



ISP Agreement

The following visp.net *ISP Agreement* is a legal agreement between you (hereafter "ISP") and visp.net that is governed by the following ISP Policies and Procedures. VISP.NET EXTENDS TO ISP THE RIGHTS AND BENEFITS OUTLINED IN THIS ISP AGREEMENT AND THESE ISP POLICIES AND PROCEDURES ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THE FOLLOWING ISP POLICIES AND PROCEDURES. FURTHER, YOUR USE OF VISP.NET SERVICES CONSTITUTES YOUR AGREEMENT TO BE BOUND BY THE TERMS OF THIS ISP AGREEMENT AND THESE POLICIES AND PROCEDURES IN THEIR ENTIRETY.

ISP Policies and Procedures

Section 1 – Mission & Overview

- 1.1 Mission** – visp.net's mission is Building Better ISPs®. Visp.net is a unique national wholesale Internet Service Provider that offers complete Internet service and back office management solutions for ISPs. Visp.net Provides ISPs and other organizations the ability to offer "private-label" Internet solutions from Internet access to web hosting.
- 1.2 Ownership of Internet Access Accounts** – ISP will own the rights to ISP's accounts according to the terms of the ISP Agreement provided ISP is not in default of any part of the ISP Agreement.
- 1.3 Triple Guarantee** – Visp.net strives to provide the highest quality services available in the industry. Visp.net's services are guaranteed as follows:
 - a) 100% Subscriber Satisfaction Guarantee** – If for any reason your subscriber is not satisfied with ISP services you provide through your partnership with visp.net and you provide the subscriber a refund, visp.net will provide you a full refund for the wholesale cost you paid for that subscriber's services for up to 60 days prior to your written request for refund not to exceed the same period you refunded the subscriber. Such requests can be made to billing@visp.net.
 - b) 100% Uptime Guarantee** – Visp.net employs a wide array of redundancy technologies to maximize uptime of its network. At your request, visp.net will provide you with a pro-rated refund for downtime that negatively impacted your subscribers according to the terms of these Policies and Procedures (see the Service Outages section below).
 - c) 100% Migration Retention Guarantee** – If a migrated subscriber terminates due to dissatisfaction with visp.net provided services during or up to 90 days from the start of the migration process, visp.net will credit the ISP 12 months of the wholesale rate for that subscriber's service over the subsequent 12 months. To exercise the guarantee, ISP will provide a copy of a verifiable written cancellation notice from the subscriber stating the reason for the subscriber's termination, which must be attributable to the migration. Applies to ISPs with 12 month or longer term.

Section 2 – Services

2.1 Description of Services – It is visp.net's intent to provide ISPs a wide variety of high-quality, easy to manage ISP services, and new services as they become available and commercially viable to offer on visp.net's platform. These services may be aggregated from various sources or provided by visp.net. These may include but are not limited to: Web access, dial-up access, DSL access, cable access, broadband-over-power-line access, wireless access, personal disk space, email, aliases, web email, and FTP access.

Services are considered "Active" if the services have been used or made available to a subscriber, or are reflected by ISP in the ISP in-a-box® database.

2.2 License Cost – ISP agrees to pay to visp.net the License Fee selected by ISP at visp.net's website. By entering into this ISP Agreement, ISP authorizes visp.net to charge the credit card account provided by ISP (if applicable). The License Fee or other setup fees will be considered as fully earned by visp.net from the moment that visp.net has setup ISP's private labeled Internet Service. There are no refunds on License Fees once they have been fully earned.

2.3 Change of Email Address, Mailing Address, or Telephone – To facilitate communication between visp.net and ISP, it is very important that the visp.net's files are current. ISP must update ISP's email, mailing addresses, and telephone numbers, as this contact information changes, through the ISP Management & Billing software, and by emailing billing@visp.net with current contact information.

2.4 Monthly Minimum – ISP agrees to meet the Monthly Minimum purchase requirement effective the first full calendar month following the date the ISP entered into the ISP Agreement unless otherwise agreed in writing. If ISP's invoice for services from visp.net is less than the Monthly Minimum as may be indicated with an Addendum, ISP agrees to pay the Monthly Minimum.

2.5 No Territory Restrictions – Visp.net acknowledges that there are no geographic or Territory restrictions with which ISP is restricted or bound by visp.net. There are no exclusive territories granted to ISP. No franchise fees are required.

2.6 Purchase of Internet Products & Services – ISP's cost for various wholesale Internet services that ISP may purchase from visp.net will be reflected in ISP's monthly invoices to which ISP and visp.net have agreed by this reference. Special pricing for high volume ISPs may be accommodated by written addendum or may be set by a written agreement or email from visp.net's President and/or CEO.

In the event there is a significant change in visp.net's cost structure or a change in government regulation or tax affecting the costs to provide various Internet services, visp.net reserves the right to change the cost for services at its sole discretion. Such changes shall require at least thirty (30) days advanced notice to ISP.

2.7 Billing & Payment for Services – visp.net will bill ISP each month for services provided to ISP and ISP's subscribers in one of the following manners:

a) Pay-as-you-Go (POG) Billing: ISP agrees to maintain a balance equal or greater than the wholesale value of services ISP expects to use during the month. In the event ISP's POG account balance has insufficient balance, ISP's subscribers may automatically be denied services until sufficient balance exists to pay for those services. Unless otherwise specified, any credit balance will carry forward to the following month or refunded to ISP at ISP's written request, which may be sent by email to billing@visp.net.

b) Late Payments – All payments to visp.net must be paid prior to service. If for any reason payment is not received when due, any applicable REAP discount (described at <http://www.visp.net/faq/#REAP>) may be forfeited at visp.net's

discretion. In addition, interest charges of 2% per month (or the highest rate permitted by law) will accrue daily on any unpaid balance.

c) Collection – Notwithstanding any other provision in these Policies and Procedures requiring the arbitration of disputes, visp.net may take any collection measures as may be permitted under law for the recovery of amounts due, including without limitation filing suit in the appropriate courts. ISP agrees to pay visp.net's costs of collecting overdue amounts from ISP, including court costs, and visp.net's reasonable attorney fees, regardless of whether suit or action is required.

d) Royalty Payments – An ISP purchasing Fully Managed Internet Services from visp.net may choose a Royalty payment instead of POG billing. At ISP's request, visp.net will estimate ISP's royalty based on ISP's retail rates. Royalties will be paid only on services where visp.net has received payment from the Subscriber for the current month, less any refunds or credits provided to the Subscriber. Any changes to ISP's retail rates thereafter may affect ISP's royalty payment.

2.8 REAP Discounts – ISP may qualify for Ratio Efficiency Adjustment for Profit ("REAP") discounts ranging from 0 to 50% off of the Cost Per Dialup Account. REAP discounts are based upon effective management of ISP's dialup Subscriber base and may be forfeited, if ISP fails to timely make payments to visp.net. REAP is further described at <http://www.visp.net/faq/#REAP>

2.9 End-user Payment & Prices – ISP will set ISP's own retail prices and process ISP's Subscriber payments by credit card, invoice or other suitable method according to ISP's agreements with ISP's Subscribers. Where credit cards are used, ISP will abide by its agreement(s) with its merchant account provider(s).

2.10 Online Subscriber Payment Refunds – When Subscribers use visp.net's online payment processing services, Visp.net offers a 100% money-back guarantee for all ISP Services for unused months. Visp.net will refund a Subscriber when a Subscriber uses visp.net's payment processing services or Fully Managed Internet Services and the Subscriber requests a refund for unused months and may, at its discretion, refund the month of cancellation and up to 60 days and sometimes 90 days prior if the Subscriber paid by credit card.

2.11 ISP Refunds to Subscribers – Customer satisfaction is the responsibility of the ISP who acquired the Subscriber. ISPs must refund payments received from a subscriber when the subscriber cancels and has prepaid the ISP for unused months according to the terms of the Terms of Use. The ISP may at its discretion give the Subscriber a refund for the current month and request a credit from visp.net for the wholesale amount of that service for that month.

2.12 Accounting Fees – ISP's subscribers may utilize visp.net's online automated payment processing to pay for visp.net provided Products and Services which may be subject to a small processing fee determined by visp.net.

2.13 Operational Policies – From time to time visp.net's vendors change their policies or other business circumstances compel a change in operational policies. Visp.net strives to manage these changes quickly and in a manner that is win-win for all parties. To reduce the overhead of managing this formal Policies and Procedures document, visp.net posts changes to <http://wiki.visp.net>. Over time these policies may evolve and hopefully improved for the benefit of all parties involved and eventually incorporated into these Policies and Procedures.

2.14 Privacy Policies – All web sites and portals operated by visp.net or made available to ISPs by visp.net are subject to visp.net's [Privacy Policy](#). ISP agrees that any such Privacy Policy posted at portals provided by visp.net and at www.visp.net are broadly drafted to offer the greatest possible protection to visp.net, ISP, and the Subscribers served by these Policies and Procedures and are not intended to govern ISP's use of Subscriber information. With respect to such information, ISP agrees as follows:

a) ISP shall not share any personally identifiable Subscriber information with any third party;

b) ISP shall not share Subscriber profile information with any third party;

c) ISP shall not market or promote or attempt to market or promote, via electronic mail or otherwise, the products or services of any third party to any Subscriber;

d) ISP may market or promote products or services that are offered by ISP provided ISP was in the business of providing such products or services prior to the date of the ISP Agreement and ISP honors all opt-out or unsubscribe requests submitted by Subscribers to ISP; and

e) ISP shall not use clear gifs, web beacons, or web bugs to verify Subscriber email addresses or to otherwise gather Subscriber or user information.

Violation of any of the foregoing may be grounds at visp.net's discretion for termination of the ISP Agreement.

2.15 Subscriber 'Terms of Use' – Services furnished by visp.net are subject to the Terms of Use, a copy of which is located at <http://www.smartwire.net/main/terms.htm>. Each of ISP's end-user Subscribers, by using services provided by ISP and visp.net, are deemed to have accepted the Terms of Use. If ISP uses the Subscriber Portal, the Terms of Use are included by default, but if ISP provides their own subscriber portal or home page, ISP agrees to post the Terms of Use on ISP's web site. Visp.net provides many of the services referenced by the Terms of Use, ISP may make changes to the legal text of the Terms of Use only with express written approval of visp.net. ISP agrees that ISP shall accept all responsibility and will indemnify and hold harmless visp.net for any liability resulting from a user who has not received, or otherwise agreed to, the Terms of Use.

ISP also agrees to abide by the Terms of Use. ISP agrees to assist visp.net in the enforcement of the Terms of Use which may change from time to time.

Power User Premiums (dialup only): Network providers and ISPs often offer "unlimited" dialup access and define "unlimited" as 150 hours or less. Most providers then bill hourly or otherwise charge additional fees per subscriber. Visp.net provides ISP with a wide range of tools to simplify the management of these high-usage subscribers, which may include usage reports, hourly caps per subscriber or per network, automated high-usage notification, and more. When a subscriber exceeds 150 hours, visp.net notifies ISP so ISP can contact the subscriber and encourage better usage habits, such as logging off when not in use. Visp.net also absorbs the first month of these charges and sends ISP an automated warning. If the behavior continues a second month, the ISP will be automatically charged a PUP or Power User Premium to defray the additional network costs. Visp.net also offers dedicated dialup accounts for ISP's subscribers that need to be continuously connected.

2.16 DSL Modem Sales & Rentals – Visp.net may offer modem resale options for ISP to provide a lower price or attain a higher markup on DSL modem sales to ISP's subscribers. The following special terms apply:

a) **Modem purchases** – Modem purchases by ISP's subscribers may be billed to ISP's Pay as-you-go account instantly upon order. If ISP's account has insufficient funds, the modem purchase may be denied. Any applicable shipping & handling fees will be added to the cost of the modem.

b) **Modem rentals** – Modem Rentals will be billed on a monthly basis beginning the month following the shipment at the rate listed on the DSL ordering page and subsequently reflected on ISP's invoice. Shipping and handling charges will be billed instantly against ISP's Pay as-you-go account. If ISP's account has insufficient funds to pay the shipping and handling charge, modem rental may be denied. Modem rental rates will continue until the modem is either returned to visp.net in the original

packaging with all included accessories or purchased by ISP for the original or current purchase price, whichever is less.

In the event the subscriber cancels service that requires the modem, it is ISP's responsibility to ensure the modem is returned to visp.net in the original packaging with all included accessories to stop the monthly rental fee for the modem. ISP may also purchase the modem at this time for the original or current purchase price, whichever is less.

c) Cancellation – In the event ISP terminates this agreement with visp.net, ISP agrees to return all modems in working condition in the original packaging with all included accessories or pay the original or current purchase price, whichever is less. All modems need to be returned to visp.net before the final termination date.

d) Payment – At visp.net's option, visp.net may require that ISP pay for monthly modem rentals automatically each month with a credit card.

2.17 Equipment Maintenance – Visp.net will provide, install, maintain, repair, operate, control and or outsource the equipment necessary for various wholesale services. Unless otherwise provided, visp.net will pay the cost of purchasing and installing all equipment and such equipment will be and remain the property of visp.net.

2.18 Other Services – Visp.net may perform Other Services or provide support for services not specifically resold by visp.net. Visp.net will provide such consulting and services as time allows at a discounted wholesale rate as determined by visp.net. Requests for services and support may be sent by email and billed with ISP's regular monthly bill.

2.19 Domain Hosting – Domains are competitively priced to ISP based on average usages & oversubscription. Therefore, if ISP's aggregate usage substantially exceeds the averages of other visp.net ISPs, ISP may be required to take actions such as moving certain high-usage accounts off visp.net's servers, or pay a premium for a particular domain to bring ISP's overall averages in line with reasonable norms as determined by visp.net.

2.20 Domain Name and Renewal – If ISP does not already own a domain, then visp.net will provide to ISP at visp.net's expense, a domain name for exclusive use by ISP to provide Internet Services to ISP's Subscribers. ISP agrees to pay for subsequent renewal costs (usually \$10 to \$25 per year) for its domain name and visp.net will authorize this renewal with no corresponding visp.net administrative charges to ISP. In the event the ISP Agreement is canceled, ownership of this domain name will be determined as set forth in these Policies and Procedures Term and Termination paragraph herein.

2.21 Technical Support and Customer Service – Unless ISP has otherwise subscribed to Technical Support and/or Customer Service options provided by visp.net, ISP shall provide all general customer support and technical assistance, at ISP's own cost and expense, to ISP's Subscribers who have purchased the above-described Internet access accounts from ISP. Except for system administration broadcasts, visp.net will not deal directly with ISP's Subscribers.

If ISP does not subscribe to these services, visp.net will provide advanced support and technical assistance during regular business hours to ISP's employees or authorized agents.

Technical support is charged a flat rate per user, per month and includes all ISP's subscribers. If visp.net provides all services to subscribers, the technical support rate is guaranteed; however, if any service provided to subscribers is outside of the visp.net network the following overage may be applied. Tech support charges are calculated based on a call volume not exceeding 1% of the ISP's total subscriber base per day. Example: ISP has 1000 subscribers, 1% equals 10 calls per day. Any overage on technical support is calculated at 1.00 per minute or as otherwise agreed in advance and in writing by the parties, and will be posted to the ISP POG account the month following the usage. The first three (3) days of overages are waived to account for periodic network problems.

2.22 Service Outages – Visp.net guarantees 100% uptime on Mission-critical services provided by visp.net. Mission-critical services include: Radius, DNS, Qwest DSL, spam filtering, dial-up access, and email.

Scheduled maintenance, cable cut(s) or reasons set forth in the Force Majeure paragraph herein are specifically excluded. Scheduled maintenance will not exceed ten (10) continuous or cumulative hours, or any combination thereof per month with respect to Mission Critical Services.

Service Outage Credits – ISP will be entitled to an outage credit in the event of certain outages. Credits for outages will be calculated on the following basis:

a) Calculation of Time – For the purposes of Service Outage Credits, all months contain thirty days. Service and equipment are on a twenty-four hour-per-day, seven day-per-week basis. For purposes of credit computations, every month will be considered to have 720 one-hour periods. An "interruption period" starts when a report is received by visp.net of an outage and ends when access to the affected service is restored.

b) Interruption of Service – With ISP's written request, submitted by email, ISP will be credited for outages in the case of an Interruption caused by visp.net if the outage lasts more than one (1) hour. "Interruptions" include hardware failure, cable cuts, equipment enclosure fires, explosions, or any other circumstances that result in an interruption of service to more than ten percent of ISP's subscribers. The credit will take the form of a pro-rated deduction from the next monthly billing equal to the outage time and for the portion of service that was unavailable.

c) Exceptions – No credit will be given for outages which are: (1) caused by an event of Force Majeure; (2) caused by other telecommunications companies or entities or persons; (3) caused by ISP or ISP's End User(s); or (4) caused by circuits or services being taken out of service for ordinary maintenance. Credits are limited to the affected service. Parties agree that no credit will ever exceed the wholesale monthly rate charged by visp.net for a particular service for any given month.

2.23 Force Majeure – In no event will a Party have any claim or right against the other Party for any failure of performance by such other Party if such failure of performance is caused by or is the result of causes beyond the reasonable control of such other Party, including, but not limited to such causes as, cable dig-up or cut by a third Party; act of God, fire, flood or other natural catastrophe; laws, orders, rules, regulations, directions or action of governmental authorities having jurisdiction or any civil or military authority; national emergency, insurrection, riot or war; or strike, lockout, work stoppage or other labor difficulty; or other similar occurrence beyond the control of a Party. If the excusable delay exceeds (60) sixty days, the ISP Agreement or the affected services may be terminated upon written notice.

2.24 Disclaimer on Network Warranties – In many areas, visp.net has expanded geographic internet access coverage available to ISP through third party network providers. However, service uptimes on third-party networks cannot be guaranteed. Visp.net will use commercially reasonable efforts to resolve problems with third party network providers or specific issues with their POPs. Visp.net makes no warranties and will not be responsible for third-party network shutdowns, POP closures, or other third-party network acts that may disrupt ISP's business.

2.25 Commissions – For those ISPs that have received Commissions for referrals or other sales, visp.net will continue to pay Commissions to those ISPs at its discretion.

2.26 Unlawful Purpose – The ISP Services provided by visp.net to ISPs are subject to the condition that such services are not used for any unlawful purposes.

2.27 Returned Checks – All checks returned by an ISP's or Subscriber's bank for insufficient funds will be re-submitted for payment. A \$25.00 returned check fee will be charged to the account of the ISP or Subscriber. After receiving a returned check from an ISP or Subscriber, visp.net may require that all future payments be made by Credit Card, money order or cashier's check. Any fees resulting from ISP's (or ISP's Subscriber's) NSF check (or returned check fees) will be charged to ISP.

Section 3 – Term and Termination

3.1 Term – The Term of the ISP Agreement will continue on a month to month basis from the date of execution unless an additional term was otherwise agreed.

3.2 Inactivity – Where no other Monthly Minimum has been established, ISP must manage at least \$100.00 per month in wholesale billable services from visp.net, or the ISP Agreement may be terminated by visp.net at its sole discretion.

3.3 Pause a Monthly Minimum with a Term Addendum – A new ISP that has committed to a Term Addendum may request their monthly minimum and all services be "Paused," or "Suspended" for up to 12 months. Approval of this request is solely at the discretion of visp.net.

To suspend, the ISP must be current with a non-refundable deposit on account with visp.net which will apply to ISP's invoices following ISP's re-activation. If the ISP does not re-activate within 12 months, any funds on deposit will be forfeited.

The Term Expiration Date will be extended by the number of full calendar months the ISP is suspended. ISP may remain suspended for up to one year. After one year, the ISP's license may be terminated by visp.net subject to the Termination provisions of the ISP License Agreement.

3.4 Termination – An ISP's violation of any of the terms of the ISP Agreement, including any amendments that may be made by visp.net, may result in termination of the ISP Agreement. Failure to make timely payment to visp.net for any amount due under these Policies and Procedures may result in immediate termination of any or all services by manual or automated means. Termination of services shall not constitute the sole remedy of visp.net for collection of amounts due.

So long as parties have not otherwise agreed to a term and the term has not expired, either party may terminate the ISP Agreement without cause at any time with at least sixty (60) days notice. Once a term has expired the ISP Agreement will continue month to month unless canceled by either party according to the provisions of these policies and procedures.

3.5 Termination Liability – If parties have agreed to a term, either party may terminate the ISP Agreement for cause, provided written notice specifying the cause for termination and requesting correction within thirty days. Cause is any material breach of the terms of the ISP Agreement. If cause the reported is resolved within the 30 day period, the ISP Agreement will continue.

If parties have agreed to a term and if visp.net terminates the ISP Agreement for cause or if ISP terminates the ISP Agreement in whole or in part WITHOUT cause, ISP shall pay early termination charges as follows.

- a) As specified in the Term Addendum, or
- b) If a termination charge was not established in the Term Addendum, 50% of the Monthly Minimum multiplied by the number of months remaining in the term.

3.6 Buyout by visp.net – At any time during the Term of the ISP Agreement, provided ISP is not in default of any part of the ISP Agreement, ISP may request that visp.net and/or assigns (herein, Buyer) purchase ISP's accounts. Buyer may then, at its option purchase ISP's accounts according to the terms below or as may be negotiated between the parties and terminate the ISP Agreement with the ISP.

To execute this option, ISP agrees to provide written notice. ISP will then assign ISP's domain name and all Subscribers using visp.net Products and Services to buyer. ISP further agrees to provide all data and Subscriber materials including but not limited to signed Subscriber agreements and application forms related to ISP's Active accounts to Buyer and will assist Buyer in making an orderly transition of the accounts.

Thereafter, Buyer will directly invoice these active accounts for Internet services. Each month for the next 12 months, Buyer will remit to ISP payments not to exceed the income received minus ISP's cost for services required to support ISP's subscribers.

For Example: If ISP has 1000 Active dial-up accounts who each pay monthly, and ISP sells dial-up access for \$20.00 per month, with a cost for services of \$10.00 each, the formula would be 1000 x \$10.00 or \$10,000 per month for a total of \$120,000 over the following 12 months, assuming 100% retention. Actual retention will vary.

Section 4 – Software License

4.1 In General – ISPs must use visp.net's ISP Management & Billing software in order to sell ISP Services to Subscribers. When registering as an ISP, the software is delivered to each ISP via download and ISP's use of such software is subject to this Software License Agreement. THIS SOFTWARE LICENSE AGREEMENT IS A LEGAL AGREEMENT BETWEEN ISP AND VISP.NET. READ IT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND USING THE SOFTWARE. IT PROVIDES A LICENSE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY INSTALLING AND USING THE SOFTWARE, ISP CONFIRMS ACCEPTANCE OF THE SOFTWARE AND AGREES TO BE BOUND BY THE TERMS OF THIS SOFTWARE LICENSE AND THE ISP AGREEMENT. IF AN ISP DOES NOT AGREE TO BE BOUND BY THESE TERMS, THEN THE ISP MUST NOT INSTALL THE SOFTWARE.

THIS LICENSE SHALL APPLY ONLY TO THE SOFTWARE SUPPLIED BY VISP.NET HEREWITH REGARDLESS OF WHETHER OTHER SOFTWARE IS REFERRED TO OR DESCRIBED HEREIN.

4.2 Definitions – As used in this Section (ISP Management & Billing software License), the following terms shall have the following meanings:

- a) "Visp.net" or "visp.net" means visp.net and its licensors, if any.
- b) "Software" means only the visp.net software program(s) and third party software programs, in each case, supplied by visp.net herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation.

4.3 License Grants – The licenses granted hereunder are subject to the terms and conditions of this ISP Management & Billing software License and this ISP Agreement.

- a) ISP may install and use the Software on as many computers as ISP has purchased simultaneous licenses. If this was not specified when ISP purchased their original license, then ISP may install the Software on up to five (5) computers simultaneously. ISP may not sell or transfer any copy of the Software except as otherwise provided herein.
- b) ISP agrees that visp.net may audit ISP's use of the Software for compliance with these terms by the use of automated logs or other method determined to be commercially reasonable by visp.net. In the event that such audit reveals any use of the Software by ISP other than in full compliance with the terms of these Policies and Procedures, ISP shall reimburse visp.net for all reasonable expenses related to such audit in addition to any other liabilities visp.net may incur as a result of such non-compliance.

c) ISP's rights under this License are non-exclusive.

d) **Mandatory Product Activation.** ISP will need to activate the Software through the Internet. There are technological measures in this Software that are designed to prevent unlicensed or illegal use of the Software. ISP agrees that visp.net may use those measures and ISP agrees to follow any requirements regarding such technological measures. Product activation is based on the exchange of information between ISP's computer and visp.net.

4.4 License Restrictions

a) ISP may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network.

b) ISP may not alter, merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.

c) Unless otherwise provided herein, ISP may not rent, lease, or sublicense the Software.

d) Unless otherwise provided herein, ISP may not modify the Software or create derivative works based upon the Software.

e) Unless otherwise provided herein, ISP shall not (A) install or use more than one copy of a demo version of the Software (herein "Demo") (B) alter the contents of a hard drive or computer system to enable the use of a Demo for an aggregate period in excess of the Demo period for one license to such Demo, or (C) disclose the results of software performance benchmarks obtained using a Demo to any third party without visp.net's prior written consent.

f) ISP shall not use the Software to develop any application having the same primary function as the Software.

g) In the event that ISP fails to comply with this License Agreement or the ISP Agreement, visp.net may terminate the license and ISP must destroy all copies of the Software (with all other rights of both parties and all other provisions of this License surviving any such termination).

4.5 Ownership – The foregoing license gives ISP limited license to use the Software. Visp.net and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software (as an independent work and as an underlying work serving as a basis for any application ISP may develop), and all copies thereof. All rights not specifically granted in this License Agreement, including Federal and International Copyrights, are reserved by visp.net and its suppliers.

4.6 U.S. Government Restricted Rights – This Software and the documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. Without limiting the foregoing, use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this License Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii)(OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14, as applicable. Manufacturer: Visp.net, 301 NE 6th Street, Grants Pass, OR 97526.

4.7 ISPs & Subscribers Outside of the U.S. – The limitations or exclusions of warranties and liability contained in this License Agreement do not affect or prejudice the statutory rights of a consumer, i.e., a person acquiring goods otherwise than in the course of a business. The limitations or exclusions of warranties, remedies or liability contained in this License Agreement shall apply to ISP only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where ISP is located.

4.8 Third Party Software – The Software may contain third party software which requires notices and/or additional terms and conditions and are made a part of and incorporated by reference into this License Agreement. By accepting this License, ISP also accepts the additional terms and conditions, if any, set forth therein.

Section 5 – General Provisions

5.1 Consent to Electronic Record – The Electronic Signatures in the Global and National Commerce Act (15 U.S.C. § 7001, et seq.), requires that each ISP applicant consent to use of an electronic record of the ISP Agreement before the ISP Agreement is entered into. The information below describes the electronic record and Agreement.

a) The ISP Agreement is an online agreement that is evidenced by an electronic record. ISP must consent to the use of an online record in order to enter into the ISP Agreement. By submitting the online Agreement, an applicant consents to the use of electronic records as evidence of the ISP Agreement.

b) The hardware and software necessary to access the ISP Agreement and submit online includes the following: A personal computer with modem or other Internet access device, operational Internet browser software (e.g., Internet Explorer, Firefox, or Netscape Communicator) and also may require Adobe Acrobat Reader (available at <http://www.adobe.com>).

c) ISP may withdraw ISP's consent to the use of electronic records at any time. However, should ISP do so, ISP's ISP Agreement will be automatically terminated and ISP will lose all rights as under the ISP Agreement. Should ISP wish to withdraw consent to the exclusive use of an electronic agreement (and thereby terminate the ISP Agreement) ISP may do so by sending an email to operations@visp.net clearly stating the intent to withdraw such consent.

d) During the registration process, all applicants are provided the opportunity to read the ISP Agreement in its entirety. Following completion of the registration process, a copy of the ISP Agreement may be emailed to ISP. If ISP wishes to obtain a paper copy of the ISP Agreement, ISP may print a PDF or html version of the same at www.visp.net/legal. Alternatively, ISP may send a written request with a \$25 check to visp.net, 301 NE 6th Street, Grants Pass, OR 97526. The written request must include ISP's name, Tax I.D. number, mailing address, and email address.

e) Visp.net may amend these Policies and Procedures at its sole discretion at any time and ISP agrees to be bound by these amendments. Outdated versions are archived by visp.net. If ISP wishes to obtain a copy of any version of the Policies and Procedures since the date of ISP's first agreement, ISP must send a written request with a \$25 check payable to visp.net, 301 NE 6th Street, Grants Pass, OR 97526. The written request must include the ISP's name, Tax I.D. number, mailing address, email address, and the date of the version that the ISP wishes to receive.

f) In the event there is a change in the equipment or software necessary to access the Policies and Procedures, visp.net will advise ISPs of the same and will provide ISP with a list of the necessary equipment and software. Upon such event, an ISP may terminate the ISP Agreement subject to the Term and Termination Section herein.

5.2 Conventions – Throughout the ISP Agreement, certain conventions have been employed to make the document more readable. Sections, subsections and paragraphs have been titled, headed, lettered, and/or numbered. References to subsections are underlined. References to other forms are underlined and in blue type. These titles, headings, letters, numbers and type styles and colors are for the convenience of the reader only and should not be relied upon in construing and interpreting the ISP Agreement. Further, as used in the ISP Agreement, the masculine, feminine or neuter gender and the singular and plural number shall each be deemed to include the others whenever the context so indicates.

5.3 Changes to Policies and Procedures – Because federal, state, provincial, territorial and local laws, as well as the business environment, periodically change, visp.net reserves the right to

amend the Policies and Procedures of the ISP Agreement, the Privacy Policy, and its prices at its sole and absolute discretion. By entering into the ISP Agreement, an ISP agrees to abide by all amendments or modifications that visp.net elects to make. Amendments shall be effective upon notice that the Policies and Procedures have been modified. Notification of amendments will be published at www.visp.net/legal/. Visp.net may provide or make available to all ISPs a complete copy of the amended provisions by one or more of the following methods: (1) posting on visp.net's official web site; (2) electronic mail (email); (3) as a click-agree license at the ISP in-a-box login screen; (4) inclusion in Company periodicals; or (5) special mailings.

5.4 Confidentiality and Non-Disclosure – ISP agrees that these Policies and Procedures, the contents of visp.net's subscription sites including, but not limited to <http://support.visp.net>, and any other materials that ISP receives from visp.net pursuant to the ISP Agreement are completely confidential and ISP will not hereafter disclose any information concerning the ISP Agreement or any materials that ISP receives from visp.net to anyone except ISP's attorney, accountants, and/or tax advisors, or unless compelled by court order or in litigation to enforce any provision of the ISP Agreement. This agreement of confidentiality shall survive the termination of the ISP Agreement.

5.5 Entire Agreement – The electronically signed ISP Agreement constitutes the entire agreement between visp.net and ISP unless the parties have a specific agreement, amendment or addendum, herein, "Addendum" that has been signed by both parties, in which case, the Addendum is hereby incorporated by this reference. If there is a conflict or inconsistency between these Policies and Procedures and the Addendum, the Addendum shall prevail.

Except as provided above, there are no promises, terms, conditions, or obligations other than those contained herein. **This ISP Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between ISP and visp.net. Any promises, representations, offers, or other communications not expressly set forth in the ISP Agreement are of no force or effect.**

5.6 Limitation of Liability – To the extent permitted by law, ISP agrees that visp.net, its parent companies, subsidiaries, directors, officers, shareholders, employees, assigns, successors, and agents (collectively referred to as "affiliates") shall not be liable for, and ISP releases visp.net and its affiliates from, and waives all claims for, any loss of profits or indirect, direct, special or consequential, punitive, non-economic, damages, or any other loss incurred or suffered by ISP as a result of:

- a) The ISP's breach of the ISP Agreement;
- b) The improper promotion or operation of an ISP Business by an ISP and any activities related thereto;
- c) Any incorrect or wrong data or information provided by an ISP to visp.net; or,
- d) The ISP's failure to provide any information or data necessary for visp.net to operate its business.

The entire liability of visp.net and its affiliates for any claim whatsoever related to the relationship between visp.net and an ISP, including, but not limited to, any cause of action sounding in contract, tort, or equity shall not exceed, and shall be limited to, the amount paid by the ISP for services purchased from visp.net under the ISP Agreement that have not been used or resold. Each ISP further agrees to indemnify, hold harmless, and defend at ISP's expense visp.net and its affiliates against any and all claims, demands, costs, losses, damages, liabilities, judgments, attorney fees and all other expenses arising or alleged to arise in connection with the operation of ISP's Business.

5.7 Severability – If any provision of the ISP Agreement, in its current form or as may be amended, is found to be invalid, or unenforceable for any reason, only the invalid portion(s) of the provision shall be severed and the remaining terms and provisions shall remain in full

force and effect and shall be construed as if such invalid, or unenforceable provision never comprised a part of the ISP Agreement.

5.8 Waiver – Visp.net never gives up its right to insist on compliance with the ISP Agreement and with the applicable laws governing the conduct of a business. No failure of visp.net to exercise any right or power under the ISP Agreement or to insist upon strict compliance by an ISP with any obligation or provision of the ISP Agreement, and no custom or practice of the parties at variance with the terms of the ISP Agreement, shall constitute a waiver of visp.net's right to demand exact compliance with the ISP Agreement. Waiver by visp.net can be effected only in writing by an authorized officer of visp.net. Visp.net's waiver of any particular breach by ISP shall not affect or impair visp.net's rights with respect to any subsequent breach, nor shall it affect in any way the rights or obligations of any other ISP. Nor shall any delay or omission by visp.net to exercise any right arising from a breach affect or impair visp.net's rights as to that or any subsequent breach.

The existence of any claim or cause of action of ISP against visp.net shall not constitute a defense to visp.net's enforcement of any term or provision of the ISP Agreement.

5.9 Assignment – Either Party may assign this Agreement without the prior written consent of the other Party, except that ISP agrees that ISP will provide written notice at least ten days prior to the assignment. Visp.net will then have at least ten days (until the assignment is effective) to review the application for potential conflict of interest and/or credit worthiness. The absence of a written or email challenge from visp.net within the review period will constitute approval of the assignment.

5.10 Warranties

Disclaimer

a) VISP.NET AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO, THERE IS NO WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. VISP.NET DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON ISP UNLESS EXPRESSLY GRANTED HEREIN. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. VISP.NET SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

b) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO SIXTY DAYS FROM THE DATE OF DELIVERY.

c) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VISP.NET, OTHER ISPS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

d) SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO ISP. THIS WARRANTY GIVES ISP SPECIFIC LEGAL RIGHTS AND ISP MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

5.11 Exclusive Remedy – ISP's exclusive remedy under the ISP Agreement for any defect or non-conformity with respect to the Software provided by visp.net is replacement of the Software. Provided that any non-compliance with the above warranty is reported in writing to visp.net no more than sixty days following delivery to ISP, visp.net will use reasonable commercial efforts to supply ISP with a replacement copy of the Software that substantially conforms to the documentation, or to refund to ISP the purchase price for the Software, at visp.net's option. Visp.net shall have no responsibility if the Software has been altered in any way, if the media has been damaged by misuse, accident, abuse, modification or misapplication, or if the failure arises out of use of the Software with other than a recommended hardware configuration. Any such misuse, accident, abuse, modification or misapplication of the Software will void the warranty above. THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO ISP FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND RELATED DOCUMENTATION.

5.12 Cooperative Resolution of Disputes - Visp.net and ISP will attempt to settle any claim or controversy arising out of the ISP Agreement through consultation or negotiation in good faith and in the spirit of mutual cooperation. If those attempts fail, the dispute will be mediated by a mutually acceptable mediator to be chosen by visp.net and ISP within 30 days after written notice by either party demanding mediation. Any party who shall be found to have failed or refused to mediate or failed to mediate in good faith shall not be entitled to any recovery or award of their attorney's fees.

Neither party may unreasonably withhold consent to the selection of a mediator. Visp.net and ISP will share the cost of mediation equally, provided however that each party shall be responsible for their attorney's fees, costs for witnesses and any other such legal fees or costs. A party may postpone mediation for a reasonable time not to exceed 60 days for the purpose of conducting specified and limited discovery regarding the dispute and the parties shall reasonably cooperate in facilitating such discovery.

Arbitration – Except as may otherwise be provided in these Policies and Procedures, any controversy or claim arising out of or relating to the ISP Agreement, or the breach thereof, or to the existence, scope, or validity of the ISP Agreement or the arbitration agreement, shall be settled by arbitration administered by the Arbitration Service of Portland and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

If ISP files a claim or counterclaim against visp.net, ISP may only do so on an individual basis and not with any other ISP or as part of a class or consolidated action. ISP waives all rights to trial by jury or to any court. All arbitration proceedings shall be held in the City of Grants Pass, Oregon. Each party to the arbitration shall be responsible for its own costs and expenses of arbitration, including legal and filing fees. The decision of the arbitrator shall be final and binding on the parties and may, if necessary, be reduced to a judgment in any court of competent jurisdiction. This agreement to arbitrate shall survive any termination or expiration of the ISP Agreement.

Notwithstanding the provisions in these Policies and Procedures requiring the arbitration of disputes, visp.net may take any collection measures as may be permitted under law for the recovery of amounts due, including without limitation filing suit in the appropriate courts. ISP agrees to pay visp.net's costs of collecting overdue amounts from ISP, including court costs, and visp.net's reasonable attorney fees, regardless of whether suit or action is required.

Nothing in the ISP Agreement shall prevent visp.net from applying to and obtaining from any court having jurisdiction a writ of attachment, a temporary injunction, preliminary injunction, permanent injunction or other relief available to safeguard and protect visp.net's interest prior to, during or following the filing of any arbitration or other proceeding or pending the rendition of a decision or award in connection with any arbitration or other proceeding.

5.13 Governing Law, Jurisdiction and Venue – Jurisdiction and venue of any matter not subject to arbitration shall reside in Josephine County, State of Oregon unless the laws of the state in which an ISP resides expressly require the application of its laws, in which case that state's law shall govern all issues related to jurisdiction and venue. The Federal Arbitration Act shall govern all matters relating to arbitration. The laws of the State of Oregon shall govern all other matters relating to or arising from the ISP Agreement unless the laws of the state in which an ISP resides expressly require the application of its laws.

YOUR USE OF VISP.NET SERVICES CONSTITUTES YOUR AGREEMENT TO BE BOUND BY THE TERMS OF THE ISP AGREEMENT AND THESE POLICIES AND PROCEDURES IN THEIR ENTIRETY.