

NETWAVE BROADBAND INC'S.

SERVICES AND TERMS OF USE AGREEMENT

THIS SERVICES AND TERMS OF USE AGREEMENT (this "Agreement") is made effective between NetWave Broadband Inc., a Minnesota corporation (Provider) and the user ("you," "user" or "Customer") upon the signing of this document.

WHEREAS, Provider is in the business of providing network services to its customers, including customized solutions to access high-speed internet and voice connections through fiber optic networks, colocation and data centers, enhanced cell phone coverage and cloud storage; and

WHEREAS, Customer wishes to engage Provider to provide Customer with such services in accordance with the terms of this Agreement.

NOW, THEREFORE in consideration of the premises and the mutual covenants herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Services & Installation.**

(a) The Services will generally be available to Customer twenty-four (24) hours a day, seven (7) days a week, subject to temporary unavailability or interruptions due to service requirements, network maintenance, repair and modification, facility upgrades, or acts or omissions outside of Provider's control. The Services provided by Provider pursuant hereto are subject to all of the terms and conditions of this Agreement.

(b) The Services provided by Provider to Customer includes a connection to Provider's nearest point of presence ("POP") unless otherwise specified.

(c) As part of the Services, Provider will, directly or indirectly, provide network installation services at Customer's premises. As part of the installation process, modifications to the inside wiring in Customer's premises may be required, and Customer hereby consents to and authorizes any such modifications. Customer authorizes Provider, and its employees, agents, contractors, and authorized representatives to enter Customer's premises in order to install, maintain, inspect, repair and remove any equipment required to provide the Services. If Customer is not the owner of the premises, upon request, Customer will supply Provider with the owner's name and address and written consent or other evidence that Customer is authorized to grant access to the premises on the owner's behalf, or Provider may request permission from the owner to install any equipment necessary to provide the Services on the premises. This Agreement is contingent upon Provider's obtaining a right of entry onto the premises and Provider shall not have any liability if access or right of entry to the premises is denied or limited for any reason. Customer will not remove equipment necessary for provision of the Services from the premises, modify such equipment in any way, or connect the equipment to any outlet other than the outlet to which such equipment was initially connected to by the Provider installer. For such additional charges as Provider may determine, Provider may relocate the equipment necessary for the Services within the premises at Customer's request.

2. Fees, Payment and Billing Terms.

(a) Customer shall pay Provider the following "Fees" as consideration for the Services rendered

(i) a one-time "Set-up Fee" due in full upon execution of this Agreement, which is nonrefundable upon execution of this Agreement;

(ii) each month during the Term (as described herein), a "Monthly Fee" for the Services;

(iii) other miscellaneous, task-based fees (each, a "Task Fee") as accrued.

(iv) Initial Term of service is a 36 month contract.

(b) Provider shall not be responsible for the payment of any equipment or service charges or taxes incurred by Customer in connection with Customer's utilization of the Services. Such expenses are, and shall remain, the sole liability and responsibility of Customer.

(c) Provider shall deliver an invoice to Customer each (month) from the date of installation on NET 30 terms. Payment shall be due within ten (10) days from the date of invoice and shall be paid in lawful money of the United States of America to Provider at its offices at the address specified in the invoice. If Customer fails to pay any portion of the amounts due hereunder within seven (7) days after written notice of such failure, Customer shall pay to Provider a late charge of [**five percent (5%)**] of the amount of the Fees due and owing, which late fee shall be payable on demand; provided however, that the amount of any such late charge shall not exceed the lawful maximum.

3. Term, Schedules Amendments, Termination and Remedies.

(a) The term of this Agreement shall commence on the Effective Date, and end on the date set forth on the Fees, Payment and Billing Terms (the "Initial Term"). Following conclusion of the Initial Term (and any further Renewal Term, as described herein) this Agreement shall automatically renew for an additional one (1) year (each, a "Renewal Term", and collectively with the Initial Term, the "Term") unless either party gives written notice to the other party of its intention to terminate this Agreement at least sixty (60) days prior to the end of the Term but not longer than ninety (90) days prior to the end of the Term.

(b) Customer agrees that Provider may, from time to time and upon written notice to Customer at least sixty (60) days prior to the end of the Term but not longer than ninety (90) days prior to the end of the Term, amend the contents of the contract.

(c) Provider may terminate this Agreement and its obligation to provide Services to Customer upon written notice to Customer after the occurrence of any of the following:

(i) Customer's failure to pay any Fees due and owing to Provider pursuant to this Agreement within ten (10) days after the date of the invoice therefore; or

(ii) Determination by Provider 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 Provider 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 Provider's Acceptable Use Policy ("AUP"), incorporated herein by this reference as if fully set forth herein (available at [www.netwavebroadband.net]) and failure or refusal to cure any breach of this Agreement and/or AUP (other than as set forth in Section 3(c)(i) and Section 3(c)(ii) above) within ten (10) days after notice of such breach has been sent by Provider to Customer.

(d) Upon termination, Customer acknowledges and understands that Provider shall remove and delete all of Customer's electronically stored data from Provider's facilities without further notice or any liability of any kind, nature or description whatsoever to Customer, and Customer hereby expressly authorizes Provider to undertake such removal and deletion.

(e) Customer acknowledges and understands that its obligation to pay the Fees hereunder for the Services provided prior to any suspension or termination of this Agreement shall not be delayed, excused or otherwise relieved by a suspension of the Services provided by Provider or termination of the Agreement by Provider. Customer will pay Early Termination Fees should the Agreement be terminated by Customer for any reason other than a material breach of this Agreement by Provider. Customer is responsible for the remaining balance of the contract for an early termination fee.

(f) The rights and remedies provided by this Agreement are given in addition to any other rights or remedies Provider 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 Provider shall not preclude or waive its right to use all other rights and remedies.

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

(a) *Unlawful, Inappropriate Content Prohibited*. Customer covenants and agrees that it shall not use the Services 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 the 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 covenants and agrees not to use the Services to send unsolicited e-mail to persons who are not employed by Customer. Customer shall not use Provider 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. Any mail servers must be approved by Provider prior to connecting to any network or device using connections provided by Provider.

(d) **Simultaneous Use.** Customer covenants and agrees that Customer's accounts for use of the Services shall not be shared. Customer will not connect any routers, switches, access points, or other devices in a manner that allows open access to the network. Provider points may be connected provided the wireless link is encrypted for protection against unauthorized access. Customer will provide Provider with login information such as user names and passwords for any networking device connected to the network upon installation or within two (2) days of request.

(e) **Use of Provider IP.** The Services and any devices, equipment, firmware or software used to provide the Services or provided to the Customer in conjunction with providing the Services, and all information, documents and materials on Provider websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of the Provider websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "Provider IP") are and will at all times remain the exclusive property of Provider. Nothing in this Agreement grants Customer the right or license to use any Provider IP.

5. **Customer Representations, Warranties and Covenants.** Customer represents, warrants and covenants to Provider as follows:

(a) Customer has the full right, power and authority to enter into this Agreement.

(b) 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.

(c) Provider or any of its agents (including collection agents) may contact Customer to leave live or pre-recorded messages, text messages or emails to the extent that such are necessary to enforce any part of this Agreement.

(d) Customer is solely responsible for independent backup of any Customer data files residing on Provider's computers or networks. Provider shall be entitled to remove/delete any Customer files after the Services are terminated.

(e) Customer understands and acknowledges that the internet may contain information, materials, and language that may be deemed adult in nature and inappropriate or offensive. Customer is responsible for all information received, transmitted, and/or stored by Customer's use of the Services.

6. **Indemnification.** Subject to the terms and conditions of this Agreement, Customer shall indemnify, defend, and hold harmless Provider and its officers, directors, shareholders, employees, agents, affiliates, successors and permitted assigns (each, an "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, the costs and expenses of enforcing any right to indemnification under this Agreement and the costs and expenses of pursuing any insurance providers, incurred by an Indemnified Party arising out of or relating to any claim by Provider or a third party:

(a) alleging or relating to any negligent or more culpable act or omission of Customer or its personnel (including fraud or any recklessness or willful misconduct) in connection with the rights and obligations described in this Agreement;

(b) alleging or relating to any bodily injury, death of any person or damage to real or tangible personal property caused by the acts or omissions of Customer or its personnel in connection with the rights and obligations described in this Agreement; or

(c) relating to any failure by Customer or its personnel to comply with any applicable Laws, where "Laws" means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, or other requirement or rule of law of any applicable governmental authority.

7. **Warranties.**

(a) *Limited Warranty.* Provider warrants that it will use reasonable efforts to implement and render the Services pursuant to this Agreement in a timely, professional and workmanlike manner. Any claim for breach of this foregoing warranty must be brought within thirty (30) days after Customer's actual discovery of any defect giving rise to a breach of warranty claim. Provider will have no liability for any claim made after such time.

(b) Provider shall provide Service as a best effort Service. Service outages may occur due to pre-scheduled maintenance or unforeseen reasons. Provider shall respond to trouble call from a Customer call by acknowledging the call within one hour by phone and on-site visits will be determined by the best availability of technician to trouble shoot and/or make repairs in the event Service restoration requires an on-site visit. This response shall be available during normal business hours Monday-Friday between the hours of 8 A.M. – 5 P.M. Central Standard Time, Calls received after hours will be returned the next business day, and Provider will make all commercially reasonable efforts to resolve the problem.

(c) OTHER THAN THE LIMITED WARRANTIES PROVIDED ABOVE, PROVIDER DOES NOT WARRANT THAT (i) CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR SECURE; (ii) THE FUNCTIONS CONTAINED

IN THE SERVICES OR ANY EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS; (iii) THE SERVICES WILL BE ERROR-FREE OR FREE OF ANY VIRUSES, WORMS, SPAM, POP-UP ADVERTISING, SPYWARE, ADWARE OR OTHER HARMFUL COMPONENTS; 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. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICES OR DEVICES, IF ANY, BY PROVIDER OR ITS AGENTS OR INSTALLERS, WHETHER ORAL OR WRITTEN, ARE INFORMATIONAL ONLY AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

(d) CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES AND ANY EQUIPMENT IS AT CUSTOMER'S SOLE RISK. THE SERVICES AND ANY EQUIPMENT PROVIDED TO CUSTOMER BY PROVIDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY.

8. **Limitation of Liability.**

(a) UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (TORT, CONTRACT OR OTHERWISE) SHALL PROVIDER BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR PARTY FOR ANY 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 THE SERVICES, REGARDLESS OF THE CAUSE THEREOF.

(b) IN NO EVENT SHALL PROVIDER'S AGGREGATE LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE INCIDENT GIVING RISE TO A CLAIM.

9. **No Archival Services.** Customer acknowledges and understands that Provider provides only temporary storage of Customer's data and information. Customer acknowledges and agrees that Provider 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.

10. **Force Majeure.** Customer agrees that Provider shall be relieved of all obligations, and will incur no liability or responsibility for any damages beyond payment of insurance proceeds, if the performance of any obligation is prevented or restricted or interfered

with by reason of strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; legal inability to access property; acts of any governmental authority; government codes, ordinances, laws, rules and regulations or restrictions; war or civil disorder; or any other cause beyond the reasonable control of Provider.

11. **Miscellaneous.**

(a) *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 a schedule and the body of this Agreement, the body of this Agreement shall prevail.

(b) *Binding Effect.* This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and permitted assigns.

(c) *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 Provider to exercise or enforce at any time any right or provision of this Agreement will be considered a waiver of Provider's rights 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.

(d) *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.

(e) *Third Party Rights or Benefits.* 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.

(f) *Assignment.* Customer shall not assign any of its rights, duties or obligations hereunder without the prior written consent of Provider, which may be withheld for any reason, and any attempted assignment or delegation without such consent will be void. Provider 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.

(g) *Notices.* All notices required or permitted to be given under this Agreement shall be in writing and delivered: (i) by hand; (ii) by overnight delivery with a reputable courier of national presence; (iii) by certified mail, postage prepaid, return receipt requested, (iv) by reputable courier service, or (v) by facsimile or email, 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; if sent by facsimile, on the date of receipt printed by the facsimile machine when it reports that the transmission is complete; or if sent by email, upon confirmation of receipt.

(h) *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.

(i) *Survival.* The provisions that by their terms survive, all payment obligations and the provisions contained in Section 3(e), Section 5, Section 6, Section 7, Section 8, Section 9 and Section 11 shall survive expiration or termination of this Agreement.

(j) *Governing Law; Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, notwithstanding its conflict of law's provisions. The parties hereto expressly agree, consent to and designate the courts of competent jurisdiction located in Hennepin County, Minnesota as the sites for any dispute, controversy or claim arising out of or in connection with this Agreement, or breach or alleged breach hereof.

(k) *No Remedy Exclusive.* No remedy set forth in this Agreement is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement.

(l) *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, and any such counterpart may be executed and delivered by facsimile signature or by e-mail or other electronic signature with the same force and effect as an original signature.

12. **Additional Provider Policies**

By signing this agreement the Customer Acknowledges that they have also read and reviewed the Providers AUP (Acceptable Use Policy), Open Internet Statement Policy and Privacy Policy which can be found at www.NetWaveBroadband.net/policies

IN WITNESS WHEREOF, the undersigned have executed this Agreement, to be effective as of the Effective Date.

Revision: 11/07/2018

