

## **IKTEL TERMS OF SERVICE (GENERAL)**

LAST UPDATED: JULY 5, 2011

THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND IKTEL AND CONTAINS IMPORTANT TERMS, CONDITIONS AND LIMITATIONS RELATING TO MATTERS SUCH AS 9-1-1 SERVICE, LIABILITY, WARRANTY AND CUSTOMER OBLIGATIONS. BY ACTIVATING OR USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS SET FORTH IN THIS AGREEMENT.

These Terms of Service constitute the agreement between you ("**you**" or "**Customer**") and IKTEL NETWORKS, (IKTEL NETWORKS IS TRADE NAME FOR ALANIK TECHNOLOGIES. ALANIK TECHNOLOGIES IS A REGISTERED UNDER PROVINCE OF ONTARIO, CANADA) ("**us**" or "**IKTEL**") that sets out the terms and conditions that apply to your use of all or any of the services (collectively, the "**Services**"), including high-speed Internet access ("**High Speed Services**"), Voice over Internet Protocol services ("**VoIP Services**") and related software, equipment and components provided by IKTEL to you (collectively, the "**Equipment**").

By activating or using any Service, Equipment or user account with IKTEL with respect to the Services (your "**Account**"), you agree to be legally bound by and abide by the terms of this Agreement. **If you do not wish to be bound by this Agreement or any modifications which may be made by IKTEL from time to time (as described in Section 1), you may not activate or use any Service or Equipment and you must immediately contact IKTEL immediately to terminate your Account, if you have one, and this Agreement (see Section 36).**

### **1. Amendments to this Agreement**

IKTEL reserves the right to amend this Agreement at any time. IKTEL will use reasonable efforts to publish each amendment before such amendment becomes effective, but at all times ensure that the latest, fully amended version of this Agreement is published, on its website at <http://www.iktel.ca>, or such address as may be updated from time to time (the "**IKTEL Web Site**"). IKTEL may, but is not required to, advise you of such amendments by (a) sending you an electronic mail at the electronic mail address registered on your Account, or (b) or mailing notification by Canada Post to the address shown on your Account. **You are responsible for regularly reviewing the IKTEL Web Site to obtain timely notice of such amendments. If any amendment is unacceptable, you may terminate your Account and this Agreement pursuant to Section 36. If you do not terminate this Agreement before the effective date of the amendment, you will be conclusively deemed to have accepted the amendment.**

### **2. Legal Capacity**

You represent and warrant that you have reached the age of majority (at least 18 or 19 years of age) in the jurisdiction in which you reside and that you possess the legal right, capacity and ability to enter into this Agreement and use the Services in accordance with this Agreement.

### **3. Services**

The details of the various Services, including other products and services offered by IKTEL, can be found on the IKTEL Web Site. IKTEL may, from time to time at its sole discretion and without notice or liability, create, amend, change, or delete any Service, including changing pricing for any Services, introducing new Services, substituting old Services for new Services, changing any Service features and deleting any Services. If you do not agree with such changes, you may (as your sole remedy) terminate your Account pursuant to Section 36. The various Services offered by IKTEL include a variety of access speeds and features, such as varying tiers VoIP Services and High Speed Internet Services.

### **4. Term of Agreement**

Service is offered and paid for, and the term of this Agreement shall be, on a prescribed recurring basis (usually monthly, though certain Services are offered on different recurring periods) for a term that begins on the date that your Account is activated (your "**Billing Date**") and ends on the day before the same date in the following period (the "**Recurring Period**"). The Services, and this Agreement, will automatically renew for the same Recurring Period, at IKTEL's then-current rates and terms, without further action by either party unless this Agreement and the Account is terminated pursuant to Sections 36 through 40, inclusive. You acknowledge and agree that the Service is provided for the full Recurring Period, meaning that if you attempt to cancel the Services or terminate this Agreement prior to the end of the applicable Recurring Period, you will be responsible for all charges relating to the then-current Recurring Period, including unbilled charges, plus a disconnection fee (if applicable), an early cancellation fee for term-based Service contracts (if applicable), and a fee for any unreturned Equipment that is the property of IKTEL (if applicable), all of which will become immediately due and payable.

### **5. Content Warning**

You acknowledge that the Services provide access to content, information and materials that are uncensored. IKTEL makes no representation, express or implied, about such content, information or material. You acknowledge that some of the content, information and material that is available through the Services and the Internet may be inaccurate, offensive, harmful or in violation of applicable laws. You further acknowledge and agree that you and all those who use your Account or the Services are exclusively responsible for determining the accuracy, suitability, harmfulness or legality of any content, information or material received, transmitted or sent using the Services. Without limiting the foregoing, IKTEL recommends the following for parents or guardians of minors who may be using the Services: (a) advise each minor to never divulge personal information such as his or her name, phone number or address over the Internet or the Services, and to never organize meetings with other users of the Internet or the Services without your strict supervision; and (b) supervise the use of the Services by

minors and require that they inform you as to the materials and information that they access.

## **6. Your Account and Account Use**

The use of any Service requires a valid Account. Regardless of whether you are the Account-holder, your use of any Service shall at all times be governed by this Agreement; however, if you are not the Account-holder, you are only permitted to use the Services with the permission of the Account-holder.

7. If you are the Account-holder, you are responsible for your Account and the maintenance, confidentiality and security of your Account and all passwords related to your Account. You are solely responsible and liable for any and all activities that occur under your Account, including all activities of any sub-Account holders and persons who gain access to your Account, whether with or without your permission. You agree to immediately notify IKTEL of (a) any unauthorized use of your Account, any Service provided through your Account or any password related to your Account, or (b) any other breach of security with respect to your Account or any Service provided through it, and you further agree to provide assistance to IKTEL, as requested, to stop or remedy any breach of security related to your Account.

## **8. Customer Information and Privacy**

You acknowledge that you have read the IKTEL Privacy Commitment at <http://www.iktel.ca/privacy>, as it may be updated from time to time (the "**IKTEL Privacy Commitment**"), and hereby consent to the collection, use and disclosure by IKTEL and its agents of your personal information (whether previously collected or to be collected) for the purposes identified in the IKTEL Privacy Commitment. You also consent to IKTEL's use of such personal information in accordance with applicable terms and conditions contained in this Agreement.

9. You agree to provide true, current, accurate and complete customer information as prompted by IKTEL's registration or Account-creation process or as

otherwise requested by IKTEL or its agents from time to time and you agree to promptly notify IKTEL of any changes to this information as required to keep such information held by IKTEL current, complete and accurate. For greater continuity of Service, you must update your Account information at least 7 days prior to any change (see Section 16(b)(iii) for how this affects emergency calls for VoIP Services). Your customer information and other details about your Account and the Services are available online at IKTEL's My Account <http://www.iktel.ca/online/index.php>.

## **10. Billing and Payment**

It is the responsibility of the customer to read and understand the following billing policies (the "**Billing Policies**"). IKTEL reserves the right to change the Billing Policies at our discretion and without notice in accordance with Section 1. The Billing Policies are set out in this Section 10:

a. **Fees.** As an Account-holder, you hereby agree to pay such fees, including all applicable taxes, incurred by the use of any Service in arrears upon demand by IKTEL, all of which shall be charged to you in accordance with the rates and conditions established by IKTEL for the Service and as such rates and conditions may be amended by IKTEL from time to time in accordance with this Agreement. Such rates and fees will be posted on the IKTEL Web Site or otherwise made available to you by IKTEL. Typically, an account will incur two types of fees:

- i. Service-Based Fees-recurring, periodic Service fees based on the Services you have selected (please refer to your invoices, My Account, and the IKTEL Web Site for specific characteristics of your Services); and
- ii. Usage-Based Fees and other Fees-depending on the Services to which you subscribe, fees based on usage (such as the number of hours or minutes used, the amount of data sent or received, or the destination or location of data transmitted and received) or other fees described in this Agreement (such as late fees or suspension fees on delinquent accounts).

You remain responsible for all unauthorized use of your Account until you notify IKTEL in accordance with this Agreement.

b. **Billing and Invoices.** Accounts are invoiced on your Billing Date, and invoices are generated and sent electronically via e-mail. Your Service fees will be invoiced and billed in advance and must be paid in advance of each Recurring Period. Your usage-based fees for previous Recurring Period's Services will appear on your invoice separately and are invoiced and payable separately in arrears. For greater clarity, this means that you shall pay a periodic Service fee in advance at the beginning of each Recurring Period, together with any usage charges or other fees from previous Recurring Periods. Any failure of IKTEL to provide you with a bill or invoice pursuant to this Agreement does not affect your responsibility to pay any incurred charges.

c. **Payments and Payment Methods.** All amounts invoiced are due and payable upon receipt of said invoice. The following pre-authorized or automatic payment options are available to you:

i. **Credit Card.** Automatic monthly payments may be made using major credit cards: Visa, MasterCard or American Express. It is your responsibility to notify IKTEL promptly of any changes to your credit card payment information prior to your next Billing Date. To sign up for automatic monthly credit card payments, you may complete the Credit Card payment process available online through the Control Panel if your Account has already been activated.

ii. **By Cheque or Money Order.** You may mail a cheque payable to ALANIK TECHNOLOGIES along with your invoice stub, to ALANIK TECHNOLOGIES, B-7116 MCLEOD ROAD, NIAGARA FALLS, ON, L2G 3H2

Contact our billing department for more information or to sign up for or withdraw from any particular method of payment. Available billing and payment options may vary

depending on your location, the Services you receive or your plan, and IKTEL reserves the right to modify the types of payment it will accept, at any time, in its sole discretion.

**d. New Accounts.** All Account invoices are payable immediately upon issuance, via e-mail or other method as may be provided. If you are set up for credit or Pre-Authorized Payments, these amounts will be automatically taken care of by your credit card company or banking institution. If these payments are declined, you will be notified by our Billing department. Your Service may be suspended at IKTEL's sole discretion until such time as IKTEL receives full payment.

**e. Late, Rejected and Unpaid Amounts.**

i. **Rejected Payments.** If any payment you make is rejected or returned for any reason, IKTEL will charge a \$35 (\$20 for pre-authorized payment) processing fee to your Account, and your Account may be subject to suspension at IKTEL's sole discretion (A) for cheque payment methods, if not fully paid within 2 weeks of IKTEL's notice to you of such a rejection, and (B) for pre-authorized debit, within 1 week of IKTEL's notice to you of such a rejection and, (C) for other payment methods, immediately.

ii. **Unpaid Accounts, Late Fees, and Delinquency Fee.** Any outstanding balance on your Account (including accumulated late fees) unpaid for 30 days after the invoice date will accrue late fees (commencing on the invoice date) at a rate of 1.5% per month, (19.56% per annum compounded) on the total amount overdue.

iii. **Suspension of Unpaid Accounts.** If there is an unpaid balance on your Account over 28 days in arrears, IKTEL reserves the right to suspend your Account or Services or your access thereto until you make such arrangements to pay the balance owing in full, without affecting your obligation to pay all amounts outstanding. To reactivate a suspended Account, the full outstanding balance must be paid. Furthermore, IKTEL may require a particular payment method be used for all future payments. Any Accounts outstanding for more than 90 days will be sent to collections and will be subject to other collection charges.

iv. **Collection.** You agree to pay all costs incurred by IKTEL in the collection of any delinquent charges due under this Agreement or in the enforcement of this Agreement, including lawyers' fees. As outlined in the IKTEL Privacy Commitment, IKTEL may release customer information to a collection agency for collection purposes only, as IKTEL does not sell personal information.

f. **Service Plan or Payment Plan Changes.** If you upgrade your Services, your Recurring Period will be pro-rated and the new Services will take effect immediately. Any adjustments made to your Account or the Services you receive can only be made by the authorized Account holder or other authorized person listed on your Account. At the time you sign up for a different method of payment, your Recurring Period will be pro-rated accordingly, meaning that changes in your method of payment will go into effect immediately.

**g. Username Change/E-mail Address Change.** Your Account will have one or more usernames or e-mail addresses associated with it (each a "Username"). You can change your Username at any time. A password must be provided with the new Username being activated. The user passwords associated with your Username may be changed at any time free of charge. You must back up any data associated with your Account, such as web-hosted materials, before changing any Username.

**h. Cancellations.** To cancel an Account or any Service, the authoritative Account holder must give notice of cancellation in accordance with Section 36 by e-mail, fax, letter, telephone call or online submission. All Accounts will have the cancellation made effective at the end of the Recurring Period in which the request is received in accordance with this Section 10(i) and Section 36. For greater clarity, Service fees will not be calculated on a prorated basis for any Recurring Period.

**i. Services Used.** You, the Account-holder, shall be responsible for all usage charges on your Account, whether incurred by you or other users. It is yours, and not IKTEL's, responsibility to track the use of your Account, including tracking any measurable units or charges that may be used in relation to your Account.

**j. Limitation Period for Billing Disputes.** Unless you notify IKTEL of any errors, discrepancies or irregularities in any billing within 30 days after they first appear on your bill or invoice, such bill or invoice will be deemed accepted by you for all purposes and you agree to release IKTEL from any and all liability and claims of loss resulting from such errors, discrepancies or irregularities.

**11.** Your right to use the Services is subject to any limits established by your credit card issuer or financial institution, if applicable. By using a credit card, pre-authorized payment, bank account withdrawal, Bank Account Debit, or other payment method you expressly authorize IKTEL or its agents to charge all fees and charges incurred by you under this Agreement to such payment method and such authorization will survive termination of this Agreement until there are no charges owing by you under this Agreement.

## **12. Service Limitations**

The following provisions apply with respect to all Services:

**a. General Practices and Limits.** You acknowledge that IKTEL may establish general practices and limits concerning the use of the Services, including: the maximum size of any e-mail message or other data that may be sent from or received by an Account; the maximum disk space that will be allotted on IKTEL's servers on your behalf; the maximum amount of data, speed of data or type of data that may be sent from or received using the Services or Account; and the maximum number of days that e-mail messages, voice messages or other data will be stored on IKTEL's servers. Such general practices and limits shall be posted on the IKTEL Web Site or otherwise made available to you, and you agree to comply with all such general practices and limits, regardless of when or how such limits are conveyed to you. You acknowledge that such general practices and

limits may differ for different portions of the Services and may be set at different levels for different users based upon factors that may be determined in IKTEL's sole discretion. IKTEL reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice. You further agree that violating such practices or exceeding such limits may result in suspension, restriction or termination of your Account or the imposition of additional charges.

**b. Availability.** All Services are subject to the availability of suitable equipment, facilities and infrastructure and consequently all Services are not available at all locations.

**c. Virus, Spam and Spyware Protection.** For any Services for which any of virus protection, spam control, or spyware protection are offered, you acknowledge and agree that these features are network-level services that attempt to filter such content before reaching your equipment; however, such features will not protect your equipment from any malicious, surreptitious or disabling code, virus, Trojan horse, spyware or spam that are able to circumvent such filters.

**d. Internet-based Services.** The Services depend on the Internet, including networks, cabling, facilities and equipment that is not in the control of IKTEL; accordingly (i) any representation made by IKTEL regarding access performance, speeds, reliability, availability, use or consistency of the Services are on a "commercial best efforts" basis, (ii) IKTEL cannot guarantee any minimum level regarding such performance, speed, reliability, availability, use or consistency, and (iii) data, messages, information or materials sent over the Internet (such as calls made using VoIP Services, or e-mail messages sent or received) may not be completely private, and your anonymity is not guaranteed.

**e. Interoperability.** IKTEL does not guarantee or make any representation or warranty that any Service will operate with any particular equipment or software, including all Internet applications and appliances. It is your responsibility to ensure that your equipment and software meet the current minimum requirements specified from time to time by IKTEL as being necessary for access to any Service (however, compliance with such minimum requirements does not imply compatibility with the Services). From time to time, the equipment or software required to access the Services may change. Accordingly, your equipment or software may cease to be adequate to access the Services. In such circumstances, you may choose to upgrade your equipment or software, the cost of which will be borne by you, or you may choose to terminate your Account in accordance with Section 36.

**f. Compatibility.** The Services or any Equipment used to access the Services may interrupt the functioning of some home or business security systems or other devices that use the same phone line(s), communications hardware or protocols. You agree that IKTEL is not responsible for any such problems or interruptions. You are responsible for ensuring that your premises are appropriately wired to ensure proper functioning of any such security systems or other devices prior to installation of the Services.

### **15. High Speed Service-Specific Provisions**

Without limiting the generality of Section 12(a), High Speed Services have transfer rate limits as described in your Account plan. If your transfer rate exceeds these limits, extra fees may be charged per gigabyte or IKTEL may, at its sole discretion, terminate or suspend your Service or Account.

### **16. VoIP Service-Specific Provisions**

**THIS SECTION CONTAINS IMPORTANT PROVISIONS, INCLUDING THOSE REGARDING 911 ACCESS. PLEASE READ CAREFULLY.**

a. **Description.** VoIP Services allow you to make or receive telephone calls over the Internet to or from the public switched telephone network ("**VoIP Calls**"). The nature of VoIP Calls, while appearing similar to traditional telephone calling services, create unique limitations and circumstances, and you acknowledge and agree that differences exist between traditional telephone service and the VoIP Services, including the lack of traditional 911 services and privacy.

b. **911 Service.** Because of the unique nature of VoIP Calls, emergency calls to 911 through the VoIP Service (each a "**911 Call**") will be handled differently than traditional phone service. The following provisions describe the differences and limitations of 911 Calls, and you hereby acknowledge and understand the differences between traditional 911 service and VoIP Calls to 911 as described below:

i. **Placing 911 Calls.** When you make a 911 Call, the VoIP Service will attempt to automatically route your 911 Call through a third party service provider to the Public Safety Answering Point ("**PSAP**") corresponding to the address on record with your account. However, due to the limitations of the VoIP System, your 911 Call may be routed to a different location than that which would be used for traditional 911 dialling. For example, your call may be forwarded to a third-party, specialized call centre that handles emergency calls. This call centre is different from the PSAP that would answer a traditional 911 call, and you may be required to provide your name, address, and telephone number to the call centre.

ii. **How Your Information is Provided.** The VoIP Service will attempt to automatically provide the PSAP dispatcher or emergency service operator (each a "**Dispatcher**") with the name, address and telephone number associated with your Account. However, for technical reasons, the Dispatcher may not be able to capture or retain your name, phone number or physical location. Therefore, when making a 911 Call, you must immediately inform the Dispatcher of your location (or the location of the emergency, if different). If you are unable to speak, the Dispatcher may not be able to locate you.

iii. **Correctness of Information.** As stated in Section 9, you are responsible for providing; maintaining and updating correct contact information (including name, residential address and telephone number) with your Account. If you do not correctly identify the actual location where your Service Access Device (defined in Section 21) is located, or if your Account information has recently changed, 911 Calls may be misdirected to an incorrect Dispatcher.

iv. **Disconnections.** You must not disconnect the 911 Call until told to do so by the dispatcher, as the dispatcher may not have your number or contact information. If you are inadvertently disconnected, you must call back immediately.

v. **Connection Time.** For technical reasons, including network congestion, it is possible that a 911 Call will produce a busy signal or will take longer to connect when compared with traditional calls.

vi. **911 Calls May Not Function.** For technical reasons, the functionality of 911 Calls may cease or be curtailed in various circumstances, including:

**A. Failure of Service or Service Access Device-**if your Service Access Device (defined in Section 21) fails or is not configured correctly or if your VoIP Service is not functioning for any reason, including in the event of power outage, VoIP Service outage, suspension or disconnection of your Service due to billing issues, network or Internet congestion, or network or Internet outage, in the event of a power, network or Internet outage, you may need to reset or reconfigure the Service Access Device before being able to use the VoIP Service, including for 911 Calls;

**B. Changing Location of Service Access Device-**if you move your Service Access Device (defined in Section 21) to a location other than that described in your Account information or otherwise on record with IKTEL; and

**C. Use outside of Canada or the United States-**if you move your System Access Device (defined in Section 21) to a location other than the United States or Canada, excluding Alaska, Hawaii, the Northwest Territories, Yukon and Nunavut.

vii. **Alternate Services.** If you are not comfortable with the limitations of 911 Calls, IKTEL recommends that you terminate the Services or consider an alternate means for accessing traditional 911 services.

viii. **Inform Other Users.** You are responsible for notifying, and you agree to notify, any user of your VoIP Services of the nature and limitations of 911 Calls on the VoIP Services as described herein.

ix. **No Liability and Indemnity.** In accordance with Section 32, you acknowledge and agree that IKTEL will not be liable for any service outage or inability to place 911 Calls using your VoIP Service or to access emergency service personnel due to the limitations of 911 service described herein. You further acknowledge and agree that the indemnity provision of Section 35 applies to 911 Calls.

c. **Privacy.** You acknowledge that VoIP Calls and VoIP Services utilize, in whole or in part, the public Internet and third party networks to transmit voice and other communications, which transmissions may be intercepted by other parties.

d. **411 Service.** 411 "information" service is available at IKTEL's current rates as set from time to time in IKTEL's sole discretion and without notice and available at the IKTEL Web Site.

e. **900 and 976 Numbers.** VoIP Calls to certain special service phone numbers, including 900- and 976- numbers, may be limited and IKTEL reserves the right to limit your ability to call any such number at its discretion.

f. **Long Distance Services.** Sections 17 and 18, relating to long distance service, are applicable to VoIP Services.

**g. Telephone Number Portability.** You may be able to transfer an existing telephone number to your VoIP Service or your VoIP Service telephone number to another service provider, provided that your Account is in good standing. However, IKTEL will not be responsible for any termination fees imposed by any other service provider as a result of you transferring or instructing IKTEL to transfer your existing number to the Services. IKTEL cannot guarantee or warrant the timeliness or date of any transfer, nor can it guarantee that you will be able to transfer your number.

**h. Directory Services.** IKTEL will make your name, address and telephone numbers available to publishers of paper and electronic telephone directories and to providers of operator services, in accordance with legal, contractual or regulatory requirements.

**i. Limit on Usage Patterns.** Even for unlimited calling plans, IKTEL, in its sole discretion, reserves the right to terminate, curtail or suspend your VoIP Services if your calling patterns materially exceed IKTEL's average customer calling patterns under similar plans or if you breach any part of this Agreement.

**j. Bandwidth Usage.** VoIP calls require high-speed Internet bandwidth, which may affect throughput over any High Speed Services and will count towards your bandwidth usage for all High Speed Services.

**k. Specific Prohibitions.** You are prohibited from using any VoIP Services for: (i) automatic-dialling announcing devices and unsolicited voice and facsimile calls made for the purpose of solicitation; (ii) non-residential use or operating a business, including home-based businesses and call centres; (iii) long-distance calls made using call forwarding and three-way calling features; (iv) multi-party conference or party lines; or (v) any application with continuous or excessive calling patterns, including debit card processing, for auto-dialling, remote call forwarding, telemarketing (including charitable and political solicitation and polling), fax broadcasting or fax blasting.

## **17. Long-Distance Call-Specific Provisions**

**Rates and Fees.** Some of the Services include the ability for you to place long-distance telephone calls. By dialling or placing a long-distance telephone call, you agree to pay IKTEL's then-current rates and fees for such calls. IKTEL will make its rates and fees for long-distance telephone calls available on its website at <http://phone.iktel.ca>. IKTEL may, in its sole discretion, change such rates and fees upon at least 30 days prior notice posted at such website.

## **18. Free phone and Unlimited Long-Distance Plan Limitations and Prohibitions.**

Even for unlimited long-distance plans, IKTEL, in its sole discretion, reserves the right to terminate, curtail or suspend your long-distance telephone Services if your calling patterns materially exceed IKTEL's average customer calling patterns under similar plans or if you breach any part of this Agreement. Furthermore, you are prohibited from using unlimited long-distance Services or plans for: (a) automatic-dialling announcing devices and unsolicited voice and facsimile calls made for the purpose of solicitation; (b) non-residential use or operating a business, including home-based businesses and call centres; (c) long-distance calls made using call forwarding and three-way calling features; (d) multi-party conference or party lines; or (e) any application with continuous or excessive calling patterns, including debit card processing, for auto-dialling, remote call

forwarding, telemarketing (including charitable and political solicitation and polling), fax broadcasting or fax blasting.

## **19. Support**

The IKTEL Customer Support Team will provide telephone assistance on a reasonable efforts basis, via the telephone number and during the hours specified on the IKTEL Web Site. Assistance is limited to your problems using the Services or your Account and may exclude problems related to certain equipment and software, as specified by IKTEL, in its discretion. IKTEL cannot guarantee the resolution of any particular problem or Services interruption, and your sole remedy in the event of your dissatisfaction or IKTEL's failure to resolve any particular problem is to terminate the Agreement in accordance herewith.

## **20. Service Installation, Maintenance and Removals**

The following provisions apply to all installations, maintenance, inspections, repairs or removals of any Service or Equipment, whether by you or by a third party or on behalf of IKTEL:

a. **Installation Services.** The standard installation configuration for self-installation or IKTEL installation only includes the installation of the Service access device, such as a high speed modem for High Speed Services or a combination modem/ATA for VoIP Services (the "**Service Access Device**"), and related components to one stand-alone computer or non-networked server. If you wish to connect additional computers to the Internet or to your home network, you are responsible for installing and maintaining the necessary systems and their configurations. You are required to show that your equipment is functioning properly prior to IKTEL doing any work on your equipment (where applicable).

b. **Hardware/Software Requirements.** Many Services require you to have suitable hardware (such as a network interface card) or software (such as an operating system) installed in your computer before accessing the Services is possible, and IKTEL will not install, remove from or rearrange any such software or hardware unless expressly provided for hereunder or at IKTEL's sole discretion. You acknowledge and agree that IKTEL is not responsible for the installation, operation, maintenance or support of any equipment or software owned or used by you, including any equipment or software used in connection with the Services.

c. **Access.** By electing for any installation services provided by or on behalf of IKTEL, you authorize IKTEL, its employees, agents, contractors and representatives, to enter your premises and access your equipment and software for the purpose of installing, maintaining, inspecting, repairing or removing any equipment or software as reasonably required for the provision of the Services.

d. **Time of Access.** IKTEL will exert commercially reasonable efforts to arrange for access to your premises at a time that is mutually convenient for you and IKTEL.

e. **Availability.** You acknowledge and agree that final confirmation of Service availability cannot occur until the necessary equipment is installed at your premises and tested in such environment. Installation options available for certain Services, including High Speed Services and VoIP Services will depend upon your location. Not all installation options or Services are available at all locations.

f. **Standards.** At all times, you must provide: (i) an adequate, standard household power outlet within 1.8 metres of the location that the Service Access Device is to be installed; (ii) a suitable location for the installation of the Service Access Device and associated components within 1.8 metres of the computer to be used for access to the Services and that provides reasonable ventilation and protection from damage to, or theft or loss of, the Service Access Device and associated components.

g. **Additional Charges.** Additional charges shall apply when it is necessary for IKTEL to install special equipment or software or to incur an unusual expense to establish or install the Services. All site visits for moves, changes, rearrangements or re-installations of a Service will involve a minimum charge, unless otherwise specified by IKTEL.

h. **No liability.** In accordance with IKTEL's exclusion of liability to you as described in Section 32, IKTEL recommends that you back-up all existing computer files by copying them to a different storage device prior to the installation or maintenance of any Services, software, Service Access Devices or related components.

## **21. IKTEL Equipment**

If IKTEL provides you with any Equipment, including Service Access Devices or related components, as part of the Services (collectively, "**IKTEL Equipment**"), you acknowledge and agree that such IKTEL Equipment are at all times owned by IKTEL and that nothing in this Agreement grants you any right, title or interest in or to such IKTEL Equipment except as expressly set out herein. You hereby agree not to sell, transfer, lease, assign any interest in, or encumber all or any part of such IKTEL Equipment.

**22.** You agree that all IKTEL Equipment is exclusively for use in connection with the Service. You agree not to tamper or modify the device in any manner including changing the electronic serial number or other identification code of such IKTEL Equipment, altering the firmware of such IKTEL Equipment or performing factory resets. You agree to use all IKTEL Equipment in the manner and for the purpose for which it was intended and solely as expressly permitted under this Agreement.

**23.** IKTEL Equipment must be returned in accordance with Section 40 upon termination, cancellation or deactivation of your Account or Services for any reason.

**24.** You agree not to access the Service with any Equipment or device that has been modified, tampered, or altered to (a) change the electronic serial number or identification code, or (b) circumvent any access controls, limitations or security mechanisms in connection with the Service.

## **25. Software Supplied by IKTEL**

You agree that any and all software and documentation that forms part of the Services or that is supplied by IKTEL, its agents or representatives for use in connection with the Services (the "Software") is protected by applicable intellectual property laws, remains the sole property of IKTEL or its suppliers and is supplied subject to the terms of this Agreement, including the Disclaimers and Limitations of Liability herein, and the terms of any applicable software license made available to you by IKTEL. Unless otherwise expressly authorized by IKTEL or in the applicable Software license, you agree not to: a. copy, modify, rent, lease, loan, sell, assign, sublicense, grant a security interest in or otherwise transfer any right or interest in the Software;

- b. distribute, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover the source code, of the Software;
- c. remove any proprietary notices or labels on or in the Software; or
- d. allow any other person or entity to engage in any of the foregoing activities.

## **26. Acceptable Use and Prohibitions**

You agree to fully abide by each of the following terms and conditions regarding the acceptable and prohibited use of the Services:

a. **Background.** IKTEL is committed to being the best possible network citizen. To assist us in protecting the usefulness and enjoyment of the Internet and the Services for our members and for other users, we require full compliance with these acceptable use provisions.

b. **Lawful Use.** The Services may be used only for lawful purposes.

c. **Prohibited Conduct.** Without limiting the generality of the foregoing, you further agree that you will not:

- i. post, upload, reproduce, distribute or otherwise transmit (A) unauthorized or unsolicited commercial e-mail, junk or bulk e-mail, chain letters or other "spam" (whether or not using e-mail services, such as Instant Messaging spam) or any other duplicative or unsolicited messages, surveys, contests or pyramid schemes, (B) any information, material or software that contains a virus, cancelbot, Trojan horse, worm or other harmful, disruptive or surreptitious component, (C) inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful material or information, (D) information or materials where such activity gives rise to civil liability, or otherwise violates the rights or assists others to violate the rights of IKTEL or any third party; such violations include engaging in copyright infringement, invasion of privacy, trademark infringement and defamation, or (E) information or materials where such activity constitutes a criminal offence, or otherwise engage in or assist others to engage in any criminal offence; such offences include communicating hatred, pyramid selling, unauthorized use of a computer, mischief in relation to data, fraud, obscenity and child pornography;
- ii. engage in threats, harassment, intimidation, stalking or abuse or any conduct that violates the legal rights of others, including the rights of minors and rights relating to privacy and publicity;
- iii. scan or probe another computer system, obstruct or bypass computer identification procedures or engage in unauthorized computer or network trespass;
- iv. forge headers or otherwise manipulate any protocols or identifiers used in any system or protocol in such a manner to disguise the origin of any data transmitted using the Services;
- v. impersonate or falsely represent your association with any person, including a IKTEL representative;
- vi. export equipment (including the IKTEL Equipment, any Service Access Device and related components), software or data outside of Canada or the United States in contravention of applicable export control legislation;

- vii. violate established or accepted network etiquette, applicable charters, FAQs, policies, rules or guidelines of IKTEL or other parties;
- viii. disrupt or threaten the integrity, operation or security of any Service, any computer or any Internet system;
- ix. engage in conduct that elicits or is likely to elicit complaints from other Internet users, restricts or inhibits any other person from enjoying the Service or the Internet, or, in the sole judgement of IKTEL, is otherwise objectionable;
- x. violate this Agreement as it may be updated from time to time;
- xi. use or register IKTEL's trade-marks, trade names or logos, including any such trade-marks, logos or service marks displayed on any web site(s) operated by IKTEL, without IKTEL's express prior written permission;
- xii. share, resell, reproduce, copy, distribute, redistribute, or exploit for any commercial purposes, any portion of, use of or access to, any Service, except where expressly authorized by IKTEL;
- xiii. extract, gather, collect, or store personal information about others without their express consent; or
- xiv. allow any other person or entity to engage in any of the foregoing activities while using your Account.

**d. No Servers.** You are not permitted to operate an e-mail, web, news or other similar server for any purpose through any Service, except as may be specified by IKTEL from time to time in its sole discretion.

**e. Notification regarding Prohibited Use.** If at any time you become aware of any violation, by any person or entity, of the acceptable use rules set out above, which involves your Account, you agree to immediately notify IKTEL and provide IKTEL with assistance, as requested, to stop or remedy such violation.

**f. IKTEL's Remedies.** Without limiting any of IKTEL's rights to suspend, restrict or terminate your Services or Account as described elsewhere in this Agreement, IKTEL may suspend, restrict or terminate your Services or Account without notice if, in IKTEL's sole and absolute discretion, IKTEL determines or believes that you have violated any of the acceptable use rules set out above.

## **27. Proprietary Rights**

You acknowledge and agree that:

**a. Third-Party Content**-content, including text, software, music, sound, photographs, video, graphics or other material accessed or available through the Services or the Internet may be owned by parties other than you (including IKTEL and third parties) and may be protected by applicable copyrights, trade-marks, patents, trade secrets or other proprietary rights and laws;

**b. IKTEL Content**-except where expressly stated otherwise, all programs, Services, processes, designs, technologies, materials and all other things comprising the Services are owned by IKTEL, its licensors or its suppliers and are protected by applicable copyrights, trade-marks, patents, trade secrets or other proprietary rights and laws;

c. **Your Content**-IKTEL does not claim ownership of information, materials, software or other content (collectively, the "Customer Content") that you post, upload, input, provide, submit or otherwise transmit to IKTEL, or any third party using the Services; however, you agree that by posting, uploading, inputting, providing, submitting or otherwise transmitting the Customer Content to IKTEL or any third party using the Services, you have thereby granted IKTEL a royalty-free, non-exclusive license to use, copy, distribute, transmit, display, edit, delete, publish and translate such Customer Content to the extent reasonably required by IKTEL to provide the Services to its customers or to ensure adherence to or enforce the terms of this Agreement;

d. **IP Addresses; E-Mail Addresses; Telephone Numbers, etc.**- except where otherwise specified by IKTEL, telephone numbers for VoIP Services and numbers and addresses for other Services (such as both static and dynamic IP addresses and e-mail addresses) assigned to you by IKTEL during the term of this Agreement remain the property of IKTEL at all times and IKTEL reserves the right to change such telephone numbers, numbers and addresses assigned to you at any time;

e. **Advertising**-IKTEL shall have the right, without notice, to insert advertising data into the Internet browser used by a UNSERVE customer, and transferred to a IKTEL customer over IKTEL's network, so long as this does not involve IKTEL transmitting any personal information of the customer to whom such data is sent in contravention of the IKTEL Privacy Commitment;

f. **Public Transmission**-the technical processing and transmission of the Services, including the Customer Content and other content, materials or other information, may involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices; and

g. **Caching**-You further acknowledge that any Customer Content, materials or information that you may access through the Services may be subject to "caching" or other policies and procedures at intermediate locations on the Internet.

## **28. Compliance Measures and Complaints**

You acknowledge and agree that IKTEL has no obligation to censor or monitor use of the Services by you, any customer or any third party, including any obligation to censor or monitor any Customer Content, material or other information sent, received or accessible by you through the Services or the Internet. However, you agree that IKTEL has the right to, without notice, monitor use of the Services and monitor, review and retain such Customer Content, material or information if IKTEL reasonably believes that such activity is reasonably necessary to provide the Services to customers, ensure adherence to or enforce the terms of this Agreement, comply with any laws or regulations, respond to any allegation of illegal conduct or claimed violation of third party rights, or protect you, itself or others.

**29.** If IKTEL receives a complaint relating to use of the Services by you or through your Account, you acknowledge and agree that IKTEL may, in its sole and absolute discretion and without notice or liability: investigate the complaint; restrict, suspend or terminate any Accounts or Services involved; or remove any Customer Content, information or materials from its servers.

**30. DISCLAIMERS AND LIMITS OF LIABILITY**

**CUSTOMER ACKNOWLEDGEMENT-YOU ACKNOWLEDGE AND AGREE THAT:** (A) ALL USE OF THE SERVICES IS AT YOUR OWN RISK; (B) THE IKTEL WEB SITE(S) WHICH YOU MAY VISIT WHILE USING THE SERVICES MAY CONTAIN LINKS TO OTHER WEB SITES. THESE LINKS ARE PROVIDED SOLELY AS A CONVENIENCE TO YOU AND THE INCLUSION OF ANY SUCH LINK DOES NOT IMPLY ENDORSEMENT, INVESTIGATION OR VERIFICATION BY IKTEL OF SUCH WEB SITES OR THE INFORMATION CONTAINED THEREIN; AND (C) THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

**31. DISCLAIMER OF WARRANTIES-IKTEL MAKES NO CONDITIONS, WARRANTIES OR REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, USABILITY, SECURITY, QUALITY, CAPACITY, PERFORMANCE, AVAILABILITY, TIMELINESS OR ACCURACY OF THE SERVICES, ANY OTHER PRODUCTS OR SERVICES SUPPLIED UNDER THIS AGREEMENT, THE NETWORKS OF THIRD PARTIES OR ANY CONTENT SENT OR RECEIVED USING OR THROUGH THE SERVICES. IKTEL EXPRESSLY DISCLAIMS ALL CONDITIONS, WARRANTIES AND REPRESENTATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE AND NON-INFRINGEMENT, WHETHER ARISING BY USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE OR OTHERWISE.**

**32. NO LIABILITY-NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL IKTEL, ITS PARENTS, SUBSIDIARIES, AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUPPLIERS, RESELLERS AND DISTRIBUTORS (COLLECTIVELY, THE "IKTEL ENTITIES") BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY OTHER DAMAGES OR LOSSES WHATSOEVER, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OPPORTUNITY, EARNINGS, USE OR DATA, ARISING DIRECTLY OR INDIRECTLY FROM OR RELATED TO THIS AGREEMENT OR THE USE, NON-USE, OR INSTALLATION OF THE SERVICES OR ANY SOFTWARE OR SERVICE ACCESS DEVICE OR RELATED COMPONENTS, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF ONE OR MORE OF THE IKTEL ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, INCLUDING DAMAGES OR LOSSES ARISING FROM OR IN ANY WAY RELATED TO THE FOLLOWING:**

- a. 911 SERVICE OUTAGE, DELAYS, ERRORS OR OMISSIONS OR YOUR INABILITY TO (I) PLACE 911 CALLS USING YOUR SERVICES OR (II) ACCESS EMERGENCY SERVICE PERSONNEL;
- b. SENDING, RECEIVING, NOT SENDING, NOT RECEIVING, LOSS, DELETION OR ALTERATION OF ANY TRANSMISSIONS OR DATA, INCLUDING ANY 911 CALLS, E-MAIL MESSAGES OR TELEPHONE OR VOIP TRANSMISSIONS, OR FOR ANY TRANSACTIONS ENTERED INTO THROUGH OR USING THE SERVICES, INCLUDING DOMAIN NAME REGISTRATIONS, RENEWALS AND TRANSFERS;
- c. ANY SUSPENSION, CURTAILMENT, RESTRICTION, TERMINATION OR OTHER LIMITATION PLACED ON YOUR SERVICES OR YOUR ACCOUNT;
- d. ANY ACT OR OMISSION OF YOU OR ANY THIRD PARTY, INCLUDING ANY THREATENING, DEFAMATORY, OBSCENE, OFFENSIVE OR ILLEGAL CONDUCT OR ANY INFRINGEMENT OF ANOTHER'S RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS;
- e. ANY LOSS OR DAMAGE TO YOUR EQUIPMENT, SOFTWARE OR DATA ARISING DIRECTLY OR INDIRECTLY OUT OF USE OR NON-USE OF THE SERVICES OR ANY SERVICE ACCESS DEVICE OR RELATED COMPONENT;
- f. THE PERFORMANCE OF THE INTERNET OR THE SERVICES;
- g. THE CONTENT OR ACCURACY OF ANY MATERIAL, INFORMATION OR DATA (INCLUDING ANY SOFTWARE) RELATED TO THIS AGREEMENT OR VIEWED, DOWNLOADED, ACCESSED OR TRANSMITTED USING, OVER OR THROUGH THE INTERNET OR THE SERVICES, INCLUDING MATERIAL WHICH INFRINGES THE RIGHTS OF OTHERS OR OTHERWISE VIOLATES LAWS OR REGULATIONS;
- h. THE VIEWING, DOWNLOADING, TRANSMITTING, ACCESSING, PURCHASING OR BY ANY OTHER MEANS ACQUIRING ANY INFORMATION, MATERIAL, PRODUCT OR SERVICE ACCESSIBLE THROUGH THE INTERNET OR THE SERVICES;
- i. DELAYS, ERRORS, INTERRUPTIONS, MISTAKES, OMISSIONS, NON-DELIVERY, INCORRECT DELIVERY, VIRUSES, TROJAN HORSES, SPYWARE, SPAM OR DEFECTS IN THE TRANSMISSION OF ANY INFORMATION, MATERIAL OR DATA OVER OR THROUGH IKTEL'S SYSTEMS OR NETWORKS OR THE SYSTEMS OR NETWORKS OF THIRD PARTIES; AND
- j. INSTALLATION OR MAINTENANCE OF THE SERVICES, WHETHER BY YOU, IKTEL OR THIRD PARTIES, INCLUDING IF AN INSTALLATION APPOINTMENT FOR THE SERVICES IS MISSED, EITHER BY IKTEL OR BY ANY THIRD PARTY INSTALLER.

**33. LIMITATION OF LIABILITY**-WITHOUT RESTRICTING THE FOREGOING, CIRCUMSTANCES MAY ARISE IN WHICH YOU OR ANOTHER PARTY IS ENTITLED TO RECOVER DAMAGES FROM ONE OR MORE OF THE IKTEL ENTITIES. IN SUCH INSTANCE, THE AGGREGATE LIABILITY OF THE IKTEL ENTITIES FOR DAMAGES IS LIMITED TO \$100.00.

**34. APPLICABILITY-SOME JURISDICTIONS PROHIBIT THE DISCLAIMER OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OF CERTAIN TYPES OF LIABILITY. IN SUCH CIRCUMSTANCES, TO THE EXTENT THAT SUCH PROHIBITIONS PROHIBIT ANY EXCLUSIONS AND LIMITATIONS IN THIS AGREEMENT, SUCH EXCLUSIONS AND LIMITATIONS WILL NOT APPLY TO YOU STRICTLY TO THE EXTENT NECESSARY TO MAKE THIS AGREEMENT CONSISTENT WITH SUCH PROHIBITIONS.**

**35. INDEMNITY-YOU AGREE TO INDEMNIFY AND HOLD HARMLESS EACH OF THE IKTEL ENTITIES FROM ALL DEMANDS, CLAIMS, AWARDS, ACTIONS, PROCEEDINGS, DAMAGES, LOSSES, COSTS, CHARGES AND EXPENSES, INCLUDING LEGAL FEES, INCURRED BY OR MADE AGAINST ANY OF THE IKTEL ENTITIES, WHICH RESULT FROM OR RELATE TO:**

- a. ANY FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO 911 CALLS;
- b. ACCESS TO OR USE, BY YOU OR ANY THIRD PARTY, OF THE SERVICES, ANY SERVICE ACCESS DEVICE OR RELATED COMPONENTS, OR YOUR ACCOUNT; OR
- c. ANY OF YOUR ACTS OR OMISSIONS, INCLUDING BREACH OR NON-PERFORMANCE OF THIS AGREEMENT AND ANY VIOLATION OF THIRD PARTY RIGHTS.

### **36. Termination**

**Termination by You. Please be advised only the Account holder may terminate their Account.**

You may stop using the Services at any time, but IKTEL will continue to bill you until you terminate your Account or the Services in accordance with this provision. You may cancel your Account or any Services by:

- a. Cancelling direct with a IKTEL customer service agent by telephone, or sending a fax, e-mail or letter to IKTEL, at least 1 day prior to your next Billing Date and specifying the following: (i) your request for Account or Service termination; (ii) your name and contact telephone number; (iii) your Username and password; (iv) if a pre-authorized or automatic payment plan is used for your Account, the last 4 digits and expiry date of your credit card or the last 4 digits of your financial institution Account number and the name of the financial institution used for billing; and (v) your reason for terminating your Account.

IKTEL will process your termination request effective on the day immediately before the next Billing Date, provided IKTEL received your request at least the number of days specified in this Section 36 before that Billing Date.

**37. Termination by IKTEL.** IKTEL may, in its sole discretion, suspend, restrict or terminate your Services or your Account, effective at any time, without notice to you, for any reason, including because:

- a. the operation or efficiency of the Services or IKTEL's or any third party's equipment or network is impaired by the use of the Services from your Account;

- b. any amount is past due from you to IKTEL;
- c. IKTEL has received a third party complaint which relates to the use or misuse of the Services from your Account;
- d. you have been or are in breach of any term or condition of this Agreement; or
- e. the Account contains invalid contact information.

**38. Effect of Termination.** Subject to Section 51, termination of your Account by you or IKTEL automatically terminates this Agreement, but shall not relieve you from any amounts owing or other liability accruing under this Agreement prior to the time that such termination becomes effective. If your Account or any Service is suspended, restricted or terminated, IKTEL shall have no obligation to forward any unread or unsent messages to you or any third party or to maintain any messages, information or other Customer Content related to your Account and you acknowledge that all such messages, information and Customer Content may be immediately deleted. Without limiting the generality of the foregoing, you acknowledge that upon suspension, restriction or termination of your Account, all e-mail addresses related to your Account may be immediately deleted or reassigned to other customers.

**39. No Notice of Termination.** IKTEL shall have no responsibility to notify any third party, including any third party providers of services, merchandise or information, of any suspension, restriction or termination of your Account or any of your Services.

**40. Return of Equipment.** You agree to return any IKTEL Equipment to IKTEL within 30 days of termination (whether by cancellation, deactivation due to non-payment or any other reason) of your Account or those Services to which IKTEL Equipment relates, unless otherwise directed by IKTEL. If you do not return such IKTEL Equipment in accordance with the foregoing, if such IKTEL Equipment is returned damaged, or if you have assigned, encumbered, sold, transferred or leased such IKTEL Equipment, you agree to pay a replacement charge, plus applicable taxes, without limiting or affecting any right available to IKTEL in at law or in equity.

#### **41. General**

**Interpretation.** In this Agreement, any word is deemed to include the masculine, feminine, neuter, singular or plural form thereof as the context so required. The captions and headings used in this Agreement are for convenience only and do not constitute substantive matter and are not to be construed as interpreting the Customer Contents of this Agreement. The word "**including**", the word "**includes**" and the phrase "**such as**", when following a general statement or term (whether or not non-limiting language such as "without limitation" or "but not limited to" or other words of similar import are used with reference thereto), is not to be construed as limiting the general statement or term to any specific item or matter set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope, and the word "or" between two or more listed matters does not imply an exclusive relationship between the matters being connected.

**42. Waiver of Rights.** The failure of IKTEL to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between you and IKTEL nor trade practice shall act to modify any provision of this Agreement.

**43. Severability.** If any of the provisions of this Agreement or any part thereof shall be or held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provisions or parts thereof, and the rights and obligations of the parties shall be construed and enforced accordingly, with the invalid or unenforceable provisions or parts modified so as to be limited and enforced to the fullest extent possible.

**44. Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada. You hereby irrevocably consent to the exclusive jurisdiction of the courts of the Province of Ontario and the federal courts of Canada in connection with any matter arising under this Agreement.

**45. Limitation Period.** Any cause of action you may have with respect to this Agreement or the Services must be commenced within one year after the claim or cause of action arose, or it shall be barred.

**46. Internet References.** All references to IKTEL Web Site addresses in this Agreement shall also include any successor or replacement web sites containing substantially similar information as the referenced web site(s).

**47. Assignability.** IKTEL may at any time assign its rights and obligations under this Agreement, in whole or in part, without notice to you. You may not assign this Agreement.

**48. Inurement.** This Agreement will inure to the benefit of and bind you and IKTEL and our respective personal and legal representatives, successors and permitted assigns.

**49. Currency.** All monetary amounts expressed in this Agreement are in Canadian dollars, unless otherwise expressly stated.

**50. Remedies.** The rights, powers and remedies of IKTEL in this Agreement, including without limitation the right to suspend, restrict or terminate any Service or Account, are cumulative and in addition to and not in substitution for any right, power or remedy that may be available to IKTEL at law or in equity.

**51. Survival.** The following provisions shall survive termination of this Agreement: Sections 5, 10(a), 10(f), 10(g), 10(i), 10(j), 10(l), 10(m), 10(n), 11, 12, 13, 18, 19, 20, 22(h), 23, 27, 28, 29, 31, 32, 33, 34, 35, 36, 39, 40, 41, and 42 through 56 (inclusive) and

any other provisions that, by their meaning, are intended to survive termination of this Agreement.

52. **Relationship.** You agree that no joint venture, partnership, employment or agency relationship exists between IKTEL and you as a result of this Agreement or use of your Account or any Services.

53. **Force Majeure.** Neither party shall be responsible for a failure to fulfill its obligations under this Agreement or for delay in doing so if such failure or delay is due to circumstances beyond its reasonable control, such as acts of God, acts of government, war, riots, strikes and accidents in transportation (collectively, "Force Majeure").

54. **Entire Agreement.** This Agreement, as amended from time to time, including any and all documents, web sites, rules, terms and policies referenced herein, constitutes the entire agreement between IKTEL and you with respect to the matters referred to in this Agreement and supersedes all prior and contemporaneous agreements and understandings, whether electronic, oral or written, between IKTEL and you with respect to such matters.

55. **English Language.** The parties have requested and agree that this Agreement and all documents relating thereto be drawn up in English. *Les parties ont demandé que cette convention ainsi que tous les documents qui s'y rattachent soient rédigés en anglais.*

Last Updated: July 5, 2011