

## Subscriber Service Agreement

By using ZipLink Internet service, the Subscriber agrees to the following:

- **1.1 Terms & Conditions**

CellTex Networks, LLC (“**Provider**”) is pleased to provide you with Internet access and other services (“**Service**” or “**Services**”). For purposes of this Subscriber agreement (“**Agreement**”), “**ZipLink Internet.com**”, “**we**” or “**our**” means Service or Services provided by CellTex Networks, LLC, its subsidiaries, affiliates and any other person or entity doing business with CellTex Networks, LLC and providing Services to you (and any agents of the aforementioned entities, including any billing agents). As a condition of using the Services, you (“**you**” or “**your**” or “**Subscriber**”) agree to accept and comply with the provisions of this Agreement. Your use of the Services constitutes your acknowledgement and agreement that you have read and understand these provisions, and agree to be bound by the terms and conditions of this Agreement each time you access the Services. The provisions of this Agreement shall apply to all Service(s) you purchase from the Provider now, or in the future, unless such provisions are superseded pursuant to the terms of a separate agreement or agreements. Except as set forth elsewhere in this Agreement, the Provider reserves the right to change the terms of this Agreement, at any time, without notice. The most current version of this Agreement will be posted on the legal section of the ZipLink Internet.com website. If you have any questions about these terms of service, you should speak with your ZipLink Internet.com Subscriber consultant.

- **1.2 Acceptance**

Please read this Agreement carefully before accessing the Service. If you agree with and accept the Agreement, check the “I accept” box for the Service. By accepting the Agreement and accessing the Service, you acknowledge that you are of legal age, and you have read, understood, and agree to be bound by this Agreement. In all events, by using this Service, you agree to be bound by these terms and conditions. If you do not agree to the terms of this Agreement, do not use the Service.

## Section 2 Your Use Of Service

- **2.1 Eligibility**

As a Subscriber, you must be at least 18 years old to be eligible to subscribe to the Service. However, if you are less than 18 years old, you may use the Service if, and only if, you have your parent’s or legal guardian’s prior permission. By accepting this Agreement you are representing that you are at least 18 years of age or that you have your parent’s or legal guardian’s permission to access the Service. In cases where you have authorized a minor to use the Service, you recognize that you are fully responsible for: (i) the online conduct of such minor; (ii) controlling the minor’s access to and use of the Service; and (iii) the consequences of any misuse by the minor. The Provider does not

discriminate on the basis of age (for eligible Subscribers), gender, race, ethnicity, nationality, religion, sexual orientation, or any other protected status.

- **2.2 Parental Controls and Child Safety**

Certain material available on the Internet is not appropriate for minors. To prevent or limit minor's access to such materials, a number of parental control protections (such as computer hardware, software, or filtering services) are commercially available. The Provider is not responsible for the content of or exposure to the information and material available through the Internet. The Provider makes no representations or warranties and gives no guarantees as to the quality, suitability, truth, accuracy or completeness of any information or materials contained on the Internet. Any questions regarding any such information or materials should be directed to the providers of such information or materials.

- **2.3 Accuracy of Subscriber Information**

The Provider requires you to register and provide certain data. In consideration of the use of the Service, you represent and warrant that: (a) the information about yourself is true, accurate, current, and complete (apart from optional items) as required by the registration forms ("**Registration Data**") and (b) you will maintain and promptly update the Registration Data to keep it true, accurate, current and complete. Each time you update such information, you represent and warrant that such information is true, accurate, current, and complete. The Provider may allow multiple account ID's and passwords per billing account. However, there must be only one responsible individual per account. You will not permit others to use any of your account ID's and passwords. If you provide any information that is untrue, inaccurate, not current or incomplete, or we suspect, in our sole discretion, that such information is untrue, inaccurate, not current or incomplete, we have the right, in our sole discretion, to suspend or terminate your account and refuse all current and/or future use of the Services. Your Registration Data becomes the exclusive property of the Provider. The Provider reserves the right to use and reuse all Registration Data and other personally identifiable Subscriber information in accordance with the Privacy terms described in a later section of this Agreement.

- **2.4 Impersonation**

You agree that you will NOT use the Service to impersonate any person or entity in person or electronically or forge anyone else's digital or manual signature, including, but not limited to, an official of the Provider or its employees, a forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity. You may not appear to represent the Provider through the use of or reference to the Provider's name in any emails without the express written consent of the Provider.

- **2.5 Reselling & Redistribution**

You may not resell, share, or otherwise distribute the Service or any portion thereof to any third party without the express written consent of the Provider. For example, you cannot provide Internet access to others through a dial up or wireless connection (unless you are subject to a Service plan that permits otherwise), host shell accounts over the Internet, provide email or news service, or send a news feed. You may not use the Service for commercial purposes unless your Service plan permits such use. The Service offered is a residential consumer product designed for your personal, noncommercial use of the Internet. For example, the Service may not provide the type of security, upstream performance and total downstream throughput capability typically associated with commercial use. You may not use the Service in a manner that constitutes or enables competition with the Service.

- **2.6 Unlawful Use**

In using of the Service, you may not use the Service for any activity that is unlawful (whether criminal or tortious) under the laws of any jurisdiction to which you or the Provider are subject or promotes activity that is unlawful under the laws, rules, regulations, or statutes of any jurisdiction to which you or the Provider are subject. The Service may not be used to breach the security of another Subscriber or to attempt to gain access to any other person's computer, software or data, without the consent of such person. The Service may not be used in any attempt to circumvent the Subscriber authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing or breaching the security of other networks. You must not upload, post, email, otherwise transmit or post links to any content, or select any Subscriber name password or email address, that is unlawful, harmful, threatening, advocating violence, abusive, harassing, defamatory, vulgar, obscene, pornographic, libelous, invasive of privacy or publicity rights, hateful, or racially, sexually, ethnically or otherwise objectionable, all as determined by the Provider in its discretion. You must not upload, post, email, otherwise or post links to any content that promotes illegal activity, including without limitation the provision of instructions for illegal activity.

- **2.7 Codes of Conduct**

In using of the Service, you agree to obey any codes of conduct or other notices we provide. You also agree to obey any codes of conduct or other notices provided by other networks or services accessed via the Service.

- **2.8 Security**

You agree not to use the Service in a manner that presents a material security risk or will interfere materially with the continued operation of the Service. Upon registering, you are responsible for maintaining the confidentiality of your Subscriber ID and password, and

are fully responsible for all activities that occur under your Subscriber ID or password. You are responsible for any misuse of the Service, even if the misuse was committed by a friend, family member, guest, employee or Subscriber with access to your Service account. Therefore, you must take steps to ensure that others do not use your account to gain unauthorized access to the Service by, for example, strictly maintaining the confidentiality of your Subscriber ID login and password. You agree to (a) immediately notify the Provider of any unauthorized use of your account, Subscriber ID or password or any other security breach, and (b) ensure that you exit from your account at the end of each session. You agree not to use or distribute tools, or links to tools, designed for compromising security or facilitate hacking, such as, but not limited to, password guessing programs, cracking tools, packet sniffers or network probes. You are solely responsible for the security of any device you choose to connect to the Service, including any data stored or shared on that device. The Provider recommends against enabling file, printer or other device sharing of any sort unless you do so in strict compliance with all security recommendations and features provided by the manufacturer of the shared devices. Any files or devices you choose to make available for remote access must be protected with a strong authentication scheme.

- **2.9 Damaging Content**

You agree to not download or disseminate damaging content, including, without limitation, viruses, bugs, “Trojan Horses”, worms, Easter eggs, time bombs, trap doors, cancelbots or other computer programs that have the purpose or effect of disabling, denial of service, modifying or rerouting the Service, obtaining other Subscriber’s credentials, overburdening, damaging, interfering, altering, intercepting, expropriating or otherwise impacting or affecting the Service, any computer systems or other Subscribers of the Service. You agree not to make any use of the Service to post or transmit any Content, defined below, that holds the Provider or any of its affiliates, employees, or shareholders up to public scorn or ridicule.

- **2.10 Automated Scripts**

You agree to not use automated means, including spiders, robots, crawlers, or similar software means to upload or download data using the Service except for bona fide Internet-based data backup services.

- **2.11 Unsolicited and Bulk Mail**

Mass electronic messages or “mailbombing” (sending mass unsolicited mail or deliberately sending very large attachments to one recipient) are prohibited. Spamming, sending unsolicited commercial email messages or unsolicited bulk email to advertise, promote, offer, sell, or buy any goods or services, including pyramid schemes, raffles, contests, feebased games, chain mail and junk mail, charity requests, petitions for signatures, political or religious messages, for any business or individual, is strictly prohibited. Such messages may only be sent to those who have explicitly requested them (“optin”). The Service may not be used to collect responses from unsolicited email sent

from other email or network services. You are also prohibited from sending the same or substantially similar unsolicited email message, whether commercial or not, to fifty or more recipients without written permission from the Provider. In the interest of maintaining network performance, you should not send unreasonably large electronic mail attachments. You are prohibited from running programs designed to defeat network inactivity timeouts. In response to a complaint, the Provider has the discretion to determine, from all of the evidence it receives, whether the intended recipients were from an “optin” email list.

- **2.12 Falsification**

Use of the Service may allow you to post information for others to access. You agree not to make any use of the Service to post or transmit any information or material that is falsified, deceptive, or misleading, including without limitation the use of forged headers, return or other email addressing information, IP and MAC addresses or otherwise manipulated identifiers in order to disguise the origin of the information or material, or lacking author attributions, copyright notice, or any other information necessary to make the information or material not misleading.

- **2.13 Intellectual Property Rights**

You are prohibited to use the Service in any manner that infringes another’s copyrights, patents, trademarks, service marks, trade names, trade secrets or other intellectual property rights or rights of publicity, including failing to obtain all required permissions to receive, upload, download, display, distribute, or execute programs or perform other works or derivative works protected by intellectual property laws or removing or altering applicable copyright, trademark, or patent notices. This prohibition shall include, without limitation, the following forms of piracy: making available serial numbers for software that can be used to illegally validate or register software; making copyrighted, nonroyalty free works, such as music, published text, artwork, photographs, or otherwise freely available in any digital format without consent of the copyright holder.

- **2.14 Information About Third Parties**

You are prohibited to attempt to intercept, collect or store information or data about third parties without their knowledge or consent.

- **2.15 Securities Regulations**

You may not use the Service intentionally or unintentionally to 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 international 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. This includes, but is not limited to, the acquisition or

dissemination of insider information, or any other proprietary or confidential information, or attempting to manipulate any equity, security, commodity or other market.

- **2.16 Servers (Residential Plans Only)**

You may not run a server in connection with the Service, nor may you provide network services to others via the Service unless you are subject to a Service plan that permits otherwise. Examples of prohibited uses include, but are not limited to, running servers for mail, http, ftp, irc, WiFi, and dhcp, and multisubscriber interactive forums.

- **2.17 Instant Messaging**

Subscribers alone are responsible for the contents of their instant messages and the consequences of any such instant messages. Neither the Provider nor any of its underlying providers have any obligation to monitor instant messaging transmissions made on the Service. However, the Provider and its underlying providers have the right to monitor such transmissions from time to time for violations of this Agreement or applicable local, state, national and international laws and to disclose, block or remove the same in accordance with your Agreement and any other applicable agreements and policies.

- **2.18 DHCP**

You may only access and use the Service with a dynamic Internet Protocol (“**IP**”) address that adheres to the dynamic host configuration protocol (“**DHCP**”). You may not access or use the Service with a static IP address or using any protocol other than DHCP unless you are subject to a Service plan that expressly permits otherwise.

- **2.19 VPN Usage**

The Provider allows Subscribers to utilize virtual private network (“**VPN**”) software in accordance with the Agreement and other terms of service; however, we do not provide any technical support for them. To get support, please contact your VPN supplier’s system administrator.

- **2.20 Service Characteristics**

- **2.20.1 Throughput**

Transmission and reception throughput is determined by a myriad of factors, such as, but not limited to, weather, time of day, condition of the network, third party services, number of Subscribers using the Service, usage by emergency services, characteristics of the subscriber’s equipment, geographical location, building characteristics and various obstructions to the wireless signal. Transmission and reception rates published in the Provider’s Service plans are targets that should be typically obtainable but are not guaranteed. Access locations may be removed and or updated from time to time in the

Provider's sole discretion and actual coverage, locations and quality may vary. Wireless access is subject to unavailability, including, but not limited to, unavailability for emergencies, colocation failures, maintenance, and transmission limitations. Network speeds for access may vary. Access may be based on third party networks over which the Provider has no control beyond contractual service level agreements, if any, with the third party network provider. The Provider may, but is not required to, modify the 802.11x standard. Wireless access is transmitted over complex unpredictable networks. Not all Internet Sites can be accessed and you may receive an error message if you attempt to access a site that cannot be accessed.

- **2.20.2 Eavesdropping**

The risk of "eavesdropping" exists on the Internet as well as other services to which access is provided as part of the Service. This means that other persons may be able to access and/or monitor Subscriber's computer, transmissions and receptions. Because of this risk, any sensitive or confidential information sent by Subscriber is sent at Subscriber's sole risk, and neither the Provider nor its underlying providers shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions by Subscriber. Privacy cannot be guaranteed and you acknowledge you are responsible for taking precautions related to the privacy and security of your access to the Service.

- **2.20.3 FTP/HTTP**

Subscriber should be aware that when using the Service to access the Internet or any other online network or service, there are certain transfer protocols, such as FTP (File Transfer Protocol) and HTTP (Hyper Text Transfer Protocol), which may allow other Service Subscribers and Internet Subscribers to gain access to Subscriber's computer. If Subscriber chooses to run such transfer protocols, Subscriber should take appropriate security measures. Neither the Provider nor its underlying providers shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings resulting from, arising out of or otherwise relating to the use of such transfer protocols by Subscriber, including without limitation, damages resulting from others accessing Subscriber's computer.

- **2.20.4 File and Print Sharing**

The Service functions as a Local Area Network (LAN) in that each Subscriber is a node on the network. As such, Subscribers outside the Subscriber's home may be able to access the Subscriber's computer. Additionally, some software may permit other Subscribers across a network such as the Service and the Internet to gain access to Subscriber's computer and to the software, files and data stored on the computer. For example, operating systems such as Windows and Apple OSx include file sharing and print sharing capabilities which, when enabled, will permit other Subscribers to gain access to the Subscriber's computer even if the Subscriber is not using the Service. Unless you are subject to a Service plan that expressly provides otherwise, the Provider

therefore recommends that the Subscriber connect only a single computer or router/firewall per Subscriber to the Service and that the Subscriber disable file and print sharing and other capabilities that allow others to gain access to the Subscriber's computer. Any Subscriber who chooses to participate in the Service using other than a single computer or who chooses to enable capabilities such as file sharing, print sharing, or other capabilities that allow Subscribers to gain access to the Subscriber's computer, acknowledges and agrees that the Subscriber does so at the Subscriber's own risk, and that neither the Provider nor its underlying providers shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such use by the Subscriber.

- **2.20.5 High Risk Activities**

The Service is not failsafe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service could lead to severe injury to business, persons, property or environment (“**High Risk Activities**”). Such High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. Subscriber expressly assumes the risks of any damages resulting from High Risk Activities.

- **2.20.6 Facilities Allocation**

With respect to Voice over Internet Protocol (VoIP) operation, the Provider Service plans may offer differing of levels of Quality of Service (‘QOS’). Due to the aforementioned Service characteristics, the Provider does not guarantee any minimum QOS performance characteristics.

- **2.21 Provider Provided Equipment**

- **2.21.1 Provider Equipment**

Any equipment such as wireless routers, modems or similar interior or exterior use equipment provided by the Provider, including any wiring or antenna attached to Subscriber property, installed by the Provider or the Subscriber (including passive and active devices, the “**Provider Equipment**”) shall at all times remain the property of the Provider or its designee. The Provider may, at its option, provide Subscriber with new or reconditioned equipment. Subscriber may not sell, transfer, lease, encumber or assign all or any part of the Provider Equipment.

- **2.21.2 Maintenance of the Provider Equipment**

The Provider may during the time of this Agreement, but is not obligated to, repair and maintain the Provider Equipment. Subscriber agrees that the Provider Equipment shall not be serviced by anyone other than the Provider, its employees or agents and that



Subscriber shall not relocate, tamper with or modify any of the Provider Equipment or the Service installation.

- **2.21.3 Access to Subscriber's Premises**

Subscriber grants to the Provider the right, at reasonable times and upon reasonable notice, to enter upon the premises where any Provider Equipment is located for purposes of connecting, disconnecting, inspecting, repairing, replacing in whole or in part, updating and/or removing any of the Provider Equipment and the Service. The Provider shall have the option of removing any or all of the Provider Equipment during or after its relationship with the Subscriber terminates, but the Provider shall not have the obligation to do so. Subscriber acknowledges and agrees the Provider will not be obligated to remove the Provider Equipment, or any external antenna or wiring attached to or installed at Subscriber's property. Subscriber warrants that they are the owner or a tenant of the Service address and that they are authorized to grant access to the Premises. Subscriber agrees to indemnify and hold the Provider harmless from any claim resulting from a breach of this warranty.

- **2.22 Subscriber's Equipment**

You acknowledge that performance of the Service is materially affected by the specifications and configuration of the Subscriber's device connected to the service, including, but not limited to, memory and storage. The Service is not available everywhere and is only available when the device is within operating range of the Provider system or a system with which the Provider has a roaming agreement. Subscriber understands and agrees that use of the Service requires certain equipment provided by the Subscriber such as a personal computer and an appropriate operating system ("**Subscriber Equipment**"). Subscriber represents that they own the Subscriber Equipment or otherwise has the right to use it in connection with the Service. Subscriber shall have sole responsibility for protecting all Subscriber Equipment and software from loss or damage including, but not limited to, power surges, viruses, hackers, lightning, fire, flood and acts of God. The installation, use, inspection, maintenance, repair and removal of the Provider Equipment may result in Service outages or potential loss or damage to Subscriber Equipment, and Subscriber understands, accepts and assumes any and all risks associated with such loss or damage, including, but not limited to, Subscriber's failure to "backup" all existing computer files by copying them to another storage medium prior to such activities. NEITHER THE PROVIDER NOR ITS UNDERLYING PROVIDERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, COMPUTER PERIPHERALS, FILES OR DATA. Subscriber acknowledges that the use of the Service may periodically require updates and/or changes to the software resident in the Provider Equipment. Such updates and changes may be performed remotely or onsite by the Provider and/or its underlying providers at their sole option. Subscriber hereby consents to such updates which will be performed as deemed necessary by the Provider and/or its underlying providers with or without notice to Subscriber.

**WITHOUT LIMITING THE FOREGOING, SUBSCRIBER UNDERSTANDS AND AGREES THAT UNLESS PROHIBITED BY LAW, PROVIDER SHALL NOT BE LIABLE FOR ANY DAMAGES TO OR FROM SUBSCRIBER'S EQUIPMENT (WHETHER DIRECT OR INDIRECT), INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF REVENUE, PROFITS, BUSINESS OR GOODWILL, LOSS OF USE, DATA OR OTHER INTANGIBLE LOSSES, EVEN IF SUCH DAMAGE RESULTS FROM NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY THE PROVIDER, OR ANY SUBSIDIARY, AFFILIATE, DIRECTOR, OFFICER, CONTRACTOR OR AGENT, OF PROVIDER. IN ANY EVENT, SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH DAMAGE SHALL BE TERMINATION OF THE SERVICE AS PROVIDED UNDER PARAGRAPH 3.7 OF THIS AGREEMENT.**

- **2.23 Installation & Use**

The Provider, its employee or agent, will supply and install the Provider Equipment and a connection to the Service, or the Provider may at its option permit Subscriber to self-install the Provider Equipment. Subscriber shall follow all self-installation instructions and assumes sole responsibility with respect to self-installation. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL THE PROVIDER OR ANY UNDERLYING PROVIDERS BE LIABLE FOR ANY LOSS OR DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY, ARISING DIRECTLY OR INDIRECTLY OUT OF THE INSTALLATION OR CONNECTION OF SUCH EQUIPMENT BY SUBSCRIBER. The Provider may charge Subscriber a fee for any missed installation/upgrade appointments without notice 24 hours in advance. If Provider is hired to install Provider Equipment at Subscriber's property, Subscriber gives permission to enter, and accepts responsibility for Provider's entry upon, the property upon which the Provider Equipment is attached.

- **2.24 Technical Difficulties**

There may be times when, for whatever reason, electronic communication to or from the Provider, or access or use of the Service is delayed, impaired or impossible (collectively, "**Technical Difficulties**"). Should you experience any Technical Difficulties promptly contact the Provider's Subscriber Service using the contact information provided online. In no event shall the Provider be liable to you for any loss of information, blockages or delays affecting data, information, notifications, purchases, deliveries or any other aspect of the Service due to Technical Difficulties.

## **Section 3 Your Account**

- **3.1 Subscriber Responsibility**

You agree to be responsible for all material and content posted to the Service under your username and password. You may not authorize any third party to access and/or use the Service on your behalf. The Service will allow Subscriber to access the Internet, online services and other commercial sites. Subscriber acknowledges that you may incur charges for goods or services purchased online in addition to those billed by the Provider and agrees that all such charges, including all applicable taxes are Subscriber's sole responsibility. You will be responsible for any applicable roaming charges associated with the Service. You are responsible for ensuring that your conduct is at all times in compliance with the laws, rules and regulations applicable to business transactions conducted in your particular location or by persons or entities of your citizenship.

- **3.2 Subscriber Identification**

The Provider requires you to register and provide certain data. In consideration of the use of the Service, you represent and warrant that: (a) the information about yourself is true, accurate, current, and complete (apart from optional items) as required by the registration forms ("**Registration Data**") and (b) you will maintain and promptly update the Registration Data to keep it true, accurate, current and complete. Each time you update such information, you represent and warrant that such information is true, accurate, current, and complete. You agree to be bound by any affirmation, assent or agreement you transmit through the Internet, including but not limited to any consent you give to receive communications from the Provider solely through electronic transmission. You agree that, when you click on an "I agree," "I consent" or other similarly worded "button" or entry field with your mouse, keystroke or other computer device, your agreement or consent will be legally binding and enforceable and the legal equivalent of your handwritten signature. If you provide any information that is untrue, inaccurate, not current or incomplete, or we suspect, in our sole discretion, that such information is untrue, inaccurate, not current or incomplete, we have the right, in our sole discretion, to suspend or terminate your account and refuse all current and/or future use of the Service.

- **3.3 Copyright Responsibility**

You represent and warrant to the Provider that you are either the owner of any information or material (collectively, the "**Content**") posted under your username and password on the Service. You agree to pay any royalties or other sums owing to any third party for Content posted by you or under your password and to indemnify and hold harmless the Provider from any claims, costs, or liability incurred as the result of your violation of the third party's terms.

- **3.4 Payment & Billing**

You agree to timely and fully pay all charges and fees specified when you order the Service, including any monthly recurring or nonrecurring charges for activation, installation, termination, equipment charges, taxes, late payment interest charges, fees, surcharges or other assessments applicable to the Service. All charges for the Service are billed in advance. When you create a billing account, you will enter your payment

method. You must be authorized to use the payment method. You authorize us to charge you for the Service using your payment method and for any paid feature of the Service for which you choose to sign up or use while this Agreement is in force. If we previously informed you that the Service would be provided indefinitely or automatically renewed, we may automatically renew your Service and charge you for any renewal term. You must keep all information in your billing account current, including your billing address and the expiration date of your credit card. You may change your payment method at any time. If you tell us to stop using your payment method, we may cancel your Service. Your notice to us will not affect charges we submit to your billing account before we reasonably could act on your request. Set up fees, activation fees, installation fees, other nonrecurring fees, and equipment charges, if applicable, will be included in your first month's bill. Monthly recurring charges will be billed one month in advance. We may change rates and terms at any time by giving you notice thereof prior to the billing period in which the change would go into effect or we may prorate the charges for the Service at any point after the date of notification. Continuing to subscribe to, use, or pay for the Service after we make any changes in the prices, charges, terms or conditions, means that you agree to the changes.

- **3.5 Online Statements & Billing Errors**

We will provide you with an online billing statement. This is the only billing statement that we provide. You may view or print a paper copy of this statement online. If we make an error on your bill, we will correct it promptly after you notify us and we investigate the alleged error. You must notify us within 120 days after an error first appears on your bill. You release us from all liability and claims of loss resulting from any error that you do not report to us within 120 days after the error first appears on your online statement. If you do not tell us within this time, we will not be required to correct the error. We can correct billing errors at any time.

- **3.6 Late Payments, Failure to Pay**

Payments are expected to be paid in full when due. If any payment is not timely received, or if the Provider is unable to charge Subscriber's credit card or debit card due to invalid credit card or debit card information or due to insufficient credit or funds, an administrative charge may be assessed (the "**Collection Fee**"), and the Service may be suspended or disconnected. In the event the Service is suspended or disconnected due to any payment not being timely received by the Provider as described in the foregoing sentence, such occurrence shall be considered a breach of this Agreement, and Provider may elect, in Provider's sole discretion, to terminate this Agreement in accordance with Section 3.7 of this Agreement. In any event, once the Service has been suspended or disconnected, Subscriber may be required to pay an administrative fee (the "**Reconnect Fee**"), in addition to all past due charges before the Service is reconnected. The Collection Fee and the Reconnect Fee are intended to be a reasonable advance estimate of the costs resulting from Subscriber's late payments and non-payments as it would be difficult to determine the costs associated with any particular late payment or nonpayment. The Provider does not extend credit to Subscribers and any administrative

charges or fees are not intended as interest, a credit service charge or a finance charge. No acceptance of partial payment shall constitute a waiver of the Provider's right to collect the full balance owing. We may use a third party to collect past due amounts. You must pay for all actual reasonable costs we incur to collect any past due amounts. These costs may include reasonable attorneys' fees and other legal fees and costs.

- **3.7 Canceling or Termination of Service**

You may cancel your Service at any time, with or without cause. Cancellation requests must be received by Provider at least 15 days in advance and must be provided in writing via fax to 210-495-6129 or via email to support@ziplinkinternet.com from the email account on record. You may obtain further information on canceling your service online or by calling the Provider using the contact information provided online. Certain Service offers may require cancellation charges, and you will pay all cancellation charges as specified in the materials describing the offer. Cancellation of Service by you will not alter your obligation to pay all charges made to your billing account. The Provider may terminate this Agreement and/or the Service without notice if we determine that you have breached any provision of this Agreement, or if we have any other good cause, including our decision to elect to cease providing the Service. If you have agreed to a fixed Service term, should we terminate this Agreement due to your breach of this Agreement, or if you terminate this Agreement without cause, you will be required to pay early termination charges equal to the recurring charges for the terminated Service multiplied by the number of months remaining in the Agreement. Upon termination of Service, and within thirty (30) days of such termination, Subscriber shall a.) return to Provider all Provider Equipment, undamaged and at Subscriber's expense, or b.) schedule with Provider for Provider's recovery of the Provider Equipment, with said recovery being at no expense to Subscriber. Upon Provider's receipt or recovery of the Provider Equipment, so long as a.) receipt by Provider, or scheduling of recovery, is made within thirty (30) days of termination, and b.) there is no damage to the Provider Equipment attributable to Subscriber, the Provider will issue a refund of any deposit that may have been collected, less any amounts otherwise provided for in this Agreement. If the Provider Equipment is not returned, or recovery is not scheduled, within thirty (30) days of Service termination, or if the Provider Equipment returned or recovered is damaged, Subscriber will be charged for the replacement cost of the Provider Equipment, and Provider shall a.) retain any deposit collected by Provider in full, or partial, satisfaction thereof, and b.) charge the Subscriber an additional fee if such deposit is insufficient to cover the replacement cost of the Provider Equipment. If the Provider Equipment is not returned within thirty (30) days and a deposit was not collected at time of Service initiation, the Provider has the right to charge the Subscriber a fee in an amount equal to the replacement cost of the Provider Equipment. The Provider reserves the right to delete all data, files, electronic messages, or other information that is stored on the Provider's or its underlying provider's servers or systems when Subscriber's account with the Provider is terminated for any reason.

- **3.8 Risk of Loss**

You acknowledge and agree that you must evaluate, and bear all risks associated with the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you rely on any Content created by or obtained through the use of the Service at your own risk. You assume and accept all liability and/or risk associated with use of the Service. **In connection therewith, you will protect, defend, hold harmless and indemnify the Provider and its owners, directors, officers, employees, agents, insurers, other Subscribers, contractors, vendors, suppliers and invitees, and those of its subsidiary or affiliated companies, from and against any and all demands, claims, actions, costs, expenses (including, without limitation, legal costs and attorneys' fees to enforce rights arising hereunder) and liabilities (individually, "Claim", collectively, "Claims") brought or asserted against the Provider by or on behalf of any person or entity whomsoever, which Claims directly or indirectly relate to your use of the Service, by whomsoever incurred, regardless of the extent to which, if at all, a Claim may be attributable, in whole or in part, to the breach of contract, negligence, strict liability or other legal fault of the Provider, for acts or omissions occurring or conditions existing at any time.**

- **3.9 Violations**

The Provider reserves the right to investigate suspected violations of this Agreement, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on the Provider's servers and network. During an investigation, the Provider may suspend the account or accounts involved and/or remove or block material, which potentially violates this Agreement. You hereby authorize the Provider and its underlying providers to cooperate with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) and system administrators at other Internet service providers or other network or computing facilities in order to enforce this Agreement. Such cooperation may include the Provider providing available personally identifying information about you to law enforcement or system administrators, including, but not limited to, username, Subscriber name, and other account information. As a Subscriber, you agree to cooperate with the Provider in any violation investigation and to use any violation prevention measures the Provider may prescribe. Upon termination of your account, the Provider is authorized to delete any files, programs, data and email messages associated with your account.

- **3.10 Sole Remedy; Non-Disparagement**

Subscriber's sole remedy for anything pursuant to this Agreement is the right to terminate this Agreement. Further, by accepting the terms of this Agreement, Subscriber agrees that from and after the date of such acceptance, Subscriber shall not denigrate or derogate the Provider or its affiliates or underlying providers, or any officer, director, partner, member, manager, employee, agent or representative of the Provider, its affiliates or underlying providers, or any product of service provided or performed by any of the foregoing.

## **Section 4 Provider's Rights**

- **4.1 Credit Inquiries**

Credit Inquiries: Subscriber authorizes the Provider to make inquiries and to receive information about Subscriber's credit experience from others, to enter this information in Subscriber's file, and disclose such information concerning Subscriber to appropriate third parties for reasonable business purposes.

- **4.2 Subscriber Feedback**

Should you provide the Provider by electronic mail or otherwise with information including feedback data, such as questions, comments, suggestions, such information shall be deemed to be non-confidential and the Provider shall have no obligation of any kind with respect to such information and shall be free to reproduce, use, disclose and distribute the information to others without limitation to the extent permitted by state and federal law. The Provider shall be free to use any ideas, concepts, knowhow or techniques contained in such information for any purpose whatsoever including but not limited to developing and marketing services incorporating such information.

- **4.3 Preservation of Subscriber Data**

You expressly acknowledge and agree that the Provider may preserve Content and may also disclose Content and your Registration Data if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third parties; or (d) protect the business interests, rights, property, or personal safety of the Provider, its users, and the public.

- **4.4 Provider's Copyright Material**

The Service contains content, names, and graphics which are protected by copyright and trademark laws and are the sole property of the Provider or its affiliates and are protected by intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of the Provider are and shall remain the exclusive property of the Provider and nothing in this Agreement shall grant you the right or license to use such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided in conjunction with providing the Service, other than a nontransferable, revocable license to use such firmware or software (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. Other than private text and e-mail messages, all of the content you see, hear or otherwise experience through the Service, including, for example, all of the page headers, images, illustrations, graphics, and text, are subject to trademark, service mark, trade dress, copyright, trade secret, patent, and/or other intellectual property rights or licenses held by the Provider or by third parties who may own them. The use of any such property without the express written consent of the Provider is prohibited. No content

from the Provider may be copied, modified, uploaded, or distributed in any form or manner without our prior written consent. Any unauthorized use of content from the Provider, which may violate copyright or trademark laws, could result in criminal or civil penalties.

- **4.5 Service Availability**

The 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 provision of the Service and that the Provider will not be liable for such interruptions. You further understand and agree that the Provider 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 the Provider. In the event Service is temporarily interrupted within the first thirty (30) days of Service connection, Subscriber may request a refund of a portion of the first installment paid by Subscriber, provided such first installment has been received by Provider; any such refund contemplated hereby shall be determined based on a pro-rated hourly basis by first dividing the number of hours of the Service interruption by the number of hours in the period of time covered by the first installment (the “**Quotient**”), and then multiplying the Quotient by the first installment amount. For purposes of clarity, Provider shall be under no obligation to refund any amount above the first installment paid by Subscriber, and further, in no event, shall Provider be obligated to refund any amount after the first thirty (30) days of Service connection. The Provider 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 the Provider will not be liable to you or to any third party for any such modification, suspension or discontinuance of the Service.

- **4.6 Third Party Content**

Materials provided by service providers other than the Provider (“**Third Party Providers**”) have not been independently authenticated in whole or in part by the Provider. The Provider does not provide, sell, license, or lease any materials other than those specifically identified as being provided by the Provider. The Provider does not control, nor is the Provider responsible or liable for data, content, services, or products (including software) that you access, download, receive or buy via the Service. The Service may be linked to other websites, which are not under the control of and are not maintained by the Provider. The Provider is not responsible for the content of those sites. The Provider is providing these links to you only as a convenience, and the inclusion of any link to such sites does not imply endorsement by the Provider of those sites. The Provider may block information, transmissions or access to certain information, services, products or domains to protect the Provider, the Provider’s network, the public or other users. Therefore, messages and other content may be deleted before delivery. How third parties handle and use your personal information related to their sites and services is governed by their privacy and other policies (if any) and not the Provider’s. The Provider



has no responsibility for third party provider policies, or their compliance with them. The Internet contains unedited materials, some of which may be offensive to you. The Provider is not a publisher of third party content accessed through the Service, and is not responsible for the content, accuracy, timeliness or delivery of any opinions, advice, statements, messages, services, graphics, data or any other information provided to or by third parties as accessible through the Service.

- **4.7 Suspension of Service**

The Provider reserves the right to suspend or discontinue providing the Service generally, or to terminate your Service, at any time in its sole discretion, with or without notice, and with or without cause. The Provider shall not be liable for any damages, losses, cost or expenses caused by or arising out of termination of the Service, to you or to any other individual.

- **4.8 Email Delivery & Forwarding**

The Provider is not responsible for forwarding email sent to any account that has been suspended or terminated. Such email will be returned to sender, ignored, deleted, or stored temporarily at the Provider's sole discretion.

- **4.9 ID Blocking**

In the event that the Provider believes in its sole discretion that any Subscriber name, account name, or email address (collectively, an “**identifier**”) on the Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, the Provider (i) reserves the right to block access to and prevent the use of any such identifier and (ii) may at any time require any subscriber to change his or her identifier. In addition, the Provider may at any time reserve any identifiers on the Service for the Provider's own purposes.

- **4.10 Provided Software**

If you receive software from us as part of the Service, your use of that software is under the terms of the license that is presented to you for acceptance for that software. If there is no license presented to you, then we grant you the right to use the software only for the authorized use of the Service on that number of computers stated in your Service offer. We reserve all other rights to the software. We may automatically check your version of the software. We may automatically download upgrades to the software to your computer to update, enhance and further develop the Service. Unless we notify you otherwise, your license to use the software will end on the date your Service ends, and you must promptly uninstall the software. We may disable the software after the date the Service ends. You will not disassemble, decompile, or reverse engineer any software included in the Service, except and only to the extent that the law expressly permits this activity. The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software.

These laws include restrictions on destinations, end Subscribers and end use. Subscriber agrees to comply with the terms and conditions of all end user license agreements accompanying any software or plugins to such software distributed in connection with the Service. All end user licenses supplied by the Provider or its underlying providers will terminate at such time as the Service is terminated.

- **4.11 Privacy**

- **4.11.1 Collection of Information**

The Provider collects, uses and releases information on Subscriber use of the Service as necessary to render the Service, to otherwise undertake legitimate business activities related to the Service and to comply with law. The Provider may collect information in accordance with applicable law concerning Subscriber's use of the Service and subscriber preferences which are reflected in the choices that a subscriber makes among the range of services offered as part of the Service, the time that the subscriber actually uses the Service, the menus and features used most often by the Subscriber, and other information about a subscriber's "electronic browsing." In order to provide you the Service, we may collect certain information about Service performance, your machine and your Service use. We may automatically upload this information from your machine. This data will not personally identify you.

- **4.11.2 Use of Information**

Collecting information contained in transmissions made by Subscriber through the Service directed at the Provider, its underlying providers, Internet web sites, or other service providers to which access is provided as part of the Service, is necessary to provide the Service. The Provider's detailed business records generally are used to help make sure subscribers are properly billed; to send subscribers pertinent information about the Service; and for accounting purposes. Subscriber information is also used to execute requests and orders placed by subscribers with advertisers, merchants, and other service providers; to understand subscriber reactions to various features of the Service or the Internet; and to personalize the Service based on the interests of subscribers. Such information helps the Provider improve the Service and uncover unauthorized access to the Service or subscriber data and may be provided to law enforcement agencies in the event of such unauthorized access. We may use technology or other means to protect the Service, protect our subscribers, or stop you from breaching this Agreement. These means may include, for example, filtering to stop spam or increase security. These means may hinder or break your use of the Service.

- **4.11.3 Confidentiality of Information**

Your Registration Data becomes the exclusive property of the Provider. The Provider reserves the right to use and reuse all Registration Data and other personally identifiable user information in order to conduct normal business. The Provider considers the personally identifiable subscriber information that is collected to be confidential. The

Provider will disclose to third parties personally identifiable information that the Provider maintains related to subscribers only when it is necessary to deliver the Service to subscribers or carry out related business activities, in the ordinary course of business, for ordinary business purposes, and at a frequency dictated by the Provider's particular business need, or pursuant to a court order or order of any regulatory body having jurisdiction over matters which are the subject of this Agreement. The Provider may access or disclose information about you, your account and/or the content of your communications, in order to: (1) comply with the law or legal process served on us; (2) enforce and investigate potential violations of this Agreement; including use of the Service to participate in, or facilitate, activities that violate the law; or (3) protect the rights, property, or safety of the Provider, its employees, its subscribers or the public. You consent to the access and disclosures outlined in this section.

- **4.12 Copyrighted Material Removal**

The Provider is committed to complying with U.S. copyright and related laws, and requires all Subscribers and Subscribers of the Service to comply with these laws. Accordingly, you may not store any material or content on, or disseminate any material or content over, the Service (or any part of the Service) in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "**DMCA**") to report alleged infringements. It is the Provider's Agreement in accordance with the DMCA and other applicable laws to reserve the right to terminate the Service provided to any Subscriber or Subscriber who is either deemed to infringe third party copyright or other intellectual property rights, including repeat infringers, or who the Provider believes in its sole discretion is infringing such rights. The Provider may terminate the Service at any time with or without notice for any such Subscriber. Copyright owners may report alleged infringements of their works made on or over the Service by sending the Provider's authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon the Provider's receipt of a satisfactory notice of claimed infringement, the Provider will either remove the allegedly infringing work(s) from the Service or will block access to the work(s). The Provider will then notify the affected Subscriber or Subscribers of the Service that it has removed or blocked access to the work(s). If the affected Subscriber or Subscribers believes in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then that person may send a counter notification to the Provider. Upon the Provider's receipt of a counter notification that satisfies the requirements of DMCA, the Provider will provide a copy of the counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. In all events, you expressly agree that the Provider will not be a party to any disputes or lawsuits regarding alleged copyright infringement. Copyright owners may send the Provider a notification of claimed infringement to report alleged infringements of their works made on or over the Service to the Provider's registered address. Claimed infringement forms must satisfy the requirements of Section 512(c)(3) of the U.S.

Copyright Act. Under the DMCA anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to the Provider, the alleged infringer, and the affected copyright owner for any damages incurred in connection with the removal, blocking, or replacement of allegedly infringing material. If a notification of claimed infringement has been filed against you, you can file a counter notification with the Provider's designated agent using the contact information shown above. All counter notifications must satisfy the requirements of Section 512(g)(3) of the U.S. Copyright Act.

- **4.13 Monitoring**

The Provider has no obligation to monitor user or third party Content, or transmissions, made on the Service. However, Subscriber acknowledges and agrees that the Provider and its underlying providers shall have the right to monitor such transmissions from time to time and to disclose the same in accordance with applicable laws, regulations or governmental requests and to operate the Service properly. The Provider and its underlying providers reserve the right to refuse to post or to remove any information or materials, in whole or in part, that in their sole discretion are unacceptable, undesirable or in violation of this Agreement. The Provider reserves the right to monitor the use of the Service to ensure compliance with this Agreement or applicable law. The Provider reserves the right to monitor transmissions and to collect and use personally identifiable information to assist in provisioning of Service and to monitor network health and performance and otherwise solve problems associated with the Service.

- **4.14 Subscriber Content**

You retain all ownership rights in any Content posted or transmitted by you through the Service to which you are entitled by law, and the Provider does not claim any ownership rights in any Content posted or transmitted by you through the Service. However, when you post any Content on or through the Service, you grant to the Provider a nonexclusive, fully paid, royalty-free license to use, distribute, reproduce, modify, adapt, and publicly display or perform such Content on the Service. It is necessary for you to grant this license in order for the Provider to operate the Service. You may terminate the license to any particular Content by deleting it from the Service.

- **4.15 Content Blocking**

The Provider reserves the right to remove, block or refuse to post or store any information or materials, in whole or in part, that it, in its sole discretion, deem to be offensive, indecent, or otherwise inappropriate regardless of whether such material or its dissemination is unlawful. This includes, but is not limited to: obscene material; defamatory, fraudulent or deceptive statements; threatening, intimidating or harassing statements; or material which violates the privacy rights or property rights of others (copyrights or trademarks, for example). For purposes of this section, "material" refers to all forms of communications including narrative descriptions, graphics (including

photographs, illustrations, images, drawings, logos), executable programs and scripts, video recordings, and audio recordings.

- **4.16 Bandwidth/Data Volume Allocation**

The Provider reserves the right to determine, in its discretion, and on an ongoing basis, the nature and extent of its facilities allocated to support the Service, including, but not limited to, the amount of bandwidth and data volumes to be utilized in conjunction with the Service. If the Subscriber usage pattern is excessive, as determined by the Provider, or is in excess of the terms and conditions stated within a Service plan, the Provider has the option to change the Subscriber's Service plan to one that is commensurate with the usage pattern of the Subscriber.

- **4.17 Revision of Agreement**

The Provider reserves the right to update or amend these terms and conditions at any time and may, in fact, limit the use of the Service. The amended Agreement shall be effective immediately upon posting to the Provider's site without further act, consent or deed. Your continued use of the Service after the effective date of any posted change constitutes your acceptance of the amended Agreement. For this reason, we encourage you, as a Subscriber, to review this Agreement whenever you use the Service.

- **4.18 Disclaimers & Waivers**

THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, RESULTS, AND ACCURACY OR COMPLETENESS OF INFORMATION. NEITHER THE PROVIDER NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, DEALERS, SUPPLIERS, PARENTS, SUBSIDIARIES OR AFFILIATES WARRANT THAT ANY DATA OR FILES SENT BY OR TO SUBSCRIBER WILL BE TRANSMITTED IN UNCORRUPTED FORM, AT ANY MINIMUM SPEED OR WITHIN A REASONABLE PERIOD OF TIME, THAT THE OPERATION OF THE PROVIDER EQUIPMENT, SUBSCRIBER EQUIPMENT, PRODUCTS, PROCESSES AND/OR SERVICES AVAILABLE THROUGH THE SERVICE WILL BE UNINTERRUPTED, ALWAYS AVAILABLE, ACCURATE, COMPLETE, USEFUL, FUNCTIONAL OR ERROR FREE.

- **4.19 Limitation of Liability**

IN NO EVENT SHALL THE PROVIDER OR ANY OF THEIR MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, OR BUSINESS PARTNERS HAVE ANY LIABILITY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OR

CORRUPTION OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR INTERRUPTION OF BUSINESS), DAMAGES INCURRED BY REASON OF OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED IN THE SERVICE AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED ON THE SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED IN THE SERVICE WHETHER ARISING UNDER NEGLIGENCE (WHETHER ACTIVE OR PASSIVE), CONTRACT, STRICT LIABILITY OR ANY OTHER THEORY, AND REGARDLESS OF WHETHER THE PROVIDER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL REMAIN IN EFFECT EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL THE PROVIDER BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OF NATURE, FORCES, OR CAUSES BEYOND THE PROVIDER'S REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, INTERNET FAILURES, COMPUTER EQUIPMENT FAILURES, TELECOMMUNICATION EQUIPMENT FAILURES, OTHER EQUIPMENT FAILURES, ELECTRICAL POWER FAILURES, STRIKES, LABOR DISPUTES, RIOTS, INSURRECTIONS, CIVIL DISTURBANCES, SHORTAGES OF LABOR OR MATERIALS, FIRES, FLOODS, STORMS, EXPLOSIONS, ACTS OF GOD, WAR, GOVERNMENTAL ACTIONS, ORDERS OF DOMESTIC OR FOREIGN COURTS OR TRIBUNALS, NONPERFORMANCE OF THIRD PARTIES, OR LOSS OF OR FLUCTUATIONS IN POWER, HEAT, LIGHT, OR AIR CONDITIONING. THE PROVIDER WILL NOT HAVE ANY LIABILITY FOR ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE INSTALLATION OR USE OF THE PROVIDER EQUIPMENT, SUBSCRIBER EQUIPMENT OR SERVICE BY SUBSCRIBER OR A THIRD PARTY INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY, OR BASED UPON A CONTENTION THAT OPENING SUBSCRIBER EQUIPMENT IN ORDER TO INSTALL ANY ETHERNET CARD REQUIRED TO USE THE SERVICE INVALIDATES ANY WARRANTY GOVERNING THE SUBSCRIBER EQUIPMENT OR PROVIDER EQUIPMENT.

- **4.20 No Third Party Benefits**

This Agreement is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors and assignees under this Agreement. Any names, marks, products or services of third parties, or hypertext links to third party sites or information, do not necessarily constitute or imply an endorsement, sponsorship, or recommendation of the third party, information, product or service by the Provider. The Provider does not endorse nor make any warranties or representations about any website

you may access during your use of the Provider wireless hotspot, including the privacy policy of any such website. As a Subscriber, you need to make your own decisions regarding your interactions or communications with any other website. No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

- **4.21 Indemnification**

**You agree to defend, indemnify, and hold harmless the Provider and its parent, subsidiaries, affiliates, officers, directors, employees, members, managers, agents and representatives (collectively, the “Provider Indemnified Parties”) free and harmless at all times from and against any and all claims, liabilities, expenses, losses, costs, fines, settlements, judgments, penalties and damages (including attorneys’ fees) and causes of action of every kind and character (this is to the extent allowed by law except to the extent caused by a Provider Indemnified Parties’ sole negligence) incurred or sustained by any of the Provider Indemnified Parties and any other person whomsoever, or any governmental agency, arising out of, or incident to, or in connection with: (i) any Content that you or anyone using your account may submit, post or transmit; (ii) your use of the Service; (iii) your violation of this Agreement; and (iv) any violation or failure by you to comply with all applicable laws, rules, statutes and regulations in connection with the use of the Service. You recognize the broad nature of this indemnification and hold harmless clause, and voluntarily make this covenant and expressly acknowledge the receipt of such other good and valuable consideration provided by Provider in support of this indemnification.**

- **4.22 Dispute Resolution**

Any claim or dispute between a Subscriber and the Provider arising under or related to the Service or the Agreement shall be resolved by the Provider in its sole discretion.

- **4.23 Claims**

Any claim of a Subscriber related to this Agreement or the Service may not be pursued unless filed within 90 days after the date such claim first arose. If it is not timely filed, then that claim is permanently barred. This applies to you and your successors and assigns.

- **4.24 Notices to Subscriber**

We have promised to send you certain information in connection with the Service and have the right to send you certain additional information. There may be other information regarding the Service that the law requires us to send you. We may send you this information in electronic form. You have the right to withdraw this consent, but if you do, we may cancel your Service. We may provide required information to you: by email

at the email address you specified when you signed up for your Service; by access to a Provider website that will be designated in an email notice sent to you at the time the information is available; or by access to a Provider website that will be generally designated in advance for this purpose. Notices provided to you via email will be deemed given and received on the transmission date of the email. As long as you can access and use the Service, you have the necessary software and hardware to receive these notices. If you do not consent to receive any notices electronically, you must stop using the Service.

- **4.25 Severability**

All terms and conditions of this Agreement are independent of each other. If any provision of this Agreement is deemed invalid or unenforceable, then the invalid or unenforceable provision shall be stricken and replaced with a valid and enforceable provision that most closely matches the intent of the original, stricken provision, and all other provisions of this Agreement shall be unaffected and remain in full force, unless the Provider's obligations hereunder are materially impaired, in which case the Provider reserves the right to terminate this Agreement. The Provider's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provisions of this Agreement.

- **4.26 Retention of Rights**

Nothing contained in this Agreement shall be construed to limit the Provider's rights and remedies available at law or in equity. No course of dealing and no delay by either party in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice its rights, powers or remedies.

- **4.27 Entire Agreement**

This Agreement, and any software end-user license agreement provided in connection with the Service constitute the entire Agreement between Subscriber and the Provider. No undertaking, representation or warranty made by an agent or employee of the Provider or its underlying providers in connection with the installation, maintenance or provision of the Service which is inconsistent with the terms of this Agreement shall be binding on the Provider.

- **4.28 Assignment**

The Provider may freely assign its rights and obligations under this Agreement, including, without limitation, to any parent, subsidiary or other affiliated company of the Provider. This Agreement may not be assigned or transferred by Subscriber.

- **4.29 Choice of Law & Venue**



This Agreement, its validity, construction and performance, shall be governed by the laws of the State of Texas. In no event shall any arbitration be commenced outside the United States, nor shall any law outside the United States be applied. By using the Service, or by contracting for or accepting services from the Provider through the Service, you expressly agree, for yourself and for your successors and assigns, to: (i) submission of all disputes arising out of or in connection with this Agreement to litigation, (ii) without a jury, (iii) in a state or federal court located in Bexar County, Texas, (iv) waive and not assert in any proceeding that you are not bound to litigate as aforesaid, that you are not subject to the jurisdiction of the state or federal courts of Bexar County, Texas or that Bexar County, Texas is an improper or inconvenient location or forum in which to litigate and (v) the entry of any settlement or judgment arising from such litigation in a court of competent jurisdiction for the purpose of enforcing such settlement or making such award executory in that jurisdiction.

- **4.30 Correspondence & Notices**

All correspondence and notices related to this Agreement must be sent in writing to the attention of 'Legal Dept.' at the Provider's registered address and delivered by a delivery service requiring a delivery acceptance signature. The Provider explicitly does not accept fax, or email notices.

The Provider's current registered address can be found in the 'Contact Us' page at URL: <http://www.ZipLinkInternet.com> Updated 6/13/2017.