

The following terms and conditions apply to and control End User Services', d/b/a End User Services provisioning of, and your access to and/or use of the Services described herein (you shall hereinafter be referred to as "Customer").

CUSTOMER HEREBY WARRANTS THAT HE/SHE/IT IS AT LEAST 18 YEARS OF AGE. BY ACCESSING AND USING THE SERVICE, THE CUSTOMER ACKNOWLEDGES THAT HE/SHE/IT HAS READ THIS AGREEMENT, IS AGREEING TO ALL THE TERMS AND CONDITIONS HEREIN, AND CONSENTS TO BE BOUND BY AND BECOME A PARTY HERETO. SHOULD CUSTOMER NOT AGREE TO ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR CANNOT COMPLY WITH THESE TERMS AND CONDITIONS, HE/SHE/IT SHALL IMMEDIATELY CEASE ANY USE OF THE SERVICE OR TERMINATE THE REGISTRATION PROCESS.

1. **THE SERVICE.**

The Service provided hereunder is Dial-Up Internet Service (the "Service"). The Service shall consist of a combination of various software solutions, networks, services and hosting facilities (the "Network"), components of which End User Services has been granted access and/or licenses to by third party licensors, suppliers, vendors, and subcontractors ("Third Party Vendors"). In no event shall End User Services' use of, or contractual arrangement with, any Third Party Vendors create any agency, employment relationship, joint venture, partnership, representation or fiduciary relationship with such third parties, and neither shall End User Services or such Third Party Vendors have the authority to create any obligation on behalf of the other. End User Services and any Third Party Vendor may, at any time and without liability, modify, expand, improve, maintain or repair the Service, although such process may require a temporary suspension of Services or increased rates.

2. **TERM.**

These Terms of Service shall apply upon Customer registering for and/or ordering the Service; Provided that if Customer acquires access to the Service without registering or submitting an order, then these Terms of Service shall immediately apply upon such access. Subject to the terms conditions, and qualifications herein, either Party may terminate any of the Services ordered hereunder, without penalty or liability, upon notice to the other. Customer shall remain responsible and shall pay all charges and fees associated with the Service that accrue up to the moment of termination. In the event Customer terminates the Service for any reason, the date of termination shall be the last day of the then current billing period.

3. **EQUIPMENT.**

The Customer, at its cost, shall be solely responsible for obtaining and maintaining all hardware, software and equipment necessary to access the Service. Customer agrees to indemnify and hold End User Services, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising

from any hardware, software and equipment provided and/or used by Customer to access the Services.

#### **4. UNLAWFUL AND PROHIBITED USE.**

Customer agrees to use the Service only for lawful purposes and in a lawful manner. Customer is expressly prohibited from using the Service in manner that would, in any way, constitute, or encourage conduct that is criminal in nature, that may give rise to a civil liability, or that otherwise violates any applicable laws or regulations. In addition, Customer is expressly prohibited from using the Service (a) for any abusive or fraudulent purpose, (b) in a manner that enables Customer or its End User to avoid any obligation to pay for the Service, (c) in a manner that is deemed to interfere with, disrupt, or present a risk to the service, network, software, property, or security of End User Services, its customers, its Third Party Vendors or other third parties, whether directly or indirectly, (d) in a manner that results in usage inconsistent with End User Services' expectations or the purpose for which End User Services is providing the Services, or (e) in a manner that may violate these Terms of Service or the policies of End User Services or any of its Third Party Vendors, as the same may change from time to time. Further, Customer is prohibited from camping on the Network. Camping shall be defined as using the service in excess of 420 hours a month. If End User Services determines, in its sole discretion, that Customer is using the Service in a manner that violates or is contrary to this Section then End User Services, as well as any affected Third Party Vendors, shall have the right, without liability, to block, suspend or terminate the Service, or any part thereof, without notice. Customer shall be responsible for any liabilities or obligations arising from Customer's use of the Service that is contrary to, or violates this Section. Customer agrees to indemnify and hold End User Services, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of Customer's use of the Service in violation of this Section. If End User Services, in its sole discretion, believes that Customer's actions or omission may be considered criminal in nature, End User Services may forward personally identifiable information to the appropriate authorities for investigation and prosecution. Customer hereby consents to such forwarding and agrees to notify any person or entity it permits access to use the Service of the same.

#### **5. AUDIT AND LAW ENFORCEMENT.**

End User Services enforce the provisions of these Terms of Service. In addition, End User Services may track and monitor Customer's use of the Service to (a) conform to legal requirements or comply with legal process; (b) protect and defend the rights, interests, or property of End User Services, its customers, the Third Party Vendors or any other third party; (c) respond to requests associated with any legal claim or proceeding, or unlawful activity; or (d) provide the Services hereunder. Customer agrees that these Terms of Service are sufficient notice to Customer of such monitoring to the extent any notice is required under applicable Federal or state law. Customer shall inform and provide notices to any person or entity it permits access to use the Service of the provisions of this Section. Customer agrees to indemnify and hold End User Services, the Third Party Vendors, and the parent companies, sister companies,

employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of the forgoing.

**6. PRIVACY.**

The Service utilizes the public Internet and third party networks. End User Services and its Third Party Vendors shall not be liable for any lack of privacy which may be experienced by Customer with regard to the Service. Customer shall be solely responsible for any liabilities arising from Customer's lack of privacy, and Customer agrees to indemnify and hold End User Services, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of the same.

**7. CONTENT.**

Neither End User Services nor any of its Third Party Vendors operate or control the content transported by the Service. As such, neither End User Services nor any of its Third Party Vendors shall have any liability or responsibility for the content of any communication or information transmitted via the Service. Customer agrees to indemnify and hold End User Services, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of such content, and Customer's use of Service.

**8. ACCESS NUMBER TRANSITION**

From time to time, End User Services may, at its sole discretion and without liability, Direct Customer to a generic webpage to choose a new access number to dial. The webpage provides access to End User Services (') Call finder utility at no charge. Customer shall be solely responsible to ensure that the number that he/she/it chooses to access the Service is local to Customer's calling area (i.e. a number with an area code utilized in Customers local calling area). Customer shall be solely responsible to pay for all fees and charges billed by Customer's telephone provider that are associated with Customer's use of the Service, including but not limited to long distance charges.

**9. PAYMENT TERMS**

Customer shall pay all charges and amounts associated with the Services. Customer hereby authorizes End User Services to charge the credit card account or debit the bank account that Customer identifies upon registration, for payment of any and all fees and charges associated with the Services, pursuant to End User Services' then current billing policy and rates. The authority granted above shall remain in full force and effect until the expiration of the

Termination Date, as provided in Section 2 above, or for such longer period of time as necessary to collect all charges and fees that accrue prior to the termination of Services. Customer shall be responsible for accurately providing End User Services with Customer's valid payment information, including the payment method, and maintaining and updating the same at all times. Customer shall ensure that all amounts billed hereunder are available each time End User Services attempts to charge or debit the account designated for such purposes. End User Services shall charge Customer a service fee each time End User Services attempts to charge or debit the designated account and such charge or debit is rejected due to insufficient funds. Customer hereby waives any and all claims, actions or suits against End User Services, and its parent companies, affiliates and subsidiaries, and such entities' employees, officers, directors and shareholder, and releases the same from any errors, omissions, and/or liabilities that may arise due to the processing of aforementioned transaction.

Customer is responsible for, and must pay any and all applicable Federal, state, and local sales, use, excise, public utility, or other taxes, regulatory fees, and charges, now in force or enacted in the future, that arise as a result of the Customer's sale, use and/or consumption of the Service. Similarly, End User Services may pass through to Customer taxes and fees owed by End User Services to the extent permissible by law. Said amounts are in addition to and exclusive of charges for Service. If Customer is exempt from paying any taxes or fees, Customer must provide documentation, satisfactory to End User Services, that Customer is exempt. Tax exemption will only apply from and after the date End User Services acknowledges Customer's exemption request. Customer agrees to indemnify and hold End User Services, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of the foregoing, including any claim of exemption by Customer.

End User Services may immediately suspend, restrict, or cancel the Services, without notice or liability, if End User Services does not receive payment of all amounts billed to Customer by the required due date. In addition, End User Services may add interest charges to any past-due amounts at a rate equal to the lesser of 2.5% per month or the maximum rate allowed by law, prorated for each day payment is past due. Acceptance of late or partial payments (even if marked "Paid in Full" or with other restrictions) shall not waive any of the rights of End User Services to collect the full amount of the charges for the Service. Customer agrees to reimburse End User Services for reasonable attorneys' fees, and any other costs associated with, collecting delinquent or dishonored payments. Customer agrees to indemnify and hold End User Services, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out Customer's non-payment hereunder.

## 10. **BILLING DISPUTES**

In the event Customer disputes any amount billed by End User Services ,Customer shall notify End User Services of such billing dispute within sixty (60) days of the billing date or such dispute shall be forever waived. The existence of a dispute shall not relieve Customer from paying any amounts billed hereunder. Upon receipt of a billing dispute, End User Services shall reasonably investigate the dispute and provide Customer with a conclusive resolution based on the outcome of such investigation.

#### **11. MODIFICATION OF TERMS.**

End User Services has the right to and may, at any time, modify the terms and conditions of these Terms of Service, and to change or discontinue any aspect or feature of the Services as it deems necessary. Notice of any such change shall be sent to Customer via email, at the email address provided by Customer upon registration. Customer hereby consents to receive notifications in electronic format and acknowledges that such format shall not affect the enforceability thereof. Any changes or modifications to these Terms of Service shall be effective immediately upon the transmission such notice, or at such time indicated in the notice. In addition to providing the above mentioned notice, End User Services shall publish the modified Terms of Service at End User Services Customer agrees to review the Terms of Service periodically to be aware of any and all modifications thereto. Customer's use of the Service after notice of any such changes shall constitute Customer's conclusive acceptance of any and all such changes. In the event Customer no longer desires to receive notices via electronic methods, Customer shall provide written notification of such decision, at which time End User Services may terminate Services without liability.

In addition, End User Services may provide additional terms and conditions on its website which shall be enforceable against Customer and shall control Customer's use of the Service. Such additional terms may include payment and billing terms and conditions. All such terms and conditions may be amended from time to time by End User Services ,and Customer agrees to review the Website periodically to be aware of any and all modifications thereto.

#### **12. WEBSITE USE/WARRANTIES**

By accessing and using the End User Services Website, the Customer acknowledges that it has read the terms of use located at End User Services ("Terms of Use"), and, in addition to the terms and conditions contained herein, Customer agrees to all the terms and conditions therein, and consents to be bound and become a party thereto. Should the Customer not agree to, or cannot comply with any of the terms and conditions of the Terms of Use, it shall immediately cease any use of the End User Services Website as well as the Service or terminate the registration process. Information, ideas and opinions expressed on the End User Services Website should not be regarded as professional advice or the official opinion of End User Services ,and Customer is encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on the End User Services website. In addition to those disclaimers contained in these Terms of Service and the Terms of Use, End User Services does not make any warranties or representation that the content and services

available on the End User Services Website are, in any case, true, correct or free from any errors. End User Services may provide hyperlinks to websites not controlled by End User Services ("target sites") and such hyperlinks do not imply any endorsement, agreement on or support of the content, products and/or services of such target sites. End User Services does not editorially control the content, products and/or services on target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access, the use, inability to use, or the content available on or through target sites.

### **13. GENERAL WARRANTIES**

THE SERVICES, HARDWARE, SOFTWARE AND OTHER COMPONENTS OF THE NETWORK AND SERVICE ARE OFFERED AND PROVIDED "AS IS", "AS AVAILABLE" AND SUBJECT TO THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY FOUND HEREIN. End User Services AND ITS THIRD PARTY VENDORS AND ANY THIRD PARTY WHO FURNISHES SERVICES TO End User Services OR ENABLES End User Services TO FURNISH SERVICE TO CUSTOMER, MAKES NO WARRANTIES OF ANY KIND REGARDING THE SERVICE, SOFTWARE, OR EQUIPMENT PROVIDED HEREUNDER AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, ACCURACY OF DATA, AVAILABILITY, FITNESS FOR A PARTICULAR PURPOSE, THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, ANY WARRANTY AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE SERVICES, OR AGAINST INFRINGEMENT OF ANY NATURE. IN ADDITION, End User Services ,AND ITS THIRD PARTY VENDORS AND ANY THIRD PARTY WHO FURNISHES SERVICES TO End User Services OR ENABLES End User Services TO FURNISH SERVICE TO CUSTOMER IN CONNECTION WITH THESE TERMS OF SERVICE, MAKE NO WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. End User Services DOES NOT AUTHORIZE ANYONE, INCLUDING, BUT NOT LIMITED TO, EMPLOYEES, AGENTS, OR REPRESENTATIVES, TO MAKE A WARRANTY OF ANY KIND ON BEHALF OF End User Services(°), ITS THIRD PARTY VENDOR' OR ANY THIRD PARTIES. ANY AND ALL STATEMENTS AND/OR DESCRIPTIONS CONCERNING THE SERVICE OR EQUIPMENT, IF ANY, BY End User Services OR ITS EMPLOYEES, AGENTS OR INSTALLERS, ARE INFORMATIONAL ONLY AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND AND CUSTOMER SHOULD NOT RELY ON ANY SUCH STATEMENT OR DESCRIPTIONS.

### **14. LIMITATION OF LIABILITY**

IN ADDITION TO AND NOT TO LIMIT ANY OTHER LIMITATIONS OF LIABILITY PROVIDED HEREIN, EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, End User Services SHALL NOT BE LIABLE FOR ANY DAMAGE, LOSS OR LIABILITY, OF ANY NATURE, INCURRED BY CUSTOMER AND/OR ANY THIRD PARTY RESULTING FROM THESE TERMS OF SERVICE, THE SERVICES PROVIDED HEREUNDER, AND/OR CUSTOMER'S ACCESS TO, AND/OR USE OF THE SAME. IN

NO EVENT SHALL End User Services BE RESPONSIBLE FOR ANY LIABILITIES ARISING OUT OF: (A) THE SERVICES, FACILITIES OR EQUIPMENT PROVIDED OR USED BY CUSTOMER OR PROVIDED BY A THIRD PARTY VENDOR (INCLUDING ANY AGENTS, SUBCONTRACTORS, INDEPENDENT CONTRACTORS OR END USERS OF THE SAME); (B) ANY ACT OR OMISSION OF CUSTOMER OR ANY THIRD PARTY.

IN ADDITION TO AND NOT TO LIMIT THE FOREGOING, End User Services SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF, OR RELATING TO, THESE TERMS OF SERVICE, THE SERVICES PROVIDED HEREUNDER, AND/OR CUSTOMER'S ACCESS TO AND/OR USE OF THE SAME. FURTHERMORE, IN NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF End User Services ARISING WITH RESPECT TO THESE TERMS OF SERVICE EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE CLAIM.

NO CAUSE OF ACTION UNDER ANY THEORY WHICH ACCRUED MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF A LEGAL PROCEEDING MAY BE ASSERTED BY CUSTOMER HEREUNDER OR OTHERWISE, RELATIVE TO THE SERVICES OR THESE TERMS OF SERVICES.

IN THE EVENT A JURISDICTION DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SUCH LIABILITIES AND WARRANTIES SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

#### **15. INDEMNIFICATION.**

In addition to any other indemnification provisions herein, Customer agrees to indemnify and hold End User Services, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to Customer's acts or omissions, consumption of the Services and/or breach of these Terms of Service. End User Services shall promptly notify Customer in writing of any claim for which it is obligated under this indemnity and for which End User Services may seek indemnification.

#### **16. DISPUTE RESOLUTION**

These Terms of Service and all aspects of the Services provided hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to choice of law rules. The above governing law provision applies regardless of the location of the Customer or where Customer or any person or entity it permits access to use the Service use or pay for Service. Venue for any action brought hereunder shall be Allegheny

County, Pennsylvania, and Customer hereby waives any rights or claims to the contrary. In any proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights under this Agreement, the prevailing party may be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and enforce the final judgment.

## 17. MISCELLANEOUS

(a) *General Provisions.* These Terms of Service and any documents incorporated herein constitute the entire Agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, statements, or proposals concerning the Service, including representations, whether written or oral. No written or oral statement, advertisement, or service description not expressly contained in these Terms of service will be allowed to amend, contradict, explain, or supplement it unless agreed upon by the Parties in writing. Neither Customer nor End User Services is relying on any representations or statements by the other party or any other person or entity that is not included as a Party to these Terms of service.

(b) *Force Majeure.* Except for the Customer's payment of charges, which have accrued, neither Party to these Terms of service assumes a risk of any event, foreseeable or unforeseeable, and beyond the reasonable control of either Party, that has a material effect upon the agreed exchange contemplated herein.

(c) *Survival.* The provisions of these Terms of service that, by their purpose, are intended to survive the termination of these Terms of service shall so survive. Said provisions shall include, but shall not be limited to, those provisions that include indemnification clauses, limitations on liability, warranty limitations, billings, non-disclosure and Customer's obligations to pay for the Service provided, including any additional usage charges.

(d) *Non-Waiver.* Failure by either Party to insist upon strict performance of any terms or conditions of these Terms of service or failure or delay to exercise any rights or remedies provided herein or by law shall not release either Party from any of the obligations of these Terms of service, and shall not be deemed a waiver of any right to insist upon strict performance thereof or any rights and remedies herein.

(e) *Severability.* If any terms herein are illegal or unenforceable at law or in equity, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect, except to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of these Terms of Service shall then be fully enforceable.

(f) *Third Parties.* Notwithstanding anything to the contrary contained herein, no third party shall be considered a party to or beneficiary of these Terms of service or have any claim under these Terms of service against either Customer or End User Services, and the Customers, sister companies, parent companies, vendors, independent contractors and service providers of the same. End User Services acknowledges and understands that Customer may permit third parties



to have access to and Use the Service through Customer's account and using Customer's equipment and software. Customer agrees that it shall remain entirely responsible for such third party's actions and omissions and shall ensure that such third party comply with the policies set forth in these Terms of Service, including but not limited to those Policies set forth in Section 2 above. In addition, Customer shall ensure that such third party is aware of the privacy limitations set forth in Section 6 above. Customer shall remain responsible and agrees to pay all fees and charges generated from any third party's use of the Service through Customer's account, regardless of whether Customer is aware of or permits such use.

(h) *Assignment.* Customer may not assign these Terms of service without the express written consent of End User Services, which consent shall not be unreasonably withheld.

(i) *Business Relationship.* These Terms of Service shall not create any agency, employment, joint venture, partnership, representation or fiduciary relationship between the Parties. Neither party shall have the authority, nor shall any party attempt, to create any obligation on behalf of the other party.

(j) *Notices.* Customer Agrees that all notices shall be considered written and properly given if sent to Customer via the email address provided by Customer at the time of registration and as necessarily updated. Customer hereby consents to receive notifications in electronic format and acknowledges that such format shall not affect the enforceability thereof. In the event Customer wishes to not receive notices electronically, Customer shall inform End User Services of such desire and End User Services may, at its sole discretion terminate the Service without further liability.