

**These are the Acceptable Use Policies (AUP) of FMCTC. All clients of FMCTC agree to abide by these policies. FMCTC reserves the right to change and update these policies as necessary.**

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## **Introduction**

The primary purpose of FMCTC is to provide communication with computer networks referred to as "the Internet." It is FMCTC's intention to allow FMCTC users complete access to everything the Internet has to offer, with minimal or no interference from FMCTC.

However, many individual networks or portions of the Internet have specific guidelines for use. As the Internet expands, it is more common for an Internet Service Provider, such as FMCTC, to be blocked from use of another organization's systems due to violations of that system's guidelines. Because FMCTC runs multi-user systems, actions of one FMCTC customer can have a severe impact on other customers' ability to use the system(s). *This is unfair to all FMCTC users.*

To this end, FMCTC has developed these Acceptable Use Policies. They are intended to inform customers of what FMCTC considers to be acceptable conduct regarding the Internet, and to inform Customers what actions FMCTC may take, *with or without notice*, in the event of inappropriate use of FMCTC's service. This AUP will be used to help FMCTC system administrators deal with complaints from users of FMCTC or other Internet-connected systems, and to determine when action should be taken. It is expected that all FMCTC Customers will follow these policies. These policies are drawn from applicable law and generally accepted standards of Internet conduct, and are intended to ensure protection of FMCTC's technical resources, ability to continue to provide high quality service to its customers, and the protection of FMCTC's reputation as a service provider.

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## **ACCESS TO FMCTC INTERNET SERVICE IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

### **1. Warranties/Disclaimers**

FMCTC Internet service is 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 FMCTC or any information or software therein. You release FMCTC from and FMCTC shall have no liability or responsibility for any direct, indirect, incidental or consequential damages suffered by you in connection with your use of or inability to use the FMCTC services. These include, but aren't limited to, damages from loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruptions, or inadvertent release or disclosure of information sent by you even if the same is caused by FMCTC's own negligence. Without limiting the generality of the foregoing, FMCTC disclaims to the full extent permitted by applicable law any responsibility for (and under no circumstances shall be liable for) any conduct, content, goods and services available on or through the Internet or the FMCTC services. In no event shall FMCTC's aggregate liability exceed the amount paid by you to FMCTC for the FMCTC services. Use of any information obtained via FMCTC's Internet service is at the user's own risk. FMCTC specifically disclaims any responsibility for the accuracy or quality of information obtained through its services.

### **2. Security**

The Customer is responsible for all use of the Customer's account(s), confidentiality of password(s) and ensuring file protections are set correctly. FMCTC will suspend access or change access to Customer's account(s) immediately upon notification by Customer that their password has been lost, stolen or otherwise compromised. FMCTC is not liable for any usage and or charges prior to FMCTC making the necessary account alteration. Electronic mail on this system is as private as we can make it. FMCTC's Customers are reminded

that no computer network can ever be considered *completely* safe from intrusion. E-Mail may pass through many computer systems, and should not be considered a secure means of communication unless encrypted – and even encrypted information is only as secure as the encryption method utilized.

### 3. Personal Files

FMCTC is not responsible for any Customer's personal files residing on FMCTC. The Customer is responsible for independent backup of the Customer's data that is stored on FMCTC. FMCTC reserves the right to delete any Customer's personal files after one or both parties terminates the service agreement between FMCTC and the Customer.

### 4. Non-Transferability of Account

The right to use FMCTC's Internet service is not transferable. Use of FMCTC accounts is expressly limited to the individual or business whose name appears on the account and dependents of the account holder living at the same address. A Customer may use no more than one log-in session per account at any time. If a Customer has multiple accounts, the Customer is limited to one log-in session per account at any time.

### 5. Network Address Ownership

Any network address assignments issued by FMCTC (i.e., IP addresses and Class C address space) are the property of FMCTC and are considered to be loaned to its customers. In the event service with FMCTC is discontinued for any reason, such addresses will revert to FMCTC. If a Customer of FMCTC participates in a service of FMCTC which provides for a unique Domain Name System (DNS) entry, the Customer will retain ownership of the assigned Domain Name, but *not* the IP address to which it was assigned by FMCTC.

### 6. Compliance with all Laws

Customer agrees to use the service in a manner consistent with *any and all applicable laws and regulations* of the United States of America, the State of Iowa, and the Customer's locality. Reproduction or transmission of any material in violation of any local, state, U.S., or international law or regulation is prohibited. The Customer agrees that any material to be reproduced or transmitted on FMCTC's service through Customer's account(s) does not violate or infringe any copyright, trademark, patent, statutory, common law or proprietary rights of others, or contain anything obscene, libelous or threatening. Software intended to facilitate any such violations or infringements may not be stored on FMCTC. The Customer shall defend, indemnify and hold FMCTC harmless from and against any claims, liabilities and expenses, including attorney fees, resulting from any Customer's use of the FMCTC service or a Customer's account in an unlawful manner or otherwise in violation of or contrary to the Customer's Agreement with FMCTC or FMCTC's Acceptable Use Policies. At FMCTC's discretion, FMCTC may revoke any Customer's access to FMCTC services or accounts for inappropriate usage.

### 7. Unacceptable Conduct

The following types of conduct are grounds for *immediate* suspension of service pending investigation by FMCTC and may result in termination of the account(s) the investigation determines to have originated or transmitted these types of traffic. In addition, FMCTC reserves the right, where feasible, to implement technical mechanisms which block multiple postings by a FMCTC Customer as described in (a) and (b) below before such postings are forwarded:

**(a)** Posting a single article or substantially similar articles to an excessive number of newsgroups (i.e., more than 20) or continued posting of articles which are off-topic according to the newsgroup charter, or which provoke complaints from the regular readers of the newsgroup for being inappropriate).

**(b)** Sending unsolicited commercial email ("UCE")/unsolicited bulk email ("UBE"), including activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email whether or not that email is commercial in nature.

**(c)** Engaging in either (a) or (b) from a provider other than FMCTC and using an account on FMCTC as a mail drop for responses, or to draw attention to a web site housed within FMCTC's networks.

**(d)** Continued harassment of other individuals on the Internet after being asked to stop by those individuals and/or by FMCTC.

**(e)** Advertising, transmitting, storage, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send e-mail spam, initiation of pinging, flooding, mail-bombing, denial of service attacks, and piracy of software and licensed content (e.g., digital music and entertainment). This

includes, without limitation, material protected by copyright, trademark, trade secret, or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.

**(f)** Impersonating another user or otherwise falsifying one's user name in E-Mail, Usenet postings, on Internet Relay Chat (IRC), or with any other Internet service. (This does not preclude the use of nicknames in IRC or the use of anonymous remailer services.)

**(g)** Unauthorized attempts, whether successful or not, to gain access to any account or other system or users' private data (e.g., "cracking").

**(h)** Use of IRC bots or clonebots on FMCTC, whether on IRC servers controlled by FMCTC or by other parties. An IRC bot is a program which runs and is connected to an IRC server 24 hours a day, automatically performing certain actions.

**(i)** Obtaining or attempting to obtain service with the intent of offering services that may impair or degrade FMCTC's network including, but not limited to, voice over IP gateway services ("VOIP"), gaming server services, and streaming audio or video services.

**(j)** Obtaining or attempting to obtain service by any means or device with intent to avoid payment.

**(k)** Obtaining or attempting to obtain service with the intent of reselling services without written permission from FMCTC.

**(l)** Network unfriendly activity: Attempts to interfere with the regular workings of FMCTC's systems or network connections or which adversely affect the ability of other people or systems to use FMCTC services or the Internet, including, but not limited to:

1. any unauthorized attempts by a user to gain root access or access to any account not belonging to that user on this or any other FMCTC system;
2. any use of this or any other FMCTC system as a staging ground to disable other systems.
3. any network activity that degrades service in the FMCTC system or in the general Internet including, but not limited to, pinging, flooding, and denial of service attacks.

**(m)** Any activity which violates the laws or statutes of the United States or the State of Iowa.

**(n)** Obscene material such as ***Animalsex, Bestiality and Child Pornography are strictly forbidden*** and any account found serving anything of such material will be suspended immediately.

## **8. Excess Utilization of System or Network Resources**

FMCTC account descriptions in some cases may specify limits on bandwidth, CPU and disk utilization for certain types of Customers, and use up to these limits is included in the price for that type of Customer. In the event FMCTC determines that a Customer is exceeding the bandwidth, CPU and/or disk utilization limits, the Customer will be notified by E-Mail. If the excess use continues for more than 48 hours after such notification, the Customer may be requested to upgrade to a web hosting service agreement or to modify the activity creating the excess use. If excessive bandwidth, CPU or disk space utilization is determined by FMCTC to adversely affect FMCTC's ability to provide service for all customers, immediate action may be taken to alleviate the problem. In such event, the Customer will be notified by E-Mail as soon as practicable.

## **9. Compliance with Rules of Other Networks**

Any access to other networks connected to FMCTC's Internet service must comply with the rules for that other network as well as with FMCTC's rules.

## **10. Monitoring/Privacy**

FMCTC reserves the right to monitor any and all communications through or with FMCTC facilities. Customer agrees that FMCTC is not considered a secure communications medium for the purposes of the Electronic Communications Privacy Act, and that no expectation of privacy is afforded. It may become necessary for FMCTC employees to examine system accounting logs and other records to determine if privacy violations or other network unfriendly activities have occurred. FMCTC also reserves the right to access a Customer's mailbox or other files stored on FMCTC systems to resolve system problems or mail system errors.

## **11. Cooperation with Authorities**

FMCTC reserves the right to cooperate with law enforcement and other authorities in investigating claims of illegal activity including, but not limited to, illegal transfer or availability of copyrighted material, postings or e-mail containing threats of violence or other illegal activity.

## **12. Confidentiality of Personal Subscriber Information**

FMCTC will not release a Customer's personal subscriber information, nor a Customer's billing information, to any third party except upon presentation of a valid court order of a government or entity within our jurisdiction. Customer agrees that FMCTC judgment as to the validity of any court order of subpoena shall be considered proper and final.

## **13. FMCTC's Right to Suspend or Cancel Account**

FMCTC reserves the right to suspend or cancel service to a Customer at any time and without notice, for any reason, including, but not limited to, refusal or failure to pay for services provided or by sole judgment of FMCTC that the Customer may be performing activities harmful to FMCTC or its Customers, employees, vendors, business relationships or any other users of the Internet.

## **14. Right to Damages**

FMCTC reserves the right to collect damages (software, hardware and man hours) if any harm is done to FMCTC which requires repair or reconfiguration of any kind.

## **15. Other Remedies/Non-Waiver**

Nothing contained in these policies shall be construed to limit action FMCTC may take or remedies available to FMCTC in any way with respect to any of the described conduct. FMCTC reserves the right to take any additional actions FMCTC may consider appropriate with respect to such conduct, including without limitation taking action to recover the costs and expenses of identifying offenders and removing them from the FMCTC service, and levying cancellation charges to cover FMCTC's costs in the event of disconnection of dedicated access for the causes outlined above. In addition, FMCTC reserves at all times all rights and remedies available to FMCTC with respect to such conduct at law or in equity. Non-enforcement of any policy or rule herein does not constitute consent or waiver, and FMCTC reserves the right to enforce such policy or rule at its sole discretion.

## **16. FMCTC's Right to Change Service**

FMCTC reserves the right to change without notice the FMCTC service, including, but not limited to, access procedures, hours of operation, menu structures, commands, documentation, vendors and services offered.

## **17. FMCTC's Right to Modify its Acceptable Use Policies**

FMCTC may modify its Acceptable Use Policies upon notice published online via FMCTC. Customer's use of FMCTC services after such notice shall constitute Customer's acceptance of the modifications to these policies.

## **18. Indemnifications**

Customer agrees to defend, indemnify and hold harmless FMCTC and its owners, officers, shareholders, directors, employees, affiliates and subsidiaries from and against any and all claims, demands, liabilities, proceedings, damages, injuries, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to:

**A.)** Any acts or omissions by Customer undertaken in connection with the Internet page, including, without limitation, those arising out of or related to any branch of:

- (i) any Customer warranties, representations, or covenants hereunder;
- (ii) inaccuracy of any information, including false advertising claims and unfair competition claims;
- (iii) claims and investigations made by any Federal or State agency arising out of information contained on the Customer's Internet page.

**B.)** Violations of any third-party intellectual property rights, or any claim of infringement, misappropriation or violation of a right of a third party (including, without limitation, a trade secret claim, a defamation or libel claim, or an obscenity claim).

## **19. Miscellaneous Provisions**

19.1 - Prevention of Performance. The parties shall not be liable for any delay or failure of performance of this

Agreement if such failure is caused by acts of God, war, governmental decree, power failure, judgment or order, strike, communications failure, equipment of software malfunction, or other circumstances, whether or not similar to the foregoing, which are beyond the reasonable control of such party.

19.2 - Entire Agreement. This instrument embodies the whole agreement between the contracting parties. There are no promises, representations, conditions, or terms other than those contained herein.

19.3 - Severability. The provisions of this Agreement are severable. If any provision is determined by a court of competent jurisdiction or a governmental regulatory entity to be invalid or unenforceable, in whole or in part, that provision shall be construed or limited in such a way as to make it enforceable, consistent with the manifest intentions of the parties. If such a construction or limitation is not possible, the unenforceable provision will be stricken, and the remaining provisions of this Agreement will remain valid and enforceable.

19.4 - Waiver. Failure by either party to insist upon the strictest performance or observance of any provision of this Agreement or to exercise any right or remedy arising out of this Agreement shall not be construed as a waiver of any right or remedy with respect to any existing or subsequent breach or default.

19.5 - Notices. Any and all written notices, communications, or payments shall be made to the respective parties at their addresses indicated in the first paragraph of this Agreement or at such other address as a party may indicate in a written notice to the other party to this Agreement.

19.6 - Governing Law. This Agreement shall be governed by the internal laws of the State of Iowa and the parties hereto agree that the courts in Iowa shall have exclusive jurisdiction for any claims or disputes which may arise hereunder.

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Questions should be directed to [support@fmctc.com](mailto:support@fmctc.com).

October, 2007