

## INTERNET ACCESS AND USER AGREEMENT

THIS INTERNET ACCESS AND USER AGREEMENT ("Agreement") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 200\_\_ by and between LOOPBACK, INCORPORATED d/b/a Brick Network, a Missouri corporation ("Brick") and \_\_\_\_\_, a \_\_\_\_\_ ("Customer").

In consideration of the covenants and agreements herein contained, Brick and Customer covenant and agree as follows:

1. **Services.** Brick shall provide to Customer a high-speed connection to the Internet for lawful uses via Brick's network and computer facilities, which shall be operated seven (7) days per week, twenty-four (24) hours per day (the "Services"), subject to temporary unavailability or interruptions due to service requirements, network maintenance, repair and modification, facility upgrades, acts or omissions outside of Brick's control and *force majeure*. The Services provided by Brick pursuant hereto are subject to all of the terms and conditions of this Agreement.

2. **Payment.** Customer shall pay Brick a one-time set-up charge upon execution of this Agreement as described in the attached Fee Schedule. **THIS SET-UP CHARGE SHALL BE NONREFUNDABLE UNDER ANY AND ALL CIRCUMSTANCES.** Thereafter, Customer shall pay Brick a monthly fee in accordance with the attached Fee Schedule. **THERE ARE NO REFUNDS FOR ANY PORTION OF AN UNUSED MONTHLY, QUARTERLY, SEMI-ANNUAL OR ANNUAL PAYMENT UPON CANCELLATION OR TERMINATION OF THE SERVICES BY EITHER PARTY FOR ANY REASON.** Brick shall not be responsible for the payment of any telephone equipment or service charges or taxes incurred by Customer in connection with Customer's utilization of the Services, which such expenses are, and shall remain, the sole liability and responsibility of Customer. Customer acknowledges, covenants and agrees that it shall pay all of Brick's attorneys fees, court costs and expenses of litigation if Brick incurs same in enforcing this Agreement or because Customer has failed to pay any amount due hereunder on or before the due date therefore, whether or not litigation is actually commenced. Any and all amounts not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, in addition to a five percent (5%) late charge for each month, or portion thereof, said amount remains unpaid. Customer authorizes and consents to Brick obtaining a credit report on Customer, and acknowledges that the acceptability to Brick of said credit report is a condition precedent to any of Brick's obligations arising under this Agreement.

3. **Term and Termination.** (a) The Term of this Agreement shall commence on the day and year first above written, and end on the date set forth on the Fee Schedule (the "Term"); provided, however, that the Term of this Agreement (including any renewal Terms) shall automatically renew for additional periods of one (1) year unless either party gives written notice to the other party of their intention to terminate this Agreement at least sixty (60) days prior to the end of the then-current Term.

(b) Brick may terminate this Agreement and its obligation to provide Services pursuant hereto without notice to Customer upon: (i) Customer's failure to pay any amounts due and owing pursuant hereto within twenty (20) days after the date of the invoice therefore; or (ii) Brick's determination that Customer has used the Services fraudulently, unlawfully or abusively, and has failed or refused to cease such fraudulent, unlawful or abusive use within two (2) days after Brick's sending of notice thereof to Customer, or at any time after such notice is given, if Customer recommences such fraudulent, unlawful or abusive uses; or (iii) Customer's breach of the terms and conditions hereof, and/or those set forth in Brick's Acceptable Use Policy ("AUP"), incorporated herein by this reference as if fully set forth herein (available at [www.brick.net](http://www.brick.net)) and failure or refusal to cure any breach of this Agreement and/or AUP (other than as set forth in subparagraph (b)(i) and (b)(ii)) within two (2) days after notice of such breach has been sent by Brick to Customer. Upon such termination, Customer acknowledges and understands that Brick shall remove and delete all of Customer's electronically stored data from Brick's facilities without further notice or any liability of any kind, nature or description whatsoever to Customer, and Customer hereby expressly authorizes Brick to undertake such removal and deletion.

(c) In addition to the remedies described above, Brick may, in its sole and absolute discretion, elect to suspend or interrupt Services under this Agreement upon: (i) Customer's failure to pay any amounts due and owing hereunder within twenty (20) days after the date of the invoice therefore; or (ii) Brick's determination that Customer has used the Services fraudulently, unlawfully or abusively. Upon its determination to suspend provision of Services hereunder, Brick shall notify Customer that the Services hereunder

have been suspended and the reason therefore, but covenants and agrees not to remove any of Customer's electronically stored data from Brick's facilities unless and until this Agreement is cancelled. **Customer acknowledges and understands that its obligation to make payment hereunder for the Services is and shall not be abrogated, delayed, excused or otherwise relieved by a suspension of the Services provided by Brick or termination of the Agreement by Brick.**

(d) The rights and remedies provided by this Agreement are given in addition to any other rights or remedies Brick may have by law, statute, ordinance or otherwise. All such rights and remedies are intended to be cumulative, and the use of any one right or remedy by Brick shall not preclude or waive its right to use all other rights and remedies.

4. **Restrictions.** Brick's obligation to provide Services under this Agreement, and Customer's use of the Services provided by Brick hereunder, are expressly subject to the following limitations and restrictions:

(a) **Unlawful, Inappropriate Content Prohibited.** Customer covenants, agrees, warrants and represents that it shall not use the Services provided by Brick to create, store, transmit or duplicate data which violates any federal, state, local or municipal law, statute, regulation, rule, ordinance or other government regulation including, but not limited to, those dealing with libel, slander or defamation of character; intellectual property (including copyright, trademark, patent, or trade secret rights) or obscenity.

(b) **Compliance With AUPs.** Customer at all times during the use of Services covenants and agrees to abide by Brick's AUPs as established and modified from time to time, and the AUPs of all other networks which Customer may traverse in the course of its use of the Services.

(c) **Bulk Mailings.** Customer shall not use Brick mail facilities to send unsolicited e-mail to persons who are not employed by Customer. Customer shall not use Brick mail servers to send bulk mailings to more than twenty (20) persons not employed by Customer. If Customer desires to send bulk mailings to more than twenty (20) persons, Customer covenants and agrees to provide, at its sole cost and expense, its own mail server for such purposes.

(d) **Simultaneous Use.** Customer's dial-in accounts shall not be used simultaneously by more than one computer, nor may Customer authorize the use of its account to any unrelated third party.

5. **Indemnification.** Customer covenants and agrees to defend, indemnify and hold harmless Brick, its parents, affiliates and subsidiaries, and its and their respective officers, directors, shareholders, employees, contractors, agents and representatives, of, from and against any and all actions, causes of action, claims, costs, damages, expenses, interest, judgments, liabilities, penalties, and suits whatsoever (including, but not limited to, reasonable attorneys fees, court costs, expert witness fees and expenses of litigation) whatsoever imposed upon, incurred by or asserted against Brick and/or any of its parents, affiliates, subsidiaries, officers, directors, shareholders, employees, contractors, agents and representatives, which arise, directly or indirectly, out of any use by Customer of the Services provided by Brick or from Customer's breach or violation of any of the terms and conditions hereof.

6. **Disclaimer of Warranties.** Customer acknowledges, understands and agrees that Brick exercises no control whatsoever over the content, accuracy or quality of the data and information passing through its network or any products or services ordered by Customer via its network. The Services, and any information, products or services obtained by Customer through its use of the Services, are provided "AS-IS". **Brick makes no warranties or representations of any nature or description, either express or implied, with respect to the services to be provided hereunder including, without limitation, any warranties of non-infringement, quality, performance, merchantability or fitness for a particular purpose or use. This disclaimer of warranties constitutes an essential part of this agreement.**

7. **Limitation of Liability.** (a) **Under no circumstances and under no legal theory (tort, contract or otherwise) shall Brick be liable to Customer or any other person or party for damages of any kind or nature including, but not limited to, any direct, indirect, special, incidental, consequential or punitive damages of any character whatsoever, arising out of its provision of the Services hereunder, or its failure to provide the Services hereunder, including, but not limited to, damages for loss of goodwill, work stoppage, computer failure or malfunction, or losses of data or information due to delays, non-deliveries, misdeliveries or interruptions in service, regardless of the cause therefore.** However, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply.

(b) To the extent that any exclusion of damages described above is not valid or does not apply, Customer acknowledges and agrees that Brick's total liability to Customer under or related to this Agreement shall be limited to the amount having actually been paid by Customer to Brick under this Agreement for the twelve (12) months immediately preceding the day Brick receives notice of the claim. Customer hereby **RELEASES AND DISCHARGES** Brick from all obligations, liabilities, claims or demands relating to the Services, or otherwise related to this Agreement, in excess of the limitation provided for in this paragraph. Customer acknowledges and understands that the limitations set forth in this paragraph are integral to amount of fees charged by Brick in connection with the Services rendered hereunder and that, were Brick to assume any liability in excess of that set forth herein, such fees, of necessity, would be substantially higher.

8. **No Archival Services.** Customer acknowledges and understands that Brick provides only temporary storage of Customer's data and information. Customer acknowledges and agrees that Brick shall have no responsibility for failure to backup, or loss of, any of Customer's data or information. Customer warrants, represents, covenants and agrees that it shall be solely and completely responsible for providing any archival history services with respect to its data and information, whether created by Customer or a third party.

9. **Force Majeure.** Neither party to this Agreement shall be held liable for failure to comply with any of the terms of this Agreement to the extent such failure is caused by fire, labor dispute, strike, war, insurrection, terrorist action, government restriction, act of God, or other force majeure beyond the control and without fault on the part of the party involved. The foregoing shall not apply to the payment of fees by Customer described in paragraph 2 hereof.

10. **Headings.** The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to paragraphs or attachments shall, unless otherwise provided, refer to paragraphs hereof or attachments hereto, all of which are incorporated herein by this reference. In the event of a conflict between an exhibit and the body of this Agreement, the body of this Agreement shall prevail.

11. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective legal and personal representatives, voluntary and involuntary successors and permitted assigns.

12. **Entire Agreement; Waiver; Modification.** This Agreement, together with all schedules hereto, constitutes the entire understanding and agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter. No delay or failure by Brick to exercise or enforce at any time any right or provision of this Agreement will be considered a waiver thereof of Brick's rights thereafter to exercise or enforce each and every right and provision of this Agreement. No single waiver will constitute a continuing or subsequent waiver. No waiver, modification or amendment of any provision of this Agreement will be effective unless it is in writing and signed by all of the parties hereto, but it need not be supported by consideration in order to be effective.

13. **Nature of Relationship.** The parties acknowledge that they are independent contractors and that nothing in this Agreement shall be construed to create a partnership, joint venture, franchise, employer/employee or other similar arrangements between the parties. Neither party has the authority to enter into any agreement, or make any warranty or representation, on behalf of the other party.

14. **Counterparts.** This Agreement may be executed contemporaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. **Third Party Rights or Benefits; Assignment.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action against any party to this Agreement. Customer shall not assign any of its rights, duties or obligations hereunder without the prior written consent of Brick, which may be withheld for any reason, and any attempted assignment or delegation without such consent will be void. Brick shall have the right to assign any or all of its

rights, duties and obligations hereunder without consent from any party, and shall give fifteen (15) days prior written notice thereof to Customer.

16. **Notices.** All notices required or permitted to be given under this Agreement shall be in writing and delivered: (a) by hand, (b) by overnight or 2nd day delivery with a reputable courier of international presence, (c) by certified mail, postage prepaid, return receipt requested, (d) by reputable courier service, or (e) by facsimile, provided the sender possesses a written receipt reflecting a successful transmission of the notice to the recipient and the original is promptly transmitted by one of the foregoing methods, properly addressed as set forth below their signatures, or to such other address for which notice has been given by the other party in the manner set forth above. All notices shall be deemed received, if delivered by hand, on the date of delivery; if mailed, on the earlier of five (5) days after mailing or date of receipt appearing on the return receipt card, a refusal being deemed delivery on the date of refusal; if sent by courier, on the date recorded by the courier company as having been received by the addressee; or, if sent by facsimile, on the date of receipt printed by the facsimile machine when it reports that the transmission is complete.

17. **Severability.** If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by any court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties. The parties further agree that any such invalid or unenforceable provisions shall be deemed replaced with valid and enforceable provisions that achieve, to the extent possible, the business purposes and intent of such invalid and unenforceable provisions.

18. **Survivability.** The provisions that by their terms survive, all payment obligations and the provisions contained in paragraphs 4 through 8 shall survive expiration or termination of this Agreement.

19. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, exclusive of its conflict of law provisions. The parties hereto expressly agree, consent to and designate the jurisdiction and venue of the United States Federal District Court, Eastern Division, State of Missouri and/or the St. Louis County, Missouri Circuit Court, as the case may be, as the situs for any dispute, controversy or claim arising out of or in connection with this Agreement, or breach or alleged breach hereof.

20. **Customer Representations and Warranties.** Customer represents and warrants to Brick that Customer has the full right, power and authority to enter into this Agreement. Customer is not a party to any agreement or understanding which would conflict with this Agreement or the rights granted, or duties, obligations and responsibilities undertaken, herein. This Agreement, when executed and delivered by Customer, shall constitute the valid and binding obligation of Customer, enforceable in accordance with its terms.

"BRICK"

LOOPBACK, INCORPORATED d/b/a Brick Network

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

Name:  
Title:  
1000 Macklind Avenue, St. Louis, Missouri 63110  
Telephone Number: 314-645-5550  
Facsimile Number: 314-645-6293

"CUSTOMER"

\_\_\_\_\_

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

Name:  
Title:  
\_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_