

ProTek Communications, LLC.  
Service Terms and Conditions Agreement

This Service Terms and Conditions Agreement (“Service Agreement”), consisting of these terms and conditions, the Confirmation of Sale (“COS”) and all other documents referenced herein, is entered into as of the date set forth on the COS by and between ProTek Communications, LLC., (“ProTek”) and the individual or entity named on the COS to which this Agreement is attached (“Customer”) and sets forth the terms and conditions under which ProTek will make available its Service (as defined below) Customer has elected to receive (collectively, the “Service”). This Service Agreement governs both residential and commercial Customers. “Affiliate” means an entity that controls, is controlled by or is under common control with ProTek.

By using the Service, Customers agree to be bound by the terms of this Service Agreement and all documents incorporated by reference herein, including without limitation ProTek’s Privacy Policy, Open Internet Policy, Website Terms of Use Agreement and Additional Terms (terms and conditions that will govern a new service offering) as each may be amended from time to time. If there is a conflict between this Service Agreement and any Additional Terms, the Additional Terms shall govern.

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

THIS SERVICE AGREEMENT INCLUDES MANY IMPORTANT TERMS, INCLUDING WARNINGS THAT YOU MAY BE UNABLE TO USE TELEPHONY SERVICE FOR 911 OR OTHER EMERGENCY CALLS UNDER CERTAIN CIRCUMSTANCES, AND LIMITS AND DISCLAIMERS ON ProTek’S LIABILITY. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE SERVICE.

ProTek regularly updates and amends this Service Agreement, the Privacy Policy, the Open Internet Policy, the Website Terms of Use Agreement and other documents incorporated by reference in this Service Agreement. ProTek will communicate any such updates or amendments to Customer in accordance with Section 23(h). Customer may obtain, at no charge, a copy of the current Service Agreement or any documents incorporated by reference herein by visiting ProTek’s website or by contacting ProTek.

## **1. GENERAL OVERVIEW**

This Service Agreement governs the following components in ProTek’s Service and Customer may customize Customer’s residential or commercial Service based on Customer’s needs:

- Internet access service – Internet broadband service, as described on the ProTek’s website here [www.protekweb.com](http://www.protekweb.com)
- ProTek Equipment – leased equipment (point to point systems and home equipment)
- “Telephony Service” – digital, IP-based phone service ProTek provides for telephone calls.
- Customer support, including support technicians
- Camera Systems

## **2. EQUIPMENT AND REQUIREMENTS FOR PROVISION OF THE SERVICE**

(a) Customer Equipment. To use the Service, Customer must have a personal computer or other device and other equipment meeting ProTek's most recent "Minimum Customer Equipment Specifications," which are defined on ProTek's website and may be modified from time to time by ProTek. The Minimum Customer Equipment Specifications may change, and ProTek may make reasonable efforts to support previously acceptable configurations; however, ProTek is not obligated to continue to provide such support. Although ProTek is under no obligation to do so, ProTek may, and Customer authorizes ProTek to, perform any updates and/or changes to Customer's equipment, on-site or remotely, from time to time as ProTek deems necessary, in ProTek's sole discretion. Customer will direct any questions concerning third-party hardware or software to the manufacturer. ProTek has no responsibility for the operation or support, maintenance or repair of any equipment, software or services that Customer elect to use in connection with the Services. **As set forth below and in the Open Internet Policy, Customer is not permitted to connect any harmful equipment to the ProTek Equipment (as defined below). Customer understands that failure to comply with this restriction may cause damage to ProTek's network and subject Customer to liability for damages and/or other liability. Customer agrees to not alter, modify or tamper with the ProTek Equipment or the Service, or to permit, encourage or solicit any other person to do the same, unless such person has been authorized to do so by ProTek.**

(b) ProTek Equipment. Customer acknowledge that at the time of installation of the Service, the equipment listed on the COS was installed (such equipment listed in the COS, the "ProTek Equipment"). Customer further acknowledges that the ProTek Equipment may, at ProTek's sole discretion, be refurbished or otherwise used equipment. Customer agrees that the ProTek Equipment was installed at a location and in a manner authorized by Customer. The ProTek Equipment is and shall remain the property of ProTek, and will be provided to the Customer under the terms set forth in the COS. At such time as Customer or ProTek terminate the Service, Customer will return the ProTek Equipment to ProTek within 15 calendar days, and

in accordance with ProTek's then-current return procedures. In the event that Customer have not returned the ProTek Equipment within 15 calendar days as set forth in the previous sentence, or in the event that the ProTek Equipment is damaged or otherwise inoperable, Customer will pay each applicable "Equipment Non-Return Fee" listed in the COS.

(c) **Telephony Service Requirements and Availability.** Customer must supply certain facilities, such as a phone handset or equivalent, installed phone wiring and jacks, and a powered electrical outlet. Customer is responsible for supplying and ensuring that the facilities Customer supplies are compatible with the Service and meet federal and other applicable standards. Customer represents that Customer either owns Customer's facilities or has the right to use the facilities in connection with the Telephony Service. ProTek shall have no obligation to provide, maintain, support, or service Customer's facilities. If Customer's Internet connection is terminated, suspended, or disconnected for any reason, the Telephony Service will not be available until Customer reestablishes Customer's Internet connection with ProTek or whichever Internet provider Customer utilizes.

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

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

(f) **Replacement and Upgrade of ProTek Equipment**

(i) Unless the COS indicates the ProTek Equipment Assurance Plan is "Not Included," ProTek will repair, replace, or otherwise upgrade any ProTek Equipment that, as determined by ProTek in its sole discretion, needs to be installed, replaced or otherwise upgraded. Notwithstanding the foregoing, Customer will be solely liable for, and ProTek shall have no obligation to repair, replace or otherwise upgrade, any ProTek Equipment that has been, in ProTek's sole discretion, damaged or otherwise requires repair, replacement or upgrade as a result of damage or disruption caused by misuse or neglect or otherwise caused by Customer, including, without limitation, damage or disruption caused by Customer's failure to comply with Section 2(e) herein or by Customer's failure to comply with the last sentence of Section 2(a) herein.

(ii) If the COS indicates the ProTek Equipment Assurance Plan is “Not Included,” beginning on the date of installation of the Service and for a one-year period thereafter, ProTek provides a limited warranty against any defect in materials or workmanship in the ProTek Equipment that is warranted by the manufacturer of such ProTek Equipment. During this one-year period, in the event there is a problem with the ProTek Equipment that is, as determined by ProTek in its sole discretion, not a result of action or inaction on the part of Customer, that cannot be corrected either over the telephone or onsite, ProTek will, as its sole obligation and Customer’s sole remedy for such problem, repair or replace such ProTek Equipment at ProTek’s expense. This warranty expressly excludes defects in the ProTek Equipment caused by acts of nature (such as, but not limited to, lightning damage), damage from misuse or neglect, water damage, damage caused by Customer’s failure to comply with Section 2(e) herein or damage or other disruption caused by Customer’s failure to comply with the last sentence of Section 2(a) herein. After such one-year period, Customer will be solely liable for any and all damage to any ProTek Equipment.

(iii) If the COS indicates the ProTek Equipment Assurance Plan is “Not Included,” Customer understands and agree that ProTek’s ability to provide an appropriate quality of Service to Customer and the other customers on ProTek’s network may from time to time require upgrades or replacement of the ProTek Equipment, and Customer will be obligated to pay the then-applicable “Equipment Upgrade Fee” as established by ProTek from time to time, at such time as ProTek determines, in its sole discretion, that the ProTek Equipment needs to be upgraded or replaced.

(g) Customer understands, acknowledges and agrees that prior to ProTek servicing any Customer equipment or ProTek Equipment under contract with Customer, it is Customer’s responsibility to (A) back-up the data, software, information or other files stored on Customer’s computer or other device including but not limited to disk drives, peripherals, MP3 player, DVD player, camcorder, digital camera and/or on any other electronic storage device; and (B) remove all videotapes, compact disks, floppy disks, laser disks, cassettes, DVDs, film or other media from Customer’s equipment. Customer agrees that whether or not Customer requests back-up services from ProTek and/or its Operational Service Provider, neither ProTek nor its Operational Service Provider shall be liable under any circumstances for any loss, disclosure, alteration or corruption of any data, software, information, files, videotapes, compact disks, floppy disks, laser disks, cassettes, DVDs, film or other media.

### **3. CUSTOMER’S REPRESENTATIONS, RESPONSIBILITIES AND WARRANTIES**

(a) If Customer is an individual, Customer represents and warrants that he or she is at least 18 years of age and has legal authority to execute this Agreement. If Customer is a commercial entity, the individual executing this Agreement represents and warrants he or she has legal authority to execute this Service Agreement on behalf of Customer.

(b) Customer agrees that the Service is personal to Customer and agrees not to assign, transfer, resell or sublicense Customer’s rights under this Agreement unless specifically permitted by the terms of this Agreement. For residential Customers, Customer agrees that the Service and the ProTek Equipment shall be used only by Customer and by members of

Customer’s immediate household living with Customer at the same address, and Customer will not redistribute or share the Service with any others or transmit the Service over a wireless or other network that is not secured. For commercial Customers, Customer agrees that the Service and the ProTek Equipment shall be used only by Customer and by authorized members of Customer’s business located at the same address, and Customer will not redistribute or share the Service with any others or transmit the Service over a wireless or other network that is not secured. Customer acknowledges that Customer is executing this Service Agreement on behalf of all persons who use the Service by means of the ProTek Equipment. Customer agrees that Customer is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement and any other documents incorporated by reference in this Service Agreement, whether such breach results from Customer’s use of the Service or by another using Customer’s equipment or the ProTek Equipment.

(c) Customer represents and warrants that Customer will not use the Service in a

manner that (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any local, state or federal statute, ordinance or regulation; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable; (iv) impersonates any person or entity, including without limitation any employee or representative of ProTek or its Affiliates; or (vi) transmits any virus, trojan horse, worm, time bomb, or other harmful computer code, file, or program. ProTek reserves the right to suspend Customer's access the Service at any time upon receipt of claims or allegations from third parties or authorities or if ProTek is concerned that Customer may have breached this Service Agreement. Customer (and not ProTek or its Affiliates, Operational Service Providers) remains solely responsible for Customer's use of the Service and any material transmitted through the Service, and Customer warrants that Customer possess all rights necessary to transmit such material.

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

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

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

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

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

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

(i) Service is provided for use in conformance with this Service Agreement. ProTek reserves the right to investigate suspected violations of the Service Agreement. When ProTek becomes aware of possible violations, ProTek may initiate investigation which may include gathering information from Customer or Customers involved and the complaining party, if any, and examination of Customer's Material on ProTek's servers. Customer's Material collectively includes, but is not limited to, any software, computer programs, applications, data, photographs, video and/or audio content, text, files, and other information, including emails, address book and web storage content.

(ii) During an investigation, ProTek may suspend the account or accounts involved and/or remove Customer's Material involved from its servers. If ProTek believes a violation of this Service Agreement has occurred, it may take responsive action at its sole discretion. Such action may include, but is not limited to, temporary or permanent removal of Customer's Material from ProTek's servers, warnings to Customer or Customers responsible,

and the suspension or termination of the account or accounts responsible. ProTek, at its sole discretion, will determine what action will be taken in response to a violation on a case-by-case basis. Violations of this Service Agreement could also subject the Customer to criminal or civil liability.

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

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

(ii) Customer is prohibited from storing, distributing, or transmitting any unlawful content through the Service. Examples of unlawful content include but are not limited to direct threats of physical harm, child pornography and copyrighted, trademarked and other proprietary material used without proper authorization. Customer may not post, upload or otherwise distribute copyrighted content without the consent of the copyright holder. The storage, distribution, or transmission of unlawful content could subject Customer to criminal as well as civil liability, in addition to the actions outlined in Section 3(i) above.

(iii) Customer may not store or distribute certain other types of material on ProTek's servers. Examples of prohibited material include, but are not limited to software, applications and programs containing viruses, trojans and other tools or technology that would compromise the security of ProTek or others.

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

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

#### **4. THE SERVICE AND PRIVACY**

(a) ProTek has established a Privacy Policy ("Privacy Policy"), which governs ProTek's collection, use, disclosure, management and security related to Customer's personally identifiable information ("Personal Information"). Customer agrees that Customer received a copy of the then-in-effect Privacy Policy at the time Customer executed this Service Agreement. Subject to Section 23 (g) herein, ProTek may update or amend the Privacy Policy at any time without Customer's prior consent. ProTek will, however, provide notice of any such changes or amendments as stated in ProTek's Privacy Policy. Customer understands, acknowledges and agrees that Customer's continued use of the Service after notice of any changes or amendments have been provided will indicate Customer's acceptance of such

changes, except where further steps are required by applicable law. All such updates or amendments shall be deemed to be incorporated by reference into this Service Agreement.

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

(c) Customer authorizes ProTek to make inquiries and to receive information about Customer's credit history from others and to utilize such information in its decision regarding its provision of the Service to Customer.

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

## **5. PASSWORDS**

(a) Residential accounts are for individual use only. Commercial accounts are for authorized personnel only.

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

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

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

## **6. SYSTEM SECURITY**

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

(b) Customer is prohibited from utilizing the Service to compromise the security or tamper with ProTek's system resources or accounts on any of ProTek's computers, routers, switches, servers, radios, modems, or any other equipment at ProTek or at any other site. Use or distribution of tools designed for compromising security is prohibited. Examples of the tools include but are not limited to password guessing programs, cracking tools, and network probing tools. Any attempt to access any of ProTek's corporate assets is strictly prohibited.

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

## **7. LIMITATIONS OF TELEPHONY SERVICE**

(a) The Telephony Service is not a telecommunications service and ProTek provides it on a best efforts basis. Important distinctions exist between telecommunications service and the Telephony Service offering that ProTek provides. The Telephony Service is subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect Customer's rights of redress before regulatory agencies.

(b) The Telephony Service does not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls, or calling card calls. The Telephony Service may not support 311, 511 and/or other x11 services, other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this Agreement, in one or more or all Service areas.

(c) The phone numbers Customer obtains from ProTek will not be listed in any telephone directories. Phone numbers transferred from Customer's local phone company may, however, be listed. As a result, someone with Customer's phone number may not be able to utilize a reverse directory to lookup Customer's address.

(d) The Telephony Service may not be compatible with non-voice communications equipment, including, but not limited to, home security systems or alarm systems that are set up to use phone lines, modems, fax machines, credit card machines, DVR-type devices, any device that relies upon a modem, hearing impaired devices, and medical monitoring devices ("Non-Voice Systems"), and may be interrupted or permanently disabled by installation or operation of the Telephony Service. Customer should maintain a telephone connection through Customer's local exchange carrier in order to use any alarm monitoring functions for any security system that uses a phone line. Customer is solely responsible for the operation and use of such Non- Voice Systems with the Telephony Service, including taking any necessary steps, as permitted under this Agreement with ProTek, to ensure compatibility between such Non-Voice Systems and the Telephony Service.



(e) Customer authorizes ProTek to act on Customer's behalf, as Customer's agent, in porting Customer's telephone number and related local and long distance services from Customer's current provider to ProTek or any of its wholesale service providers. Customer acknowledges that ProTek may change wholesale providers from time to time and may port Customer's phone number from one wholesale carrier to another at any time. Customer acknowledges that ProTek will become the customer of record for all phone numbers that ProTek ports to the Telephony Service.

(f) The Telephony Service relies upon portions of the public Internet, and third party networks, to transmit voice and other communications signals. ProTek cannot, and does not, guarantee that the Telephony Service is secure or can be used in a secure manner.

(g) The Telephony Service is not fail-safe or designed or intended for use in situations where error-free or uninterrupted service is essential, including uses involving vital communications in which an error or interruption in Telephony Service could lead to injury to business, persons, property, or the environment ("High-Risk Uses").

## **8. ACCEPTABLE USAGE**

(a) "Acceptable Usage of Internet Service" is hereby defined as the normal activities associated with the use of the Internet, including but not limited to usage of ProTek's systems and network facilities for accessing the World Wide Web, Internet Relay Chat, USENET Newsgroups, Email, and other Internet features. Depending on the account type, this may include file storage on ProTek's servers for Customer's own personal web page and file access area (FTP), etc.

(b) "Acceptable Usage of Telephony Service" is hereby defined as the normal activities associated with the use of the telephone system.

## **9. PROHIBITED INTERNET SERVICE ACTIVITIES**

(a) Internet Service Activities specifically prohibited by ProTek ("Prohibited Internet Service Activities") include but are not limited to the following:

(i) Background and/or server-type applications – Including but not limited to IRC bots, HTTP servers, MUDs, and any other process which were initiated by the Customer that continues execution on the system upon Customer logout.

(ii) Long-term storage of data – Long-term storage of data is referred to as the storage of files which are not used regularly in an account for an extended period of time. This specifically includes, but is not limited to, programs such as shareware programs which the Customer may download to their account for purposes of transferring to their home computer(s)/device(s). Such programs should be removed at such time as they are successfully transferred to the Customer's personal system.

(iii) Flooding or abuse of other users – Flooding is a fairly common occurrence on the Internet, and one which is dealt with strictly by ProTek. Flooding takes place in numerous ways, including, but not limited to, ICMP flooding, mail bombing (sending large amounts of email repeatedly to a person for purposes of harassment), mass mailings to multiple addresses, MSG/CTCP flooding on IRC, as well as other, less common methods.

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

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

(vi) PPP/SLIP emulation software – Since PPP/SLIP is a product offered by ProTek, Customers desiring such access are required to sign up for that service rather than

attempting to emulate it by software. Any such software will be removed from Customer's account by ProTek immediately when found.

(vii) Conducting business through a personal residential account – The residential single-Customer Internet accounts provided by ProTek are designed for the home/casual Customer and may not provide the level of service, capacity or speed required for conducting business. Therefore, conducting business with a residential account is not advisable. Please contact ProTek's sales department to upgrade to a commercial account.

(viii) Excessive use of system resources – This includes, but is not limited to, the continued use of programs or commands which take a large amount of system resources, be that processor time, memory, network bandwidth, and/or drive space on the host system. Customer may not resell Service.

(ix) Email abuse – Email abuse typically comes in one of three forms, the transfer of a message to unsolicited individuals, the sending of harassing and/or threatening messages to other users, and the forging of email addresses so as to make the email appear to be from another user.

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

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

(xii) Pirated software – Pirated software is defined as the illegal exchange of software for purpose of avoiding the purchase of said software by the individuals involved. This includes most commercial applications such as Adobe Photoshop, Microsoft Office, etc. Such activities are prohibited by Federal law and are thus not allowed in any form on ProTek. Such prohibition also includes the unauthorized copying of copyrighted material including, but not limited to digitization and distribution of photographs from magazines, books, or other

copyrighted sources and copyrighted software. The exportation of software or technical information in violation of U.S. export control laws is strictly prohibited.

(xiii) High-traffic websites – Individual accounts on ProTek machines are intended to provide access to individuals only. As most individual pages are fairly low-traffic, the performance for everybody on the systems is optimal. However, some individuals occasionally choose to put content on their pages that draws a large number of hits to their pages and thus degrades performance for other users' pages. Due to this, ProTek has had to implement certain limitations on the amount of traffic an individual Customer's home page can receive. Typically a page can safely transfer 250 MB per day without causing excessive load on the host system. Sites generating more than this must be moved to ProTek's Web Hosting service, where ProTek is better able to deal with the extra traffic.

(b) Digital Millennium Copyright Act – Under the Digital Millennium Copyright Act (“DMCA”), copyright owners have the right to notify ProTek's registered agent if they believe that a Customer has infringed on their work(s). When ProTek receives a complaint notice from a copyright owner, ProTek will notify the Customer of the alleged infringement by providing Customer a copy of the submitted DMCA notice, to the extent permissible by law. As required by law, ProTek enforces a graduated response policy to complaints that may lead to suspension or termination of service. ProTek's policy is to cancel the internet services for any Customer receiving twelve or more DMCA notices annually and to assess a “DMCA Administrative Fee” for the processing and handling of every complaint received after the second.

## **10. PROHIBITED TELEPHONY SERVICE ACTIVITIES**

Telephony Service activities specifically prohibited by ProTek (“Prohibited Telephony Service Activities”) include but are not limited to the following:

(a) Customer shall not resell or transfer the Telephony Service or Equipment to another party. Customer is prohibited from using the Telephony Service or Equipment for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting.

(b) Customer shall use the Telephony Service and Equipment only for lawful purposes. ProTek reserves the right to immediately terminate Customer's Service if, in ProTek's sole and absolute discretion, ProTek determines that Customer has used the Telephony Service or Equipment for an unlawful purpose. In the event of such termination, Customer will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of Customer's Service. If ProTek believes that Customer used the Telephony Service or Equipment for an unlawful purpose, ProTek may forward the relevant communication and other information, including Customer's identity, to the appropriate authorities for investigation and prosecution. Customer hereby consents to ProTek forwarding of any such communications and information to these authorities. In addition, ProTek will provide information in response to law enforcement requests, subpoenas, court orders, to

protect its rights and property, and in the case where failure to disclose the information may lead to imminent harm to the Customer or others.

(c) Customer shall not use the Telephony Service or Equipment in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. ProTek reserves the right to immediately terminate Customer's Service if, in ProTek's sole and absolute discretion, ProTek determines that Customer has used the Telephony Service or Equipment in any of the aforementioned ways. In the event of such termination, Customer will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of Customer's Service. In addition, ProTek will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property, and in the case where failure to disclose the information may lead to imminent harm to the Customer or others.

(d) Although Customer may use the Telephony Services to place calls to the United States and Canada, ProTek does not presently offer or support the Telephony Service in any countries other than the United States. If Customer uses the Telephony Service or Equipment outside of the United States, Customer will be solely responsible for any violations of local laws and regulations resulting from such use. ProTek reserves the right to terminate Customer's Telephony Service immediately if ProTek determines, in ProTek's sole and absolute discretion, that Customer has used the Telephony Service or Equipment outside of the United States.

(e) Customer agrees not to: use the Telephony Service in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming, or any duplicative or unsolicited messages (commercial or otherwise); defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others; publish, distribute, or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent, or unlawful material or information; advertise or offer to sell or buy any goods or Telephony Services for any non-personal purpose; harvest or otherwise collect information about others, including email addresses, without their consent; create a false identity for the purpose of misleading others as to the identity of the sender or the origin of a message; use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity that is not a Service member any directory of the Service members or other User or usage information or any portion thereof other than in the context of Customer's use of the Telephony Service as permitted under this Agreement, and these Terms of Service; transmit or upload any material that contains viruses, trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs; transmit or upload any material that contains software or other material protected by intellectual property laws, rights of privacy or publicity or any other applicable law unless Customer owns or controls the rights thereto or have received all necessary consents; interfere with or disrupt networks connected to the Service or violate the regulations, policies or procedures of such networks; attempt to gain unauthorized access to the Service, other accounts, computer systems, devices, or networks connected to the Service, through password mining or any other means; host any type of publicly accessible file sharing, gaming, or email server including, but not limited to HTTP, FTP, SMTP, POP3, and Peer-to-Peer; interfere with another member's use and enjoyment of the Service or another individual or entity's use and enjoyment of similar Services.

(f) ProTek has no obligation to monitor the Telephony Service or any Customer's use thereof or retain the content of any Customer session. However, ProTek reserves the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request. ProTek reserves the right to implement reasonable network management practices to ensure service quality levels are maintained.

(g) Customer agrees not to share or re-sell the Telephony Service with anyone not residing at the Service address.

## **11. PENALTIES FOR VIOLATIONS OF SERVICE AGREEMENT**

(a) All Prohibited Internet Service Activities as defined in Section 9 and all Prohibited Telephony Service Activities as defined in Section 10 hereof are subject to immediate termination of Customer's account and any and all criminal and civil penalties available under the law. The penalties imposed on Customer for such violations will vary based on the level of the offense. Typically, Customer will receive a warning on the first offense. However, if the offense is severe enough, ProTek reserves the right to disable the account immediately. Accounts which have been disabled for abuse will not be re-opened. It is vital for ProTek to provide a quality service for all Customers, and ProTek will not tolerate Customers who through their actions hinder ProTek in that endeavor. It is also important for ProTek to have a non-intrusive presence to the rest of the Internet, and thus prohibit activities that adversely affect Customers on other service providers and their associated networks. To this end, ProTek reserves the right to modify and/or disable Service at any such time the Customer violates this Service Agreement.

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

(c) If Service is disconnected for non-payment, ProTek is not obligated to re-connect Customer's Service. However, if Customer desire re-connection, and ProTek agrees to do so, Customer agree to pay a re-installment fee plus any amount past due under Customer's COS. The amount of the re-installment fee is set forth on ProTek's website.

## **12. SOFTWARE LICENSES AND THIRD PARTY SERVICES**

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

(b) Certain Software may be accompanied by an end user license agreement ("EULA") from ProTek or a third party. ProTek's use of the Software is governed by the terms of that EULA and by this Agreement, where applicable. Customer may not install or use any

Software that is accompanied by or includes a EULA unless Customer first agrees to the terms of the EULA.

(c) For Software not accompanied by a EULA, Customer is hereby granted a revocable, non-exclusive, non-transferable license by ProTek or its applicable third party licensor(s) or Operational Service Provider to use the Software (and any corrections, updates and upgrades thereto). Customer may not make any copies of the Software. Customer agrees that the Software is confidential information of ProTek or its third party licensors/Operational Service Providers and that Customer will not disclose or use the Software except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by ProTek or its third party licensors/Operational Service Providers. Customer may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. Customer may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. Customer is not granted any title or rights of ownership in the Software. Customer acknowledges that this license is not a sale of intellectual property and that ProTek or its third party licensors/Operational Service Providers continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

### **13. CUSTOMER'S PAYMENT OBLIGATIONS**

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

(a) **Deposit.** At the time of installation of the Service, Customer is required to pay the "Total Deposit" set forth in the COS. Together, the "Installation Fee" and the "Monthly Service Fee" due (if any) constitute the "Total Deposit". Customer agrees that the Total Deposit is to be paid in consideration of ProTek's making the Service available on the terms and conditions set forth in this Service Agreement, that ProTek has earned the Total Deposit in full and that the Total Deposit is not refundable. If any portion of the Total Deposit remains unpaid at the time of execution of this Service Agreement, Customer will pay such amount promptly after execution of the Service Agreement.

(b) Customer agrees to pay the Total Deposit on or before the first day of Customer's "Monthly Billing Cycle". Except as set forth on the COS, Customer's Monthly Billing Cycle begins on the day the customer signs the COS. Notwithstanding the foregoing, ProTek may modify Customer's Monthly Billing Cycle upon at least 15 calendar days' advance notice to Customer.

(c) Customer agrees to pay the applicable "Monthly Equipment Assurance Fee" set forth on the COS, if any; provided, however, Customer may, on 10 calendar days' advance

notice to ProTek, elect to discontinue participation in the "Equipment Assurance Plan" as then in effect, effective on the first day of Customer's next Monthly Billing Cycle, in which case this Agreement shall be deemed to be amended such that the COS indicates "ProTek Equipment Assurance Plan Not Included". If the COS indicates "ProTek Equipment Assurance Plan Not Included," Customer may, on 10 calendar days' advance notice to ProTek and payment of applicable fees, elect to commence or resume participation in the Equipment Assurance Plan as then in effect, provided, however, the Equipment Assurance Plan shall not apply, and the COS shall only be deemed not to indicate "ProTek Equipment Assurance Plan Not Included" as of the first day of the second Monthly Billing Cycle commencing after such notice.

(d) Customer agrees to pay the applicable Monthly Service Fee set forth in the COS and Monthly Equipment Assurance Fee, if any, (collectively the "Monthly Fees"), in advance, prior to the month billed, on or before the first day of the Customer's Monthly Billing Cycle. The full Monthly Fee is due for any part of a month for which service is provided.

(e) For each Monthly Billing Cycle with respect to which Customer does not pay on time (including without limitation if Customer's Monthly Fees are not received by ProTek on or before the first day of the Monthly Billing Cycle), Customer agrees to pay the "Billing Administrative Fee" as established by ProTek from time to time. Customer and ProTek specifically agree that the Billing Administrative Fee is not a late fee, but rather is intended to compensate ProTek for its additional expense incurred in processing irregular payments, and may be changed at any time without notice to Customer. Customer also agrees to pay the "Late Fees" defined in the COS.

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

(g) The "Service Term" is defined in the COS, and continues on a month-to-month basis thereafter. In order for Customer to terminate the contract, Customer shall follow the termination procedures described in Section 22. Customer agrees to pay the "Monthly Service Fee" set forth in the COS, which may change from time to time subject to advance notice by ProTek. All accounts 60 days or more past due will be turned over to collections and Service discontinued permanently.

(h) Customer agrees to pay a "Reinstallation Charge" as set forth in the COS when Customer moves physical locations and would like to transfer the service to the new physical location.

(i) Customer also agrees to pay all applicable federal, state, and local taxes and fees, including, but not limited to, those imposed after the date of execution of the COS.

#### **14. TELEPHONY SERVICE FEES, TAXES AND OTHER CHARGES**

Telephony Service fees, taxes, and other charges may change from time to time. ProTek blocks international phone calls from the United States except those made to Canada. Should a Customer require the ability to place international calls to countries other than Canada, ProTek may open the lines for those specific countries at their discretion. If Customer makes calls to locations outside the United States and Canada, international rates will apply. International calling rates can be found on ProTek's web site <http://www.ProTekISP.com>. Customer will be charged \$1.50 for each call Customer makes to Directory Assistance.

#### **15. TELEPHONY SERVICE 911 EMERGENCY SERVICES**

Carefully read the information below. By acceptance, and use, of the Telephony Service, Customer acknowledges and accepts any limitations of 911/E911 service, and Customer agrees to convey these limitations to all persons who may have occasion to place calls over the Telephony Service. If Customer has any questions about 911/E911, call ProTek at 800-765-7772.

(a) The Telephony Service includes 911/Enhanced 911 functionality ("911/E911") that may differ from the 911 or E911 function furnished by other providers. As such, it may have certain limitations. E911 service includes transmission of Customer's telephone number, and information Customer provides to ProTek about the physical location of the Equipment and facilities that are used to provide Telephony Service ("Registered Location") to Customer. When Customer dials 911, Customer's emergency services call will be routed to the applicable Public Safety Answering Point, or other applicable emergency services call center, or local emergency authority ("PSAP"). If the PSAP is capable of receiving Customer's telephone number and Registered Location ("E911 Information"), such information will also be conveyed to the PSAP when Customer dials 911.

(b) Registered Location: Use of the Telephony Service from a location other than Customer's Registered Location may cause Customer's 911 call or E911 information to be routed to the wrong PSAP, may cause emergency response personnel to be dispatched to the wrong address, and may result in other problems with accessing and obtaining emergency services, including, but not limited to, Customer's inability to receive emergency services. As a result, Customer must update Customer's Registered Location with ProTek before using the Telephony Service at a new location. To update Customer's Registered Location, Customer should log into the Telephony Service web portal at <https://phone.ProTek.net> and choose "Manage E911 Info", or contact ProTek Technical Support at 800-765-7772, or at the address set forth at <http://www.ProTekISP.com>.

(c) Even if Customer uses the Telephony Service from its Registered Location, trying to call 911 or obtain emergency services through a 911 call may fail for a number of reasons, including:



(i) Power failure – if there is a power or Internet outage or interruption, Customer will not be able to use the Telephony Service for any 911 or other emergency calls (after such an event, Customer also may need to reset or reconfigure Equipment before Customer can call 911).

(ii) Termination or suspended service – if Customer's Telephony Service or Internet connection is interrupted, suspended or cancelled for any reason (including due to technical problems, Customer's failure to pay ProTek or other provider, or termination of this Agreement), Customer will not be able to use the Telephony Service to call 911;

(iii) Transferred number – as described further below, if Customer transfers a telephone number from Customer's traditional telephone service, there may be a delay or interruption in Customer's ability to use the Telephony Service to call 911;

(iv) Updated location information – as described further below, if Customer uses the Telephony Service at a new Registered Location, it may take several days after Customer notifies ProTek of the new Registered Location before 911 calling or E911 functions will be available; and

(v) Technical limitations – network congestion, radio interference, weak signals, packet loss, or other causes of reduced Service performance may prevent Customer from using the Telephony Service to call 911 or may delay the routing of Customer's 911 call or E911 information. Customer should not rely on the Telephony Service as Customer's primary method to obtain emergency services. If Customer does not feel comfortable with these limitations, ProTek suggests Customer makes alternative methods available to call 911 or otherwise obtain emergency services, such as through a traditional telephone line or a mobile phone.

(d) CALLER ID LIMITATIONS AND FEES. If Customer modifies its Caller ID to a number that ProTek's E911 service does not recognize or if Customer is using multiple line trunking, an E911 call will be routed to an Emergency Routing Service ("ERS") call center, which will then route the call to appropriate PSAP after the caller's location is determined. Customer understands that such E911 calls will be delayed and that the caller must speak to ERS personnel before communications with the PSAP is established. For each call routed to ERS, Customer will be charged a fee of \$150. Multiple calls will result in multiple charges. If Customer does not feel comfortable with these limitations, ProTek suggests Customer makes alternative methods available to call 911 or otherwise obtain emergency services, such as through a traditional telephone line or a mobile phone.

(e) LIABILITY: Customer acknowledges and agrees that ProTek will not be liable for any Service outage, inability to dial 911, and/or inability to access emergency service personnel. Customer agrees to defend, indemnify, and hold harmless ProTek and its associated parties from any and all claims, losses, damages, fines, penalties, costs, and expenses (including but not limited to reasonable attorney fees) by, or on behalf of, Customer or any third party or user of the Services relating to the failure or outage of the Services, including those related to 911/E911. Customer acknowledges that it is aware of and understands the foregoing limitations and agrees to advise all persons who may conduct calls using Customer's Telephony Service of the same.

(f) "REVERSE 911" SERVICE: "Reverse 911" service is a telephonic community notification system that may be used to deliver outbound messages in the event of an emergency. The system employs a combination of database and mapping technologies to allow emergency responders to pinpoint a specific geographic area and deliver the appropriate message to residents in the affected area. Certain systems have the ability to call both listed and unlisted phone numbers. Customers should contact their local PSAP to determine if the number used in the provision of the Telephony Service can be registered with the local PSAP. The technical limitations associated with the provision of Reverse 911 service are due entirely to the local PSAP's network and systems capabilities. ProTek shall not be liable for any failures, loss of service, interference, or incompatibility of the Telephony Service and any Reverse 911 service offered by local PSAPs. Further, ProTek offers no warranties, either express or implied, as to the availability of such Reverse 911 services, or their compatibility with the Telephony Service.

## **16. TELEPHONY SERVICE RELOCATION REQUIREMENT**

The Telephony Service may be used only at the Registered Location Customer provides to ProTek. If Customer wishes to relocate the Equipment, Customer must contact ProTek for information on Service availability at the new location. If the Service is available at Customer's new location, Customer must update and register the new location with ProTek in order to update ProTek's records for the Service and help make 911 services and E911 features available to Customer. If Service, 911 calling or an E911 feature is not available at the new location, Customer's Service will be terminated or suspended until Customer returns the Equipment to a location with Service, 911 and E911 availability and provides ProTek updated information for the new location. Using or moving, or attempting to use or move, the Equipment or Telephony Service to a location without complying with this Section 16 is a violation of this Agreement and Customer does so at Customer's own risk.

## **17. TELEPHONY SERVICE LOCAL NUMBER PORTABILITY**

If Customer is porting Customer's existing phone number from another service provider for use with the Telephony Service, the following terms and conditions also shall apply:

(a) Customer will cooperate fully with ProTek and provide promptly all information, including a letter of authorization or other documentation, as requested by ProTek in connection with the processing of Customer's order for Service.

(b) Customer authorizes ProTek to notify Customer's current telephone service provider of Customer's decision to switch Customer's local, local toll and long distance services to the Telephony Service, and Customer represents Customer is authorized to take such actions.

(c) Customer acknowledges that if Customer sets up the Telephony Service prior to the date that the number switch becomes effective (the "Port Effective Date," as defined in the COS), Customer may be able to place outgoing calls but not receive incoming calls over the Telephony Service, and may not be able to make 911 or other emergency calls over the Telephony Service, until the Port Effective Date (in such a case, Customer should keep another phone connected to an existing phone extension at Customer's service location to receive incoming calls until the Port Effective Date).

(d) Customer acknowledges that if the Telephony Service is not yet activated as of the Port Effective Date, Customer's existing phone service for the number Customer is transferring will be disconnected and Customer will have no service for that line. To help avoid an interruption in Customer's phone service, Customer should install the Telephony Service prior to, or on, the Port Effective Date. An estimate of the Port Effective Date may be sent to Customer by ProTek following Customer's completion of the ordering process, but this is only an estimate and not a guarantee of the Port Effective Date.

(e) Customer acknowledges that ProTek may use call detail, and customer proprietary network information, for all lawful purposes, including but not limited to actions related to the initiation, rendering, billing and collection of the Telephony Service. Further, such actions also include the use of such information for the purposes of testing, verifying, and otherwise assuring that the Telephony Service is delivered to Customer.

## **18. DISCLAIMER OF WARRANTIES**

(a) CUSTOMER EXPRESSLY AGREES THAT CUSTOMER USES THE SERVICE AND THE ProTek EQUIPMENT AT CUSTOMER'S SOLE RISK. THE SERVICE AND ProTek EQUIPMENT ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS AND EXCEPT TO THE LIMITED EXTENT SPECIFICALLY SET FORTH IN SECTION 2 HEREIN, IF APPLICABLE, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY. NEITHER ProTek NOR ITS AFFILIATES, AGENTS, OPERATIONAL SERVICE PROVIDERS, THIRD PARTY SUPPLIERS OR SOFTWARE LICENSORS WARRANTS: (I) TO UNINTERRUPTED, TIMELY OR SECURE USE OF SERVICE; (II) THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS; (III) THAT THE SERVICE WILL BE ERROR-FREE OR FREE OF ANY VIRUSES, WORMS, SPAM, POP-UP ADVERTISING, SPYWARE, ADWARE OR OTHER HARMFUL COMPONENTS, EVEN IF COUNTERMEASURES HAVE BEEN DEPLOYED; OR (IV) THAT ANY PERSONAL INFORMATION, NON PERSONAL INFORMATION, DATA OR FILES CUSTOMER SENDS OR RECEIVES VIA THE SERVICE WILL BE TRANSMITTED IN UNCORRUPTED FORM, WITHIN A REASONABLE TIME, OR FREE FROM UNAUTHORIZED ACCESS BY OTHERS OR THAT OTHER USERS WILL BE UNABLE TO GAIN ACCESS TO CUSTOMER'S COMPUTER OR DEVICE. THIS INCLUDES, BUT IS NOT LIMITED TO, INCIDENTS OF FILE SHARING, PRINT SHARING OR USE OF OTHER MEANS THAT ENABLE INTERNET USERS TO GAIN ACCESS TO CUSTOMER'S COMPUTER, DEVICE, OR NETWORK OR ProTek EQUIPMENT, OR TO MONITOR CUSTOMER'S ACTIVITY AND CONDUCT WHILE USING THE SERVICE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM ProTek SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME STATES DO NOT ALLOW LIMITATIONS ON THE SCOPE OF A LIMITATION OF WARRANTY OR HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

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

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

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

(e) Customer understands, acknowledges and agrees that ProTek may use various tools and techniques in order to efficiently and reasonably manage its networks and to ensure compliance with ProTek’s Open Internet Policy and Sections 8, 9 and 10 above (such tools and techniques, “Network Management Tools”). These may include detecting malicious traffic patterns and preventing the distribution of viruses or other malicious code or managing network resources through techniques such as limiting the number of simultaneous peer-to-peer sessions that Customer may conduct, limiting the aggregate bandwidth available for certain usage protocols such as peer-to-peer and newsgroups, and such other Network Management Tools as ProTek may from time to time determine appropriate.

(f) Customer understands, acknowledges and agrees that, to allocate bandwidth across all of its Customers, ProTek may employ traffic-management technology, including but not limited to packet-reset technology, which technology may materially slow the uploading of certain files.

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

(h) Customer understands, acknowledges and agrees that ProTek does not warrant that Service descriptions, information, graphic depictions, fees, product and or other components of

the Service are accurate, reliable, updated, current, complete or error-free. Despite ProTek's efforts, it is possible that a price for the Service (or a component of the Service) offered on ProTek's website, or the Service description may be inaccurate in some part. In the event ProTek determines that a Service contains an inaccurate price or description, ProTek reserves the right to take any action ProTek deems reasonable and necessary, in ProTek's sole discretion, to rectify the error, including without limitation, canceling Customer's order, unless prohibited by law. ProTek may make improvements or changes to any of ProTek's information, or Services described on ProTek's websites at any time without notice. Customer agrees to notify ProTek immediately if Customer becomes aware of any pricing or descriptive errors or inconsistencies with any Services Customer order and to comply with any corrective action that ProTek may take.

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

## **19. LIMITATION OF LIABILITY**

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

(b) TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL ProTek OR ITS AFFILIATES, AGENTS, OPERATIONAL SERVICE PROVIDERS, THIRD PARTY LICENSORS OR THIRD PARTY SUPPLIERS, OR EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, OR AGENTS, AND ANY OF THEIR SUCCESSORS AND ASSIGNS BE LIABLE WITH RESPECT TO THE SERVICE OR THE SUBJECT MATTER OF THIS SERVICE AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS AND EXCLUSIONS HEREIN MAY NOT APPLY TO CUSTOMER. IF ANY PART OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR

UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF ProTek UNDER SUCH CIRCUMSTANCES FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00 US).

(c) DEVELOPING, INSTALLING, OPERATING, PROVIDING, IMPLEMENTING, MAINTAINING, OR PARTICIPATING IN A 911 EMERGENCY TELEPHONE SYSTEM OR SIMILAR EMERGENCY SYSTEM OR E911 SERVICE, INCLUDING WITHOUT LIMITATION (I) RECEIVING, DEVELOPING, COLLECTING, OR PROCESSING INFORMATION FOR E911 DATABASES, (II) RELAYING, TRANSFERRING, OPERATING, MAINTAINING, OR PROVIDING 911 OR E911 SERVICES OR SYSTEM CAPABILITIES, OR (III) PROVIDING EMERGENCY TELEPHONE AND RADIO COMMUNICATIONS FOR AMBULANCE, POLICE AND FIRE DEPARTMENTS;

(d) ADDITIONALLY, ProTek WILL HAVE NO LIABILITY FOR THE FOLLOWING:

(i) FOR ANY AMOUNT IN THE IN EXCESS OF ONE HUNDRED DOLLARS (\$100.00 US);

(ii) FOR ANY THIRD-PARTY FEES OR CHARGES, INCLUDING 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, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER;

(iv) FOR DATA LOSS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES;

(v) FOR ANY DAMAGES OR LOSS DUE TO CUSTOMER'S FAILURE TO BACK UP ANY EQUIPMENT AS REQUIRED IN SECTION 2(g) HEREIN;

(vi) ANY LACK OR BREACH OF SECURITY CUSTOMER OR ANY OTHER PARTY MAY EXPERIENCE OR BE EXPOSED TO WHILE USING THE SERVICE;

(vii) FOR ANY MATTER BEYOND ProTek'S REASONABLE CONTROL;

(viii) FOR ANY INTERFERENCE OR INCOMPATIBILITY WITH OR DISRUPTION OF ANY NON-VOICE SYSTEMS, WHETHER CAUSED BY THE TELEPHONY SERVICE, INTERNET SERVICE, EQUIPMENT, OR OTHERWISE; OR

(ix) CUSTOMER'S USE OF THE SERVICE FOR OR IN CONNECTION WITH ANY HIGH-RISK OR UNLAWFUL USES, OR ANY USE THAT VIOLATES THIS SERVICE AGREEMENT.

(e) Customer understands, acknowledges and agrees that ProTek may block traffic to or from any source, including, without limitation, the deletion of any electronic mail, as it deems necessary to secure its network or eliminate spam. Customer agrees that ProTek shall be entitled to damages if Customer transmits or is otherwise connected with the transmission of spam. Customer agrees that ProTek is entitled to actual damages, however, if actual damages cannot be reasonably calculated, Customer agrees to pay ProTek liquidated damages of five dollars for each piece of spam transmitted from or otherwise connected with Customer's account.

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

(g) This Section 19, Limitation of Liability, will survive termination or expiration of this Service Agreement, whether terminated by the Customer or the ProTek, for any reason.

## **20. AGREEMENT TO ARBITRATE**

(a) CUSTOMER AND ProTek AGREE TO ARBITRATE ALL DISPUTES AND CLAIMS BETWEEN CUSTOMER AND ProTek. The agreement between Customer and ProTek to arbitrate all disputes and claims between them is intended to be broadly interpreted. It includes, but is not limited to: claims arising out of or relating to any aspect of the relationship between Customer and ProTek, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising), claims that are currently the subject of purported class action litigation in which Customer is not a member of a certified class and claims that may arise after the termination of this Agreement. For the purposes of this Section 20, references to Customer include Customer's subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all Authorized Users or unauthorized users or beneficiaries of the Service. **CUSTOMER AGREES THAT, BY ENTERING INTO THIS AGREEMENT, CUSTOMER AND ProTek ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

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

made by ProTek or Customer shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which Customer or ProTek is entitled.

(c) The arbitration shall be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association (the "AAA"), as modified by this Agreement, and shall be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879 or written request to the ProTek. The arbitrator shall be bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are reserved to the decision of a court of competent jurisdiction. Unless Customer and ProTek agree otherwise, any arbitration hearings shall take place in St. Clair County, Illinois. The right to a hearing shall be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The party initiating arbitration proceedings shall bear all the

arbitration-related costs and expenses of both parties including, without limitation, legal fees and expenses.

(d) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. CUSTOMER AND ProTek AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Customer and ProTek agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

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

## **21. INDEMNIFICATION**

Customer agrees to indemnify, defend and hold harmless ProTek, its Affiliates, Operational Service Providers, agents, third party licensors and suppliers and their respective members, officers, directors, employees, agents, representatives and contractors, and each of their successors and assigns (collectively, the "ProTek Indemnitees") from and against all losses, expenses, damages and costs, (including reasonable attorneys' fees) and other claims brought against any ProTek Indemnitee(s) related to Customer's use of the Service or any violation of this Service Agreement and all other documents incorporated herein by reference) including, but not limited to, claims that Customer's use of the Service infringed on the patent, copyright, trademark or other intellectual property right of any third party, Customer's violation of any law or the rights of another and claims resulting from Customer's negligence. Customer agrees to pay any attorneys' fees incurred by ProTek and/or any other ProTek Indemnitee in connection



with the defense of any such third-party claims. ProTek reserves the right to assume the defense and control of any matter subject to indemnification by Customer, in which event Customer will cooperate with ProTek in asserting any available defenses.

## **22. TERMINATION OF THE SERVICE**

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

(b) Customer may terminate the Service at any time by providing ProTek written notice, either via mail to the address set forth in Section 23(h) or email to customerservice@ProTekISP.com, 10 days prior to desired termination date. ProTek may take reasonable steps to verify Customer's identity and authority before effecting such termination. The full Monthly Payment is due for any part of a month in which Service is provided. Upon termination, Customer agrees to pay any account balance, a "Cancellation Fee" as defined in the COS, and to return any ProTek Equipment or pay the Equipment Non-Return Fee as set forth in Section 2(b) herein.

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

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

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

(f) Sections 3 through 6, 8 through 10, 13, and 18 through 23 hereof shall survive any termination or expiration of this Agreement.

## **23. GENERAL PROVISIONS**

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

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

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

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

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

(f) ProTek's failure to exercise or enforce any right or provision of this Service Agreement shall not constitute a waiver of such right or provision. If any term, covenant, condition or provision of this Service Agreement shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Service Agreement shall not be affected and each remaining term, covenant, condition and provision shall be valid and enforceable to the fullest extent permitted by law or construed as nearly as possible to reflect the original intentions of the parties.

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

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

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

(ii) *If to ProTek*: notice shall be made exclusively by first-class mail to ProTek Communications, LLC., at 3680 Lebanon Ave., Suite 101, Belleville, Illinois 62221 or such other address as ProTek may from time to time publish to Customer, and such notice shall be deemed effective upon receipt.

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

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