

**SmarterBroadband, Inc. Usage Rules and Contract**  
**23718 McCourtney Road, Grass Valley, CA 95949**  
**(530)-268-8289**

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Our rules and regulations are designed to make our relationship mutually beneficial. Basically, SmarterBroadband, Inc. respects others and we will be responsible for our actions, and we expect the same from Subscribers. Throughout this contract, the phrases "SmarterBroadband" "we" and "our" refer to SmarterBroadband, Inc. its staff, owners, assignees and operators. The phrases "the Subscriber," "the Customer," and "your" refer to the Subscriber who reads and signs this Contract.

**I. Acceptable Use Policies**

1. Your account and your files are yours; we respect your privacy and will not examine or inspect your files, mail messages or postings except as provided for herein.
2. SmarterBroadband has the right to reserve certain usernames (email names) for internal use. We also reserve the right to refuse various usernames (email names) if deemed inappropriate.
3. Users may not attempt to circumvent user authentication or security of any host, network, or account on the SmarterBroadband Systems or the Internet at large. (Such practices are also known as "cracking" or "hacking" and are prohibited.)
4. We ask you to follow general "Netiquette" when sending email messages or posting UseNet messages. Advertising may not be "broadcast" or otherwise sent on an intrusive basis to any user of any network (i.e., NO SPAMMING!). Advertising may be posted in UseNet newsgroups, applicable commercial advertising directories (if any), or emailed to any user or user mailing list that has requested such advertising. Transferring commercial traffic, as well as research and educational traffic, is an acceptable use so long as such use is acceptable to all interconnected networks along the entire route, from source to destination.
5. You may not attempt to harm, overload, or damage the system, SmarterBroadband or its Subscribers. It is not acceptable to use SmarterBroadband so as to interfere with or disrupt network users, services, or equipment. Disruptions include, but are not limited to, distribution of unsolicited advertising, propagation of computer "worms" and viruses, using the network to make or attempt to make unauthorized entry into any other machine accessible via the network, and sustained high volume network traffic which substantially hinders other Customer's use of the network.
6. Open Mail Relays: Maintaining an open mail relay invites senders of mass unsolicited commercial e-mail to exploit the server by using it for spamming. Failure or refusal to take appropriate steps to close an open mail relay on SmarterBroadband's network is grounds for temporary suspension or permanent termination of service.
7. The Subscriber has the responsibility of keeping SmarterBroadband informed of a current, valid mailing address. Credit card Subscribers also have the requirement of keeping SmarterBroadband informed of the status and validity of the credit card account to which their billings are made.

**II. Billing Procedures**

1. Payment of the Installation fee, the first month's Service fee and either; (i) the one time rental fee, or (ii) the first month's rental fee shall be due at the time of installation. Thereafter, payment for SmarterBroadband services is due on the 1<sup>st</sup> of each month in advance in accordance with SmarterBroadband current schedule of fees. If payment is not received within 10 days of due date, SmarterBroadband reserve the right to suspend access to service for Customer's Account(s). A reconnection charge will apply in addition to any outstanding balance.
2. SmarterBroadband's preferred payment method for monthly fees is via Credit Card or ACH. SmarterBroadband will provide instructions on how to set-up these payment options at the time of installation.
3. Invoices are not automatically provided for monthly Service or Equipment fees. A monthly invoice may be requested. Such invoices will be delivered by electronic mail (email). We do not send paper invoices.
4. All outstanding charges shall be due immediately and payable within ten (10) days. It is the sole responsibility of the Customer to insure their payment instrument information is maintained current and available for payment of incurred fees, and that check payments arrive on or before the due date. A defaulted account accelerates payments to be due immediately.
5. Payments for services not made within 30 days past due are considered delinquent and may be subject to reasonable collection and legal fees. Delinquent accounts will be charged interest at the rate of 1.5% per month, or the maximum permitted legal rate, whichever is lower. Credit card Customers agree to pay all charges according to the card issuer agreement.
6. Customer agrees to pay SmarterBroadband all charges relating to use of Customer's Account(s). Customer acknowledges that there is a One year minimum subscription period, which means no full or partial refund of the initial year's service and Equipment fees will be given if service is canceled within the initial year subscription period. The Installation and Activation fee is non-refundable. If the Customer wishes to cancel service during the first year, there will be an additional \$100.00 disconnection charge paid by the Customer.
7. SmarterBroadband reserves the right to change the price and/or terms and condition of service at any time. Upon such change, we will let you know one month in advance by sending an email message to your account, as well as making the notice available on-line.

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8. If you default in any aspect of this Contract, you agree to pay SmarterBroadband its reasonable expense, including attorney and collection-agency fees incurred in enforcing its rights under these Billing Procedures.

### **III. Liability Limits**

#### **LIMITATION OF LIABILITY:**

**ALL SERVICES ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE MADE WITH RESPECT TO THESE SERVICES OR ANY INFORMATION OR SOFTWARE PROVIDED THEREBY.**

1. Neither SmarterBroadband nor its Providers are responsible for any damages arising from Customer's use of SmarterBroadband network or inability to use SmarterBroadband network.
2. Electronic mail and other transmissions passing over the Internet and through SmarterBroadband's system are not confidential. Accordingly, SmarterBroadband does not guarantee the protection or privacy of any information of any Subscriber or permitted user using SmarterBroadband's services or system. SmarterBroadband and its agents will not disclose any information unless required to operate its system or pursuant to a court order, subpoena, or similar legal request or otherwise on the advice of counsel.
3. There is no guarantee of message delivery. Email return receipts may be requested, but there is no guarantee that the recipients mail system will process or even acknowledge these requests.
4. SmarterBroadband is not responsible for Customer's files residing on SmarterBroadband network. Customer is responsible for independent backup of all such data at a site determined by Customer.
5. SmarterBroadband cannot and does not exercise any control whatsoever over the information passing through its network or through the Internet.
6. Due to the potential threat of viral attack, SmarterBroadband highly recommends the practice of virus scanning to protect against infection from computer viruses. SmarterBroadband is in no way responsible for any data loss or damage arising from viral infection from the Internet. Customer undertakes browsing and downloading of Internet files at their own risk. Consult with your local computer re-seller, systems analyst, consultant, and/or management information systems personnel to determine the anti-viral protection program best suited to your needs.
7. Customer is hereby warned that some Internet sites accessible via SmarterBroadband network allow posting, retrieval, and/or electronic mailing of materials that may be considered obscene or objectionable. SmarterBroadband is not responsible for inadvertent or deliberate access to such material and cannot prevent access to such material. It is recommended that each Customer closely monitor use of his/her connection especially in the case of potential use of misuse of minor children. A parent or legal guardian must open accounts for minor children.
8. Any access to other networks through the SmarterBroadband network must comply with the rules appropriate for the other network. Violation of the rules of other networks is grounds for account cancellation. This includes, but is not limited to, mass UseNet posting, Use Net cross-posting or mass emailing.
9. SmarterBroadband and its affiliates shall not be liable under any legal theory (including tort or contract) for any direct, indirect, incidental, special or consequential damages in anyway related to the product or services provided. The services provided by SmarterBroadband are data transport and email storage through our remote hosting company 1and1. These services are contracted with adults of legal age only, and shall be governed by the State of California. Any access of these services by minors, or by residents of States or localities other than California, is the responsibility of the service user and not SmarterBroadband. All users are expected to abide by the laws of the state or country within which they reside. Upon notification of violation of law, SmarterBroadband may at its discretion immediately terminate the account without refund.

### **IV. Connect Contract**

SmarterBroadband Connect Contract is straightforward. We require that you do nothing illegal with your account, that you follow the rules of the Internet itself, and that you behave responsibly, both with regards to your actions and for the charges you incur while using SmarterBroadband.

1. SmarterBroadband network service may be used only for lawful purposes. Transmission, promulgation, theft, procurement, communication, alteration, publication or storage of any information, data or material in violation of any federal, state or local law, statute, regulation or rule is prohibited. This includes, but is not limited to: copyrighted materials, material legally judged to be threatening or obscene, or material protected by trade secret. You agree to indemnify and hold harmless SmarterBroadband from any claims resulting from your use of the service that damages you or another party.
2. The Subscriber is responsible for knowing and following all the rules and regulations pertaining to the means of connecting their terminal, PC, Mac, or LAN to SmarterBroadband Service, including payment of shareware cost or royalties, if any, directly to the authors.

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3. In the event that SmarterBroadband is required to engage the services of an attorney due to breach in this Contract by the Subscriber of any of the terms contained herein, the Subscriber agrees to pay any and all of SmarterBroadband reasonable attorney fees and court costs. Upon breach of this contract, all of the Subscriber's rights and privileges shall be immediately terminated and all fees shall be forfeited as liquidated damages to SmarterBroadband. Both parties expressly waive a jury trial.
4. Unless expressly authorized under terms of written contract, account sharing or reselling, for any type of account offered by SmarterBroadband is strictly prohibited and shall be cause of immediate termination of service. SmarterBroadband's connections are intended for the sole use of a single family residence for "Residential" Accounts or a Single Business entity for "Business" accounts. Discounts may be available for multiple accounts. Account sharing will include but is not limited to; permitting access by anyone who is not residing at or visiting the Subscribers address to access and use SmarterBroadband's network either by direct connection or via a wireless network.
5. Wi-Fi: Subscribers agree to keep their own wireless networks secure using WEP or WPA security when available.
6. Subscriber confirms they are aware of SmarterBroadband's Monthly Transfer Limit (MTL) for their chosen service plan and agrees to pay the Additional Transfer Charge (ATC) as posted on SmarterBroadband's web site for each gigabyte over and above the MTL for their service plan.
7. SmarterBroadband reserves the right to suspend service at anytime, for any reason without notice. If such a suspension is to last more than a day, the Subscriber will be notified as to the reason.
8. SmarterBroadband warrants that, if a Subscriber is dissatisfied with the service, SmarterBroadband will, upon written notification received from the Subscriber to SmarterBroadband refund any prepaid fees for future months. Other than the foregoing, no warranty is made by SmarterBroadband regarding any information, service or products provided through, in connection with, or located on the computer systems of SmarterBroadband and SmarterBroadband hereby expressly disclaims any and all warranties, including without limitation: (i) any warranties as to the availability, accuracy, or content of information, products, or service; and (ii) any warranties of merchantability or fitness for a particular purpose.
9. Residential Wireless service is intended to provide Customers with a dedicated high speed connection only. Use of your connection for other than intended purpose such as, but not limited to, web hosting is in violation of this agreement. Violators will be moved to the appropriate Business Wireless service plan.
10. The service plan you have purchased has an up-to speed range (both Download and Upload). There is no guarantee or warranty that the Internet Service will perform at the upper end of the speed range specified, there is no minimum speed guarantee. Many factors determine the speed at which a wireless connection is made and the speed of the internet at large. As such, SmarterBroadband does NOT guarantee the speed at which a Customer will connect to the internet.
11. Use of your SmarterBroadband account constitutes acceptance of this Connect Contract.

**V. Operation**

1. SmarterBroadband reserves the right to change its services without notice, including but not limited to access procedures, hours of operation, menu structures, commands, documentation, MTLs and services offered. Notice of modification to this contract will be posted to SmarterBroadband Web site. Customer's use of SmarterBroadband network after such notice shall constitute Customer Acceptance of such modification.
2. Customer understands that SmarterBroadband network services may be interrupted for several reasons, including but not limited to malfunctions, maintenance, and improvement or as required to protect network resources in the event of malfunctions or misuse. Customer understands that it may not receive advance notification of any such interruption of service. Scheduled outages will be publicized on-line. SmarterBroadband shall not be liable for any delay in or failure to perform the service as provided herein.
3. There will be no refunds for scheduled or unscheduled service interruptions of less than 24 hours duration. At its sole discretion, SmarterBroadband may elect to provide a pro rated refund or additional/extension of service for service interruptions of greater than 24 hours.
4. Customer hereby agrees that any material submitted for distribution on SmarterBroadband's network through Customer's Account(s) does not violate or infringe upon any copyright, trademark, patent, statutory, common law or proprietary right of others, or contain anything obscene, objectionable, or libelous.
5. SmarterBroadband at its sole discretion and judgment may immediately suspend Customer's access to the service upon any breach of any of this contract by Customer, including, but not limited to, refusal or failure to pay for services provided or disruptive on-line behavior.
6. As a courtesy to Subscribers, SmarterBroadband may post links from its web site to software sites including "freeware" or "shareware". SmarterBroadband is not the author of or otherwise responsible for any of such software or engaged in the sale or licensing of such software. SmarterBroadband makes NO warranty of any kind, either expressed or implied, with respect to software, including freeware or shareware available to Subscribers. SmarterBroadband accepts NO liability of any kind with respect to such software or any damages resulting from use thereof. Subscriber and any other user assumes ALL risks of any kind with respect to such software. The user, and NOT SmarterBroadband, must pay all

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software license fees. No Subscriber or permitted user will assert any claim against SmarterBroadband with respect to any software obtained through SmarterBroadband.

7. SmarterBroadband reserves the right at its sole discretion to delete any information entered into SmarterBroadband network, not be obligated, to review accept/reject publicly viewable information.
8. SmarterBroadband reserves the right to refuse and/or terminate service to anyone or any entity for any reason at its sole discretion. However, SmarterBroadband will not discriminate in providing service to any Customer based on race, religion, sex, or national origin.

**VI. Contract Term**

1. The term of this Contract is one (1) year and is automatically renewable thereafter.

**Customer Acceptance**

1. This Contract represents the complete understanding between the parties as to the subject matter hereof, and supersedes all prior written or oral negotiations, representation, guaranties, warranties, promises, order, 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. By signing SmarterBroadbands Terms and Conditions Agreement at the time of installation, the Subscriber agrees to the preceding Terms and Conditions of this Contract with SmarterBroadband.