

# ZeroOutages Service Agreement

This is a legal agreement ("Agreement" and/or "TOS" or Terms Of Service) between the purchaser as identified and XRoads Networks, Inc. (dba ZeroOutages), ZeroOutages is a service provided by XRoads Networks, to provide Internet/WAN Management Services. By signing this agreement and accept to being bound to its terms and conditions along with our Acceptable Use Policy. Upon submission of this agreement via our online order system ZeroOutages will email the technical contact to obtain configuration information for the onsite device. Expect the service to be delivered within 7-10 days of placing the order or the specified service start date (whichever is later).

Company Name:	
Order Number:	(enter the associated quote number, if any)
Primary Contact:	
Contact Primary Phone:	
Contact Email Address:	
Start Date:	(mm/dd/yyyy)
Service Term	Term 24-Months (then month-to-month) (post evaluation period)
Service Definition:	
Number of Sites:	
Total Monthly Amount:	
Total Setup (if any):	

Technical Contact:	
Technical Phone:	
Technical Email:	
Contact Primary Phone:	
Shipping Address:	
Card Number: _____ Card Type: VISA Card Name: _____ Card Expiration Date: _____ Security Code: _____	
Associated Agents / Comments:	

IN WITNESS WHEREOF, the customer hereto has executed this Agreement as of the day and year first set forth.

**Customer**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

**The services associated with this order may also be detailed in the ZOQ order number which is processed as part of signing this agreement. Please refer to that order number to confirm the services attached to this agreement. By signing this agreement the signor agrees to be bound to the services outlined in the ZOQ order which were selected as part of our standard online order process. The signor understands and agrees to utilize our efficient online setup and management process.**

## I. TERMS AND CONDITIONS

### 1. Legal Authority

By accepting these TOS as a Customer Account holder, you confirm (through your duly authorized representative) that you are a corporation, partnership or other legal entity duly formed (and incorporated if applicable) in good standing where required to do business with all legal authority and power to accept these TOS..

### 2. The Service

The Service provides monitoring and management for data networks across one or more Internet links and/or MPLS or private networks connections (as a whole these services are called SD-WAN). The service may also include additional bandwidth management and tunnel based security capabilities. The Service provides a fully managed switching appliance and/or software which resides at the account holders designated premise which allows ZeroOutages to manage the SD-WAN service and control access across these links in order to provide increase throughput and high reliability for the WAN (wide-area network). ZeroOutages can only manage network connectivity at the edge of the network, i.e. between the LAN and WAN and does not guarantee the availability of any individual network applications as they rely on many components outside the management of ZeroOutages.

The Service provides a minimum of 99.999% uptime SLA for Internet connectivity when used in combination with multiple Internet links so that the combined service delivers an average uptime of over five nines. The actual speed experienced by customers may vary and depends upon several factors including customer location, destination on the Internet, traffic on the Internet, interference with high frequency spectrum on the customer's circuit, etc. No minimum level of speed is guaranteed and is greatly dependent on the service providers and their communication networks. Additionally the managed service is delivered as best effort based on the availability and access provided through the account holders Internet service providers.

2.1 Modifications to Service. ZeroOutages reserves the right to modify the Service (or any function or feature of the Service or any part thereof, including, but not limited to, rates and charges beyond the term of the initial contract) in order to improve upon the Service. It is your responsibility to check the ZeroOutages website for any such change notices. You agree that ZeroOutages will not be liable to you or to any third party for any such modification or suspension of the Service based on the terms and conditions of this agreement or our acceptable use policy (AUP).

2.2 Service Aggregation. ZeroOutages provides increased throughput capabilities through link bonding/balancing. This is the process by which individual network sessions are bonded between two or more Internet connections. Through this process ZeroOutages is able to speed up many common Internet applications and may be able to speed up single sessions for some web-based downloads, depending on availability of our MSA bonding technique.

2.3 Service Limitations. ZeroOutages cannot and does not guarantee the availability of the customer's network applications. ZeroOutages also does not guarantee the individual links provided by each service provider. ZeroOutages responsibility is limited to our ability to ensure that our appliance/software is functioning properly. If a ZeroOutages representative is able to login and confirm that any specific network application traffic is properly going through the appliance/software as per design, then that is the extent of our responsibility for confirming the network connectivity. ZeroOutages support engineers cannot and will not login/manage/or make any changes to any non-ZeroOutages equipment, switches, routers, etc.

2.4 Service Setup. A service setup fee applies to each ZeroOutages installation in order to cover engineering planning, configuration, and implementation time. This service setup fee is typically integrated in to our first and last month payment option, i.e. during the first month of service we charge for the first and last month's billing.

2.5 Add-On Services. ZeroOutages has a number of modular services which it can enable based on the customer's requirements. Some of these services provide extended LAN functionality. These extended LAN services may have monthly fees based on network usage beyond a minimum amount of data usage per month. The customer will be notified if any of the services they are using fall under this requirement.

2.6 Support Services. ZeroOutages reserves the right to charge a per incident fee of \$25 for customers that make excessive support requests in any given month where it is deemed by ZeroOutages to be an abuse of the support services.

### 3. Equipment

Other than all hardware provided to you by ZeroOutages and any revised version thereof that you choose to use, you must provide all equipment, devices and software necessary to receive the Service. Due to the infinite number of possible combinations of hardware and software, you are responsible for the compatibility of your system with the Service. Any equipment that was not provided to you by ZeroOutages is not the responsibility of ZeroOutages, and ZeroOutages will not provide support and will not be responsible for ongoing maintenance or management of such equipment. Any ZeroOutages-provided device will be either a new or a fully inspected, tested, and warranted return or repackaged unit. If for any reason you cancel your service, you must return your equipment in the original packaging and such equipment must be in good working condition. Equipment must be returned within 30 days of terminating your Service or pay for the non-returned equipment, see Section 5 below.

3.1 Installation. If you request ZeroOutages provide professional onsite install of the equipment, you must pay a Professional Installation Charge in the amount specified by ZeroOutages at the time you enroll in the Services, or when you request a transfer of the Services. In the event that no one authorized to permit installation of the Equipment is available at your Premises at the time you scheduled an installation appointment, and notification was not provided to ZeroOutages at least 48 hours in advance, you agree to pay a No-Show Charge in the amount of \$300/hr. You authorize ZeroOutages and our employees, agents, contractors, and representatives to enter your premises in order to install, maintain, inspect, repair, or remove the equipment and software. By scheduling an installation appointment, you represent to us that you have the right to and do authorize us to enter your premises.

3.2 File Modification/Backup Requirements. The Qualifications of your network, as well as the installation (whether self-installed or ZeroOutages -installed), use, inspection, maintenance, repair, or removal of the Equipment, may result in an inadvertent service outage or reconfiguration of the network, or temporary interruption of your telephone service. ZeroOutages does not represent or warrant that the installation will not temporarily disrupt the normal operations of your network. You acknowledge and agree that you are solely responsible for backing up all existing computer files by copying them to another storage medium prior to the installation of your Equipment, and prior to any inspection, maintenance, repair, or removal of your Equipment. ZeroOutages DOES NOT REPRESENT OR WARRANT THAT INSTALLATION BY YOU OR A THIRD PARTY CHOSEN BY YOU WILL ENABLE YOU TO SUCCESSFULLY ACCESS OR USE THE SERVICES, NOR THAT ANY SUCH INSTALLATION WILL NOT CAUSE DAMAGE OR MODIFICATIONS TO, OR LOSS OF, ANY OF YOUR SOFTWARE, HARDWARE, FILES, DATA, OR PERIPHERALS. ZeroOutages AND OUR EMPLOYEES, AGENTS, CONTRACTORS, AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR SERVICE PROBLEMS (INCLUDING TELEPHONE SERVICE) RESULTING FROM YOUR, OR A THIRD PARTY'S, FAILURE TO PROPERLY INSTALL, ACCESS, OR USE THE EQUIPMENT OR SERVICES.

3.3 ZeroOutages Installation of Your Equipment. Except for our gross negligence or willful misconduct, we shall have no liability whatsoever for any damage, loss, or destruction to all or a portion of your network during our installation of your Equipment. In the event of such gross negligence or willful misconduct by ZeroOutages, ZeroOutages shall pay for the repair or replacement of the damaged, lost, or destroyed portions of your hardware, up to a maximum of those amounts paid as part of your service contract. EXCEPT FOR OUR WILLFUL MISCONDUCT, ZeroOutages AND OUR EMPLOYEES, AGENTS, CONTRACTORS, AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO, LOSS, OR DESTRUCTION OF ANY SOFTWARE, FILES, OR DATA, REGARDLESS OF THE CAUSE OF SUCH DAMAGE, LOSS, OR DESTRUCTION.

3.3 ZeroOutages Equipment Replacement. In the event of a device malfunction ZeroOutages (XRoads Networks) will replace the equipment free of charge. Replacement equipment will be shipped for overnight delivery to the ZeroOutages customer. The customer is responsible for unplugging the old equipment and plugging in the new

equipment. All equipment will be shipped pre-configured for remote management by ZeroOutages.

#### 4. Revisions

This Agreement may be updated or changed from time to time. The current Agreement shall be posted at: [www.zerooutages.com](http://www.zerooutages.com) ("Website"). This site will be updated as changes are made. You agree to visit the Website periodically to be aware of and review any such revisions. All changes shall become effective upon posting of the revised Agreement on the Website. Your continued use of the Service following such notice constitutes your acceptance of those changes. If you do not agree to the revisions, you must terminate your Service immediately.

#### 5. Term & Termination

You agree to the specified term set forth in the offer under which you purchased the Service once the initial 30-day evaluation period has completed. **The evaluation period begins once the Service equipment is shipped to customer's location and continues for 30 days.** The customer has the option of terminating this agreement at anytime during this 30-day evaluation period. You further agree that if you cancel your plan after the evaluation period but before the end of the specified term, you will be subject to early cancellation fees and/or service fees (collectively "Termination Charges") associated with that plan. At the end of the initial term, the Service will continue on a month-to-month basis unless otherwise renewed.

5.1 Suspension/Termination. Your Service may be suspended or terminated if your payment is past due and such condition continues un-remedied for thirty (30) days. ZeroOutages may also terminate or suspend your Service if you provide false or inaccurate information that is required for the provision of Service or is necessary to allow ZeroOutages to bill you for Service.

5.2 Early Termination Fee. There is a base minimum service commitment of 12-months. Each ZeroOutages Service includes an additional minimum term commitment (see your service plan description). Your minimum term begins on the billing start date as described in the foregoing section titled "Start Date". **IN THE EVENT THAT YOU TERMINATE (OR TAKE AN ACTION THAT CAUSES TERMINATION OF) YOUR SERVICE BEFORE SATISFYING YOUR SERVICE PLANS MINIMUM TERM COMMITMENT (SEE THE TERM SELECTED ABOVE), THEN YOU AGREE TO PAY, UPON DISCONTINUANCE OF THE SERVICE, A TERMINATION FEE OF 9x YOUR MONTHLY SERVICE FEE FOR EACH COMMITTED YEAR.** In addition to any applicable Early Termination Fee, you will be required to pay the remaining balance of the charges applicable to your ZeroOutages service through the effective date of termination.

5.3 Equipment Return. Upon the termination of service it is the Company's responsibility to package and ship back any equipment provided to the customer for this Service. This equipment must be returned in good working order (given that there was no issue with the equipment to cause the termination of this service) within no less than 30 days after Service termination. Failure to return the equipment will result in a minimum fee of \$1500 per device or the current list price of the UBM appliance per XRoads Networks then pricing guide (whichever is greater).

#### 6. Service Rates and Charges

6.1 Agreement to Pay. You agree to pay all fees and charges specified when you ordered your Service, including recurring and nonrecurring charges, taxes, fees and assessments applicable to the Service and the associated equipment (including but not limited to applicable service activation fees, installation charges (see Section 3 ), shipping and handling and termination charges). In order to provide you with the Service, ZeroOutages may pay taxes, fees and surcharges to municipalities and other governmental entities, which ZeroOutages may pass on to you. You will be invoiced monthly for usage of the Service and for any other services utilized by your or other users of your account which are billed to the customer by ZeroOutages in connection with the Service (including applicable taxes), either directly by ZeroOutages or through your designated credit card company. Rates, charges and other terms and conditions of the Service, are subject to change by ZeroOutages from time to time by notice provided on the Service or otherwise. In the event legal action is necessary to collect on balances due, you agree to reimburse ZeroOutages for all expenses incurred to recover sums due, including attorneys' fees and other legal expenses. You

also agree to pay all current charges for the Service as well as taxes and fees assessed against you or ZeroOutages on the charges and all late payment, interest or other fees as stated on your bill.

**6.2 Credit Check / Deposit.** 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 for (1) unsatisfactory credit rating; (2) insufficient credit history; (3) fraudulent or abusive use of any ZeroOutages Services within the last five years; or (4) late payments for current or prior bills, we may refuse to provide the Services or we may require an additional deposit to establish or maintain Service(s). A deposit may be held as a partial guarantee of payment. It cannot be used by you to pay your bill or delay payment. We may require you to increase your deposit at any time to reflect your estimated monthly charges based on actual usage or our reevaluation of your ability to pay. Establishment of a prompt payment record or credit may result in a partial or total refund of the deposit to you or credit to your account. Upon termination or cancellation of your service and there are unpaid amounts in your account, the equipment is not returned, or you owe an early termination fee, the deposit will be used to pay the outstanding amount due.

**6.3 Method of Payment.** You authorize ZeroOutages to charge any amounts payable by you in connection with your use of the Service by one of the following methods: automatically by credit card, or other electronic funds transfer.

**Credit Card Billing.** Credit card billing is required for all accounts where the sum total of monthly charges is less than \$300 per month. If credit card billing is required, or you choose to pay by credit card or debit card, you must provide ZeroOutages with a valid credit or debit card number and specified account information from a debit or credit card issuer. By providing such information you authorize your card issuer, bank or financial institution to charge or debit your corresponding account for all charges arising from your use of the Services. You authorize ZeroOutages on a monthly basis to automatically charge the credit card account, or to deduct from the debit card account, for payment of all sums due each month to ZeroOutages for use of the Service, as defined and agreed to at the time of purchase of the Service. You agree to notify ZeroOutages of any change to the credit or debit card information including, but not limited to, changes in account number, expiration date or billing address. If you do not update your credit card information, ZeroOutages may suspend your use of the Service. If ZeroOutages makes other billing options available, you agree to abide by terms and conditions applicable to those options. ZeroOutages shall not be responsible for any charges made by the credit or debit card issuer, bank or financial institution to your credit or debit card account for exceeding credit limit, insufficient funds or any other reasons. ZeroOutages reserves the right to terminate your Service and your participation in this payment and billing plan without further notice due to reversals of payments, insufficient funds, or for any other abuses related to your card account. 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. If charges cannot be processed through your credit card, or if your bank draft or electronic funds transfer is returned for insufficient funds, we will charge you an additional \$15.00. If the state law where you receive the Service requires a different fee, we will charge you that amount.

## **7. Service Rates and Charges**

**7.1 Billing Information.** Billing for the Service commences when ZeroOutages provisions your Service and prepares your ZeroOutages switching appliance, whether or not you register and/or install the Service. When billing commences, you will be billed for your installation/setup fee, the first and last thirty (30) days of service and for applicable installation charges and equipment shipping charges. Thereafter, charges will be billed one month in advance. If you terminate your Service within the first thirty (30) days your charge will not be pro-rated. If you terminate after your first thirty (30) days, you will be charged for the pro-rated number of days for which you had service in that billing cycle, and will receive a credit for the remaining balance.

## **8. Security**

**8.1 Security.** ZeroOutages takes certain industry-accepted precautions from time to time to secure our Service, however, you understand and agree that such precautions do not guarantee that use of the Service is invulnerable to all security breaches, and that ZeroOutages makes no warranty, guarantee, or representation that use of our Service is protected from all viruses, security threats or other vulnerabilities. There is a risk that other users may attempt to

access your computer through the Internet or connected networks. You acknowledge this risk as inherent to the shared nature of the Internet and you agree to take full responsibility for taking adequate security precautions and safeguarding your data from loss.

## **9. Other Responsibilities of User**

9.1 Accurate Information. Whenever you provide information to ZeroOutages, you agree to: (a) provide true, accurate, current and complete information and (b) maintain and promptly update such information to keep it true, accurate, current and complete. If you provide any information that is, or we have reasonable grounds to suspect is, untrue, inaccurate, not current or incomplete, ZeroOutages may suspend or terminate your Service and refuse any and all current or future use of our Service (or any portion thereof).

9.2 Data Management and Responsibility. You are responsible for management of your information including but not limited to back-up and restoration of data, erasing data from disk space you control and changing data on or settings for your modem and/or router. ZeroOutages is not responsible for the loss of your data or for the back-up or restoration of your data regardless of where this data is maintained.

9.3 Acceptable Use Policy. As a Customer, some of ZeroOutages may require that we pass your data through our data centers. In such cases, ZeroOutages requires that our customers not abuse the service by utilizing network applications in such a way that might cause problems for other customers, i.e. flooding the network, hacking attempts, or other illegal activity. If ZeroOutages determines that such actions have taken place or are taking place, ZeroOutages has the right to restrict service or terminate the service. Additional components of the AUP are available on our website at [www.zerooutages.com](http://www.zerooutages.com).

## **10. Letter of Agency and Ticket Authorization**

10.1 Definition. The Customer hereby authorizes ZeroOutages, a division of XRoads Networks Inc., and its employees, as Agent in dealings with the telecommunication services (regards to support related activities and requests) provided to the Customer by their associated telecommunication service providers.

10.2 Authorization. The authorization is specifically related to opening support tickets with the associated telecommunication service providers due to performance or outages related to those circuits delivered by said providers to the Customer. ZeroOutages may contact the Customers telecommunication service providers to follow up with any existing or open tickets, and provide information to said telecommunication service provider in order to resolve issues with the Customer's circuits associated with said telecommunication service providers.

10.3 Assignment. The Customer approves the creation of any Letter of Agency that needs to be sent to telecommunication service provider to complete such activities, and/or for ZeroOutages and its employees to utilize the Customer's assign password/code/or other information in order to open, manage, track and resolve new and existing tickets with the telecommunication service providers.

## **11. Privacy and Non-Disclosure Policy**

11.1 Confidential Information. This contract defines confidential information as any information, technical data, or network related data, including, but not limited to, that which relates to the customers network infrastructure, security procedures, rules, policies or other network designs, drawings, engineering, hardware configuration information.

11.2 Security of Data. ZeroOutages and XRoads Networks agree not to use and not to permit its Agents to use any Confidential Information disclosed to it by the Customer for any purpose except to carry out the services required per this contract. ZeroOutages agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Customer in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized to have any such information.

11.3 Return of Materials. Any materials or documents which have been furnished by the Customer in connection with the services will be promptly destroyed, within ten (10) days after (i) the services have been terminated and at the request of the customer or (ii) destroyed as part of a batch process to purge all customer data for customers which have terminated their services with ZeroOutages.

## 12. Infringement of Intellectual Property Rights

The Customer agrees that it will not attempt, through the use of the service, to decompile or access any aspect of ZeroOutages software code and/or mechanisms that it employs to deliver the service to said Customer. ZeroOutages will abide by any valid court issued subpoena to provide information that is required under said subpoena with regards to our customer's service.

## 13. 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 your Internet connectivity may occur as normal events in the provision of the Service and that ZeroOutages is not liable for such interruptions. You further understand and agree that ZeroOutages 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 ZeroOutages. In addition, ZeroOutages is not liable for any failure of performance due to any cause beyond ZeroOutages' reasonable control including Acts of God, fire, explosion, vandalism, nuclear disaster, sun spots, solar flares, terrorism, cable cut, storm or other similar occurrence, any law order, regulation, direction, action, or request by any government, civil or military authority, national emergencies, insurrections, riots, wars, labor difficulties, supplier failures, shortages, breaches, or delays, or suspension of existing Service in compliance with state and/or federal law, rules and regulations, or delays caused by you or your equipment.

## 14. Indemnity

You agree to indemnify and hold harmless ZeroOutages and its subsidiaries, affiliates, officers, agents, co-branders, licensors or other partners and employees from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of: (a) content you make available through the Service; (b) your use of the Service; (c) your violation of these TOS; (d) your violation of the AUP; (d) your violation of any rights of another; and (e) use of your account whether or not such usage is expressly authorized.

## 15. Disclaimer of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

A. YOUR USE OF OUR SERVICE IS AT YOUR SOLE RISK. OUR SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ZEROOUTAGES 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, ACCURACY OF DATA AND NON-INFRINGEMENT. BECAUSE SOME JURISDICTIONS MAY NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THESE EXCLUSIONS MAY NOT APPLY TO YOU.

B. ZEROOUTAGES MAKES NO WARRANTY THAT (i) OUR SERVICE WILL MEET YOUR REQUIREMENTS, (ii) OUR SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF OUR SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH OUR SITE WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE SERVICE WILL BE CORRECTED.

C. ANY MATERIAL DOWNLOADED, UPLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF OUR SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR BUSINESS OR LOSS OF DATA THAT RESULTS FROM THE



DOWNLOAD OR UPLOAD OF ANY SUCH MATERIAL OR THE USE OF OUR SITE.

D. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ZEROOUTAGES OR THROUGH OR FROM OUR SITE SHALL CREATE ANY WARRANTY. ADVICE OR INFORMATION RECEIVED VIA OUR SITE SHOULD NOT BE RELIED UPON FOR SIGNIFICANT PERSONAL, BUSINESS, MEDICAL, LEGAL OR FINANCIAL DECISIONS AND YOU SHOULD CONSULT AN APPROPRIATE PROFESSIONAL FOR SPECIFIC ADVICE TAILORED TO YOUR PARTICULAR SITUATION.

#### **16. Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT ZEROOUTAGES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR OTHER DAMAGES (WHETHER OR NOT ZEROOUTAGES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE OUR SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM OUR SITE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OUR SITE; OR (v) ANY OTHER MATTER RELATING TO OUR SITE. BECAUSE SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, ZEROOUTAGES' LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

IF YOU ARE DISSATISFIED WITH ANY PORTION OF ANY OF THESE TERMS OF USE YOU'RE SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING OUR SERVICE

#### **17. Remedies of User**

Your sole and exclusive remedy for any failure or non-performance of the Service shall be for ZeroOutages to use commercially reasonable efforts to effectuate an adjustment or repair of the Service and, in the event such downtime exceeds twenty-four consecutive hours due to something that could have been controlled by ZeroOutages, to receive a pro-rata refund or credit of or against any charges otherwise payable for the Service for the period of Service downtime. Additionally, Customer may terminate a particular Service without incurring early termination charges as described in the Agreement if Customer experiences Chronic Trouble, as defined herein, with the Service provided by ZeroOutages. "Chronic Trouble" is defined as eight (8) or more materially related Service Outages of three (3) hours or more on the same Service within a thirty (30) day period, or one continuous, uninterrupted Service Outage on a particular Service for a period of forty-eight (48) hours or more.

This provision will not apply to Service Outages: (i) caused in whole or in part by the negligence or acts or omissions of Customer or its end users or its agents; (ii) due to the failure or malfunction of non- ZeroOutages services (i.e. telecommunication service provider failures), equipment (iii) due to circumstances or causes beyond the control of ZeroOutages or its agents; (iv) due to unscheduled emergency maintenance or scheduled maintenance. Further, the following conditions must be met:

(1) Customer must notify ZeroOutages of each Service Outage by calling the Customer Care number provided on Customer's invoice in order for the applicable outage time period to begin to run; (2) Customer must provide written notification to ZeroOutages of Customer's intent to terminate the affected Service due to Chronic Trouble. Notice must be sent to the billing within thirty (30) days of the last Service Outage constituting a Chronic Trouble event.

#### **18. Use of Materials, Marks and Information**

The ZeroOutages company names and logos and all related product and service names, design marks and slogans are the property of ZeroOutages or its affiliates. You are not authorized to use any ZeroOutages name or mark in any advertising, publicity or in any other commercial manner without the prior written consent of ZeroOutages.

#### **19. Dispute Resolution**

IT IS IMPORTANT THAT YOU READ THIS ENTIRE SECTION CAREFULLY. THIS SECTION PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION. YOU CONTINUE TO HAVE CERTAIN RIGHTS TO OBTAIN RELIEF FROM A FEDERAL OR STATE REGULATORY AGENCY.

19.1 Binding Arbitration. The arbitration process established by this section is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16. You have the right to take any dispute that qualifies to small claims court rather than arbitration. All other disputes arising out of, or related to, this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory) must be resolved by final and binding arbitration. This includes any dispute based on any product, service or advertising having a connection with this Agreement and any dispute not finally resolved by a small claims court. The arbitration will be conducted by one arbitrator using the procedures described by this Section. If any portion of this Dispute Resolution Section is determined to be unenforceable, then the remainder shall be given full force and effect.

NO DISPUTE MAY BE JOINED WITH ANOTHER LAWSUIT, OR IN AN ARBITRATION WITH A DISPUTE OF ANY OTHER PERSON, OR RESOLVED ON A CLASS-WIDE BASIS. THE ARBITRATOR MAY NOT AWARD DAMAGES THAT ARE BARRED BY THIS AGREEMENT AND MAY NOT AWARD PUNITIVE DAMAGES OR ATTORNEYS' FEES UNLESS SUCH DAMAGES OR FEES ARE EXPRESSLY AUTHORIZED BY A STATUTE. YOU AND ZEROOUTAGES BOTH WAIVE ANY CLAIMS FOR AN AWARD OF DAMAGES THAT ARE EXCLUDED UNDER THIS AGREEMENT

19.2 Arbitration Information and Filing Procedures. This Agreement is governed by California law without regard to conflict of law provisions. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration, and administered by the American Arbitration Association under its Commercial Arbitration Rules. Any such arbitration will be governed by California law and will be held in Irvine, California. The arbitrator will be an expert in the field of Internet routing systems. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. There shall be no class action arbitration pursuant to this agreement.

## 20. General

20.1 Non-transferable. Your right to use the Service is not transferable and is subject to any limits established by ZeroOutages, and by your credit card company if billing is through a credit card.

20.2 Governing Law. This Agreement and the Service shall be governed by the laws of the State of California, without regard to its conflicts of law's provisions. If any provision or provisions hereof shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

20.3 Entire Agreement. This Agreement and any modifications published by ZeroOutages over the Service, and the Pricing Terms and Conditions applicable to your Service, constitute the entire and only agreement between you and ZeroOutages with respect to the Service and supersede all other communications and agreements with regard to the subject matter hereof. Your use of the Service is also governed by ZeroOutages Acceptable Use Policy.

20.4 No Third Party Rights. This Agreement does not provide any third party with a claim or right of reimbursement.

20.5 Assignment. We can assign all or part of our rights or duties under this Agreement without notifying you. If we do that, we have no further obligations to you. You may not assign this Agreement or the Services without prior written consent.

20.6 Separability. If any part of this Agreement is found invalid, the rest of the Agreement will remain valid and enforceable.

20.7 Survival. Obligations and rights in connection with this Agreement, which by their nature would continue beyond

the termination, cancellation or expiration of this Agreement, including, but not limited to those sections in this Agreement.