

TERMS AND CONDITIONS

These Service Terms and Conditions (the “**Terms and Conditions**”) apply to the Services (as defined below) described in the Service Order Form (“**SOF**”) by and between Bandwidth.com, Inc. (“**Provider**”) and the customer named in the SOF (“**Customer**”).

Provider may amend these Terms and Conditions from time to time by posting an amended version at www.broadband.com/legal/terms and sending Customer written notice thereof. Such amendment will be deemed accepted and become effective thirty (30) days after such notice (the “**Proposed Amendment Date**”) unless Customer first gives Provider written notice of rejection of the amendment. If Customer rejects such amendment, these Terms and Conditions will continue pursuant to its original provisions and the amendment will become effective at the commencement of the next Renewal Term (as defined below) following the Proposed Amendment Date. Customer’s continued use of the Services following the effective date of an amendment will confirm Customer’s consent thereto.

- 1. Service Description.** Provider will provide Customer with the Services described in the SOF for the Service Term so long as no Default (as defined below) has occurred. Customer has the sole and exclusive responsibility for the installation, configuration, security (including, without limitation, firewall security policies, even if Customer uses a third party to configure and implement such measures), and integrity of all Customer facilities, systems, equipment, proxy servers, software, networks, network configurations and the like (the “**CPE**”) used in conjunction with or related to the Services provided by Provider, unless Customer obtains such CPE from Provider pursuant to a written agreement between Customer and Provider and Provider expressly assumes any of such duties in writing.
- 2. Service Activation Date.** The “**Service Activation Date**” means the date two (2) business days after Provider deems the applicable Services ready for activation, which customarily will follow Provider’s receipt of confirmation from any applicable underlying carrier(s) that the Services are ready for activation; provided, however, with respect to MPLS Services (as defined below) only (as identified on the SOF), the “**Service Activation Date**” means the earlier of (i) the date two (2) business days after Provider deems the Services ready for activation, which customarily will follow Provider’s receipt of confirmation from any applicable underlying carrier(s) that the Services are ready for activation; and (ii) the date the Service is successfully activated by the underlying carrier and confirmed tested and accepted by Customer and Provider. Provider will notify Customer (via phone, email or other means) of the Service Activation Date. For clarity, the Service Activation Date established by Provider will apply regardless of whether Customer has completed all necessary steps to activate the Services.
- 3. Service Term.** The initial Service Term will be as specified in any applicable SOF (the “**Initial Service Term**”). The Initial Service Term will automatically extend thereafter upon the same terms and conditions applicable during the Initial Service Term for additional consecutive term(s) of one (1) year unless earlier terminated pursuant to these Terms and Conditions or unless either party provides notice of nonrenewal to the other at least sixty (60) days prior to the expiration of the then existing Service Term.
- 4. Service Availability.** Provider may from time to time interrupt or otherwise impact Services for routine maintenance. Provider will make commercially reasonable efforts to provide to Customer reasonable advance notification (via phone, email or other means) of such maintenance. Provider will use commercially reasonable efforts to perform such maintenance in a manner that will not unreasonably interrupt Services. Provider normally will perform maintenance between the hours of 11:30 PM and 6:00 AM Eastern. If Provider determines that emergency maintenance is necessary for any reason, Provider will make commercially reasonable efforts to notify Customer with respect to the anticipated down-time and/or other information pertinent to the affected Services.
- 5. Service Support.** Provider provides support for the Services only as described at www.broadband.com/legal/support pursuant to any applicable Service Level Agreement (“**SLA**”) posted at www.broadband.com/legal/SLA. NOTWITHSTANDING ANY TERM OF THESE TERMS AND CONDITIONS OR ANY APPLICABLE SLA TO THE CONTRARY, PROVIDER DOES NOT SUPPORT ANY SERVICES BEYOND THE PROVIDER POINT OF DEMARCATION, DEFINED AT WWW.BROADBAND.COM/LEGAL/SUPPORT.
- 6. Applicable Only If Customer Leases CPE from Provider:** If Customer installation is required, then Customer must install such leased CPE in accordance with instructions provided by Provider (or its third party vendor). Such CPE must be used solely to utilize Services. Customer acknowledges and agrees that Provider retains title to such CPE at all times and will not remove or modify any marking indicating Provider’s ownership of such CPE. Customer will allow Provider reasonable access to the CPE as required to provide the CPE and/or any applicable Services. Customer acknowledges and agrees that any such leased CPE may be new or recertified. CPE leased by Customer from Provider may be covered under a limited warranty provided by any applicable manufacturer or provider, which Provider will extend to Customer without charge to the extent Provider can do so pursuant to Provider’s agreements with any applicable manufacturer or provider; however, Provider provides no warranty with respect to any such leased CPE (and/or CPE provider service). Customer will reimburse Provider, on a time and materials basis, for Provider’s entire cost to repair and/or replace any such CPE in the event of (a) misuse, (b) failure to exercise reasonable care, (c) alteration of the original configuration of such CPE by Provider, (d) damage, (e) theft, or (f) disaster. If such CPE requires maintenance not caused by one of the events set out in the preceding sentence, Provider (or its agents) will either arrange to repair such CPE at Customer’s premises or ship an equivalent pre-configured replacement to Customer. If Provider ships replacement CPE to Customer at any time, Customer will return, at Customer’s cost and expense, the replaced CPE to Provider not later than ten (10) days immediately after Customer’s receipt of the replacement CPE or pay for such replaced CPE. Customer will not receive any compensation or credit for any

downtime or outages associated with the replacement or repair of any such CPE. Upon expiration or termination of these Terms and Conditions and/or any applicable SOF for any reason, Customer will return, at Customer's cost and expense, to Provider any leased CPE not later than ten (10) days immediately after the expiration or termination of these Terms and Conditions and/or any applicable SOF. Customer is responsible for all risk of loss and damage to CPE being shipped to Provider pursuant to this Section 6. If Customer fails to return such leased CPE in good working condition to Provider not later than thirty (30) days immediately after the expiration or termination of the Service Term, Provider will charge Customer (and Customer agrees to pay Provider) the greater of \$5,000.00 or the commercial value of such CPE, which amount represents the agreed-upon value of the CPE. If Customer terminates any applicable lease of any CPE prior to the expiration or termination of any applicable Service Term, in addition to any amounts otherwise due and payable pursuant to the terms and conditions of such lease, Provider may charge Customer a restocking fee equal to twenty percent (20%) of the original purchase price of such leased CPE. Notwithstanding any terms or conditions of any SLA to the contrary, except as otherwise expressly provided in this Section 6, Provider does not maintain, support or manage any CPE, which will be the obligation of Customer solely. Customer is solely responsible for unauthorized access to or use of any Services by any third-party through CPE, regardless of whether such unauthorized access is unintentional, accidental, intentional or fraudulent and regardless of whether Customer had knowledge of such unauthorized access.

- 7. Applicable Only If Customer Purchases CPE from Provider:** CPE purchased by Customer from Provider may be covered under a limited warranty provided by any applicable manufacturer or provider, which Provider will extend to Customer without charge to the extent Provider can do so pursuant to our agreements with any applicable manufacturer or provider; however, Provider provides no warranty with respect to any such purchased CPE (and/or CPE provider service). All sales of CPE purchased by Customer from Provider are final; provided, however, if Customer receives purchased CPE that is damaged or nonfunctional upon arrival, (i) within ten (10) days of receipt of such damaged or nonfunctional CPE, Customer must notify Provider via email to Customer Care at customer-care@broadband.com to request an RMA; (ii) Provider only will accept returns of any such damaged or nonfunctional products within thirty (30) days of the date of the shipment to Customer by Provider; (iii) any such damaged or nonfunctional CPE timely returned to Provider by Customer must be fully complete, including all original manufacturer boxes with the UPC code and packing materials, all manuals, blank warranty cards, accessories and any other documentation included with the original shipment to Customer; (iv) Provider will not accept CPE returned in used or altered condition; (v) Customer is solely responsible for all costs and expenses connected to the shipment to Provider of any such damaged or nonfunctional products shipped to Provider pursuant to this Section 7; (vi) Customer is responsible for all risk of loss and damage to products being shipped to Provider pursuant to this Section 7; and (vii) if Provider determines that the CPE operates within manufacturer specifications upon return pursuant to any applicable RMA, the affected CPE will be returned to Customer at Customer's sole cost and expense, the sale of such CPE will remain final, and Provider may charge Customer a restocking fee equal to twenty percent (20%) of the original purchase price of such CPE. Notwithstanding any terms or conditions of any SLA to the contrary, except as otherwise expressly provided in this Section 7, Provider does not maintain, support or manage any CPE, which will be the obligation of Customer solely. Customer is solely responsible for unauthorized access to or use of any Services by any third-party through CPE, regardless of whether such unauthorized access is unintentional, accidental, intentional or fraudulent and regardless of whether Customer had knowledge of such unauthorized access.
- 8. Applicable Only If Customer Obtains Managed Network Services Pursuant to Any Applicable SOF:** "Managed Network Services" are Services that may be specified in writing as "Managed Network Services" pursuant to any applicable SOF and is a solution in which the Internet access CPE (whether provided by Customer or Provider) is managed by Provider. If Customer chooses to provide its own Internet access CPE, Customer hereby assigns full operational management responsibility, including, but not limited to, full management of the logical configuration for such CPE, solely to Provider. Except as expressly provided in any applicable SOF, no Managed Network Services apply.
- 9. Applicable Only If Customer Obtains Professional Services Pursuant to Any Applicable SOF:** "Professional Services" are any services that may be specified in writing as "Professional Services" pursuant to any applicable SOF and is a service in which Provider provides certain professional services to Customer as specified in such SOF. Except as expressly provided in any applicable SOF, no Professional Services apply. All Professional Services will be provided by phone, email or other similar means from Provider's facilities.
- 10. Billing and Payment.** Unless the terms and conditions of any applicable SOF provide for prepayment to Provider by Customer with respect to any applicable Service(s), Customer will pay for all Service(s) not later than the date fifteen (15) calendar days immediately after the invoice date reflected on Provider's invoice ("**Due Date**"). Provider will bill Customer, and Customer will pay, for Services at the rates stated in any applicable SOF, including, without limitation, any applicable MRC and/or NRC, as well as any other charges or amounts as described in the SOF and/or these Terms and Conditions. After any applicable Initial Service Term, Provider may increase any applicable rates, including, without limitation, any applicable MRC and/or NRC, upon at least thirty (30) days written notice to Customer; provided, however, Provider may at any time pass on to Customer any circuit price increases from any applicable underlying carrier(s) upon at least thirty (30) days written notice to Customer. Bills and/or charges will include all applicable federal, state, and local taxes; all such taxes, and all use, sales, commercial, gross receipts, privilege, surcharges, or other similar taxes, license fees, surcharges and miscellaneous fees, including but not limited to regulatory fees such as Universal Service Fund and including, without limitation, any cost recovery fee which shall represent an accurate and non-inflated recovery of Provider's, or any underlying provider's, miscellaneous tax, surcharge, and fee payments to federal, state or local governmental authorities associated with the provision of Services by Provider to Customer pursuant to these Terms and Conditions and/or any applicable SOF ("**Taxes**" and "**Fees**" or together "**Taxes and Fees**"), whether or not charged to or against Provider, will be payable by Customer. However, if Customer provides proof of its exempt status for a specific Tax or Fee, Provider will not charge the applicable Tax or Fee due to such exemption. If applicable, Customer will supply Provider a valid and properly executed tax exemption certificate(s) in the form of an email (with supporting attachments) sent to customer-care@broadband.com with "Notice of Tax Exempt Status" in the subject line of the email. In such cases Customer remains responsible for, and agrees to pay, any and all remaining non-exempt Taxes and Fees; tax exemption status validation is solely the responsibility of Customer and Provider will not be obligated to consider any retroactive tax exemption. In the event of any Regulatory Activity, Provider reserves the right, at any time with as much advance notice as reasonably possible and without liability, to: (i)

pass through to Customer all, or a portion of, any Taxes and Fees directly or indirectly related to such Regulatory Activity; (ii) modify the Services, rates (including any applicable rate guarantees), promotions, terms and/or conditions of these Terms and Conditions and/or any applicable SOF to conform to such Regulatory Activity; and/or (iii) if such Regulatory Activity materially and adversely impairs the provision of Services pursuant to these Terms and Conditions and/or any applicable SOF, as reasonably determined by Provider, terminate these Terms and Conditions, any applicable SOF and/or the provision of any applicable Services. Provider will commence billing for all MRC and any other charges pursuant to these Terms and Conditions and/or any applicable SOF on any applicable Service Activation Date. Except as expressly provided in any applicable SOF, the MRC applicable to any applicable Service for the first and second calendar months immediately following the applicable Service Activation Date (and any then applicable NRC) will be billed upon the Service Activation Date. If applicable, the MRC applicable to any applicable Service for the first partial calendar month immediately following the applicable Service Activation Date will be *pro rated* and billed accordingly. Thereafter, the applicable MRC for each calendar month (and any applicable NRC) will be billed on or about the first day of such calendar month. Time is of the essence with respect to any amounts due or payable pursuant to these Terms and Conditions and/or any applicable SOF. After fifteen (15) days of non-payment after the Due Date, all fees will accrue interest at a rate of one and one-half percent (1.5%) per month or any part thereof, or the highest rate allowed by applicable law, and Customer will pay all collection costs incurred by Provider (including, without limitation, reasonable attorney's fees). If, at any time after any applicable Due Date for any applicable bill, Customer has failed to make satisfactory payment as determined by Provider, Provider may give Customer written notification (by email or otherwise), that Customer has committed a Default of these Terms and Conditions and/or any applicable SOF. Provider will provide the "Notification of Default" at least two (2) business days prior to Provider's suspension or termination of any applicable Service for such Customer. Customer must pay all outstanding amounts payable to Provider pursuant to these Terms and Conditions and/or any applicable SOF within such two (2) business day period to avoid suspension or termination of any applicable Service. If Provider terminates any applicable Service for such Customer due to non-payment pursuant to these Terms and Conditions and/or any applicable SOF, then, in addition to any other amounts then due and payable by Customer to Provider, Customer also will be obligated to pay to Provider the fees described in these Terms and Conditions and/or any applicable SOF. Upon termination of these Terms and Conditions and/or any applicable SOF(s), then Provider may collect from Customer: (i) all amounts due and payable pursuant to these Terms and Conditions, including, without limitation, any document incorporated by reference into these Terms and Conditions, for Service(s) provided prior to such termination, including, without limitation, any past due balance at the time of such termination, and/or the remainder of the Service Term; (ii) the total of all minimum commitments for any Service(s) for the remainder of the Service Term applicable pursuant to any applicable SOF(s); (iii) any early termination charges, if any, specified in any applicable SOF(s) or any other document or agreement between Customer and Provider; and (iv) if such termination arises pursuant to any Default, any non-recurring charges previously waived at any time by Provider. Customer acknowledges and agrees that the damages arising due to the early termination of this Agreement would be difficult to determine and, therefore, for the sake of efficiency, economy and convenience, any early termination charges constitute liquidated damages and are not intended as a penalty or to be punitive in nature. Upon the occurrence of a Default (other than for nonpayment as provided above), Provider may immediately suspend or terminate any applicable Service for such Customer. Provider may, at any time and in its sole discretion: (i) require a security deposit to continue provisioning any applicable Service to Customer pursuant to these Terms and Conditions and/or any applicable SOF, if Customer's level of approved credit, as determined by Provider in its sole discretion, is deemed insufficient, as determined by Provider in its sole discretion; (ii) change payment terms, billing cycle, and/or any applicable Due Date(s); (iii) demand immediate payment by wire or other means and discontinue any applicable Service for Customer without notice to Customer if Customer's level of approved credit, as determined by Provider in its sole discretion, is deemed insufficient, as determined by Provider in its sole discretion; and/or (iv) immediately block Customer's access to or use of any applicable Service if a Customer's pre-paid balance is depleted, or Customer otherwise refuses to make any reasonably requested payments. Provider retains the right to bill, including, without limitation, amend or correct any bill previously issued, for any applicable Service provided pursuant to these Terms and Conditions and/or any applicable SOF, for a period of up to twelve (12) months, commencing from the date of the provision of any applicable Services to Customer. Provider will retain such billing rights for such twelve (12) month period notwithstanding any prior billing to Customer for the same period(s) and regardless of any otherwise conflicting billing conditions in these Terms and Conditions and/or any applicable SOF. For the duration of such twelve (12) month period, Provider will not be deemed to have waived any rights with regard to billing for any applicable Service provided pursuant to these Terms and Conditions and/or any applicable SOF during such period, nor will any legal or equitable doctrines apply, including estoppel or laches. Unpaid bills and/or charges may be sent to third party collection agencies.

11. Billing Disputes. If Customer disputes any amounts charged to Customer by Provider pursuant to these Terms and Conditions and/or any applicable SOF, Customer will pay in full all charges billed by any applicable Due Date and thereafter submit written notification, within thirty (30) calendar days of the date of the disputed charges, in the form of an email sent to customer@broadband.com with "Notice of Billing Dispute" in the subject line of the email. Such email notification must include Customer's complete contact information, the specific dollar amount in dispute, detailed supporting calculations and reasons for the dispute, and any supporting documentation, if available, in the body of or attached to, the email. Provider will respond to Customer, in writing, within thirty (30) calendar days immediately after receipt of from Customer of any such notice of billing dispute. Any dispute resolved in favor of Customer will be credited as appropriate to the next bill issuable by Provider pursuant to these Terms and Conditions and/or any applicable SOF. If Provider determines that any disputed amounts are correct as billed pursuant to these Terms and Conditions and/or any applicable SOF, Provider will notify Customer in writing that the charges have been deemed valid and legitimate, and the dispute will be considered resolved by both parties; if, for any reason, any amount(s) remain due from Customer related to such dispute, then all such amounts will be due and payable immediately. Provider reserves the right to deny or delay any and all billing disputes and/or credits if Customer's account is in arrears or otherwise not in good standing.

12. Resumption of Service. If Customer requests the restoration of any applicable Service to such Customer after a suspension or termination, Provider has the sole and absolute discretion to restore any applicable Service to such Customer and may condition restoration upon satisfaction of such conditions as Provider determines necessary, including, without limitation, Customer's execution or delivery of a new agreement, payment of all past due amounts in full, completion of Provider's credit approval process, and/or the making of advance payments. Additional NRC also may apply.

13. Additional NRC and Usage Charges.

General. Provider also may invoice Customer for the following NRCs: (i) Changes of IP Addresses: \$100.00; (ii) Service Reinstatement / Resumption Fee: \$200.00 (plus any charges imposed by underlying carrier(s) and/or pursuant to Section 12 above); (iii) Missed Appointment Fee: \$200.00; (iv) Rejected Credit Card/Unpaid Check: \$40.00 (or legal limit, if lower); (v) Relocation Fee: varies upon address; (vi) Upgrade Charge: varies upon specific upgrade requested; and (vii) Downgrade Charge: varies upon specific downgrade requested.

Inside Wiring. The availability of inside wiring installation is dependent upon a number of factors, including, without limitation, any applicable service address and/or LEC availability. Any inside wiring provided by Provider's underlying carrier(s) may incur additional fees to the charges listed in the SOF. Any request for inside wiring or wiring extension for any applicable Services will be provided on a best-effort basis only. In many cases, Customer's LEC will not extend wiring beyond the Minimum Point of Entry ("MPOE") as determined by the LEC. In all such cases, Customer will provide any needed internal wiring or extensions (and required conduit, facilities, power, etc.) to the circuit required to provision service unless Provider has agreed in writing to provide this service to Customer.

Special Construction Charge. When a Customer's location has insufficient facilities needed to support any applicable Service, the underlying carrier(s) may add facilities that may impose an additional "special construction charge" or other similar charge. If this occurs, Provider will notify Customer (via phone, email or other means) of the cost of these additional special construction charges, if available and if any, as well as the estimated time to complete the construction. Customer must agree in writing to pay these additional special construction costs within three (3) business days. If Customer fails to do so, Provider will cancel the SOF for lack of facilities and the SOF will terminate without liability to either Customer or Provider.

Miscellaneous Charges. Miscellaneous charges and/or fees imposed by any third party carrier or any underlying provider from time to time, whether charged to or against Provider, will be payable by Customer, including, without limitation, any cost recovery fee which shall represent an accurate and non-inflated recovery of the miscellaneous charges and/or fees to or against Provider associated with the provision of Service(s) by Provider to Customer.

Usage Charges (Applicable to Burstable Dedicated Internet Access Service Only): Additional usage charges stated in any applicable SOF will be calculated based on Customer's monthly usage, which Provider will calculate as follows: Provider will take usage samples approximately every five (5) minutes throughout the applicable month and will retain the higher of two (2) samples taken during each five (5) minute period – one (1) sample that will reflect inbound usage / utilization and one (1) sample that will reflect outbound usage / utilization. At the end of the applicable billing period, the samples will be arranged from highest to lowest. Provider will discard the top five percent (5%) of the samples for the purposes of calculating Customer's monthly usage. Provider will utilize the highest remaining sample (i.e., the ninety-fifth percentile (95%) peak Mbps port utilization) (the "**Mbps Port Utilization**") to calculate Customer's monthly usage. Provider will measure the Mbps Port Utilization to the 100th decimal place, but the invoice will reflect the Mbps Port Utilization only to the 10th decimal place. Provider will multiply the Mbps Port Utilization by the per-Meg rate listed on any applicable SOF to calculate any applicable additional usage charges. Provider will charge Customer such additional usage charges as well as any applicable base rate provided in any applicable SOF.

14. IP Addresses. Customer acknowledges that Provider retains title at all times to the IP addresses assigned to Customer in connection with any Service. Upon IP address reassignment or expiration, cancellation or termination of these Terms and Conditions and/or any applicable SOF, Customer will relinquish any IP addresses or address blocks assigned to Customer by Provider or its underlying carrier(s) and will perform all acts reasonably requested by Provider to return to Provider full use of such IP addresses and address blocks.

15. Default. Upon the occurrence of a Default, Provider may, in addition to delivering an Escalation Notice pursuant to Section 19(a) below: (i) suspend Provider's performance of any or all Services without liability or further obligation immediately; (ii) terminate any or all SOF(s) without liability or further obligation immediately upon written notification of termination to Customer; and/or (iii) terminate these Terms and Conditions and/or any applicable SOF without liability or further obligation immediately upon written notification of termination to Customer. Upon the occurrence of a Default, the following fees will apply, which Customer acknowledges and agrees are customary and reasonable and do not constitute a penalty or premium: (a) any amounts due pursuant to these Terms and Conditions and/or any applicable SOF incurred prior to such termination, (b) any amounts due pursuant to any applicable SOF with respect to any applicable Service, including, without limitation, the total of any applicable monthly minimum commitments for any Services provided hereunder for the remainder of the applicable Service Term and any other fees included in any applicable SOF, and (c) any NRC previously waived by Provider. All remedies expressed in this Agreement are without exclusion as to any rights or remedies that the parties may have under this Agreement or which may be recognized under controlling law.

16. Termination by Provider. In addition to any other right that Provider may have to terminate or suspend these Terms and Conditions and/or any applicable SOF, if Provider determines, in its sole discretion, that Customer's ongoing use of any or all Services, and/or the specific method or technology utilized by Customer places the network operated by Provider, other customers, partners or the overall business(es) of each in jeopardy, Provider reserves the right to terminate these Terms and Conditions and/or any applicable SOF and Customer's access to any or all applicable Services immediately and without notification.

17. Acceptable Use Policy. All use of any Services must comply with Provider's Acceptable Use Policy, which is posted at www.broadband.com/legal/AUP, and is incorporated herein by reference. By using any Services, Customer agrees to comply with the AUP, as

modified by Provider from time to time in Provider's sole discretion. Any amendment to the AUP will be effective immediately upon the posting of the modified AUP at www.broadband.com/legal/AUP. Violation of the AUP by Customer will constitute a Default pursuant to this Agreement.

18. License; Intellectual Property.

(a) Subject to Customer's compliance with these Terms and Conditions and/or any applicable SOF, Provider grants Customer a non-exclusive, non-transferable license to use any Electronic Tools provided by Provider from time to time solely in connection with Customer's use of any Services during the Service Term. Such Electronic Tools may be incorporated into, and may incorporate itself, software and other technology owned or controlled by third parties. Any such third party software or technology incorporated in any such Electronic Tools falls under the scope of these Terms and Conditions. Any and all other third party software will be subject to Customer's acceptance of a license agreement with such third party. Customer will use such Electronic Tools solely for lawful purposes in connection with Customer's use of Services during the Service Term. Customer will not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of any such Electronic Tools; (ii) modify, translate or create derivative works based on any such Electronic Tools; (iii) rent, lease, distribute, sell, resell, assign, display, host, outsource, disclose or otherwise commercially exploit or otherwise transfer rights to any such Electronic Tools or make any such Electronic Tools available to any third party; (iv) use any such Electronic Tools for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) remove any proprietary notices or labels on any such Electronic Tools; or (vi) copy, reproduce, post or transmit any such Electronic Tools in any form or by any means, including, without limitation, electronic, mechanical, photocopying, recording or other means.

(b) Any such Electronic Tool each is the Intellectual Property of Provider. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on or in connection with any such Electronic Tool. Any third party Intellectual Property included in any such Electronic Tool is the property of the respective owner of such Intellectual Property and may be protected by applicable law. Nothing in these Terms and Conditions and/or any applicable SOF gives Customer any right or license to any trademarks and/or trade names (whether registered or unregistered), signs, logos, icons, slogans, banners, screen shots, trade dress, links or other brand features of Provider without the prior written consent of Provider, which consent may be withheld in the sole discretion of Provider for any reason. If Customer from time to time provides suggestions, comments and/or other feedback to Provider with respect to any such Electronic Tool, Provider may, in connection with any of its products or services, freely use, copy, disclose, license, distribute and/or exploit any such suggestions, comments and/or other feedback in any manner and without any obligation or restriction based on intellectual property rights or otherwise. Provider will retain sole ownership of any such suggestions, comments and/or other feedback and Customer will not provide any such suggestions, comments and/or other feedback subject to any terms that would impose any obligation on Provider or any of its customers or partners.

19. Dispute Resolution Process and Applicable Law.

(a) It is the mutual desire of the parties to promptly and fully resolve any dispute arising in connection with these Terms and Conditions and/or any applicable SOF in good faith, confidentially, and informally with minimal transaction costs; no public statement may be made by any party regarding any such dispute. If either party determines that the dispute cannot be resolved informally, then such party will initiate an escalation process by giving written notice ("**Escalation Notice**") to the other party. Each party will name one executive as its representative, to be a person knowledgeable of the subject matter in dispute and someone with authority to discuss the dispute ("**Officers**"). The Officers will meet in person or by conference call, together with any persons assisting them, within fifteen (15) days after delivery of the Escalation Notice. All negotiations conducted by the Officers are confidential and will be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state rules of evidence. The Officers will conduct such additional meetings as they deem necessary to exchange relevant information, will appoint staff to engage in resolution of any disputed facts, and will attempt to resolve the dispute. Should the Officers be unable to resolve the dispute within such fifteen (15) days, or within such additional time as the parties may otherwise agree to in writing, either party may demand mediation, whereupon the parties will, in good faith, mediate the dispute no later than thirty (30) days after such demand through the services of a mutually selected mediator, the cost of whom will be borne equally by the parties, at a date and location selected by the mediator after consultation with the parties. **IF THE DISPUTE IS NOT RESOLVED AFTER APPLYING THE ESCALATION PROCEDURES SET FORTH ABOVE, THE PARTIES AGREE TO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY JUDICIAL PROCEEDING ARISING UNDER OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, AND AGREE TO SUBMIT ALL CONTROVERSIES, CLAIMS AND MATTERS OF DIFFERENCE TO ARBITRATION ACCORDING TO THE COMMERCIAL RULES AND PRACTICES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA").** Arbitration hereunder will occur within sixty (60) days of the date of submission before a single neutral arbitrator having significant experience in the subject matter of this Agreement and who will be selected in accordance with AAA rules. Arbitration proceedings will take place in Wake County, North Carolina. Discovery will be permitted, including the use of interrogatories, requests for admission and production of documents and depositions. If the amount claimed to be in dispute is less than \$500,000, all applicable expedited procedures of the AAA will apply. The arbitrator's fees and costs of the arbitration will be borne by the party against whom the award is rendered, except that if the arbitrator issues a split decision, granting partial relief to both parties, the arbitrator will equitably allocate the arbitrator's fees and other costs. Each party will pay its attorney's fees related to any dispute related to this Agreement. The arbitration award will be final and binding on both parties of this Agreement, will not be subject to any appeal and will be enforceable in any court of competent jurisdiction.

(b) ANY DISPUTE RESOLUTION PROCEEDINGS, WHETHER IN ARBITRATION OR IN COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS ACTION OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. CUSTOMER WILL NOT BE A CLASS

REPRESENTATIVE, CLASS MEMBER OR OTHERWISE PARTICIPATE IN A CLASS, CONSOLIDATED OR REPRESENTATIVE PROCEEDING.

(c) This Agreement will be governed by, construed under and enforced in accordance with the laws of the State of North Carolina without reference to its choice of law principles or the United Nations Convention on the International Sale of Goods. In the event any party brings a civil action or initiates judicial proceedings of any kind related to this Agreement (except for actions to enter or collect on judgments), the parties consent to the exclusive personal jurisdiction and venue of the federal and state courts located in Wake County, North Carolina and the prevailing party will be entitled to recover its costs, including reasonable attorney's fees.

20. Limitation of Liability. EXCEPT AS PROVIDED IN SECTION 21 BELOW, IN NO EVENT WILL PROVIDER OR CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) ARISING OUT OF OR IN RELATION TO THE SERVICES, CPE, AND/OR ANY PRODUCTS OR SERVICE PROVIDED BY THIRD PARTIES UNDER THESE TERMS AND CONDITIONS AND/OR ANY APPLICABLE SOF. PROVIDER'S MAXIMUM LIABILITY UNDER THESE TERMS AND CONDITIONS AND/OR ANY APPLICABLE SOF IS LIMITED TO SERVICE CREDITS NOT TO EXCEED THE FEES PAID TO PROVIDER BY CUSTOMER FOR THE APPLICABLE SERVICE PROVIDED DURING THE PRECEDING TWELVE (12) CALENDAR MONTHS.

21. Indemnity. Customer will indemnify and hold harmless Provider and its stockholders, directors, officers, employees, agents, licensors, representatives and affiliates from and against any and all actual or alleged losses, costs, claims, liability of any kind, damages (including to any tangible property or bodily injury to or death of any person), or expense of whatever nature, (including reasonable attorneys' fees) to or by any third party, relating to or arising from (a) the use of any Services provided to Customer, whether or not Customer has knowledge of or has authorized access for such use, (b) any damage to or destruction of CPE or equipment not caused by Provider or its agents, and (c) any breach of these Terms and Conditions and/or any applicable SOF by Customer. Customer will be solely responsible for implementing any installation, configuration, and/or connection of any CPE and has the sole and exclusive responsibility for the security and integrity of such CPE, if any. Customer therefore will indemnify and hold harmless Provider and its stockholders, directors, officers, employees, agents, licensors, representatives and affiliates from and against any actual or alleged losses, costs, claims, liability of any kind, damages, or expenses or fees (including reasonable attorneys' fees) on the part of or which may be incurred by Customer or a third-party relating to or arising from the use or operation of CPE. Customer's indemnification in this Section 21 includes any actual or alleged losses or claims in connection with unauthorized access to or use of any Services by any third-party through CPE, regardless of whether such unauthorized access is unintentional, accidental, intentional or fraudulent and regardless of whether Customer had knowledge of such unauthorized access. In all such cases of unauthorized access through or to CPE, Customer retains full and sole responsibility for any and all charges for the use of any Services as otherwise provided in these Terms and Conditions and/or any applicable SOF. If Provider grants Customer access to any Electronic Tools, Customer agrees that it is fully and exclusively responsible for all information accuracy, charges, costs, transactions, and activities conducted through such Electronic Tools. Customer agrees that it is fully and exclusively responsible to safeguard, monitor, manage, and maintain access by any Electronic Tools, and to only allow authorized use of such Electronic Tools to Customer's Administrator(s) or Account Administrator, as the case may be. Customer will indemnify and hold harmless Provider and its stockholders, directors, officers, employees, agents, licensors, representatives and affiliates from and against any actual or alleged losses, costs, claims, liability of any kind, damages, or expenses or fees (including reasonable attorneys' fees) on the part of or which may be incurred by Customer, or a third-party, relating to or arising from the use or operation of Electronic Tools, including, without limitation, any actual or alleged losses or claims in connection with unauthorized access to, use, transactions, or activity conducted through the Electronic Tools, regardless of whether such unauthorized access is unintentional, accidental, intentional, or fraudulent, and regardless of whether Customer had knowledge of such unauthorized access. In all such cases of unauthorized access through or by Electronic Tools, Customer retains full and sole responsibility for any and all charges for the use of any Services as otherwise provided in these Terms and Conditions and/or any applicable SOF.

22. No Warranties and Customer Assumption of Risk. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN AN APPLICABLE SLA, ANY APPLICABLE SERVICE AND ANY CPE, EQUIPMENT, AND/OR RELATED SERVICES EACH IS PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, EACH OF PROVIDER, ITS AFFILIATES, SUPPLIERS AND, IF APPLICABLE, RESELLERS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OF NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, PROVIDER, ITS AFFILIATES, SUPPLIERS AND, IF APPLICABLE, RESELLERS DO NOT WARRANT THAT ANY FUNCTIONS OF ANY SERVICES, ANY CPE, EQUIPMENT, AND/OR RELATED SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT ANY SERVICES (OR ANY SERVER THAT MAKES ANY SERVICES AVAILABLE) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. PROVIDER DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR RESULTS OF ANY SERVICES OR ANY ELECTRONIC TOOL IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, UNAUTHORIZED ACCESS BY THIRD PARTIES OR OTHERWISE. CUSTOMER (AND NOT PROVIDER) ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. CUSTOMER ACKNOWLEDGES THAT ANY DATA OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED OR ACQUIRED THROUGH THE USE OF ANY SERVICES AND/OR ELECTRONIC TOOL IS AT CUSTOMER'S SOLE RISK AND DISCRETION AND PROVIDER WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER OR CUSTOMER'S PROPERTY. CUSTOMER HEREBY EXPRESSLY ASSUMES THE RISK OF ITS USE OF ANY INFORMATION TRANSMITTED VIA ANY SERVICES AND/OR ANY ELECTRONIC TOOL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM PROVIDER, ITS EMPLOYEES OR THROUGH OR FROM ANY SERVICE AND/OR ELECTRONIC TOOL WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE FOREGOING EXCLUSION MAY

NOT APPLY.

PROVIDER WILL HAVE NO OBLIGATION TO DEFEND OR INDEMNIFY CUSTOMER FROM OR AGAINST ANY THIRD PARTY CLAIMS ALLEGING THAT CUSTOMER'S USE OF ANY SERVICES OR ANY ELECTRONIC TOOL OR THE EXERCISE OF ANY RIGHTS GRANTED HEREIN INFRINGES ON ANY INTELLECTUAL PROPERTY OF ANY THIRD PARTY. IF A CLAIM IS MADE, OR IN PROVIDER'S REASONABLE OPINION IS LIKELY TO BE MADE, AGAINST PROVIDER, CUSTOMER OR ANY THIRD PARTY ALLEGING THAT ANY APPLICABLE SERVICES OR ELECTRONIC TOOL OR ANY USE THEREOF INFRINGES ANY INTELLECTUAL PROPERTY OF ANY THIRD PARTY, PROVIDER MAY, IN PROVIDER'S SOLE DISCRETION, TERMINATE THESE TERMS AND CONDITIONS AND/OR ANY APPLICABLE SOF AND ALL RIGHTS AND OBLIGATIONS PURSUANT TO THESE TERMS AND CONDITIONS AND/OR ANY APPLICABLE SOF.

23. Third Party Beneficiaries. The parties do not intend by the execution, delivery, or performance of these Terms and Conditions and/or any applicable SOF to confer any benefit, direct or incidental, upon any person or entity not a party to these Terms and Conditions and/or any applicable SOF.

24. Miscellaneous. Customer is not relying on any affirmation of fact, description, or promise from (or purported to be from) any person or entity, nor any oral or written representation or warranty that is not expressly included in these Terms and Conditions and/or any applicable SOF. Any alterations or additions to these Terms and Conditions and/or any applicable SOF made by Customer by any means will not be considered part of these Terms and Conditions and/or any applicable SOF. Provider's failure to insist upon or enforce strict performance of or strict compliance with any provision of these Terms and Conditions and/or any applicable SOF shall not be construed as a waiver of any provision or right; neither the course of conduct between the parties nor trade practice shall act to modify any provision of these Terms and Conditions and/or any applicable SOF entered into from time to time pursuant to these Terms and Conditions and/or any applicable SOF. These Terms and Conditions and/or any applicable SOF may only be modified, or any rights under it waived, by a separate written document executed by both parties. Customer may not assign these Terms and Conditions and/or any applicable SOF, by operation of law or otherwise, including, without limitation, pursuant to any merger, stock purchase or other change in control of Customer, without Provider's prior written consent. These Terms and Conditions and/or any applicable SOF will be binding on the parties hereto and their respective personal and legal representatives, successors, and permitted assigns. If any provision of these Terms and Conditions and/or any applicable SOF is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of these Terms and Conditions and/or any applicable SOF will not be affected thereby. In the event any specified time frame or deadline denotes calendar days, it is agreed that when the last date of required action or response falls on a weekend or holiday, the action and/or deadline will automatically extend to the next business day. Headings are provided for reference purposes only.

25. Definitions. For the purposes of these Terms and Conditions and/or any applicable SOF, the following terms will have the following meanings:

"Account Administrator" means Customer's Administrator who has access to (and is authorized to) modify Customer's billing and other similar account information via any applicable Electronic Tool. For clarity, only one (1) Administrator will serve as Customer's Account Administrator.

"Administrator" means a person (or persons) authorized to act on behalf of Customer, who is/are responsible for the administration and management of the use of any applicable Services by Customer.

"Burstable Dedicated Internet Access Service" means dedicated Internet access services that provide the ability to "burst" above otherwise applicable minimum bandwidth commitments during heavy-traffic periods.

"Default" occurs: (i) if Customer fails to make any payment for Services more than two (2) business days immediately after the applicable Due Date, or any other payment contemplated by these Terms and Conditions and/or any applicable SOF on or before the date two (2) business days immediately after any applicable required date; (ii) if Customer violates the AUP; (iii) if Customer fails to perform or observe any term or obligation of these Terms and Conditions and/or any applicable SOF, including, without limitation, any document incorporated by reference into these Terms and Conditions, not otherwise specified in clauses (i) or (ii) above and applicable to the Services, which failure remains uncured thirty (30) calendar days after Customer's receipt of written notification from Provider informing Customer of such failure; (iv) upon the institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings, by or against Customer, unless such proceedings have been dismissed or discharged not later than the date thirty (30) calendar days immediately after the commencement of such proceeding; (v) upon the making of an assignment for the benefit of creditors, adjudication of insolvency, or institution of any reorganization arrangement or other readjustment of debt plan, of or by Customer; and/or (vi) upon the appointment of a receiver for all or substantially all of Customer's assets.

"Electronic Tools" means online access, application programming interface (API), or access by any other means, to a service ordering/management system to access or manage Customer's use of any applicable Services.

"Intellectual Property" means patents, pending patent applications, designs, trademarks and/or trade names (whether registered or unregistered), copyrights and related rights, database rights, know-how, trade secrets and/or confidential information, and all other intellectual property rights and similar or equivalent rights which currently exist or are recognized in the future, as well as all applications, extensions and renewals in relation to any such rights.

"IP" means Internet Protocol.

“**LEC**” means local exchange carrier.

“**MPLS Services**” means those multiprotocol label switching services described in the SOF by and between Provider and Customer.

“**MRC**” means monthly recurring charge.

“**NRC**” means non-recurring charge.

“**Regulatory Activity**” means any laws, regulations or other similar mandates (including, without limitation, any fees, surcharges or other like charges imposed or mandated) by any federal, state or other governmental agency at any time.

“**RMA**” means a Return Materials Authorization.

“**Service Term**” will mean the period commencing on the Service Activation Date during which any applicable SOF remains in effect with respect to any Services. For clarity, the “Service Term” will expire and/or terminate immediately upon the date when all SOFs entered into with respect to any Services from time to time will have expired and/or terminated by their terms.

“**Services**” means those services described in the SOF by and between Provider and Customer, which services may include Burstable Dedicated Internet Access Services, dedicated Internet access services, Managed Network Services, MPLS Services, Professional Services, and/or private line services.