

## TERMS OF SERVICE FOR RESIDENTIAL CONSUMER INTERNET SERVICE

### THESE TERMS AND CONDITIONS CONTAIN IMPORTANT INFORMATION REGARDING YOUR USE OF INTERNET SERVICE AND YOUR RELATIONSHIP WITH FAIRPOINT.

#### **PLEASE READ THEM CAREFULLY**

This Agreement is entered into between the Customer ("You", "Your", "Customer") and FairPoint Communications and its operating affiliates (hereinafter referred to as "We", "Our", or "FairPoint"). This Agreement includes the Service Quotations ("Quotation") provided to you, FairPoint's Acceptable Use Policy ("AUP") as set forth at [www.FairPoint.com](http://www.FairPoint.com), your Service Plan as well as our Privacy Policies located at [www.FairPoint.com](http://www.FairPoint.com) and all of which may be updated from time-to-time in accordance herewith (collectively, "Agreement"). **Your acceptance of the Terms of Service indicates your agreement to comply with FairPoint's Terms of Service, the specific terms of your Service plan (including the plan's duration and applicable early termination fee) and related policies regarding your use of the Services. You agree with and are deemed to have accepted this Agreement upon the earlier of: (a) submission of your order; (b) your accepting the Terms of Service electronically or in the course of installing the Software; (c) your use of the Service; or (d) retention of the Software FairPoint provides beyond thirty (30) days following delivery.**

#### **1. Term and Acceptance of Agreement; Agreement Terms Generally Included.**

The term of this Agreement will either be month-to-month, a one year term or two year term (depending on the Service plan you select) (the "Term"). The Term begins when **you accept this Agreement** and ends when either you or FairPoint terminates this Agreement as permitted herein.

Your acceptance of this Agreement occurs upon the earlier of: (a) your acceptance of this Agreement electronically during an online order, registration or when installing the Software or the Equipment; (b) your use of the Service; or (c) your retention of the Software or Equipment FairPoint provided beyond thirty (30) days. If you change Service plans, your term and monthly rate may change (depending on the plan you select), but all other provisions of this Agreement will remain in effect unless otherwise noted.

This Agreement consists of the terms below, plus (a) the specific terms of your Service plan (including the plan's pricing, duration and applicable Early Termination Fee ("ETF")); (b) our Acceptable Use Policy (Attachment A); (c) Additional Services Terms (Attachment B); and (d) other policies and terms referred to in this Agreement (including our Privacy Policy), all of which are incorporated herein by reference. This Agreement and related policies are posted online at <http://www.FairPoint.com> ("Website").

#### **2. DEFINITIONS AND CHANGES TO SERVICE.**

- 2.1 "Content" means content provided by FairPoint or its third party licensors or suppliers and accessible on the Service, including without limitation images, photographs, animations, video, audio, music, and text in any format.
- 2.2 "Equipment" means the single port modem, four port wireless gateway, router and/or other equipment provided by FairPoint for use with the Service.
- 2.3 "High-Speed Internet" ("HSI") means FairPoint's Internet service.
- 2.4 "Service" means all FairPoint dial-up and High-Speed Internet Services, FAST Services and related transport services provided to you by FairPoint; (b) the Internet services provided by FairPoint which include Software, Equipment, Content, Additional Services as defined in Attachment B, technical support, email, domain name server (DNS) and related services; and (c) other products and services provided by FairPoint under the pricing plan applicable to your Service. The Service does not include voice telephony services.

#### **3. REVISIONS TO THIS AGREEMENT.**

From time to time FairPoint will make revisions to this Agreement and the policies relating to the Service. You will be provided notice of such revisions by: a) posting revisions to the Website Announcements page; and/or b) sending an email to your primary myFairPoint.net email address on file. By entering into this Agreement, you agree to visit FairPoint's website periodically to review any such revisions. Increases to the monthly price of the Service (excluding other charges as detailed in Sections 8.1 shall be effective thirty (30) days after notice is provided; revisions to any other terms and conditions shall be effective on the date noted in the posting and/or email. By continuing to use the Service after revisions are effective, you accept and agree to abide by all revisions made.

#### 4. AUTHORIZED USER, ACCOUNT USE, AND RESPONSIBILITIES.

- 4.1 You acknowledge that you are eighteen (18) years of age or older and that you have the legal authority to enter into this Agreement. You agree promptly to notify FairPoint whenever your personal or billing information changes.
- 4.2 You are responsible for all use of your Service and account, whether by you or someone using your account with or without your permission, including all secondary or sub-accounts associated with your primary account, and to pay for all activity associated with your account. You agree to comply with all applicable laws, regulations and rules regarding your use of the Service and to only use the Service within the United States (unless otherwise permitted by this Agreement).
- 4.3 **Restrictions on Use.** The Service is a consumer grade service and is not designed for or intended to be used for any commercial purpose. You may not resell the Service, use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial). If you subscribe to High-Speed Internet Service, you may connect multiple computers/devices within a single home to your modem and/or router to access the Service, but only through a single FairPoint-issued (or previously issued by Verizon) IP address. You also may not exceed the bandwidth usage limitations that we may establish from time to time for the Service, or use the Service to host any type of server. Violation of this section may result in bandwidth restrictions on your Service or suspension or termination of your Service.
- 4.4 **Dial-Up Accounts.** If you subscribe to Dial-up Service, your Service may be subject to log-off automatically and without notice if your account is idle for fifteen minutes. An account session may be deemed to be idle if there appears to be no interactive, human generated data received from your computer system within a prescribed amount of time. Use of automatic re-dialer, script or other programs for the purpose of avoiding inactivity disconnects is a violation of this Agreement. You may only use your account for one log-on session per connection type at a time and you may not use more than one IP address for each log-on session. If your pricing plan includes an hourly usage allocation, unused hours will not carry over to another billing cycle.
- 4.5 **High-Speed Internet Accounts.** If you use your account to connect through a Dial-up connection, you are responsible for any dial-up usage charges above any monthly dial-up allotment that may apply. Additional User IDs provided for High-Speed Internet customers' email boxes may not be used as dial-up connections.

#### 5. PRIVACY POLICY; LEGAL COMPLIANCE.

Personal information you provide to FairPoint is governed by FairPoint's Privacy Policy, which is posted on the Website and is subject to change from time to time. FairPoint reserves the right to provide account and user information, including email, to third parties as required or permitted by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter. Such cooperation may include, but is not limited to, monitoring of the network consistent with applicable law.

#### 6. AVAILABILITY OF AND CHANGES TO SERVICE.

- 6.1 **Service and Bandwidth Availability and Speed.** The Service you select may not be available in all areas or at the rates, speeds, or bandwidth generally marketed, and some locations may not qualify for the Service even if initial testing showed that your line was qualified. We will provision HSI service using the maximum bandwidth rate available to your location based on our standard qualification procedures, unless you have selected a level of service with a lower maximum rate. Bandwidth is provided on a per-line (not a per-device) basis. The bandwidth available to each device connected to the network will vary depending upon the number, type and configuration of devices using the Service and the type of use (e.g., streaming media), among other factors. The speed of the Service will vary based on network or Internet congestion, your computer configuration, the condition of your telephone line and the wiring inside your location, among other factors. FairPoint and FairPoint's suppliers reserve the right, at any time, with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control. For Customers that subscribe to the lease modem or gateway program, troubleshooting and related support is limited to diagnosing the cause or suspected cause of any modem or gateway performance issues and excludes any troubleshooting and support of your computer and any wiring (whether or not directly or indirectly related to the modem or gateway). Any available technical support beyond diagnosing the cause or suspected cause is a chargeable service (see FairPoint Premium Technical Support section of this Agreement). In order to properly troubleshoot a modem or gateway performance issue, FairPoint may require that you replace the current wiring to ensure proper compliance with the modem or gateway specifications or industry standard guidelines for optimum performance as part of the troubleshooting process and prior to any repair or replacement of a modem or wireless gateway.
- 6.2 **Changes to your local voice telephony service.** If you change your local telephone company or discontinue your local telephone service, FairPoint may in its sole discretion either terminate your Service or continue to provide High-Speed Internet Service without local FairPoint Communications voice service at the then-current rates, terms and conditions applicable to your new Service plan and you agree to pay any new or

higher monthly fee that may apply to your new Service plan. If we elect to terminate your Service under this Section 6.2, then we reserve the right to charge any early termination fees and to apply the Equipment return terms under Section 9.

- 6.3 **Migration to fiber-based (FAST) Internet Service.** When FairPoint is able to provision Service utilizing fiber optic technologies, we may in our discretion migrate your High-Speed Internet service to fiber based technologies. In such case, we will offer you fiber-based (FAST) Internet Service at the then applicable rates and terms, which may differ from your previous High-Speed Internet Service rates and terms.
- 6.4 **Changes to Service or Features.** We reserve the right to change any of the features, Content or applications of the Service at any time with or without notice to you. This includes the portal services we may make available as part of the Service or for an additional charge.
- 6.5 **Force Majeure.** If the performance of any obligation hereunder is interfered with by reason of any circumstance beyond our reasonable control, including but not limited to acts of God, labor strikes and other labor disturbances, power surges or failures, or the act or omission of any third party, we shall be excused from such performance to the extent necessary, provided that FairPoint shall use reasonable efforts to remove such causes of nonperformance.

## 7. SOFTWARE LICENSES AND THIRD PARTY SERVICES.

- 7.1 We may provide you, for a fee or at no charge, software for use in connection with the Service which is owned by FairPoint or its third party licensors, providers and suppliers ("Software"). We reserve the right periodically to update, upgrade or change the Software remotely or otherwise and to make related changes to the settings and software on your computer or Equipment, and you agree to permit such changes and access to your computer and Equipment. You may use the Software only in connection with the Service and for no other purpose.
- 7.2 Certain Software may be accompanied by an end user license agreement ("EULA") from FairPoint or a third party. Your use of the Software is governed by the terms of that EULA and by this Agreement, where applicable. You may not install or use any Software that is accompanied by or includes a EULA unless you first agree to the terms of the EULA.
- 7.3 For Software not accompanied by a EULA, you are hereby granted a revocable, non-exclusive, non-transferable license by FairPoint or its applicable third party licensor(s) to use the Software (and any corrections, updates and upgrades thereto). You may not make any copies of the Software. You agree that the Software is confidential information of FairPoint or its third party licensors and that you will not disclose or use the Software except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by FairPoint or its third party licensors. You may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. You are not granted any title or rights of ownership in the Software. You acknowledge that this license is not a sale of intellectual property and that FairPoint or its third party licensors continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.
- 7.4 Your license to use the Software or any Additional Services will remain in effect until terminated by FairPoint or its third party licensors, or until your Service is terminated. Upon termination of your Service, you must cease all use of and immediately delete the Software from your computer.
- 7.5 If you subscribe to or otherwise use any third party services offered by FairPoint, your use of such services is subject to the EULA of that third party provider. Violation of those terms may, in our sole discretion, result in the termination of your Service.

## 8. PRICING, CHANGES TO SERVICE PLANS AND PAYMENT.

- 8.1 **Prices and Fees; Billing.** You agree to pay the monthly fees applicable to your Service, and to pay: a) applicable taxes, b) surcharges, c) recovery fees, d) telephone charges, e) activation fees, f) installation fees, g) set-up fees, h) equipment charges, i) lease charges, j) ETFs, and k) other recurring and nonrecurring charges. The taxes, fees and other charges detailed in a)-d) above may vary on a monthly basis. Surcharges and recovery fees are not taxes and are not required by law, but are set by us and may change. You also agree to pay any additional charges or fees applied to your account, including interest and charges due to insufficient credit or insufficient funds. Non-recurring charges such as set up, activation and installation fees, lease charges and equipment charges will be included in your first bill. Monthly Service recurring charges will be billed one month in advance; any usage charges will be billed in arrears. Customer shall be liable for the undepreciated list price for any unreturned Equipment. For Customers participating in a lease program, FairPoint will repair or replace any damaged leased Equipment (e.g., Internet modem

or wireless gateway) at no cost to you; however, FairPoint does reserve the right to charge you for the undepreciated list price of the Equipment, not repair the Equipment, or terminate the Service for damaged Equipment that is caused, in FairPoint's sole discretion, by the intentional or repeated careless or negligent acts or omissions of you or a third party. All lease charges for any Equipment are per month, per device. Any Equipment received may be new, repaired, or refurbished. You must subscribe to FairPoint's Internet service to participate in the lease modem program. Shipping charges will be incurred by you for the mailing of damaged Equipment, Equipment needing repair, or when returning Equipment, unless FairPoint provides you with a pre-paid shipping label. If installation of Equipment is completed by FairPoint, an installation charge will also apply to you, unless otherwise agreed to by FairPoint or waived as part of a promotion or plan. Based on your election and subject to our approval, FairPoint or its agent will bill you directly, or bill your charge card or local FairPoint Communications telephone bill (where available). IF YOU ELECT TO BE BILLED ON YOUR FAIRPOINT PHONE BILL, BY USING THE SERVICES YOU AGREE TO HAVE ALL SERVICE CHARGES INCLUDED ON YOUR PHONE BILL. Billing for Dial-up Service will automatically begin upon registration of your account. Billing for High-Speed Internet Services will automatically begin on the date provisioning of your High-Speed Internet Service is complete ("Service Ready Date"). We may, at our election, waive any fees or charges. If you wish to cancel your Internet Service, you may do so by calling FairPoint at 1-866-984-2001. Customers have the option to either purchase the FairPoint modem or wireless gateway for a one-time non-recurring charge (NRC) or lease for a monthly recurring charge (MRC). Standard pricing will be applicable at time of placing High-Speed Internet order. The leased equipment is the property of FairPoint. Upon cancellation of Service, the customer must return the leased FairPoint modem or wireless gateway within 30 days, by using the return label included with the Equipment or the return label supplied with the lease Equipment letter.

- 8.2 **Pricing Plans with Minimum Terms.** You agree to maintain your Service for the month to month or one year term that applies to the plan you have selected (a "Term Plan"). Your Term Plan begins on the later of: (a) the date you change your existing High-Speed Internet Service plan to a Term Plan; or (b) your Service Ready Date. At the end of any Term Plan, you may be given the option to select a new Term Plan. If you do not select a new Term Plan, your Service will automatically convert to a month-to-month Service plan at a monthly fee that may be higher than your current rate. If you select a new Term Plan, the terms of that plan will apply.
- 8.3 **Money Back Guarantee.** If we provide a money back guarantee ("MBG") for your Service, it will begin on your Service Ready Date. During this MBG period you may cancel your Service and receive a full refund of all monthly, one-time and Equipment charges paid to us (provided you return all Equipment as required in good working condition and without damage). If you fail to return the Equipment or it is damaged, an Equipment fee will apply. Except for any unreturned or damaged Equipment, ETFs will not apply to Service terminated within the MBG period. The MBG does not apply to existing customers who change or renew their existing Service. The MBG is limited to one per Customer per Service type per Service address.
- 8.4 **Discontinuation of Service for Nonpayment.** We may discontinue Service without notice if you fail to make payment when due for either telephone or Internet Service charges, or if your payment method (i.e., personal check, credit or debit card) is refused for any reason.
- 8.5 **Late Fees.** If any portion of your bill is not paid by the due date, we may charge you a late fee on unpaid balances and may also terminate or suspend your Service without notice. If your charges are billed by your FairPoint local carrier, the late fee will be equal to the late payment charge that the local exchange carrier applies. Otherwise, the late fee will be the lesser of 1.5 % per month, or the highest rate permitted by law. If we use a collection agency or legal action to recover monies due, you agree to reimburse us for all expenses we incur to recover such monies, including attorneys' fees.
- 8.6 **Deposits.** We may require that you provide us with a refundable deposit ("Customer Deposit") prior to the provision of Service(s). We may also require an additional deposit after activation of the Service if you fail to pay any amounts when due. Within ninety (90) days of termination of service, we shall return a sum equal to the Customer Deposit, without interest unless otherwise required by law, minus any amounts due on your account including, without limitation, any amounts owed to us for unreturned or damaged equipment, if applicable. If you fail to pay for the Services when due, we may use the deposit to satisfy amounts due without giving you notice.
- 8.7 **Local Telephone, Toll and Long Distance Charges.** FAIRPOINT IS NOT RESPONSIBLE FOR ANY CHARGES, INCLUDING BUT NOT LIMITED TO, LONG DISTANCE AND METERED LOCAL OR TOLL CHARGES INCURRED WHEN YOU ACCESS THE SERVICE. YOU SHOULD CHECK WITH THE LOCAL PHONE COMPANY TO DETERMINE WHETHER A DIAL-UP NUMBER YOU HAVE SELECTED IS A LOCAL CALL FROM YOUR LOCATION AND WHETHER ANY CHARGES APPLY. WE DO NOT GUARANTEE THAT ANY DIAL-UP ACCESS NUMBERS WE PROVIDE WILL BE A LOCAL CALL FROM YOUR LOCATION. ADDITIONAL CHARGES, WHICH MAY BE SUBSTANTIAL, APPLY TO REMOTE DIAL UP ACCESS, WHICH IS AVAILABLE FROM CERTAIN LOCATIONS ONLY.
- 8.8 **Limitation on Special Pricing Promotions.** You may only take advantage of one pricing promotion during any consecutive twelve (12)-month period.

## 9. TERMINATION OR SUSPENSION OF SERVICE.

### 9.1 Termination of Service.

9.1.1 **High-Speed Internet or Dial-up Subscribers with Month-to-Month Accounts.** . If you are a month-to-month High-Speed Internet Service or Dial-Up Service customer, either you or FairPoint may terminate this Agreement at any time by giving notice to the other as set forth in this Agreement. Termination will be effective upon your notice to FairPoint. Activation or set-up fees paid at the initiation of your Service, if any, are not refundable, except during the 30-day MBG period.

9.1.2 **High-Speed Internet Subscribers with Term Plans; Early Termination Fee.** EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, IF YOUR HIGH-SPEED INTERNET SERVICE IS TERMINATED BY YOU OR BY FAIPOINT BEFORE COMPLETING YOUR TERM PLAN, THEN YOU AGREE TO PAY US THE EARLY TERMINATION FEE AS SET FORTH IN THE PRICING PLAN YOU HAVE CHOSEN. If you terminate Service at your location, your existing Term Plan cannot be carried over to a new Service location.

9.1.3 **Termination and/or Suspension by FairPoint.** FairPoint reserves the right to change, limit, terminate, modify or temporarily or permanently cease providing the Service or any part of it with or without prior notice in accordance with the Agreement or if you violate any terms of the Agreement. If FairPoint terminates your Service under this Paragraph 9.1.3, you must immediately stop using the Service and you will be responsible for the applicable fees and/or Equipment charges set forth in Paragraphs 8.4, 9.1.1, or 9.1.2. If your Service is reconnected, a reconnection fee may apply.

9.2 **Deletion of Data upon Termination.** YOU AGREE THAT IF YOUR SERVICE IS TERMINATED FOR ANY REASON, WE HAVE THE RIGHT TO IMMEDIATELY DELETE ALL DATA, FILES AND OTHER INFORMATION (INCLUDING EMAILS, ADDRESS BOOK AND WEB STORAGE CONTENT) STORED IN OR FOR YOUR ACCOUNT WITHOUT FURTHER NOTICE TO YOU.

9.3 **Return of Equipment upon Termination.** If your Service is terminated for any reason and you received Equipment at no charge from FairPoint or it is leased, you must return the Equipment to FairPoint or you will be charged for the Equipment.

## 10. MANAGEMENT OF YOUR DATA AND COMPUTER.

10.1 **Your Responsibilities Regarding Management of Your Computer and Data.** You are solely responsible for obtaining, maintaining and updating all equipment and software necessary to use the Service, and for management of your information, including but not limited to back-up and restoration of your data. YOU AGREE THAT FAIRPOINT IS NOT RESPONSIBLE FOR THE LOSS OF YOUR DATA OR FOR THE BACK-UP OR RESTORATION OF YOUR DATA REGARDLESS OF WHETHER THIS DATA IS MAINTAINED ON OUR SERVERS OR YOUR DEVICE(S). YOU SHOULD ALWAYS BACK-UP ANY IMPORTANT INFORMATION SEPARATELY FROM DATA STORED ON FAIRPOINT'S OR ANY THIRD PARTY'S SERVERS.

10.2 **Content and Data Management by FairPoint:** We reserve the right to: (a) use, copy, display, store, transmit and reformat data transmitted over our network and to distribute such content to multiple FairPoint servers for back-up and maintenance purposes; and (b) block or remove any unlawful content you store on or transmit to or from any FairPoint server. We do not guarantee the protection of your content or data located on our servers or transmitted across our network (or other networks) against loss, alteration or improper access.

10.3 **Your Responsibilities Regarding Security.** Unless otherwise prohibited by law, you agree that you are solely responsible for maintaining the security of your computer(s) and data, including without limitation, encryption of data and protection of your User ID, password and personal and other data. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS, ANTI-SPYWARE AND FIREWALL SOFTWARE. IT IS ALSO YOUR RESPONSIBILITY TO SECURE YOUR NETWORK. INSTRUCTIONS FOR CERTAIN SECURITY SETTINGS RELATED TO THE MODEM OR GATEWAY ARE IN THE USER GUIDE AND WE STRONGLY RECOMMEND YOU TO IMPLEMENT THESE SECURITY SETTINGS AT A MINIMUM BEFORE USE OF THE SERVICE.

10.4 **Monitoring of Network Performance by FairPoint.** We automatically measure and monitor network performance and the performance of your Internet connection and our network. We also will access and record information about your computer and Equipment's profile and settings and the installation of software we provide. You agree to permit us to access your computer and Equipment and to monitor, adjust and record such data, profiles and settings for the purpose of providing the Service. You also consent to our monitoring of your Internet connection and network performance, and to our accessing and adjusting your computer settings, as they relate to the Service, Software, or other services, which we may offer from time to time. We do not share information collected for the purpose of network or computer performance monitoring or for providing customized technical support outside of FairPoint or its authorized vendors, contractors and agents.

## **11. LIMITATIONS ON USE OF THE SERVICE.**

- 11.1 You acknowledge and agree that FairPoint (a) is not responsible for invalid destinations, transmission errors, or the corruption of your data; and (b) does not guarantee your ability to access all websites, servers or other facilities or that the Service is secure or will meet your needs.
- 11.2 You acknowledge that the Service will allow access to information which may be sexually explicit, obscene or offensive, or otherwise unsuitable for children. You agree that the supervision of use of the Service by children is your responsibility and that we are not responsible for access by you or any other users to objectionable or offensive content. WE STRONGLY RECOMMEND THE USE OF COMMERCIALY AVAILABLE CONTENT FILTERING SOFTWARE.
- 11.3 You understand and agree that if you type a nonexistent or unavailable Uniform Resource Locator (URL), or enter a search term into your browser address bar, FairPoint may present you with an advanced web search page ("AWS Page") containing suggested links based upon the query you entered in lieu of your receiving an NXDOMAIN or similar error message. FairPoint's provision of the AWS Page may impact applications that rely on an NXDOMAIN or similar error message and may override similar browser-based search results pages. If you would prefer not to receive AWS Pages from FairPoint, you should follow the opt-out instructions that are available by clicking on the "About the Search Results Page" link on our AWS Page.
- 11.4 You are not authorized to use any FairPoint name or mark as a hypertext link to any FairPoint web site or in any advertising, publicity or in any other commercial manner without the prior written consent of FairPoint.
- 11.5 You agree that FairPoint assumes no responsibility for the accuracy, integrity, quality completeness, usefulness or value of any Content, advice or opinions contained in any emails, message boards, chat rooms or community services, or in any other public services or social networks, and that FairPoint does not endorse any advice or opinion contained therein, whether or not FairPoint provides such service(s). FairPoint does not monitor or control such services, although we reserve the right to do so.
- 11.6 You represent that when you transmit, upload, post or submit any content, images or data using the Service you have the legal right to do so and that your use of such data or content does not violate the copyright or trademark laws or any other third party rights.
- 11.7 Websites linked to or from the Service are not reviewed, controlled, or examined by FairPoint and you acknowledge and agree that we are not responsible for any losses you incur or claims you may have against the owner of third party websites. The inclusion of any linked websites or content from the Service, including websites or content advertised on the Service, does not imply endorsement of them by FairPoint.

## **12. WARRANTIES AND LIMITATION OF LIABILITY.**

- 12.1 YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT PROVIDED BY FAIRPOINT (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH EQUIPMENT), FAIRPOINT (AND THEIR OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES) (COLLECTIVELY THE "FAIRPOINT PARTIES"), THEIR THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS FOR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, COMPATIBILITY OF SOFTWARE PROGRAMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. ALSO, THERE IS NO WARRANTY OF WORKMANLIKE EFFORT OR LACK OF NEGLIGENCE. NO ADVICE OR INFORMATION GIVEN BY FAIRPOINT OR THEIR REPRESENTATIVES SHALL CREATE A WARRANTY WITH RESPECT TO ADVICE PROVIDED.
- 12.2 FAIRPOINT DOES NOT WARRANT OR GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF WE HAVE ACCEPTED YOUR ORDER FOR SERVICE. THE PROVISIONING OF SERVICE IS SUBJECT TO NETWORK AVAILABILITY, CIRCUIT AVAILABILITY, LOOP LENGTH, THE CONDITION OF YOUR TELEPHONE LINE AND WIRING INSIDE YOUR LOCATION, AND YOUR COMPUTER/DEVICE CONFIGURATION AND CAPABILITIES, AMONG OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR FAIRPOINT SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY FAIRPOINT-PROVIDED EQUIPMENT).
- 12.3 FAIRPOINT DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY FAIRPOINT WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES,

WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE. FAIRPOINT SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE.

12.4 IN NO EVENT SHALL FAIRPOINT OR FAIRPOINT'S THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE, LOSS OF PROGRAMS OR INFORMATION OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, OR RELIANCE ON OR PERFORMANCE OF THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

12.5 THE LIABILITY OF FAIRPOINT, OR (SUBJECT TO ANY DIFFERENT LIMITATIONS OF LIABILITY IN THIRD PARTY END USER LICENSE OR OTHER AGREEMENTS) THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS, FOR ALL CATEGORIES OF DAMAGES SHALL NOT EXCEED A PRO RATA CREDIT FOR THE MONTHLY FEES (EXCLUDING ALL NONRECURRING CHARGES, REGULATORY FEES, SURCHARGES, FEES AND TAXES) YOU HAVE PAID TO FOR THE SERVICE DURING THE SIX (6) MONTH PERIOD PRIOR TO WHEN SUCH CLAIM AROSE, WHICH SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY REGARDLESS OF THE TYPE OF CLAIM OR NATURE OF THE CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL APPLY TO THE FULL EXTENT PERMITTED BY LAW, AND ARE NOT INTENDED TO ASSERT ANY LIMITATIONS OR DEFENSES WHICH ARE PROHIBITED BY LAW.

12.6 ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS SECTION 12 ALSO APPLY TO FAIRPOINT'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.

12.7 THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

### **13. INDEMNIFICATION.**

You agree to defend, indemnify and hold harmless FairPoint from and against all liabilities, costs and expenses, including reasonable attorneys' and experts' fees, related to or arising from your use of the Service (or the use of your Service by anyone else), (a) in violation of applicable laws, regulations or this Agreement; (b) to access the Internet or to transmit or post any message, information, software, images or other materials via the Internet; (c) in any manner that harms any person or results in the personal injury or death of any person or in damage to or loss of any tangible or intangible (including data) property; or (d) claims for infringement of any intellectual property rights arising from or in connection with use of the Service.

### **14. NOTICES.**

14.1 Notices required under this Agreement by you must be provided to us at the address below. Notice by FairPoint to you (including notice of changes to this Agreement under Section 3) shall be deemed given when: (a) transmitted to your primary myFairPoint.net email address; or (b) mailed via the US mail or hand-delivered to your address on file with us; or (c) when posted to the Announcements page of the Website.

FairPoint  
Customer Service  
521 E. Morehead St., Suite 500  
Charlotte, NC 28202

14.2 If you send us an email, you agree that the User ID and/or alias contained in the email is legally sufficient to verify you as the sender and the authenticity of the communication.

### **15. FAIRPOINT PREMIUM TECHNICAL SUPPORT SERVICE ("PTS").**

15.1 Description of Service and Scope of Support. PTS addresses issues outside the scope of FairPoint's standard technical support. PTS will include: (a) configuration troubleshooting; (b) evaluating and attempting to correct software, operating systems and networking issues; (c) virus/spyware support; and (d) software and peripherals support for network, video and sound cards, memory, hard drives, CD/DVD reader/writers, printers, scanners and home networking equipment. All PTS services are offered in English only.

15.2 Limitations of PTS.

15.2.1 PTS will not support all software, hardware or Internet-related products, applications or features and we reserve the right to defer support issues to your equipment or software vendor. PTS does not including training on hardware or software use.

15.2.2 PTS is not intended to replace the more advanced technical support that may be available from hardware or software manufacturers.

15.2.3 PTS is for incident-specific troubleshooting and problem resolution, and excludes: i) computer programming; ii) software development; iii) warranty repairs or product replacement; iv) support for Macintosh® and Windows® 95 and earlier versions of Windows; v) problems or issues arising out of any impermissible or unauthorized use or modification of a product or vi) upgrades of firmware, software, operating systems, or applications. Use of PTS does not constitute a license to use the software, applications or equipment being supported, or an upgrade thereto. You are responsible for obtaining any necessary licenses to use your software and applications.

15.2.4 In some cases, we may not be able to diagnose or resolve a problem because of complications with your computer or its configuration. PTS is offered as a “best efforts” service and without warranty except as specifically set forth in this Agreement. We reserve the right to refuse to troubleshoot software not on our list of supported products.

15.2.5 You understand and agree that technical problems may be the result of software or hardware errors not yet resolved by the product manufacturer, and that we may not have the ability to obtain the information necessary to resolve a specific technical problem.

### 15.3 Your Responsibilities.

15.3.1 In order for us to deliver PTS, you must first confirm that you have: a) full access (including any required licenses) to the hardware and/or software that is the basis of the problem; and (b) completed a back-up of any data, software, information or other files stored on your computer disks and/or drives that may be impacted. FairPoint is not responsible for the loss, corruption or alteration of data, software or files that may result from performance of PTS by our technicians. You also acknowledge and agree that you are the owner or authorized user of any hardware or software about which you are contacting us. PTS is only available to you and those residing at your location; PTS is not transferable.

15.3.2 You agree to cooperate with and follow instructions provided by FairPoint and acknowledge that such cooperation by you is essential to our delivery of PTS to you.

15.3.3 You hereby grant FairPoint permission to view, access and modify your computer, computer (including registry) settings and any related software or peripheral equipment, including all data, hardware and software components, in order to perform PTS.

15.3.4 You are responsible for any and all restoration and reconstruction of lost or altered files, data, or programs, and for ensuring that any information or data disclosed to FairPoint is not confidential or proprietary to you or any third party.

### 15.4 Support Procedures.

15.4.1 **Purchase Terms.** PTS can be purchased either: (a) for an unlimited number of Incidents for a term beginning on the date you order PTS and continuing for the duration of the plan you selected (“Term Plan”); or (b) on a per-Incident basis (the “Per-Incident Service Plan”). For the Per-Incident Service Plan, FairPoint will address a single Incident (as defined in Section 15.4.2 below) which shall include follow-up calls, as reasonable and necessary, regarding the Incident. Once an Incident is resolved (as set forth in Section 15.4.3, below), you may call back and obtain assistance on the same Incident for up to seventy-two (72) hours at no additional charge, after which the Incident will be considered closed. Once an Incident has been closed by FairPoint, any further calls or requests for assistance will be considered a new Incident and additional fees will apply if you subscribe to our Per-Incident Service Plan. IF YOU PURCHASE PTS UNDER A TERM PLAN AND YOUR SERVICE IS TERMINATED BY YOU (OR BY US IF YOU BREACH THIS AGREEMENT) BEFORE COMPLETING YOUR TERM, THEN, UPON TERMINATION OF YOUR SERVICE, YOU AGREE TO PAY FAIRPOINT AN EARLY TERMINATION FEE IN THE AMOUNT SET FORTH IN THE PLAN YOU HAVE CHOSEN.

15.4.2 “Incident” means a specific, discrete problem for which FairPoint will attempt to isolate its origin to a single cause. FairPoint, in its sole discretion, will determine what constitutes an Incident.

15.4.3 An Incident will be considered resolved when you receive one of the following: (a) information or advice that resolves the Incident; (b) information on how to obtain a software solution that will resolve the Incident; (c) notice that the Incident is caused by a known, unresolved issue or an incompatibility issue; (d) information that the Incident can be resolved by upgrading to a newer release of a product; (e) notice



that the Incident has been identified as a hardware equipment issue; or if (f) you cannot, or elect not to, pursue the course of action we recommend.

15.4.4 Our advice to you may include steps that you will need to take before the Incident can be resolved, such as buying cables or cords, acquiring software, etc. and we will keep your service request open for future reference when you are ready to resume the process.

15.5 **Third Party Warranties.** Third-party equipment, software and peripheral products are covered by the warranties provided by the original manufacturer or the seller of the product. Third party warranties may vary from product to product. It is your responsibility to consult the applicable product documentation for specific warranty information. In addition, you acknowledge that certain third party equipment or software warranties may limit or void the remedies that they offer if unauthorized persons perform support service on the equipment or software. It is your responsibility to ensure that any impact that FairPoint's delivery of PTS might have on third party warranties is acceptable to you.

15.6 Customer Specific Service. PTS is only available to you and to persons you authorize. In either case, the terms of this Agreement will apply to the PTS services we perform.

15.7 LIMITATION OF LIABILITY. FAIRPOINT'S TOTAL LIABILITY ARISING OUT OF THE PTS SERVICE, OR FROM FAIRPOINT'S NEGLIGENCE OR OTHER ACTS OR OMISSIONS, IF ANY, SHALL BE LIMITED, AT FAIRPOINT'S SOLE DISCRETION AND OPTION, (A) TO REPERFORMING THE PTS SERVICE, OR (B) AS SET FORTH IN SECTION 12 OF THE AGREEMENT; EXCEPT THAT, IN THE CASE OF PER-INCIDENT SERVICE PLANS, YOUR REMEDIES WILL BE LIMITED TO A REFUND OF THE CHARGES AND FEES PAID FOR THE PTS SERVICE GIVING RISE TO THE CLAIM, IF ANY. THE REMEDIES FOR A FAILURE OR BREACH OF SUCH LIMITED WARRANTY ARE EXCLUSIVE.

## 16. GENERAL PROVISIONS.

16.1 All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination of this Agreement, including without limitation, those relating to Limitation of Liability and Indemnification, shall survive such termination.

16.2 FairPoint will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes, work slow-downs or other labor-related activity, or an inability to obtain necessary equipment or services.

16.3 You may not assign or otherwise transfer this Agreement, or your rights or obligations under it, in whole or in part, to any other person. Any attempt to do so shall be void. We may freely assign all or any part of this Agreement with or without notice and you agree to make all subsequent payments as directed.

16.4 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state of New York, without reference to its choice of law rules. Each party hereby irrevocably consents to non-exclusive personal jurisdiction and venue in the state and federal courts located in Charlotte, North Carolina, with respect to any claim arising out of or related to this Agreement. Except as otherwise required by law any cause of action or claim you may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.

16.5 Use, duplication or disclosure by any Government entity is subject to restrictions set forth, as applicable, in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19, FAR 12.212, DFARS 227.7202, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. Contractor/manufacturer is FairPoint or its licensors and suppliers. The use of Software and documentation is further restricted in accordance with the terms of this Agreement.

16.6 FairPoint's failure at any time to insist upon strict compliance with any of the provisions of this Agreement shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.

16.7 This Agreement, including all Policies referred to herein and posted on the Website, constitutes the entire agreement between you, FairPoint with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. No changes by you to this Agreement shall be effective unless agreed to in a writing signed by an authorized person at FairPoint.

**ATTACHMENT A**  
**ACCEPTABLE USE POLICY - FAIRPOINT**  
**Residential Consumer and Small Business**  
**Internet Service Acceptable Use Policy**

**INTRODUCTION**

This Acceptable Use Policy ("AUP") is intended to help enhance the use of the Internet by preventing unacceptable use. It is not a "terms of service" or a billing guideline. Please refer to your Terms of Service for terms and conditions applicable to your Internet Service. PLEASE READ THIS POLICY CAREFULLY BEFORE ACCESSING THE SERVICE. BY ACCESSING THE SERVICE, YOU AGREE TO BE BOUND BY THIS POLICY. IF YOU DO NOT WISH TO BE BOUND BY THIS AUP, YOU MAY NOT ACCESS OR USE THE SERVICE.

This FairPoint AUP applies to Residential Consumer and Small Business customer use of Internet Service ("Services") provided by FairPoint ("Service Provider"). Your use of the Services indicates your acceptance of and agreement to abide by this Acceptable Use Policy. It is designed to help protect the Service, Service Provider customers and the Internet community from irresponsible or illegal activities. Service Provider may modify this AUP from time to time. In the event of any inconsistency between Service Provider Acceptable Use Policy and the terms of any service agreement, this Acceptable Use Policy shall govern and control.

**GENERAL POLICY**

Service Provider reserves the right in its sole discretion to deny or restrict your use of the Services, or immediately to suspend or terminate your Services, if the use of your Services by you or anyone using it, in our sole discretion violates your Terms of Service or other Service Provider policies, is objectionable or unlawful, interferes with the functioning or use of the internet or Service Provider network by Service Provider or other users or violates the terms of this AUP.

**ILLEGAL AND PROHIBITED USE**

This section is used to address actions, content and or practices that are prohibited by law and by rules set forth by the Service Provider. Please review the sections below before using Service Provider's services or networks. The restrictions are not negotiable. Not all services provided by Service Provider are listed or mentioned but are bound by this document. Users found to engage in activities that Service Provider determines, in its sole discretion, are in violation of this AUP will have their accounts terminated. Violators may also be subject to any appropriate legal action and/or consequences. Service Provider reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected illegal activity or civil wrong. Activities or use of Services considered by Service Provider to be a violation of this AUP are as follows, but are not limited to:

- to post or transmit information or communications that, whether explicitly stated, implied, or suggested through use of symbols, are obscene, indecent, pornographic, sadistic, cruel, or racist in content, or of a sexually explicit or graphic nature; or which espouses, promotes or incites bigotry, hatred, terrorism or racism; or which might be legally actionable for any reason;
- to post, transmit, download or view any material whatsoever pornographic in nature involving actual images of children or minors or digitally or otherwise artificially created or manipulated images of children or minors, or any material whatsoever that may be deemed obscene under applicable law;
- to access or attempt to access the accounts of others, to spoof or attempt to spoof the URL or DNS or IP addresses of Service Provider or any other entity, or to attempt to penetrate or penetrate security measures of Service Provider or other entities' systems ("hacking") whether or not the intrusion results in corruption or loss of data;
- to introduce viruses, worms, harmful code and/or Trojan horses on the Internet;
- to violate Service Provider or any third party's copyright, trademark, proprietary or other intellectual property rights, including trade secret rights;
- to use any name or mark of Service Provider, its parent, affiliates or subsidiaries, as a hypertext link to any Web site or in any advertising publicity or other commercial manner;
- to use the Service or the Internet in a manner intended to threaten, harass, intimidate or terrorize;
- to make false or unverified complaints against any Service Provider subscriber, or otherwise abusing any of Service Provider complaint response procedures
- Indirect or attempted violations of this AUP.
- Reselling of service provided by Service Provider.
- Services used to transmit, retransmit, distribute, post, or store any material that in the judgment of Service Provider is threatening, libelous, defamatory, or otherwise objectionable including but not limited to child pornography and advocating unlawful activity against any persons, animals, governments or businesses. Harassment of users, employees, or of others will not be tolerated.
- Actions and/or services prohibited by federal, state and local law.
- Distribution, posting, copying or dissemination of copyrighted material including but not limited to movies and/or music.

- Inhibiting any other person's use of the service provided by Service Provider is prohibited.
- Participation in illegal gambling, lottery or other similar activities.
- Transmission of scams such as "Make Money Fast" schemes.
- Making fraudulent offers.
- The attempt to access the accounts of other or other computers and/or networks to penetrate security measures, whether or not the intrusion results in damage.

Service Provider reserves the right to limit, restrict and/or prohibit services it provides to customers, as Service Provider determines necessary. The restrictions mentioned apply to all users unless specifically documented.

## **EMAIL**

Service Provider reserves the right to limit the file size of individual email mailboxes at its sole discretion. Individual email mailboxes found over the limit will be subject to deletion without notice. Deleted email will not be restored or saved.

Service Provider reserves the right to limit the maximum transfer limit of any one message in its sole discretion.

Service Provider reserves the right to reject or filter email based on source address and content. Examples are, but are not limited to, virus filtering and blocking open relay mail servers.

Service Provider will not make back-ups of a customer's email.

The services may not be used to transmit, retransmit, or distribute by e-mail or any other method any material that violates any condition of this AUP in the sole judgment of ISP. Activities considered by Service Provider to be a violation of this AUP are as follows, but are not limited to:

- Any unsolicited e-mail, whether commercial or otherwise, including, but not limited to, bulk mailing of commercial advertising, informational announcements, and political tracts.
- Solicited e-mail that contains material that otherwise violates this AUP or any e-mail that falsifies the address or other information; harassing e-mail, whether through language, frequency, or size of messages.
- Any e-mail "chain letters" or other "pyramid schemes."
- E-mail relayed without the express permission of that site, service, system or network.
- E-mailing the same or similar messages to one or more newsgroups (also known as "cross-posting" or "multiple posting").
- E-mail containing false or misleading statements, claims, or representations.
- Forging header information including, but not limited to, any attempt to circumvent the approval process for posting to a moderated newsgroup.

## **SPAM**

Service Provider has a "zero tolerance" policy for SPAM or unsolicited commercial email or unsolicited bulk email. Any User of Service Provider services found to be actively distributing or engaged in the mass distribution of unsolicited emails without consent of the intended receiver may have their account(s) terminated and all future access to Service Provider's services and network revoked.

You may not use the Service or any Equipment or Software provided by Service Provider:

- (a) to send e-mail of a personal, bulk or commercial nature, including, without limitation, bulk mailings of commercial advertising, informational announcements, charity requests, political or religious messages, and petitions for signatures, except to those who have requested such e-mails via a confirmed opt-in subscription process maintained by You;
- (b) to send e-mail or other messages to someone who has indicated that he or she does not want to receive messages from You;
- (c) to collect or receive responses from unsolicited e-mail messages (even if such e-mail was sent from accounts on other Internet service providers or e-mail services) that violate the Agreement or this Acceptable Use Policy or the terms of use under the other Internet service provider or e-mail service from which it was sent;
- (d) to conduct "mail bombings" (e.g., to send more than ten copies of the same or substantially similar message, or to send very large messages or files, with the intent of disrupting a server or account);
- (e) to send or forward make-money-fast schemes or chain/pyramid letters (whether or not the recipient requests it);
- (f) to harvest e-mail addresses or personal information of other Service Provider subscribers or the subscribers of any other network; or
- (g) to use another Internet site's mail server to relay mail without the express permission of the owner of that Internet site.
- (h) to use e-mail or the internet in violation of federal law or the rules of the Federal Communications Commission.

## **DIAL-UP SERVICE**

Service Provider restrictions to Dial-up service are:

An account session will disconnect upon an idle timeout in excess of 10 minutes. An account session may be determined to be idle if there appears to be no interactive, human generated data received from the remote user's computer system within a prescribed amount of time. Use of "keep alive" to keep the connection active are prohibited.

Maximum session time of 24 consecutive hours will be imposed on the connection. After 24 hours the session will be disconnected. The connection can be reestablished.

Multiple logons are restricted. Users are only allowed to logon once with the same account. Accounts establishing concurrent connections will be disconnected. Abuses of this service may be subject to account termination.

## **DSL**

Service Provider restrictions to DSL services are:

Multiple logons are restricted. Users are only allowed to logon once with the same account. Accounts establishing concurrent connections will be disconnected. Abuses of this service may be subject to account termination.

Modifications of the DSL modem in ways other than advised by the manufacturer are restricted.

## **SERVING**

Serving of any kind is NOT allowed without express written consent from Service Provider. Consent should be given in a separate service contract and should be producible by the customer upon request from Service Provider.

Serving constitutes:

- Email servers
- Web - HTTP servers
- FTP servers
- IRC servers
- Other Listening IP services

## **UNAUTHORIZED SHARING**

You agree not to allow others to use any of the services provided including, but not limited to, sharing your account user name and password, dial-up access, or broadband access via any type of networking device (router, gateway, wireless access point, etc.). You may at your own risk and responsibility permit other members of your household to access the services and utilize some networking devices approved by the provider for use within your household only. You as the account holder shall ensure that other such users are aware of and comply with these terms of use, and you agree to be held responsible for any activity or use of the services on that account, whether or not authorized by you.

## **COMMERCIAL USE**

Re-selling Service Provider's services or offering use of Service Provider's services for adding value to a commercial entity without Service Provider's authorization is prohibited. Service Provider's services are designed for the account holder's use of the Internet and may not be used for commercial purposes without the Service Provider's explicit consent. You also agree not to use Service Provider's services for operation as an Internet Service Provider (ISP), or for any other business enterprise including, without limitation, IP address translation or similar facilities intended to provide access, operating or allowing others to operate servers of any type, or any other device, equipment and/or software providing server-like functionality in connection with Service Provider's services, unless expressly authorized.

## **OTHER**

Other services not specifically listed in this AUP but that are provided by Service Provider are bound by this AUP.

## **COMPLIANCE WITH THE AUP OF UPSTREAM PROVIDERS**

The AUP of Service Provider's upstream providers also bind Service Provider users. An "upstream provider" is any company that provides Service Provider bandwidth and/or other services.

## SYSTEM & NETWORK SECURITY

Violations of system or network security are prohibited and may result in criminal and civil liability. Service Provider will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

- port scanning, probes, data capture, denial of service, access of restricted systems.
- attempted access of systems not previously given access to.
- anything deemed "hacking" or "cracking" to the systems, network or users.
- unauthorized access to or use of data, including any attempt to circumvent user authentication or security of any host, network, or account (hacking, cracking, port scans, or flood pings).
- unauthorized monitoring of data or traffic.
- interfering with service to any user, host, system or network.
- conducting denial of service attacks.
- any attempt to disrupt service including, but not limited to, distributing or introducing viruses, worms, or other harmful software.
- creating an active full time connection on a FairPoint-provided dial-up account for Internet
- access by using artificial means, involving software, programming, or any other method.

## COPYRIGHT INFRINGEMENT/REPEAT INFRINGER POLICY

Service Provider respects the intellectual property rights of third parties, including those granted under the US copyright laws, and the interests of its subscribers and content providers on the Internet. You may not store material of any type or in any format on, or disseminate such material over, Service Provider ' systems or servers in any manner that constitutes an infringement of third party intellectual property rights, including rights granted under the US copyright laws. In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, it is the policy of Service Provider to terminate, in appropriate circumstances, the Service provided to any subscriber or account holder who is deemed to infringe third party intellectual property rights, including repeat infringers. Appropriate circumstances may exist where:

- (i) a Subscriber or account holder has been found by a court of competent jurisdiction to have infringed the copyrights of a third party on two or more occasions, i.e., a repeat infringer,
- (ii) where a valid, effective and uncontested notice has been provided to Service Provider alleging facts which are a violation by the Subscriber or account holder of Service Provider Copyright Policy prohibiting infringing activity involving Service Provider systems or servers, or
- (iii) in other cases of repeated flagrant abuse of access to the Internet (e.g., willful commercial piracy or malicious attempts to destroy the value of copyrighted works). In addition, Service Provider expressly reserves the right to terminate or suspend the Service of any Subscriber or account holder if Service Provider, in its sole judgment, believes that circumstances relating to the infringement of third party intellectual property rights warrant such action. These policies are in addition to and do not affect or modify any other rights Service Provider may have under law or contract.

You shall comply with all applicable local, state, national and international laws and regulations, including those related to data privacy, international communications, and exportation or technical or personal data. You represent that you are not a specifically designated individual or entity under any US embargo or otherwise the subject, either directly or indirectly (by affiliation, or any other connection with another party) to any order issued by any agency of the US Government limiting, barring, revoking or denying, in whole or in part your US export privileges. You agree to notify Service Provider if you become subject to any such order.

You shall not delete any proprietary designations, legal notices or other identifiers belonging to third parties from any information obtained or sent using the Service and shall not impersonate any person or use a false name while using the Service. You agree to obtain all required permissions if you use the Service to receive, upload, download, display, distribute, or execute Software or perform other works protected by intellectual property laws including copyright, trademark, trade secret and patent laws. You agree to cooperate with Service Provider and provide requested information in connection with all security and use matters. You agree to notify Service Provider promptly if you suspect unauthorized use of the Service or of your UserID. Service Provider reserves the right to cooperate with

legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong. Such cooperation may include, but not be limited to, provision of account or user information or email as well as monitoring of the Service Provider network.

## **USER RESPONSIBILITY**

Users need to be aware that they do not operate in a vacuum. Safe practices need to be taken by the users to protect themselves and others.

Users are responsible for account passwords and should keep them safe.

Do NOT share account information.

Do NOT leave username and passwords in the open.

If a user feels that the account was compromised, the username and or password should be changed at once.

Do NOT "save" user names or passwords. Each should be entered at each login.

Users are responsible for protecting their own equipment. Anti-virus software and personal firewalls are not required but strongly encouraged.

Users are responsible for any misuse of Service Provider services that occurs through user's account.

Users are responsible for protecting their accounts and must take steps to insure that others do not gain unauthorized access to user's account or misuse Service Provider's services.

## **ADMINISTRATIVE DISCRETION**

Service Provider administrators, staff, and executives have sole and final discretion over all aspects of service, the network, and this AUP. Service Provider reserves the right to terminate any account or service without cause or prior notice.

## **VIOLATIONS AND MONITORING**

Service Provider does not intend to actively monitor the content of web sites, e-mail, news groups, or material created or accessible over its services.

Service Provider reserves the right to monitor such services or any services on or within our network.

Reporting Violations and complaints:

- Violations, attempted violations, and/or concerns should be addressed to [abuse@fairpoint.com](mailto:abuse@fairpoint.com) via Email. --When reporting anything to Service Provider please include:
  - The internet protocol address used to commit the alleged violation.
  - The date, time and time zone of such violation.
  - Evidence of the violation, including, if applicable, full headers from emails, firewall logs, traffic dumps (example, the \*.enc files generated by Network Ice's Black Ice program or "hex" dump from any other firewall or IDS system) or information pertaining to the events in question.
  - Do not send excerpted parts of a message; sending the entire message with full headers helps prevent misunderstandings based on incomplete information or information taken out of context.

Service Provider has sole judgment and discretion on how we enforce this AUP. Guidelines as to punishment and legal action will be within the Service Provider's legal department and administrative department discretion.

## **REVISIONS**

Changes to this AUP are considered effective immediately and it is the end user's responsibility to stay current. Service Provider can make changes to the AUP at any time without notice. Changes to this document will be available on Service Provider's web page.

Service Provider may, but is not required to, monitor your compliance, or the compliance of other subscribers, with this Acceptable Use Policy.

## ATTACHMENT B

### ADDITIONAL SERVICES TERMS

If you subscribe to any of the following services, the terms and conditions below apply to your use of the service(s) in addition to the terms of the Agreement.

#### 1. PERSONAL WEB SPACE ("PWS") AND FAIRPOINT BACKUP & STORAGE ("STORAGE SERVICES").

- 1.1. If PWS and/or Storage Services are made available as a feature of the Service, you agree that you are solely responsible for all content you store on or retrieve from such services. Additional terms and conditions applicable to Storage Services are posted on the Website and are incorporated herein by reference. You understand that we do not provide telephone technical support for PWS or Storage Services. Storage Services may be accessed from any suitable Internet connection.
- 1.2. If you breach this Agreement or the Storage Services terms and conditions, we reserve the right immediately to suspend or terminate your Service and/or Storage Services with or without notice. In such case, you agree that we may immediately delete all data, files, and other content stored on your Storage Services, including archived data, without further notice to you. **It is your responsibility to remove or copy any content stored on the Storage Services prior to closure of your account; otherwise, it may be lost.**
- 1.3 FairPoint reserves the right to access your PWS or Storage Service account at any time with or without prior notice to you and to disable access to or remove content which in our sole discretion is or reasonably could be deemed unlawful.
- 1.4 **Use Requirements for Free Storage Services Accounts ("Free Account").** If you sign up for a Free Account, you must actively use the Free Account. To "actively use" your account means to upload, download, backup or restore content to your Free Account. In the event you do not use your Free Account for a period of six (6) months or more, then FairPoint reserves the right to cancel your account. We will provide notice of cancellation by email to your primary myFairPoint.net email address. If you use your Free Account within ten (10) calendar days of the date of such cancellation notice, then your account will not be cancelled. **It is your responsibility to remove or copy any content in your Free Account prior to cancellation or termination; otherwise, it will be lost. FairPoint will also delete archived data.**
- 1.5 FairPoint Backup & Sharing is provided by DigiData Corporation, which is a third party beneficiary of this Agreement capable of enforcing its terms independently from FairPoint.

#### 2. EMAIL AND EMAIL MESSAGING SERVICE.

- 2.1 **Email Service.** Use of FairPoint email service is subject to FairPoint's email and anti-spam policies, which include important information about limitations on use of the email service such as the storage capacity and deletion of stored messages. More information is available at on the Website and these email policies are incorporated herein by reference.
- 2.2 **Email Security.** FairPoint reserves the right in our sole discretion to provide the level of security we deem appropriate to safeguard our network and customers, and other Internet users, against Internet threats or abuses, including viruses, spam and phishing threats. These security measures may include, but are not limited to, the use of firewalls and blocklists to block potentially harmful or abusive emails or attachments, anti-spam filters, anti-virus and anti-spyware software, and blocking selected ports. **Such activities may result in the blocking, filtering or non-delivery of legitimate and non-legitimate email sent to or from your email account. Such activities may result in the blocking, filtering or non-delivery of legitimate and non-legitimate email sent to or from your email account. By using any FairPoint-provided email service, you agree that delivery and receipt of email is not guaranteed and to FairPoint's use of such Internet and email security measures we in our sole discretion deem appropriate.**
- 2.3 **Email Aliases.** FairPoint will issue email aliases (alternate email addresses) based upon availability. You will surrender your alias by changing it or if your account is terminated for any reason and we will not forward emails addressed to that alias. If your Service is reinstated we cannot guarantee your alias will still be available to you.

#### 3. FAIRPOINT SECURITY SUITE ("FSS").

- 3.1 FSS is manufactured by Radialpoint Inc. located at 2050 Rue de Bleury, Suite 300 Montreal, Quebec, H3A 2J5. Radialpoint™ is a trademark of Radialpoint Inc. The personal jurisdiction and venue provisions in Section 15.4 shall not apply to any causes of action by or against Radialpoint Inc. under or in relation to this Agreement. Radialpoint Inc. is a third party beneficiary of this Agreement capable of enforcing its terms independently from FairPoint.



3.2 You acknowledge and consent that Radialpoint Inc.: (i) may provide non-personally identifiable usage data collected in anonymous and aggregate form ("FSS Data") to its subcontractors in North America, for analysis of the performance of FSS, including the redundancy, reliability, and disaster recovery components of the services; and (ii) may use such FSS Data (1) to improve activation flow; and/or (2) as part of trends or reports published by Radialpoint Inc.

**4. FAIRPOINT GAMES ON DEMAND.** FairPoint Games on Demand are manufactured by Exent Technologies, Inc., which is a third party beneficiary of this Agreement capable of enforcing its terms independently from FairPoint.

## ATTACHMENT C

### RESTRICTIONS ON USE AND END USER LICENSE AGREEMENT

#### APPLICABLE TO FAIRPOINT SECURITY SUITE ("FSS") SERVICES PROVIDED BY RADIALPOINT

1. **Restrictions on use.** You may not, directly or indirectly, except as otherwise expressly provided herein:

- a. Rent, lease, resale, lend, share, operate on a time share or service bureau basis, distribute as part of an ASP, VAR, OEM or other arrangement, or otherwise use RADIALPOINT's or its Licensors' system, the Radialpoint Value Added Services or the Radialpoint Software;
- b. Reverse engineer, de compile, disassemble, transform, modify, translate or otherwise attempt to decrypt or derive the source code, any trade secrets, or any sensitive or proprietary information in or in respect of RADIALPOINT's or its Licensors' system, or of the Radialpoint Value Added Services or the Radialpoint Software, except to the extent expressly permitted by applicable law despite this limitation;
- c. Misappropriate, hack into or misuse RADIALPOINT's or its Licensors' systems, or the Radialpoint Value Added Services or the Radialpoint Software;
- d. Use RADIALPOINT's or its Licensors' systems, or the Radialpoint Value Added Services or the Radialpoint Software, to publish, transfer, display, store, distribute or disseminate or otherwise transmit, load upon or make available (i) anything (including any information, files, software, photographs, images, data or other content) that is inappropriate, inaccurate, illegal, unlawful, profane, defamatory, obscene, or indecent, or that is protected by or contravenes or violates any laws, or (ii) any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software, program or device that may be damaging;
- e. Do any act that compromises the security or integrity of RADIALPOINT's systems, or of the Radialpoint Value Added Services or of the Radialpoint Software;
- f. Alter, destroy or remove any copyright, trade secret, patent, trademark or other proprietary or legal markings or notices placed upon or contained within any Radialpoint Value Added Services or Radialpoint Software, or any supporting media; or
- g. Transfer any rights or obligations hereunder, in whole or in part.

## End User License Agreement

### APPLICABLE TO VALUE ADDED SERVICES PROVIDED BY RADIALPOINT

**THIS END USER LICENSE AGREEMENT**, dated as of the date when you download or install any Software (as defined below) on your workstation, personal computer or other similar device (“**CPU**”) or use any End User Services (as defined below) (the “**Effective Date**”) is a binding agreement between **RADIALPOINT SAFECARE GENERAL PARTNERSHIP**, with a registered address at 2050 Rue de Bleury, Suite 300 Montreal, Quebec, H3A 2J5 (“**RADIALPOINT**”), and You as owner and/or lawful operator of the CPU and/or authorized user of End User Services enabled by the Software (“**Licensee**” or “**You**”) (collectively the “**Parties**” and each a “**Party**”) governing such download, installation and use.

BY CLICKING AN “ENTER”, “I AGREE” OR “I ACCEPT” OR ANY OTHER SIMILAR ICON OR BUTTON WHEN PROMPTED TO DO SO AT THE TIME OF USING, ACCESSING, INSTALLING, DOWNLOADING OR COPYING THE SOFTWARE AND/OR ANY END USER SERVICES, OR BY ACTUALLY SIMPLY USING, ACCESSING, INSTALLING, DOWNLOADING, COPYING OR OTHERWISE USING THE SOFTWARE OR ANY END USER SERVICES, LICENSEE SHALL BE DEEMED TO HAVE IRREVOCABLY AGREED TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT YOUR USE OF THE SOFTWARE AND/OR END USER SERVICES IS FURTHER LIMITED BY THE TERMS AND CONDITIONS OF ANY AGREEMENT WITH THE ISP (THE “**ISP AGREEMENT**”).

- 1. SOFTWARE LICENSE AND GOVERNING TERMS.** Subject to the terms and conditions of this Agreement, RADIALPOINT hereby grants you, during the Term, a personal, non-assignable, non-sub-licensable, non-exclusive, revocable, limited license to download, install and execute one copy of the applicable Software, in object code, on the CPU, solely for your personal use and strictly in relation to and for your use of End User Services. In addition to the terms and conditions of this Agreement, your access, use, download and installation of the Software and/or the End User Services will also be governed by any additional use terms that we may provide to you either with the relevant product or service or by publication on the World Wide Web at a site we identify to You or by some other reasonable means. It is your responsibility to make the CPU on which the Software is installed secure, and You may only provide access to the Software and any End User Services to yourself. You are responsible for all activity made by anyone who uses your CPU, your copy of the Software, the End User Services, including all legal liability incurred from such use. You may use the Software and the End User Services for lawful purposes only.
- 2. CONSENT TO DATA AND INFORMATION GATHERING/USE.** You acknowledge, agree and consent to the following: RADIALPOINT has the right and does access the Software and/or your CPU and/or software thereon (including registry settings on your CPU) for various purposes in connection with the End User Services (e.g. including for the implementation of Updates) as well as to download, install and/or gather, obtain, collect and then use, in relation to the delivery and operation of End User Services, various information and data (which information and data may also be provided to RADIALPOINT by the ISP), which may include information such as: the identity of a user's CPU, a user's email address, subscription, activation and cancellation dates (and times to), list of subscribed End User Services, account activity, the identity of the operating system, the versions of various Software downloaded and/or installed, other RADIALPOINT or ISP unique identifiers (including for the purpose of allowing targeted notifications), the status as to whether a user checked or unchecked the “Show alerts” and other options, usage information in relation to the Software and End User Services, information as to which notifications have been viewed and when and which links a user clicked on as a result of a notification, and information as to when a user asked Software to download and/or install Software. You also acknowledge, agree and consent to RADIALPOINT (i) providing the above information and data to its subcontractors in North America (for redundancy, reliability, disaster recovery and other similar purposes), and its authorized distributor, FairPoint Communications, Inc. (“FairPoint”) and FairPoint's affiliates and (ii) using relevant usage, performance or technical portions of such information and data on an anonymous basis (1) to improve activation flow, (2) as part of trends or reports published by RADIALPOINT, and/or (3) for marketing and sales purposes.
- 3. NO SERVICES/SOFTWARE INCLUDED, EXCEPT AS NOTED.** Except as otherwise expressly set forth in an email or notification accompanying this Agreement, no End User Services or Software, and no maintenance, technical support or other services are provided to You under this Agreement. Any such services or products are subject to the execution of a separate written agreement on commercial terms (including an ISP Agreement) and may be subject to a fee as determined by RADIALPOINT from time to time in its discretion. We have no obligation to provide any Updates to You. Any Updates so provided to you under this Agreement in RADIALPOINT's discretion will thereafter be part of the Software and governed by this Agreement. You must provide at your own expense the equipment and Internet connections that you will need to use the Software or any End User Services. You are solely responsible for any costs you incur to access the Internet through any wireless or other communication service.
- 4. OWNERSHIP.** As between the Parties, RADIALPOINT is, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Software, the End User Services, all its systems, any and all RADIALPOINT trademarks and proprietary markings in or on the Software, the End User Services, its systems or its property, and in each case all related intellectual property and intellectual property rights (collectively,

the “**RADIALPOINT Property**”). This is a license. It is not a sale or a lease. No property, ownership or real right or interest in the RADIALPOINT Property, or any component thereof, is granted, assigned, conveyed, transferred or sold to Licensee by virtue of this Agreement or otherwise. RADIALPOINT™ is a trademark of Radialpoint SafeCare Inc. This trademark may be registered in certain jurisdictions.

- 5. PROHIBITED USES.** Save and except as expressly allowed in this Agreement or the ISP Agreement, Licensee has no rights with respect to the RADIALPOINT Property or any component thereof. Without limiting the generality of the foregoing, Licensee shall not, directly or indirectly: (i) decompile, transform, modify, translate, disassemble, reverse engineer or otherwise attempt to decrypt or derive the source code, any trade secrets, or any sensitive or proprietary information of, or included in or related to the RADIALPOINT Property, (ii) modify, merge, alter, copy, distribute or otherwise reproduce or tamper with the RADIALPOINT Property or produce or create any other applications whatsoever or any derivative works thereof (except to the extent expressly permitted by applicable law despite this limitation), (iii) destroy or remove any copyright, trade secret, patent, trademark or other proprietary or legal markings or notices placed upon or contained within the RADIALPOINT Property or any supporting media, (iv) copy, rent, resale, lease, access, share, operate on a time share or service bureau basis, distribute as part of an ASP, VAR, OEM or other arrangement, the RADIALPOINT Property, (v) use or access the RADIALPOINT Property to publish, transfer, display, store, distribute or disseminate or otherwise transmit, load upon or make available anything (including any information, files, software, photographs, images, data or other content) that is inappropriate, inaccurate, illegal, unlawful, profane, defamatory, obscene, or indecent, or that is protected by or contravenes or violates any applicable laws or regulations, or any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software, program or device that may be damaging; or to damage, misappropriate, hack into or misuse the property of any Person, including the RADIALPOINT, or (vi) otherwise use the RADIALPOINT Property for unlawful, prohibited, illegal, inappropriate, offensive, damaging or otherwise unsuitable purposes, including in connection with activities involving pyramid schemes, chain letters, junk email, spamming, hacking, defamation, abuse, harassment, stalking, threatening or otherwise violating the rights of any Person.
- 6. TERM AND TERMINATION.** This Agreement shall become effective upon the Effective Date and shall continue in effect until the earlier of when: (i) it is terminated by RADIALPOINT in its discretion, (ii) you stop using the Software in relation to End User Services or End User Services are terminated, or (iii) the ISP Agreement terminates (“Term”). Upon any termination: (a) all licenses hereunder shall terminate and Licensee shall immediately cease using the RADIALPOINT Property, and (b) all copies of the Software, any supporting materials, on whatever media, shall forthwith be destroyed by Licensee.
- 7. NO WARRANTY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY RADIALPOINT PROPERTY MADE AVAILABLE TO LICENSEE IS FURNISHED “AS IS”, AT LICENSEE’S RISKS AND PERILS, WITH ALL FAULTS AND WITHOUT REPRESENTATIONS, WARRANTIES, RIGHTS, OBLIGATION OR CONDITION OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, LEGAL, STATUTORY, CONTRACTUAL, EXTRA-CONTRACTUAL, DELICTUAL, OR IN TORT, WHETHER ARISING BY LAW, STATUTE, USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES’ CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR WHETHER ARISING AS RESULT OF THE NATURE OF THIS AGREEMENT OR IN CONFORMITY WITH USAGE, EQUITY OR LAW, OR OTHERWISE. WITHOUT LIMITATION, ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS, RIGHTS OR CONDITIONS OF TITLE, OWNERSHIP, NON-INFRINGEMENT, MERCHANT-ABILITY AND FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, QUALITY, WORKMANSHIP, HIDDEN DEFECTS, PEACEFUL ENJOYMENT, SECURITY, DELIVERY AND GOOD STATE OF REPAIR, ARE DENIED, DISCLAIMED AND EXCLUDED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR AND ITS AFFILIATES AND FAIRPOINT AND ITS AFFILIATES, DENY AND DISCLAIM ANY WARRANTY, RIGHT, OBLIGATION OR CONDITION, EXPRESS OR IMPLIED, CONCERNING THE PERFORMANCE, OPERATION OR FUNCTIONALITY OF ANY RADIALPOINT PROPERTY WHATSOEVER, ITS FITNESS FOR USE BY LICENSEE, THAT THE OPERATION OF THE RADIALPOINT PROPERTY WILL BE ERROR FREE OR UNINTERRUPTED OR THAT IT WILL PERFORM OR FUNCTION APPROPRIATELY OR PRODUCE A DESIRED RESULT, THAT THE RADIALPOINT PROPERTY (INCLUDING RADIALPOINT SOFTWARE) WILL FUNCTION AT ALL IN AN ENVIRONMENT OR SYSTEM THAT ARE NOT IN STRICT CONFORMITY WITH RADIALPOINT’S MINIMUM SYSTEM REQUIREMENTS AS SPECIFIED IN RADIALPOINT’S PRODUCT DOCUMENTATION (E.G. CPU POWER, FREE HARD DISK SPACE, AMOUNT OF MEMORY, REQUIRED OPERATING SYSTEMS AND INTERNET BROWSERS, ETC.), THAT THE RADIALPOINT PROPERTY MEETS LICENSEE’S REQUIREMENTS OR ANY OTHER REQUIREMENTS OR THAT IT WILL SATISFY ITS OR ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE OR OTHER NEEDS OR REQUIREMENTS, THAT THE RADIALPOINT PROPERTY IS COMPATIBLE OR OPERATES IN COMBINATION OR WHEN USED IN CONJUNCTION WITH ANY SERVICES, SYSTEMS, NETWORKS, HARDWARE, PRODUCTS, SOFTWARE OR EQUIPMENT, OR THAT ANY DEFECTS, PROBLEMS, BUGS OR ERRORS OF THE RADIALPOINT PROPERTY COULD BE DETECTED AND/OR CORRECTED.

IN RELATION TO ANY “SECURITY ADVISOR SERVICE” TYPE OF END USER SERVICE, PLEASE NOTE THAT SUCH SERVICE PURPORTS TO MONITOR THE SECURITY STATUS OF CERTAIN SECURITY MEASURES ON YOUR CPU. AT PRESENT, THE STATUS OF THREE CORE SECURITY MEASURES IS VERIFIED: VIRUS PROTECTION, SPYWARE PROTECTION AND PERSONAL FIREWALL. IT IS POSSIBLE THAT OTHER SECURITY MEASURES WILL BE ADDED TO ANYSECURITY ADVISOR SERVICE PROVIDED

HEREUNDER FROM TIME TO TIME. WHILE MOST APPLICATIONS THAT PROVIDE THESE KINDS OF MEASURES ARE KNOWN, IT IS POSSIBLE THAT SOME SECURITY APPLICATIONS MAY NOT BE RECOGNIZED BY THE SECURITY ADVISOR SERVICE, SO YOU SHOULD ALWAYS MAKE YOUR OWN INDEPENDENT ASSESSMENT OF THE SECURITY STATUS OF YOUR CPU. THE RESULT OF THE SCANNING OF YOUR CPU WILL BE PROVIDED TO YOU IN THE FORM OF BOTH AN OVERALL AND CATEGORY SPECIFIC "SAFETY RATING" – EITHER AT RISK, AVERAGE OR EXCELLENT, THE SAFETY RATING IS DETERMINED BY SUCH FACTORS AS THE PRESENCE OF EXISTING VIRUS, SPYWARE OR FIREWALL PROTECTION, AND IN THE CASE OF VIRUS AND SPYWARE WHETHER THESE ARE UP TO DATE TO PROTECT AGAINST THE LATEST MALWARE THREATS AND/OR HAVE REAL-TIME PROTECTION.

8. **EXCLUSIVE REMEDY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE'S SOLE REMEDY IN RELATION TO OR UNDER THIS AGREEMENT SHALL BE FOR LICENSEE TO TERMINATE THE AGREEMENT.
9. **EXCLUSION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND ITS AFFILIATES, AND FAIRPOINT AND ITS AFFILIATES HAVE NO LIABILITY WHATSOEVER TOWARDS LICENSEE, ITS AFFILIATES OR ANY OTHER PERSON OR ENTITY IN RELATION TO OR ARISING UNDER THIS AGREEMENT, RADIALPOINT PROPERTY, THE SOFTWARE OR THE END USER SERVICES (INCLUDING WITHOUT LIMITATION, FOR BREACH OF CONTRACT, STRICT LIABILITY, CONTRACTUAL OR EXTRA-CONTRACTUAL LIABILITY, TORT, INCLUDING NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY), AND WHETHER IN RESPECT OF DIRECT, GENERAL, INCIDENTAL, AGGRAVATED, PUNITIVE, TREBLE, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST BUSINESS REVENUE, LOST PROFITS, LOST GOODWILL, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION, LOSS OF BUSINESS OPPORTUNITY, EVEN IF LICENSOR OR FAIRPOINT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. **MISCELLANEOUS. Additional Definitions.** For the purposes of this Agreement, "Software" means any RADIALPOINT software product or tool (which may include anti-virus, firewall, anti-spyware, anti-phishing, parental control, cookie manager, scan & clean, client gateway, keyword alert, form filler, privacy manager, ad/pop-up, service point agent (or "SPA") and security advisor related software products or tools, or other End User Services-related software products, in each case which may include third party software) provided to You by RADIALPOINT or the ISP, including existing end user documentation and Updates, if any, provided to Licensee in RADIALPOINT's discretion; "Update" means, bug fixes, workarounds, patches, or maintenance updates, as well as major changes, new versions or releases in respect of any Software; "End User Services" means RADIALPOINT-powered value added services that are purchased or obtained by You from RADIALPOINT and/or the ISP directly or pursuant to the ISP Agreement, which services may be accessed remotely by Licensee from RADIALPOINT's servers and systems, whether directly or through the ISP or a third party; "ISP" means any distributor, sub-distributor, sub-contractor, sub-licensee and/or reseller and/or client of Software or End User Services, including Internet service providers, carriers, portals, telecommunications companies and other similar entities and intermediaries, in each case with whom or with which you have an agreement in relation thereto; and whenever used in this agreement, "including" or "includes" means "including (or includes) without limitation" and "you" means Licensee, and "we" or "us" means RADIALPOINT. **Transfer and Assignment.** RADIALPOINT may assign this Agreement, in whole or in part, to any person or entity without Licensee's prior consent, which assignment shall operate novation; Licensee may not assign this Agreement to any person or entity, in whole or in part; this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their permitted assigns. **Survivorship.** The Sections of this Agreement regarding restrictions on use, ownership, confidentiality, no warranties and disclaimers, exclusions of liability, effects of termination and miscellaneous, and any other provisions which by their nature survive the termination or expiry of this Agreement, will survive any termination or expiration of this Agreement. **Applicable Law and Jurisdiction.** This Agreement shall be governed by Quebec law. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. The Superior Court of Quebec, and the Federal Court of Canada, as applicable, sitting in the District of Montreal, shall have sole and exclusive jurisdiction over any action, claim, demand, proceeding or lawsuit whatsoever arising under or in relation to this Agreement or its subject matter, except that RADIALPOINT may seek injunctive relief or any other equitable remedy with respect to any violation, breach or infringement of Intellectual Property or Confidential Information related rights or obligations in any appropriate jurisdiction. **Compliance with Law.** Each Party shall perform its obligations and exercise its rights hereunder in compliance with all applicable laws and regulations. All Software shall be deemed to be subject to U.S. and Canadian export controls and restrictions (including end user, end use and destination restrictions), and You will comply with all such controls and restrictions, including the U.S. Export Administration Regulations, the Export and Import Permits Act (Canada), and any other related, relevant or applicable export controls or restrictions. The Software is provided with RESTRICTED RIGHTS. If used or acquired by the United States Government, the Government acknowledges that (a) the Software constitutes "commercial computer software" or "commercial computer software documentation" for purposes of FAR 48 C.F.R. 12.212 and DFAR 48 C.F.R. 227.7202-3, as applicable and (b) use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software--Restricted Rights at 48 CFR 52.227-19, as applicable and such use, duplication or disclosure of the Software is limited to those specifically granted to the Licensee pursuant to this Agreement. The manufacturer is RADIALPOINT at the address on the first page of this Agreement. **Open Source and/or Third Party Software.** Portions of the Software include software developed by and/or proprietary to the following and may be subject to additional terms and conditions published by such Persons: (i) OpenSSL Project for use in the OpenSSL Toolkit (<http://www.openssl.org/>); Copyright © 1998-2001 The OpenSSL Project, all rights reserved; (ii) CMemDC - memory DC; Author: Keith Rule; Email: keithr@europa.com; Copyright © 1996-1997, Keith Rule, all rights reserved; (iii) bzip2 and associated library libbzip2, are Copyright © 1996-2000 Julian R Seward, all rights reserved; (iv) gSOAP software; portions created by gSOAP are Copyright © 2001-2004 Robert A. van Engelen, Genivia inc. all rights reserved; (v) Pest Patrol, Inc., Copyright © 2003 PestPatrol, Inc., all rights reserved; (vi) Command Software Systems, Inc. Copyright © 2003, all rights reserved; (vii) Daniel Stenberg, daniel@haxx.se, Copyright © 1996 - 2005, all rights reserved; (viii) Jean-Philippe Barrette-LaPierre, Copyright © 2002-2004, all rights reserved; (ix) Thai Open Source Software Center Ltd, Copyright © 1998, 1999, 2000, all rights reserved; (x) The Apache Software Foundation (<http://www.apache.org/>), Copyright © 1999, all rights reserved (The names "log4j" and "Apache Software Foundation" must not

be used to endorse or promote products derived from this software without prior written permission. For written permission, please contact [apache@apache.org](mailto:apache@apache.org); Products derived from this software may not be called "Apache", nor may "Apache" appear in their name, without prior written permission of the Apache Software Foundation); (xi) Raxco Software, Inc. Copyright © 2006 Raxco Software, Inc. all rights reserved; and (xii) Xceed Software, Inc. Copyright © 1995-2004 Xceed Software Inc., all rights reserved; (xiii) Kaspersky Lab Copyright © 2007-2008 all rights reserved; (xiv) Chilkat Software, Inc. Copyright 2000-2008, all rights reserved; (xv) Copyright © 1986 by University of Toronto, Henry Spencer; (xvi) TinyXml XML Parser. copyright © 2000-2002 Lee Thomason ([www.grinninglizard.com](http://www.grinninglizard.com)). Portions by Yves Berquin. Released under the zlib/libpng License; (xvii) Boost Software License - August 17th, 2003; (xviii) Copyright © OPSWAT, Inc. 2002-2008. All rights reserved; (xix) Copyright © 2004-2005 Angus Turnbull [www.twinhelix.com](http://www.twinhelix.com). Licensed under the CC-GNU LGPL; (xx) Copyright © 1995-2005 Jean-loup Gailly and Mark Adler; (xxi) Copyright © Tad E. Smith All rights reserved, published under the terms of the Apache Software License; (xxii) Copyright © 2001 - 2004, Davide Pizzolato, Copyright © 1995, Alejandro Aguilar Sierra ([asierra@servidor.unam.mx](mailto:asierra@servidor.unam.mx)); (xxiii) Sana Security, Inc. Copyright © 2008, all rights reserved. Language. It is the express wish of the Parties hereto that this Agreement be drafted in English. Les parties ont expressément demandé que ce contrat soit rédigé en anglais. Third-Party Beneficiary. Notwithstanding anything herein to the contrary, FairPoint shall be a third-party beneficiary of this Agreement.

