



# Alyrica Networks, Inc.

## Terms Of Service

June 6, 2017

This Service Terms and Conditions Agreement ("Service Agreement"), consisting of these terms and conditions, the COS (as defined below) and all other documents referenced herein, is entered into as of the date set forth on the COS by and between Alyrica Networks, Inc., ("Alyrica") and the individual or entity named on the COS to which this Agreement is attached ("Customer") and sets forth the terms and conditions under which Alyrica will make available its Service (as defined below) Customer has elected to receive (collectively, the "Service"). This Service Agreement governs both home and commercial Customers. "Affiliate" means an entity that controls, is controlled by or is under common control with Alyrica.

By using the Service, Customers agree to be bound by the terms of this Service Agreement and all documents incorporated by reference herein, including without limitation Alyrica's Privacy Policy, Open Internet Policy, and Additional Terms (terms and conditions that will govern a new service offering) as each may be amended from time to time. If there is a conflict between this Service Agreement and any Additional Terms, the Additional Terms shall govern.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT CUSTOMER UNDERSTANDS EACH PROVISION. THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTION LAWSUITS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO CUSTOMER IN THE EVENT OF A DISPUTE. IF CUSTOMER DOES NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT USE THE SERVICE.

Alyrica regularly updates and amends this Service Agreement, the Privacy Policy, the Open Internet Policy, the Website Terms of Use Agreement and other documents incorporated by reference in this Service Agreement. Alyrica will communicate any such updates or amendments to Customer in accordance with Section 17(h). Customer may obtain, at no charge, a copy of the current Service Agreement or any documents incorporated by reference herein by visiting Alyrica's website or by contacting Alyrica.

### 1. GENERAL OVERVIEW

This Service Agreement governs the following components in Alyrica's Service and Customer may customize Customer's home or commercial Service based on Customer's needs:

- Internet Access Service – Internet broadband service, as described on the Alyrica's website, including but not limited to Alyrica Home Internet, Alyrica Business Internet and Industrial Internet.
- Server Colocation, as described on Alyrica's website here.
- Web Hosting, as described on Alyrica's website here.
- WatchESPN, as available here.
- Webmail, as available on Alyrica's website here.
- Consulting, as described on Alyrica's website here including but not limited to wireless data consulting and network consulting.
- Computer Repair Service – This is a supplemental service and is not part of any of the Service components listed above. Alyrica can provide a customized technical troubleshooting and IT repair service via the telephone and/or via remote access to identify problems with Customer's computer (including tablet) or other device or other equipment (Alyrica's or a third party's), or software. Alyrica's



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Computer Repair Service is available for a one time troubleshooting/repair request that is subject to a separate fee. All fees are available upon request. If Customer's state requires a written estimate for repairs in advance of any repair work, we will provide a written estimate in compliance with state law.

### 2. EQUIPMENT AND REQUIREMENTS FOR PROVISION OF THE SERVICE

(a) **Customer Equipment.** To use the Service, Customer must have a personal computer or other device and other equipment meeting Alyrica's most recent "Minimum Customer Equipment Specifications," which are defined on the Alyrica's website and may be modified from time to time by Alyrica. The Minimum Customer Equipment Specifications may change, and Alyrica may make reasonable efforts to support previously acceptable configurations; however, Alyrica is not obligated to continue to provide such support. Although Alyrica is under no obligation to do so, Alyrica may, and Customer authorizes Alyrica to, perform any updates and/or changes to Customer's equipment, on-site or remotely, from time to time as Alyrica deems necessary, in Alyrica's sole discretion. Customer will direct any questions concerning third-party hardware or software to the manufacturer. Alyrica has no responsibility for the operation or support, maintenance or repair of any equipment, software or services that Customer elect to use in connection with the Services. As set forth below and in the Open Internet Policy, Customer is not permitted to connect any harmful equipment to the Alyrica Equipment (as defined below). Customer understands that failure to comply with this restriction may cause damage to Alyrica's network and subject Customer to liability for damages and/or other liability. Customer agrees to not alter, modify or tamper with the Alyrica Equipment or the Service, or to permit, encourage or solicit any other person to do the same, unless such person has been authorized to do so by Alyrica.

(b) **Alyrica Equipment.** Customer acknowledge that at the time of installation of the Service, the equipment listed on the confirmation of sale (the "COS") was installed (such equipment listed in the COS, the "Alyrica Equipment"). Alyrica Equipment shall also include all wires, cables, fiber optic lines, conduits, vaults, junction boxes and related materials and items. Customer further acknowledges that the Alyrica Equipment may, at Alyrica's sole discretion, be refurbished or otherwise used equipment. Customer agrees that the Alyrica Equipment was installed at a location and in a manner authorized by Customer. The Alyrica Equipment is and shall remain the property of Alyrica, unless Customer purchases equipment from Alyrica outright, and will be provided to the Customer under the terms set forth in the COS. At such time as Customer or Alyrica terminate the Service, Customer will return the Alyrica Equipment to Alyrica within 15 calendar days, and in accordance with Alyrica's then-current return procedures. In the event that Customer have not returned the Alyrica Equipment within 15 calendar days as set forth in the previous sentence, or in the event that the Alyrica Equipment is damaged or otherwise inoperable, Customer will pay each applicable "Equipment Purchase Price" listed in the COS. If the Customer decides to purchase the equipment from Alyrica outright, the applicable "Equipment Purchase Price" listed in the COS may apply. At and following termination of service, Alyrica may, in its sole and absolute discretion, abandon some or all Alyrica Equipment located on Customer's property. In the event of such abandonment, the item(s) abandoned shall become the property of Customer, and Alyrica shall have no obligation to maintain, remove, repair, and/or dispose of such abandoned item(s).

(c) **Access to Customer's Premises.** Customer hereby grants Alyrica and its Affiliates, and their respective employees, contractors and agents the right to enter Customer's property and premises at any time for the purpose of operating or maintaining the Alyrica Equipment or Alyrica's network, retrieving Alyrica Equipment



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or fulfilling its obligations or exercising its rights under this Agreement. Alyrica shall provide Customer with reasonable advance notice of any such planned access, except when, in the reasonable opinion of Alyrica, an emergency or other exigent circumstance exists that would require Alyrica to immediately enter Customer's property and premises.

(d) Customer's Obligation to Maintain Power to Alyrica Equipment. Customer understands and agrees that: (i) Customer must provide electrical power and a continuous connection to the power grid to Alyrica Equipment at all times (including, without limitation, when Customer is not using the Service), and (ii) Customer's failure to provide such power and continuous connection may result in damage to the Alyrica Equipment or to Customer's computer, equipment, property or premises, for which damage Customer will be solely responsible.

(e) Replacement and Upgrade of Alyrica Equipment

(i) Unless the COS indicates the Alyrica Equipment Assurance Plan is "Not Included," Alyrica will repair, replace, or otherwise upgrade any Alyrica Equipment that, as determined by Alyrica in its sole discretion, needs to be installed, replaced or otherwise upgraded. Notwithstanding the foregoing, Customer will be solely liable for, and Alyrica shall have no obligation to repair, replace or otherwise upgrade, any Alyrica Equipment that has been, in Alyrica's sole discretion, damaged or otherwise requires repair, replacement or upgrade as a result of damage or disruption caused by misuse or neglect or otherwise caused by Customer, including, without limitation, damage or disruption caused by Customer's failure to comply with Section 2(d) herein or by Customer's failure to comply with the last sentence of Section 2(a) herein.

(ii) If the COS indicates the Alyrica Equipment Assurance Plan is "Not Included," beginning on the date of installation of the Service and for a one-year period thereafter, Alyrica provides a limited warranty against any defect in materials or workmanship in the Alyrica Equipment that is warranted by the manufacturer of such Alyrica Equipment. During this one-year period, in the event there is a problem with the Alyrica Equipment that is, as determined by Alyrica in its sole discretion, not a result of action or inaction on the part of Customer, that cannot be corrected either over the telephone or onsite, Alyrica will, as its sole obligation and Customer's sole remedy for such problem, repair or replace such Alyrica Equipment at Alyrica's expense. This warranty expressly excludes defects in the Alyrica Equipment caused by acts of nature (such as, but not limited to, lightning damage), damage from misuse or neglect, water damage, damage caused by Customer's failure to comply with Section 2(d) herein or damage or other disruption caused by Customer's failure to comply with the last sentence of Section 2(a) herein. After such one-year period, Customer will be solely liable for any and all damage to any Alyrica Equipment.

(iii) If the COS indicates the Alyrica Equipment Assurance Plan is "Not Included," Customer understands and agree that Alyrica's ability to provide an appropriate quality of Service to Customer and the other customers on Alyrica's network may from time to time require upgrades or replacement of the Alyrica Equipment, and Customer will be obligated to pay the then-applicable "Equipment Upgrade Fee" as established by Alyrica from time to time, at such time as Alyrica determines, in its sole discretion, that the Alyrica Equipment needs to be upgraded or replaced.



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(f) Customer understands, acknowledges and agrees that prior to Alyrica servicing any Customer equipment or Alyrica Equipment under contract with Customer, it is Customer's responsibility to (A) back-up the data, software, information or other files stored on Customer's computer or other device including but not limited to disk drives, peripherals, MP3 player, DVD player, camcorder, digital camera and/or on any other electronic storage device; and (B) remove all videotapes, compact disks, floppy disks, laser disks, cassettes, DVDs, film or other media from Customer's equipment. Customer agrees that whether or not Customer requests back-up services from Alyrica and/or its Operational Service Provider, neither Alyrica nor its Operational Service Provider shall be liable under any circumstances for any loss, disclosure, alteration or corruption of any data, software, information, files, videotapes, compact disks, floppy disks, laser disks, cassettes, DVDs, film or other media.

### 3. CUSTOMER'S REPRESENTATIONS, RESPONSIBILITIES AND WARRANTIES

(a) If Customer is an individual, Customer represents and warrants that he or she is at least 18 years of age and has legal authority to execute this Agreement. If Customer is a commercial entity, the individual executing this Agreement represents and warrants he or she has legal authority to execute this Service Agreement on behalf of Customer.

(b) Customer agrees that the Service is personal to Customer and Customer shall not to assign, transfer, resell or sublicense Customer's rights under this Agreement unless specifically permitted by the terms of this Agreement. For home Customers, Customer agrees that the Service and the Alyrica Equipment shall be used only by Customer and by members of Customer's immediate household living with Customer at the same address, and Customer will not redistribute or share the Service with any others or transmit the Service over any wireless or other network whether or not secured. For commercial Customers, Customer agrees that the Service and the Alyrica Equipment shall be used only by Customer and by authorized members of Customer's business located at the same address, and Customer will not redistribute or share the Service with any others or transmit the Service over any wireless or other network whether or not secured. Customer acknowledges that Customer is executing this Service Agreement on behalf of all persons who use the Service by means of the Alyrica Equipment. Customer agrees that Customer is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement and any other documents incorporated by reference in this Service Agreement, whether such breach results from Customer's use of the Service or by another using Customer's equipment or the Alyrica Equipment.

(c) Customer represents and warrants that Customer will not use the Service in a manner that (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any local, state or federal statute, ordinance or regulation; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable; (iv) impersonates any person or entity, including without limitation any employee or representative of Alyrica or its Affiliates; or (vi) transmits any virus, trojan horse, worm, time bomb, or other harmful computer code, file, or program. Alyrica reserves the right to suspend Customer's access the Service at any time upon receipt of claims or allegations from third parties or authorities or if Alyrica is concerned that Customer may have breached this Service Agreement. Customer (and not Alyrica or its Affiliates, Operational Service Providers) remains solely responsible for Customer's use of the Service and any material transmitted through the Service, and Customer warrants that Customer possess all rights necessary to transmit such material.



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(d) Customer represents and warrants that the personal identifiable information ("Personal Information") Customer provided and will provide to Alyrica during the term of this Service Agreement, including without limitation Customer's legal name, email address for communications with Alyrica (such email address, as the same may be modified from time to time by Customer upon notice to Alyrica, the "Account Email Address"), Service address, billing address, telephone number(s), and payment data (including without limitation information provided when authorizing Automated Clearing House payments or other recurring payments) and Non-Personal Information, such as but not limited to the number of computers on which the Service is being accessed (all such information, collectively, the "Customer Information" for purpose of this Service Agreement is accurate, complete and current. (In the Privacy Policy, Non-Personal Information may also be classified as Personal Information if it is directly associated with or reasonably linked to Customer's account, computer or device.) Customer agrees to promptly notify Alyrica, in accordance with the terms of this Service Agreement, upon the occurrence of any change in the status of Customer's account (including, without limitation, the creation or removal of an Authorized User (as defined below)) or if there is any change in the Customer Information. Customer's failure to provide and maintain accurate Customer Information with Alyrica constitutes a breach of this Service Agreement.

(e) Customer agrees that Customer is responsible for anyone using the Alyrica Equipment, Customer's computer system, password, name or Customer name in connection with the Service (with or without Customer's knowledge or consent) and for ensuring that anyone who uses the Service through the Alyrica Equipment, Customer's equipment or access to the Service, does so in accordance with the terms and conditions of this Service Agreement. Customer agrees to take all reasonable measures necessary to ensure that the Service is not used by another person without Customer's consent. Customer understands, acknowledges and agrees that Customer is responsible for all use of the Service and Customer's account whether Customer or someone else uses Customer's account (with or without Customer's permission).

(f) Customer is responsible for procuring and installing patches, any and all anti-virus and firewall software/hardware and operating system patches, updates or supplements that may be necessary for (i) the protection and maximum functionality of Customer's computer and related equipment and the Alyrica Equipment and (ii) the protection of Alyrica's network and other customers. For purposes of clarification, Alyrica and its Affiliates hereby disclaim any and all responsibility and liability for any damages that may arise from Customer's failure to procure or install the aforementioned security or other software and/or hardware and Customer agree that Alyrica and its Affiliates shall have no liability for Customer's failure to do the same.

(g) Customer represents that there are no legal, contractual or similar restrictions on the installation of the Alyrica Equipment in the location(s) and in the manner authorized by Customer. Customer is responsible for ensuring compliance with all regulations, applicable building codes, zoning ordinances, homeowners' association rules, covenants, conditions or other restrictions related to the installation of the Alyrica Equipment and Service, for paying any fees or other charges and obtaining any permits or authorizations necessary for the installation of the Alyrica Equipment and/or provision of the Service (collectively, "Legal Requirements"). Customer is solely responsible for any fines or similar charges for violation of any applicable Legal Requirements.

(h) Customer is responsible for backing up the data on Customer's computer(s) and network(s) and Alyrica shall have no liability whatsoever for any loss of data.



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(i) Customer agrees to comply with the following terms and conditions for the use of Service:

(i) Service is provided for use in conformance with this Service Agreement. Alyrica reserves the right to investigate suspected violations of the Service Agreement. When Alyrica becomes aware of possible violations, Alyrica may initiate investigation which may include gathering information from Customer or Customers involved and the complaining party, if any, and examination of Customer's Material on Alyrica's servers. Customer's Material collectively includes, but is not limited to, any software, computer programs, applications, data, photographs, video and/or audio content, text, files, and other information, including emails, address book and web storage content.

(ii) During an investigation, Alyrica may suspend the account or accounts involved and/or remove Customer's Material involved from its servers. If Alyrica believes a violation of this Service Agreement has occurred, it may take responsive action at its sole discretion. Such action may include, but is not limited to, temporary or permanent removal of Customer's Material from Alyrica's servers, warnings to Customer or Customers responsible, and the suspension or termination of the account or accounts responsible. Alyrica, at its sole discretion, will determine what action will be taken in response to a violation on a case-by-case basis. Violations of this Service Agreement could also subject the Customer to criminal or civil liability.

(j) Customer agrees to comply with the following terms for the use of Customer Materials:

(i) Lawful content in the public domain (e.g., images, video, audio, text, data, and programs) may be downloaded or uploaded using the Service. Customer may re-distribute content in the public domain. Customer assumes all risks regarding the determination of whether content is in the public domain.

(ii) Customer is prohibited from storing, distributing, or transmitting any unlawful content through the Service. Examples of unlawful content include but are not limited to direct threats of physical harm, child pornography and copyrighted, trademarked and other proprietary material used without proper authorization. Customer may not post, upload or otherwise distribute copyrighted content without the consent of the copyright holder. The storage, distribution, or transmission of unlawful content could subject Customer to criminal as well as civil liability, in addition to the actions outlined in Section 3(i) above.

(iii) Customer may not store or distribute certain other types of material on Alyrica's servers. Examples of prohibited material include, but are not limited to software, applications and programs containing viruses, trojans and other tools or technology that would compromise the security of Alyrica or others.

(iv) Customer represents that when Customer transmits, uploads, posts, or submits any Customer Material using the Service, Customer has the legal right to do so and that Customer's use of such Customer Material does not violate any copyright or trademark laws or any other third party rights.

(v) Customer agrees that if Customer's Service is terminated for any reason, Alyrica has the right to immediately delete all Customer Material, stored in or for Customer's account without further notice to Customer.

#### 4. THE SERVICE AND PRIVACY



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(a) Alyrica has established a Privacy Policy ("Privacy Policy"), which governs Alyrica's collection, use, disclosure, management and security related to Customer's personally identifiable information ("Personal Information"). Customer agrees that Customer received a copy of the then-in-effect Privacy Policy at the time Customer executed this Service Agreement. Subject to Section 17(g) herein, Alyrica may update or amend the Privacy Policy at any time without Customer's prior consent. Alyrica will, however, provide notice of any such changes or amendments as stated in Alyrica's Privacy Policy. Customer understands, acknowledges and agrees that Customer's continued use of the Service after notice of any changes or amendments have been provided will indicate Customer's acceptance of such changes, except where further steps are required by applicable law. All such updates or amendments shall be deemed to be incorporated by reference into this Service Agreement.

(b) Alyrica has no obligation to monitor content transmitted by use of, or other information related in any way to the provision or receipt of, the Service. However, Customer agrees that Alyrica has the right to monitor the Service and any and all information or Customer Material transmitted through the Service or by use of the Alyrica Equipment and information available to Alyrica regarding Customer's computer and other equipment in accordance with this Agreement. Alyrica has the right at all times and without notice to remove, restrict access to or make unavailable any information or content residing on Alyrica's or its Affiliates' or Operational Service Providers' servers. Alyrica has the right to monitor, review, retain or disclose any content or other information in Alyrica's possession about or related to Customer (including, without limitation, Customer Information), Customer's use of the Service, or otherwise, as necessary to satisfy any applicable law, or otherwise as Alyrica deems necessary or appropriate in Alyrica's sole discretion.

(c) Customer authorizes Alyrica to make inquiries and to receive information about Customer's credit history from others and to utilize such information in its decision regarding its provision of the Service to Customer.

(d) Alyrica may require that Customer use a username and password combination or other reasonable procedures to confirm Customer's identity when requesting or otherwise accessing account information, making changes to the Service or performing other functions related to the Service through Alyrica's authorized Customer service channels. Customer may also choose to designate an authorized user of Customer's account (an "Authorized User"), who will be permitted to access Customer's account information and make certain changes to Customer's account. Customer will be solely liable for any and all action or inaction by any Authorized User.

### 5. PASSWORDS

(a) Home accounts are for individual use only. Commercial accounts are for authorized personnel only.

(b) Home Customers shall not share passwords or accounts with others. Commercial Customers shall only provide passwords to authorized personnel.

(c) Alyrica shall provide or obtain passwords to protect Customer's account and Services. In the event that the security of a Customer's account or Service is compromised, Alyrica shall provide Customer with a new password.



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(d) Alyrica may monitor the security of Customer's passwords at any time. A Customer with an insecure password may be directed to change the password to one which complies with the above rules. Customers who repeatedly choose insecure passwords may be assigned a password by Alyrica; continued failure to maintain password security may be grounds for account termination.

### 6. SYSTEM SECURITY

(a) Customer is solely responsible for maintaining the security of Customer's computer(s)/device(s) and data and protection of Customer's User ID, password and Personal Information and other data. Alyrica strongly recommends the use and appropriate updating of commercial anti-virus, anti-spyware, firewall software, and encryption of data, to the extent feasible.

(b) Customer is prohibited from utilizing the Service to compromise the security or tamper with Alyrica's system resources or accounts on any of Alyrica's computers, routers, switches, servers, radios, modems, or any other equipment at Alyrica or at any other site. Use or distribution of tools designed for compromising security is prohibited. Examples of the tools include but are not limited to password guessing programs, cracking tools, and network probing tools. Any attempt to access any of Alyrica's corporate assets is strictly prohibited.

(c) Alyrica reserves the right to release the login names of Customers involved in violating system security to system administrators at other sites, in order to assist them in resolving security incidents. Alyrica will also fully cooperate with law enforcement authorities in investigating suspected lawbreakers, subject to Alyrica's Privacy Policy and applicable law.

### 7. ACCEPTABLE USAGE AND PROHIBITED INTERNET SERVICE ACTIVITIES

(a) "Acceptable Usage of Internet Service" is hereby defined as the normal activities associated with the use of the Internet, including but not limited to usage of Alyrica's systems and network facilities for accessing the World Wide Web, Internet Relay Chat, USENET Newsgroups, Email, and other Internet features. Depending on the account type, this may include:

(i) file storage on Alyrica's servers for Customer's own personal web page and file access area (FTP), etc.

(b) "Prohibited Internet Service Activities" specifically prohibited by Alyrica include but are not limited to the following:

(i) Background and/or server-type applications – Including but not limited to IRC bots, HTTP servers, MUDs, and any other process which were initiated by the Customer that continues execution on the system upon Customer logout.

(ii) Long-term storage of data – Long-term storage of data is referred to as the storage of files which are not used regularly in an account for an extended period of time. This specifically includes, but is not limited to, programs such as shareware programs which the Customer may download to their account for purposes of



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transferring to their home computer(s)/device(s). Such programs should be removed at such time as they are successfully transferred to the Customer's personal system.

(iii) Flooding or abuse of other users – Flooding is a fairly common occurrence on the Internet, and one which is dealt with strictly by Alyrica. Flooding takes place in numerous ways, including, but not limited to, ICMP flooding, mail bombing (sending large amounts of email repeatedly to a person for purposes of harassment), phishing, mass mailings to multiple addresses, MSG/CTCP flooding on IRC, as well as other, less common methods.

(iv) Attempts to compromise system and/or network security – Programs such as packet sniffers, password crack programs, and similar utilities found to be running from Customer's account are prohibited. This also includes attempts to hack into both Alyrica and non-Alyrica systems.

(v) Sharing of accounts – Sharing Customer's Internet Service with another party for purposes of avoiding payment for a second Service is strictly prohibited. Customer may connect multiple computers/devices within a single location to Customer's modem, router, and/or radio to access the Internet Service, but only through a single Alyrica-issued IP address.

(vi) PPP/SLIP emulation software – Since PPP/SLIP is a product offered by Alyrica, Customers desiring such access are required to sign up for that service rather than attempting to emulate it by software. In addition to any other rights and remedies set forth in this agreement, any such software will be removed from Customer's account by Alyrica immediately when found.

(vii) Bulk broadcast data – This includes flood pinging, broadcast pinging, multicast, or IGMP use outside of the private network.

(viii) Port scanning

(ix) Conducting business through a personal home account – The home single-Customer Internet accounts provided by Alyrica are designed for the home/casual Customer and may not provide the level of service, capacity or speed required for conducting business. Therefore, conducting business with a home account is not advisable. Please contact Alyrica's sales department to upgrade to a commercial account.

(x) Excessive use of system resources – This includes, but is not limited to, the continued use of programs or commands which take a large amount of system resources, be that processor time, memory, network bandwidth, and/or drive space on the host system. Customer may not resell Service.

(xi) Email abuse – Email abuse typically comes in one of three forms, the transfer of a message to unsolicited individuals, the sending of harassing and/or threatening messages to other users, and the forging of email addresses so as to make the email appear to be from another user.

(xii) USENET news abuse – Similar to email abuse, includes forging of addresses, harassment/threats, the posting of the same message to multiple newsgroups (spamming), as well as the posting of information in groups where it is not relevant and unwanted.



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- (xiii) Pyramid/money-making schemes – Such activities as the transfer of information or solicitation of persons via the Internet in an attempt to extort money or other valuables or the use of pyramid/chain letters are all prohibited.
- (xiv) Pirated software – Pirated software is defined as the illegal exchange of software for purpose of avoiding the purchase of said software by the individuals involved. This includes most commercial applications such as, but not limited to, Adobe Photoshop, Microsoft Office, etc. Such activities are prohibited by Federal law and are thus not allowed in any form on Alyrica. Such prohibition also includes the unauthorized copying of copyrighted material including, but not limited to digitization and distribution of photographs from magazines, books, or other copyrighted sources and copyrighted software. The exportation of software or technical information in violation of U.S. export control laws is strictly prohibited.
- (xv) High-traffic websites – Home internet service is intended to provide access to individuals only. As most individuals s primarily download content, rather than upload it,, the performance for everybody on the systems is optimal. However, some individuals occasionally choose to host content on their account, that could degrade performance for other users.. Due to this, Alyrica has had to implement certain limitations on the amount of web hosting traffic an individual customer’s account can receive. Typically an account can safely upload 250 MB per day without causing excessive load. . Sites generating more than this must be moved to Alyrica’s Web Hosting service, where Alyrica is better able to deal with the extra traffic. Alyrica’s Web Hosting packages and the amount of Internet traffic each package supports are outlined on the Web Hosting portion of Alyrica’s website..

### 8. CONSEQUENCES AND REMEDIES FOR VIOLATIONS OF SERVICE AGREEMENT

- (a) All Prohibited Internet Service Activities as defined in Section 7 herein are subject to immediate termination of Customer’s account and any and all criminal and civil penalties available under the law. The penalties imposed on Customer for such violations will vary based on the level of the offense. Typically Customer will receive a warning on the first offense. However, if the offense is severe enough, Alyrica reserves the right to disable the account immediately. Accounts which have been disabled for abuse will not be re-opened. It is vital for Alyrica to provide a quality service for all Customers, and Alyrica will not tolerate Customers who through their actions hinder Alyrica in that endeavor. It is also important for Alyrica to have a non-intrusive presence to the rest of the Internet, and thus prohibit activities that adversely affect Customers on other service providers and their associated networks. To this end, Alyrica reserves the right, without prior notice, to modify and/or disable Service at any such time the Customer violates this Service Agreement.
- (b) Alyrica will not reimburse Customer when Service has been suspended or disabled due to violations of this Service Agreement.
- (c) If Service is disconnected for non-payment, Alyrica is not obligated to re-connect Customer’s Service. However, if Customer desires re-connection, and Alyrica agrees to do so, Customer agree to pay a “Re-installment Fee” plus any amount past due under Customer’s COS. The amount of the re-installment fee is set forth on the Customer’s COS.

### 9. SOFTWARE LICENSES AND THIRD PARTY SERVICES



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- (a) Alyrica may provide Customer software for use in connection with the Service which is owned by Alyrica or its third party licensors, third party suppliers, and Operational Service Providers ("Software"). Such software will be subject to an additional fee. Alyrica reserves the right periodically to update, upgrade, or change the Software remotely or otherwise and to make related changes to the settings and software on Customer's computer(s)/device(s) or Equipment, and Customer agrees to permit such changes and access to Customer's computer(s)/device(s) and Equipment. Customer may use the Software only in connection with the Service and for no other purpose.
- (b) Certain Software may be accompanied by an end user license agreement ("EULA") from Alyrica or a third party. Alyrica's use of the Software is governed by the terms of that EULA and by this Agreement, where applicable. Customer may not install or use any Software that is accompanied by or includes a EULA unless Customer first agrees to the terms of the EULA.
- (c) For Software not accompanied by a EULA, Customer is hereby granted a revocable, non-exclusive, non-transferable license by Alyrica or its applicable third party licensor(s) or Operational Service Provider to use the Software (and any corrections, updates and upgrades thereto). Customer may not make any copies of the Software. Customer agrees that the Software is confidential information of Alyrica or its third party licensors/Operational Service Providers and that Customer will not disclose or use the Software except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Alyrica or its third party licensors/Operational Service Providers. Customer may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. Customer may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. Customer is not granted any title or rights of ownership in the Software. Customer acknowledges that this license is not a sale of intellectual property and that Alyrica or its third party licensors/Operational Service Providers continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

### 10. CUSTOMER'S PAYMENT OBLIGATIONS

Failure to fulfill any payment obligations in a timely manner as provided herein will be considered to be a violation of this Service Agreement and Customer's COS.

- (a) **Deposit.** Prior to the Installation Date defined in the COS, Customer is required to pay any "Initial Deposit," set forth in the COS. At the time of installation of the Service, Customer is required to pay the "Installation Fee Due" and "First Month Payment" set forth in the COS.. The First Month Payment is payment for a full month regardless of where the Installation Date falls in the month; at the end of the term the First Month Payment will be prorated and any credit will be applied to Customer's final payment. Together, any Initial Deposit, Installation Fee Due, and First Month Payment constitute the "Total Deposit". Customer agrees that the Total Deposit is to be paid in consideration of Alyrica's making the Service available on the terms and conditions set forth in this Service Agreement, that Alyrica has earned the Total Deposit in full and



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that the Total Deposit is refundable only if the Service is not working within seven (7) days of the Installation Date.

(b) Customer agrees to pay the Installation Fee and the First Month Payment, as well as any recurring Monthly Fee on or before the first day of Customer's "Monthly Billing Cycle". Except as set forth on the COS, Customer's Monthly Billing Cycle begins on the first day of each month. Notwithstanding the foregoing, Alyrica may modify Customer's Monthly Billing Cycle upon at least 15 calendar days' advance notice to Customer.

(c) Customer agrees to pay the applicable "Monthly Equipment Assurance Fee" set forth on the COS, if any; provided, however, Customer may, on 10 calendar days' advance notice to Alyrica, elect to discontinue participation in the "Equipment Assurance Plan" as then in effect, effective on the first day of Customer's next Monthly Billing Cycle, in which case this Agreement shall be deemed to be amended such that the COS indicates "Alyrica Equipment Assurance Plan Not Included". If the COS indicates "Alyrica Equipment Assurance Plan Not Included," Customer may, on 10 calendar days' advance notice to Alyrica and payment of applicable fees, elect to commence or resume participation in the Equipment Assurance Plan as then in effect, provided, however, the Equipment Assurance Plan shall not apply, and the COS shall only be deemed not to indicate "Alyrica Equipment Assurance Plan Not Included" as of the first day of the second Monthly Billing Cycle commencing after such notice.

(d) Customer agrees to pay the applicable Monthly Service Fee set forth in the COS and Monthly Equipment Assurance Fee, if any, (collectively the "Monthly Fees"), in advance, prior to the month billed, on or before the first day of the Customer's Monthly Billing Cycle. The Monthly Fees for the first month includes the pro-rated fees of the first month of service and the Monthly Service Fee. For each month thereafter, the full Monthly Fee is due for any part of a month for which service is provided.

(e) For each Monthly Billing Cycle with respect to which Customer does not pay on time (including without limitation if Customer's Monthly Fees are not received by Alyrica on or before the first day of the Monthly Billing Cycle), Customer agrees to pay the "Billing Administrative Fee" as established by Alyrica from time to time. Customer and Alyrica specifically agree that the Billing Administrative Fee is not a late fee, but rather is intended to compensate Alyrica for its additional expense incurred in processing irregular payments, and may be changed at any time without notice to Customer. There is also a "Returned Check Fee" established on the COS for the administrative costs related to returned checks.

(f) Alyrica shall not be obligated to provide the Service during Monthly Billing Cycles for which Customer has not paid the applicable Monthly Fees in advance. If at any time Customer's account has past due amounts or upon Customer's violation of this Agreement (including any documents incorporated by reference herein), Alyrica may, in Alyrica's sole and absolute discretion, suspend provision of the Service to Customer and/or terminate this Agreement. Amounts are past due if not paid before the first calendar day of Customer's Monthly Billing Cycle. Customer understands, acknowledges and agrees that Alyrica is not required to provide notice before suspending the Service and/or terminating this Agreement, and Alyrica will not be liable to Customer or any Authorized User for any such suspension or termination or any damages that may result therefrom. In order to restore service after a disconnection, Customer agrees to pay the applicable "Re-installment Fee" set forth in the COS.



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(g) At the expiration of the Service Term, unless Customer signs a new COS, the terms of this Agreement and the Service Terms will continue on a month-to-month basis thereafter. In order for Customer to terminate the contract, Customer shall follow the termination procedures described in Section 16. Customer agrees to pay the "Monthly Service Fee" set forth in the COS, which may change from time to time subject to advance notice by Alyrica. All accounts 60 days or more past due will be turned over to collections and Service discontinued permanently.

(j) Customer also agrees to pay all applicable federal, state, and local taxes and fees, including, but not limited to, those imposed after the date of execution of the COS.

### 11. SERVICE LEVEL AGREEMENT AND REFUNDS

(a) Service Level Agreement. In the event Customer experiences a Service outage for more than two (2) consecutive hours and is unable to transmit and receive information through Alyrica's network to other portions of the Internet and Customer notifies Alyrica immediately of such event and Alyrica determines that such inability was caused by Alyrica's failure to provide said services for reasons within Alyrica's reasonable control and not as a result of any actions or inactions of Customer or any third parties (including failure of third party equipment), and such inability is not a result of scheduled maintenance of Alyrica's equipment or services, Alyrica will, upon Customer's request, credit Customer's account the connectivity charges for the length of the outage. Customer credit may not exceed the Monthly Service Fee in any single calendar month.

(b) Refunds. If Service cannot be supplied by Alyrica for any reason, a full refund will be given for any prepaid service fees and equipment returned in new resalable condition. Service may be cancelled without penalty within 30 days of service installation for quality of service issues. A full refund will be given for equipment returned in new resalable condition and for any remaining portion of prepaid monthly service charges pro-rated daily. All other payments are non-refundable.

### 12. DISCLAIMER OF WARRANTIES

(a) CUSTOMER EXPRESSLY AGREES THAT CUSTOMER USES THE SERVICE AND THE ALYRICA EQUIPMENT AT CUSTOMER'S SOLE RISK. THE SERVICE AND ALYRICA EQUIPMENT ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS AND EXCEPT TO THE LIMITED EXTENT SPECIFICALLY SET FORTH IN SECTION 2 HEREIN, IF APPLICABLE, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY. NEITHER ALYRICA NOR ITS AFFILIATES, AGENTS, OPERATIONAL SERVICE PROVIDERS, THIRD PARTY SUPPLIERS OR SOFTWARE LICENSORS WARRANTS: (I) TO UNINTERRUPTED, TIMELY OR SECURE USE OF SERVICE; (II) THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS; (III) THAT THE SERVICE WILL BE ERROR-FREE OR FREE OF ANY VIRUSES, WORMS, SPAM, POP-UP ADVERTISING, SPYWARE, ADWARE OR OTHER HARMFUL COMPONENTS, EVEN IF COUNTERMEASURES HAVE BEEN DEPLOYED; OR (IV) THAT ANY PERSONAL INFORMATION, NON PERSONAL INFORMATION, DATA OR FILES CUSTOMER SENDS OR RECEIVES VIA THE SERVICE WILL BE TRANSMITTED IN UNCORRUPTED FORM, WITHIN A REASONABLE TIME, OR FREE FROM UNAUTHORIZED ACCESS BY OTHERS OR THAT OTHER USERS WILL BE UNABLE TO GAIN ACCESS TO CUSTOMER'S COMPUTER OR DEVICE. THIS INCLUDES, BUT IS NOT LIMITED TO, INCIDENTS OF FILE SHARING, PRINT SHARING OR USE OF OTHER MEANS THAT ENABLE INTERNET USERS TO GAIN ACCESS TO CUSTOMER'S



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COMPUTER, DEVICE, OR NETWORK OR ALYRICA EQUIPMENT, OR TO MONITOR CUSTOMER'S ACTIVITY AND CONDUCT WHILE USING THE SERVICE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM ALYRICA SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME STATES DO NOT ALLOW LIMITATIONS ON THE SCOPE OF A LIMITATION OF WARRANTY OR HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

(b) In addition, Alyrica may, in its sole discretion, make available to Customer security software, such as anti-virus software, firewall software, "pop-up" advertising blocking software, parental control software, anti-spyware or anti-adware software for Customer's use on Customer's computer system(s) in conjunction with the Service. Any such security software provided by Alyrica to Customer is intended to provide only a minimal level of protection to Customer's computer system(s). CUSTOMER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALYRICA AND ITS AFFILIATES, AGENTS, THIRD-PARTY SUPPLIERS AND LICENSORS OF ANY SUCH SECURITY SOFTWARE, DO NOT GUARANTEE ITS ACCURACY, EFFICACY OR PERFORMANCE. CUSTOMER UNDERSTANDS AND AGREES THAT ALYRICA AND ITS AFFILIATES, AGENTS, THIRD PARTY SUPPLIERS AND LICENSORS ARE NOT RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM(S) (OR THE INFORMATION STORED THEREIN) THAT MAY RESULT FROM USE OF THE SECURITY SOFTWARE OR FROM ITS NON-PERFORMANCE.

(c) EXCEPT AS SPECIFICALLY SET FORTH IN THE COS, CUSTOMER UNDERSTANDS AND AGREES THAT NEITHER ALYRICA NOR ITS AFFILIATES, AGENTS, OPERATIONAL SERVICE PROVIDERS OR THIRD PARTY SUPPLIERS GUARANTEE THAT ANY PARTICULAR AMOUNT OF BANDWIDTH ON ALYRICA'S NETWORK OR THAT ANY SPEED OR THROUGHPUT OF CUSTOMER'S CONNECTION TO ALYRICA'S NETWORK WILL BE AVAILABLE TO CUSTOMER. Customer understands, acknowledges and agrees that the availability and speed of the Service provided at Customer's premises may vary depending upon a number of factors, including Customer's computer system(s), associated equipment and other devices accessing the Service, the terrain and location of Customer's premises, foliage between Alyrica Equipment and other components of Alyrica's network, Internet traffic, and other factors such as system capacity limitations, governmental actions, events beyond Alyrica's control and system failures, modifications, upgrades and repairs.

(d) Customer understands, acknowledges and agrees that Alyrica is NOT responsible for: obstructions that might be erected or grow between Customer's antenna and Alyrica's network antenna causing a degradation or loss of service; equipment upgrades necessary over time to address changes in foliage or other reasons; debris or ice on antenna; re-aiming the antenna; reconfiguration of network settings due to, but not limited to, tampering or re-installation of operating systems; physical or electronic damage to Customer's or third party's person or equipment, including but not limited to damage caused by lightning or by the equipment itself; damage caused by hackers or viruses; or loss of data, whether such data resides on Alyrica servers or not.

(e) Customer understands, acknowledges and agrees that Alyrica may in the future offer other Customers on Alyrica's network Service with specific minimum service standards (including, without limitation, minimum standards for speed, bandwidth, latency or availability) (such minimum service standards that may be offered in the future "Future Enhanced Service"). Customer further understands, acknowledges and agrees that Alyrica shall be under no obligation to provide any Future Enhanced Service to Customer unless and until



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Alyrica and Customer have executed a new agreement with respect to such Future Enhanced Service, which agreement may include, without limitation, such increased or modified Monthly Fees and additional terms and conditions as Alyrica and Customer may agree.

(f) Customer understands, acknowledges and agrees that Alyrica may use various tools and techniques in order to efficiently and reasonably manage its networks and to ensure compliance with Alyrica 's Open Internet Policy and Section 7 above (such tools and techniques, "Network Management Tools"). These may include detecting malicious traffic patterns and preventing the distribution of viruses or other malicious code or managing network resources through techniques such as limiting the number of simultaneous peer-to-peer sessions that Customer may conduct, limiting the aggregate bandwidth available for certain usage protocols such as peer-to-peer and newsgroups, and such other Network Management Tools as Alyrica may from time to time determine appropriate.

(g) Customer understands, acknowledges and agrees that, to allocate bandwidth across all of its Customers, Alyrica may employ traffic-management technology, including but not limited to packet-reset technology, which technology may materially slow the uploading of certain files.

(h) Customer understands, acknowledges and agrees that, in order to provide redundancy or increased efficiency or otherwise to enhance Alyrica's network, Alyrica may install additional equipment at Customer's premises, and any such equipment not set forth in the COS shall be deemed to be Alyrica Equipment for the purposes of this Agreement. Customer further understands, acknowledges and agrees that Alyrica may use the Alyrica Equipment to provide Service to others in a manner that secures and separates Customer's traffic and local area network from Service provided to others.

(i) Customer understands, acknowledges and agrees that Alyrica does not warrant that Service descriptions, information, graphic depictions, fees, product and or other components of the Service are accurate, reliable, updated, current, complete or error-free. Despite Alyrica's efforts, it is possible that a price for the Service (or a component of the Service) offered on Alyrica's website, or the Service description may be inaccurate in some part. In the event Alyrica determines that a Service contains an inaccurate price or description, Alyrica reserves the right to take any action Alyrica deems reasonable and necessary, in Alyrica's sole discretion, to rectify the error, including without limitation, canceling Customer's order, unless prohibited by law. Alyrica may make improvements or changes to any of Alyrica's information, or Services described on Alyrica's websites at any time without notice. Customer agrees to notify Alyrica immediately if Customer becomes aware of any pricing or descriptive errors or inconsistencies with any Services Customer order and to comply with any corrective action that Alyrica may take.

(j) THIS SERVICE AGREEMENT GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

### 13. LIMITATION OF LIABILITY

(a) LIMITATION ON ACTIONS: NOTWITHSTANDING ANY OTHER PROVISION OF LAW CUSTOMER MUST BRING ANY CLAIM OR LAWSUIT WHETHER BASED ON TORT, CONTRACT, OR ANY OTHER THEORY OF LAW WITHIN ONE (1) YEAR AFTER THE CLAIM OR SUIT ARISES.



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(b) TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL ALYRICA OR ITS AFFILIATES, AGENTS, OPERATIONAL SERVICE PROVIDERS, THIRD PARTY LICENSORS OR THIRD PARTY SUPPLIERS, OR EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, OR AGENTS, AND ANY OF THEIR SUCCESSORS AND ASSIGNS BE LIABLE WITH RESPECT TO THE SERVICE OR THE SUBJECT MATTER OF THIS SERVICE AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS AND EXCLUSIONS HEREIN MAY NOT APPLY TO CUSTOMER. IF ANY PART OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF ALYRICA UNDER SUCH CIRCUMSTANCES FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00 US).

(c) ADDITIONALLY, ALYRICA WILL HAVE NO LIABILITY FOR THE FOLLOWING:

(i) FOR ANY AMOUNT IN THE IN EXCESS OF ONE HUNDRED DOLLARS (\$100.00 US);

(ii) FOR ANY THIRD-PARTY FEES OR CHARGES, INCLUDING BUT NOT LIMITED TO, BANKING FEES, OVERDRAFT FEES, MOBILE PHONE OR OTHER WIRE LINE CHARGES, TECHNICIAN CHARGES, OR OTHER SIMILAR CHARGES;

(iii) FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER;

(iv) FOR DATA LOSS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES;

(v) FOR ANY DAMAGES OR LOSS DUE TO CUSTOMER'S FAILURE TO BACK UP ANY EQUIPMENT AS REQUIRED IN SECTION 2(f) HEREIN;

(vi) ANY LACK OR BREACH OF SECURITY CUSTOMER OR ANY OTHER PARTY MAY EXPERIENCE OR BE EXPOSED TO WHILE USING THE SERVICE;

(vii) FOR ANY MATTER BEYOND ALYRICA'S REASONABLE CONTROL;

(viii) FOR ANY INTERFERENCE OR INCOMPATIBILITY WITH OR DISRUPTION OF ANY NON-VOICE SYSTEMS, WHETHER CAUSED BY THE TELEPHONY SERVICE, INTERNET SERVICE, EQUIPMENT, OR OTHERWISE; OR

(ix) CUSTOMER'S USE OF THE SERVICE FOR OR IN CONNECTION WITH ANY HIGH-RISK OR UNLAWFUL USES, OR ANY USE THAT VIOLATES THIS SERVICE AGREEMENT.

(d) Customer understands, acknowledges and agrees that Alyrica may block traffic to or from any source, including, without limitation, the deletion of any electronic mail, as it deems necessary to secure its network or eliminate spam. Customer agrees that Alyrica shall be entitled to damages if Customer transmits or is otherwise connected with the transmission of spam. Customer agrees that Alyrica is entitled to actual damages, however, if actual damages cannot be reasonably calculated, Customer agrees to pay Alyrica



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liquidated damages of five dollars for each piece of spam transmitted from or otherwise connected with Customer's account.

(e) Customer understands, acknowledges and agrees that when using the Service to access the Internet or any other online network or service, there are certain risks that may enable other Internet users to gain access to or use of Customer's computer(s) or other equipment. Customers are responsible for putting in place and should put in place all appropriate security measures when using the Service. Customers are responsible for any misuse of the Service that occurs through Customer's account, whether by a member of Customer's household or an authorized or unauthorized third party.

(f) This Section 13, Limitation of Liability, will survive termination or expiration of this Service Agreement, whether terminated by the Customer or the Alyrica, for any reason.

#### 14. AGREEMENT TO ARBITRATE

(a) CUSTOMER AND ALYRICA AGREE TO ARBITRATE ALL DISPUTES AND CLAIMS BETWEEN CUSTOMER AND ALYRICA THAT THEY ARE NOT ABLE TO RESOLVE THROUGH GOOD FAITH DISCUSSION. The agreement between Customer and Alyrica to arbitrate all disputes and claims between them is intended to be broadly interpreted. It includes, but is not limited to: claims arising out of or relating to any aspect of the relationship between Customer and Alyrica, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising), claims that are currently the subject of purported class action litigation in which Customer is not a member of a certified class and claims that may arise after the termination of this Agreement. For the purposes of this Section 14, references to Customer include Customer's subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all Authorized Users or unauthorized users or beneficiaries of the Service. CUSTOMER AGREES THAT, BY ENTERING INTO THIS AGREEMENT, CUSTOMER AND ALYRICA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION WITH RESPECT TO THIS AGREEMENT. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

(b) A party who intends to seek arbitration must first send to the other, by certified mail, a written notice ("Arbitration Notice"). An Arbitration Notice to Alyrica must be addressed to Alyrica at the address set forth in this Service Agreement for notices. An Arbitration Notice to Customer must be addressed to Customer at Customer's then-current billing address. The Arbitration Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If Customer and Alyrica do not reach an agreement to resolve the claim within 60 calendar days after the Arbitration Notice is received, Customer or Alyrica may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Alyrica or Customer shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which Customer or Alyrica is entitled.

(c) The arbitration shall be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association (the "AAA"), as modified by this Agreement, and shall be administered by the AAA. The AAA Rules are



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available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879 or written request to the Alyrica. The arbitrator shall be bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are reserved to the decision of a court of competent jurisdiction. Unless Customer and Alyrica agree otherwise, any arbitration hearings shall take place in Benton County, Oregon. The right to a hearing shall be determined by the AAA Rules.

Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The party initiating arbitration proceedings shall bear all the arbitration-related costs and expenses of both parties including, without limitation, legal fees and expenses.

(d) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. CUSTOMER AND ALYRICA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Customer and Alyrica agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

(e) Notwithstanding any provision in this Agreement to the contrary, Customer and Alyrica agree that if Alyrica makes any future change to this arbitration provision (other than a change to the address to which an Arbitration Notice is to be sent), Customer may reject any such change by sending Alyrica written notice within 30 days of the change. By rejecting any future change, Customer agrees that Customer will arbitrate any dispute between Customer and Alyrica in accordance with the language of this provision.

### 15. INDEMNIFICATION

Customer agrees to indemnify, defend and hold harmless Alyrica, its Affiliates, Operational Service Providers, agents, third party licensors and suppliers and their respective members, officers, directors, employees, agents, representatives and contractors, and each of their successors and assigns (collectively, the "Alyrica Indemnitees") from and against all losses, expenses, damages and costs, (including reasonable attorneys' fees) and other claims brought against any Alyrica Indemnitee(s) related to Customer's use of the Service or any violation of this Service Agreement and all other documents incorporated herein by reference) including, but not limited to, claims that Customer's use of the Service infringed on the patent, copyright, trademark or other intellectual property right of any third party, Customer's violation of any law or the rights of another and claims resulting from Customer's negligence. Customer agrees to pay any attorneys' fees incurred by Alyrica and/or any other Alyrica Indemnitee in connection with the defense of any such third-party claims. Alyrica reserves the right to assume the defense and control of any matter subject to indemnification by Customer, in which event Customer will cooperate with Alyrica in asserting any available defenses.

### 16. TERMINATION OF THE SERVICE

(a) IF CUSTOMER CANCELS THE SERVICE OR ANY ASPECT THEREOF FOR ANY REASON, ALYRICA SHALL NOT BE REQUIRED TO REFUND CUSTOMER ANY PORTION OF THE MONTHLY FEES PAID BY CUSTOMER FOR THE MONTH IN WHICH CANCELLATION OCCURS, UNLESS REQUIRED OTHERWISE BY STATE LAW.



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(b) Customer may terminate the Service at any time by providing Alyrica written notice, either via mail to the address set forth in Section 17(h) or email to [support@alyrica.net](mailto:support@alyrica.net), 30 days prior to termination date.

Alyrica may take reasonable steps to verify Customer's identity and authority before effecting such termination. The full Monthly Payment is due for any part of a month in which Service is provided. Upon termination, Customer agrees to pay any account balance and to return any Alyrica Equipment or pay the Equipment Purchase Price as set forth in Section 2(b) herein. Any "Early Termination Fee" is set forth in the COS. Any portion of the First Month Payment that is credited to Customer's account will be applied to the final account balance.

(c) The Service and all Service features are subject to availability on an ongoing basis. Customer understands that Alyrica may cease to offer the Service or any Service feature at any time, for any reason or no reason, and without notice to Customer. Without limiting the generality of the foregoing, Alyrica may suspend, disconnect or terminate the Service at any time without prior notice if Alyrica believes in its sole discretion that Customer have (i) failed to pay Customer's bill when due, (ii) threatened or harassed any Alyrica employee, agent or contractor or (iii) violated any other provision of this Service Agreement.

(d) If the Service to Customer is disconnected for any reason or Service is suspended in accordance with this Agreement, Alyrica may charge Customer (i) for Service during the period of disconnection or suspension in accordance with applicable federal and state law and (ii) reasonable disconnection and reconnection fees.

(e) In the event that Customer's account is suspended, disconnected or terminated, no refund, including of fees paid by Customer to Alyrica, shall be granted. Moreover, Alyrica shall not be responsible for the return of data stored on Alyrica's servers, including web and email servers. Customer agrees that Alyrica has no obligation to visit Customer's home upon termination to reconfigure Customer's computer(s) or for any other reason.

(f) Sections 3 through 7, and 10 through 17 herein shall survive any termination or expiration of this Agreement.

### 17. GENERAL PROVISIONS

(a) This Service Agreement (including all documents incorporated herein by reference) constitutes the entire agreement with respect to the Service. This Service Agreement supersedes and nullifies all prior understandings, promises and undertakings made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement.

(b) The Parties agree that any Affiliates, Operational Service Providers, agents, third party suppliers and licensors of Alyrica are intended beneficiaries of this Service Agreement. Except as set forth in the previous sentence, this Agreement is not intended to give and does not give any rights or remedies to any person other than Customer and Alyrica.

(c) No agency, partnership, joint venture, or employment relationship is created as a result of the Service Agreement and neither party has any authority of any kind to bind the other in any respect.



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(d) Alyrica shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Alyrica's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference).

(e) This Service Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of Oregon without regard to conflicts of law provisions. Subject to the agreement between Customer and Alyrica with respect to arbitration of any disputes, Customer agrees that the federal and state courts of Oregon alone shall have jurisdiction over all disputes arising under this Service Agreement and Customer consents to the personal jurisdiction of those courts.

(f) Alyrica's failure to exercise or enforce any right or provision of this Service Agreement shall not constitute a waiver of such right or provision. If any term, covenant, condition or provision of this Service Agreement shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Service Agreement shall not be affected and each remaining term, covenant, condition and provision shall be valid and enforceable to the fullest extent permitted by law or construed as nearly as possible to reflect the original intentions of the parties.

(g) Alyrica may change, amend, alter, or modify this Service Agreement at any time. Alyrica may notify Customer of any change either by posting that change on Alyrica's website ([www.alyrica.net](http://www.alyrica.net)), and by sending Customer an email or by U.S. mail. If Customer continues to use the Service after such notice has been made, Customer agrees that such continued use shall be deemed to be Customer's acceptance of those changes. The current version of this Service Agreement, as the same may be modified by Alyrica from time to time, shall supersede any prior version of this Service Agreement that may have been provided to Customer at any time.

(h) Except as specifically set forth in this Service Agreement, any notices under this Agreement shall be effective as follows:

(i) If to Customer: notice shall be made by (i) email to Customer's Account Email Address; (ii) by first-class mail to Customer at Customer's billing address then on file with Alyrica ; or (iii) when posted to the Announcements page of Alyrica's website. If by email, such notice shall be deemed effective when transmitted by Alyrica. If by first-class mail, such notice shall be deemed effective upon the earlier of (a) three business days after dispatch or (b) at such time as actually received by Customer.

(ii) If to Alyrica: notice shall be made exclusively by first-class mail to Alyrica Networks, Inc., at 521B N. 19th Street, Philomath, Oregon, 97370, or such other address as Alyrica may from time to time publish to Customer, and such notice shall be deemed effective upon receipt.

(i) Customer may not assign this Agreement, or Customer's rights or obligations under this Service Agreement, without Alyrica's prior written consent, and any purported assignment by Customer without such consent shall be void. Alyrica may transfer or assign any portion or all of this Service Agreement at any time without notice to Customer, and Customer waives any notice that may be required by law

Customer and Alyrica have executed this Service Agreement by their signatures (or, in the case of Alyrica, the signature of Alyrica's authorized person) on the COS.