

**Boudinot & Associates, Inc.**  
**THS WIRELESS - SUBSCRIBER AGREEMENT**

THIS SUBSCRIBER AGREEMENT (THE "AGREEMENT") STATES THE TERMS AND CONDITIONS UNDER WHICH YOU ("YOU" OR "CUSTOMER") MAY USE THE SERVICE PROVIDED BY BOUDINOT & ASSOCIATES, Inc - THS WIRELESS (HEREINAFTER "WISP" or WIRELESS INTERNET SERVICE PROVIDER"). READ THIS AGREEMENT CAREFULLY AND COMPLETELY AS IT SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO YOUR USE OF THE SERVICE.

**Scope of this Agreement**

WISP provides its service to Customer conditioned upon Customer's acceptance, in its entirety, of the terms and conditions contained in this Agreement. WISP may, in its sole discretion, change, modify, add/or remove portions of this Agreement, and the service provided hereunder, at any time. WISP will notify Customer of any such changes by posting the modified Agreement on the WISP Web site: <http://www.thswireless.com>, or sending notice via email, postal mail, or other means to Customer. Customer's continued use of the service following notice of such change shall be deemed to be Customer's acceptance of any such modification. If Customer does not agree to any such modification, Customer must immediately stop using the service and notify WISP that Customer is terminating this Agreement in accordance with the notice provisions contained herein.

**Equipment**

Customer understands and agrees that the service requires certain equipment required to be provided by Customer (the "Customer Equipment") such as a personal computer with an Ethernet jack and an appropriate operating system, as well as certain equipment that will be provided by WISP or its designee such as an antenna. Customer represents that it owns the Customer Equipment or otherwise has the right to use the same in connection with the service. It is the responsibility of Customer to provide and maintain all equipment that is not provided by WISP. It is Customer's responsibility to make sure that all Customer Equipment is working properly and to troubleshoot and resolve problems with such equipment if it is not functioning properly. Customer is provided with WISP equipment as part of their monthly subscription fees. It is the responsibility of WISP to make sure that WISP equipment is working properly.

**I. Terms and Conditions**

**1. Service Term.** As consideration for the subscription Customer agrees to pay WISP the applicable subscription fees set forth on our Web site at the time of your selection, or, if applicable, upon receipt of your invoice from WISP. All fees are due immediately and are non-refundable, except as otherwise expressly noted in section VIII: Termination and Expiration. Unless otherwise specified on our Web site, each WISP service plan is for a one-year initial term. After the initial term, unless Customer renews the one year subscription, Residential service will be supplied on a month to month automatically renewing basis. Business services will renew for a like term unless service is terminated by written notice to WISP prior to 30 days before the end of the current term. Any renewal of your services with us is subject to the then current terms and conditions. Customer acknowledges that at the time of renewal the subscription fee may be higher or lower than the price paid for the initial term of service. Notwithstanding any other part of this agreement, Customer will be required to pay for service for each month of the current term.

**2. Non-Recommended Configuration.** Customer agrees that (i) Customer will not be entitled to Customer support relating to any issues other than the quality of the signal delivered to Customer's antenna and wall jack, and (ii) the following limitations of liability shall

apply: WISP DOES NOT ASSUME ANY LIABILITY WHATSOEVER FOR ANY DAMAGE OR FAILURE TO CUSTOMER EQUIPMENT OR CUSTOMER'S INABILITY TO ACCESS OR USE THE SERVICE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in the remainder of this Agreement.

**3. Access to Customer's Premises.** Customer authorizes WISP and its employees, agents, contractors, and representatives to enter Customer's premises (the "Premises") in order to install, maintain, inspect, repair, and if necessary remove the WISP equipment. All such services will be conducted at a time agreed to with Customer. If Customer is not the owner of the Premises, upon request, Customer will supply WISP with the owner's name and address, evidence that Customer is authorized to grant access to the Premises on the owner's behalf, and (if needed) written consent from the owner of the Premises to install the necessary WISP equipment. WISP assumes no responsibility for any damage, personal or property, to the Premises or the Customer Equipment as a result of the installation or removal of the WISP equipment. In the event Customer elects to remove or move any WISP equipment, Customer assumes all responsibility for any damage, personal or property, caused by such action.

**4. Relocating Equipment.** Customer shall not relocate the WISP equipment as this may affect Customer's ability to receive service. If Customer decides to move locations, Customer will contact WISP for additional information concerning the procedures for transferring the WISP equipment and service to Customer's new location. If the service is not available to Customer at their new location, then the Agreement shall terminate and Customer shall comply with the termination provisions of this Agreement. If the service is available at the new location, upon request by Customer and approval by WISP, WISP may relocate the WISP equipment to Customer's new location at a time agreed to with Customer. Customer acknowledges that Customer will be billed for the removal and reinstallation of the WISP equipment at WISP's then current hourly rates plus materials. In all cases, Customer shall notify WISP as provided herein.

**5. Replacement or Repair of WISP Equipment.** Customer shall be solely responsible for the cost of replacement or repair of any lost, stolen, damaged, sold, transferred, leased, encumbered, or assigned WISP equipment or part thereof, together with any incidental costs incurred by WISP relating to the replacement, repair, or installation of the WISP equipment.

**6. Back-up Requirements.** The installation, use, inspection, maintenance, repair, and removal of the WISP equipment may result in service outage or potential damage to Customer's computer and other Customer Equipment. If Customer does not back up all existing computer files by copying them to another storage medium prior to such activities, Customer understands and accepts the associated risks of such a decision. IN ANY EVENT, EXCEPT AS OTHERWISE SET FORTH HEREIN, WISP SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF THE CUSTOMER'S COMPUTER, PERIPHERALS, SOFTWARE, OR DATA.

**7. Customer Equipment Liability.** WISP has no liability whatsoever for any damage, loss, or destruction of Customer Equipment, including loss or destruction of any software, files, or data. This includes harm resultant from any computer upgrades. Customer must perform for service eligibility, including the installation of an Ethernet Network Interface Card.

**8. Installation.** WISP or its agents will install the WISP equipment. The Customer will be billed separately for installation according to the selected billing plan.

**9. Service Fees.** Customer agrees to pay the monthly service fees, plus applicable taxes, as set forth in the current price list effective at the time of installation, as modified from time to time in accordance with the terms of this agreement. The initial service fee, together with applicable taxes, will be charged to Customer at the time of installation. Thereafter, the service fee together with applicable taxes will be billed to Customer. The service fee together with applicable taxes will be billed at the beginning of the applicable service period, on the day of the month that the Customer installation was completed (the "Anniversary Date"). WISP reserves the right to change prices and institute new fees at any time upon notice to Customer

by posting new prices on the WISP Web site or by sending notice via email or postal mail.

**10. Installation Charges.** The installation charge, any additional installation equipment required plus applicable taxes, is as set forth in the Price List. At WISP's option, the installation charge, together with any additional equipment required and applicable franchise fees and taxes, will be charged to Customer at the time of installation, or (ii) in accordance with WISP's then-current billing policies.

**11. Agreement to Pay.** For the term chosen by Customer in the Service Request application, Customer agrees to pay all WISP equipment fees, installation charges, maintenance fees and service fees, including applicable taxes. Customer hereby authorizes WISP to charge Customer's debit or credit card, invoice customer, or use other billing option in accordance with WISP's then-current billing policies, for all such fees, charges and taxes. Customer agrees to pay for WISP service through the end of the term or in accordance with WISP's then-current billing policies. Further, Customer hereby authorizes THS Wireless to charge Customer's debit or credit card for all fees related to termination, including pay out of the fees owed to WISP for the remainder of the selected term of the Agreement, equipment charges and any and all other fees related to termination to which the Customer is subject pursuant to the terms of this Agreement. ALL BILLING FOR THS WIRELESS IS HANDLED BY OUR PARENT COMPANY, BOUDINOT & ASSOCIATES, INC. ALL CHARGES WILL APPEAR ON YOUR CREDIT CARD STATEMENT AS BOUDINOT & ASSOCIATES, INC.

**12. Late Payments; Failure to Pay.** If any payment due to WISP is not received within seven days, an administrative charge may be assessed and the service may be disconnected. If the service is disconnected, Customer may be required to pay a reconnect fee in addition to all past due charges before the service is reconnected. The administrative charge is intended to be a reasonable advance estimate of WISP's costs resulting from Customer's late payments and non-payments. In the event of a disconnection of Customer's service hereunder, Customer will remain liable for all service Fees and other fees due through the end of the term selected in the service Request application.

**13. Additional Charges.** The service will allow Customer to access the Internet, online services, and other information, and provides Customer access to e-mail. Customer acknowledges that Customer may incur charges while using the service in addition to those billed by WISP. For example, charges may be incurred as a result of accessing certain online services or purchasing or subscribing to certain other offerings. Customer agrees that all such charges, including all applicable taxes, are the sole responsibility of Customer.

**14. Billing Errors.** Subject to applicable law, Customer must notify WISP of any billing errors or other requests for credit within 60 days of the related billing. WISP will not be responsible for disputes in billing not brought within this time.

## **II. Unforeseen Interruption of Services**

**1. Notification.** To the extent possible, WISP shall notify Customer as soon as it is practical in the event that WISP is required to interrupt, either partially or fully, the services being provided to Customer. Such interruptions shall not be deemed a default hereunder.

**2. Refunds.** Except as expressly set forth in or contemplated by this Agreement, in the case of refund for lost services, credit will be issued only for periods of lost service greater than twenty four (24) continuous hours. In the event of lost services greater than 24 continuous hours, not including lost service due to the failure of Customer Equipment, unauthorized Customer relocation of WISP equipment, through any other fault of Customer, or due to the failure of any upstream network outage, WISP will prorate the refund for the lost service time in respect to the Customer's monthly service Fees. No refund will be given for any lost time under 24 continuous hours. Customer is not eligible for any refunds if Customer is in violation of any of the terms of this Agreement.

**3. Repair.** WISP will use commercially reasonable efforts to (at WISP's option), repair or replace any WISP equipment damaged due to normal wear. If determined by WISP, that (i) a repair was not related to the WISP equipment, or (ii) WISP equipment was not damaged by normal wear, then the Customer will be billed at WISP's then-current hourly rates plus materials. WISP will not be responsible for the repair or replacement of any Customer Equipment or any interruption of service due to failure of Customer Equipment.

**4. Providers.** WISP will not be held responsible for the external Internet connections provided from third parties.

**5. Relocation.** In the event the Customer moves or relocates to a location where WISP service is not available, Customer is responsible to fulfill the terms of this Agreement as set forth in section VIII: Termination and Expiration.

### **III. Conduct**

1. Customer understands that all information, data, text, software, music, sound, photographs, graphics, videos, messages, or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such Content originated. Customer is entirely responsible for all Content that Customer uploads, posts, emails, or otherwise transmits via the service. WISP does not control the Content posted via the service and, as such, does not guarantee the accuracy, integrity, or quality of such Content. Customer understands that by using the service, Customer may be exposed to Content that is offensive, indecent, or objectionable. Under no circumstances will WISP be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of any Content posted, emailed, or otherwise transmitted to Customer via the service.

2. Customer agrees not to use the service to: (i) upload, post, email, or otherwise transmit any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable; (ii) harm minors in any way; (iii) impersonate any person or entity, including, but not limited to, a WISP representative, forum leader, guide or host, or falsely state or otherwise misrepresent Customer's affiliation with a person or entity; (iv) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the service; (v) upload, post, email, or otherwise transmit any Content that Customer does not have a right to transmit under any law or under any contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); (vi) upload, post, email or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; (vii) upload, post, email, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; (viii) upload, post, email, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (ix) interfere with or disrupt the service or servers or networks connected to the service, or disobey any requirements, procedures, policies, or regulations of networks connected to the service; (xi) intentionally or unintentionally violate any applicable local, state, federal, or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, but not limited to, the New York Stock Exchange, the American Stock Exchange, or the Nasdaq, and any regulations having the force of law; (xii) "stalk" or otherwise harass another; or (xiii) collect or store personal data about others.

3. Customer acknowledges that WISP does not pre-screen Content, but that WISP and its designees shall have the right (but not the obligation) in their sole discretion to refuse, restrict or move any Content that is available via the service. Without limiting the foregoing, WISP

and its designees shall have the right to remove any Content that violates this Agreement or is otherwise objectionable, in WISP's sole discretion. Customer agrees that Customer 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, Customer acknowledges that Customer may not rely on any Content created by WISP or submitted to WISP.

4. Customer acknowledges and agrees that WISP may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce this Agreement; (iii) respond to claims that any Content violates the rights of third parties; or (iv) protect the rights, property, or personal safety of WISP, its users, and the public.

5. Customer understands that the technical processing and transmission of the service, including Customer's Content, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

6. It is solely Customer's responsibility to evaluate the accuracy, completeness, and usefulness of all opinions, advice, services, and other information provided through the service. WISP does not endorse or represent the reliability, accuracy, or quality of any information, goods, services, or products displayed or advertised on the service. Any items purchased or obtained by any Customer through the service is done at the Customer's sole risk. Any Content related to business, finance, and/or securities matters and the like contained on the service is provided for informational purposes only, and no content included in the service is intended for trading or investing purposes. WISP shall not be responsible or liable for the accuracy, usefulness, or availability of any information transmitted via the service, and shall not be responsible or liable for any trading or investment decisions made based on such information.

7. Customer agrees that the service and the software may contain proprietary and confidential information that may be protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that Content contained in sponsor advertisements or information presented to Customer through the service, advertisers, or suppliers may be protected by copyrights, trademarks, service marks, patents, or other proprietary rights and laws.

8. Customer agrees not to reproduce, duplicate, copy, sell, resell, or exploit for any commercial purposes, any portion of the service, use of the service, or access to service.

9. *Dealings with Advertisers and Suppliers.* Customer may enter into correspondence with or participate in promotions of advertisers and/or suppliers on the service showing their products on the service. Any such correspondence or promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties, or representations associated with such correspondence or promotions, are solely between the corresponding user and the advertiser, and/or supplier. WISP assumes no liability, obligation, or responsibility for any part of any such correspondence or promotion.

10. *Links to Third-Party Sites.* WISP provides links to other external sites or resources. Because WISP has no control over such sites and resources, Customer acknowledges and agrees that WISP is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, services or other information or materials on or available from such sites or resources. If Customer chooses to access third-party services, Customer does so entirely at his/her own risk.

## **IV. Privacy Policy**

**1. Subscriber Privacy Notice.** This Privacy Policy contains information pertaining to Customer's privacy rights provided under federal law. WISP may, in its sole discretion, change, modify, add, or remove portions of the Privacy Policy, and the service provided hereunder, at any time. WISP will notify Customer of any such changes by posting the modified Privacy Policy on the WISP Site, or sending notice to Customer via email, postal mail, or other means. Customer's continued use of the service following notice of such change shall be deemed to be Customer's acceptance of any such modification. If Customer does not agree to any such modification, Customer must immediately stop using the service and notify WISP that Customer is terminating the Privacy Policy and this Agreement. If Customer does not agree to the new policies, Customer's sole remedy is to terminate this Agreement and comply with the terminations provision herein.

**2. Monitoring the service.** WISP has no obligation to monitor the service, but may do so, and disclose information regarding Customer's use of the service if WISP, in its sole discretion, believes that it is reasonable to do so, including to: satisfy laws, regulations, or governmental or legal requests; operate the service properly; or protect itself and its Customers. WISP may immediately remove Customer's material or information from WISP's servers, in whole or in part, which WISP, in its sole and absolute discretion, determines to infringe another's property rights or to violate this Agreement or the Privacy Policy.

### **3. Prohibited Uses of the service**

#### **USE OF PEER TO PEER (P2P) NETWORKS SUCH AS KAAZA, ETC ARE EXPRESSLY PROHIBITED.**

Customer shall not use the WISP equipment or the service to, directly or indirectly:

(a) participate in any unlawful purposes. Use of the WISP equipment or service for transmission or storage of any information, data, or material in violation of any U.S. federal, state, or local regulation or law is prohibited. This includes, but is not limited to, posting or disseminating content which is obscene, unlawful, threatening, defamatory, or which infringes the intellectual property of any person; (b) post, transmit, or disseminate objectionable information, including, without limitations, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, federal, or international law, order, or regulation; (c) access any other person's computer or software without the knowledge and consent of such person; (d) upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way, information, software, or other material obtained through the service which is protected by copyright or other proprietary right, without obtaining permission of the owner; (e) alter, modify, or tamper with the WISP service or permit any other person to do the same that is not authorized by WISP; (f) restrict, inhibit, or otherwise interfere with the ability of any other person to use or enjoy the WISP equipment or the service, including, without limitation, posting or transmitting any information or software which contains a virus or other harmful feature; or generating levels of traffic sufficient to impede others' ability to send or retrieve information; (g) inhibit or have the potential to inhibit the ability of any other person to use the service by serving or attempting to serve faulty IP addresses to other WISP customers. WISP may deny service to Customer until the problem is resolved; (h) knowingly disrupt the service; (i) resell the service or otherwise charge others to use the service. The service is for personal use only and Customer agrees not to use the service for operation as an Internet service Provider or for any other business enterprise in competition with the service; (j) attempt to login, access, or attack any of WISP's equipment or network, including radio and network equipment; (k) assist (release proprietary software and information) unauthorized users to gain access to WISP's network; or (l) open, tamper with or attempt to repair WISP equipment; WISP reserves the right to restrict or block certain activities or immediately terminate this Agreement and the service (i) if Customer engages in any of the activities listed above, (ii) if WISP receives an appropriate notice or request under the Digital Millennium Copyright Act, (iii) if necessary to comply with any law, regulation, rule or judicial or regulatory order, or (iv) if Customer uses the WISP equipment or services in a way which is contrary to any other WISP policy. Copies of policies are available on the WISP Web site. This

Section shall not in any way limit WISP's rights of termination pursuant to this Agreement. Customer assumes the risk and agrees to indemnify and hold harmless WISP against all claims and expenses (including reasonable attorney fees) resulting from Customer engaging in any of the activities listed above. This provision will survive termination of this Agreement.

**4. Intent.** Unless produced by WISP, the information Customer accesses or receives by using the service or information sent to Customer by other users is provided, entered, or posted by the users and is not reviewed, controlled, examined, verified, or endorsed by WISP. The data and information Customer sends and receives may be subject to privacy- and security-invading activities including, but not limited to, eavesdropping, electronic trespassing, "sniffing," "spamming," "nuking," "hacking," "spoofing," imposture, breaking passwords, harassment, fraud, forgery, and system contamination including use of viruses, "worms," and "Trojan" applications causing unauthorized, damaging, harmful access and/or retrieval of information and data on Customer's computer and other forms of activities that may even be considered unlawful. Information and data may also not reach its destination or may reach an erroneous address or recipient.

CUSTOMER IS ADVISED NOT TO USE OR RELY ON THE SERVICE AND INFORMATION RELATED THERETO FOR "CONTENT SENSITIVE" OR "MISSION CRITICAL" APPLICATIONS AND USE. "CONTENT SENSITIVE" MEANS ANY INFORMATION OR DATA CUSTOMER DOES NOT WISH TO BE FREELY ACCESSIBLE AND GENERALLY AVAILABLE TO INTERNET USERS. "MISSION CRITICAL" APPLICATIONS AND USE ARE THOSE WHERE CONTINUOUS OPERATION IS CRITICAL TO AN INDIVIDUAL OR COMPANY AND WHERE HARM OR DAMAGE MAY BE CAUSED IF ANY DOWNTIME WOULD HAVE AN ADVERSE EFFECT ON THAT INDIVIDUAL OR COMPANY.

**5. Security, And File and Print Sharing.**

WISP's facilities are used by numerous service subscribers. As a result, there is a risk that Customer could be subject to "eavesdropping." This means that other service subscribers may be able to access and monitor Customer's use of the service. This risk of eavesdropping exists not only with WISP's facilities, but also on the Internet and other services to which access is provided as part of the service. Because of this risk, any sensitive or confidential information sent by Customer is sent at the Customer's sole risk, and WISP shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise relating to such actions by Customer.

**6. FTP/HTTP Service Setup.** Customer should be aware that when using the service to access the Internet or any other online network or service, there are certain applications, such as FTP (File Transfer Protocol) server or HTTP (Hyper Text Transfer Protocol) server, which may be used to allow other service users and Internet users to gain access to Customer's computer. If Customer chooses to run such applications, Customer should take the appropriate security measures. WISP shall not 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 applications by Customer, including without limitation, damages resulting from others accessing Customer's computer.

**7. Local Area Network (LAN)** in that each Customer is a node on the network. As such, users outside the Customer's home may be able to access the Customer's computer. It is important that the Customer take appropriate steps to protect their information on the computer from being accessed by others. To this end, we encourage Customers to acquire a firewall, utilize virus protection, and implement other security measures the Customer deems necessary to protect the integrity of the data on Customer's computer. In addition, some software includes capabilities that permit other users across a network, such as the service and the Internet, to gain access to the Customer's computer and to the software, files, and data stored on the computer. Operating systems can include file sharing and print sharing capabilities which, when enabled, will permit other users to gain access to the Customer's computer even if the Customer is not using the service. Notwithstanding the foregoing recommendations, Customer hereby acknowledges and agrees that the Customer's use of the service is at the Customer's own risk, and WISP shall not have any liability whatsoever for any

claims, losses, actions, damages, suits, or proceedings arising out of or otherwise relating to such use by the Customer.

**8. Permission Grant.** WISP grants to you permission to use the WISP equipment (antenna, radio modem, Category-5 cable, wall jack), but does not grant permission to:

- (a) attempt to login/reconfigure/attack the WISP equipment
- (b) open WISP equipment
- (c) remove any proprietary notices or labels on the WISP equipment
- (d) modify, translate, reverse-engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction), or create derivative works based on the WISP equipment
- (e) rent, sell or otherwise transfer the WISP equipment (except to the extent assignable pursuant to the terms of this Agreement).

**9. Customer Obligations.** In consideration of Customer's use of the service, Customer agrees to:

- (a) provide true, accurate, current, and complete information as prompted by the service's registration or member sign-up form (such information being the "Registration Information");
- (b) maintain and promptly update the Registration Information to keep it true, accurate, and complete;
- (c) refrain from using the service for any purpose that is unlawful or prohibited by this Agreement. If Customer provides any information that is untrue, inaccurate, not current, or incomplete, or if WISP has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, WISP has the right to suspend or terminate Customer's account and refuse any and all current or future use of the service (or any portion thereof); and

**10. Service Eligibility.** The service is available only to individuals and entities that can form legally binding contracts under applicable law and their permitted agents and assigns (i.e., family members, friends, etc.).

- (a) Customer is responsible for the use of the service by anyone other than Customer at all times without exception. WISP or any of its parents, subsidiaries, affiliates, agents, or assigns, may refuse the use of, and participation in, the service to anyone at any time, in its sole discretion.
- (b) Receiving files from third parties, via any application (i.e., email) may be harmful. Before receiving any files from any user, and even if the account from which the file transfer notice is sent looks familiar to Customer, it is strongly recommended that Customer verifies that the person sending Customer these files is indeed the person Customer thinks he or she is, for example by asking for some kind of information known only to the Customer and such other person. Please make sure not to receive files from users Customer does not trust, from users Customer is not sure they are whom they say they are, or whenever Customer is not sure Customer wants to receive the files.
- (c) If WISP identifies that a certain IP address/block is the source of illegal network activity, such as hacking, DDOS-Distributed Denial of service attacks, and SYN flood, WISP may block Internet access to/from that IP address/block without any advance notice.
- (d) If WISP identifies that a certain email domain is "spamming" or using "email relay," WISP will block any email coming from that email domain without any advance notice.

## **V. Limited Warranty**

EXCEPT AS OTHERWISE SET FORTH, THE WISP EQUIPMENT, SERVICE, AND SOFTWARE ARE PROVIDED BY WISP "AS IS" WITHOUT WARRANTY OF ANY KIND. WISP DOES NOT WARRANT UNINTERRUPTED USE OR OPERATION OF THE WISP EQUIPMENT OR SERVICE. CUSTOMER'S SOLE REMEDY FOR SERVICE INTERRUPTION SHALL BE LIMITED TO A PRO RATA REFUND FOR

INTERRUPTIONS GREATER THAN 24 CONTINUOUS HOURS. WISP DOES NOT WARRANT THAT ANY DATA OR FILES SENT BY OR TO CUSTOMER WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY ARE HEREBY EXCLUDED.

**1. DISCLAIMER OF WARRANTIES.** CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT:

a. WISP MAKES NO WARRANTY THAT (i) THE SERVICE OR THE WISP EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) DELETION, MISDELIVERY, OR FAILURE TO STORE OR EFFECTUATE ANY USER COMMUNICATIONS, ORDERS, LISTINGS, OR CUSTOMIZATION SETTINGS WILL NOT OCCUR AS A RESULT OF CUSTOMER'S USE OF THE SERVICE, (iv) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, AND (v) ANY ERRORS IN THE WISP EQUIPMENT, INCLUDING HARDWARE OR SOFTWARE, WILL BE CORRECTED. b. THE SERVICE MAY CONTAIN DEFECTS AND, ACCORDINGLY, CUSTOMER IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION, AND TO NOT RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE SERVICE. c. ANY MATERIAL, PRODUCTS, OR SERVICES DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM WISP OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

**2. LIMITATION OF LIABILITY.** WISP OR ANY OTHER PERSON INVOLVED IN CREATING, INSTALLING, DELIVERING, TESTING, OR USING THE SERVICE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE, SERVICE OUTAGE, OR FOR COST PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED, OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE OR RESULTING FROM UNAUTHORIZED ACCESS TO, OR ALTERATION OF A USER'S TRANSMISSIONS OR DATA, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF REVENUE, PROFITS, BUSINESS USE, DATA, OR OTHER INTANGIBLE INFORMATION, EVEN IF WISP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY FOR WISP TO CUSTOMER FOR ALL CLAIMS ARISING FROM THE USE OF THE SERVICE IS LIMITED TO \$100.

**3. EXCLUSIONS AND LIMITATIONS.** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

**4. General Acknowledgments.** Customer acknowledges that WISP may establish general practices and limits concerning use of the service, including without limitation (i) the maximum number of days that email messages, message board postings, or other uploaded Content will be retained by the service, (ii) the maximum number of email messages that may be sent from or received by an account on the service, (iii) the maximum size of any email message that may be sent from or received by an account on the service, (iv) the maximum disk space that will be allotted on WISP's servers on Customer's behalf. Customer agrees that WISP has no responsibility or liability for the failure of the service and the deletion of other Content maintained or transmitted by the service. WISP reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the service (or any part thereof) with or without notice.

**5. Third parties.** Customer agrees that WISP shall not be liable to Customer or to any third party for any modification, suspension, or discontinuance of the service. Customer further

acknowledges that WISP reserves the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

**6. Indemnification.** Customer agrees to indemnify and hold WISP, its directors, officers, employees, agents, attorneys, co-branders or other partners harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of the Content Customer submits, posts to or otherwise transmits through the service, Customer's use of the service and the WISP equipment, Customer's connection to the service, Customer's violation of this Agreement, or Customer's infringement of any intellectual property or other right of any other person or entity.

**7. Enforcement.** Because user authentication on the Internet is difficult, WISP cannot and does not confirm that each user is who they claim to be. Because WISP does not and cannot be involved in user-to-user dealings or control the behavior of participants on WISP, in the event that Customer has a dispute with one or more users, WISP has no ability to prevent or restrict conduct, communications, or Content which might violate this Agreement prior to its transmission on or through the service, nor can WISP ensure prompt removal of any such communications or Content after transmission or posting. Accordingly, WISP does not assume responsibility to Customer or others for any failure by WISP to enforce the provisions contained in this Agreement.

**8. Assignment.** Customer shall have no right to assign or transfer this Agreement or the associated Customer Equipment without the express prior written consent of WISP.

**9. Governing Law.** This Agreement is between Customer and WISP

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard to its conflicts of law provisions.

(b) *International Use.* Recognizing the global nature of the Internet, Customer agrees to comply with all local rules regarding online conduct and acceptable Content. Specifically, Customer agrees to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which Customer resides.

**10. Time Limitation.** Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement or use of the service must be filed within one year after such claim or cause of action arose or be forever barred.

**11. Headings.** The section headings and sub-headings contained in this Agreement are for convenience only and have no legal or contractual effect.

## **VI. Miscellaneous**

CUSTOMER IS REQUIRED TO MONITOR HIS/HER EMAIL ON A REGULAR BASIS AND PROVIDE WISP WITH PROMPT NOTICE OF ANY CHANGE TO CUSTOMER'S EMAIL ADDRESS. Customer's use of the service following delivery of any notice to Customer from WISP will be deemed to be Customer's acknowledgment and acceptance of such notice. It is Customer's sole responsibility to notify WISP of his/her e-mail address to use for all notices regarding this Agreement, the Privacy Policy, the Price List, the service, and all other notifications.

1. *No Relationship.* Nothing in this Agreement will create any joint venture, joint employer, franchisee/franchiser, employer-employee, or principal-agent relationship with WISP, nor impose upon either company any obligations for any losses, debts, or other obligations incurred by the other except as expressly set forth herein.

2. *Customer's Account, Password, and Security.* Customers receive a user name, password, and account designation upon registration. WISP Customers and members of WISP Customers' household or business (if a business account has been purchased) are the only authorized

users of Customer's WISP account and must comply with this Agreement. Customer must keep his/her password confidential so that no one else may access the service through the account. Customer must notify WISP within 24 hours of discovering any unauthorized use of Customer's account. E-mail accounts exceeding Customer's allotted Web Space in size may block new incoming messages. User names, passwords, and e-mail addresses are WISP's property and WISP may alter or replace them at any time.

3. *General.* This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes and replaces any and all prior written or verbal agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. WISP'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.

## **VII. Termination and Expiration**

**1. Termination by Customer.** Customer may only terminate this Agreement by written notice to WISP. The obligation of Customer to pay for the remaining service term shall survive such termination. All related charges and fees may be billed to Customer's or charged to Customer's credit card. Customer agrees and acknowledges that the payment obligations set forth herein apply to Customer's termination of this Agreement for any reason whatsoever.

**2. Customer Obligations Upon Termination.**

Customer agrees that upon termination of this Agreement WISP equipment must be returned in good working condition or will be subject to a \$500 non-returned equipment fee. Customer will permit WISP, and its employees, agents, contractors, and representatives, to access Customer's premises to remove the WISP equipment, or Customer may remove equipment and return it to WISP in good working condition within 5 days of the effective date of termination or Customer will be subject to a \$500 non-returned equipment fee.

**3. Termination by WISP** WISP may terminate this Agreement immediately should Customer violate any of the terms of this Agreement. WISP may also terminate the service for any other reason at any time by providing Customer with written notice of such termination no later than 30 days prior to the date of termination. In the event WISP terminates the service for any reason other than Customer's violation of this Agreement, fees and charges will accrue through the date of termination but all prepaid fees and charges that have been paid in advance for any full month of canceled services will be refunded.

**4. Retention of Rights.** Nothing contained in this Agreement shall be construed to limit WISP's rights and remedies available at law or in equity. Subject to applicable law, WISP reserves the right to delete all data, files, electronic messages, or other information that is stored on WISP's servers or systems when Customer's account with WISP is terminated for any reason.

**5. Multiple Users.** Customer acknowledges that Customer is executing an Agreement on behalf of all persons who use the WISP equipment and/or service through Customer's computer. Customer shall have sole responsibility for ensuring that all such other users understand and comply with the terms and conditions of this Agreement. Customer further acknowledges and agrees that Customer is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach is the result of use of the service and/or WISP equipment by Customer or by another user of Customer's computer. Customer agrees to indemnify and hold harmless WISP against all claims and expenses (including reasonable attorney fees arising out of the use of the service and/or equipment by any other user of Customer's computer).

**6. Copyright Infringement.** Notices and Procedure to Making Claims of Copyright Infringement. Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to the WISP's Designated Agent.