

**Aerionet, Inc.**

**DSL Service Order Confirmation and Acknowledgement of Terms and Conditions  
08/01/01**

This message shall serve as confirmation of your DSL service order with Aerionet, Inc. (Aerionet) and our acceptance of such order, including acceptance of all of the terms and conditions ("Terms and Conditions") set forth below. Aerionet will commence delivery of the Services (as defined below) on the earlier of (i) receipt of your acknowledgement, or (ii) 24 hours of Aerionet sending this message. Please read the Terms and Conditions carefully before responding to this message. By responding, you acknowledge that you are an adult (18 years or older), that you have read and understand the Terms and Conditions and agree to be bound by the Terms and conditions in effect and as updated by Aerionet from time to time. You acknowledge that Aerionet will commence delivery of the Services and incur expenses and obligations commencing 24 hours from the sending of this message. Your failure to respond within 24 hours of this message shall be deemed acceptance of the Terms and Conditions (the "Acceptance"). The latest version of the Terms and Conditions may be found at <http://www.aerionet.com>. For purposes of the Terms and Conditions, you will be referred to as the "Customer."

1. **Services:** Customer agrees to purchase telecommunication and/or network access services ("Services") from Aerionet. Customer shall be responsible for obtaining and maintaining any equipment needed to access, connect to, or use the Services. Customer shall be responsible for insuring that such equipment is compatible with the Services. Services provided by Aerionet are for the sole use of the Customer and not for resale of any kind without the prior written consent of Aerionet, which may be given in its sole discretion. In the event the Customer attempts to resell the Services, Aerionet may, at its sole discretion, increase the fees associated with the Services, or terminate the Services.
2. **Billing:** Customer agrees to pay all charges to Customer's account, including applicable taxes, in accordance with billing terms in effect at the time the fee or charge becomes payable. The recurring monthly fee is due and payable in advance of the first day of each monthly billing period for which the Customer has purchased Services, with the first payment due and payable on the activation date of the Services. Monthly fees are non-refundable. The initial payment may include non-recurring installation charges including, but not limited to equipment, inside wiring and installation fees. Delinquent accounts are subject to immediate termination or suspension of Services at the sole discretion of Aerionet. A Customer's account is considered delinquent and Customer will be subject to a late payment fee of 1.5% per month of the outstanding balance on Customer's account or \$15 dollars, whichever is greater (not to exceed the maximum rate permitted by law), if payment is not received by Aerionet within five (5) days from the date payment is due.

3. **Intended Use of the Services:** Customer agrees not to use the Services in a manner prohibited by any federal or state law or regulation. Customer further agrees to adhere to Aerionet's Acceptable Use Policy (AUP). Transmission of any material in violation of federal or state law or regulation, including, but not limited to any copyrighted material, material protected by a trade secret or material or messages that are unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable in any manner or nature or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation, is prohibited.
4. **IP Addresses:** IP addresses are not portable and are not assigned for independent administration or distribution. Customer understands that IP assignments are not guaranteed, and may be modified as required by Aerionet and/or the American Registry for Internet Numbers (ARIN).
5. **5. Restrictions:** Aerionet DSL customers agree not to use any servers in conjunction with the Services, including but not limited to, Electronic Mail, NAT, DHCP and DNS servers. In the event any Aerionet DSL customer attempts to utilize a server on the network, Aerionet may, at its sole discretion, increase the fees associated with the Services, or terminate the Services.
6. **Inside Wiring and Installation:** Customer acknowledges that the inability of Customer's or third party's facilities to access the Services or other operational impediments may preclude or delay delivery of Services. Customer acknowledges that the installation representative may require inside wiring to complete Services delivery at an additional hourly or other charge. Customer further acknowledges this charge will occur at the sole discretion of the installation representative. In the event the Customer fails to keep an installation appointment, Aerionet may charge the Customer a fee to recover its related costs, not to exceed 50% of the installation costs.
7. **Term / Cancellation:** Customer agrees to maintain Services for a period of at least one year from the Services activation date (the "Initial Term"). After the Initial Term, Services shall automatically renew for successive periods equivalent to the Initial Term. Customer may terminate the Services at the end of the Initial Term or any renewal term by providing written notice to Aerionet not less than thirty (30) days prior to the expiration of the term. Termination notice must be sent to: Aerionet, Attention: Cancellation Department, 585 Camino Del Sol, Thousand Oaks, CA 91320.
8. **Early Termination:** A Customer who terminates the Services after Acceptance, but prior to the Services activation date will be charged a \$ 300.00 order cancellation fee. A Customer who terminates the Services prior to the end of the Initial Term, may be liable for any or all of the following termination charges: (1) an amount equal to the monthly recurring charge multiplied by the number of months remaining on the Initial Term; (2) an additional termination charge in an amount equal to any promotional credit, discount, or fee waiver (if applicable) provided to the Customer; and (3) an additional equipment rental charge equal to the monthly equipment rental charge multiplied by the number of months remaining on the Initial Term. Termination charges are billed in one lump sum and shall be payable immediately upon termination.

9. **Disclaimer of Liability:** THE SERVICES PROVIDED BY AERIONET ARE PROVIDED "AS IS." AERIONET MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR ANY WARRANTY REGARDING THE RELIABILITY OR SUITABILITY FOR A PARTICULAR PURPOSE OF ITS SERVICES. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT AERIONET EXERCISES NO CONTROL OVER THE NATURE, CONTENT OR RELIABILITY OF THE INFORMATION PASSING THROUGH ITS NETWORK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AERIONET, ITS DEALERS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. AERIONET MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, REGARDING THE QUALITY, ACCURACY OR VALIDITY OF THE INFORMATION AND/OR DATA RESIDING ON OR PASSING THROUGH ANY NETWORK USE OF ANY INFORMATION OBTAINED FROM OR THROUGH SERVICES PROVIDED BY AERIONET WILL BE AT CUSTOMERS OWN RISK. CUSTOMER ACKNOWLEDGES THAT AERIONET IS NOT LIABLE FOR ANY ERRORS OR INTERRUPTION IN THE SERVICES, WHETHER WITHIN OR OUTSIDE THE CONTROL OF AERIONET. UNDER NO CIRCUMSTANCES SHALL THE CUSTOMER HOLD AERIONET RESPONSIBLE FOR ANY FORM OF DAMAGES OR LOSSES (INCLUDING WITHOUT LIMITATION ANY DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSSES) SUFFERED FROM, BUT NOT LIMITED TO ERRORS, DELAYS, LOSS OF INFORMATION, OR INTERRUPTIONS IN SERVICES CAUSED BY THE CUSTOMER, AERIONET OR A THIRD PARTY'S NEGLIGENCE, FAULT, MISCONDUCT OR FAILURE TO PERFORM. CUSTOMER UNDERSTANDS THAT TELECOMMUNICATION AND/OR NETWORK ACCESS SERVICES MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED OR UNSCHEDULED MAINTENANCE AND FOR OTHER REASONS WITHIN AND OUTSIDE OF THE DIRECT CONTROL OF AERIONET. UNDER NO CIRCUMSTANCES DO ANY SUCH ERRORS, DELAYS, INTERRUPTIONS IN SERVICES OR LOSS OF INFORMATION NULLIFY OR MODIFY THESE TERMS AND CONDITIONS. AERIONET RESERVES THE RIGHT TO REFUSE OR TERMINATE SERVICES TO A CUSTOMER AT ANY TIME WITHOUT CAUSE.

10. **Additional Terms and Conditions.** Aerionet and/or third parties may, from time to time, send e-mail messages to Customer containing advertisements, promotions, etc. Aerionet makes no representation or warranty with respect to the content of any such e-mail messages or goods or services which may be obtained in response to such e-mail messages and Customer agrees that Aerionet shall not have any liability with respect thereto, nor shall any such e-mail messages amend the Terms and Conditions unless specifically stated. Additionally, Aerionet web site may contain links to web sites operated by parties other than Aerionet. Such links are provided for your convenience only. Aerionet does not control such web sites and is not responsible for their contents. Aerionet inclusion of links to such web sites does not imply any endorsement of the material on such web sites or any association with their operators.

11. **Entire Agreement.** These Terms and Conditions contain the entire agreement and understanding concerning the Services and supersede all prior negotiations, proposed agreements, and all other agreements, whether electronic, written or oral. The Terms and Conditions may be modified at any time by Aerionet and the latest version of the Terms and Conditions may be found at <http://www.aerionet.com>. A printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative hearings based upon or relating to the Terms and Conditions to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
  
12. **Assignment and Successors in Interest.** All of the Terms and Conditions shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of Customer. Except as specifically stated herein, neither these Terms and Conditions nor any of the rights, interests or obligations of Customer or Aerionet shall be assigned or delegated without the prior written consent of Aerionet. Any unauthorized assignment or delegation shall be null and void. Notwithstanding the foregoing, Aerionet may assign or otherwise transfer its rights and obligations to any affiliate (whether by purchase of stock or assets, merger, operation of law, or otherwise) of that portion of its business related to the subject matter hereof.
  
13. **Venue/Choice of Law.** These Terms and Conditions shall be construed in accordance with the laws of the State of California (excluding rules regarding conflicts of law) and the United States of America. In the event of any dispute, the parties submit to the personal jurisdiction of and venue in the Superior Court of the State of California, County of Ventura, or the United States District Court for the Central District of California in Ventura County, and both parties represent and agree that this agreement is entered into and is to be performed in the State of California, County of Ventura.
  
14. **Severability.** In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of these Terms and Conditions (or part thereof is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of the Terms and Conditions will remain in full force and effect.
  
15. **Indemnification.** Customer shall indemnify and hold Aerionet harmless against any and all claims, losses, damages and liabilities sustained by Aerionet resulting from, arising out of, or connected with any breach of, or non-fulfillment of any representation, warranty, covenant or agreement made by or other obligation of Customer contained in these Terms and Conditions.