

# Internet and e-Commerce Terms and Conditions

Blackfoot's commitment is to provide its customers with consistently superior on-line experiences. To accomplish this, Blackfoot provides customers a number of services that make use of the Internet and other on-line services and third party software.

**BY USING ANY OF THESE SERVICES, YOU ACCEPT THE TERMS AND CONDITIONS SPELLED OUT IN THIS DOCUMENT. ACCEPTANCE OF THE TERMS AND CONDITIONS CONSTITUTES AN AGREEMENT BETWEEN YOU AND BLACKFOOT.**

## Network Management Practices and Performance Characteristics

### Network Management Practices:

Blocking – Blackfoot does not block or otherwise prevent end user access to lawful content, applications, service, or non-harmful devices.

Throttling – Blackfoot does not degrade or impair access to lawful Internet traffic on the basis of content, application, service, user, or use of a non-harmful device.

Affiliated Prioritization – Blackfoot does not engage in any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, to benefit an affiliate. Blackfoot Telephone Cooperative, Inc. DBA Blackfoot is affiliated with Blackfoot Communications, Inc. DBA Blackfoot, and Fremont Telcom Co. DBA Blackfoot.

Paid Prioritization – Blackfoot does not engage in any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, in exchange for consideration, monetary or otherwise.

Congestion Management – Blackfoot engineers its network, and undersubscribes its network, so the network very rarely experiences congestion. In the unlikely event of congestion, Blackfoot utilizes standards-based, best practice methodologies. Such methodologies include QoS, queuing, buffering and traffic engineering. Blackfoot engineers its network so that, in the event of congestion, network management traffic is the last to go down. This practice minimizes the impact on the end-user's experience and enables Blackfoot—in the event of congestion—to communicate with network elements, troubleshoot, and maintain its network. To minimize the impact on the end-user's experience, Blackfoot also engineers its network so traffic that supports a service that is sensitive to delay—e.g. voice, MPLS, and emulated circuits—is some of the last traffic impacted by congestion. Despite not imposing usage limits on end-users, Blackfoot's network very rarely experiences congestion. For additional information regarding Blackfoot's performance guarantees regarding availability, latency, packet delivery, and jitter, please refer to Blackfoot's Service Level Agreement at <http://www.blackfoot.com/service-agreements/>.

Application-Specific Behavior – Blackfoot does not block or rate control specific protocols or protocol ports, modify protocol fields in ways not prescribed by the protocol standard or otherwise inhibit or favor certain applications or classes of applications.

Device Attachment – Blackfoot does not restrict the types of devices that connect to the network. If a device creates issues on Blackfoot's network, Blackfoot will request its removal or disconnect service to protect the rest of the network.

Security – Blackfoot uses the latest generally accepted best practices to protect content, service, and reliability, including but not limited to the deployment of software and hardware that blocks harmful content and notifies Blackfoot of security incidents.

### Performance Characteristics:

Service Description – Blackfoot offers broadband internet access services enabling you to access lawful content, applications, and services. To ensure your unique needs are met Blackfoot offers a number of speed tiers and technologies. Blackfoot partners exclusively with Tier 1 upstream Internet providers to ensure your connection is always available. Blackfoot's backbone means fewer hops to content on

Google, Amazon, Microsoft and more. Not all locations are capable of receiving service levels that are suitable for real-time applications. Access speeds and latency will vary based on the service selected by you. For more information on your selected service offering, you may visit [www.blackfoot.com](http://www.blackfoot.com) or contact a customer care representative at 406-541-5000.

Impact of Non-Broadband Internet Access Service Data Services – Blackfoot does not offer non-broadband Internet access data services, that impact affect the last-mile capacity available for, and the performance of, broadband Internet access service.

#### **Commercial Terms:**

Price – If the service is a tariffed service, please refer to the terms and conditions (including price) within the applicable Blackfoot tariff by visiting <http://www.blackfoot.com/legal-tariff/tariff-library/>. If the service is not a tariffed service, monthly prices and fees for early termination or additional network services vary by service. For additional information please see the "PAYMENT" heading below, the terms and conditions of the applicable agreement by visiting <http://www.blackfoot.com/service-agreements/>, or by calling a Blackfoot customer care representative at 406-541-5000.

Privacy Policies – Please see the heading below titled "Privacy and Censorship". Blackfoot only stores network traffic or inspects network traffic if Blackfoot is required by law to do so—by court order or subpoena, for example—or to resolve a customer complaint. Similarly, Blackfoot only provides information relating to a customer's traffic if it is required to do so by law. Blackfoot does not use network traffic for non- network management purposes.

Redress Options – If you have a complaint or a question please call a Blackfoot customer care representative at 406-541-5000, and Blackfoot will endeavor to promptly resolve the complaint or answer the question.

## **ACCEPTABLE USE POLICY**

This document, the "Blackfoot Acceptable Use Policy", is an agreement that governs the use of our Internet, Dialup and Broadband services. It is an agreement between you, as a subscriber to our service, and Blackfoot. You are responsible for all users and usage of the account, whether or not the use is authorized. This agreement is a series of guidelines that are designed to help Blackfoot meet the needs of our customers and assure the quality of service and safety of all online users. We trust that the guidelines encourage responsible use of Blackfoot services by our community of users that, along with good judgment, will continue Blackfoot's ability to provide superior customer experiences both to our customers and the Internet community as a whole.

Our policies reflect following goals:

- Increasing the enjoyment and usage of the Internet and on-line services,
- Maintaining the image and reputation of Blackfoot as a responsible provider, and
- Preserving the privacy and security of individual users.

In the event that Blackfoot believes or discovers that a user of one of our sites or services has violated this policy, Blackfoot reserves the right to terminate or suspend service(s) and access without notice. In the case where an account has been terminated or suspended, the reactivation of the old account or the acquiring of a new account will only be allowed by express written approval of Blackfoot. The account holder may also be held responsible for any charges associated with any installation or activation charges, whether it is for a new account or an existing suspended or terminated account.

The provision of this Acceptable Use Policy does not in any way obligate Blackfoot to monitor or police accounts for violation. **Blackfoot is not responsible for content and is acting only as a passive conduit.** Blackfoot is also not liable to any party, either you or any other party, for any violations of this policy.

Because of the continual changes in the Internet environment, technology, legal requirements, and service offerings, Blackfoot reserves the right to modify the Acceptable Use Policies whenever needed without prior notification. Changes to the policies will be posted electronically on-line. It is your responsibility to be

aware of and understand the policies and posted modifications. Any use of the service after the posting will constitute the acceptance by the subscriber of the policy modification and or changes.

### **Blackfoot's Rights and Responsibilities**

In providing online services, Blackfoot has certain rights and responsibilities to you and to Federal and State legal and administrative authorities. Following is a list of some, although not all, of Blackfoot's rights and responsibilities.

In providing service to you, Blackfoot employees or representatives have the right and responsibility to examine operational systems, conduct performance measurement testing, access logs or audit trails in order to resolve problems or service system errors, and to take other actions to comply with applicable law and regulatory orders and regulations. Blackfoot employees or representatives have the right and responsibility to monitor operational systems, access logs or audit trails for purposes of measuring system performance and for billing purposes. In our responsibility to the Internet community and/or for the protection of Blackfoot's services and reputation, Blackfoot has the right to respond accordingly, including the monitoring of accounts.

Blackfoot has the obligation and responsibility to cooperate with appropriate legal authorities in investigating illegal activities. In instances where you or other users of Blackfoot's services or of the Internet have reported to law authorities the belief that your/their legal rights or privacy have been violated, Blackfoot will assist the appropriate law enforcement authorities to the extent possible. Blackfoot will not become involved in the mediation or resolution of any dispute between Blackfoot subscribers and/or Internet users.

Blackfoot will take necessary measures to provide a high level of security for the services offered. In offering the services, Blackfoot cannot provide any guarantee of secure service or secure servers including any data on the servers or any part of the services, even if the service or servers are described as "SECURE". Blackfoot will not assume any liability for the security of the services, the servers or the data.

Notwithstanding anything to the contrary herein, Blackfoot undertakes reasonable network management practices to, among other things, ensure network security and integrity, including addressing traffic that is harmful to the network; addressing traffic that is unwanted by end users and the Internet community, such as by providing services or capabilities consistent with a user's choices regarding parental controls or security capabilities; and reducing or mitigating the effects of congestion on the network.

In providing services and systems used for communication purposes, Blackfoot will assist to the extent possible those subscribers who notify Blackfoot of any e-mail or postings that they view as illegal or unsolicited. Blackfoot does not have the responsibility or the authority to regulate or censor the content of any newsgroup or communications passing through its services or systems. Additionally, the content of any communications sent via Blackfoot systems does not reflect the endorsement or approval of Blackfoot.

If Blackfoot becomes aware of inappropriate use of its services or of illegal activities engaged in by either you or another user of your account, Blackfoot may respond accordingly, including the immediate termination of the account without notice if deemed appropriate.

### **Availability**

Speed availability will vary by location, so not all service options may be available at a given address. Customer service can assist you in determining the maximum speed available for your location. Service speeds are subject to limitations inherent in Internet communications, including the transmissions speeds at any given time of day on the Internet and congestion at individual Internet sites. Service may be temporarily limited, interrupted, or curtailed by factors that are not under Blackfoot's control. **We are not liable for any Service failures.** Blackfoot will not block lawful content, applications, services, or non-harmful devices nor, will it unreasonably discriminate in transmission of lawful network traffic.

### **Use of Service**

You agree not to resell the Service (whether for profit or otherwise) or to use your Service for any unlawful or abusive purpose or in such a way as to create damage or risk to our business, reputation, employees, facilities, third parties or to the general public. You agree not to connect any device to the network which results in harm to the network or other users. If a device is connected that is causing harm, you agree to remove it immediately upon request.

## Privacy and Censorship

In using Blackfoot services, you agree to comply with the following policies concerning privacy and censorship:

1. You have the responsibility to monitor your accounts for access to newsgroups and Web sites that may contain offensive material.
2. You will notify Blackfoot of the continual receipt of e-mail that you view as illegal or that is unsolicited.
3. You must not design or provide systems used for the collection of information about others without their explicit knowledge and consent. For Web sites that require registration before access or downloading of information, the intended use of the "registration" information should be provided.
4. You will not misuse any electronic information collected about others.
5. Blackfoot's full Privacy Statement can be viewed at <http://www.blackfoot.com/privacy-policy/>

## Copyright Infringement

In using Blackfoot services, you agree to comply with the following policies concerning copyright infringement:

1. You will be aware of copyright law as it pertains to obtaining or transmitting information on the Internet.
2. You will take any action needed to protect your ownership rights for any work created for your own exclusive use.
3. You will obtain appropriate licenses for work other than your own that is either transmitted by you or placed on your personal web page.
4. You will only download files that can be legally distributed.
5. You will not remove or falsify the source or origin of any material in any files uploaded.

## COPYRIGHT AND TRADEMARK CLAIM NOTICES

**If you believe in good faith that Blackfoot should be notified of a potential online copyright infringement occurring on Blackfoot's systems or network, please promptly submit to Blackfoot a copyright or trademark infringement notice. All such notices must contain the following:**

1. identification of the copyrighted work you claim has been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
2. identification of the material that you claim to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled by Blackfoot, and information reasonably sufficient to permit Blackfoot to locate the material;
3. information reasonably sufficient to permit Blackfoot to contact you, such as an address, telephone number, and, if available, an electronic mail address;
4. a statement that you believe in good faith that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
5. a statement under penalty of perjury that the notification is accurate and that you are either the owner of an exclusive right that has allegedly been infringed or are authorized to act on behalf of such owner; and

6. your physical or electronic signature as the owner of the exclusive right that is allegedly being infringed or of a person authorized to act on your behalf.

**Upon receipt of such notification, Blackfoot will remove or disable access to the material that is claimed to be infringing. If you receive notice from Blackfoot of a claim of infringement made in relation to material you have placed on Blackfoot's systems or network and you believe in good faith that such claim has been wrongly made against you by the claiming party, you may submit counter-notice to bring about a private dispute between you and the party claiming copyright infringement.**

**Blackfoot will terminate service to those customers, subscribers and account holders that repeatedly violate federal copyright laws.**

**All such notices of copyright infringement and counter-notices must be sent to Blackfoot's Designated Agent that handles copyright and trademark infringement claims:**

Cody Mitchell, Technical Assistance Center (TAC)  
Blackfoot Telephone Cooperative, Inc.  
1221 N. Russell St.  
PO Box 16600  
Missoula, MT 59808  
Phone: 406-541-5499  
E-mail: [copyright@blackfoot.net](mailto:copyright@blackfoot.net)

### **Security**

In using Blackfoot services, you agree to comply with the following policies concerning security

1. You will not attempt to interfere with or compromise any part of the Service's operation, the equipment making up the Service and its system, other accounts or restricted areas of the Service and its system, or in any manner affect the availability of the Services or its systems for other Blackfoot customers.
2. You are prohibited from trying to gain access to any account, customer data or system that you do not have authorized access to unless consent has been granted by the owner.
3. You may not attempt to compromise the security of any computing facility or assist others to compromise the security of a computing facility.
4. You may not modify or prevent the intended or proper operation of any computing facility.
5. You will protect your passwords. You will not disclose any information regarding passwords that protect services and facilities to others. You will not attempt to discover the password of another user, nor attempt access to services or facilities with the use of another's password.
6. You may not disclose any part of any of Blackfoot's or any other party's confidential information, including but not limited to any business records, files or business practices.

### **Illegal Activity**

**In using Blackfoot services, you will use Blackfoot services for lawful purposes only and will not engage in any illegal activity. Illegal activities include activities that violate federal or state regulations and laws or the legal rights of others. Illegal activities include, but are not limited to:**

- **The illegal transmission, illegal storage or illegal use of copyrighted material, trade secrets, confidential information or threatening material.**
- **Postings or e-mails containing threats of violence.**
- **Distributing or disseminating of illegal defamatory, infringing or obscene material or information.**
- **Using Blackfoot's services to threaten, harass, stalk, abuse or otherwise violate the legal rights of others.**

## **E-mail**

In providing services to you, Blackfoot does not have the responsibility for the content or tone of any e-mail sent using Blackfoot's services. In using Blackfoot's services, you will abide by the following policies:

1. You are prohibited from sending unsolicited bulk e-mail, or from the receiving of responses from unsolicited bulk e-mail in a Blackfoot e-mail address.
2. **You are prohibited from sending e-mail that is terrorist in nature, threatening and/or harassing.**
3. You will not intercept or redirect e-mail intended for others.
4. You will not maliciously send files with either corrupted data or viruses.
5. You will not use impersonation, or use a different name or address with the intent of misleading the receiver into believing that the sender is someone other than who they are.
6. You are responsible for ensuring that any resource limitations in the use of e-mail or mailboxes are followed.

## **Newsgroups**

In providing access to newsgroup services, Blackfoot does not have the responsibility for the content or tone of any newsgroup, or the retrieval of any postings from any newsgroup. In using newsgroup services from Blackfoot's Services, you will abide by the following policies:

1. You will not exceed general usage standards for the number of postings of the same or similar article to multiple newsgroups.
2. You will adhere to the newsgroup's definition of what can be posted. Most newsgroups describe the posting of commercial advertisements as off-topic postings.
3. You will not use impersonation, or use a different name or address with the intent of misleading the receiver into believing that the sender is someone other than who they are.

## **Internet Relay Chat**

In providing access to Chat services, which are multi-user, multi-channel chatting networks that allow Internet users to talk (via text) to each other in real time about subjects of mutual interests, Blackfoot does not have the responsibility for the content or the tone of any chat. In participating in any chat forum accessed from Blackfoot services, you will not violate any accepted policies on the chat servers and will not make use of chat bots, or any automated data that is not human generated.

## **Dial-up Services**

In providing dial-up services for access to Blackfoot's services or to the Internet, Blackfoot provides equipment and resources that are used on a shared basis by many subscribers. Because the equipment and facilities are limited, it is not appropriate for any subscriber to use the services in a dedicated or automated constant use application. If the excessive use by an account is such that it potentially impacts Blackfoot's ability to provide Services or network resources that need to be protected, the account can be terminated immediately.

Blackfoot dial-up accounts may be subject to idle timeouts. An idle timeout is the disconnection of a session when a dial-up account is idle for a specified period of time and no interactive, human generated data appears to be received from the remote user's computer system. Automated data is not considered interactive or human generated and is also subject to idle timeout. Examples of automated data include data generated by an automatic re-dialer, script or other program that runs on the user's computer system for the purpose of avoiding inactivity disconnects.

In using dial-up services from Blackfoot, you will not resell any services or offer public information services over dial-up accounts (unlimited usage or otherwise), nor permit more than one log-on session to be active at one time on dial-up accounts.

### **Resource Usage**

In providing access to Blackfoot's services or to the Internet, Blackfoot provides resources, including but not limited to bandwidth and disk space, that are used on a shared basis by many subscribers. Because the resources are limited, it is not appropriate for any subscriber to exceed their usage of these resources. If the excessive use by an account is such that it potentially impacts Blackfoot's ability to provide services or that network resources need to be protected, the account can be terminated immediately.

To facilitate the use of shared network resources, Blackfoot has resource limits for the use of the e-mail services. Blackfoot shall not be liable to you or parties interacting with you for any damages resulting from the actions Blackfoot takes to enforce the following provisions:

1. Total mailbox storage is limited to **100** megabytes per mailbox. When the mailbox reaches the **100** megabytes of storage limit, an e-mail rejection notice will be returned to the sender.
2. The maximum size of an e-mail message is **10** megabytes, either for inbound or outbound messages. Messages that exceed **10** megabytes will not be delivered, and the user will receive a notification message informing them that the message was too large.

## **ADDITIONAL TERMS AND CONDITIONS**

### **Content**

You are solely responsible for creating, managing, editing, reviewing, deleting and otherwise controlling the content of messages or information in connection with services provided by Blackfoot. Blackfoot is acting only as a passive conduit. Blackfoot gives you complete discretion over the content to be accessed or distributed in connection with the Service. Blackfoot has no obligation, and undertakes no responsibility to determine whether any such content may give rise to liability to third parties. Notwithstanding anything to the contrary herein, if Blackfoot believes in its sole discretion that any use by you of service may create liability for Blackfoot, Blackfoot may take any actions, including but not limited to termination of service, that Blackfoot believes are prudent to minimize Blackfoot's potential liability.

If additional content screening would be of benefit to you, please contact our Customer Service department. Blackfoot offers Blackfoot Security Center for content screening for an additional fee. This service will assist you in screening on-line content. However, some internet users continue attempts to circumvent the effectiveness of any filtering or screening systems and you remain solely responsible for managing the content of information received over the Service.

### **LIMITATION OF LIABILITY**

**OUR NONPERFORMANCE HEREUNDER SHALL BE EXCUSED AND WE SHALL NOT BE LIABLE IF CAUSED BY ACT OR OMISSION OF AN UNDERLYING CARRIER, EQUIPMENT OR FACILITY FAILURE, EQUIPMENT OR FACILITY UPGRADE OR MODIFICATION, ACTS OF GOD, STRIKES, FIRE, WAR, RIOT, GOVERNMENT ACTIONS, EQUIPMENT OR FACILITY SHORTAGE, EQUIPMENT OR FACILITY RELOCATION OR CAUSES BEYOND OUR REASONABLE CONTROL. OUR LIABILITY, IF ANY, FOR ANY MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR, DEFECT OR OTHER FAILURE WITH RESPECT TO THE SERVICE SHALL IN NO EVENT EXCEED THE AMOUNT OF THE PRORATED MONTHLY CHARGES TO YOU FOR SAID SERVICE DURING THE AFFECTED PERIOD, PROVIDED THAT NO LIABILITY SHALL RESULT FOR OUTAGES OF 24 HOURS OR LESS. IN NO EVENT SHALL WE BE LIABLE TO YOU, YOUR EMPLOYEES, AGENTS OR CUSTOMERS, OR ANY THIRD PARTY (COLLECTIVELY FOR PURPOSES OF THIS PARAGRAPH, "SUBSCRIBER") FOR ANY COST, DELAY, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY FAILURE OF SERVICE OR OUR FAILURE TO PERFORM UNDER THIS AGREEMENT. WE SHALL NOT BE LIABLE TO SUBSCRIBER FOR INJURIES TO PERSONS OR PROPERTY ARISING FROM SUBSCRIBER'S USE OF YOUR SERVICE OR THE INSTALLATION, REPAIR, OR MAINTENANCE OF YOUR EQUIPMENT. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD BLACKFOOT, ANY UNDERLYING CARRIER, AND ANY OF OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS,**

**ACTIONS, LIABILITIES, COSTS OR DAMAGES RELATING TO THIS AGREEMENT AND SUBSCRIBER'S USE OF THE SERVICE. YOU FURTHER AGREE TO PAY OUR REASONABLE ATTORNEY'S AND EXPERT WITNESSES' FEES AND COSTS ARISING FROM ANY ACTIONS OR CLAIMS HEREUNDER AND THOSE INCURRED IN ESTABLISHING THE APPLICABILITY OF THIS PARAGRAPH.**

#### **DISCLAIMER OF WARRANTIES**

BLACKFOOT MAKES NO WARRANTY OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU UNDERSTAND AND AGREE THAT THE SERVICE IS NOT A GUARANTEE THAT VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, CANCELBOTS OR OTHER SIMILAR HARMFUL OR DELETERIOUS PROGRAMMING ROUTINES WILL NOT BE IMPORTED TO THE CUSTOMER'S NETWORK. BLACKFOOT DOES NOT GUARANTEE THAT YOUR NETWORK WILL NOT EXPERIENCE UNINTERRUPTED COMMUNICATIONS OR BREACHES IN SECURITY.

AS IS. WE ARE NOT THE MANUFACTURER OF YOUR DSL MODEM OR OTHER PROVIDED EQUIPMENT AND WE MAKE NO WARRANTIES REGARDING THE SERVICE OR YOUR EQUIPMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY TYPE OR CHARACTER. ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. STATEMENTS REGARDING OR DESCRIPTIONS OF THE SERVICE OR YOUR UNIT, IF ANY, BY BLACKFOOT OR OUR AGENTS OR INSTALLERS ARE INFORMATIONAL ONLY AND ARE NOT MADE OR GIVEN AS WARRANTY OF ANY KIND.

THE MANUFACTURER'S WARRANTY, IF ANY, IS BETWEEN YOU AND THE MANUFACTURER; IT DOES NOT APPLY TO BLACKFOOT, AND WILL NOT BE HONORED OR EXECUTED BY BLACKFOOT.

#### **Bundled Services that Include Long Distance – PIC Freeze Authorization**

If you subscribe to Internet or DSL services that include, as part of a package or bundle, long distance services (either flat rated or measured), then you designate Blackfoot as your long distance carrier for intrastate, interstate, and international long distance services, and you further authorize Blackfoot to place a free PIC Freeze on your account. You understand that no long distance carrier change will be made on your account until you give either verbal or written notification of your desired change. You may remove the PIC Freeze from your account at any time. However, if you remove the PIC Freeze and change long distance carriers, your package or bundled pricing will no longer be valid, and Blackfoot will charge you for your remaining services at the then current prices for each such service.

#### **Assignment**

We may assign in whole or in part our rights or duties under this Agreement without prior notice to you and upon such assignment we shall be released from all liability hereunder. You may assign this Agreement only with our prior written consent. Subject to this restriction, this Agreement shall inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective parties.

#### **Notices**

Written notices to you shall be considered given on the date deposited in the U.S. Mail addressed to you at your last known address as shown on the reverse side. Written notice to Blackfoot shall be considered given when received at our address of record. Verbal notices shall be considered given on the date reflected in our billing system.

#### **Return Policy**

If your DSL Modem was purchased from Blackfoot and includes its receipt and original packaging and contents, undamaged and in good working condition, you may return your unit within 72 hours of purchase for a full refund of your purchase price. Your return may be subject to a restocking fee. However, this does not limit your obligation to pay all installation costs and any termination fee pursuant to Section 3.

#### **Severability**



Should any part or portion of this Agreement be found invalid, the balance of the provisions shall remain unaffected and in full force and effect, unless our obligations hereunder are materially impaired.

### **Governing Law**

This Agreement, its validity, construction, and performance, shall be governed by applicable federal law, the regulations of the FCC and the laws of the State of Montana.

### **Copyright**

The content of our software and all Blackfoot on-line software or sites, including but not limited to the text and images therein and their arrangement, are copyrighted. All Rights Reserved.

Blackfoot hereby authorizes you to copy and/or display the content herein, but for your personal, non-commercial use only. Any copy you make must include this copyright notice. If attribution to Blackfoot is included, limited quotations from the content are hereby permitted. You may not sell, copy, use or display for redistribution to third parties or for commercial purposes any portion of the content without the prior written permission of Blackfoot.

### **No Implied Licenses**

Nothing contained herein shall be construed as conferring by implication, estoppel, or otherwise any license or right under any patent, trademark, copyright or proprietary rights of Blackfoot or of any third party.

## **PAYMENT**

### **Term/Rates**

(a) This Agreement begins on the date Service is activated to your current premise and continues until terminated in the manner provided herein. (b) If you select a plan with a fixed term longer than one month (such as an annual plan or a special promotional plan), the term of this Agreement shall continue for the number of months applicable to the term selected (the "Fixed Term"). If you select such a plan, you understand you have been provided a waiver of some or all installation charges in exchange for your agreement to subscribe for a Fixed Term. If you change physical location of the Services or otherwise attempt to terminate this Agreement prior to the end of the Fixed Term, you will breach this Agreement. In such event we will require you to pay a cancellation fee (which you agree may be deducted from your deposit).

You are responsible for all charges incurred by the use of the services, requested using either verbal or written means. The applicable term will be based on the verbal or written commitment made at the time of service request. The nonrecurring install charge will be waived for new customers with a 12 month commitment. If the install charge is waived a penalty will apply where service is discontinued prior to the end of the term. Request and use of service will be considered a binding commitment.

### **Deposits**

We may require a deposit in which you grant Blackfoot a security interest to secure your payment of all amounts when due. If not prohibited by law, deposits received by Blackfoot may be commingled with other of our funds, and will not earn interest. The amount of your deposit may be increased by Blackfoot at any time upon reevaluation of your credit. You may either provide Blackfoot such increased deposit or terminate this Agreement, in which case any cancellation fee will be waived. You must promptly pay your bills even if you have given Blackfoot a deposit. If this Agreement is terminated for any reason, any deposit from you will be applied to pay any of your charges then or thereafter due. Any remaining deposit or other credit balance on your account will be returned without interest (as allowed by law) to you at your last-known address within ninety (90) days after termination. Unless otherwise prohibited by law, if the Postal Service is not able to deliver the funds to you and returns them to Blackfoot, title to such funds shall be conclusively deemed to remain ours, and you shall have no further right thereto.

### **Billing and Payment of Charges**

You will pay all charges for Service under this Agreement. You will be charged for Service features on a monthly basis, with any charges for a partial month of feature usage to be determined on a prorated basis. Charges, including disputed amounts, must be paid by the date shown on the monthly invoice. You agree that (a) time is of the essence; (b) in the event of such failure, you shall pay Blackfoot interest at the rate of one percent (1.0%) per month (or any portion thereof), or the maximum rate allowable by law, whichever is less, on any amount not paid when due. If we accept late or partial payments or payments marked "Paid in Full" or similar notations, it will not waive any of our rights hereunder nor will it constitute an accord and satisfaction. We may charge you a returned check fee as required by law for any check returned for insufficient funds. Questions about or objections to any charges reflected on an invoice must be in writing and must be received by Blackfoot from you no later than the payment due date or any objection shall be waived. You are responsible for all charges incurred by the use of the login name assigned to you. If you lose your password you must contact Blackfoot promptly at the address or phone numbers below, and a representative will assign you a new password. Blackfoot will have no responsibility for any charges incurred on your account.

**Furthermore, Blackfoot cannot be responsible for any charges, which you may incur through your long distance company, and/or, any expenses incurred for your equipment or software. Check any installation programs carefully to assure that the phone number to which you are connecting is a local number.**

#### **Taxes**

Any applicable sales, use, excise, public utility or other taxes, fees or charges imposed on Blackfoot as a result of providing the Service or your equipment to you will be added to your charges when imposed or required by law. If you are exempt from payment on any such taxes, you may provide Blackfoot with an original Tax Exempt Document. Tax exemption will only apply from the date we receive the Tax Exempt Document (you cannot receive credit for any taxes already paid by you).

#### **Default/Termination**

We may discontinue Service and/or terminate this Agreement without prior notice to you if you do not pay any sum when due, breach any representations you made to Blackfoot in this Agreement, fail to perform any of your obligations set forth in this Agreement or in any other agreement between you and Blackfoot, use your Service in any abusive manner or in any way that damages or interferes with Blackfoot, or become the subject of any proceeding under the Bankruptcy Code or become insolvent. In any such case, you shall remain responsible for payment of all charges due to Blackfoot under this Agreement, which charges (including, without limitation, all unbilled installment amounts) will be immediately due and payable. In the event of your default, you will reimburse Blackfoot for our attorneys' and expert witnesses' fees, costs of investigation, collection and similar expenses incurred by Blackfoot in the enforcement of any right or privilege hereunder. If this Agreement is terminated because of your default, we may keep any charges or sums prepaid by you upon termination. If we agree to renew Service to you after discontinuing Service, you agree to pay any reactivation charges. Our remedies hereunder are not exclusive but are in addition to all other remedies provided by law.

#### **Modifying Your Account**

You may upon verbal or written notice to Blackfoot add or delete Service features. Unless you have selected a special promotional rate plan or Fixed Term Plan, you may, upon verbal or written notice to Blackfoot and payment of transfer fee (if any) assessed by Blackfoot, change to another rate plan beginning with the following billing cycle. Any Fixed Term will remain unchanged by any modification to your account. If we allow you to temporarily suspend your account, however, the Fixed Term may be extended by the length of the temporary suspension, at our option.

#### **IMPORTANT - READ CAREFULLY**

BY ACCEPTING OR USING ANY BLACKFOOT INTERNET, DIALUP OR BROADBAND SERVICE IN ANY WAY, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS. THESE TERMS AND CONDITIONS ARE CAN BE VIEWED ON BLACKFOOT'S WEB SITE.

#### **NO LIABILITY FOR DAMAGES**

IN NO EVENT WILL BLACKFOOT, OR ANY OF ITS AFFILIATED COMPANIES USING BLACKFOOT FOR THE PROVISION OF INTERNET SERVICES, BE LIABLE TO YOU FOR ANY DAMAGES, INCLUDING

LOST PROFITS OR LOST SAVINGS, ANY DAMAGE OR LOSS OF YOUR COMPUTER'S SOFTWARE, DATA FILES OR PERIPHERALS WHICH MAY RESULT FROM USE OF BLACKFOOT SERVICES OR THE INSTALLATION OR REMOVAL OF THE BLACKFOOT SOFTWARE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF THIS SOFTWARE OR SERVICE.

**Commercial Power**

Alternative power sources, such as generators, may cause interference with DSL service due to the introduction of noise and power fluctuations. No service credits will be issued by Blackfoot for any service interruptions or degradation directly or indirectly caused by Subscriber's use of non-commercial power sources.

**Entire Agreement**

These terms and conditions represent the final and entire agreement between you and Blackfoot. No prior or subsequent handwritten, typed, or oral change to this Agreement will be valid unless we accept it in writing. Our failure at any time to require strict performance by you of any of the provisions herein shall not waive or reduce our right to thereafter require strict compliance with any provisions of this Agreement. Blackfoot reserves the right to change or modify these terms and conditions from time to time. Such changes can be viewed on the Blackfoot web site.