

Zephyrtel, Inc. (fka PeerApp Solutions, Inc.)

End User License Agreement

This End User Software License Agreement, along with applicable Exhibits (collectively referred to as the "Agreement"), is a binding agreement on the effective date as indicated in the attached Purchase Agreement ("Effective Date"), by and between Zephyrtel, Inc. (fka PeerApp Solutions, Inc.), a company incorporated US, located at 401 Congress Avenue, Suite 2650, Austin, TX 78701 USA ("PeerApp"), and the Buyer as indicated on such Purchase Agreement ("Licensee").

1. Definitions

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1.3 "Hardware" means all hardware components provided by PeerApp, which are part of the Product.

1.4 "Licensed Software" means all accompanying or subsequently provided software and computer programs in machine-readable form of the object code included as an integral part of the Products.

1.5 "Product(s)" means the product distributed by PeerApp generally commercially known as the UltraBand family, which includes the Hardware, Licensed Software, Documentation, updates, upgrades, and maintenance, ordered by Licensee and provided to Licensee by PeerApp.

1.6 "Term" means the term of this Agreement as defined herein.

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2.5 Licensee acknowledges participation in the PeerApp Global Internet Media Index Program whereby PeerApp will collect anonymous network usage data for aggregation to determine network usage trends and forecast future infrastructure requirements. PeerApp shall not share the identity of program participants or publish network data from any single program participant. The collected data will be represented in anonymous, aggregate form.

3. Term & Termination

3.1 Term.

This Agreement will commence on the Effective Date and will continue in effect indefinitely unless terminated in accordance with the terms hereof.

3.2 Termination By Either Party. Either party may terminate this Agreement immediately upon giving notice in writing to the other party if such other party commits a material breach of this Agreement and shall have failed to cure such breach within thirty (30) days of receipt of a request in writing from the notifying party to do so; provided, however, that, under Section 6, a breach by PeerApp of its obligations hereunder shall not be deemed to be a material breach but instead shall be subject to the exclusive remedies set forth in Section 6.2.

3.3 Termination by PeerApp. PeerApp may terminate this Agreement immediately upon giving notice in writing to Licensee, if Licensee infringes PeerApp's intellectual property, breaches the license grant and commits or permits any third party to commit, any breach of confidentiality obligations owed to PeerApp.

3.4 Effect of Termination. Licensee's right to use the Licensed Software shall, without further action, cease upon termination of this agreement. Within seven (7) days of termination, Licensee shall return to PeerApp any and all Confidential Information in its possession, together with a certification by a duly authorized representative of Licensee

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6.3 Licensee's sole and exclusive remedy with respect to the warranty noted above shall be to have the defective Licensed Software repaired or replaced (at Seller's option) at the delivery point noted on the order or for Seller to remedy any other non-conformance of the Licensed Software to enable such Licensed Software to materially conform to Seller's functional specifications.

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7. General Limitation of Liability

7.1 Limitation of Liability. Except for the indemnification obligation, as set forth in section 5.1 above, PeerApp's (and its suppliers') entire liability, and Licensee's exclusive remedy, for any and all claims arising under or in connection with this Agreement or related to any item or service provided under or in connection with this Agreement, regardless of the form of the action (including negligence), whether in breach of warranty, contract, tort, strict liability or otherwise, shall be limited to an amount equal to the license fee(s) paid to PeerApp by Licensee for that part of the Product(s) that is related to the claim, as depreciated on a straight-line sixty (60) month basis.

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8. Licensee's Reference. So long as Licensee is satisfied with PeerApp's fulfillment of its duties and obligations hereunder, Licensee will act as a strong reference for PeerApp. PeerApp may use Licensee's name in its customers' list on its web site and in its media relations and press releases, and any advertising, mailings or any promotional activity (including details of the particular transaction with Licensee, such as quantity, location and price), and may request Licensee to provide quotes and testimonials for PeerApp's use within marketing materials, provided, however, PeerApp shall, upon request of Licensee, provide Licensee with the opportunity to review such marketing material prior to publication.

9. Audit. Licensee shall keep records of transactions and data required sufficient to determine Licensee's use of the Products and compliance of its obligations hereunder for

at least five (5) years. PeerApp shall have the right, at its expense, to audit such records, subject to confidentiality obligations, on not less than ten (10) days written notice to Licensee, during Licensee's regular business hours. If the audit reveals Licensee's use of the Products has exceeded that contemplated by this Agreement and the limitations set forth herein, PeerApp reserves all rights available to it in law and equity, including, but not limited to, immediate termination of this Agreement.

10. General

10.1 Integration. This Agreement supersedes all prior oral and written agreements and understandings between the parties related to the subject matter hereof, and constitutes the complete and exclusive statement of such agreement.

10.2 Headings. Headings in this Agreement are for reference only, and shall be disregarded when interpreting the terms hereof.

10.3 Export Controls. Licensee shall not export or attempt to export any Product outside of the United States without the prior written consent of PeerApp.

10.4 Assignment. Neither this Agreement nor any of Licensee's rights or obligations under this Agreement shall be assigned or transferred by Licensee voluntarily, by operation of law or otherwise, without the prior written consent of PeerApp and any attempted assignment or transfer without such consent shall be void. Licensee agrees that this Agreement binds Licensee and each of its employees, agents and persons associated with it, including Licensee's affiliated and subsidiary firms, corporations and other organizations.

10.5 Force Majeure. PeerApp shall not be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by Licensee by reason of such failure or delay, which is, indirectly or directly, caused by strike, riot, natural catastrophe or other act of God, or any other cause beyond PeerApp's reasonable control.

10.6 No Waiver. If either party fails to perform any of its obligations hereunder and the other party fails to enforce the provisions relating thereto, such party's failure to enforce this Agreement shall not prevent its later enforcement.

10.7 Severability. If any provision of this Agreement is determined by a court to be, or becomes, invalid, unenforceable or illegal, such provision shall be (a) modified to be made valid, enforceable and legal in such a manner as to best effectuate the manifest intent of the parties on the date hereof, or (b) deemed eliminated where such modification is not practicable; and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.

10.8 Notices. All notices and correspondence under this Agreement shall be in writing and shall be delivered by personal service, confirmed facsimile, electronic mail,

express courier, or certified mail, return receipt requested, to the addresses first set forth herein, or at such different address as may be designated by such party by written notice to the other party from time to time. All notices shall be deemed received and effective upon receipt if delivered personally or sent by express courier, confirmed facsimile or electronic mail, and seven (7) days after mailing if sent by certified mail.

10.9 Venue, Governing Law, etc. This Agreement and all transactions hereunder shall be governed by and construed in accordance with the substantive law, (but not the choice-of-law [conflict of laws] rules) of The Commonwealth of Massachusetts. Licensee hereby irrevocably consents to the exclusive jurisdiction of the United States District Court for the District of Massachusetts and any court of The Commonwealth of Massachusetts which sits in the City of Boston, over any action, suit or proceeding arising hereunder. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any of the transactions contemplated by this agreement. Licensee further waives any personal service of any and all process upon it and consents that all such service of process may be made by certified mail, return receipt requested, addressed to Licensee at the address hereinabove stated or at such other address as hereinafter designated by Licensee; and service so made shall be conclusively considered made and complete five (5) business days after the same has been mailed. Licensee waives, to the extent permitted by applicable law, trial by jury in any action between the parties.

10.10 Attorney Fees and Costs. If any legal action is brought in connection with this Agreement, the prevailing party shall be entitled to receive its reasonable attorney fees and court costs in addition to any other relief it may receive.

10.11 Modifications. No modifications of this Agreement shall be binding upon either party unless made in writing and signed by an authorized representative of PeerApp and Licensee.

10.12 Survival. The following Sections shall survive the expiration or termination of this Agreement: Section 4 "Intellectual Property Rights & Confidential Materials"; Section 5 "Intellectual Property Infringement"; Section 6 "Limited Warranty & Disclaimer"; Section 7 "General Limitation of Liability"; and Section 10 "General."

10.13 Limited Use. The Licensed Software and the Documentation have been developed at private expense and are sold commercially to the general public. They are provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in PeerApp's standard commercial license. Thus, the Licensed Software referenced herein, and the Documentation provided by PeerApp hereunder to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by federal acquisition regulations.