in contract, tort, or any other legal doctrine. Your sole and exclusive remedies under this Agreement are as expressly set out in this Agreement.

1. **Service Limitations.** Because VIP Internet Service is subject to network outages, power outages, acts of God, and other expected interruptions of service, VIP shall not be liable to you or anyone else for any special, indirect, or consequential damages, including without limitation loss of anticipated profits or other economic loss, personal injuries, loss of files or data, corruption of software, or property damage arising out of interruptions, errors, or defects, in installation, provision, termination, maintenance, repair, or restoration, of VIP Internet Service or equipment, however caused, or for damage to, loss of, or destruction of, any software, files, or data (collectively, a "Loss").

2. **Limitation of Damages.** Without limiting the foregoing, VIP's liability for damages for a Loss caused by VIP shall not exceed the pro rata amount you paid or owed for the affected service for the period of time it was affected or the value of the equipment affected. Further, and

without limiting the foregoing, VIP's liability for any direct damages for a Loss caused by the gross negligence on the part of the Company shall be limited to \$2,500. VIP shall not be liable for any Loss due to causes beyond its control. These damages limitations and the foregoing disclaimers of service warranties shall, include any claims or Losses arising from or relating to software or intellectual property rights of you or any third party.

12. Indemnification. You agree that upon request by VIP you will defend, indemnify, and hold harmless VIP, its officers, directors, agents, employees, and Vendors, from all claims, liabilities, and expenses, including attorneys' fees, that arise from or relate to your breach of this Agreement, violation of laws, or infringement on the rights of third parties, including without limitation:

1. Any breach of this Agreement by you or anyone you permit to use your VIP Internet Service ("Users");
2. Your or any Users' use of VIP Internet Service or the Internet for the placement or transmission of any information, software, or other materials on the Internet;
3. Your acts or omissions or those of your agents or contractors in connection with, among other things, the installation, maintenance, presence, use, or removal of equipment or software not provided by VIP connected or to be connected to VIP Internet Service; and
4. Claims for infringement of any third party proprietary right, including copyright, patent, trade secret, and trademark rights, arising from the use of any services, equipment, or software not provided by VIP.

VIP reserves the right, at its own expense, to assume the exclusive defense and control of any matter for which VIP is entitled to indemnification hereunder.

13. Termination.

1. Your Voluntary Termination

1. Notice Required. In order to terminate your VIP Internet Service, you must give notice to VIP either by email (info@volcano.net) or by United States mail (***Volcano Internet Provider, Attn: Customer Service, P. O. Box 1070, Pine Grove, CA 95665***) or contact by telephone 209 296 7502. Effective upon VIP's receipt of notice of termination, and proper verification of request, VIP shall stop charging you for VIP Internet Service.

2. Refunds. Upon termination of VIP Internet Service, VIP will refund any unused portion of fixed monthly rates paid in advance, except in the case of early termination of a VIP Internet Service arrangement requiring a minimum number of months' service in return for a discounted rate, in which event the regular (non-discounted rate) shall be applied to the months of service furnished by VIP, in order to determine what, if any, balance remains for refund.

2. **Involuntary Termination for Misuse or Nonpayment.** VIP may terminate your service for violation of this Agreement. In the event VIP exercises its right to terminate VIP Internet Service to you in accordance with the provisions of this Agreement, it may terminate VIP Internet Service with immediate effect without prior notice

3. **Payment Upon Termination.** Upon termination of VIP Internet Service for any reason, all charges incurred for VIP Internet Service, together with interest owed for late payments, if any, shall become immediately due and payable, and the provisions of Section 3(e) shall apply as to any amounts not immediately paid and as to costs incurred in collecting such amounts.

14. **Entire Agreement.** This Agreement contains and refers to the entire agreement of the parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this Agreement shall be of no force and effect unless contained in a subsequent written modification signed by both parties to this Agreement or unless modified pursuant to Section 2.

15. **Agreement to Arbitrate Disputes; Waiver of Class Action Claims.**

EXCEPT FOR ANY COLLECTION ACTIONS INITIATED BY VIP (BUT INCLUDING ANY COUNTERCLAIMS BY YOU), YOU AND VIP AGREE THAT ANY CONTROVERSIES, CLAIMS OR DISPUTES ARISING BETWEEN CUSTOMER AND VIP, WHETHER IN TORT OR IN CONTRACT, INCLUDING BUT NOT LIMITED TO THOSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, OR THE SERVICES PROVIDED, WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES ANY AND ALL DISPUTES BASED ON ANY PRODUCT, SERVICE OR ADVERTISING PROVIDED BY VIP. ADDITIONALLY, YOU AND VIP AGREE NOT TO PURSUE ARBITRATION RELATED TO OR ARISING OUT OF THIS AGREEMENT ON A CLASSWIDE BASIS. YOU AND VIP AGREE THAT ANY ARBITRATION RELATED TO OR ARISING OUT OF THIS AGREEMENT WILL BE SOLELY BETWEEN VIP AND YOU (NOT BROUGHT ON BEHALF OF OR TOGETHER WITH ANOTHER INDIVIDUAL'S CLAIM). SUCH ARBITRATION SHALL BE BEFORE A PANEL CONSISTING OF A SINGLE ARBITRATOR IN SAN FRANCISCO, CALIFORNIA. SUCH ARBITRATION SHALL BE BINDING UPON BOTH CUSTOMER AND VIP AND SHALL BE CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER ITS RULES, INCLUDING THE SELECTION OF THE ARBITRATOR, WHICH SHALL BE ACCOMPLISHED IN ACCORDANCE WITH THE RULES OF THE AAA. THE AWARD RENDERED BY THE ARBITRATOR SHALL BE FINAL, AND JUDGMENT MAY BE ENTERED UPON IT IN ACCORDANCE WITH APPLICABLE LAW IN ANY COURT HAVING JURISDICTION THEREOF. THE PARTIES FURTHER AGREE THAT THE PREVAILING PARTY IN SUCH ARBITRATION SHALL BE ENTITLED TO RECOVER THE COSTS OF SUCH ARBITRATION FROM THE OTHER PARTY, INCLUDING, BUT NOT LIMITED TO,

REASONABLE ATTORNEYS' FEES. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE UNDER THE FEDERAL ARBITRATION ACT IN ANY COURT HAVING JURISDICTION THEREOF.

YOU AND VIP EACH EXPRESSLY WAIVE ANY RIGHT TO PURSUE DISPUTES ON A CLASSWIDE BASIS; THAT IS, TO EITHER JOIN A CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY, OR ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING.

16. **Headings.** The headings in this Agreement are for convenience of reference only and shall not be given any effect in the interpretation of this Agreement.

17. **No Waiver.** No course of dealing or failure of either party to enforce strictly any right, term, or condition of this Agreement shall be deemed or construed as a waiver of such right, term, or condition.

18. **Severability.** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect.