



Zirkel Wireless, LLC
Service Terms and Conditions Agreement
Last Revised and Effective March 2023

This Service Terms and Conditions Agreement (this “*Service Agreement*”), consisting of these terms and conditions, the Confirmation of Sale (“*COS*”) and specific documents referenced herein, is entered into as of the date set forth on the *COS* by and between Zirkel Wireless, LLC (“Zirkel,” “*we*,” “*our*,” “*us*,” or “*its*”) and the individual or entity named on the *COS* to which this Agreement is attached (“*Customer*,” “*you*,” or “*your*”) and sets forth the terms and conditions under which Zirkel will make available the service Customer has elected to receive (the “*Service*”) (as defined below). This Service Agreement governs both residential and business Customers for Zirkel’s (i) Residential Internet Access Service (“*Internet Access Service*” or “*IAS*”), and (ii) Business Internet Access Service for high-volume business/government Customers. “*Affiliate*” means an entity that controls, is controlled by or is under common control with Zirkel.

By using the Service, all Customers agree to be bound by the terms of this Service Agreement and the following documents incorporated by reference herein, including without limitation, Zirkel’s Privacy Policy, Open Internet Policy, DMCA Copyright Notification Infringement Policy, Confirmation of Sale (“*COS*”) and any Additional Terms (terms and conditions that will govern a new service offering) as each may be amended from time to time. If there is a conflict between this Service Agreement and any Additional Terms, the Additional Terms shall govern.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTION LAWSUITS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO CUSTOMERS IN THE EVENT OF A DISPUTE. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT USE THE SERVICE.

Zirkel regularly updates and amends this Service Agreement, the Privacy Policy, the Open Internet Policy, DMCA Copyright Infringement Notification Policy, and other documents incorporated by reference in this Service Agreement. Zirkel will communicate any such updates or amendments to Customer in accordance with Section 19(h). Customer may obtain, at no charge, a copy of the current Service Agreement or any documents incorporated by reference herein by visiting the Zirkel Website and then accessing Zirkel’s customer service platform through the Zirkel Website or by contacting Zirkel.

1. GENERAL OVERVIEW

This Service Agreement governs the following components of Zirkel’s Service. Customer may customize Customer’s residential or business Service based on Customer’s needs:

- Residential Internet Access Service – High-speed Internet broadband service for residential Customers using bandwidth that is shared with other users on the Zirkel network; can be accessed via various devices and internal networks; bandwidth plans ranging from Basic to Premier to Turbo to Turbo Plus to Extreme.
- Business Internet Access Service – High-speed Internet broadband service for business Customers using bandwidth that is shared with other users on the Zirkel

network; can be accessed via various devices and internal networks; bandwidth plans ranging from Basic to Premier to Turbo Plus to Extreme.

- Static IP Address – IPv4 addresses managed by Zirkel and allocated to Customer for use with residential or business Internet Access Service or ProIAS Service.

2. TERM OF SERVICE.

The initial term of the Internet Access Service (“IAS”) is six (6) months from the date of installation (“IAS Service Term”). At the expiration of the IAS Service Term, unless Customer signs a new COS, this Service Agreement will automatically renew on a monthly basis (“IAS Renewal Term”). In order for Customer to terminate this Service Agreement, Customer shall follow the termination procedures described in Section 18.

3. EQUIPMENT AND REQUIREMENTS FOR PROVISION OF THE SERVICE

(a) Customer Equipment. To use the Service, Customer must have a personal computer(s) or other device(s) and other equipment necessary to connect to the Service meeting Zirkel’s most recent “Minimum Customer Equipment Specifications,” which can be obtained by emailing support@zirkel.us. The Minimum Customer Equipment Specifications may vary depending on whether you have the service chosen and may change over time. Zirkel may make reasonable efforts to support previously acceptable configurations; however, you understand, acknowledge and agree that Zirkel is not obligated to continue to provide such support. Although Zirkel is under no obligation to do so, Zirkel may, and Customer authorizes Zirkel to, perform any updates and/or changes to Customer’s equipment, on-site or remotely, from time to time as Zirkel deems necessary, in Zirkel’s sole discretion. Customer will direct any questions concerning third-party hardware or software to the manufacturer. Zirkel has no responsibility for the operation or support, maintenance or repair of any equipment, software or services that Customer elects to use in connection with the Service, nor is Zirkel responsible for any damage that Zirkel Equipment or Service may or will cause to Customer’s own equipment. **As set forth below and in the Open Internet Policy, Customer is not permitted to connect any harmful equipment to the Zirkel Equipment (as defined below). Customer understands that failure to comply with this restriction may cause damage to Zirkel’s network and subject Customer to liability for damages and/or other liability. Customer agrees to not service, alter, modify or tamper with the Zirkel Equipment or the Service, or to permit, encourage or solicit any other person to do the same, unless such person has been authorized to do so by Zirkel.**

(b) Zirkel Equipment. Customer acknowledges that at the time of installation of the Service, the equipment listed on the COS was installed (the “Zirkel Equipment”). Customer further acknowledges that the Zirkel Equipment may, at Zirkel’s sole discretion, be refurbished or otherwise used equipment. Customer agrees that the Zirkel Equipment was installed at a location and in a manner authorized by Customer. The Zirkel Equipment is and shall remain the property of Zirkel, and Customer shall acquire no interest therein by virtue of the payments provided for herein or the attachment of any portion of the Zirkel Equipment to the Customer’s premises or otherwise. Customer and Zirkel expressly understand, acknowledge and agree that the Zirkel Equipment is not and shall not be considered a fixture to Customer’s premises.

- Equipment Rental Fee for Internet Access Service. Customer may be subject to an “Equipment Rental Fee” under the terms set forth in the COS, unless Customer purchases his/her own equipment or alternatively purchases equipment from Zirkel outright. The

Equipment Rental Fee will be provided to the Customer under the terms set forth in the COS. At such time as Customer or Zirkel terminate the Service, Customer will return the Zirkel Equipment to Zirkel within ten (10) calendar days in the same condition it was received (ordinary wear and tear excepted), and in accordance with Zirkel's then-current return procedures.

- In the event that Customer has not returned the Zirkel Equipment within ten (10) calendar days as set forth in the previous sentence, or in the event that the Zirkel Equipment is damaged, destroyed, lost or stolen while in Customer's possession or is otherwise inoperable, Customer will pay \$350 listed in the COS without any deduction for depreciation, wear and tear or physical condition of such Zirkel Equipment. Zirkel Equipment for Internet Access Service includes without limitation wireless router(s); modem(s), wired Ethernet hardware, point-to-point links, internal wiring and/or Software, as defined in Section 11 herein.

(c) Access to Customer's Premises. Customer hereby grants Zirkel and its Affiliates, and their respective employees, contractors and agents the right to enter Customer's property and premises at any time for the purpose of operating or maintaining the Zirkel Equipment or Zirkel's network, retrieving Zirkel Equipment or fulfilling its obligations or exercising its rights under this Agreement. Zirkel shall provide Customer with reasonable advance notice of any such planned access, except when, in the reasonable opinion of Zirkel, an emergency or other exigent circumstance exists that would require Zirkel to immediately enter Customer's property and premises.

(d) Customer's Obligation to Maintain Power to Zirkel Equipment. Customer understands, acknowledges and agrees that: (i) Customer must provide electrical power and a continuous connection to the power grid to Zirkel Equipment at all times (including, without limitation, when Customer is not using the Service), and (ii) Customer's failure to provide such power and continuous connection may result in damage to the Zirkel Equipment or to Customer's computer, equipment, property or premises, for which damage Customer will be solely responsible.

(e) Replacement and Upgrade of Zirkel Equipment

(i) Customer will be solely liable for, and Zirkel shall have no obligation to repair, replace or otherwise upgrade, any Zirkel Equipment that has been, as determined by Zirkel in its sole discretion, damaged or otherwise requires repair, replacement or upgrade as a result of damage or disruption caused by misuse or neglect or otherwise caused by Customer, including without limitation, damage or disruption caused by Customer's failure to comply with Section 3(a) herein.

(ii) Customer understands and agrees that Zirkel's ability to provide an appropriate quality of Service to Customer and the other customers on Zirkel's network may from time to time require upgrades or replacement of the Zirkel Equipment, and Customer will be obligated to pay the then-applicable "Equipment Upgrade Fee" as established by Zirkel from time to time, at such time as Zirkel determines, in its sole discretion, that the Zirkel Equipment needs to be upgraded or replaced for Customer's current service plan. Customer understands, acknowledges and agrees that upgrades in equipment may be necessary when the Customer upgrades his/her service plan.

(f) Customer understands, acknowledges and agrees that prior to Zirkel servicing any Customer equipment or Zirkel Equipment under contract with Customer, it is Customer's

responsibility to: (i) back-up the data, software, information or other files stored on Customer's computer or other device including without limitation disk drives, peripherals, MP3 players, DVD players, camcorders, digital cameras and/or on any other electronic storage devices; and (ii) remove all videotapes, compact disks, floppy disks, laser disks, cassettes, DVDs, film or other means from Customer's equipment. Customer agrees that whether or not Customer requests back-up services from Zirkel and/or its Operational Service Provider(s), neither Zirkel nor its Operational Service Provider(s) shall be liable under any circumstances for any loss, disclosure, alteration or corruption of any data, software, information, files, videotapes, compact disks, floppy disks, laser disks, cassettes, DVDs, film or other means.

(g) Zirkel does not recommend Customer rely on wireless Internet or VoIP for emergency contacts (such as 911 calls) and Zirkel cannot guarantee the reliability of such wireless Internet services.

4. CUSTOMER'S REPRESENTATIONS, RESPONSIBILITIES AND WARRANTIES

(a) If Customer is an individual, Customer represents and warrants that he or she is at least the age of majority in his/her state of residence and has legal authority to execute this Agreement. If Customer is a business or commercial entity, the individual executing this Agreement represents and warrants he or she has legal authority to execute this Service Agreement on behalf of Customer.

(b) Customer agrees that the Service is personal to Customer and agrees not to assign, transfer, resell or sublicense Customer's rights under this Agreement unless specifically permitted by the terms of this Agreement. For residential Customers, Customer agrees that the Service and the Zirkel Equipment shall be used only by Customer and by members of Customer's immediate household living with Customer at the same address, and Customer will not redistribute or share the Service with any others or transmit the Service over a wireless or other network that is not secured. For business Customers, Customer agrees that the Service and the Zirkel Equipment shall be used only by Customer and by authorized members of Customer's business located at the same address, and Customer will not redistribute or share the Service with any others or transmit the Service over a wireless or other network that is not secured. Customer acknowledges that Customer is executing this Service Agreement on behalf of all persons who use the Service by means of the Zirkel Equipment. Customer agrees that Customer is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement and any other documents incorporated by reference in this Service Agreement, whether such breach results from Customer's use of the Service or by another using Customer's equipment or the Zirkel Equipment.

(c) Customer represents and warrants that Customer will not use the Service in a manner that (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any local, state or federal statute, ordinance or regulation; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable; (iv) accesses, discloses, uses, or disposes of any personally identifiable information ("*Personal Information*") as defined by the Federal Trade Commission without proper authorization or impersonates any person or entity, including without limitation, any employee or representative of Zirkel or its Affiliates; or (v) transmits any virus, trojan horse, worm, time bomb, or other harmful computer code, file, or program. Zirkel reserves the right to suspend Customer's access to the Service at any time upon receipt of claims or allegations from third parties or authorities or if Zirkel is concerned that Customer may have breached this Service Agreement. Customer (and not Zirkel

or its Affiliates and/or Operational Service Providers) remains solely responsible for Customer's use of the Service and any material transmitted through the Service, and Customer warrants that Customer possess all rights necessary to transmit such material.

(d) Customer represents and warrants that the Personal Information Customer provided and will provide to Zirkel during the term of this Service Agreement, including, without limitation, Customer's legal name, email address for communications with Zirkel (such email address may be modified from time to time by Customer upon notice to Zirkel, the "*Account Email Address*"), Service address, billing address, telephone number(s), and payment data (including, without limitation, information provided when authorizing Automated Clearing House payments or other recurring payments) and Non-Personal Information, such as, but not limited to, the number of computers on which the Service is being accessed (all such information, collectively, the "*Customer Information*" (as defined below)) to ensure this Service Agreement is accurate, complete and current. (In the Privacy Policy, Non-Personal Information may also be classified as Personal Information if it is directly associated with or reasonably linked to Customer's account, computer or device.) Customer agrees to promptly notify Zirkel, in accordance with the terms of this Service Agreement, upon the occurrence of any change in the status of Customer's account (including, without limitation, the creation or removal of an Authorized User (as defined below)) or if there is any change in the Customer's Information. Customer's failure to provide and maintain accurate Customer Information with Zirkel constitutes a breach of this Service Agreement.

(e) Customer agrees that Customer is responsible for anyone using the Zirkel Equipment, Customer's computer system, password, name or Customer name in connection with the Service (with or without Customer's knowledge or consent) and for ensuring that anyone who uses the Service through the Zirkel Equipment, Customer's equipment or access to the Service, does so in accordance with the terms and conditions of this Service Agreement. Customer agrees to take all reasonable measures necessary to ensure that the Service is not used by another person without Customer's consent. Customer understands, acknowledges and agrees that Customer is responsible for all use of the Service and Customer's account whether Customer or someone else uses Customer's account (with or without Customer's permission).

(f) Customer is responsible for procuring and installing patches, any and all anti-virus and firewall software/hardware and operating system patches, updates or supplements that may be necessary for (i) the protection and maximum functionality of Customer's computer and related equipment and the Zirkel Equipment and (ii) the protection of Zirkel's network and other customers. For purposes of clarification, Zirkel and its Affiliates hereby disclaim any and all responsibility and liability for any damages that may arise from Customer's failure to procure or install the aforementioned security or other software and/or hardware and Customer agrees that Zirkel and its Affiliates shall have no liability for Customer's failure to do the same.

(g) Customer represents that there are no legal, contractual or similar restrictions on the installation of the Zirkel Equipment in the location(s) and in the manner authorized by Customer. Customer is responsible for ensuring compliance with all regulations, applicable building codes, zoning ordinances, homeowners' association rules, covenants, conditions or other restrictions related to the installation of the Zirkel Equipment and Service, for paying any fees or other charges and obtaining any permits or authorizations necessary for the installation of the Zirkel Equipment and/or provision of the Service (collectively, "*Legal Requirements*"). Customer is solely responsible for any fines or similar charges for violation of any applicable Legal Requirements.

(h) Customer is responsible for backing up the data on Customer's computer(s) and network(s) and Zirkel shall have no liability whatsoever for any loss of data.

(i) Customer agrees to comply with the following terms and conditions for the use of Service:

(i) Service is provided for use in conformance with this Service Agreement. Zirkel reserves the right to investigate suspected violations of the Service Agreement. When Zirkel becomes aware of possible violations, Zirkel may initiate investigation(s) which may include gathering information from Customer or Customers involved and the complaining party, if any, and examination of anything installed by Customer on Zirkel's servers not provided by Zirkel (collectively, "*Customer Material*"). Customer Material collectively includes, without limitation, any software, computer programs, applications, data, photographs, video and/or audio content, text, files, and other information, including emails, address book and web storage content.

(ii) During an investigation, Zirkel may suspend the account or accounts involved and/or remove the Customer Material involved from its servers. If Zirkel believes a violation of this Service Agreement has occurred, it may take responsive action at its sole discretion. Such action may include without limitation temporary or permanent removal of Customer's Material from Zirkel's servers, warnings to Customer(s) responsible, and the suspension or termination of the account or accounts responsible. Zirkel, in its sole discretion, will determine what action will be taken in response to a violation on a case-by-case basis. Violations of this Service Agreement could also subject the Customer to criminal and/or civil liability.

(j) Customer agrees to comply with the following terms for the use of Customer Materials:

(i) Lawful content in the public domain (e.g., images, video, audio, text, data, and programs) may be downloaded or uploaded using the Service. Customer may re-distribute content in the public domain. Customer assumes all risks regarding the determination of whether content Customer re-distributes is in the public domain.

(ii) Customer is prohibited from storing, distributing, or transmitting any unlawful content through the Service. Examples of unlawful content include without limitation direct threats of physical harm, child pornography and copyrighted, trademarked and other proprietary material used without proper authorization. Customer may not post, upload or otherwise distribute copyrighted content without the consent of the copyright holder. The storage, distribution, or transmission of unlawful content could subject Customer to criminal as well as civil liability, in addition to the actions outlined in Section 4(i) above. Customer understands, acknowledges and agrees that Zirkel may remove any content at any time that is alleged to infringe on a third party's copyright(s) upon receiving a notice of infringement under the Digital Millennium Copyright Act. Please see the [Zirkel DMCA Policy](#) for details.

(iii) Customer may not store or distribute certain other types of material on Zirkel's servers. Examples of prohibited material include without limitation software, applications and programs containing viruses, Trojans and other tools or technology that would compromise the security of Zirkel or others.

(iv) Customer represents that when Customer transmits, uploads, posts, or submits any Customer Material using the Service, Customer has the legal right to do so and that Customer's use of such Customer Material does not violate any copyright or trademark laws or any other third party rights.

(v) Customer agrees that if Customer's Service is terminated for any reason, Zirkel has the right to immediately delete all Customer Material, stored in or for Customer's account, including without limitation personal websites and email, without further notice to Customer.

5. THE SERVICE AND PRIVACY

(a) Zirkel's Privacy Policy governs Zirkel's collection, use, disclosure, management and security related to Customer's Personal Information and Non-Personal Information (collectively, "*Customer Information*"). Customer agrees that Customer received a copy of the then-in-effect Privacy Policy at the time Customer executed this Service Agreement. Subject to the notice provisions in Section 19(g) herein, Zirkel may update or amend the Privacy Policy at any time without Customer's prior consent. Zirkel will, however, provide notice of any such changes or amendments as stated in Zirkel's Privacy Policy. Customer understands, acknowledges and agrees that Customer's continued use of the Service after notice of any changes or amendments have been provided will indicate Customer's acceptance of such changes, except where further steps are required by applicable law. All such updates or amendments shall be deemed to be incorporated by reference into this Service Agreement.

(b) Zirkel has no obligation to monitor content transmitted by use of, or other information related in any way to the provision or receipt of the Service. However, Customer agrees that Zirkel has the right to monitor the Service and any and all information or Customer Material transmitted through the Service or by use of the Zirkel Equipment and information available to Zirkel regarding Customer's computer and other equipment in accordance with this Agreement. Zirkel has the right at all times and without notice to remove, restrict access to, or make unavailable any information or content residing on Zirkel's or its Affiliates' or Operational Service Providers' servers. Zirkel has the right to monitor, review, retain or disclose any content or other information in Zirkel's possession about or related to Customer (including, without limitation, Customer Information), Customer's use of the Service, or otherwise, as necessary to satisfy any applicable law, or otherwise as Zirkel deems necessary or appropriate in Zirkel's sole discretion.

(c) Customer authorizes Zirkel to seek and acquire credit and related Customer information from reporting agencies furnishing such information for the purpose of ascertaining Customer's credit and payment history. Zirkel will use the information acquired about Customer's credit history from others and will utilize such information in its decision regarding its provision of the Service to Customer.

(d) Zirkel may require that Customer use a username and password combination or other reasonable procedures to confirm Customer's identity when requesting or otherwise accessing account information, making changes to the Service or performing other functions related to the Service through Zirkel's authorized Customer service channels. Business Customers may also choose to designate an authorized employee or management personnel of Customer (an "*Authorized User*"), who will be permitted to access Customer's account information and make certain changes to Customer's account. Customer will be solely liable for any and all action or inaction by any Authorized User.

6. PASSWORDS

(a) Residential accounts are for individual and personal use only. Business accounts are for authorized personnel only.

(b) Residential Customers shall not share passwords or accounts with others. Business Customers shall only provide passwords to authorized personnel.

(c) Zirkel shall provide or obtain passwords to protect Customer's account and Services. In the event that the security of a Customer's account or Service is compromised, Zirkel shall provide Customer with a new password.

(d) Zirkel may monitor the security of Customer's passwords at any time. A Customer with an insecure password may be directed to change the password to one which complies with the above rules. Customers who repeatedly choose insecure passwords may be assigned a password by Zirkel. Continued failure to maintain password security may be grounds for account termination.

7. SYSTEM SECURITY

(a) Customer is solely responsible for maintaining the security of Customer's computer(s)/device(s) and data and protection of Customer's User ID, password and Personal Information and other data. Zirkel strongly recommends the use and appropriate updating of commercial anti-virus, anti-spyware, firewall software, and encryption of data, to the extent feasible.

(b) Customer is prohibited from utilizing the Service to compromise the security or tamper with Zirkel's system resources or accounts on any of Zirkel's computers, routers, switches, servers, radios, modems, or any other equipment at Zirkel or at any other site. Use or distribution of tools designed for compromising security is prohibited. Examples of the tools include, without limitation, password guessing programs, cracking tools, and network probing tools. Any attempt to access any of Zirkel's corporate assets is strictly prohibited.

(c) Zirkel reserves the right to release the login names of Customers involved in violating system security to system administrators at other sites, in order to assist them in resolving security incidents. Zirkel will also fully cooperate with law enforcement authorities in investigating suspected lawbreakers, subject to Zirkel's Privacy Policy and applicable law.

8. ACCEPTABLE USAGE AND PROHIBITED INTERNET SERVICE ACTIVITIES

(a) "*Acceptable Usage of Internet Service*" is hereby defined as the normal activities associated with the use of the Internet, including without limitation, use of Zirkel's systems and network facilities for accessing the World Wide Web, Internet Relay Chat, USENET Newsgroups, Email, and other Internet features. Depending on the account type, this may include file storage on Zirkel's servers for Customer's own personal web page and file access area (FTP), etc.

(b) "*Prohibited Internet Service Activities*" specifically prohibited by Zirkel include without limitation the following:

(i) Background and/or server-type applications – Including without limitation IRC bots, HTTP servers, MUDs, and any other process which were initiated by the Customer that continues execution on the system upon Customer logout.

(ii) Long-term storage of data – Long-term storage of data is referred to as the storage of files which are not used regularly in an account for an extended period of time. This specifically includes without limitation programs such as shareware programs which the Customer may download to their account for purposes of transferring to their home

computer(s)/device(s). Such programs should be removed at such time as they are successfully transferred to the Customer's personal system.

(iii) Flooding or abuse of other users – Flooding is a fairly common occurrence on the Internet, and one which is dealt with strictly by Zirkel. Flooding takes place in numerous ways, including without limitation, ICMP flooding, mail bombing (sending large amounts of email repeatedly to a person for purposes of harassment), phishing, mass mailings to multiple addresses via bulk email not in compliance with the CAN-SPAM Act, MSG/CTCP flooding on IRC, as well as other, less common methods. “*Bulk Email*” is defined as the same or similar email messages sent to more than twenty-five (25) recipients.

(iv) Attempts to compromise system and/or network security – Programs such as packet sniffers, password crack programs, and similar utilities found to be running from Customer's account are prohibited. This also includes attempts to hack into non-Zirkel systems.

(v) Sharing of accounts – Sharing Customer's Internet Service with another party for purposes of avoiding payment for a second Service is strictly prohibited. Customer may connect multiple computers/devices within a single location to Customer's modem, router, and/or radio to access the Internet Service, but only through a single Zirkel-issued IP address.

(vi) Bulk broadcast data – This includes flood pinging, broadcast pinging, multicast, or IGMP use outside of the private network.

(vii) Port scanning.

(viii) Excessive use of system resources – This includes without limitation the continued use of programs or commands which take a large amount of system resources, e.g. processor time, memory, network bandwidth, and/or drive space on the host system. Customer may not resell Service.

(ix) Email abuse – Email abuse typically comes in one of three forms, the transfer of a message to unsolicited individuals not in compliance with the CAN-SPAM Act, the sending of harassing and/or threatening messages to other users, and the forging of email addresses so as to make the email appear to be from another user.

(x) USENET news abuse – Similar to email abuse, includes forging of addresses, harassment/threats, the posting of the same message to multiple newsgroups (spamming), as well as the posting of information in groups where it is not relevant and unwanted.

(xi) Pyramid/money-making schemes – The transfer of information or solicitation of persons via the Internet in an attempt to extort money or other valuables or the use of pyramid/chain letters are all prohibited.

(xii) Pirated software – Pirated software is defined as the illegal exchange of software for the purpose of avoiding the purchase of said software by the individuals involved. This includes most commercial applications such as Adobe Photoshop, Microsoft Office, etc. Such activities are prohibited by federal law and are thus not allowed in any form on Zirkel's Service. Unauthorized copying of copyrighted material including, without

limitation, digitization and distribution of photographs from magazines, books, or other copyrighted sources and copyrighted software is prohibited. The exportation of software or technical information in violation of U.S. export control laws is strictly prohibited.

(xiii) High-traffic websites – Residential internet service is intended to provide access to individuals only. As most individuals primarily download content, rather than upload it, the performance for everybody on the systems is optimal. However, some individuals occasionally choose to host content on their account that could degrade performance for other users. Due to such circumstances, Zirkel may have to implement certain limitations on the amount of web hosting traffic an individual Customer's residential account can receive.

9. DIGITAL MILLENNIUM COPYRIGHT ACT

Under the Digital Millennium Copyright Act ("DMCA"), copyright owners have the right to notify Zirkel's registered designated agent if they believe that a Customer has infringed on their work(s). When Zirkel receives a complaint notice from a copyright owner, Zirkel will notify the Customer of the alleged infringement by providing Customer a copy of the submitted DMCA notice, to the extent permissible by law. As required by law, Zirkel enforces a graduated response policy to complaints that may lead to suspension or termination of service. Zirkel's policy is to terminate the internet services for any Customer receiving four (4) or more DMCA notices annually. For information regarding how to contact Zirkel's Designated Agent, please see Zirkel's DMCA Copyright Infringement Notification Policy, available here.

10. PENALTIES FOR VIOLATIONS OF SERVICE AGREEMENT

(a) All Prohibited Internet Service Activities as defined in Sections 4(i), 4(j), 8 and 9 herein are subject to immediate termination of Customer's account and any and all criminal and civil penalties available under the law. The penalties imposed on Customer for such violations will vary based on the level of the offense. Typically Customer will receive a warning on the first offense. However, if the offense is severe enough, Zirkel reserves the right to disable the Service and terminate the account immediately. Accounts which have been terminated for abuse will not be re-opened. It is vital for Zirkel to provide a quality service for all Customers, and Zirkel will not tolerate Customers who through their actions hinder Zirkel in that endeavor. It is also important for Zirkel to have a non-intrusive presence to the rest of the Internet, and thus prohibit activities that adversely affect Customers on other service providers and their associated networks. To this end, Zirkel reserves the right to modify and/or disable Service, and terminate the Customer's account at any such time the Customer violates this Service Agreement.

(b) Zirkel will not reimburse Customer when Service has been suspended or disabled due to violations of this Service Agreement.

(c) All accounts sixty (60) days or more past due will be turned over to collections and Service will be discontinued permanently. If Service is disconnected for non-payment, Zirkel is not obligated to re-connect Customer's Service. However, if Customer desires re-connection, and Zirkel agrees to do so, Customer agrees to pay a "Re-installment Fee" plus any amount past due under Customer's COS. The amount of the Re-installment Fee is set forth in the Customer's COS.

11. SOFTWARE LICENSES AND THIRD PARTY SERVICES

(a) Zirkel may provide Customer software for use in connection with the Service which is owned by Zirkel or its third party licensors, third party suppliers, and Operational Service Providers (“Software”). Software may be subject to an additional fee. Zirkel reserves the right to periodically update, upgrade, or change the Software remotely or otherwise and to make related changes to the settings and Software on Customer’s computer(s)/device(s) or Equipment, and Customer agrees to permit such changes and access to Customer’s computer(s)/device(s) and Equipment. Customer may use the Software only in connection with the Service and for no other purpose.

(b) Certain Software may be accompanied by an end user license agreement (“EULA”) from Zirkel or a third party. Zirkel’s use of the Software is governed by the terms of that EULA and by this Agreement, where applicable. Customer may not install or use any Software that is accompanied by or includes a EULA unless Customer first agrees to the terms of the EULA.

(c) For Software not accompanied by a EULA, Customer is hereby granted a revocable, non-exclusive, non-transferable license by Zirkel or its applicable third party licensor(s) or Operational Service Provider to use the Software (and any corrections, updates and upgrades thereto). Customer may not make any copies of the Software. Customer agrees that the Software is confidential information of Zirkel or its third party licensors/Operational Service Providers and that Customer will not disclose or use the Software except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Zirkel or its third party licensors/Operational Service Providers. Customer may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. Customer may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. Customer is not granted any title or rights of ownership in the Software. Customer acknowledges that this license is not a sale of intellectual property and that Zirkel or its third party licensors/Operational Service Providers continue to own all right, title and interest, including without limitation to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

12. CUSTOMER’S PAYMENT OBLIGATIONS

Failure to fulfill any payment obligations in a timely manner as provided herein will be considered to be a violation of this Service Agreement and Customer’s COS.

Initial Payment for Internet Access Service. At the time of installation of the regular Internet Access Service, Customer is required to pay the “Activation Fee,” “First Month Payment,” “Equipment Rental Fee,” and any Additional Service Fees, as set forth in the COS. The First Month Payment is the “Monthly Service Fee” set forth in the COS, for a full month of Internet Access Service regardless of where the “Installation Date” falls in the calendar month; at the end of the term the First Month Payment will be prorated and any credit will be applied to Customer’s final payment. Together, the Activation Fee, First Month Payment, and the first month’s payment of the Equipment Rental Fee and any Additional Service Fees constitute the “Initial Payment.” Customer agrees that the Initial Payment is to be paid in consideration of Zirkel’s making the Internet Access Service available on the terms and conditions set forth in this Service Agreement,

that Zirkel has earned the Initial Payment in full and that the Initial Payment is refundable only if the Internet Access Service is not working within seven (7) days of the Installation Date.

(a) After the Initial Payment, Customer agrees to pay the applicable “Monthly Service Fee,” “Monthly Equipment Assurance Fee” if any, and any other recurring monthly fee(s) (collectively the “*Monthly Fees*”) on or before the first day of Customer’s “Monthly Billing Cycle.” Except as set forth in the COS, Customer’s Monthly Billing Cycle begins on the date of installation, unless the Installation Date is on the 29th through the 31st of a month, then the billing cycle will begin on the 28th of the month and prorated accordingly. Notwithstanding the foregoing, Zirkel may modify Customer’s Monthly Billing Cycle upon at least fifteen (15) calendar days’ advance notice to Customer.

(b) Customer understands, acknowledges and agrees that the Monthly Service Fee is subject to change from time to time after the initial IAS Service Term and prior to any IAS Renewal Term subject to advance notice by Zirkel. Customer further understands, acknowledges and agrees that the Activation Fee – up to \$99 is situation dependent and may be limited to standard installation and hardware.

(c) Customer bears the sole responsibility to timely pay Monthly Fees when due. Bills will be sent via email to the Customer’s Account Email Address. Customer may also choose to receive the monthly bill via postal mail for no fee, subject to change at Zirkel’s sole discretion. Customers may also choose an invoice billing method. Customers that choose an invoice billing method at initial installation are required to prepay for at least \$300 worth of internet service at the time of installation. It is Customer’s sole responsibility to have a valid Account Email Address on file with Zirkel. Online billing is available if set up in advance by Customer with Zirkel. Customers may pay their bill with cash, check, credit card or debit card (MasterCard, Visa, or American Express). In certain circumstances (such as a sub-par credit rating, or poor payment history) Zirkel may require a deposit or other guaranteed form of payment (such as payment card or bank account debit authorization) from Customer. Customer understands, acknowledges and agrees that Zirkel or its Operational Service Provider(s) can run a credit check on Customer prior to any installation.

(d) If Customer owes money on any account, Zirkel may deduct the amounts owed from any existing credit Customer has or any security deposit provided or, if applicable, charge them to the bank or payment card account Customer has authorized Zirkel to use.

(e) Additionally, Customer will automatically be charged a fifty-dollar (\$50.00 US) fee for any check returned for non-payment or insufficient funds, “*Check Non-Payment Fee*.”

(f) Zirkel shall not be obligated to provide the Service during Monthly Billing Cycles for which Customer has not paid the applicable Monthly Fees in advance. If at any time Customer’s account has past due amounts or upon Customer’s violation of this Agreement (including any documents incorporated by reference herein), Zirkel may, in Zirkel’s sole and absolute discretion, suspend provision of the Service to Customer and/or terminate this Agreement. Amounts are past due if not paid by the twentieth calendar day of Customer’s Monthly Billing Cycle. Customer understands, acknowledges and agrees that Zirkel is not required to provide notice before suspending or disabling the Service and/or terminating the Customer’s account or this Agreement, and Zirkel will not be liable to Customer or any Authorized User for any such suspension, disabling or termination or any damages that may result therefrom. In order to restore service after a disconnection, Customer agrees to pay the applicable “Re-installment Fee” set forth in the COS.

(g) For the Zirkel Service generally, Customer also agrees to pay all applicable federal, state, and local taxes and fees, including without limitation those imposed after the date of execution of the COS.

13. SERVICE LEVEL AGREEMENT AND REFUNDS

(a) Service Level Agreement. In the event Customer experiences a Service outage for more than two (2) consecutive hours and is unable to transmit and receive information through Zirkel's network to other portions of the Internet and Customer notifies Zirkel immediately of such event and Zirkel determines that such inability was caused by Zirkel's failure to provide said services for reasons within Zirkel's reasonable control and not as a result of any actions or inactions of Customer or any third parties (including failure of third party equipment), and such inability is not a result of scheduled maintenance of Zirkel's equipment or services, Zirkel will, upon Customer's request, credit Customer's account the connectivity charges for the length of the outage. Customer credit may not exceed the Monthly Service Fee in any single calendar month.

(b) Refunds. If Service cannot be supplied by Zirkel for any reason, a full refund will be given for any prepaid service fees and equipment returned in new resalable condition. At the discretion of Zirkel Management, service may be cancelled without penalty within thirty (30) days of service installation for quality of service issues. A full refund will be given for equipment returned in new resalable condition and for any remaining portion of prepaid monthly service charges pro-rated daily. All other payments are non-refundable.

14. DISCLAIMER OF WARRANTIES

(a) CUSTOMER EXPRESSLY AGREES THAT CUSTOMER USES THE SERVICE AND THE ZIRKEL EQUIPMENT AT CUSTOMER'S SOLE RISK. THE SERVICE AND ZIRKEL EQUIPMENT ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS AND EXCEPT TO THE LIMITED EXTENT SPECIFICALLY SET FORTH IN SECTION 3 HEREIN, IF APPLICABLE, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY. NEITHER ZIRKEL NOR ITS AFFILIATES, AGENTS, OPERATIONAL SERVICE PROVIDERS, THIRD PARTY SUPPLIERS OR SOFTWARE LICENSORS WARRANTS: (I) TO UNINTERRUPTED, TIMELY OR SECURE USE OF SERVICE; (II) THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS; (III) THAT THE SERVICE WILL BE ERROR-FREE OR FREE OF ANY VIRUSES, WORMS, SPAM, POP-UP ADVERTISING, SPYWARE, ADWARE OR OTHER HARMFUL COMPONENTS, EVEN IF COUNTERMEASURES HAVE BEEN DEPLOYED; OR (IV) THAT ANY PERSONAL INFORMATION, NON PERSONAL INFORMATION, DATA, FILES, OR CUSTOMER MATERIAL CUSTOMER SENDS OR RECEIVES VIA THE SERVICE WILL BE TRANSMITTED IN UNCORRUPTED FORM, WITHIN A REASONABLE TIME, OR FREE FROM UNAUTHORIZED ACCESS BY OTHERS OR THAT OTHER USERS WILL BE UNABLE TO GAIN ACCESS TO CUSTOMER'S COMPUTER OR DEVICE. THIS INCLUDES WITHOUT LIMITATION INCIDENTS OF FILE SHARING, PRINT SHARING OR USE OF OTHER MEANS THAT ENABLE INTERNET USERS TO GAIN ACCESS TO CUSTOMER'S COMPUTER, DEVICE, OR NETWORK OR ZIRKEL EQUIPMENT, OR TO MONITOR CUSTOMER'S ACTIVITY AND CONDUCT WHILE USING THE SERVICE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM ZIRKEL SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME STATES DO NOT ALLOW LIMITATIONS ON THE SCOPE OF A LIMITATION OF WARRANTY OR HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

(b) In addition, Zirkel may, in its sole discretion, make available to Customer security software, such as anti-virus software, firewall software, "pop-up" advertising blocking software, parental control software, anti-spyware or anti-adware software for Customer's use on Customer's computer system(s) in conjunction with the Service. Any such security software provided by Zirkel to Customer is intended to provide only a minimal level of protection to Customer's computer system(s). CUSTOMER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ZIRKEL AND ITS AFFILIATES, AGENTS, OPERATIONAL SERVICE PROVIDERS, THIRD-PARTY SUPPLIERS AND LICENSORS OF ANY SUCH SECURITY SOFTWARE, DO NOT GUARANTEE ITS ACCURACY, EFFICACY OR PERFORMANCE. CUSTOMER UNDERSTANDS AND AGREES THAT ZIRKEL AND ITS AFFILIATES, AGENTS, THIRD PARTY SUPPLIERS AND LICENSORS ARE NOT RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM(S) (OR THE INFORMATION STORED THEREIN) THAT MAY RESULT FROM USE OF THE SECURITY SOFTWARE OR FROM ITS NON-PERFORMANCE.

(c) EXCEPT AS SPECIFICALLY SET FORTH IN THE COS, CUSTOMER UNDERSTANDS AND AGREES THAT NEITHER ZIRKEL NOR ITS AFFILIATES, AGENTS, OPERATIONAL SERVICE PROVIDERS, THIRD PARTY SUPPLIERS, OR LICENSORS GUARANTEE THAT ANY PARTICULAR AMOUNT OF BANDWIDTH ON ZIRKEL'S NETWORK OR THAT ANY SPEED OR THROUGHPUT OF CUSTOMER'S CONNECTION TO ZIRKEL'S NETWORK WILL BE AVAILABLE TO CUSTOMER. Customer understands, acknowledges and agrees that the availability and speed of the Service provided at Customer's premises may vary depending upon a number of factors, including Customer's computer system(s), associated equipment and other devices accessing the Service, the terrain and location of Customer's premises, foliage between Zirkel Equipment and other components of Zirkel's network, Internet traffic, and other factors such as system capacity limitations, governmental actions, events beyond Zirkel's control and system failures, modifications, upgrades and repairs.

(d) Customer understands, acknowledges and agrees that Zirkel is NOT responsible for: obstructions that might be erected or grow between Customer's antenna and Zirkel's network antenna causing a degradation or loss of service; equipment upgrades necessary over time to address changes in foliage or other reasons; debris or ice on antenna; re-aiming the antenna; reconfiguration of network settings due to, but not limited to, tampering or re-installation of operating systems; physical or electronic damage to Customer's or third party's person or equipment, including without limitation to damage caused by lightning or by the equipment itself; damage caused by hackers or viruses; or loss of data, whether such data resides on Zirkel servers or not.

(e) Customer understands, acknowledges and agrees that Zirkel may in the future offer other Customers on Zirkel's network Service with specific minimum service standards (including, without limitation, minimum standards for speed, bandwidth, latency or availability) (such minimum service standards that may be offered in the future "*Future Enhanced Service*"). Customer further understands, acknowledges and agrees that Zirkel shall be under no obligation to provide any Future Enhanced Service to Customer unless and until Zirkel and Customer have executed a new agreement with respect to such Future Enhanced Service, which agreement may include, without limitation, such increased or modified Monthly Fees and additional terms and conditions as Zirkel and Customer may agree.

(f) Customer understands, acknowledges and agrees that Zirkel may use various tools and techniques in order to manage the safety of its networks efficiently and reasonably and to ensure compliance with Zirkel's Open Internet Policy and Section 8 above (such tools and techniques,

“*Network Management Tools*”). These may include detecting malicious traffic patterns and preventing the distribution of viruses or other malicious code or any such other Network Management Tools as Zirkel may from time to time determine appropriate.

(g) Customer understands, acknowledges and agrees that, in order to provide redundancy or increased efficiency or otherwise to enhance Zirkel’s network, Zirkel may install additional equipment at Customer’s premises, and any such equipment not set forth in the COS shall be deemed to be Zirkel Equipment for the purposes of this Agreement. Customer further understands, acknowledges and agrees that Zirkel may use the Zirkel Equipment to provide Service to others in a manner that secures and separates Customer’s traffic and local area network from Service provided to others.

(h) Customer understands, acknowledges and agrees that Zirkel does not warrant that Service descriptions, information, graphic depictions, fees, product and or other components of the Service are accurate, reliable, updated, current, complete or error-free. Despite Zirkel’s efforts, it is possible that a price for the Service (or a component of the Service) offered on Zirkel’s website, or the Service description may be inaccurate in some part. In the event Zirkel determines that a Service contains an inaccurate price or description, Zirkel reserves the right to take any action Zirkel deems reasonable and necessary, in Zirkel’s sole discretion, to rectify the error, including without limitation, canceling Customer’s order, unless prohibited by law. Zirkel may make improvements or changes to any of Zirkel’s information, or Services described on Zirkel’s websites at any time without notice. Customer agrees to notify Zirkel immediately if Customer becomes aware of any pricing or descriptive errors or inconsistencies with any Services Customer orders and to comply with any corrective action that Zirkel may take.

(i) THIS SERVICE AGREEMENT GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

15. LIMITATION OF LIABILITY

(a) STATUTE OF LIMITATIONS: CUSTOMER MUST BRING ANY CLAIM OR LAWSUIT WITHIN ONE (1) YEAR THE CLAIM OR SUIT ARISES.

(b) TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL ZIRKEL OR ITS AFFILIATES, AGENTS, REPRESENTATIVES, OPERATIONAL SERVICE PROVIDERS, THIRD PARTY LICENSORS OR SUPPLIERS, OR EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, REPRESENTATIVES, AGENTS, OR CONTRACTORS AND ANY OF THEIR SUCCESSORS AND ASSIGNS BE LIABLE WITH RESPECT TO THE SERVICE OR THE SUBJECT MATTER OF THIS SERVICE AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS AND EXCLUSIONS HEREIN MAY NOT APPLY TO CUSTOMERS RESIDING IN SUCH STATE. IF ANY PART OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, CUSTOMER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THE AGGREGATE LIABILITY OF ZIRKEL UNDER SUCH CIRCUMSTANCES FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00 US).

(c) CUSTOMER FURTHER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ZIRKEL WILL HAVE NO LIABILITY FOR THE FOLLOWING:

- (i) FOR ANY AMOUNT IN THE IN EXCESS OF ONE HUNDRED DOLLARS (\$100.00 US);
- (ii) FOR ANY THIRD-PARTY FEES OR CHARGES, INCLUDING WITHOUT LIMITATION, BANKING FEES, OVERDRAFT FEES, MOBILE PHONE OR OTHER WIRE LINE CHARGES, TECHNICIAN CHARGES, OR OTHER SIMILAR CHARGES;
- (iii) FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER;
- (iv) FOR DATA LOSS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES;
- (v) FOR ANY DAMAGES OR LOSS DUE TO CUSTOMER'S FAILURE TO BACK UP ANY EQUIPMENT AS REQUIRED IN SECTION 3(F) HEREIN;
- (vi) ANY LACK OR BREACH OF SECURITY CUSTOMER OR ANY OTHER PARTY MAY EXPERIENCE OR BE EXPOSED TO WHILE USING THE SERVICE;
- (vii) FOR ANY MATTER BEYOND ZIRKEL'S REASONABLE CONTROL;
- (viii) FOR ANY INTERFERENCE OR INCOMPATIBILITY WITH OR DISRUPTION OF ANY NON-VOICE SYSTEMS, WHETHER CAUSED BY THE TELEPHONY SERVICE, INTERNET SERVICE, EQUIPMENT, OR OTHERWISE; OR
- (ix) CUSTOMER'S USE OF THE SERVICE FOR OR IN CONNECTION WITH ANY HIGH-RISK OR UNLAWFUL USES, OR ANY USE THAT VIOLATES THIS SERVICE AGREEMENT.

(d) Customer understands, acknowledges and agrees that Zirkel may block traffic to or from any source, including, without limitation, the deletion of any electronic mail, as it deems necessary to secure its network or eliminate spam. Customer agrees that Zirkel shall be entitled to damages if Customer transmits or is otherwise connected with the transmission of spam. Customer agrees that Zirkel is entitled to actual damages; however, if actual damages cannot be reasonably calculated, Customer agrees to pay Zirkel liquidated damages of five dollars for each piece of spam in violation of the CAN-SPAM Act transmitted from or otherwise connected with Customer's account. Customer will be charged at Zirkel's hourly rate of \$99.00, and in the minimum be charged for at least one (1) hour, for Zirkel's response to complaints from, and clean-up for, unsolicited commercial mailing, unauthorized bulk mailings and/or server violations.

(e) Customer understands, acknowledges and agrees that when using the Service to access the Internet or any other online network or service, there are certain risks that may enable other Internet users to gain access to or use of Customer's computer(s) or other equipment. Customers should have in place and are responsible for all appropriate security measures when using the Service. Customers are responsible for any misuse of the Service that occurs through Customer's account, whether by a member of Customer's household or an authorized or unauthorized third party.

(f) This Section 15, Limitation of Liability, will survive termination or expiration of this Service Agreement, whether terminated by the Customer or Zirkel, for any reason.

16. AGREEMENT TO ARBITRATE

(a) CUSTOMER AND ZIRKEL AGREE TO ARBITRATE ALL DISPUTES AND CLAIMS BETWEEN CUSTOMER AND ZIRKEL THAT THEY ARE NOT ABLE TO RESOLVE THROUGH GOOD FAITH DISCUSSION. The agreement between Customer and Zirkel to arbitrate all disputes and claims between them is intended to be broadly interpreted. It includes without limitation: claims arising out of or relating to any aspect of the relationship between Customer and Zirkel, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, claims that arose before this or any prior Agreement (including without limitation, claims relating to advertising), claims that are currently the subject of purported class action litigation in which Customer is not a member of a certified class and claims that may arise after the termination of this Agreement. For the purposes of this Section 16, references to Customer include Customer's subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all Authorized Users or unauthorized users or beneficiaries of the Service. **CUSTOMER AGREES THAT, BY ENTERING INTO THIS AGREEMENT, CUSTOMER AND ZIRKEL ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION WITH RESPECT TO THIS AGREEMENT.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

(b) A party who intends to seek arbitration must first send to the other, by certified mail, a written notice ("*Arbitration Notice*"). An Arbitration Notice to Zirkel must be addressed to Zirkel at the address set forth in this Service Agreement for notices. An Arbitration Notice to Customer must be addressed to Customer at Customer's then-current billing address. The Arbitration Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If Customer and Zirkel do not reach an agreement to resolve the claim within 60 calendar days after the Arbitration Notice is received, Customer or Zirkel may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Zirkel or Customer shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which Customer or Zirkel is entitled.

(c) The arbitration shall be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "*AAA Rules*") of the American Arbitration Association (the "*AAA*"), as modified by this Agreement, and shall be administered by the AAA. The AAA Rules are available online at www.adr.org, by calling the AAA at 1-800-778-7879 or may be obtained by written request to Zirkel. The arbitrator shall be bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provisions are reserved to the decision of a court of competent jurisdiction. Unless Customer and Zirkel agree otherwise, any arbitration hearings shall take place in Spokane County, Washington. The right to a hearing shall be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The party initiating arbitration proceedings shall bear all the arbitration-related costs and expenses of both parties including, without limitation, legal fees and expenses.

(d) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **CUSTOMER AND ZIRKEL AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER**

IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Customer and Zirkel agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

(e) Notwithstanding any provision in this Agreement to the contrary, Customer and Zirkel agree that if Zirkel makes any future change to this arbitration provision (other than a change to the address to which an Arbitration Notice is to be sent), Customer may reject any such change by sending Zirkel written notice within thirty (30) days of the change. By rejecting any future change, Customer agrees that Customer will arbitrate any dispute between Customer and Zirkel in accordance with the language of this provision.

17. INDEMNIFICATION

Customer agrees to indemnify, defend and hold harmless Zirkel, its Affiliates, Operational Service Providers, agents, third party licensors and suppliers and their respective members, officers, directors, shareholders, employees, agents, representatives and contractors, and each of their successors and assigns (collectively, the "*Zirkel Indemnitees*") from and against all losses, expenses, damages and costs, (including reasonable attorneys' fees) and other claims brought against any Zirkel Indemnitee(s) related to Customer's use of the Service or any violation of this Service Agreement and all other documents incorporated herein by reference) including without limitation, claims that Customer's use of the Service infringed on the patent, copyright, trademark or other intellectual property right of any third party, Customer's violation of any law or the rights of another and claims resulting from Customer's negligence. Customer agrees to pay any attorneys' fees incurred by Zirkel and/or any other Zirkel Indemnitee in connection with the defense of any such third-party claims. Zirkel reserves the right to assume the defense and control of any matter subject to indemnification by Customer, in which event Customer will cooperate with Zirkel in asserting any available defenses.

18. TERMINATION OF THE SERVICE

(a) IF CUSTOMER CANCELS THE SERVICE OR ANY ASPECT THEREOF FOR ANY REASON, ZIRKEL SHALL NOT BE REQUIRED TO REFUND CUSTOMER ANY PORTION OF THE MONTHLY FEES PAID BY CUSTOMER FOR THE MONTH IN WHICH CANCELLATION OCCURS, UNLESS REQUIRED OTHERWISE BY STATE LAW.

(b) For Zirkel's regular Internet Access Service, Customer may terminate the Service at any time. Customer Termination notices must be sent by Customer via email, fax, or U.S. mail to Zirkel's current address as set forth in Section 19(h) of this Service Agreement. Zirkel may take reasonable steps to verify Customer's identity and authority before effecting such termination. Upon termination, Customer agrees to pay any account balance and to return any Zirkel Equipment within ten (10) days of expiration of the IAS Service Term or pay the Equipment Purchase Price as set forth in Section 3(b) herein. Any "Early Termination Fee" is set forth in the COS.

(c) The Service and all Service features are subject to availability on an ongoing basis. Customer understands that Zirkel may cease to offer the Service or any Service feature at any time, for any reason or no reason, and without notice to Customer. Without limiting the generality of the foregoing, Zirkel may suspend, disconnect or terminate the Service at any time without prior notice if Zirkel believes in its sole discretion that Customer has (i) failed to pay Customer's bill when due, (ii) threatened or harassed any Zirkel employee, agent or contractor, or (iii) violated

any other provision of this Service Agreement. In its reasonable discretion, Zirkel may terminate the Service without prior notice to Customer.

(d) If the Service to Customer is disconnected for any reason or Service is suspended in accordance with this Agreement, Zirkel may charge Customer (i) for Service during the period of disconnection or suspension in accordance with applicable federal and state law and (ii) reasonable disconnection and reconnection fees.

(e) Zirkel will also close the Customer's account after two (2) unpaid billing cycles.

(f) In the event that Customer's account is suspended, disabled or terminated, no refund, including fees paid by Customer to Zirkel, shall be granted. Moreover, Zirkel shall not be responsible for the return of data stored on Zirkel's servers, including web and email servers. Customer agrees that Zirkel has no obligation to visit Customer's home upon termination to reconfigure Customer's computer(s) or for any other reason.

(g) Sections 2 through 19 herein shall survive any termination or expiration of this Agreement.

19. GENERAL PROVISIONS

(a) This Service Agreement (including all documents incorporated herein by reference) constitutes the entire agreement with respect to the Service. This Service Agreement supersedes and nullifies all prior understandings, promises and undertakings made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement.

(b) The Parties agree that any Affiliates, Operational Service Providers, agents, third party suppliers and licensors of Zirkel are intended beneficiaries of this Service Agreement. Except as set forth in the previous sentence, this Agreement is not intended to give and does not give any rights or remedies to any person other than Customer and Zirkel.

(c) No agency, partnership, joint venture, or employment relationship is created as a result of the Service Agreement and neither party has any authority of any kind to bind the other in any respect.

(d) Zirkel shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Zirkel's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference).

(e) This Service Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of Colorado without regard to conflicts of law provisions. Subject to the agreement between Customer and Zirkel with respect to arbitration of any disputes, Customer agrees that the federal and state courts of Colorado alone shall have jurisdiction over all disputes arising under this Service Agreement and Customer consents to the personal jurisdiction of those courts.

(f) Zirkel's failure to exercise or enforce any right or provision of this Service Agreement shall not constitute a waiver of such right or provision. If any term, covenant, condition or provision of this Service Agreement shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Service Agreement shall not be affected and each remaining term, covenant,

condition and provision shall be valid and enforceable to the fullest extent permitted by law or construed as nearly as possible to reflect the original intentions of the parties.

(g) Zirkel may change, amend, alter, or modify this Service Agreement at any time. Zirkel may notify Customer of any change either by posting that change on the Zirkel Website (www.zirkelwireless.com), by sending Customer an email, or by U.S. first-class mail. If Customer continues to use the Service after such notice has been made, Customer agrees that such continued use shall be deemed to be Customer's acceptance of those changes. The current version of this Service Agreement, as the same may be modified by Zirkel from time to time, shall supersede any prior version of this Service Agreement that may have been provided to Customer at any time.

(h) Except as specifically set forth in this Service Agreement, any notices under this Agreement shall be effective as follows:

(i) *If to Customer:* Notice shall be made by (a) email to Customer's Account Email Address; (b) by first-class mail to Customer at Customer's billing address then on file with Zirkel; or (c) when posted to the Announcements page of the Zirkel Website. If by email, such notice shall be deemed effective when transmitted by Zirkel. If by first-class mail, such notice shall be deemed effective upon the earlier of three (3) business days after dispatch or at such time as Notice is actually received by Customer.

(ii) *If to Zirkel:* Notice shall be made exclusively by first-class mail to Zirkel at 1856 Kamar Plaza, Steamboat Springs, CO 80487 or such other address as Zirkel may publish to Customer, and such notice shall be deemed effective upon receipt.

(i) Customer may not assign this Agreement, or Customer's rights or obligations under this Service Agreement, without Zirkel's prior written consent, and any purported assignment by Customer without such consent shall be void. Zirkel may transfer or assign any portion or all of this Service Agreement at any time without notice to Customer, and Customer waives any notice that may be required by law.

(j) Customer and Zirkel have executed this Service Agreement by their signatures (or, in the case of Zirkel, the signature of Zirkel's authorized person) on the COS.