

TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE OF ORDER BY SUPPLIER:** These Terms and Conditions of Purchase, the purchase order and any attachments, exhibits or specifications, whether physically attached or incorporated by reference to the purchase order (collectively, this **"Order"**) constitutes the entire agreement between EarthLink, LLC and its related entities (collectively, **"EarthLink"**) and the party listed on the purchase order (**"Supplier"**) in connection with the goods or services specified in the purchase order (goods and services are collectively referred to as **"Deliverables"**). Supplier's electronic acknowledgment of this Order, shipping the goods or commencement of performing the services constitutes Supplier's acceptance of this Order. Notwithstanding the foregoing, the terms and conditions of any agreement between EarthLink and Suppliers that by its terms governs the purchase of the Deliverables shall prevail over any inconsistent terms and conditions of this Order. If there is a discrepancy between the terms of these Terms and Conditions of Purchase and the purchase order, the terms of the purchase order shall take precedence.

2. **DELIVERY:** Supplier shall provide the Deliverables as specified in the purchase order to the address specified in the purchase order. Time, quantity and accuracy are of the essence. Supplier shall ship the Deliverables to EarthLink to be received by EarthLink by the delivery date set forth in the purchase order (**"Originally Defined Delivery Date"**). All packing slips shall include the purchase order number. Supplier shall pay shipping costs and add them to the invoice for this Order. In the event that Supplier ships the Deliverables to EarthLink or to parties designated by EarthLink to receive such Deliverables (**"Designated Receiving Parties"**), the Deliverables shall be priced for shipment to F.O.B. destination, and Supplier shall assume the cost and all risk of loss in transit until receipt of the Deliverables by EarthLink or the Designated Receiving Parties, as applicable. Title to and the right of immediate possession of the Deliverables shall pass to EarthLink upon receipt by EarthLink or the Designated Receiving Parties of the Deliverables at the designated destination. To the extent Supplier for any reason anticipates difficulty in delivering the Deliverables by the Originally Defined Delivery Date or in meeting any of the other requirements of this Order by the Originally Defined Delivery Date, Supplier shall immediately notify EarthLink in writing. EarthLink's acceptance of Supplier's notice shall not constitute EarthLink's waiver of any of Supplier's obligations. In the event that the Deliverables are not delivered by the Originally Defined Delivery Date, EarthLink, at its sole discretion, may (a) extend the Originally Defined Delivery Date or (b) terminate this Order without liability. EarthLink may require delivery by the fastest method of delivery and charges resulting from such method of delivery must be fully prepaid and absorbed by Supplier. Supplier shall not ship excess quantities or fewer quantities than specified in the purchase order without EarthLink's prior written approval. A Material Safety Data Sheet (**"MSDS"**) must be included with all shipments where required. Deliverables with any concentration of any chemical subject to reporting under SARA III must be so indicated on the MSDS.

3. **DEFECTS:** In the event that EarthLink, in its sole discretion, determines that the Deliverables do not meet (a) the specifications set forth in this Order (**"Originally Defined Specifications"**), or (b) reasonable industry standards, EarthLink shall notify Supplier about such defect (**"Defect"**) within three (3) business days after discovering the Defect. EarthLink, in its sole discretion, may require Supplier to remedy the Defect as follows: (a) repair or replace the Defect by the Originally Defined Delivery Date at no additional cost to EarthLink; (b) repair or replace the Defect within the extended delivery schedule, if applicable, as agreed to by EarthLink in writing with no additional cost to EarthLink; or (c) in the event that EarthLink determines that Supplier cannot cure the Defect in time to meet the delivery date, EarthLink reserves the right to terminate this Order without liability and source similar products from a third party and EarthLink may invoice Supplier for the difference in costs including, but not limited to, the unit

costs of the Deliverables plus any applicable manufacturing and/or logistic related expedited charges. The rights and remedies of EarthLink provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law.

4. **CHANGES:** EarthLink may, at any time, make changes to this Order including, but not limited to: (a) specifications including method of shipment or packing, (b) destination, (c) time of delivery, or (d) quantity. If such changes result in an increase or decrease in cost or a different delivery date, an equitable adjustment of pricing and/or delivery date may be made as mutually agreed upon by the parties and shall be set forth in a change order signed by the parties, otherwise EarthLink, at its option, may terminate this Order if agreement on an adjustment cannot be reached to its satisfaction. Supplier shall provide its proposed adjustment to EarthLink in writing within seven (7) business days from the date that EarthLink's notice of such changes is received by Supplier. No price increase or extension of time for delivery shall be binding unless first approved by EarthLink in writing.

5. **PRICING AND PAYMENT:** Supplier shall send the invoices in accordance with the invoicing schedule set forth in the purchase order. All invoices shall be submitted electronically by Supplier to apmail@corp.earthlink.com. Each invoice shall (a) reference the EarthLink purchase order number; (b) include an invoice number and invoice date; (c) itemize the applicable Deliverables; (d) itemize shipping costs, if applicable; (e) itemize taxes, if applicable; and (f) include the correct remit-to information. In the event that a cash discount period is available to EarthLink, such cash discount period shall commence on the later of EarthLink's receipt of the applicable Deliverables or receipt of the associated invoice. EarthLink, in its sole discretion, reserves the right to pay Supplier net sixty (60) days after the date of receipt of the invoice. EarthLink shall pay by any of the following methods, check, electronic funds transfer (EFT), wire or payment card. Each party shall be solely responsible for, and shall pay, any use, excise, sales or privilege taxes, duties, value added taxes, fees, assessments or similar liabilities, however denominated, which may now or hereafter be levied against it with regard to the Deliverables, or chargeable to or against it by any applicable government authority. EarthLink reserves the right to return any incorrect invoice(s). EarthLink shall not be required to pay such incorrect invoice(s) as long as EarthLink disputes the invoiced charges in good faith and notifies Supplier in writing of the basis for EarthLink's good faith dispute. Supplier shall continue to perform all of its obligations under this Agreement notwithstanding such dispute. Following the mutually agreed upon resolution of the disputed charges, Supplier shall send EarthLink an updated invoice with the agreed upon charges. The refusal of EarthLink to pay the disputed charges shall not constitute a breach of this Agreement by EarthLink. Supplier shall maintain proper records for three (3) years from the termination date of this Order to allow for the verification of order information including, but not limited to, deliveries and amounts charged to or paid by EarthLink. EarthLink shall not be billed at prices higher than those stated in this Order.

6. **TERM AND TERMINATION:** This Order shall terminate immediately and without notice if Supplier is unable to pay its debts as due, or enters into or files (or has filed or commenced against it) a petition, arrangement, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or similar laws of the United States or any state of the United States. EarthLink has the right to terminate this Order, in whole or in part, immediately and without liability, upon written notice to Supplier if EarthLink determines that Supplier has breached any of the terms of this Order. Supplier shall be liable to EarthLink for all damages, losses and liability incurred by EarthLink directly or indirectly resulting from Supplier's breach. EarthLink's remedies shall be cumulative and in addition to any other remedies provided in law or in equity. In addition, EarthLink may terminate this Order, in whole or in part, at any time by providing written notice to Supplier. Upon receipt of such notice, Supplier shall immediately stop work on this Order or the terminated portion hereof

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unless the notice directs otherwise, and shall notify any subcontractors to do likewise. EarthLink shall pay Supplier for the delivered portion of this Order received prior to the effective date of termination of this Order and EarthLink shall have no other liability to Supplier for the termination of this Order. Sections 7, 8, 9, 10, 11 and 12 shall survive the termination of this Order.

7. CONFIDENTIALITY: Supplier shall hold in strict confidence and not disclose to any third party any information that is designated by EarthLink as confidential or should reasonably be known by Supplier to be confidential information, including without limitation, the existence or terms of this Order, the specifications, data, processes, reports, technical or business information submitted by or on behalf of EarthLink to Supplier or any personally identifiable customer information pursuant to, and in connection with, this Order whether orally or in writing (collectively, "**EarthLink Confidential Information**") without the prior written consent of EarthLink. EarthLink Confidential Information also includes the existence and terms of this Order. Supplier shall not use the EarthLink Confidential Information for any purpose other than to perform its obligations under this Order. Supplier shall keep confidential the EarthLink Confidential Information using the same level of care it uses to prevent the unauthorized use, storage and disclosure of Supplier's confidential information but not less than a reasonable standard of care. Notwithstanding the foregoing, Supplier may disclose the EarthLink Confidential Information as required by law, regulatory agency or court order provided prior written notice of such required disclosure is given to EarthLink and provided further that Supplier shall cooperate with EarthLink to limit the extent of such disclosure. Supplier acknowledges that monetary damages may not be sufficient remedy for unauthorized disclosure or use of the EarthLink Confidential Information and that EarthLink may seek without waiving any other rights or remedies, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Supplier shall protect the EarthLink Confidential Information during the term of this Order and for three (3) years after the termination or expiration of this Order.

8. REPRESENTATIONS AND WARRANTIES: Supplier represents and warrants that it (a) has full power and authority to enter into this Order and to perform its obligations hereunder; (b) shall comply with all applicable federal, state and local laws, rules and regulations pertaining to its performance of its obligations hereunder; and (c) shall comply with the applicable terms of the EarthLink Code of Business Conduct and Ethics located at: http://ir.earthlink.net/common/download/download.cfm?companyid=EL_NK&fileid=821346&filekey=EBCFC617-2A33-429E-A8F4-5A942041E8E7&filename=Code_of_Business_Conduct_and_Ethics_April_2015_.pdf.

Supplier also represents and warrants that the Deliverables shall (a) be of merchantable quality, free from all defects in design, workmanship and materials; (b) be provided in accordance with the specifications and the delivery schedule set forth in this Order; (c) be fit for the particular purposes for which they are purchased; and (d) not infringe the intellectual property rights of a third party. Supplier further represents and warrants that it has the right through ownership or license to offer for sale, to use and to sell the Deliverables and any such rights extend to EarthLink with respect to such Deliverables. Such warranties shall be in addition to all other warranties, expressed, implied or statutory. Any attempt by Supplier to limit, disclaim, or restrict any warranties or remedies of EarthLink, by acknowledgment or otherwise, shall be null, void, and ineffective without EarthLink's prior written consent.

9. INDEMNIFICATION/LIMITATION OF LIABILITY: To the extent permitted by law, Supplier shall indemnify, hold harmless and defend EarthLink and EarthLink's subsidiaries and affiliates and their respective officers, directors, agents, employees, shareholders, successors and assigns from and against claims, damages, loss and

expenses, including but not limited to attorneys' fees, directly or indirectly arising out of or resulting from the Deliverables or the performance or failure to perform by Supplier or Supplier's agents or subcontractors, or any breach of this Order, regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or other legal theories. Supplier shall be liable for any and all special, indirect, exemplary, incidental, punitive or consequential damages, including travel costs, arising under or relating to the Deliverables, the performance or omissions of Supplier or its agents or subcontractors, or any breach of this Order, including but not limited to, loss of data, lack of delivery of Deliverables, loss of revenues or profits, or damage to property, bodily injury or death.

Supplier shall defend, at its own expense, any action or claim for alleged infringement of any intellectual property rights, including, without limitation, patent, copyright or trademark infringement. In the event that use of a Deliverable or part of a Deliverable is enjoined, Supplier shall, at its own expense, either procure for EarthLink the right to continue using such Deliverable or part of such Deliverable or replace the same with a non-infringing equivalent, or modify such Deliverable so that it becomes non-infringing without materially affecting the function, use or quality of the Deliverable. In the event of the impossibility of the foregoing options, Supplier shall grant EarthLink a credit for the purchase price of such Deliverable. These indemnity obligations shall be in addition to any other remedies provided by law.

10. INSURANCE: Supplier shall maintain and require its agents and subcontractors, if any, to maintain during the term of this Order insurance coverage sufficient to satisfy Supplier's indemnification obligations hereunder.

In the event that Supplier or its agents or subcontractors, if applicable, shall physically be on EarthLink's property or an EarthLink customer's property during the term of this Order, then Supplier shall maintain and require its agents and subcontractors, if applicable, to maintain insurance throughout the term of this Order including, but not limited to the following insurance coverages: (a) Commercial General Liability with a single limit of not less than \$1,000,000 per occurrence (combined single limit for bodily injury and property damage), \$1,000,000 for personal and advertising injury liability, \$1,000,000 aggregate on products and completed operations, and \$2,000,000 general aggregate; (b) Automobile Liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage; (c) Workers Compensation as prescribed by the law of any state in which the work is to be performed; (d) Employer's Liability with limits of at least \$1,000,000 each accident/\$1,000,000 each employee by disease/\$1,000,000 policy limit by disease; and (e) Excess/Umbrella, follow form to the primary insurance \$1,000,000 each occurrence and \$1,000,000 general aggregate.

In addition, if Supplier is providing professional services, Supplier shall maintain and require its agents or subcontractors, if applicable, Professional Liability including data security breach insurance with a limit of not less than \$2,000,000 per claim and the definitions of "professional services" within the policy of Professional Liability insurance must include the services provided hereunder. Supplier's insurance must be primary and non-contributory.

Supplier and its insurers shall waive any and all rights of subrogation against EarthLink, its directors and its employees. EarthLink shall be named as an additional insured on Supplier's Commercial General Liability policy. In the event that any vehicle of Supplier or its subcontractors is driven on the premises of EarthLink or the premises of EarthLink's customers, EarthLink shall be named as an additional insured on Supplier's Automobile Liability policy.

Supplier's insurance carrier or broker shall provide to EarthLink the certificate of insurance ("COI") via email to COI@elink.net evidencing

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the required aforementioned insurance coverages. The following address should be listed on the CIO as the Certificate Holder:

EarthLink, LLC
Attn: Procurement
330 Monroe Ave, 4th Floor
Rochester, NY 14607

11. **COMPLETE AGREEMENT:** This Order, that includes these Terms and Conditions of Purchase and the purchase order, shall constitute the entire understanding and agreement with respect to the Deliverables and supersedes any and all prior or contemporaneous representations, understandings and agreements whether oral or written between Supplier and EarthLink relating to the Deliverables. Supplier's quotation or proposal in connection with the Deliverables, if applicable, is not incorporated herein unless the purchase order specifically references a quotation or proposal, in whole or in part. This Order shall not be modified or superseded in any way without the written consent of an authorized representative of EarthLink.

12. **MISCELLANEOUS:** Except as specifically provided otherwise in this Order, any notice, approval, request, authorization, direction or other communication under this Order shall be given in writing and shall be deemed to have been delivered and given for all purposes (a) on the delivery date if delivered personally to the party to whom the same is directed; (b) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt, or (c) three (3) days after being mailed by certified mail, postage prepaid, return receipt requested: to the attention of General Counsel, EarthLink, LLC, 1170 Peachtree Street, Suite 900, Atlanta, GA 30309, and to the attention and address of Supplier set forth in the purchase order. Assignment of this Order by Supplier or any interest therein or any payment due or to become due hereunder, without the written consent of EarthLink, shall be void. Supplier shall provide the Deliverables to EarthLink hereunder as an independent contractor and not as EarthLink's agent or employee. To the extent either party is unable to fulfill, in whole or part, its obligations under this Order due to acts of God, war, terrorism, acts of government in its sovereign capacity, fire, natural disasters or other unforeseeable causes beyond its reasonable control ("**Force Majeure**"), such nonperformance shall be excused until the earlier of (a) ten (10) business days from the inception of the Force Majeure event, or (b) the abatement of such Force Majeure event provided that such nonperformance is not due to such party's fault or negligence. Force Majeure shall not include any labor problems or strikes relating to the workforce of Supplier, its suppliers or subcontractors or any commercial circumstances affecting pricing or availability of the Deliverables. Supplier shall not use EarthLink's name or any of EarthLink's trademarks in any advertising or publicity without EarthLink's prior written approval. This Order shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to its conflict of law provisions, and not including the United Nations Convention on Contracts for the International Sale of Goods. Any action or suit which arises out of or is related to this Order which cannot be resolved amicably by the parties shall be brought in a federal district court in Fulton County, Georgia, U.S.A. The failure of EarthLink to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions nor the right of EarthLink thereafter to enforce each and every such provision. If any of the provisions in this Order are found to be invalid, illegal or unenforceable, the remainder of this Order shall remain valid and enforceable. A signature on the purchase order received as a pdf attachment to electronic mail shall be treated as an original signature.

EarthLink may revise, amend, or modify these Terms and Conditions of Purchase at any time by posting the revised version of these Terms and Conditions on the EarthLink Web Site located at <http://www.earthlinkbusiness.com/static/files/pdfs/legal/EarthLink-US-tc.pdf>. The revised version shall be effective on the date that it is posted. The date of posting shall be listed at the end of each posted version. Supplier's continued provision of the Deliverables after the date of the revised version constitutes Supplier's acceptance of all of the revisions.

To the extent applicable, the parties agree that they will abide by the provisions 29 CFR Part 471 Appendix A to Subpart A. Additionally, the parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-300.10 and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

Effective Date: October 15, 2015