

# ACCEPTABLE USE POLICY ("AUP")

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**1. GENERAL** McCormack Online ("Provider") provides Internet access and related services to users who have agreed to the terms and conditions stated below.

This Online Access agreement ("Agreement") is a legal agreement between you and Provider. It states the terms and conditions under which you may access Provider's system and use the online services that Provider makes available through that system ("Service") and use the software necessary to connect to the service ("Software").

**PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. BY COMPLETING THE REGISTRATION PROCESS AND USING THE SOFTWARE AND SERVICE, YOU AGREE TO BE LEGALLY BOUND AND TO ABIDE BY THIS AGREEMENT.**

## 2. ACCESS AND LICENSE

**(a) Access.** Provider hereby grants you access to its system and the right to use the Service subject to the terms of this Agreement.

**(b) License.** Provider hereby grants you a nonexclusive, personal, nontransferable license to install and use the Software, in executable form only, solely for the purpose of accessing Provider's system and using the Service. You may install and use the Software on any compatible computer under your control and copy the Software for backup or archival purposes provided that all such copies contain the copyright notice and other proprietary markings found on the original copy of the Software. You may not (a) modify or otherwise create derivative works, (b) translate, reverse engineer or reverse compile, or disassemble, (c) sell, rent, sublicense, assign, or otherwise transfer, or distribute, the Software or this license.

**(c) Permitted Users.** You may permit other members of your organization or household to access the service provided that each such person abides by the terms and conditions of this Agreement. By permitting others to use your account, you assume all risk and liabilities resulting from their use. If you authorize a minor to use your account, you are fully responsible for the online conduct of the minor, for controlling the minor's access to and use of the Service, and for the consequences of any misuse. It is your responsibility to safeguard any personal identification number and password required to access the system. Your right to authorize others to use your account is not assignable or transferable.

**3. CHANGES** The Service, Provider's system, and this Agreement may change from time to time. Provider reserves the right, at Provider's sole discretion and without prior notice or liability, to discontinue or alter the service or any feature of the service including, without limitation, (a) restricting the time of availability, (b) restricting the availability and/or scope of the Service for certain types of computers and operating systems, (c) restricting the procedures for or amount of access or use permitted, (d) restricting or terminating any user's right to access and use the Service, and (e) changing system hardware and software. Any change is effective immediately upon a posting on the Service, electronic mail, or conventional mail. By continuing to use the Service, you accept any such changes. If any such changes are not acceptable to you, you may terminate this Agreement at any time as described in Section 11.

## 4. BILLING

**(a) Service Fee; Taxes.** Provider will charge you a monthly service fee for the Service plus any applicable sales, use, value-added, personal property, or other governmental tax imposed on the Service. Current rates are available online or by telephone or e-mail to Provider's Customer Service. Rate changes are effective on the 1st day of the month immediately following publication of the rates online.

**(b) Payment.** McCormack Online charges will be detailed on Ellington Telephone Company billing statements.

**(c) Equipment and Connect Charges.** You are responsible for obtaining, installing, maintaining, and operating all computer and telephone equipment and telephone access lines and for all telephone and other charges necessary to access the Service.

**5. SYSTEM RULES (a)** You agree to supply Provider with accurate and complete information and to inform Provider promptly of any change in such information.

**(b)** You are responsible for all use of your account. You must promptly inform Provider of the loss, theft, or unauthorized disclosure or use of your personal identification number or password. Until you notify Provider of such a breach of security, you remain liable for any unauthorized use of the Service through your account.

**(c)** The Service and Software may only be used for lawful purposes and consistent with the rights of other users and third parties. Without limiting the foregoing, the Service and Software shall not be used in a manner that would violate any law or infringe any copyright, trademark, trade secret, right of publicity, right of privacy, or any other right of any third party, or for the purpose of transmitting or storing material that is obscene or defamatory. You are prohibited from posting on, or transmitting through the Service, any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, profane, hateful, racially, ethnically or otherwise objectionable material of any kind, including without limitation any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law.

**(d)** Provider reserves the right to refuse to provide access to the Service to anyone.

## 6. DISCLAIMER; LIMITATION OF LIABILITY

THE SERVICE IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS. PROVIDER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED BY IT UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM LIABILITY OF PROVIDER TO ANY USER FOR ANY LOSS, CLAIM, DAMAGE, OR LIABILITY OF ANY KIND, INCLUDING DUE TO PROVIDER'S NEGLIGENCE, SHALL BE LIMITED TO THE AMOUNT PAID BY USER TO PROVIDER DURING THE SIX MONTH PERIOD PRECEDING THE CLAIM.

**7. INDEMNIFICATION** You agree to indemnify and hold Provider, its officers, directors, employees, and agents harmless from and against any claims and expenses (including reasonable attorney's fees) arising out of or related to any violation of this Agreement or use of your account.

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**8. PRIVACY** Electronic mail and other transmissions passing through the Service or over the Internet and through Provider's system are not secure, and Provider cannot guarantee the security or privacy of any of your information or communications. Provider will not intentionally monitor or disclose any private electronic communications, except to the extent necessary to identify or resolve system problems or as otherwise permitted or required by law.

**9. EDITORIAL CONTROL** Provider reserves the right to monitor transmissions, other than private electronic communications, as necessary to provide service and otherwise to protect the rights and property of Provider. Notwithstanding the foregoing, Provider does not have the practical ability to restrict conduct, communication, or content that might violate this Agreement before transmission on the service, nor does Provider assume any liability for any action or inaction with respect to such conduct, communication, or content.

## 10. PROPRIETARY RIGHTS

**(a) Software.** The Software and any accompanying documentation and written materials are the sole and exclusive property of Provider or its licensor and are protected by copyright and trade secret law and international treaties.

**(b) Content.** You acknowledge that the Service contains information, software, photos, video, graphics, sound, music, and other material ("Content") that are protected by copyright, trade mark, trade secret, and other intellectual property law and that the rights in such Content are valid and protected in all forms, media, and technologies that now exist or that may be developed in the future. You may not modify, publish, distribute, transmit, transfer or sell, create derivative works, or in any way exploit any of the Content, in whole or in part. Except as allowed by U.S. copyright law, you may not upload, post, reproduce, or distribute any Content protected by copyright or other proprietary rights without the permission of the copyright owner.

### **(c) Third Party Content and Services.**

(1) You may only upload or otherwise distribute via the Service Content that is not subject to any copyright or other proprietary rights protection or for which you have the owner's express authorization for such on-line distribution. The unauthorized uploading or distribution of copyrighted or other proprietary Content constitutes a breach of this Agreement, and could subject you to criminal prosecution, personal liability for any damages arising from any infringement, and to termination of this Agreement.

(2) Any opinions, advice, statements, services, offers, or other Content expressed or made available by third parties are those of the respective authors, owners, or distributors and not of Provider. In no event will Provider be liable for any loss or damage caused by a user's reliance on Content obtained through the Service.

(3) The Service may permit you to receive information and order and receive merchandise and services directly from businesses that are not owned or operated by Provider. The purchase, payment, warranty, delivery, and any other terms concerning such information, merchandise, and services are solely between you and such businesses.

**(d) Export.** The U.S. export control laws regulate the export and re-export of technology originating in the United States, including the electronic transmission of information and software to foreign countries and foreign nationals. You agree to comply with these laws and not to transfer by electronic transmission or otherwise, and Content derived from the Service without obtaining any required government authorization. You further agree not to upload to the Service any data or software that cannot be exported without prior written government authorization, including without limitation, certain types of encryption software.

**11. TERMINATION (a) For any Reason** . Either you or Provider may terminate this Agreement for any reason at any time by giving the other party notice of termination. Such termination shall be effective upon receipt of notice. Termination requests from users must be received by McCormack Online via e-mail, fax or postal service at: office@mcmo.net; 573-663-2000; or, 200 College Avenue \* PO Box 400 \* Ellington, MO 63638

**(b) For Cause.** Provider may terminate this Agreement without notice for any conduct that Provider believes in its sole discretion violates this Agreement, interferes with other users' use of the Service, or is otherwise inappropriate.

**(c) Effect of Termination** . Upon termination, your license to use the Software automatically terminates, and Provider will delete all data, files, or other information stored in your account. In the event of termination, you remain bound by Sections 2, 7, and 10 of this Agreement. Monthly service fees and any prepaid charges will not be refunded or prorated.

**12. MISCELLANEOUS (a) Choice of Law.** This Agreement and its validity, construction, and performance shall be governed in all respects by the laws of the State of Missouri, without regard to its choice of law rules.

**(b) No Waiver.** Provider's failure to insist upon strict performance of any of the provisions of this Agreement shall in no way constitute a waiver of future violations of the same or any other provision.

**(c) Modification** . This Agreement shall not be modified in any way except by a writing signed by both parties.

**(d) Severability** . If any provision or portion of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

**(e) Survival.** The provisions of this Agreement relating to confidentiality, warranties, and indemnification shall survive any termination or expiration of this Agreement.

**(f) Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all oral, written, or other communications between them concerning its subject matter.