

# **KwiKom Communications**

## **Internet Terms and Conditions of Service**

Effective date: May, 2018

Thank you for choosing KwiKom for your Internet needs. This document is important—please read it carefully. THIS KWIKOM INTERNET SERVICE TERMS AND CONDITIONS AND ALL DOCUMENTS REFERRED TO HEREIN (collectively the “Agreement”), IS A LEGAL CONTRACT BETWEEN THE CUSTOMER (“User”) AND JMZ CORPORATION D/B/A KWIKOM COMMUNICATIONS (“KwiKom”) AND SETS FORTH THE TERMS AND CONDITIONS BY WHICH KWIKOM WILL MAKE AVAILABLE THE SERVICES USER HAS ELECTED TO RECEIVE (“the Service(s)").

KWIKOM RESERVES THE RIGHT TO CHANGE OR MODIFY THIS AGREEMENT AT ANY TIME BY POSTING THE REVISED AND UPDATED AGREEMENT ON KWIKOM’S WEBSITE. KWIKOM MAY NOTIFY USER OF ANY CHANGE BY: POSTING NOTICE OF CHANGES ON KWIKOM’S WEBSITE; NOTIFYING USER BY EMAIL OR US MAIL; AND/OR NOTIFYING USER ON USERS MONTHLY BILLING STATEMENT. USER SHOULD REGULARLY REVIEW INFORMATION POSTED ON KWIKOM’S WEBSITE TO OBTAIN TIMELY NOTICE OF SUCH CHANGES. USER’S NON-TERMINATION OR CONTINUED USE OF SERVICES AFTER CHANGES ARE POSTED CONSTITUTES USER’S ACCEPTANCE OF THIS AGREEMENT AS MODIFIED BY THE POSTED CHANGES.

This Agreement takes effect once User’s order for Services has been accepted by KwiKom and User accepts Services from KwiKom. This Agreement shall continue until User’s Services are terminated in accordance with this Agreement. This Agreement governs both the Services and any equipment provided by KwiKom and used in conjunction with the Service, such as Consumer Premises Equipment; an IP phone; Multimedia Terminal Adapter; Analog Telephone Adapter; or any other IP connection device (collectively, a “Device” or the “Equipment”).

### **SERVICES**

**Internet Access** – Subject to the Service characteristics contained herein, KwiKom shall provide Internet connections between the KwiKom provided wireless or wired Equipment and KwiKom’s Internet backbone. Internet connections are provided as “up-to” the speeds advertised within the Service plan purchased by User reflecting performance under ideal conditions. KwiKom reserves the right to interrupt those speeds if necessary for Equipment upgrades and network maintenance, and will do its best to inform User of any such interruptions ahead of time. KwiKom shall have the unrestricted right to engage subcontractors in rendering Services under this Agreement.

**Electronic Mail** – KwiKom shall also provide and maintain a number of e-mail accounts for User as specified in the chosen Service plan.

**ViaSat Exede** – If User receives Services through ViaSat Exede, User acknowledges that User received, read, understands and agrees to be bound by all of the terms and conditions set forth on each of the pages of this Agreement and the ViaSat Acceptable Use Policy, as each of them may be

updated from time to time. The ViaSat Exede Acceptable Use Policy is available at <http://www.exede.com/legal/>.

**Telephony Service** – If User subscribes to telephony Services, KwiKom shall provide telephony Service, and User warrants to KwiKom that User will use the telephony Service in accordance with the Phone Terms and Conditions of Service as they may be updated from time to time.

**Webhosting Service** – If User subscribes to KwiKom’s webhosting Service, KwiKom shall provide such Service, and User will use such Service in accordance with the KwiKom Webhosting Terms of Use as they may be updated from time to time.

### **ACCEPTABLE USE**

As a condition of use of the Service, User warrants to KwiKom that User will use the Service in accordance with the Broadband Internet Acceptable Use Policy of KwiKom as it may be updated from time to time.

The transfer of technology across national boundaries, including electronic transmission thereof, is regulated by the U.S. Government. User agrees not to export, import or re-export, (including, without limitation by way of electronic transmission) any technology transmitted through KwiKom Services without first obtaining any required export license or governmental approval. User agrees it will not directly or indirectly export or re-export such technology to any of those countries listed from time-to-time in supplements to Part 770 to Title 15 of the Code of Federal Regulations in Country Groups Q, S, W, Y or Z. The parties acknowledge that the foregoing lists are subject to regulatory change from time to time.

KwiKom will cooperate fully with legal authorities in the investigation of suspected crimes or service abuses. User agrees to indemnify and hold harmless KwiKom, its agents and representatives, from any and all claims, costs, losses, damages, liabilities and expenses, including reasonable attorneys’ fees for any reason whatsoever, including without limitation, any harm, injury, loss or damage incurred by KwiKom, or any other party, arising out of User’s breach of either this lawful use provision or KwiKom’s Broadband Internet Acceptable Use Policy.

### **COPYRIGHT, TRADEMARK, UNAUTHORIZED USAGE OF DEVICE, FIRMWARE OR SOFTWARE**

The Service, any Devices or Equipment, and any firmware or software used to provide the Service or provided to the User in conjunction with providing the Service, or embedded in the Devices or Equipment, and all Services, information, documents and materials on KwiKom Websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of KwiKom’s websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively “marks”) are and will at all times remain the exclusive property of KwiKom. Nothing in this Agreement grants User the right or license to use any KwiKom marks.

User has not been granted any license to use the firmware or software used to provide the Service or provided to the User in conjunction with providing the Service, or embedded in any Devices or

Equipment, other than a nontransferable, revocable license to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. User expressly agrees that any Device or Equipment is exclusively for use in connection with the Service and that KwiKom will not provide any passwords, codes or other information or assistance that would enable User to use such Device or Equipment for any other purpose. KwiKom reserves the right to prohibit the use of any interface equipment that KwiKom has not provided to the User. User hereby represents and warrants that User possess all required rights, including software and/or firmware licenses, to use any interface equipment that KwiKom has not provided to User. In addition, User shall indemnify and hold KwiKom harmless against any and all liability arising out of User's use of such interface equipment with the Service. User shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

User shall not change the electronic serial number or equipment identifier of any Device or perform a factory reset of any Device without prior written consent from KwiKom. KwiKom reserves the right to terminate User's Service if KwiKom believes, in KwiKom's sole and absolute discretion, that User has tampered with any Device. In the event of such termination, User will remain responsible for any termination fees as provided for in this Agreement. User shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

## **SECURITY**

User can best control the risks associated with security, and are therefore solely responsible for maintaining and upholding the account security of their Service. KwiKom will not be responsible for any disruption of Service, corrupted files or viruses which affect the User of the Service. It is User's responsibility to safeguard User's network and equipment through appropriate means (e.g. using commercially available software), from theft, unauthorized use or system corruption. Any detriment caused to the network as a result of User's failure to properly secure User's network and devices may result in the immediate termination of User's Service. User is entirely responsible for any actions, damages, or costs incurred via their account, regardless of who is using that account.

## **SERVICE CHARACTERISTICS**

**Service Availability** - The Service is subject to availability as it is contingent on available KwiKom facilities and unique signal path conditions between such facilities and the User premises. Due to the nature of the Service technology, KwiKom reserves the right to deem the Service unavailable to the User up to, including, and after the installation. KwiKom assumes no liability whatsoever for any claims, damages, losses or expenses arising out of or otherwise relating to the unavailability of the Service in User's geographical area, for any reason, even where such unavailability occurs after installation of the Service.

**Service Plans** - KwiKom offers a range of Service plans with different speeds and data usage. Service plans are subject to availability and may include other promotional terms and conditions. If User

changes or upgrades their Service plan, any special or other promotions may be subject to discontinuance or removal.

**Performance Levels** - Speed is a function of the traffic experienced upon the wider network architecture of the Internet itself. KwiKom Services are provided as “up-to” speeds and KwiKom does not guarantee the maximum Service performance (throughput speeds) levels. KwiKom will make every reasonable effort to ensure that Users receive the speeds under the Service plan they signed up for throughout most of a User’s daily use and reflecting performance under ideal conditions. KwiKom is not responsible for speeds from points anywhere else on the internet and User understands that content that User may access through the Service may be subject to “caching” or several other factors that are beyond KwiKom’s control.

**Throughput Volume** - Depending on the Service plan signed up for, an account will have a standard quota for disk space and data usage. At KwiKom’s discretion, additional quota may be added to such an account for a recurring fee, based on KwiKom’s then-current rates. Data usage on an account above User’s limit will result in additional fees as set forth in the Additional Fee Statement (as defined herein).

**Network Management** - User understands, acknowledges and agrees that KwiKom may use various tools and techniques in order to efficiently and reasonably manage its networks as provided in KwiKom’s Open Internet Statement which may be updated from time to time. Consistent with its Open Internet Statement, KwiKom may employ traffic-management technology to allocate bandwidth across all of its customers and has the right at all times and without notice to remove, restrict access to or make unavailable any information or content residing on KwiKom’s servers.

**IP Addresses** - Internet Protocol (“IP”) addresses are not portable and are not assigned for independent administration or distribution. Customer understands that IP assignments are not guaranteed, and may be modified as required by KwiKom and/or the American Registry for Internet Numbers (ARIN).

## **EQUIPMENT**

**KwiKom Equipment** – KwiKom will provide User the authorized wireless or wired Equipment for use with the KwiKom Service. Only KwiKom Consumer Premises Equipment (“CPEs”) are permitted and authorized to be connected to the Service. KwiKom will own the CPE installed at the User location, and will monitor and upgrade said CPE as KwiKom determines to be necessary and appropriate.

**User Equipment** – It is User’s responsibility to ensure that User’s computer system meets the current minimum system requirements stated by KwiKom as being necessary to use the Service. From time to time, the computer equipment required to access and use the Service may change. Accordingly, User’s computer equipment may cease to be adequate to access the Service. In such event, User’s sole remedy will be to upgrade computer equipment or terminate this Agreement. It is possible for hardware and software below KwiKom’s stated minimum requirements to work on KwiKom’s network. However,

KwiKom does not guarantee service with hardware lower than the following requirements and the use of older software can expose User and User's data to viruses and other security risks.

- Windows System Desktop or Laptop Microsoft Windows 7 or newer; Pentium Processor 1 GHz, or equivalent, 1 GB of memory (RAM), 16 GB of free hard drive space, 16bit colors at 1024x768 resolution, and Ethernet card (NIC) or WAN Card (WiFi).
- Macintosh System MAC OS 10.6 or newer; Intel Core 2 Duo processor or newer, 2 GB of memory (RAM), 8 GB of free hard drive space, Ethernet or WiFi Card (NIC).

### **CANCELLATION / TERMINATION / CHANGE IN SERVICE**

If User chooses to cancel the Service at any point after the order is placed, but before the Service has been activated, User will not be invoiced and will not be charged a processing fee. If User wishes to cancel the Service before Service has been activated, the User is required to notify KwiKom of User's intent to cancel prior to activation by calling KwiKom customer service at 888-9-KwiKom (59-4566).

User may terminate the Service at any time upon notice to KwiKom. Termination is effective on the date you contact KwiKom to cancel the Service or as of a future date designated by User or KwiKom, provided KwiKom can support such future date. HOWEVER, PAID CHARGES ARE NOT SUBJECT TO REFUND SO IF USER CANCELS SERVICE BEFORE THE END OF A BILLING CYCLE, THERE WILL BE NO PRO-RATED REFUNDS OR CREDITS FOR ANY PARTIAL-MONTH PERIODS REMAINING AFTER THE TERMINATION DATE.

Upon a change or upgrade to a Service plan, any special or other promotions applied to User's account may be subject to discontinuance or removal if such promotion is no longer available.

Termination of the Service does not affect User's obligations under this Agreement, including User's obligation to pay all fees for Services rendered prior to termination. KwiKom accounts must be paid in full before a cancellation will be considered complete.

If all Equipment provided by KwiKom is not returned within 30 days of cancellation or termination of Service, User agrees to pay KwiKom the fees as set forth in the Additional Fee Statement (as defined herein). User authorizes KwiKom and its agents to charge the Equipment replacement charge to any credit/debit card or electronic check on file with KwiKom. If KwiKom is unable to obtain a charge authorization for the full amount due, User agrees to provide alternative payment in the form of a money order, cashier's check, or other certified bank check within 10 days of notification of the amount due. User bears all risk of loss of, theft of, casualty to or damage to the Equipment; from the time it is shipped to the User until the time (if any) when it is returned to KwiKom in accordance with this agreement.

Upon the termination of User's Service, KwiKom may, in its sole and absolute discretion, release to the User's new service provider the telephone number that User ported (transferred or moved over) to KwiKom from User's previous service provider and used in connection with User's service if: such new service provider is able to accept such number; User's account has been properly terminated; User's

account is completely current, including payment for all charges and applicable termination fees; and User requests the transfer upon termination of the account.

### **TERMINATION AND SUSPENSION BY KWIKOM**

Inappropriate use or abuse of the Services by User, as determined in the sole discretion of KwiKom, may result in account suspension, termination, and/or legal action. Inappropriate use or abuse of KwiKom Services by others can be traced, documented, and reported to appropriate authorities and may be prosecuted to the fullest extent of the law.

KwiKom may terminate your account immediately if it determines, in its sole discretion, that User has violated any of the provisions of this Agreement, including but not limited to KwiKom's Broadband Internet Acceptable Use Policy. KwiKom reserves the right to unilaterally terminate or suspend an account at any time, without providing a reason.

Further, KwiKom may terminate User's Service for any reason by providing written notice to User at least fifteen (15) days prior to the termination date.

If User's Service is terminated by KwiKom for any reason, User will remain fully liable and responsible to pay any fees that are still owed to KwiKom pursuant to this Agreement and for all costs KwiKom incurs to collect such amounts, including, without limitation, collection costs and attorney's fees.

### **FEES, PAYMENT AND BILLING**

**Fees** – Fees include, without limitation, set up or installation fees, monthly Service fees, monthly Equipment fees and other fees as set forth below. KwiKom will invoice fees for Services and any Equipment in advance. User agrees to pay all federal, state or local taxes and fees arising under this Agreement. If, during the first thirty (30) days of service, the User is having service or quality issues with the Telephony Service and/or Internet Service which KwiKom is not able to fix, the User may cancel the Service and KwiKom, in its sole and absolute discretion, will refund all monies paid (including installation cost).

**Additional Fees** – All KwiKom Services are subject to additional fees, including, but not limited to overage charges, unreturned Equipment fees, early termination fees, upgrade fees, Directory Assistance (411) calls, insufficient funds fees, late fees, and reconnect fees as set forth in the Additional Fees and Payment Terms Disclosure Statement as it may be updated from time to time (the "Additional Fee Statement").

**Payment Method and Timing** – Accounts may be paid by electronic bank draft, money order, check or credit/debit card. User's KwiKom account will be considered delinquent if payment is rejected for any reason or if any unpaid balance remains on the account. Payment terms including due date and late payment policy is as set forth in the Additional Fee Statement. Payment is in advance of Service delivery for that month.

**Late Fees and Service Interruption/Disconnect** – KwiKom shall charge User Late and other applicable fees to recover the costs of dealing with late payment situations. These fees are in addition to all other fees. Additionally, KwiKom may interrupt or disconnect User's Services for non-payment and User shall be subject to a Disconnect Fee. The late terms and associated charges are determined by the date payment is received by KwiKom. Late terms and associated fees for each stage of the delinquency process are as set forth in the Additional Fee Statement. The Additional Fee Statement also sets forth the appropriate intervals when User's account will be interrupted or disconnected and when any outstanding balance will be sent to collections. At such time that KwiKom determines that Equipment is to be retrieved from User, KwiKom will call or email User to inform them that Equipment will be removed and retrieved. In all cases, if User wants to resume or reconnect Services, User's account must be brought current.

**Billing Disputes and Errors** – Subject to applicable law, User may dispute any invoiced charge by contacting KwiKom within thirty (30) days of the date of the disputed invoice. All invoiced charges shall be deemed correct and indisputable thirty (30) days after the date of the invoice on which they appear and User shall waive the right to dispute any charge after such period. KwiKom's obligation with respect to any billing errors resulting in User's overpayment for Service is limited to granting invoice credits equal to the dollar amounts erroneously billed, subject to the above limitation.

**Fee Changes** – User acknowledges and agrees that KwiKom has the right to change its Service fees, additional fees, or add new fees at any time, upon notice to the User.

**User Charges** – User acknowledges that User may incur User-initiated charges while using the Services. For example, charges may be incurred as a result of User accessing certain information, or purchasing or subscribing to certain offerings, via the Internet. User agrees that all such charges, including all applicable fees and taxes, shall be paid by User and are not the responsibility of KwiKom.

### **INSTALLATION AND ACCESS TO USER'S PREMISES**

KwiKom will provide installation Services at the User premises at an agreed-upon price. As part of the installation process, modifications to the inside wiring in User's house may be required, and User hereby consents to and authorizes any such modifications. User authorizes KwiKom, and its employees, agents, contractors, and authorized representatives to enter User's premises in order to install, maintain, inspect, repair and remove the Equipment and/or Services. If User is not the owner of the premises, upon request, User will supply KwiKom with the owner's name and address and written consent or other evidence that User is authorized to grant access to the premises on the owner's behalf or KwiKom may request permission from the owner to install the Services on the premises. This Agreement is contingent upon KwiKom's obtaining a right of entry onto the premises and KwiKom shall not have any liability if access or right of entry to the premises is denied or limited for any reason. User will not remove Equipment from the premises, modify the Equipment in any way, or connect the Equipment to any outlet other than the outlet to which the Equipment was initially connected to by the KwiKom installer. For such charges as KwiKom may determine, KwiKom may relocate the Equipment for User within the premises at User's request.

## **MOVING AND RECONNECTION**

If User moves during the term of this agreement and would like to relocate the Service, User must place a relocation request with KwiKom. This request must contain the requested date of Service termination, plus the address and phone number of the new location, and, the prospective move-in date, and the requested transfer of Service date. Upon receipt of a request from User, KwiKom will suspend all monthly fees from the requested termination date until Service relocation is completed. The maximum suspension is set forth in the Additional Fee Statement. Upon transfer of User's account, User agrees to continue to comply with all terms and conditions of this Agreement and the Service plan originally agreed to. Billing cycle and Service Term will recommence upon activation of KwiKom Service at the new location.

## **PRIVACY**

KwiKom takes User's personally identifiable information and privacy seriously and has established a Privacy Policy which governs its collection, use, disclosure, management and security related to User's personal information. The KwiKom Privacy Policy may be updated from time to time. By using the Service User acknowledges that User accepts the practices and policies outlined in KwiKom's Privacy Policy. User's continued use of the Service after notice of any changes to the Privacy Policy have been provided will indicate User's acceptance of such changes.

## **USER OBLIGATIONS**

User shall be solely responsible for independent backup of any data files residing on KwiKom computers or networks. KwiKom reserves the right to remove/delete any personal files after an account is terminated or associated with prohibited activities.

User shall notify KwiKom immediately, in writing or by calling KwiKom customer support line, if any Device is stolen or if User becomes aware at any time that User's Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When User calls or writes, User must provide an account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the termination of User's Service and additional charges. Until such time as KwiKom receives notice of the theft, fraudulent use or unauthorized use, User will be liable for all use of the Service using a Device stolen from User and any and all stolen, fraudulent or unauthorized use of the Service.

User will be liable for any and all liability that may arise out of the content transmitted by User or to any person, whether authorized or unauthorized, using User's Service or Device. User shall assure that all use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. KwiKom reserves the right to terminate or suspend User's Services and remove any content from the Service, if KwiKom determines, in its sole and absolute discretion, that such use or content does not conform to the requirements set forth in this Agreement or interferes with KwiKom's ability to provide Services to User or others. KwiKom action or inaction under this Section will not constitute any review or approval of User's use or content.



User has been advised and acknowledges that the Internet may contain information, materials, and language that may be deemed adult in nature and inappropriate or offensive. The User is responsible for all information received, transmitted, and/or stored by the User and the User releases KwiKom from and agrees to indemnify KwiKom its officers, directors, agents and employees against any and all claims, losses or expenses relating to such information, materials and language. This indemnification shall survive any termination of this Agreement.

### **USER COMPLAINT RESOLUTION**

KwiKom is working to provide the best service possible and welcomes User's ideas on how KwiKom can improve the quality of our service. User can communicate User's views to KwiKom by calling 888-9-KWIKOM (59-4566).

### **WARRANTY**

USER EXPRESSLY AGREES THAT USE OF THE SERVICES AND ANY EQUIPMENT IS AT USER'S SOLE RISK. THE SERVICES AND ANY EQUIPMENT PROVIDED TO THE USER BY KWIKOM ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS 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. KWIKOM DOES NOT WARRANT (i) THE UNINTERRUPTED, TIMELY OR SECURE USE OF THE SERVICE; (ii) THAT THE FUNCTIONS CONTAINED IN THE SERVICES OR ANY EQUIPMENT WILL MEET USER'S REQUIREMENTS; (iii) THAT THE SERVICES WILL BE ERROR-FREE OR FREE OF ANY VIRUSES, WORMS, SPAM, POP-UP ADVERTISING, SPYWARE, ADWARE OR OTHER HARMFUL COMPONENTS; OR (iv) THAT ANY PERSONAL INFORMATION, NON PERSONAL INFORMATION, DATA OR FILES User 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 USER'S COMPUTER OR DEVICE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY KWIKOM OR KWIKOM AGENTS OR INSTALLERS, WHETHER ORAL OR WRITTEN, ARE INFORMATIONAL ONLY AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND. 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 User.

LIMITED WARRANTY – KWIKOM WARRANTS THAT IT WILL USE REASONABLE EFFORTS TO RENDER SERVICES PURSUANT TO THIS AGREEMENT IN A TIMELY, PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH TIMELINES ESTABLISHED HEREIN. ANY CLAIM FOR BREACH OF THE FOREGOING WARRANTY MUST BE BROUGHT WITHIN SIXTY (60) DAYS AFTER USER'S ACTUAL DISCOVERY OF ANY DEFECT AND PRIOR TO THE EXPIRATION OF SIX (6) MONTHS FROM THE DATE THE APPLICABLE SERVICES WERE RENDERED. KWIKOM WILL HAVE NO LIABILITY FOR ANY CLAIM MADE AFTER SUCH TIME. KWIKOM DOES NOT WARRANT, HOWEVER, THAT YOUR USE OF ANY SERVICES WILL BE UNINTERRUPTED OR THAT THE OPERATION OF THE SERVICES WILL BE ERROR-FREE OR SECURE. KWIKOM'S ENTIRE LIABILITY AND USER'S EXCLUSIVE REMEDY IN CASE OF BREACH OF THIS

WARRANTY SHALL BE, AT KWIKOM'S SOLE OPTION, EITHER RETURN OF ALL OR A PORTION OF THE SERVICE FEES PAID FOR THE CURRENT MONTH OF SERVICE, OR REPLACEMENT OR REPAIR OF CONNECTION SERVICES OR PRODUCTS. THIS IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY KWIKOM. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO LIMITATIONS MAY NOT APPLY TO THE USER. IF ANY UNAUTHORIZED MODIFICATIONS ARE MADE TO THE EQUIPMENT OR SERVICES BY USER DURING THE WARRANTY PERIOD, IF THE SERVICES OR PRODUCTS ARE SUBJECT TO ABUSE, ACCIDENT, IMPROPER USE, OR IF USER BREACHES THE TERMS OF THIS AGREEMENT, THEN THIS WARRANTY SHALL IMMEDIATELY BE TERMINATED.

OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE AND THE RETAIL CUSTOMER LIMITED WARRANTY EXPRESSLY SET FORTH THEREIN, KWIKOM MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED IN REGARDS TO THE DEVICE OR EQUIPMENT, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET USER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE.

**LIMITATION OF LIABILITY / DISCLAIMER OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL KWIKOM OR ITS AFFILIATES OR EACH OF THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, REPRESENTATIVES, CONTRACTORS OR AGENTS OR ANY OF THEIR SUCCESSORS AND ASSIGNS BE LIABLE TO THE USER OR ANY THIRD PARTY WITH RESPECT TO THE SERVICE OR THE SUBJECT MATTER OF THIS 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 User. IF ANY PART OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF KWIKOM UNDER SUCH CIRCUMSTANCES FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED SHALL NOT EXCEED THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD.

ADDITIONALLY, KWIKOM WILL HAVE NO LIABILITY (i) FOR ANY AMOUNT IN EXCESS OF THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD; (ii) FOR ANY THIRD-PARTY FEES OR CHARGES, INCLUDING BUT NOT LIMITED TO, BANKING FEES, OVERDRAFT FEES, MOBILE PHONE OR OTHER WIRE LINE CHARGES, TECHNICIAN CHARGES, OR OTHER SIMILAR CHARGES; (iii) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, 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 USER'S FAILURE TO BACK UP ANY EQUIPMENT OR ANY LACK OF OR BREACH OF SECURITY USER, OR ANY OTHER PARTY MAY EXPERIENCE OR BE EXPOSED TO WHILE USING THE SERVICE; (vi) FOR CUSTOMER'S USE OF THE SERVICE FOR OR IN CONNECTION WITH ANY HIGH-RISK OR UNLAWFUL USES, OR ANY USE THAT VIOLATES THIS AGREEMENT; OR (vii) FOR ANY MATTER BEYOND KWIKOM'S REASONABLE CONTROL.

KWIKOM WILL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, INCLUDING 911 DIALING, AT ANY TIME OR FROM TIME TO TIME, OR ANY INTERRUPTION OR DEGRADATION OF VOICE QUALITY THAT IS CAUSED BY ANY OF THE FOLLOWING: AN ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR OTHER THIRD PARTY; EQUIPMENT, NETWORK OR FACILITY FAILURE; EQUIPMENT, NETWORK OR FACILITY UPGRADE OR MODIFICATION; FORCE MAJEURE EVENTS SUCH AS (BUT NOT LIMITED TO) ACTS OF GOD, ACTS OF NATURE, STRIKES, FIRE, WAR, RIOT, ACTS OF TERRORISM AND GOVERNMENT ACTIONS; EQUIPMENT, NETWORK OR FACILITY SHORTAGE; EQUIPMENT OR FACILITY RELOCATION; SERVICE, EQUIPMENT, NETWORK OR FACILITY FAILURE CAUSED BY THE LOSS OF POWER TO THE USER; OUTAGE OF, OR BLOCKING OF PORTS BY, User's ISP OR BROADBAND SERVICE PROVIDER OR OTHER IMPEDIMENT TO USAGE OF THE SERVICE CAUSED BY ANY THIRD PARTY; ANY ACT OR OMISSION BY USER OR ANY PERSON USING THE SERVICE OR DEVICE PROVIDED TO THE User; OR ANY OTHER CAUSE THAT IS BEYOND KWIKOM'S CONTROL, INCLUDING, WITHOUT LIMITATION, A FAILURE OF OR DEFECT IN ANY DEVICE, THE FAILURE OF AN INCOMING OR OUTGOING COMMUNICATION, THE INABILITY OF COMMUNICATIONS (INCLUDING, WITHOUT LIMITATION, 911 DIALING) TO BE CONNECTED OR COMPLETED, OR FORWARDED. KwiKomS AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL IN NO EVENT EXCEED THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD.

IN NO EVENT SHALL KWIKOM'S AGGREGATE LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS PAID BY USER FOR THE SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE INCIDENT GIVING KWIKOM TO A CLAIM. NOTWITHSTANDING THE FOREGOING, SOME JURISDICTIONS MAY NOT ALLOW A LIMITATION ON LIABILITY FOR NEGLIGENCE THAT CAUSES DEATH OR PERSONAL INJURY, AND KWIKOM LIMITS ITS LIABILITY IN SUCH JURISDICTIONS ONLY TO THE DEGREE ALLOWED BY APPLICABLE LAWS. EXCEPT FOR THE PAYMENT OF FEES DUE BY User HEREUNDER, NEITHER PARTY WILL BE LIABLE FOR ANY FAILURE OR DELAY IN PERFORMANCE UNDER THE AGREEMENT WHICH MIGHT BE DUE, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, TO ANY CONTINGENCY, DELAY, FAILURE, OR CAUSE OF ANY NATURE BEYOND THE REASONABLE CONTROL OF SUCH PARTY, INCLUDING WITHOUT LIMITATION ACTS OF NATURE, COURT OR GOVERNMENT.

## **INDEMNIFICATION**

User agrees to defend, indemnify and hold KwiKom its officers, directors, agents and employees harmless from any claims, losses and damages, including attorney's fees, resulting from User's violation of any of the provisions of this Agreement or User's placement or transmission of any materials or content onto KwiKom servers or through its network, or from any and all use of User's account, with or without User's knowledge or consent, or from all claims, damages, fines, penalties, costs and expenses (including, without limitation, attorney fees) related to any action taken by KwiKom as part of KwiKom investigation of a suspected violation of this Agreement or as a result of its conclusion that a violation of this Agreement has occurred, or to User's use of or inability to use KwiKom Services, Equipment, bundled software, Internet or VoIP, including, without limitation, 911 dialing.

## **MISCELLANEOUS**

**Relationship** – User's relationship with KwiKom is that of an independent contractor. User is not an agent of KwiKom, and User has no authority to obligate KwiKom by contract or otherwise.

**Third Party Beneficiaries** – No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

**Survival** – The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive

**Transferability and Assignment** – User shall not sell, transfer or assign this Agreement. User's account and right to use KwiKom Services and system are not transferable without KwiKom's prior written consent. User agrees to protect its password and account and to keep them secure from unauthorized Users and use, and to be solely responsible for the protection and security of User's password and account information.

**Notices** – Notifications of either party to this Agreement shall be effective upon receipt, or refusal of delivery, when deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or when sent by a telefax, email, or a nationally recognized overnight delivery service, to KwiKom at 800 West Miller Road, Iola, Kansas 66749 or to the address of Customer set forth on KwiKom's records or such other address provided for such purposes.

**Proprietary Rights** – KwiKom grants User a non-exclusive, non-transferable license to use the products and Services provided hereunder. Title and property rights, including all intellectual property rights to such products and Services, is and shall remain with KwiKom, whether or not they are embedded in any product. User recognizes that the products and Services used hereunder constitute valuable trade secrets of KwiKom and User shall use their best efforts to protect and keep confidential any and all products and Services used by User and shall not attempt to copy, examine, in any way alter, or reengineer, reverse engineer, tamper with, or otherwise misuse such products and Services.

**Jurisdiction/Venue/Choice of Law** – User agrees that exclusive jurisdiction for any claim or dispute with KwiKom or relating in any way to User’s account or User’s use of the Services resides in the courts of Kansas and that this Agreement shall be governed by Kansas law. User expressly consents to the exercise of personal jurisdiction in the courts of Kansas in connection with any such dispute. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement or compel performance thereof, the substantially prevailing party shall be entitled to reasonable attorney’s fees and costs in addition to any other relief to which such party may be entitled.

**Amendments** – KwiKom may modify this Agreement from time to time, and User’s continued use of the Service following notice of such modification shall be deemed to be User’s acceptance of such modification. If User does not agree to any modification of this Agreement, User must immediately stop using the Service and notify KwiKom of User’s desire to cancel the Service.

**Information** – User hereby acknowledges that KwiKom and its affiliates may retain and use any information, comments or ideas conveyed by User relating to the Service (including any products and services made available on the Service). This information may be used to provide User with better service. KwiKom may open and maintain a Customer file.

**Entire Agreement** – This Agreement, and any and all other documents and KwiKom policies referenced herein, constitutes the entire agreement between KwiKom and User pertaining to the subject matter hereof. KwiKom’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.

**Severability** – In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealed judgment that any provision of this Agreement (or part thereof) is void, invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of the Agreement will remain in full force and effect.

## **ACCEPTANCE**

User represents and warrants to KwiKom that User is of lawful age to enter into this Agreement and that (i) User has the full right, power and authority to enter into this Agreement and to perform the acts required of User hereunder; and (ii) the acceptance of this Agreement by User, and the performance by User of its obligations and duties hereunder, do not and will not violate any agreement to which User is a party or by which it is otherwise bound.

By using and accepting Service from KwiKom, User acknowledges that they have read and understand the terms and conditions of this Agreement and agrees to be legally bound by all of the terms and conditions of this Agreement and any associated documents, the same as if User had physically signed this Agreement. This Agreement supersedes all other written and oral communications or agreements with regard to the subject matter. Any waiver, modification or variation of any term or condition of this Agreement shall only be effective if in writing and/or in the form of a business contract signed by an authorized officer of KwiKom

By providing KwiKom with User's telephone number, cell phone number(s), or email address, User gives consent for KwiKom, or any of KwiKom's agents (including collection agents), to contact User at these numbers or email address, or any other phone number or email address that is later acquired for User, and, to leave live or pre-recorded messages, text messages, or emails to the extent that such are necessary to enforce any part of this Agreement. For greater efficiency, calls may be delivered by an auto-dialer.

BY USER'S USE AND ACCEPTANCE OF THE SERVICE, USER IS INDICATING THAT USER HAS READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.