



## Terms and Conditions

THIS SUBSCRIBER AGREEMENT AND TERMS OF SERVICE (“Agreement”) is entered into by and between NEK Community Broadband Communications Union District dba NEK Broadband (“NEK Broadband”, “us”, “we” or “our”) and the person or entity who subscribes to our Internet services and/or all related services and features or products (“Customer”). By subscribing to and using our services, Customers agree to be bound by the terms of this Agreement and all documents incorporated herein, including NEK Broadband’s Privacy Policy.

1. PROVISION OF SERVICE. NEK Broadband shall provide and Customer shall accept Internet Service (all Internet related services provided by NEK Broadband offered herein and hereinafter defined as “Service” or “Internet Service”) at the applicable rates and charges, subject to the terms and conditions specified in this agreement. NEK Broadband shall provide each Customer with Internet access account ID’s by which that Customer may use our Internet system. The Customer shall not have any proprietary right to the access account ID(s) provided to it by NEK Broadband. Except as otherwise agreed by NEK Broadband in writing, NEK Broadband reserves the right to revise, in its sole discretion, the rates, terms, and conditions of its agreement with Customer upon at least 25 days’ written notice to Customer, such notice to be given at least 25 days’ prior to the end of the then current contract term. Customer agrees to pay for Service pursuant to such revised rates, terms and conditions, unless Customer terminates this agreement in accordance with the terms and conditions of this agreement. NEK Broadband reserves the right to assign, designate or change access account ID(s) when, in its sole discretion, such assignment designation or change is reasonable or necessary in the conduct of its business. Service is subject to transmission limitations caused by atmospheric, topographical and any other such conditions. Additionally, Service may be temporarily refused, limited, interrupted or curtailed due to government regulations or orders, system capacity limitations, limitations imposed by an underlying communications carrier, or because equipment modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of our Internet system. Customer is responsible for all persons who use Customer’s account, unless Customer notifies NEK Broadband within 24 hours of discovering unauthorized use of the account. Except for content labeled with NEK Broadband’s name, we assume no liability for any content or material accessed by the

Customer through the Service.

2. USE OF SERVICE AND EQUIPMENT. Service and equipment are furnished for use by Customer for any lawful purpose. Customer warrants Customer is at least 18 years old.

3. CUSTOMER SERVICE REQUESTS. Applications, including activation, change or discontinuance of Service, will be accepted from Customer in writing via email, telephone, facsimile transmission, via US mail or by other methods acceptable to NEK Broadband.

4. TERM OF AGREEMENT. The initial term of this Agreement commences when the Customer first uses the Internet Service we provide and continues through the last day of the next calendar month. Unless the Customer or NEK Broadband cancels the service in the manner described in this Agreement, the term of this agreement shall be renewed for successive one month terms. This Agreement runs for what is commonly called a month to month term.

5. LIMITATION OF NEK Broadband'S LIABILITY.

(a)CUSTOMER UNDERSTANDS THAT ALTERNATIVE AND COMPETING INTERNET COMMUNICATIONS CARRIERS ARE AVAILABLE TO CUSTOMER; OCCASIONAL INTERRUPTION OR IRREGULARITIES IN THE SERVICE MAY OCCUR; ANY POTENTIAL HARM FROM INTERRUPTIONS OR IRREGULARITIES IN THE SERVICE IS SPECULATIVE IN NATURE; NEK BROADBAND CANNOT OFFER THE SERVICE AT RATES WHICH REFLECT ITS VALUE TO EACH CUSTOMER; AND WE ASSUME NO RESPONSIBILITY OTHER THAN THAT CONTAINED IN THIS AGREEMENT. ACCORDINGLY, CUSTOMER AGREES THAT EXCEPT AS LIMITED BY LAW, NEK Broadband'S SOLE LIABILITY FOR LOSS OR DAMAGE ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN THE SERVICE OR TRANSMISSION OF SERVICE PROVIDED BY NEK BROADBAND OR ANY UNDERLYING COMMUNICATIONS CARRIER, OR FOR LOSSES OR DAMAGES ARISING OUT OF THE FAILURE OF NEK Broadband OR ANY UNDERLYING COMMUNICATIONS CARRIER TO MAINTAIN PROPER STANDARDS OF MAINTENANCE AND OPERATION SHALL BE AS FOLLOWS:

(i)A CREDIT ALLOWANCE AS DESCRIBED IN SUBSECTION 5(a)(iii) BELOW, WILL BE MADE AT CUSTOMER'S REQUEST IN THE FORM OF A PRO-RATA ADJUSTMENT OF THE FIXED MONTHLY CHARGES BILLED TO CUSTOMER. FIXED MONTHLY CHARGES ARE THE MONTHLY CHARGES FOR ACCESS AND OPTIONAL FEATURES PER ACCESS ACCOUNT ID, ALL AS DESCRIBED IN THE RATE SHEET IN EFFECT AT THE TIME OF INTERRUPTION.

(ii) SUCH CREDIT ALLOWANCE WILL BE BASED UPON THE PERIOD OF THE TIME WHICH SUCH MISTAKES, OMISSIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICE OR ITS TRANSMISSION CAUSED INTERRUPTIONS IN THE RENDERING OF THE SERVICE. ANY SUCH PERIOD OF TIME AN INTERRUPTION OCCURS WILL BE MEASURED FROM THE TIME IT IS REPORTED TO NEK Broadband. IN THE EVENT CUSTOMER IS AFFECTED BY SUCH INTERRUPTION FOR A PERIOD OF LESS THAN 24 HOURS, NO SUCH ADJUSTMENT SHALL BE MADE. WHEN AN INTERRUPTION EXCEEDS 24 HOURS, THE LENGTH OF THE INTERRUPTION WILL BE MEASURED IN 24 HOUR DAYS. A FRACTION OF A DAY CONSISTING OF LESS THAN 12 HOURS WILL NOT BE CREDITED, BUT A PERIOD OF 12 HOURS OR MORE WILL BE CONSIDERED AN ADDITIONAL DAY.

(iii) THE CREDIT ALLOWANCE WILL BE COMPUTED BY DIVIDING THE LENGTH OF THE SERVICE INTERRUPTION BY A STANDARD 30 DAY MONTH AND THEN MULTIPLYING THE RESULT BY NEK Broadband'S FIXED MONTHLY CHARGES FOR EACH INTERRUPTED ACCESS ACCOUNT ID. IN NO CASE WILL THE CREDIT EXCEED THE FIXED MONTHLY CHARGES.

(iv) A CREDIT ALLOWANCE WILL NOT BE GIVEN FOR MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS, OR CURTAILMENTS IN THE SERVICE CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF CUSTOMER OR OTHER PARTIES, OR MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS CAUSED BY FAILURE OF EQUIPMENT OR SERVICE NOT PROVIDED BY NEK BROADBAND.

(v) THE SERVICE FURNISHED BY NEK BROADBAND, IN ADDITION TO THE LIMITATIONS SET FORTH PRECEDING, IS ALSO SUBJECT TO THE FOLLOWING LIMITATION: THE LIABILITY OF NEK BROADBAND FOR LOSS OR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICE, ITS TRANSMISSION OR FAILURES OR DEFECTS IN FACILITIES OF THE UNDERLYING COMMUNICATIONS CARRIER, OCCURRING IN THE COURSE OF FURNISHING SERVICE AND NOT CAUSED BY THE NEGLIGENCE OF THE AUTHORIZED USER, OR THE UNDERLYING COMMUNICATIONS CARRIER IN FAILING TO MAINTAIN PROPER STANDARDS OF MAINTENANCE AND OPERATION AND TO EXERCISE REASONABLE SUPERVISION, SHALL IN NO EVENT EXCEED AN AMOUNT EQUIVALENT TO THE PROPORTIONATE FIXED MONTHLY CHARGE TO THE AUTHORIZED USER FOR SERVICE DURING THE PERIOD OF TIME IN WHICH SUCH MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN SERVICE, ITS TRANSMISSION, OR FAILURES OR DEFECTS IN FACILITIES FURNISHED BY NEK Broadband OR THE UNDERLYING COMMUNICATIONS CARRIER OCCURRED.

(b)NEK Broadband shall in no event be liable for service or equipment interruptions or delays in transmission, errors or defects in service or equipment, when caused by acts of God, fire, war, riots, government authorities, default of supplier, or other causes beyond our or any underlying communications carrier's control.

(c)Customer acknowledges that Internet systems use public access facilities to transmit data communications and that the service may not be completely private. NEK Broadband is not liable to Customer for any claims, loss, damages or cost which may result from lack of privacy on the system.

(d)Customer acknowledges that Internet systems may carry material which may be considered abusive, profane, sexually explicit or offensive and that NEK Broadband is not liable to Customer for any claims, loss, damages or cost which may result from such material being available to Customer or someone using Customer's account through the Internet Service.

(e)Customer agrees to use the Service in a way that does not violate any applicable law or which would subject NEK Broadband to liability for Customer's actions. Customer hereby agrees to indemnify and hold NEK Broadband harmless against any loss, cost, damage or fees (including attorney's fees and disbursements), claims for libel, slander, or infringement on intellectual property rights or copyright from the material transmitted, received or stored in any form over our facilities by Customer or those using Customer's equipment or Account I.D.; against claims for infringement of patents arising from combining or using apparatus or systems of Customer with our facilities or any communications carrier; and against all other claims arising out of any act or omission of Customer in connection with the use of the facilities or Service provided by NEK Broadband.

## 6. DISCLAIMER OF WARRANTIES AND LIMITATION OF REMEDIES

a) CUSTOMER ACKNOWLEDGES AND AGREES THAT NEK BROADBAND IS NOT THE MANUFACTURER OF EQUIPMENT AND INTERNET PACKAGE SOFTWARE, AND NEK Broadband HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN CONNECTION WITH THE EQUIPMENT OR SERVICE OR INTERNET PACKAGE SOFTWARE (WHETHER PURCHASED OR LEASED BY CUSTOMER FROM NEK BROADBAND OR ANOTHER), INCLUDING BUT NOT LIMITED TO ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF SUITABILITY, DURABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. NEK BROADBAND, TO THE EXTENT PERMITTED BY LAW, ASSIGNS TO CUSTOMER ANY AND ALL MANUFACTURERS' WARRANTIES RELATING TO EQUIPMENT OR INTERNET PACKAGE SOFTWARE PURCHASED BY CUSTOMER, AND CUSTOMER

ACKNOWLEDGES RECEIPT OF ANY AND ALL SUCH MANUFACTURERS' WARRANTIES.

(b) CUSTOMER ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY IN CONNECTION WITH ANY DEFECTS IN THE EQUIPMENT OR SOFTWARE, INCLUDING MANUFACTURE OR DESIGN, SHALL BE AGAINST THE MANUFACTURER OF THE EQUIPMENT OR SOFTWARE UNDER THE MANUFACTURER'S WARRANTIES AND THAT NEK BROADBAND SHALL HAVE NO LIABILITY TO CUSTOMER IN ANY EVENT FOR ANY LOSS, DAMAGE, INJURY, OR EXPENSE OF ANY KIND OR NATURE RELATED DIRECTLY OR INDIRECTLY TO ANY EQUIPMENT OR SOFTWARE OR SERVICE PROVIDED HEREUNDER. WITHOUT LIMITING THE ABOVE, NEK BROADBAND SHALL HAVE NO LIABILITY OR OBLIGATION TO CUSTOMER, IN EITHER CONTRACT OR TORT, FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCURRED BY CUSTOMER, SUCH AS, BUT NOT LIMITED TO, CLAIMS OR DAMAGES FOR PERSONAL INJURY, WRONGFUL DEATH, LOSS OF USE, LOSS OF ANTICIPATED PROFITS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSSES OF ANY KIND INCURRED BY CUSTOMER DIRECTLY OR INDIRECTLY RESULTING FROM OR RELATED TO ANY EQUIPMENT OR SERVICE OR SOFTWARE DESCRIBED HEREUNDER, WHETHER OR NOT CAUSED BY OUR NEGLIGENCE, TO THE FULL EXTENT SAME MAY BE DISCLAIMED BY LAW. ANY REFERENCES TO EQUIPMENT OR SOFTWARE IN THIS PARAGRAPH SHALL BE DEEMED TO APPLY TO ALL EQUIPMENT OR SOFTWARE PURCHASED BY CUSTOMER OR LEASED BY CUSTOMER FROM NEK BROADBAND OR ANOTHER LESSOR. UNDER CERTAIN LAWS THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES MAY NOT APPLY. YOU MAY ALSO HAVE OTHER LEGAL RIGHTS.

7. INDEMNIFICATION AND RELEASE. Customer agrees to release, defend, indemnify and hold harmless NEK Broadband, its officers and employees, to the full extent permitted by law from and against any and all claims, damages, liabilities and expenses, including legal and attorney fees, of any nature arising directly or indirectly out of this agreement, including, without limitation, claims for personal injury or wrongful death to Customer or users of the equipment, products or services provided by NEK Broadband or used in conjunction with such equipment, products or services provided by us and arising out of the manufacture, purchase, operation, condition, maintenance, installation, return or use of the equipment or service, or arising by operation of law, whether the claim is based in whole or in part on negligent acts or omissions of NEK Broadband, its agents or employees.

8. OPERATING RULES. Customer agrees not to publish on or over the Internet content which violates or infringes upon the rights of any other. If NEK Broadband is challenged by any third party regarding the suitability of Customer's content, we may at our sole discretion delete Customer's content from the Internet service. Customer agrees not to send unsolicited electronic mail to NEK Broadband's subscribers without our explicit written permission for each instance of communication.

9. RATES AND CHARGES. The rates and charges for Internet Service and the rates and charges for optional services provided by NEK Broadband are as set by us from time to time. The initial rates for Internet Service and optional services, as well as Customer payment options, are provided on the rate sheet included in the package with this Agreement. NEK Broadband reserves the right to change the rates for Internet Service and optional services, as well as Customer payment options, from time to time. We will notify Customer of any change in rate and payment option by electronic mail and by posting a notice of the change in rates and charges on the Internet Service. Unless otherwise agreed by NEK Broadband, Customer will be billed in advance for monthly access base rate charges and, if applicable, in arrears for extended connect time, bandwidth and use charges. the

(a) Unless otherwise agreed by NEK Broadband, payment is due to NEK Broadband as stated on the attached rate sheet included with this Agreement.

(b) Customer shall be responsible for payment of charges for all services furnished by NEK Broadband, including without limitation, Service establishment fees, Service connection charges and charges for enhanced features, sales and use taxes, other taxes required by law, fees or other extraction imposed by or for any municipal or other political authority against us. Rates and charges shall be based on prices in effect at the time Service is furnished.

(c) Payments received after the due date may incur a late payment charge of the lessor of 1.5% per month or the highest rate permitted by law of the unpaid balance for each month or fraction thereof that such balance shall remain unpaid.

(d) In the event Customer's equipment is lost, stolen or otherwise absent from Customer's possession and control, Customer shall nonetheless be liable for all use and other charges attributable to the Internet access account ID until such time as NEK Broadband is notified of the loss, theft, or other occurrence.

(e) When payment for Service or equipment is returned, a charge of \$15 may be made by NEK Broadband for each time such item is returned unpaid to us for any reason except to the extent limited by law.

(f) Unless otherwise agreed to by NEK Broadband, Customer shall be responsible for all outstanding charges for service rendered and shall be responsible for all charges through the end of the billing cycle within which termination occurs, without proration of any such charge.

(g) For the first month of service only, all rates and charges will be prorated based on the number of days the service was in use.

## 10. DEFAULT AND WAIVER

(a) In the event that Customer shall default in the payment when due of any sum due hereunder, or in the event of any default or breach of the terms and/or conditions of this agreement, or if any proceeding in bankruptcy, receivership or insolvency or petition for receivership shall be instituted by or against Customer, NEK Broadband, at its option, may:

(i) Proceed by appropriate court action or actions to enforce performance by Customer of the applicable covenants and terms of this agreement or to recover damages for the breach thereof; and/or

(ii) Terminate this agreement, whereupon all rights and interests of customer shall terminate and Customer shall remain liable for all Services provided through the date of termination.

(b) Customer shall pay to NEK Broadband on demand any and all past due amounts which NEK Broadband may sustain by reason of such default or breach by Customer, together with all other charges as provided by this agreement, reasonable attorney's fees incurred by us in connection with such breach or default by Customer and all other costs and expenses incurred by us in collecting such amounts. All amounts shall be payable by Customer without set off or deduction of any kind.

(c) The remedies provided in favor of NEK Broadband in the event of default shall not be deemed to be exclusive but shall be in addition to all other remedies in its favor existing at law.

(d) No failure on the part of NEK Broadband to exercise any right or remedy arising directly or indirectly under this agreement shall operate as a waiver of any right or remedy it may have nor shall an exercise of any right or remedy by us preclude any other right or remedy we may have.

11. ASSIGNMENTS. Neither this agreement nor Customer's rights hereunder shall be assignable by Customer except with NEK Broadband's prior written consent. The conditions hereof shall bind any permitted successors and assigns of Customer.

12. ENTIRE AGREEMENT AND GOVERNING LAW. Customer acknowledges receipt of this agreement, which includes the writing on both sides of this document, and that this agreement contains the entire agreement between the parties relating to the services and/or equipment described in this agreement and that NEK Broadband and its employees have not made orally or in writing any representations, warranties or agreements inconsistent with the terms of this agreement. No modification, change or alteration of any of the terms of this agreement shall be valid unless in writing and signed by NEK Broadband and Customer except as otherwise provided herein. This agreement supersedes all prior agreements and understandings, both oral and written, with respect to the subject matter hereof. Customer agrees to notify us within 30 days of any change of Customer's address. This agreement shall be governed by, construed and enforced in accordance with the laws of the State of Vermont.

13. SEVERABLE PROVISIONS. If any part of this agreement is contrary to or prohibited by or deemed invalid under applicable laws and regulations of any applicable jurisdiction, the remaining provisions and parts thereof shall remain and be construed in full force and effect to the extent permitted by law.

14. RENEWAL AND TERMINATION. Unless Customer or NEK Broadband terminates this agreement as provided herein, and except as otherwise agreed, upon completion of any initial term of this agreement, this agreement shall renew on a month-to-month basis. Notice of Customer's intent to terminate this agreement shall be made in writing to NEK Broadband by email at [csdept@nekbroadband.org](mailto:csdept@nekbroadband.org); by mail at P.O. Box 712, Hardwick, Vermont 05843 or via phone (877) NEK-Fibe(r)/(877) 635-3423 or by other methods acceptable to us. NEK Broadband reserves the right not to renew this agreement at any time prior to the conclusion of the initial or any renewal term by giving Customer notice of same.