

# Terms of Service

Lightning Bolt Dial-up Access  
A Division of Lightning Bolt Technologies  
Terms of Service Agreement  
Monthly Agreement  
Version 5.1 effective 12/01/04

## 1. Service Agreement

The following Terms and Conditions are incorporated into the signed Service Agreement between you ("You" or "Customer") and Lightning Bolt Dial-up. ("LB Dial-up") that refers to these Terms and Conditions. These Terms and Conditions with the signed Service Agreement constitute a legal document that details your rights and obligations as a customer of LB Dial-up.

## 2. LB Dial-up

a. Customer understands and agrees that LB Dial-up will contract with one or more channel partners to provide service to Customer. Customer's agreement is with LB Dial-up, and LB Dial-up has the discretion to determine the best means to obtain and/or modify the underlying service inputs to provide such service to customer. Moreover, LB Dial-up may assign its rights and obligations to third parties without Customer's consent. However, LB Dial-up shall provide notice of any such assignment.

b. Operational Limits. Provisioning of service is subject to the availability and the operational limitations of the requisite equipment and associated facilities. You understand and agree that temporary interruptions of the service may occur as normal events in the provisioning of the Service and that LB Dial-up is not liable for such interruptions. You further understand and agree that LB Dial-up has no control over third party networks you may access in the course of your use of the service, and therefore, delays and disruptions of other network transmissions are, beyond the control of LB Dial-up. Moreover, Customer understands and agrees that LB Dial-up obligation is to use its best efforts to fulfill Customer's service agreement. Should network or commercial limitations prevent LB Dial-up from such fulfillment, Customer does not have any claim for damages, whether actual, consequential, reliance or otherwise, against LB Dial-up.

## 3. Renewal /Termination

This agreement shall be for the term of one month, unless a different term is indicated in a separate written document. Such term shall begin on the date LB Dial-up activates the Service outlined in this agreement. This agreement shall, upon expiration, be renewed upon identical terms in one-month increments by Customer's continued use of his account with LB Dial-up, unless written notice of cancellation is provided no later than thirty (30) calendar days prior to the expiration of this agreement. Termination by the Customer shall not create the right to a refund of any fees paid or payable. Such termination shall be effective upon the end of the current billing cycle, and any applicable termination fees as outlined in this Agreement shall then be due and payable.

## 3. Equipment and Software

a. LB Dial-up shall not be responsible for the installation, operation, or maintenance of customer premise equipment (CPE) or other equipment or software (including without limitation, cabling) not provided by LB Dial-up (collectively, "non-LB Dial-up equipment or software"). Customer shall be responsible for the use and compatibility of the non-LB Dial-up equipment or software. Impairment of the Customer's use of the services due to non-LB Dial-up equipment or software shall not relieve Customer of any obligations hereunder. LB Dial-up shall not be responsible for any changes in service which may cause non-LB Dial-up equipment or software to become obsolete, require modification or alteration, or which may otherwise impact performance of equipment or software.

b. Other than all software and hardware provided to you by LB Dial-up and any revised version thereof that you choose to use, you must provide all equipment, devices and software necessary to receive the Service. Due to the infinite number of possible combinations of hardware and software, you are responsible for the compatibility of your system with the Service.

#### **4. Limitations of Liability**

- a. LB Dial-up shall not be liable to the Customer for any loss, damage, liability, claim or expense rising out of or in relation to this Agreement, the Services, or LB Dial-up' equipment.
- b. LB Dial-up does not guarantee service speeds services. Any service speeds quoted in this agreement are to be interpreted as estimates only, and do not guarantee the receipt of such speeds upon service delivery
- c. LB Dial-up does not guarantee actual dates of installation, or dates of service delivery. Any dates quoted by a LB Dial-up representative are meant as estimates only. LB Dial-up shall not be liable for any loss, damage, claim, or expense rising out of or in relation to installation dates, times, or any other scheduling factors.
- d. LB Dial-up shall not be liable for any inside wiring issues. Including, but not limited to loss of voice service, loss of a home alarm system access, etc.

#### **5. Notices**

All notices given by any party or required under this agreement shall be in writing and addressed to:

Lightning Bolt Dial-up Access  
PO Box 82141  
Rochester, MI 48308

#### **6. Acceptable Use Policy**

- a. You agree that you will NOT use the Service to:
  1. Upload, download, post, email, transmit or otherwise make available any Content (as defined below) that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
  2. Harm minors in any way;
  3. Forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
  4. Upload, download, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
  5. Upload, download, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
  6. Upload, download, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas (such as shopping rooms) that are designated for such purpose;
  7. Upload, download, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
  8. Disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
  9. Interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
  10. Intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
  11. "Stalk" or otherwise harass another; or
  12. Collect or store personal data about other users.

b. You understand and agree that any attempt to break security, or to access an account which does not belong to you, will be considered a material breach of these Terms and Conditions, and such breach may result in suspension or termination of the Service, and possibly referral to law enforcement authorities. Unauthorized access to the Service, to restricted portions of the Service, or to the telecommunications or computer facilities used to deliver the Service, is a breach of these Terms and Conditions whether or not such activities are a violation of law. Further, you are required to take adequate security measures to prohibit others from unauthorized access or use of the Service, and you must take prompt remedial measures upon notice of breaches, or potential breaches, of security.

c. Violations of LB Dial-up' Acceptable Use Policy may also be considered a material breach of these Terms and Conditions and may also result in suspension or termination of the Service.

d. LB Dial-up reserves the right to suspend or terminate the Service to you, or to suspend or terminate any electronic mail address, IP address, Universal Resource Locator or domain name used by you, in the event it is used in a manner which (i) constitutes violation of any law, regulation or tariff (including, without limitation, copyright and intellectual property laws); (ii) is defamatory, fraudulent, obscene or deceptive; (iii) is intended to threaten, harass or intimidate; (iv) tends to damage the name or reputation of LB Dial-up.

e. Under no circumstances will LB Dial-up be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Service.

f. Any form of a server will only be allowed LB Dial-up service.

## **7. Indemnity**

You agree to indemnify and hold LB Dial-up and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit or make available through the Service, your use of the Service, your connection to the Service, your violation of this Service Agreement, your violation of the Acceptable Use Policy, or your violation of any rights of another.

## **8. Termination For Cause**

LB Dial-up may immediately terminate all or a portion of your service, or suspend any or all access to all or a portion of the service, without notice, for conduct that LB Dial-up believes is: (a) illegal, fraudulent, harassing or abusive; (b) a violation of these Terms and Conditions, any policies or guidelines posted by LB Dial-up on the service; or (c) harmful to other users, third parties, the service, or the business interests of LB Dial-up. If LB Dial-up has terminated a portion, but not all, of your access to the service for the foregoing reasons, you will nevertheless be responsible for the all charges for the service. Use of a service for illegal, fraudulent or abusive purposes may be referred to law enforcement authorities without notice to the Customer. If you file a claim against LB Dial-up, or a claim that in any way involves LB Dial-up, then LB Dial-up may terminate your service. Upon termination of your service, LB Dial-up will have no obligation to notify any third parties nor will LB Dial-up be responsible for any damages that may result or arise out of termination of your service. Termination or suspension by LB Dial-up of service to a Customer also constitutes termination or suspension (as applicable) of that Customer's license to use the Software.

## **9. Modifications To Service**

LB Dial-up reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the Service (or any function or feature of the Service or any part thereof) with or without notice. You agree that LB Dial-up will not be liable to you or to any third party for any such modification, suspension or discontinuance of the Service.

## 10. Additional Agreements

- a. If any provision of this agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this agreement will remain in full force and effect.
- b. The Customer may not sell, transfer, or assign this agreement without the prior written consent of LB Dial-up
- c. Any alterations made to this Agreement by the Customer are null and void without the signature of an authorized LB Dial-up employee. Furthermore, the signed contract will remain in force (less the Customer alterations) according to the terms of LB Dial-up contract version "5.1", available by written request.
- d. Customer agrees that by signing an agreement referencing these terms, customer is bound to all terms and conditions as outlined in this agreement.
- e. The section titles and paragraph headings in these Terms and Conditions are for convenience only and have no legal or contractual effect.

## 11. Disclaimer Of Warranties

You expressly understand and agree that:

- a. Your use of the service and/or software is at your sole risk. The service and/or software are provided on an "as is" and "as available" basis. LB Dial-up expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement.
- b. LB Dial-up makes no warranty that (i) the service and/or software will meet your requirements, (ii) the service will and/or software be uninterrupted, timely, secure, or error-free (for example, but without limitation, LB Dial-up does not warrant that you will always receive emails addressed to you), (iii) the results that may be obtained from the use of the service and/or software will be accurate or reliable, (iv) the quality of any products, services, information, or other material purchased or obtained by you through the service and/or software will meet your expectations, and any errors in the service and/or software will be corrected.
- c. Any material downloaded or otherwise obtained through the use of the service/and or software is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.
- d. No advice or information, whether oral or written, obtained by you from LB Dial-up or through or from the service and/or software will create any warranty not expressly stated in these terms and conditions.

12. Nothing contained in this policy shall be construed to limit LB Dial-up's actions or remedies in any way with respect to any of the foregoing activities, and LB Dial-up reserves the right to take any additional actions it may deem appropriate with respect to such activities, including without limitation taking action to recover the costs and expenses of identifying offenders and removing them from LB Dial-up's service, and levying cancellation charges to cover LB Dial-up's costs in the event of disconnection of dedicated access for the causes outlined above