

**TERMS AND CONDITIONS OF SERVICE**  
**FOR**  
**BEST INTERNET COMPANY, LLC, DBA. IMAGINE INTERNET (“IMAGINE INTERNET”)**  
**INTERNET ACCESS SERVICES - RESIDENTIAL**

Imagine Internet provides its residential Internet access services (the “Services”) on the condition that its customers (“Customers”) comply with the Customer Agreements listed below. These Customer Agreements contain important information regarding Customers’ rights and responsibilities. Except for the Customer Service Order, (i) Imagine Internet may amend the Customer Agreements from time to time in its sole discretion and without notice to Customers; and (ii) a current copy of all Customer Agreements that Customers may access at any time will be maintained on the Website. All Customers should carefully review the Customer Agreements from time to time.

- **Terms and Conditions of Service** (this document, also referred to herein as this “Agreement”). This document contains the general terms and conditions governing, and information about, the Services and Customer’s use of the Services, including Imagine Internet’s policies relating to such matters as billing and customer service.
- **Customer Service Order(s)**. This document, which may be in paper or electronic acceptance form, identifies the specific Services purchased, pricing, and any other unique terms and conditions applicable to the Services purchased. If Customer did not retain a copy of its Customer Service Order, then Customer may obtain the terms of its Customer Service Order by contacting Imagine Internet during normal business hours.
- **Acceptable Use Policy**. This document governs Customers’ permitted and prohibited uses of the Services.
- **Privacy Policy**. This document explains the information and data that Imagine Internet collects from or about its Customers, and how Imagine Internet stores and uses such information.

By signing (or otherwise accepting) the Customer Service Order or by using the Services, Customer accepts (in other words, agrees to be legally bound by) the above Customer Agreements and confirms that, by doing so, Customer is not violating the terms of any agreement Customer has with another provider of services.

This document contains a “binding arbitration clause,” WHICH STATES THAT CUSTOMER AND IMAGINE INTERNET AGREE TO RESOLVE DISPUTES THROUGH ARBITRATION. THE ARBITRATION PROVISION REQUIRES THAT DISPUTES BE RESOLVED IN INDIVIDUAL ARBITRATIONS. IN ARBITRATION, THERE IS NO JUDGE OR JURY AND THERE IS LESS DISCOVERY AND APPELLATE REVIEW THAN IN COURT.

Capitalized terms used in this Agreement have specific meanings that are contained in Section 15 below.

**1. Customer’s Financial Responsibilities**

(a) Customer must pay for the Services in accordance with Imagine Internet’s then-current billing practices, along with any installation charges and other applicable fees, taxes and surcharges. If Customer has any questions about Imagine Internet’s prices, fees or billing, Customer may contact Imagine Internet during Imagine Internet’s normal business hours.

(b) Imagine Internet charges for Services monthly, in advance. If Customer fails to pay in full the invoiced amount by the due date on the applicable billing statement, Imagine Internet may require that Customer pay the following additional amounts:

- a monthly administrative late fee of \$1.5% per month on past due amounts until the account balance becomes current, or a lower interest rate if required under applicable law; plus
- amounts spent (including reasonable attorney’s fees) to collect the money due.

Customer agrees that such fees are reasonable in light of Imagine Internet’s costs to collect past due amounts.

(c) If Imagine Internet suspends Customer's access to the Services for failure to pay amounts owed or for violation of the Customer Agreements, then Imagine Internet may require that Customer pay a fee for restoring the Services.

(d) Imagine Internet may, but is not required to, verify Customer's credit standing, including through credit reporting agencies.

(e) Imagine Internet may require a deposit or other guaranteed form of payment (for example, a credit card or bank account debit authorization) from Customer. If Customer owes money on any Imagine Internet account, Customer authorizes Imagine Internet to deduct such amounts from any existing credit Imagine Internet has on file or any security deposit Customer provides or, if applicable, charge such fees to the bank or credit card account that Customer has authorized Imagine Internet to use.

(f) Customer authorizes Imagine Internet to accept (and charge Customer for) any orders or requests made through Customer's Services account or from Customer's location.

(g) Imagine Internet is not required to notify Customer of offers it makes available to others, or to lower Customer's rates to equal those contained in such offers.

(h) Customer must bring any billing errors to Imagine Internet's attention within 30 days of the applicable invoice date or Customer waives the right to (in other words, Customer will not be eligible to receive) a refund or credit from Imagine Internet.

(i) Because tax and regulatory rules are subject to interpretation and change, Imagine Internet has complete discretion in deciding what fees, taxes and surcharges to collect from Customers. Customer waives (in other words, Customer is not eligible to receive) a refund of any fees that Imagine Internet collects and pays to any governmental authority or agency.

(j) Customer cannot settle amounts owing by writing "paid in full", "accord and satisfaction", or any other similar reference on or via Customer's payment method.

(k) If Customer provides a credit or debit card for billing or deposit purposes and the issuer gives Customer a new card on the account with a different expiration date, Customer authorizes Imagine Internet to update its records to reflect the new expiration date and to continue to use the account as before.

(l) Certain Services provided to Customer by Imagine Internet may be paid for by a Manager on Customer's behalf. Nothing in this Agreement alters the relationship or obligations between Customer and such Manager, including Customer's obligation to continue paying Manager fees and dues regardless of whether Customer is receiving Services from Imagine Internet.

## **2. Customer's Responsibilities Regarding Equipment**

(a) With Customer's prior permission, Customer will allow Imagine Internet to enter Customer's premises to install, configure, maintain, inspect, upgrade, replace or remove Equipment and Imagine Internet-provided Customer Owned Equipment and to make sure that the Services are properly operating. The Services may not work with Customer Owned Equipment.

(b) All Equipment (except Equipment purchased by Customer from Imagine Internet) belongs to Imagine Internet or third parties and will not be deemed fixtures or in any way affixed to or a part of Customer's premises. Imagine Internet retains ownership of the Equipment (except Equipment purchased by Customer from Imagine Internet) at all times unless specified otherwise in a Customer Service Order.

(c) After the installation or removal of Equipment and Customer Owned Equipment on Customer's premises, Customer is responsible for any repairs or cosmetic corrections. Imagine Internet has an obligation to make such repairs only if Imagine Internet's work has damaged Customer's property.

(d) Imagine Internet may make changes to Equipment and Software through downloads via its network or otherwise. Any Customer Owned Equipment that is attached to the Equipment may be affected by Imagine Internet or manufacturer software downloads, which may change Customer Owned Equipment features and functionality. Imagine

Internet has no responsibility for the operation, support, maintenance or repair of any Customer Owned Equipment, including, Customer Owned Equipment to which Imagine Internet or a third party has sent software or downloads.

(e) Customer shall not move Equipment to any location other than the location where Customer initially receives the Services, even if Customer has moved to a new location and continues to pay Imagine Internet for the Services. Customer shall not remove or alter logos or other identifying information (for example, serial numbers) on the Equipment.

(f) Customer shall return the Equipment (except Equipment purchased by Customer from Imagine Internet) to Imagine Internet in good condition when the Services are terminated and, if Customer fails to do so, Customer hereby authorizes Imagine Internet to retrieve the Equipment from Customer's premises, during reasonable hours, at Customer's expense. Customer is responsible for all applicable fees until Imagine Internet receives the Equipment. If Imagine Internet does not receive the Equipment within a reasonable amount of time after the Services are terminated, Imagine Internet is entitled to assume that the Equipment has been lost or will not be returned.

(g) If the Equipment is lost, stolen, damaged, tampered with, or otherwise not returned to Imagine Internet, then Customer shall reimburse Imagine Internet (as "liquidated damages") even if Customer is not at fault. The liquidated damages amount for the Equipment is either stated on the Customer Service Order or available from Imagine Internet during normal business hours. Customer acknowledges and agrees that this liquidated damages approach is reasonable in light of the difficulty of determining the value of the Equipment or the losses Imagine Internet could incur if a third party improperly gained access to the Services using Equipment provided to Customer.

(h) Imagine Internet retains ownership to the Equipment (except Equipment purchased by Customer from Imagine Internet) at all times, including Equipment that is lost, stolen, damaged or unreturned, regardless of whether Customer has reimbursed Imagine Internet. If Customer recovers previously lost or stolen Equipment for which Customer reimbursed Imagine Internet during the prior 6 months, then Customer may return such Equipment to Imagine Internet and receive a full refund of the money paid for such returned Equipment that is fully functional and not cosmetically damaged (provided that serial numbers match).

### **3. Permissible Use of Services and Equipment**

(a) The Services and the way that Imagine Internet delivers them will change from time to time for various reasons, including changes in law, available technologies, and Imagine Internet's efforts to improve them. These changes may impact the Services and/or require that Customer upgrade or replace the Customer Owned Equipment or its configuration, and/or lease new or additional Equipment from Imagine Internet, to continue to obtain the full benefit of the Services.

(b) The Services are for Customer's reasonable, personal, non-commercial (non-business) use only in accordance with Imagine Internet's Acceptable Use Policy. Customer shall not provide the Services to any person who is not a member or guest in Customer's household, or to persons outside Customer's premises, regardless of whether for a fee. Customer shall not resell or permit anyone else to resell the Services in whole or in part, or use or permit anyone else to use the Equipment, Software or Services, directly or indirectly, for any unlawful purpose, including in violation of any policy Imagine Internet posts applicable to the Services. Customer shall take reasonable precautions to prevent others from gaining unauthorized access to the Services. For example, Customer shall establish and use a secure password or similar means of limiting access to the Services to members of Customer's household.

(c) Any person who knowingly accesses the Services without authorization, or that damages or alters the Equipment (or uses third party equipment) in order to obtain Services that have not been paid for by such person, is in breach of this Agreement and possibly subject to statutory damages, fines and/or imprisonment. Imagine Internet retains the right to enforce all rights and remedies available to it with respect to theft of or tampering with its Services.

(d) Imagine Internet has the right to conduct maintenance from time to time that may interrupt the Services. Imagine Internet will use commercially reasonable efforts to provide prior notice of any Service interruptions when reasonably practicable.

(e) Only Imagine Internet may service the Equipment. Customer shall not, and Customer shall not permit any other person to, open, disassemble or modify the Equipment.

(f) Imagine Internet may provide Software as part of assistance with or use of the Services. All Software provided by Imagine Internet is licensed to Customer (in other words, allow Customer to temporarily use) for the sole and limited purpose of using the Services specifically as permitted by the Customer Agreements. The Software and any other intellectual property provided by Imagine Internet always belongs to Imagine Internet and its licensors and providers, and Customer obtains no ownership right whatsoever in them or any right to license them to others.

(g) The Software is for Customer's reasonable, personal, non-commercial (non-business) use only. Customer shall not provide access to the Software to any person who is not a member or guest in Customer's household, or to any person outside Customer's premises, regardless of whether for a fee. Customer may not examine or manipulate the Software code. Customer's right to use the Software automatically terminates immediately without notice from Imagine Internet if Customer fails to comply with the Customer Agreements.

(h) In some cases, Customer may be required to agree to supplemental license terms or end user license agreements as a condition of using certain Software that is provided as part of or to help Customer use the Services. If Customer refuses to agree to these terms or agreements, then Customer is prohibited from using such Software.

(i) Imagine Internet (or its licensors) may modify the Software from time to time, but are not obligated to do so. These modifications may be made remotely through Software downloads to the Equipment or the Customer Owned Equipment. If Imagine Internet notifies Customer that a Software modification is available, Customer should promptly obtain the modified Software. Failure to do so may cause the Software to malfunction and affect Customer's use of Equipment and the Services (including possible loss or unavailability of features and functionality).

(j) All Services information, documents, and materials on the Website are or may be protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively, "Marks") of Imagine Internet and its affiliates are and shall remain Imagine Internet's (or such affiliate's) exclusive property. Nothing in this Agreement gives Customer the right or license to use any of the Marks.

(k) Imagine Internet is not responsible for any information provided by Customer to third parties, including credit/debit card or banking information, and this information is not subject to the privacy provisions of this Agreement or the privacy notice for the Services. Customer assumes all privacy, security, and other risks associated with providing any information, including customer proprietary network information ("CPNI") or personally identifiable information ("PII"), to third parties via the Services. For a description of the privacy protections associated with providing information to third parties, Customer should refer to the privacy policies, if any, provided by those third parties.

#### **4. Specific Services Information, Rights, and Obligations**

(a) Imagine Internet may manage its network to make the Services operate efficiently. See the Network Management Disclosure at [www.imagineinternet.net/policies](http://www.imagineinternet.net/policies).

(b) If Customer sends or posts materials through the Service, Customer is responsible for the material and confirms that Customer has all necessary rights to do so. Customer grants Imagine Internet, with no obligation to pay Customer, all rights that Imagine Internet needs to complete such transmissions or postings. If Imagine Internet determines, in its sole discretion, that the transmission or posting violates the Customer Agreements, then Imagine Internet may, but is not obligated to, delete the materials, block access to them and/or cancel Customer's account. Specific terms and conditions may apply to Customer's use of any content or material made available through the Services. Customer should read those terms and conditions to learn how they apply regarding use of any non-Imagine Internet content. Any materials posted or transmitted using the Services may be copied, republished or distributed by third parties, and Customer agrees to indemnify and hold harmless Imagine Internet, its agents, suppliers, affiliates, employees, licensors, contractors, distributors and business partners ("collectively, "Indemnified Parties" and individually an "Indemnified Party") from any liability or harm resulting from these actions.

(c) IF ANOTHER PERSON OR ENTITY SUES IMAGINE INTERNET OR ANY INDEMNIFIED PARTY BASED ON CUSTOMER'S USE OF THE SERVICES, EQUIPMENT OR SOFTWARE (FOR EXAMPLE, CLAIMING THEFT OR COPYRIGHT VIOLATION BASED ON SOMETHING POSTED ON-LINE USING THE SERVICE), OR BASED ON OR RELATING TO CUSTOMER'S BREACH OF ANY CUSTOMER

AGREEMENT(S), CUSTOMER SHALL INDEMNIFY (IN OTHER WORDS, PAY TO MAKE WHOLE) IMAGINE INTERNET AND THE INDEMNIFIED PARTY(IES), IF APPLICABLE, FOR ANY LOSSES OR LIABILITIES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY IMAGINE INTERNET OR SUCH INDEMNIFIED PARTIES.

## **5. Objectionable Material**

The Services provide unfiltered access to the Internet and will provide access to some material that may offend Customer or be inappropriate for members of Customer's household. Customer is responsible to control access to these materials and for who views such materials via the Services.

## **6. Credits for Service Problems**

(a) Imagine Internet will attempt to correct Service problems caused by the Equipment or Software but is not required to install, service or replace Customer Owned Equipment. Depending on the circumstances, Imagine Internet may charge Customer for service calls. For more information, please contact Imagine Internet during normal business hours.

(b) Imagine Internet has no liability for Service interruptions except that, if Customer loses all Service for more than 24 consecutive hours and the cause of the outage was within Imagine Internet's reasonable control, Imagine Internet will provide Customer with a credit for the period of outage if Customer requests one. Customer must make all credit requests within 30 days of the applicable invoice date covering the period during which the outage or service issue occurred. In addition, Imagine Internet may provide other Service credits in its sole discretion on a case-by-case basis. EXCEPT AND UNLESS SPECIFICALLY PROHIBITED BY LAW, SUCH CREDIT SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICES. Imagine Internet reserves the right to provide all credits payable to Customer directly to a Manager to the extent that such Manager pays for the applicable Services on Customer's behalf.

(c) Imagine Internet has no obligation to credit or otherwise compensate Customer for service problems that are beyond Imagine Internet's reasonable control, such as those caused by storms and other natural disasters, vandalism, terrorism, regulations or governmental acts, fires, civil disturbances, electrical power outages, fiber cuts, computer viruses or strikes.

(d) Local law may impose other outage credit requirements with respect to some or all of the Services. If this is the case in Customer's area, Imagine Internet will comply with such applicable laws.

## **7. Changes to Customer Agreements**

(a) Imagine Internet may change the Customer Agreements by amending the on-line version of the relevant document. Unless Customer has entered into a Customer Service Order that ensures a fixed price for a period of time, Imagine Internet also may change the prices for Services or the manner in which Imagine Internet charges for them at any time and from time to time.

(b) If Customer continues to use the Services following any change to the Customer Agreements, prices or other policies, Customer will be deemed to have accepted the changes (in other words, made them legally binding). If Customer does not agree to the changes, then Customer shall discontinue use the Services and contact Imagine Internet to cancel the Services.

(c) Any changes to the Customer Agreements are intended to be prospective only. In other words, the amended version of the relevant document only becomes binding on Customer as of the date that Imagine Internet makes the change and going forward.

## **8. Enforcement of Customer Agreements**

(a) If Imagine Internet determines, in its sole discretion, that Customer has violated any Customer Agreement, then Imagine Internet may suspend or terminate any or all of Customer's Services (including the right to use any Equipment or Software) without prior notice.

(b) Imagine Internet does not waive (in other words, give up) any rights under the Customer Agreements just because Imagine Internet has not previously enforced such rights. To be legally binding on Imagine Internet, any waiver Imagine Internet grants must be in writing. If Imagine Internet waives a violation of any Customer Agreement, it does not mean that Imagine Internet is waiving other rights, including for similar, earlier or later violations.

## **9. LIMITATIONS ON SERVICES AND LIABILITY**

(a) THE SERVICES (WHICH, FOR PURPOSES OF THIS SECTION, ALSO REFERS TO EQUIPMENT AND SOFTWARE) ARE NOT GUARANTEED TO WORK, TO BE ERROR-FREE OR VIRUS-FREE, OR TO BE COMPATIBLE WITH ANY NON-IMAGINE INTERNET SERVICES, EQUIPMENT OR SOFTWARE. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEITHER IMAGINE INTERNET NOR ITS LICENSORS, AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, OR BUSINESS PARTNERS (OR MANAGERS) MAKE ANY WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING ANY IMPLIED WARRANTIES (SUCH AS THOSE OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM A COURSE OF DEALING OR PERFORMANCE, AND NON-INFRINGEMENT). IF THE LAW WHERE CUSTOMER IS RECEIVING THE SERVICES PROHIBITS IMAGINE INTERNET FROM EXCLUDING ANY PARTICULAR WARRANTIES, THEN THOSE WARRANTIES ARE NOT EXCLUDED TO THE EXTENT REQUIRED TO COMPLY WITH SUCH LAW.

(b) EXCEPT FOR THE SERVICE INTERRUPTION CREDITS DESCRIBED IN SECTION 6, NEITHER IMAGINE INTERNET NOR ITS LICENSORS, AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, OR BUSINESS PARTNERS (OR MANAGERS) WILL BE LIABLE TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY FOR ANY LOSSES OR DAMAGES OF ANY KIND BASED ON BREACHES OF THE CUSTOMER AGREEMENTS OR CUSTOMER'S RELATIONSHIP WITH IMAGINE INTERNET, REGARDLESS OF THE BASIS OF ANY CLAIM. FOR EXAMPLE, IMAGINE INTERNET IS NOT LIABLE TO CUSTOMER OR THIRD PARTIES (INCLUDING MANAGERS) FOR LOSSES OR DAMAGES THAT RESULT FROM CUSTOMER'S USE OR INABILITY TO USE THE SERVICES. NEITHER IMAGINE INTERNET, NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS (OR THIRD PARTIES, INCLUDING MANAGERS) SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING TORT OR CONTRACT) HAVE ANY LIABILITY TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING LOSS OF PROFITS, LOSS OF EARNING, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES, OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (I) CUSTOMER'S RELIANCE ON OR USE OF THE SERVICES; OR (II) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, OR REMOVAL OF THE SERVICES, EQUIPMENT OR CUSTOMER OWNED EQUIPMENT (INCLUDING ANY MISTAKES, OMISSIONS, INTERRUPTIONS, HARDWARE OR SOFTWARE BREACH, SECURITY BREACH, FAILURES OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, FAILURE OF PERFORMANCE OF THE SERVICES OR CUSTOMER OWNED EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, OR LOSS OF E-EMAIL, INFORMATION OR DATA). IN NO EVENT WILL IMAGINE INTERNET BE LIABLE FOR DAMAGES UNDER THE CUSTOMER AGREEMENTS, OR REQUIRED TO CREDIT CUSTOMER, AN AMOUNT IN EXCESS OF CUSTOMER'S SERVICE FEES FOR THE MONTH DURING WHICH ANY LOSSES OR DAMAGES ARE INCURRED.

(c) THE SERVICES AND CUSTOMER'S COMMUNICATIONS USING THEM MAY NOT BE SECURE. CUSTOMER IS RESPONSIBLE FOR SECURING ITS COMMUNICATIONS AND DATA. IMAGINE INTERNET WILL NOT BE RESPONSIBLE IF A THIRD PARTY (INCLUDING MANAGERS) GAINS ACCESS TO CUSTOMER'S SERVICES, CUSTOMER OWNED EQUIPMENT OR DATA.

(d) THE SERVICES MAY RESULT IN DAMAGE OR LOSS TO CUSTOMER'S OWN SERVICES, CUSTOMER OWNED EQUIPMENT, SOFTWARE AND DATA. IMAGINE INTERNET IS NOT RESPONSIBLE FOR ANY SUCH DAMAGE OR LOSS. FOR EXAMPLE, IMAGINE INTERNET MAY, AT THE REQUEST OF THE MANUFACTURER OF ANY THIRD PARTY DEVICE THAT CUSTOMER HAS CONNECTED (OR AUTHORIZED IMAGINE INTERNET TO CONNECT) TO IMAGINE INTERNET'S NETWORK,

DOWNLOAD SOFTWARE TO SUCH DEVICE, WHICH MAY CHANGE ITS FEATURES AND FUNCTIONALITY. IMAGINE INTERNET IS NOT RESPONSIBLE FOR THESE DOWNLOADS OR ANY RESULTING LOSSES OR DAMAGES.

(e) CUSTOMER MUST COMMENCE ANY LEGAL ACTION AGAINST IMAGINE INTERNET WITHIN ONE YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISK TO A DISPUTE OR CUSTOMER SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO PURSUE ANY CLAIM BASED ON SUCH EVENTS OR FACTS. AS PROVIDED IN SECTION 1(h), CUSTOMER MUST NOTIFY IMAGINE INTERNET OF ANY BILLING DISPUTE WITHIN 30 DAYS OF THE APPLICABLE INVOICE DATE OR CUSTOMER SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO PURSUE ANY CLAIM BASED ON SUCH EVENT OR FACTS.

#### **10. Customer Privacy Rights and Obligations**

Customer's privacy interests, including the ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Communications Act of 1934, as amended, and the Electronic Communications Privacy Act. Customer grants Imagine Internet permission to collect, store, use and/or disclose Customer's personal information as described in Imagine Internet's Privacy Policy.

#### **11. Customer Consent to Phone and Email Contact**

(a) Customer hereby consents that Imagine Internet may call any number provided to Imagine Internet for any purpose, including marketing the Services, even if such numbers are included on state or federal "do not call" lists. If Customer requests that its number be removed from Imagine Internet's call list (by requesting it be placed on Imagine Internet's "do not call" list by contacting Imagine Internet during normal business hours), then Imagine Internet will not use such number for marketing purposes.

(b) Customer hereby consents that Imagine Internet may email or text Customer using any address provided to Imagine Internet (or that is issued to Customer) for any purpose, including marketing of the Services. Customer is responsible for any related charges (for example, charges for incoming text messages on a wireless device). If Customer requests that its email address be removed from Imagine Internet's list (by requesting it be placed on Imagine Internet's "do not email" list by contacting Imagine Internet during normal business hours), then Imagine Internet will not use such number for marketing purposes.

(c) Customer consents that Imagine Internet may use automated dialing systems or artificial or recorded voices to call Customer.

#### **12. Customer Consent to Use Electronic Notices and Communications**

(a) Customer hereby consents that Imagine Internet may provide notices using any method Imagine Internet determines appropriate, including by electronic means (for example, email or online posting).

(b) Imagine Internet may ask Customer to provide consents or authorizations, including by electronic means, and Imagine Internet is entitled to assume that any such consent or authorization received from Customer through the Services or from Customer's location has been authorized by Customer.

#### **13. Limit on the Time Customer Has to Bring a Legal Action**

Customer waives (in other words, gives up) the right to commence any proceeding against Imagine Internet if the relevant events occurred more than one year before Customer notifies Imagine Internet of such events. If this waiver is not enforceable under applicable law, then the normal statute of limitations in Customer's area will apply.

#### **14. Agreement to Resolve Disputes Through Binding Arbitration**

(a) Imagine Internet's goal is to resolve Disputes fairly and quickly. However, if Imagine Internet cannot resolve a Dispute with Customer, then, except as described elsewhere in this Section, Imagine Internet and Customer shall submit the Dispute to the American Arbitration Association for binding resolution under its Commercial Arbitration Rules or,

by separate mutual agreement, to another arbitration institution. The arbitration shall be conducted by a single arbitrator and held in New York City or such other location as Customer and Imagine Internet may agree, and the laws of the State of New York shall apply. Each party shall be responsible for its own costs associated with the arbitration.

(b) Customer may bring claims only on Customer's own behalf, and not on behalf of any official or other person, or any class of people. Customer only may submit claims for money damages to arbitration; all claims for injunctive, equitable or similar relief must be brought in a court with competent jurisdiction and appropriate venue. The arbitrator only shall have the power to award direct monetary damages, and not consequential, punitive, exemplary or indirect damages. Customer may not combine a claim that is subject to arbitration under any Customer Agreement with a claim that is not eligible for arbitration under any Customer Agreement. The arbitrator will decide whether a dispute can be arbitrated.

(c) The arbitration shall be conducted and completed as expeditiously as possible, but in no event longer than six months, and the arbitrator will issue an award decision in writing but will not provide an explanation for the award unless requested by a party. Any arbitration award over \$75,000 may be appealed to a three-person panel appointed by the same arbitration institution that rendered the original award. Any such appeal must be filed within 90 days and the appeal will be decided, based on that institution's appeal rules, within 120 days of filing.

(d) If the prohibition against class action and other claims brought on behalf of third parties contained in this Section is found to be unenforceable, then all of this Section automatically will be void. This Section regarding arbitration will survive the termination of the Services.

(e) If Customer does not wish to be bound by these arbitration provisions, Customer must notify Imagine Internet in writing within 30 days of (i) the date that this arbitration provision becomes effective, if Customer is an existing customer, or (i) the date that Customer first subscribes to the Services. Customer may opt out by email to [support@imagineinternet.net](mailto:support@imagineinternet.net). Customer's written notification to Imagine Internet must include Customer's name, address, and Imagine Internet account number as well as a clear statement that Customer does not wish to resolve disputes with Imagine Internet through arbitration. Customer's decision to opt out of this arbitration provision will have no adverse effect on Customer's relationship with Imagine Internet or the delivery of Services to Customer by Imagine Internet.

(f) REGARDLESS OF WHETHER IN COURT OR IN ARBITRATION, CUSTOMER AND IMAGINE INTERNET AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY.

## 15. Definitions

- (a) "Customer Owned Equipment" means (i) the microduct, in-home telecommunications wiring (such as coaxial cable, category of performance wiring [such as Cat5, 5e, 6, etc.], Ethernet wiring, cross-connects, etc.), and network access panels/enclosures/boxes located within Customer's residential premises that are intended to be fixtures to Customer's residential premises; and (ii) any devices, equipment and other items that Customer acquires from a party other than Imagine Internet that may be used in connection with the Services (for example, Customer's television, computer, tablet or mobile device).
- (b) "Dispute" means any dispute, claim, or controversy between Imagine Internet and Customer regarding any aspect of the Services, Equipment, Software or the parties' relationship, including those based on events that occurred prior to the date of any Customer Agreement.
- (c) "Equipment" means the hardware, software, equipment and other facilities provided by Imagine Internet that are located on Customer's private property that are utilized in connection with providing Services, but excluding Customer Owned Equipment.
- (d) "Imagine Internet" means Imagine Internet Networks, Inc. and its subsidiaries and affiliates.
- (e) "including" or "include(s)" means inclusion without limitation.
- (f) "Manager(s)" means any multiple dwelling unit (such as apartments) owner or manager or any homeowners', condominium owners', or similar association, in each case that pays Imagine Internet directly for any Services provided to Customer.



- (g) “Section” means an entire section of this Agreement (for example, all of Section 6), including all sub-sections thereto (such as 6(a), 6(b), etc.).
- (h) “Software” means any software that Imagine Internet or its licensors provide or make available to Customer in connection with the Services.
- (i) “Website” means Imagine Internet’s website located at [www.imagineinternet.net](http://www.imagineinternet.net).

## **16. Term of Agreement; Termination of Services**

- (a) The Customer Agreements remain in effect until terminated as permitted by such Customer Agreements.
- (b) Subject to applicable law, Imagine Internet may, at any time without notice for any or no reason, in its sole discretion, terminate or suspend Customer’s Services and right to use any Software or Equipment and/or remove from the Services any information transmitted by or to any users, including if: (i) Customer’s use of the Services does not conform with the terms of any Customer Agreement; (ii) Customer’s use of the Services interferes with Imagine Internet’s ability to provide the Services to Customer or others; (iii) Customer’s use of the Services may violate any laws, regulations, or written and electronic instructions for use; (iv) Customer’s use of the Services may infringe, violate, misappropriate or otherwise interfere with the intellectual property or proprietary rights of any other person or entity; (v) Customer’s use of the Services interferes with or endangers the health and/or health and/or safety of Imagine Internet personnel or third parties; or (vi) Customer threatens, harasses, or uses vulgar and/or inappropriate language toward Imagine Internet personnel. Imagine Internet’s action or inaction under this Section shall not constitute review or approval of any use of the Services or information transmitted by any user.
- (c) Unless the Services are subject to a minimum term agreement pursuant to a Customer Service Order, Customer may terminate this Agreement for any reason at any time by providing Imagine Internet with at least 3 business days’ prior notice in one of the following ways: (i) mailing a written notice to Imagine Internet’s main office as listed on the Website; (ii) sending an electronic notice to the email address specified on the Website; or (iii) calling Imagine Internet during normal business hours. Prior to effecting such termination, or any other change to Customer’s account, Imagine Internet may verify Customer’s identity and confirm Customer’s election. Subject to applicable law or the terms of any agreements with governmental authorities, all applicable fees and charges for the Services will accrue until the Customer Agreements have terminated, the Services have been disconnected, and all Equipment has been returned. Except for non-refundable fees and charges, Imagine Internet will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due for the Services provided, affiliate services, Equipment, or other applicable fees and charges). Imagine Internet reserves the right to provide any refunds directly to a Manager to the extent that such Manager pays for the applicable Services and/or Equipment on Customer’s behalf.
- (d) Upon termination of this Agreement, Customer shall (i) immediately cease all use of the Services, Equipment and Software; (ii) pay Imagine Internet in full for Services provided up to the date that the Customer Agreements have been terminated and the Services have been disconnected, including any early termination fees required by the Customer Service Order; and (iii) if requested, provide Imagine Internet with reasonable opportunity to schedule a visit to Customer’s location to disconnect the Services and recover the Equipment. The Equipment must be returned to Imagine Internet in working order, normal wear and tear excepted, or Customer will be charged up to the retail price for a new replacement for such Equipment. Customer may also be charged incidental costs that Imagine Internet incurs in replacing the Equipment.
- (e) Customer cannot terminate Services by writing "canceled" or any other similar message on its invoice, check or any other payment method accepted by Imagine Internet.
- (f) The provisions of this Agreement relating to Customer’s obligation to pay for Services (Section 1), indemnification (Sections 4(b) and (c), Imagine Internet’s obligation to provide Service credits (Section 6), limitations on liability and warranty disclaimers (Section 9), and resolution of disputes (Section 14) shall survive (in other words, continue beyond) the termination of this Agreement.
- (g) Nothing contained in this Agreement shall be construed to limit Imagine Internet’s rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, Imagine Internet and its agents reserve the right to

delete all of Customer's data, files, electronic messages or other information that is stored on Imagine Internet's or its suppliers' servers or systems. In addition, Customer may forfeit Customer's account user name and all e-mail, IP and Web space addresses. Imagine Internet shall have no liability whatsoever as the result of the loss of any such data.

## **17. The Rights of Third Parties**

(a) Except with Imagine Internet's prior written consent, Customer shall not transfer or assign to any other person (in other words, make another person legally responsible for) the Services, Equipment, or Software or Customer's obligation to comply with the Customer Agreements.

(b) Imagine Internet may use contractors to assist it in providing the Services. With Imagine Internet's authorization, these contractors are intended to, and do, have the same rights that Imagine Internet has under the Customer Agreements.

(c) Other than contractors referenced in this Section, the Customer Agreements are not intended to benefit (in other words, to create any rights or obligations for) anyone other than Imagine Internet and Customer.

## **18. Conflicts between Applicable Law and the Customer Agreements**

(a) The Customer Agreements are subject to applicable legal requirements, including possibly such laws that apply where Customer lives or receives the Services. If such a requirement conflicts with the Customer Agreements with respect to the Services provided to Customer, the legal requirement will take priority over the part of the Customer Agreements with which it conflicts, but only to the extent of such conflict.

(b) If a court or similar body determines that a portion of a Customer Agreement is invalid or unenforceable, the rest of the agreement shall remain in full force and effect. The invalid or unenforceable portion should be interpreted as closely as possible (consistent with applicable law) so as to reflect the intent of the original. The only exception to this is that described in Section 14 regarding Arbitration.

## **19. Conflicts between Customer Agreements**

(a) The Customer Agreements constitute the entire agreement between Imagine Internet and Customer. Customer is not entitled to rely on any agreements or undertakings made by Imagine Internet's personnel other than those contained in the Customer Agreements.

(b) If Imagine Internet has provided Customer with a non-English translation of any Customer Agreement, the English language version of that Customer Agreement will govern the relationship between Imagine Internet and Customer and will control in the event of a conflict. Any translations are provided as a convenience only.

(c) In the event of a conflict between the terms of this Agreement, the Acceptable Use Policy, the Privacy Policy, and a Customer Service Order, the following documents shall control in the following order of precedence: (i) the Privacy Policy; (ii) the Acceptable Use Policy; (iii) the terms of this Agreement; and (iv) a Customer Service Order.