

("Spectra Networks ISP Agreement")

**END USER INTERNET ACCESS AGREEMENT**

By calling to access the Internet, Subscriber, and/or any person using Subscriber's login identification name or login identification names ordered by Subscriber, is deemed to have accepted the items and conditions contained in this Internet Access Agreement (the "Agreement") and shall be bound thereby.

**1) DEFINITIONS**

a) "Subscriber," as used herein, means an individual, a corporation, or a legal entity who incurs usage charges for the Service for its own use or who incurs such charges on behalf of a third party, i.e., a User.

b) "User," as used herein, means a Subscriber who uses Service or an individual, a corporation, or a legal entity whose Service usage charges are incurred by a third party, i.e., Subscriber.

**2) SERVICE**

Spectra Networks LLC., affiliated companies, including VISP Technologies, and/or assigns, herein "Spectra Networks LLC.", will provide Subscriber and its Users analog or digital access to the Internet, depending upon the rate plan selected (the "Service"), subject to conditions generally beyond the control of Spectra Networks LLC., including the type and condition of the equipment (personal computer, modem, etc.) of Subscriber and/or its Users. Service may be temporarily unavailable or limited because of capacity limitations and may be temporarily interrupted or curtailed due to equipment modifications, upgrades, relocations, repairs, and similar activities necessary for the proper operation of Service.

**3) ACCEPTABLE USAGE OF DIAL-UP ACCOUNTS**

Subscriber and its Users agree to use dial-up accounts solely on an active, attended "dial-up" basis, meaning only as needed and in no way on an unattended, standby or inactive basis in order to maintain a connection. Without limitation of the foregoing, Subscriber and its Users shall abide by the following provisions regarding usage:

a) A dial-up account may be used for World Wide Web browsing, reading or posting to Usenet (see Section 13 below) newsgroups, sending, receiving and reading electronic mail and transferring files via the file transfer protocol.

- b) A dial-up account shall not be used to host a dedicated server site on the Internet.
- c) A dial-up account has only one mailbox for incoming electronic mail unless additional mailboxes have been purchased (unless Spectra Networks LLC. has provided additional mailboxes, at Spectra Networks LLC. sole discretion).
- d) Automated processes may not be used such as checking e-mail or pinging the host to maintain a constant connection.
- e) User ID Names will be issued to Subscriber by Spectra Networks LLC. based upon availability. If the User ID name is surrendered by Subscriber for any reason, Spectra Networks LLC. shall not be obliged to reserve that name.
- f) Spectra Networks LLC. shall not be obligated to retain electronic mail for longer than one month.
- g) A dial-up account has 25 megabytes of server space for Personal Subscriber web pages unless additional web space has been purchased or otherwise expressly allocated. And no such space shall be available for accounts that are promotional until they become billable accounts (unless such space is made available during the promotional period, at Spectra Networks LLC. sole discretion).
- h) User accounts that exceed reasonable dial-up access usage may be flagged by Spectra Networks LLC. for the following (The industry average for a dial-up account is about 35 hours a month or about an hour a day): 1) Upgrade to higher-use or dedicated-use accounts, subject to payment of a higher subscriber rate, or 2) Transfer to non-usage-sensitive networks, or 3) Charged for multiple logins, or 4) Deletion, in which case a refund of unused months will be promptly provided; as determined by Spectra Networks LLC.

#### **4) INACTIVITY DISCONNECT POLICY**

Spectra Networks LLC. reserves the right to disconnect a dial-up account after 15 minutes of inactivity, as detected by Spectra Networks LLC. through electronic means. This time is approximate and subject to change without notice in Spectra Networks LLC. sole discretion. Electronic or mechanical means to avoid an inactivity disconnect are strictly prohibited. Electronic or mechanical means include, but are not limited to, “pinging” the mail server, employing electronic or software auto dialer features to maintain an active connection or repeatedly checking for e-mail by auto log-in to the mail server. Spectra Networks LLC. reserves the right to electronically audit connections to enforce the above requirements.

## **5) ACCESS**

Service access will be provided via a local telephone number where available. Spectra Networks LLC. is not responsible for any toll or other charges in the event service access is not provided via a local telephone number, for instance, if service access is provided via a toll call. If a local telephone number is not available, the Service may be remotely accessed via an 800 series number at an additional charge.

## **6) PRICE**

Subscriber shall pay to Spectra Networks LLC. the charges associated with the rate plan selected, including applicable taxes, 800 series number, etc. If service access is not provided via a local telephone number, Subscriber may also be responsible for toll or other charges.

## **7) PAYMENT**

Subscriber shall be billed on a monthly, quarterly, semiannual or annual basis. Payment will be deemed made when received by Spectra Networks LLC.

## **8) TERM AND TERMINATION**

This Agreement becomes effective upon registration of Subscriber's login identification name and shall remain in effect for the period indicated in the rate plan selected or until terminated as provided herein. This Agreement shall continue in effect for consecutive additional terms following the Initial Term until either Party gives the other party on-line notice or other notice of termination at least thirty (30) calendar days prior to the expiration of the then-current term. In the event Subscriber terminates the Service hereunder, then without limitation to any other remedy Spectra Networks LLC. may have, Subscriber will pay to Spectra Networks LLC. upon discontinuance of the Service a termination charge equal to the applicable monthly rate times the number of months remaining in the term.

## **9) CREDIT**

**CREDIT/REFUND POLICY:** There are no refunds for your account setup fee, the current month's or any previous month's membership. If you have prepaid for additional months of membership, you may be entitled to a refund for subsequent prepaid months.

## **10) LIMITATION OF LIABILITY**

SPECTRA NETWORKS LLC. SHALL NOT BE LIABLE FOR INTERRUPTIONS CAUSED BY FAILURE OF EQUIPMENT OR SERVICES NOT PROVIDED BY SPECTRA NETWORKS LLC., FAILURE OF COMMUNICATIONS, POWER OUTAGES, OR OTHER INTERRUPTION NOT WITHIN THE COMPLETE CONTROL OF SPECTRA NETWORKS LLC, NOR SHALL SPECTRA NETWORKS LLC. BE LIABLE FOR PERFORMANCE DEFICIENCIES CAUSED OR CREATED BY SUBSCRIBER'S OR ITS USER'S EQUIPMENT. SUBSCRIBER AND USER HEREBY RELEASE SPECTRA NETWORKS LLC. FROM LIABILITY ARISING FROM ANY CONTENT ACCESSED VIA THE SERVICE. SPECTRA NETWORKS LLC. PERFORMANCE UNDER THIS AGREEMENT SHALL BE EXCUSED IN CASE OF LABOR DIFFICULTIES, GOVERNMENTAL ORDERS, CIVIL COMMOTIONS, ACTS OF GOD, OR OTHER CONDITIONS OR CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL. SPECTRA NETWORKS LLC. SHALL NOT BE LIABLE IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF SUBSCRIBER'S OR ITS USER'S EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. IN NO EVENT SHALL SPECTRA NETWORKS LLC. BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, LOSS OF USE, ETC. THE LIABILITY OF SPECTRA NETWORKS LLC. FOR ACTUAL PROVEN DAMAGES FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OF OR DISRUPTION OF SERVICE, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO AN AMOUNT EQUIVALENT TO CHARGES PAYABLE BY SUBSCRIBER UNDER THIS AGREEMENT FOR THE SERVICE DURING THE PERIOD SUCH DAMAGES OCCUR. SPECTRA NETWORKS LLC. MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, CONCERNING THE SERVICE, AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR USE OR PURPOSE, THE WARRANTY OF MERCHANTABILITY AND ANY OTHER WARRANTY IMPLIED BY LAW.

## **11) INDEMNITY**

Subscriber and User shall indemnify and hold harmless Spectra Networks LLC. from and against any loss, cost, claim, liability, damage, or expense (including reasonable attorney's fees) to third parties, relating to or arising from the use of service by Subscriber, User, or any of their personnel, whether or not Subscriber or User has

knowledge of or has authorized such access or use, including, without limitation, claims for libel, slander, invasion of privacy, infringement of copyright, patent infringement (where Subscriber or User has used, connected, or combined the Service with the products or services of others), negligence, or tortious behavior. Subscriber agrees to indemnify Spectra Networks LLC. along with any parties from whom Spectra Networks LLC. obtains network service, and to hold them harmless from any claims resulting from the use of the Service by Subscriber or its Users that damage another party or that violate the law.

12) **SUBSCRIBER RESPONSIBILITY:** Subscriber shall ensure that its Users shall comply with the terms and conditions of this Agreement. Any access to other networks connected to Spectra Networks LLC. network must comply with the rules of the other networks. Subscriber shall not use or permit its end users to use the Services in ways that violate laws, infringe the rights of others, interfere with users of our network or other networks, or otherwise violate our Acceptable Use Policy set forth on our Internet Services web site. For example, you shall not distribute chain letters or unsolicited bulk electronic mail (“spamming”); propagate computer worms or viruses; use a false identity; attempt to gain unauthorized entry to any site or network; distribute child pornography, obscenity or defamatory material over the Internet; or infringe copyrights, trademarks or other intellectual property rights. Subscriber further agrees to comply with U.S. export laws concerning the transmission of technical data and other regulated materials via the Services.

### **13) USE OF SERVICE**

Subscriber and its Users agree to abide by and comply with the following terms and conditions:

a) **Misuse of Service:** Subscriber and its Users shall not use the Service to make foul or profane expressions, to impersonate another person with fraudulent or malicious intent, to contract another person so as to annoy, abuse, threaten, or harass such other person, or for any purpose in violation of law, or in such a manner as to interfere unreasonably with the use of the Service by any of Spectra Networks LLC. customers. Subscriber and its Users shall not distribute chain letters of “junk” mail (any unsolicited mail of a business or commercial nature) or engage in “Ponzi” or “pyramid” schemes. The Service and underlying network may only be used for lawful purposes. Transmission of any material in violation of any U.S. or state regulation is prohibited. This includes, but is not limited to: copyrighted material, material which is threatening or obscene, or material protected by trade secret. In addition, Spectra Networks LLC. generally reserves the right in its sole discretion to either temporarily discontinue, or permanently terminate furnishing the Service upon notice to Customer in the event Customer uploads any information that is libelous, defamatory or that

violates or infringes any right of privacy of any Persons; uploads any messages, data images or programs that are indecent, obscene or pornographic; use the facilities and capabilities of Spectra Networks LLC. to conduct or solicit the performance of any illegal activity or to conduct any other activity that infringes the rights of Spectra Networks LLC. or any third party; or upload any information, messages, data, images or programs that is discriminatory or otherwise offensive as determined by Spectra Networks LLC. in its sole discretion.

## **b) INTERFERENCE WITH THE RIGHTS OF THIRD PARTIES**

In the event that Spectra Networks LLC. receives notice from a third party, or in the event that Spectra Networks LLC. reasonably believes, that Subscriber's or any User's use of the Service, either alone or in connection with products or services of others, constitutes, causes, results in, induces or contributes to either (I) defamation, invasion of privacy, or unfair competition, or (ii) misuse, misappropriation of infringement of any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of such third party, then Spectra Networks LLC. shall have the right, in its sole and exclusive option and discretion, without prior notification to Subscriber or to User(s), and without limiting any other rights or remedies Spectra Networks LLC. might have or incurring any obligation or liability to Subscriber or to User(s), to temporarily discontinue or permanently terminate, in whole or on part, furnishing of Services to Subscriber or to User(s).

c) Usenet Policy and Posting Restrictions: Usenet comprises a system of bulletin boards called newsgroups. Usenet access is provided to dial-up customers of Spectra Networks LLC. Subscriber and its Users shall not post to newsgroups until they have familiarized themselves with the subjects and established guidelines and restrictions of the newsgroup. All such Usenet guidelines and restrictions are hereby incorporated herein by reference and Subscriber and its Users unconditionally agree to adhere to them. These guidelines and restrictions include, but are not limited to, the following:

- Only post articles that are relevant to the newsgroup. Inappropriate or irrelevant postings are not appreciated by participants of newsgroups nor are they allowed under Usenet protocols.

- Most newsgroups do not allow commercial postings. Users should verify this restriction before making any such posting.

- Blanket postings to all or large numbers of newsgroups simultaneously with disregard to the newsgroups' subject are forbidden.

- Chain letters are not allowed to be posted.

- Unauthorized creation of newsgroups is prohibited.

d) Harm to Equipment, Software and Processes: Subscribers agree unconditionally to not cause harm to Spectra Networks LLC. or third party equipment, software, or processes used in connection with furnishing the Service. In addition to constituting a default under this Agreement, any breach of this provision may result in civil and/or criminal penalties pursuant to applicable local, state and federal law.

e) Content, Accuracy of Information: Spectra Networks and its affiliates, along with any parties from whom Spectra Networks LLC. obtains network services, exercises no control whatsoever over the content of the information passing through Spectra Networks LLC. network. Spectra Networks LLC. makes no warranties of any kind, whether express or implied, for the content of the information passing through its network. Use of any information obtained via the Spectra Networks LLC. network is at Subscriber's and its User's own risk or the risk of their affiliates. Spectra Networks LLC. specifically denies any responsibility for the accuracy or quality of information obtained through its Service.

f) Offensive and/or Harmful Information: The Internet hosts some material deemed unfit for viewing and reading by minors under the age of 18. Some sites contain information both in text and graphical formats that Subscriber and/or Users may consider obscene and/or harmful. Subscriber and/or Users agree to not hold Spectra Networks LLC. responsible for sites and postings that could be considered obscene, lewd, offensive, and/or harmful. Subscribers are responsible for their own monitoring and viewing habits and their Users, including minors. Spectra Networks LLC. does not block, filter or screen postings or sites on the Internet in whole or in part.

#### **14) DEFAULT**

Upon a default by Subscriber, Spectra Networks LLC. may, in its sole discretion, without prior notification and without limiting its remedies or incurring any liability to Subscriber, either temporarily discontinue or permanently terminate the furnishing of Service to Subscriber in whole or in part. "Default" means any failure by Subscriber to comply with any term of this Agreement, including without limitation, failure to make timely payment of any amount due Spectra Networks LLC. or failure to comply with the restrictions on use of Service set forth in Section 13. Where Subscriber's equipment is used with Service provided by Spectra Networks LLC. in violation of any of the provisions herein, Spectra Networks LLC. will notify Subscriber and take such action as is necessary for the protection of the Service for use by its other customers. Subscriber shall discontinue such use of the equipment or correct the violation immediately and shall confirm in writing to Spectra Networks LLC. within five days that such use has ceased or that the violation has been corrected, and if

Subscriber fails to do so, Spectra Networks LLC. will disconnect Subscriber's Service, without any credit allowance, until such time as Subscriber complies with the provisions hereof. Spectra Networks LLC. reserves the right to charge a reconnect fee for any discontinued Service that is subsequently reconnected.

#### **15) NO WARRANTIES**

Spectra Networks LLC. makes no warranties, express or implied with respect to this agreement or the services provide with respect to this agreement, including, but not limited to Dialup, DSL, internet access, email, news services, web hosting services, personal web space, spam filtering, virus filtering or any other services provided pursuant to this agreement. There are no implied warranties for the merchantability and fitness for any particular purpose. No representation or statement made by Spectra Networks LLC. or any of its agents or employees, oral or written, including, but not limited to, any specifications, descriptions or statements provided or made to Customer by Spectra Networks LLC. shall be binding upon Spectra Networks LLC. as a warranty or otherwise.

#### **16) EQUIPMENT**

Subscriber shall be responsible to provide for the proper installation, operation, and maintenance of Subscriber's equipment used in connection with the Service, and Subscriber shall ensure that such equipment is technically and operationally compatible with the Service and in compliance with applicable Federal Communications Commission rules and regulations.

#### **17) RESOLUTION OF DISPUTES:**

a) The parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

b) At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations.



Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications that are not prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.

c) If the negotiations do not resolve the dispute within 60 days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each party may submit in writing to a party, and that party shall so respond, to a maximum of any combination of 35 (none of which may have subparts) of the following: interrogatories, demands to produce documents and requests for admission. Each party is also entitled to take the oral deposition of one individual of another party. Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within 60 days of the demand for arbitration. The arbitration shall be held in Josephine County, Oregon. The arbitrator shall control the scheduling so as to process the matter expeditiously. The parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within 30 days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

d) Each party shall bear its own costs of these procedures. A party seeking discovery shall reimburse the responding party the costs of production of documents (to include search time and reproduction costs). The parties shall equally split fees of the arbitration and the arbitrator.

## **18) MISCELLANEOUS**

This Agreement shall be governed by, construed under, and enforced in accordance with, the laws of the state of Oregon. In the event of a conflict between this Agreement and any applicable tariff, the tariff shall prevail. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings

relating to the subject matter hereof. Spectra Networks LLC. may amend the terms and conditions of this Agreement by giving Subscriber 30 days' prior on-line notice. This Agreement is subject to modification by any authorized regulatory agency. Spectra Networks LLC. may assign this Agreement without limitation, but Subscriber may not assign this Agreement without Spectra Networks LLC.'s prior written consent. This Agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors, and permitted assigns.