

## INTERNET TERMS OF SERVICE

These Internet Terms of Service ("Agreement") along with the other documents incorporated by reference herein, set forth your obligations, Zavala Communications' obligations, and the rules you must follow when using Zavala Communications' Internet service ("Service(s)"). **THE DESCRIPTION OF YOUR SERVICE AND OTHER TERMS SET FORTH IN YOUR SERVICE CONTRACT OR OTHER SERVICE ORDER DOCUMENT ARE PART OF THIS AGREEMENT.**

**PLEASE READ THIS AGREEMENT CAREFULLY.** This is a binding agreement between you (the person or entity subscribing for the Services) the entities that provide the Service, and Zavala Communications, LLC and/or its wholly-owned subsidiary, Zavala Communications, LLC, (collectively, "Zavala Communications," "we," or "us"). **Your registration, payment for, or use of the Service constitutes your agreement to be bound by the charges, terms, and conditions set forth in this Agreement, including those incorporated by reference.** You acknowledge that you are responsible for all use of the Service through your account and that this Agreement, applies to any and all usage through your account.

**IMPORTANT: THIS AGREEMENT AFFECTS YOUR LEGAL RIGHTS. PARAGRAPH 10 REQUIRES ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS. PARAGRAPH 13 LIMITS ZAVALA COMMUNICATIONS LIABILITY. PLEASE READ THESE PARAGRAPHS CAREFULLY.**

### 1. Changes to this Agreement.

From time to time, we may change this Agreement. We will provide you with notice of material changes via an appropriate method set forth in Paragraph 16. It is your responsibility to check for any such notices. Your continued subscription to the Service after the effective date of the change constitutes your acceptance of such changes.

### 2. Internet Service.

- a. Service Description. The Service is composed of narrowband or broadband access to Internet, and offers you a capability for acquiring or retrieving information from; generating, storing, transforming, processing, or utilizing information on; or making available information to other Internet end points connected directly or indirectly to Zavala Communications network. Because the Internet consists of multiple interconnected networks and most Internet end points (e.g., websites and other content providers) are not directly connected to Zavala Communications network, Zavala Communications must connect to and exchange traffic with other networks to provide its subscribers the capability of uploading data to or downloading data from Internet end points that are connected to those networks. To that end, Zavala Communications has entered into commercially negotiated agreements to exchange traffic with such networks on mutually agreeable terms. Consistent with its longstanding practice, Zavala Communications does not warrant that it will establish or expand the connections between its network and other networks except on such mutually agreeable terms. To the extent Zavala Communications is unable to reach agreement on terms of interconnection or network expansion with these other networks it could affect your service. Zavala Communications therefore makes no promise express or implied that you will be able to upload data to or download data from Internet end points connected to other networks at any particular speed. Like the other networks that make up the

Internet, Zavala Communications is a shared network, which means that the transmission links and other network resources used to provide the Service are shared among Zavala Communications subscribers. Zavala Communications manages this network for the benefit of all users based on a variety of factors, and our technical expertise.

- b. Speed, Service Capability Speed Ranges, and Conditions that May Impact Service Performance.** Zavala Communications offers many broadband service options, each of which has a different service capability speed range. The term speed is commonly used as a shorthand way to describe the capacity at which a particular broadband internet access service can transmit data. This capacity is typically measured in the number of kilobits, megabits or gigabits that can be transmitted in one second (Kbps, Mbps or Gbps). Some applications like a short email without attachments or basic web browsing do not require high service capability speeds to function optimally, while other activities like transferring large data files can be performed faster with higher-speed services. Your service capability speed may not be suitable for some applications, particularly those involving real-time or near real-time, high-bandwidth uses such as streaming video or video conferencing. The current speed ranges Zavala Communications offers may be found at on the page describing your Service on our website, which identifies the downstream and upstream rates at which your line transfers internet access data between the network interface device at your home, office or apartment building to the point you connect to Zavala Communications' network. Because service performance varies on an end-to-end basis, Zavala Communications' service capability speeds are limited to, and measured between, your location and a point on Zavala Communications' network, which constitutes only one segment of the end to end transmission path connecting the end user to Internet websites or content providers. End-to-end performance of your Service depends on a variety of factors, including (but not limited to): the number of subscribers simultaneously using the network; customer location; destination and traffic on the Internet; Wi-Fi connectivity; interference with high frequency spectrum on your telephone line; wiring inside your premises, office or apartment; the capacity or performance of your devices or modem; the server with which you are communicating; internal network management factors (including Overhead, which refers to the various control and signaling data required to achieve the reliable transmission of Internet access data); and the networks you and others are using when communicating. In addition, your use of other Zavala Communications services that share the capacity of your broadband connection with the Service may impact the amount of capacity available for your use of the Service at that particular time and thus affect the performance of the Service. Consequently, Zavala Communications does not guarantee the performance of your service on an end-to-end basis.
- c. IP Addresses.** The Services are provided with a dynamic Internet Protocol (IP) address, a static IP address, multiple static IP address service (as applicable), or a privately managed IP address utilizing CGN (Carrier Gateway NAT) technology, at Zavala Communications' sole discretion. Static IP addresses are not available with all speeds. The dynamic IP address is a single Internet address intended for use with a single account. The static IP address or multiple static IP address is intended for use with a single computer or a

network of computer/servers. You may not use the Service in a manner that is inconsistent with these intended uses.

- d. Availability. The Service is not available in all areas, and may not be available at certain speeds (or at all) at your location, even if our initial testing indicated that your line qualified for a particular speed or Service.
  - e. Service Changes. Zavala Communications reserves the right to modify or discontinue the Service temporarily or permanently. If Zavala Communications makes a change that would have a material impact on your Service, Zavala Communications will give you notice via an appropriate method set forth in Paragraph 16. Your continued subscription to the Service after the effective date of the change constitutes your acceptance of the changes and the associated terms and conditions.
- 3. Activation and Modification; Account.** Services can be ordered through our website at <https://www.zavalacommunications.com> or by calling our offices at 1 (831) 753-3700. When you order Services, we will provide you with the installation date when we will provision the Services and commence billing. If you upgrade or downgrade existing Services, these changes will be effective as of the next billing cycle unless the changes will require additional work at the Service location, in which case the changes will be effective as of the work date. Additional fees may apply to Service upgrades/downgrades.

You agree to keep confidential all user names and passwords associated with your account and are solely responsible for any liability resulting from a failure to maintain that confidentiality. You are also solely responsible and liable for all activities that occur under your user name and password. You agree to immediately notify Zavala Communications if you suspect any breach of security such as loss, theft, public use or unauthorized disclosure or use of your user name, password, or any other confidential information (such as a credit card number).

The information you provide to us in applying/registering for Internet Service and in using the Service are subject to the Zavala Communications **Privacy Policy** attached to this Agreement.

*Red Flag Rules Compliance Statement.* In compliance with the FCC's Substantive Rules 16 C.F.R. §681.2(b)(5), Zavala Communications is providing this notice to advise you of your rights concerning identity theft. Zavala Communications has developed and implemented a program to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts. The Zavala Communications program addresses methods of identifying, detecting, and preventing identity theft. Zavala Communications makes every effort to detect "Red Flags" of identity theft, such as by obtaining identifying information about and verifying the identity of a person opening an account. Zavala Communications also authenticates customers, monitors transactions and verifies the validity of change of address requests. In order to prevent identity theft, Zavala Communications will not open a new account and will close an existing account, and notify law enforcement if Red Flags are detected.

**4. Pricing.** When you purchased the Service, you agreed to specific price and plan, which may have included a minimum term. If no minimum term is set forth in your service contract or other service order document, the minimum term will be one month. You agree to maintain your Service for the minimum term. Your Service price is valid for the minimum term unless one of the following occurs, at which time your price may revert to the then-existing price for your Service: (a) the minimum term expires; (b) you move from your current Service address to another Service address; (c) you drop one of the Zavala Communications services you were required to purchase to receive a special rate (i.e., if your Service is bundled with another Zavala Communications service, such as phone service); or (4) Zavala Communications exercises a right under this Agreement to terminate your use of the Service.

**5. Termination of Service.**

**a. Your Decision to Terminate.** When you purchased the Service, you agreed to a specific price and plan, which may have included a minimum term. You may cancel your plan before the end of the minimum term and cease making your monthly payments, in exchange for which you will be subject to the early termination fee associated with that plan as specified in your application or order confirmation. At the conclusion of your minimum term, the term for your continued Service will be month-to-month, and you may cancel your Service without an early termination fee.

No cancellation of your plan or the Service is effective unless made with at least 30 days' written notice to Zavala Communications.

**b. Zavala Communications' Right to Terminate.** Zavala Communications may immediately terminate or suspend all or any portion of your Service without notice for any of the reasons set forth in Zavala Communications' Acceptable Use Policy, or if: (i) you provide false or inaccurate information to Zavala Communications; (ii) you violate this Agreement; (iii) you engage in conduct that is a violation of any law, regulation or tariff (including, without limitation, copyright and intellectual property laws); or (iv) if you engage in conduct that is threatening, abusive or harassing to Zavala Communications employees or any of their vendor's employees or representatives, including, for example, making threats to physically harm or damage employee or company property; frequent use of profane or vulgar language; or repeatedly contacting our customer service representatives for reasons that do not pertain to our provisioning, maintenance, repair or general servicing of your Service after you have been asked to stop such conduct. You may also be subject to suspension or termination pursuant to Paragraph 6 below.

**6. Payment.** You agree to pay: (a) the monthly fee specified when you ordered your Service; (b) the charge for all equipment required for your Service; (c) activation fees and connection and/or installation charges (as set forth on your service contract or other service order document); (d) late fees, restoral of Service fees and other applicable Service charges; and (e) any applicable taxes, recovery fees and surcharges which Zavala Communications pays to municipalities and other governmental entities and may pass on to you.

**a. Credit Check / Advance Payments and Deposits.** You give us permission to obtain your credit information from consumer credit reporting agencies at any time. If we determine that you may be a credit risk due to: (i) unsatisfactory credit rating; (ii) insufficient credit history; (iii) fraudulent or abusive use of any Zavala Communications services

within the last five years; or (iv) late payments for current or prior bills, we may refuse to provide the Services or we may require an advance payment, a non-refundable payment, and/or deposit. Interest will not be paid on advance payments or deposits unless required by law. We may require special payment terms such as additional advance payments or deposits if we determine that the initial payment was inadequate. We may establish limits and restrict Service or features as we deem appropriate. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend Service until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due. Upon determination solely by Zavala Communications of satisfactory payment history or as required by law, Zavala Communications may begin refunding of deposits through bill credits, cash payments, or as otherwise determined solely by Zavala Communications.

- b. Billing.** Billing will begin when the Service is provisioned by Zavala Communications whether or not you have begun to use the Service.
- c. Method of Payment.** Your monthly charges may be billed via a monthly bill or to a credit card. If you elect to receive a monthly bill, payment is due within 15 days of the bill date. If you elect to have your monthly charges automatically billed to a credit card, you will be asked to provide us with a credit card number from a card issuer that we accept in order to activate your Service.

*Special Terms Applicable to Credit Card Billing:* You hereby authorize Zavala Communications to charge and/or place a hold on your credit card with respect to any unpaid charges for Services or any related equipment. You authorize the issuer of the credit card to pay any amounts described herein without requiring a signed receipt; you agree that this Agreement shall be accepted as authorization to the issuer of the credit card to pay any amounts described herein without requiring a signed receipt; and you agree that this Agreement shall be accepted as authorization to the issuer of the credit card to pay all such amounts. You authorize Zavala Communications and/or any other company who bills products or services, or acts as billing agent for Zavala Communications to continue to attempt to charge and/or place holds with respect to all sums described herein, or any portion thereof, to your credit card until such amounts are paid in full. You agree to provide Zavala Communications with updated credit card information upon Zavala Communications' request and any time the information you previously provided is no longer valid. You acknowledge and agree that neither Zavala Communications nor any Zavala Communications affiliated company will have any liability whatsoever for any non-sufficient funds or other charges incurred by you as a result of such attempts to charge, and/or place holds on, your credit card. When payment is made by credit card or debit card, payment will also be subject to the terms and conditions established by the credit or debit card issuer.

- d. Late Payment and Failure to Pay.** You agree that for each bill not paid in full by the payment due date, we may charge you a late fee of (i) interest on any unpaid amounts applied at a compound rate of 1.5% per month (19.56% per annum); or (ii) the maximum amount permitted under and subject to applicable law per month or partial month until the delinquent amount is paid in full. Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of Zavala Communications' rights to collect the

full amount due. Notice of any disputes must be in writing and received by us within 15 days after you received your bill or you will waive any objection. Zavala Communications may suspend or terminate Service if your payment is past due. While your Service is suspended, billing will continue for your monthly charges. If Zavala Communications suspends your service for non-payment, you must pay all past due amounts in order to have service restored, and you may also, at Zavala Communications sole discretion, be required to pay a service restoral fee.

In the event you fail to pay Zavala Communications or Zavala Communications is unable to bill charges to your credit card, Zavala Communications may assign unpaid late balances to a collection agency. You expressly authorize, and specifically consent to allowing, Zavala Communications and/or its outside collection agencies, outside counsel, or other agents to contact you in connection with any and all matters relating to unpaid past due charges billed by Zavala Communications to you. You agree that, for attempts to collect unpaid past due charges, such contact may be made to any mailing address, telephone number, cellular phone number, e-mail address, or any other electronic address that you have provided, or may in the future provide, to Zavala Communications.

- e. Returned Checks and Other Instruments. If any check, or other instrument is tendered by you and returned unpaid by a financial institution for any reason you will be charged a fee.

- 7. Access to Premises.** You will provide Zavala Communications with reasonable access to your premises in order to install, maintain, and repair the Services, and you authorize any other adult resident or guest at your residence to grant access to your premises for these purposes. You understand and agree that Zavala Communications may drill, cut, and otherwise alter improvements on the premises. If you do not own your premises, you warrant that you have obtained permission from any necessary party, including but not limited to the owner, landlord, or building manager, to make alterations Zavala Communications deems appropriate for the work to be performed. You acknowledge that Zavala Communications may use existing wiring, including altering the wiring and removing accessories, located within your premises. Without limiting any other provisions of this Agreement, you agree to indemnify Zavala Communications from and against all claims by an owner, landlord, building manager, or other party in connection with installation, maintenance, repair, or provision of the Services or related equipment.

You agree that the installation, inspection, maintenance, repair, and/or removal of any equipment could result in service outages or potential damage to your equipment, computers, computer network and/or the contents thereof and/or the loss of any recorded programming. Accordingly, you agree that you are solely responsible for providing any needed back-up for your information and data or programming and that in no event will Zavala Communications or any of its employees, agents or contractors be liable for any loss of data or programming or damage to your equipment, computers, computer network and/or the contents thereof.

You are responsible for back-up, surge protection and protection from liability or damage of your premises or equipment. Zavala Communications has no liability or responsibility due in whole or in part to any force majeure event as described in Paragraph 11.

- 8. Equipment.** Unless expressly identified as being sold to you, title to all hardware and/or software provided by Zavala Communications in connection with this Agreement (the "Equipment") shall remain with Zavala Communications. Zavala Communications' repair and maintenance obligations as to the Equipment are limited solely to ordinary wear and tear and shall not include maintenance and repair necessary as a result of any other cause, including without limitation, vandalism or intentional or negligent acts or omissions. You shall provide appropriate space, power and environment for, and take reasonable care of, the Equipment.

Unless otherwise agreed in writing, you will be solely responsible and liable for connection of your computers and other equipment to the Equipment. You will at all times be solely responsible and liable for the maintenance and repair of your computers and Customer's other equipment.

- 9. Restrictions on Use.** Your use of the Services is subject to the Zavala Communications **Acceptable Use Policy** attached to this Agreement and the following additional restrictions:
- a. **No Resale.** The Service is provided for your use only (unless otherwise specifically stated) and you agree not to, whether for a fee or without charge, reproduce, duplicate, copy, sell, transfer, trade, resell, re-provision, redistribute, or rent the Service, any portion of the Service, use of the Service, or access to the Service, including, but not limited to, reselling capabilities enabled or used by a specific application (including, without limitation, Voice Over Internet Protocol (VOIP) via wired, wireless or other means). For example, you agree that the Service is not to be used to trunk or facilitate public internet access (hotspots) or any other public use of the Service, or for any high volume purpose.
  - b. **Copyright Infringement and Digital Millennium Copyright Act.** You are prohibited from infringing, publishing, submitting, copying, uploading, downloading, posting, transmitting, reproducing, or distributing software, video or audio content, or any other material that is protected by copyright, trademark, patent, trade secret, any other type of intellectual property rights, trademark laws (by rights of privacy or publicity) or other proprietary right of any party unless you own or control the rights thereto or have received all necessary consent to do the same. **Zavala Communications assumes no responsibility, and you assume all risks, regarding the determination of whether material is in the public domain, or may otherwise be used by you for such purposes.**

Zavala Communications respects the intellectual property rights of others. Zavala Communications has adopted and maintains a policy that provides for the termination in appropriate circumstances of the account(s) of customers who are repeat copyright infringers. In addition, Zavala Communications may voluntarily participate, on terms acceptable to Zavala Communications, in copyright alert and graduated response programs.

Zavala Communications will process valid notifications of claimed infringement under the Digital Millennium Copyright Act ("DMCA"), found at 17 U.S.C. § 512). Zavala Communications' designated agent to receive notifications of claimed infringement as described in DMCA subsection 512(c)(3) is:

Marcos Zavala  
Zavala Communications LLC  
32 E. Alisal St, Suite 210  
Salinas, CA 93901

- c. Network Management. Zavala Communications reserves the right to engage in reasonable network management practices, to protect its broadband network from harm, compromised capacity, degradation in network performance or service levels, or uses of the Service which may adversely impact access to or the use of the Service by other customers. Reasonable network management practices that Zavala Communications may adopt include, but are not limited to, the following: (i) a cap on data usage; (ii) a modification of a customer's serving facility or service technology, and/or (iii) a modification of or a limitation on a customer's data throughput speed or data consumption.

A very small percentage of customers use the Service in a way which creates harm to the network, compromised capacity, degradation in network performance or service levels, or which may adversely impact access to or the use of the Service by other customers. In the event that Zavala Communications adopts a network management practice which will apply to your Service, we will provide you with a notice which describes the network management practice, explains how it will work, and explains how it could impact your Service.

*Statement as to Nondiscrimination.* Notwithstanding the foregoing, Zavala Communications manages its network in accordance with the FCC's Internet Policy Statement adopted on August 5, 2005 and the FCC's Open Internet Orders adopted December 21, 2010 and February 26, 2015 (to the extent applicable to Zavala Communications as a broadband Internet service provider with fewer than 100,000 subscribers) which promulgated certain regulations applicable to broadband Internet service providers ("Net Neutrality Laws"). Zavala Communications does not discriminate or favor any lawful Internet applications, content, or services where lawfully used. Zavala Communications promotes your ability to freely access and disseminate lawful content in a manner that respects others' use of the network and that complies with the law. Zavala Communications supports industry practices for safeguarding children, intellectual property rights of others and your privacy and security. Zavala Communications follows standard best efforts for Internet delivery with respect to allocation of capacity without differentiation among applications, providers and sources. Generally accepted technical measures to provide acceptable service levels to all customers will be used by Zavala Communications, such as application-neutral bandwidth allocation, as well as measures to address service attacks, illegal content and other harmful activities to protect network integrity and reliability.



**10. DISPUTE RESOLUTION WITH ZAVALA COMMUNICATIONS BY BINDING ARBITRATION. PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our offices. **In the unlikely event that we are unable to resolve a complaint you may have to your satisfaction (or if Zavala Communications has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration instead of in courts of general jurisdiction. Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.**

**Arbitration Agreement.**

- a. Zavala Communications and you agree to arbitrate **all disputes and claims** between you and Zavala Communications arising in any way out of the Services. This agreement to arbitrate is intended to be broadly interpreted.

References to "Zavala Communications LLC, Zavala Communications" in this Arbitration Agreement shall also apply to Zavala Communications' employees, contractors, agents or predecessors- or successors- ~~in-interest~~ or assigns.

- b. A party who intends to seek arbitration must first send to the other, by certified mail, a written notice of dispute ("Notice"). The Notice to Zavala Communications should be sent as directed in Paragraph 16. The Notice must (1) describe the nature and basis of the claim or dispute; and (2) set forth the specific relief sought. If Zavala Communications and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or Zavala Communications may commence an arbitration proceeding.
- c. The arbitration will be governed by the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless Zavala Communications and you agree otherwise, any arbitration hearings will take place in **Monterey County, CA.**
- d. **YOU AND ZAVALA COMMUNICATIONS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and Zavala Communications agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

- 11. Operational Limits/Force Majeure.** Provisioning of the Service is subject to the availability and the operational limitations of the requisite equipment and associated facilities. You understand and agree that temporary interruptions of the Service may occur as normal events in the provision of the Service and that Zavala Communications is not liable for such interruptions. You further understand and agree that Zavala Communications has no control over third party networks you may access in the course of your use of the Service, and therefore, delays and disruptions of other network transmissions are beyond the control of Zavala Communications. In addition, Zavala Communications is not liable for any failure of performance due to any cause beyond its reasonable control including acts of God, fire, explosion, vandalism, terrorism, cable cut, major weather disturbance, national emergencies, riots, wars, labor difficulties, supplier failures, shortages, breaches, any law, order, regulation, direction, action, or request by any government, civil or military authority, or suspension of existing service in compliance with state and/or federal law, rules and regulations, or delays caused by you or your equipment.

## **12. DISCLAIMER OF WARRANTIES.**

- a. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ZAVALA COMMUNICATIONS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- b. ZAVALA COMMUNICATIONS MAKES NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, OR (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE (FOR EXAMPLE BUT WITHOUT LIMITATION, ZAVALA COMMUNICATIONS DOES NOT WARRANT THAT YOU WILL ALWAYS RECEIVE EMAILS ADDRESSED TO YOU).
- c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ZAVALA COMMUNICATIONS OR THROUGH OR FROM ZAVALA COMMUNICATIONS WEBSITE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

**13. LIMITATION OF LIABILITY.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER ZAVALA COMMUNICATIONS NOR ITS AFFILIATES, EMPLOYEES, CONTRACTORS, AGENTS, OR LICENSORS WILL BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF ZAVALA COMMUNICATIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM; (a) THE USE OR THE INABILITY TO USE THE SERVICE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THROUGH THE SERVICE; (e) FAILURE TO INSURE THE COMPATIBILITY OF YOUR SYSTEM (INCLUDING THE EQUIPMENT, DEVICES, AND SOFTWARE THAT YOU PROVIDE TO RECEIVE THE SERVICE) WITH THE SERVICE; (f) ANY OTHER MATTER RELATING TO THE SERVICE; AND/OR (g) BATTERY BACKUP. ADDITIONALLY, ZAVALA COMMUNICATIONS MAXIMUM LIABILITY AND YOUR SOLE REMEDY FOR ANY DEFECT IN OR FAILURE OF THE SERVICES IS THE AMOUNT OF ONE MONTH'S FEE FOR THE SERVICES.

**14. Indemnity.** You agree to indemnify Zavala Communications and its affiliates, employees, contractors, agents, and licensors from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Service, your connection to the Service, your violation of this Agreement, or your violation of any rights of another.

Additionally, you agree to indemnify Zavala Communications and its affiliates, employees, contractors, agents, and licensors from and against any and all claims stemming from usage of the Services through your account whether or not such usage is authorized by you.

## **15. General.**

- a. Entire Agreement; Additional Terms. This Agreement, any other policies or guidelines referenced herein constitutes the entire agreement between Zavala Communications and you with respect to the Services. This Agreement supersedes any prior agreement between you and Zavala Communications with respect to the Services. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other Zavala Communications or third party services.
- b. No Implied Waiver. The failure of Zavala Communications to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

- c. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.
  - d. No Implied Third Party Beneficiaries. You agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.
  - e. Statute of Limitations. You agree that regardless of any statute of laws to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filled within one year after such claim or cause of action arose or be forever barred.
  - f. Assignment. We can assign all or part of our rights or duties under this Agreement without notifying you. You may not assign this Agreement or the Services without our prior written consent.
  - g. Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard for such State's conflicts of law rules. Any disputes arising out of this Agreement shall be initiated and brought as required in Paragraph 10, but to the extent any such disputes are instead brought in a court, exclusive jurisdiction and venue for such disputes will be the in the appropriate state or federal court located in Wichita County, Texas.
  - h. Survival. Obligations and rights in connection with this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, will survive the termination, cancellation or expiration of the Agreement, including, but not limited to those in Paragraphs 6, 8, 10, 11, 12, 13, 14, 15, 16.
- 16. Notices.** All notices to Zavala Communications under this Agreement, including any "Notice" under Paragraph 10, shall only be effective if in writing, and, unless otherwise provided, delivered via certified mail, return receipt requested, to the following address:

Zavala Communications, LLC

32 E. Alisal St, Suite 210

Salinas, CA 93901

We reserve the right to deliver notices to you in any way we deem appropriate including via your account portal, your account email address or any other email address you provide, posting online on our website, recorded announcement, bill message, bill insert, newspaper ad, postcard, letter, or call to your billed telephone number or U.S. mail. However, we will endeavor to send any formal notices (for example, a "Notice" under Paragraph 10) to you via U.S. mail to your billing address on file.

## ACCEPTABLE USE POLICY

- 1. Introduction.** By using the Service(s), as defined below, you agree to comply with this Acceptable Use Policy (“AUP”) and to remain responsible for your users. Zavala Communications reserves the right to change or modify the terms of the AUP at any time, effective when posted on Zavala Communications' website at <http://www.zavalacommunications.com>. Your use of the Service(s) after changes to the AUP are posted shall constitute acceptance of any changed or additional terms.
- 2. Scope of the AUP.** This AUP applies to the Zavala Communications services that provide (or include) access to the Internet, including hosting services (software applications and hardware), or are provided over the Internet or wireless data networks (collectively "Services").
- 3. Prohibited Activities.**
  - a. General Prohibitions.** Zavala Communications prohibits use of the Services in any way that is unlawful, harmful to or interferes with use of Zavala Communications' network or systems, or the network of any other provider, interferes with the use or enjoyment of services received by others, infringes intellectual property rights, results in the publication of threatening or offensive material, or constitutes Spam / E-Mail / Usenet abuse, a security risk or a violation of privacy.  
Additionally, failure to adhere to the rules, guidelines or agreements applicable to websites or services that are accessed via a link from the Zavala Communications-branded website or from a website is a violation of this AUP.
  - b. Unlawful Activities.** The Services shall not be used in connection with any criminal, civil or administrative violation of any applicable local, state, provincial, federal, national or international law, treaty, court order, ordinance, regulation or administrative rule.
  - c. Violation of Intellectual Property Rights.** The Services shall not be used to publish, submit/receive, upload/download, post, use, copy or otherwise reproduce, transmit, re-transmit, distribute or store any content/material or to engage in any activity that infringes, misappropriates or otherwise violates the intellectual property rights or privacy or publicity rights of any individual, group or entity, including but not limited to any rights protected by any copyright, patent, trademark laws, trade secret, trade dress, right of privacy, right of publicity, moral rights or other intellectual property right now known or later recognized by statute, judicial decision or regulation.
  - d. Threatening Material or Content.** The Services shall not be used to host, post, transmit, or re-transmit any content or material (or to create a domain name or operate from a domain name), that harasses, or threatens the health or safety of others. In addition, for those Services that utilize Zavala Communications-provided web hosting (if any), Zavala Communications reserves the right to decline to provide such services if the content is determined by Zavala Communications to be obscene, indecent, hateful, malicious, racist, defamatory, fraudulent, libelous, treasonous, excessively violent or promoting the use of violence or otherwise harmful to others.
  - e. Spam / E-Mail / Usenet Abuse.** Violation of the CAN-SPAM Act of 2003, or any other applicable law regulating e-mail services, constitutes a violation of this AUP. Spam / E-Mail / Usenet abuse is prohibited using the Services.

- f. **Security Violations.** You are responsible for ensuring and maintaining security of your systems and the machines that connect to and use Service(s), including implementation of necessary patches and operating system updates.

The Services may not be used to interfere with, gain unauthorized access to, or otherwise violate the security of any server, network, network access, personal computer or control devices, software or data, or other system, or to attempt to do any of the foregoing.

**Customer Responsibilities.** Customers remain solely and fully responsible for the content of any material posted, hosted, downloaded/uploaded, created, accessed or transmitted using the Services. [redacted] has no responsibility for any material created on the Zavala Communications network or accessible using the Services, including content provided on third-party websites linked to the Zavala Communications network. Such third-party website links are provided as Internet navigation tools for informational purposes only, and do not constitute in any way an endorsement by Zavala Communications of the content(s) of such sites. Customers are responsible for taking prompt corrective action(s) to remedy a violation of AUP and to help prevent similar future violations.

- 5. **AUP Enforcement. Your failure to observe the guidelines set forth in this AUP may result in taking actions anywhere from a warning to a suspension or termination of your Services.**

Without limitation, Zavala Communications reserves the right to act immediately and without notice to suspend or terminate affected Services in response to a court order or government notice that certain conduct must be stopped, or when Zavala Communications reasonably determines that your use of the affected Services may: (a) expose Zavala Communications to sanctions, prosecution, civil action or any other liability; (b) cause harm to or interfere with the integrity or normal operations of [redacted] network or networks with which Zavala Communications is interconnected; (c) interfere with another [redacted] customer's use of the Services or the Internet; (d) violate any applicable law, rule or regulation; or (e) otherwise present an imminent risk of harm to [redacted] or [redacted] customers.

[redacted] has no obligation to monitor content of any materials distributed or accessed using the Services. However, [redacted] may monitor content of any such materials as necessary to comply with applicable laws, regulations or other governmental or judicial requests; or to protect the [redacted] network and its customers.

Zavala Communications has no obligation to investigate possible copyright infringements with respect to materials transmitted by any user of the Services. However, Zavala Communications will process valid notifications of claimed infringement under the Digital Millennium Copyright Act ("DMCA", found at 17 U.S.C. § 512) in accordance with its **Internet Terms and Conditions**.

**6. Incident Reporting.** Any violation of this AUP should be delivered in writing to the following address:

Zavala Communications, LLC

32 E. Alisal St, Suite 210

Salinas, CA 93901

## PRIVACY POLICY

- 1. Introduction.** This Privacy Policy discusses how Cobalt Ridge uses information provided by visitors to Cobalt Ridge's website at <http://www.cobaltridge.com>. Cobalt Ridge reserves the right to change or modify the terms of the Privacy Policy at any time, effective when posted on Cobalt Ridge's website. Your use of the website after changes to the Privacy Policy are posted shall constitute acceptance of any changed or additional terms.
- 2. Personal Information.** Visitors can generally browse our website anonymously without providing any personal information. However, there are cases where we may request information from people visiting our website. When personally identifiable information is collected, you will know because you will need to provide the requested information through the completion of a form. Personally identifiable information may include a visitor's name, address, telephone number and email address. We will not collect any personally identifiable information unless the visitor provides it to us voluntarily. If you choose not to give information we request, you can still visit our website, but you may be unable to access certain options, offers, and services. Cobalt Ridge is dedicated to building a long-term relationship with all of our website visitors. We will not sell, share or rent this information to others in ways other than as set forth in this Privacy Policy. However, this Privacy Policy does not apply to the use or disclosure of information that is collected or obtained by us through means other than our website.
- 3. Log Files.** Our log tracking collects visitors' IP addresses to analyze trends, administer our website, track visitor movement, and gather broad demographic information to help determine the type of information visitors are interested in seeing on our website. This tracking only collects IP addresses and not personally identifiable information. Visitors are not personally identifiable within our log files. Cobalt Ridge only uses this information for internal purposes and does not share this information with non-affiliated companies or institutions.
- 4. Cookies.** A "Cookie" is a piece of information that is sent from a Cobalt Ridge web server to a visitor's browser and stored on the visitor's hard drive. Cobalt Ridge uses Cookies when a visitor orders a product or registers for a specific program. The Cookie stores information that allows Cobalt Ridge's website to remember a visitor the next time he or she visits it. Cookies also allow us to tailor our website to better match our visitors' interests and preferences. A visitor may choose to disable Cookies by changing his or her browser settings; however, the visitor may not be able to access some of the information or features on our website after doing so.
- 5. Registration.** In some cases, a visitor may be required to complete a registration form to order a product or to receive certain information. During the registration process, the person is required to give specific information such as name and email address. This information is used to contact the person regarding services offered by Cobalt Ridge for which the person has expressed interest.
- 6. Ordering Services.** When ordering services online, Cobalt Ridge will request certain information from the visitor/customer to complete an order. The customer's information will include name, address, telephone number, email address, payment information and other information as may be requested by Cobalt Ridge in the order form. This information is used for billing purposes, fulfillment of orders, and ongoing account maintenance.
- 7. Security.** When asked to enter certain sensitive information (such as credit card number and/or social security number), that information is encrypted and is protected through third party

security systems. Access to visitor information is restricted to Cobalt Ridge and their third party processors through their respective developers, network operations personnel and other qualified employees or agents (such as billing clerks or customer care representatives). In addition, the servers on which Cobalt Ridge stores personally identifiable information are kept in a secure location. While we use reasonable efforts to safeguard the confidentiality of your information, Cobalt Ridge will have no responsibility for disclosure of any information obtained due to errors in transmission or the unauthorized acts of third parties.

- 8. Marketing Contacts.** If a visitor wishes to subscribe to newsletters or other marketing information, such as email updates, Cobalt Ridge will ask for contact information, including a street address or email address. In addition, we may ask for information that will help deliver pertinent information from Cobalt Ridge. Persons who do not wish to receive Cobalt Ridge newsletters or promotional materials may opt-out of receiving these communications. Each contact the visitor receives from Cobalt Ridge will inform the visitor how to unsubscribe from these communications.
- 9. Sharing of Personal Information.** Collected personal information is only used for the business purposes of Cobalt Ridge and is not shared with external, non-affiliated companies except as provided in this Privacy Policy. Cobalt Ridge may partner with other parties to provide specific services, such as billing solutions, which are designed to enhance the functionality of our products and services. When a visitor/customer signs up for these products or services, Cobalt Ridge will only share names or other contact information that is necessary for the third party to provide these services. We may also provide your personal information to third party agents we have hired to help us provide a product or service you have requested. For example, we would need to provide your address to a shipping company to deliver a package you have ordered. In addition, we outsource certain functions of our business, and those agents may have access to your personal information; however, in such cases our agents are prohibited from disclosing your personal information to others. We may share statistical or aggregated non-personal information about our visitors with advertisers, business partners, sponsors and other third parties. No personal information is supplied in these cases. This data is used to customize our website content and advertising to deliver a better experience to our users.
- 10. Correcting / Updating Personal Information.** If you need to update or change personal identification information, Cobalt Ridge will help you to correct, update or remove personal data provided to Cobalt Ridge. You can update or change personally identifiable information by contacting Cobalt Ridge directly or through its website.
- 11. Links.** Cobalt Ridge's website may contain links to other websites. Cobalt Ridge is not responsible for the contents or privacy practices of these websites. We encourage our visitors and customers to read the privacy policy of each website they visit. This Privacy Policy applies solely to information collected on Cobalt Ridge's website.
- 12. Policies for Children.** Cobalt Ridge DOES NOT KNOWINGLY SOLICIT, COLLECT OR USE ANY PERSONAL INFORMATION FROM VISITORS UNDER 13 YEARS OF AGE. NO INFORMATION SHOULD BE SUBMITTED TO OUR WEBSITE BY GUESTS UNDER 13 YEARS OF AGE.
- 13. Special Cases.** Cobalt Ridge reserves the right to disclose personal information in special cases, when we have reason to believe that disclosing this information is necessary to identify, contact or bring legal action against someone who may be causing injury to or interference with (either intentionally or unintentionally) our rights or property, other website users, or anyone else that



could be harmed by such activities. We may disclose personal information without notice to you in response to a subpoena or when we believe in good faith that the law permits it or to respond to an emergency situation.

**14. Questions.** Questions regarding this Privacy Policy should be delivered in writing to the following address:

Cobalt Ridge, LLC

P.O. Box 1176

Wichita Falls, Texas 76307