

# CUSTOMER TERMS AND CONDITIONS



## APX NET, INC CUSTOMER TERMS AND CONDITIONS

The Customer named on the APX Net, Inc Service Order Agreement and APX Net, Inc agree that the terms and conditions on the APX Net, Inc Service Order Agreement and these terms and conditions, constitute the agreement (the "Agreement") for the provision of the Services selected by Customer and designated on a Service Order. Services may include APX Net, Inc commercial high-speed internet services ("Internet"), Metro Ethernet Services (WAN) and all services provided under the agreement by APX Net, Inc. The terms and conditions in the "GENERAL TERMS AND CONDITIONS" section below are applicable to all Services.

### GENERAL TERMS AND CONDITIONS

#### DEFINITIONS

**Affiliate:** Any entity that controls, is controlled by or is under common control with APX Net, Inc.

**Agreement:** Consists of these terms and conditions and the Service Order Agreement executed by Customer and accepted by APX Net, Inc, any written Amendments to the Agreement executed by both Parties including any supplemental terms and conditions ("Amendment(s)"), and each Sales Order accepted by APX Net, Inc under the Agreement.

**Amendment(s):** Any written amendment to the Agreement, executed by both Parties, including any supplemental Terms & Conditions.

**APX Net, Inc:** The operating company that offers Internet Services, WAN and all services provided under the Agreement by APX Net, Inc.

**APX Net, Inc Equipment:** Any and all facilities, equipment or devices provided by APX Net, Inc or its authorized underlying carriers at the Service Location(s) that are used to deliver any of the Services including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks. Notwithstanding the above, inside telephone wiring, whether or not installed by APX Net, Inc, shall not be considered APX Net, Inc Equipment.

**APX Net, Inc Website or Website:** The APX Net, Inc website where the Terms & Conditions, APX Net Security & Privacy policies applicable to the Agreement will be posted. The current URL for the Website is [https://apxnet.com/pdfs/APXnet\\_Terms\\_And\\_Conditions.pdf](https://apxnet.com/pdfs/APXnet_Terms_And_Conditions.pdf). APX Net, Inc may update the Website documentation and/or URL from time to time.

**Confidential Information:** All information regarding either party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential" or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, the Agreement, all Licensed Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the parties' communications regarding such items.

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**Customer:** The Company, corporation, or other entity named on the Service Order Agreement, and or sales order.

**Customer-Provided Equipment:** Any and all facilities, equipment or devices supplied by Customer for use in connection with the Services.

**Demarcation Point:** The point of interconnection between the Network.

**Invoice:** Provided monthly through electronic distribution only.

**Licensed Software:** Computer software or code provided by APX Net, Inc or required to use the Services, including without limitation, associated documentation, and all updates thereto.

**Active Order:** An order is considered an Active Order upon signature by the Customer and APX Net at which time work begins by APX Net to implement requested services.

**Party:** A reference to APX Net, Inc or the Customer; and in the plural, a reference to both companies.  
**Product Specific Attachment(s) PSA:** The additional terms and conditions applicable to Services ordered by Customer under the Agreement.

**Revenue Commitment:** A commitment by Customer to purchase the volume of service during an agreed term, as set forth in a sales order.

**Service(s):** Internet, and data services provided by APX Net, Inc to Customer described in one or more Service Order(s). All Services are for commercial use only. Services available under this Agreement are identified on the Website.

**Service Commencement Date:** The date(s) on which APX Net, Inc first makes Service available for use by Customer. A single Service Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.

**Service Order:** A request for APX Net, Inc to provide the Services to Service Location(s) submitted by Customer to APX Net, Inc (a) on a then-current APX Net, Inc form designated for that purpose or (b) if available, through a APX Net, Inc electronic order processing system designated for that purpose.

**Service Order Agreement:** The Agreement under which all Service Orders are submitted to APX Net, Inc.  
**Service Location(s):** The Customer location(s) where APX Net, Inc provides the Services.

**Service Term:** The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in a Service Order Agreement.

**Termination Charges:** Charges that may be imposed by APX Net, Inc if, prior to the end of the applicable Service Term (a) APX Net, Inc terminates Services for cause or (b) Customer terminates Services without cause. Termination Charges with respect to each terminated Service Order shall equal, in addition to all amounts payable by Customer

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in accordance with Section 5.3, One hundred percent (100%) of the remaining monthly fees that would have been payable by Customer under the Service Order if the Services described in the Service Order had been provided until the end of the Service Term. In the event the Agreement is terminated as herein described during the initial Service Term, Termination Charges shall also include one hundred percent (100%) of any amount incurred by APX Net, Inc or last mile provider in connection with Custom Installation, as that term is defined in Section 2.7, for the Services provided by APX Net, Inc under the Service Order. If Customer chooses to cancel services, after acceptance of Service Order Agreement, by APX Net, Inc, and prior to any initial construction, there will be a \$850 Termination Charge.

## **ARTICLE 1: CHANGES TO THE AGREEMENT TERMS**

APX Net, Inc may change or modify the Agreement, and any related policies from time to time (“Revisions”) by posting such revisions to the APX Net, Inc Website. The Revisions are effective immediately upon posting to the Website. Customer will receive notice of the Revisions in the next applicable monthly invoice. Customer shall have thirty (30) calendar days from the invoice notice of such Revisions to provide APX Net, Inc with written notice that the Revisions adversely affect Customer’s use of the Service(s). If after such notice APX Net, Inc is able to verify such adverse effect but is unable to reasonably mitigate the Revision’s impact on such Service(s), then Customer may terminate the impacted Service(s) without further obligation to APX Net, Inc beyond the termination date, including Termination Charges, if any. This shall be the Customer’s sole and exclusive remedy.

## **ARTICLE 2. DELIVERY OF SERVICES**

**2.1 Orders.** Customer shall submit to APX Net, Inc a properly completed Service Order to initiate Services to a Service Location(s). A Service Order shall become binding on the parties when (i) it is specifically accepted by APX Net, Inc either electronically or in writing, (ii) APX Net, Inc begins providing the Services described in the Service Order or (iii) APX Net, Inc begins Custom Installation (as defined in Section 2.7) for delivery of the Services described in the Service Order, whichever is earlier. When a Service Order becomes effective it shall be deemed part of, and shall be subject to, the Agreement.

**2.2 Speed.** Speeds of APX Net’s products and services are covered under each specific product Service Level Agreement (SLA).

**2.3 Access.** Customer, at no cost to APX Net, Inc, shall secure and maintain all necessary rights of access to Service Location(s) for APX Net, Inc to install and provide the Services, unless APX Net, Inc has secured such access prior to this Agreement. In addition, Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the APX Net, Inc Equipment used to provide the Services within the Service Location(s). APX Net, Inc and its employees and authorized underlying carriers will require free ingress and egress into and out of the Service Location(s) in connection with the provision of Services. Upon reasonable notice from APX Net, Inc, Customer shall provide all required access to APX Net, Inc and its authorized personnel.

**2.4 Service Commencement Date.** Upon installation and connection of the necessary facilities and equipment to provide the Services, APX Net, Inc shall notify Customer that the Services are available for use, and the date of such notice shall be called the “Service Commencement Date.” Any failure or refusal on the part of Customer to be ready to receive the Services on the Service Commencement Date shall not relieve Customer of its obligation to pay applicable Service charges.

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**2.5 APX Net, Inc Equipment.** APX Net, Inc Equipment is and shall remain the property of APX Net, Inc regardless of where installed within the Service Location(s), and shall not be considered a fixture or an addition to the land or the Service Location(s). At any time APX Net, Inc may remove or change APX Net, Inc Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any APX Net, Inc Equipment or permit others to do so, and shall not use the APX Net, Inc Equipment for any purpose other than that authorized by the Agreement. APX Net, Inc shall maintain APX Net, Inc Equipment in good operating condition during the term of this Agreement; provided, however, that such maintenance shall be at APX Net, Inc's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the APX Net, Inc Equipment. Customer is responsible for damage to, or loss of, APX Net, Inc Equipment caused by its acts or omissions, and its noncompliance with this Section, or by fire, theft or other casualty at the Service Location(s), unless caused by the negligence or willful misconduct of APX Net, Inc. Customer agrees not to take any action that would directly or indirectly impair APX Net, Inc's title to the APX Net, Inc Equipment, or expose APX Net, Inc to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Following APX Net, Inc's discontinuance of the Services to the Service Location(s), APX Net, Inc retains the right to remove the APX Net, Inc Equipment including, but not limited to, that portion of the APX Net, Inc Equipment located within the Service Location(s). To the extent APX Net, Inc removes such APX Net, Inc Equipment; it shall be responsible for returning the Service Location(s) to its prior condition, wear and tear excepted. Customer is responsible for returning equipment in a timely manner.

**2.6 Customer-Provided Equipment.** APX Net, Inc shall have no obligation to install, operate, or maintain Customer-Provided Equipment. Customer alone shall be responsible for providing maintenance, repair, operation and replacement of all inside telephone wiring and equipment and facilities on the Customer's side of the cable modem, route and/or coaxial input connection. All Customer-Provided Equipment and wiring that Customer uses in connection with the Services must be fully compatible with the Services. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by APX Net, Inc's employees or authorized contractors when the difficulty or trouble report results from Customer-Provided Equipment.

**2.7 Engineering Review.** Each Service Order submitted by Customer shall be subject to an engineering review by APX Net, Inc. The engineering review will determine whether the outside plant must be extended, built or upgraded ("Custom Installation") in order to provide the ordered Services at the requested Service Location(s). APX Net, Inc will provide Customer written notification in the event Service installation at any Service Location will require an additional one-time installation fee ("Custom Installation Fee"). Customer will have five (5) days from receipt of such notice to reject the Custom Installation Fee and terminate, without further liability, the Service Order with respect to the affected Service Location(s).

**2.8 Administrative Web Site.** APX Net, Inc may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). APX Net, Inc may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify APX Net, Inc if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and APX Net, Inc shall be entitled to rely on all Customer uses of and submissions to the Administrative Web Site as authorized by Customer. APX Net, Inc shall not be liable for any

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loss, cost, expense or other liability arising out of any Customer use of the Administrative Web Site or any information on the Administrative Web Site. APX Net, Inc may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

## **ARTICLE 3. CHARGES, BILLING AND PAYMENT**

**3.1 Charges.** Customer shall pay APX Net, Inc one hundred percent (100%) of the Custom Installation Fee prior to the installation of Service. Customer further agrees to pay all charges associated with the Services, as set forth or referenced in the applicable Service Order(s) or invoiced by APX Net, Inc. These charges may include, but are not limited to installation charges, monthly recurring service charges, usage charges including without limitation charges for the use of APX Net, Inc Equipment, maintenance and repair charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). Flat rated product pricing across multiple Service Location(s) are subject to change as a result of Customer requests for additions or deletions to Service Location(s). Invoices will be electronically distributed. Customer is responsible for providing accurate, current/updated email address to ensure electronic distribution of invoice. Customer is responsible for late fees that may accrue due to non-current or non-updated email address for electronic invoice distribution.

**3.2 Payment of Bills.** Except as otherwise indicated herein or on the Service Order(s), APX Net, Inc will invoice Customer in advance on a monthly basis for all monthly recurring Service charges and fees arising under the Agreement. All other charges will be billed monthly in arrears. Customer shall make payment to APX Net, Inc for all invoiced amounts within thirty (30) days after the date of the invoice. Any amounts not paid to APX Net, Inc within such period will be considered past due. If a Service Commencement Date is not the first day of a billing period, Customer's next monthly invoice shall include a pro rated charge for the Services, from the date of installation to the first day of the new billing.

**3.3 Partial Payment.** Partial payment of any bill will be applied to the Customer's outstanding charges in the amounts and proportions as solely determined by APX Net, Inc. No acceptance of partial payment(s) by APX Net, Inc shall constitute a waiver of any rights to collect the full balance owed under the Agreement.

**3.4 Payment by Credit Card.** Upon Customer's written request and APX Net, Inc's acceptance of such request, APX Net, Inc will accept certain credit card payments for charges generated under the Agreement, passing along the credit card processing fee to Customer. Present credit card processing fee is .04% of total invoice charges. By providing APX Net, Inc with a credit card number, Customer authorizes APX Net, Inc to charge the card for all charges generated under this Agreement, until (i) this Agreement is terminated or (ii) Customer provides sixty (60) days prior notice that APX Net, Inc stop charging the credit card. Customer agrees to provide APX Net, Inc with updated credit card or alternate payment information on a timely basis prior to the expiration or termination of the credit card on file or in the event that Customer's credit card limit is or will be insufficient to cover payment. If APX Net, Inc is unable to charge Customer's credit card for any reason, Customer agrees to pay all amounts due, including any late payment charges or bank charges, upon demand by APX Net, Inc. APX Net, Inc may limit the option to pay by credit card to specific Services or may discontinue acceptance of credit card payments in whole or in part upon thirty (30) days prior notice to Customer.

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**3.5 Payment by ACH/Wire Transfer.** Customer has the option of providing payment by ACH or Wire Transfer, with prior notification to APX Net, Inc. If ACH or Wire Transfer is made without prior notification, APX Net, Inc will charge a \$25 ACH/Wire Handling Fee.

**3.6 Credit Approval and Deposits.** Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide APX Net, Inc with credit information requested by APX Net, Inc. Customer authorizes APX Net, Inc to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's records. Customer represents and warrants that all credit information that it provides to APX Net, Inc will be true and correct. APX Net, Inc, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Additionally, subject to applicable regulations, APX Net, Inc may require Customer to make a deposit (in an amount not to exceed an estimated two-months charge for the Services) as a condition to APX Net, Inc's provision of the Services, or as a condition to APX Net, Inc's continuation of the Services. The deposit will not, unless explicitly required by law, bear interest and shall be held by APX Net, Inc as security for payment of Customer's charges. If the provision of Service to Customer is terminated, or if APX Net, Inc determines in its sole discretion that such deposit is no longer necessary, then the amount of the deposit will be credited to Customer's account or will be refunded to Customer, as determined by APX Net, Inc.

**3.7 Taxes and Fees.** Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes or fees (however designated). Customer will be responsible to pay any Service fees, payment obligations and taxes that become applicable retroactively.

**3.8 Other Government-Related Costs and Fees.** APX Net, Inc reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees (if any), regardless of whether APX Net, Inc or its Affiliates pay the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. These obligations may include those imposed on APX Net, Inc or its affiliates by an order, rule, or regulation of a regulatory body or a court of competent jurisdiction, as well as those that APX Net, Inc or its affiliates are required to collect from the Customer or to pay to others in support of statutory or regulatory programs. For example, customers are charged a monthly regulatory recovery fee to help defray APX Net, Inc's contributions to municipal, state, and federal programs including, without limitation, universal service, telecom relay services for the visually/hearing impaired, and 911/E911 programs and infrastructure. This regulatory recovery fee is not a tax, and it is not government-mandated. Taxes and other government-related fees and surcharges may be changed with or without notice.

**3.9 Disputed Invoice.** If Customer disputes any portion of an invoice, Customer must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Customer's claim, to APX Net, Inc for the disputed amount of the invoice by the invoice due date. This can be submitted to CustomerService@apxnet.com. The Parties shall negotiate in good faith to resolve the dispute. However, should the parties fail to mutually resolve the dispute within sixty (60) days after the dispute was submitted to APX Net, Inc, all disputed amounts shall become immediately due and payable to APX Net, Inc.

**3.10 Past-Due Amounts.** Any undisputed payment not made when due will be subject to a reasonable late charge not to exceed the highest rate allowed by law on the unpaid invoice. If Customer's account is delinquent, APX Net, Inc may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or

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any APX Net, Inc Equipment that Customer fails to return in accordance with the Agreement. If APX Net, Inc is required to use a collection agency or attorney to collect any amount owed by Customer or any unreturned APX Net, Inc Equipment, Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to APX Net, Inc under the Agreement or at law or in equity.

**3.11 Rejected Payments.** Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution.

**3.12 Fraudulent Use of Services.** Customer is responsible for all charges attributable to Customer with respect to the Services, even if incurred as the result of fraudulent or unauthorized use of the Services. APX Net, Inc may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. APX Net, Inc reserves the right to restrict, suspend or discontinue providing any Service in the event of fraudulent use by Customer.

**3.13 Custom Invoice Distribution.** In the event a customer requires changes to APX Net, Inc invoicing format or uploading requests, customer assumes \$50/hour, minimum 1 hr charge, for changes to be made.

**3.14 Fee Schedule.**

- Account Conversion Fee \$100.00
- Disconnect Fee \$100.00
- Reconnect Fee \$100.00
- Returned Check Fee \$ 45.00
- Document Research Fee \$ 25.00 per document/invoice/contract
- Service Transfer Fee \$ 50.00
- Wire Transfer Fee \$ 25.00
- Transfer of Ownership \$250.00
- Copyright Infringement Fee \$100.00 per infringement
- Credit Card Fee .04% of total invoice charges

## **ARTICLE 4. TERM**

**4.1 Agreement Term.** This Agreement shall terminate upon the expiration or other termination of the final existing Service Order entered into under this Agreement. The term of a Service Order shall commence on the Service Commencement Date and shall terminate at the end of the stated Service Term of such Service. Unless otherwise stated in these terms and conditions, if a Service Order does not specify a term of service, the Service Term shall be one (1) year from the Service Commencement Date.

**4.2 Service Order Renewal.** Upon the expiration of the Service Term, this Agreement and each applicable Service Order shall automatically renew for successive periods of one (1) year each ("Renewal Term(s)"), unless otherwise stated in these terms and conditions or prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the Service Term or the then current Renewal Term. Effective at any time after

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the end of the initial Service Term and from time to time thereafter, APX Net, Inc may, modify the charges for Internet Services subject to thirty (30) days prior notice to Customer. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing.

## **ARTICLE 5. TERMINATION OF AGREEMENT AND/OR A SALES ORDER**

**5.1 Termination for Convenience.** Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order, or this Agreement in whole or part, at any time during the Service Term upon sixty (60) days prior notice to APX Net, Inc, and subject to payment to APX Net, Inc of all outstanding amounts due for the Services, any and all applicable Termination Charges, and the return of any and all APX Net, Inc Equipment.

### **5.2 Termination for Cause.**

**(a)** If Customer is in breach of a payment obligation (including failure to pay a required deposit), and fails to make payment in full within ten (10) days after receipt of notice of default, or has failed to make payments of all undisputed charges on or before the due date on three (3) or more occasions during any twelve (12) month period, APX Net, Inc may, at its option, terminate this Agreement, terminate the affected Service Orders, suspend Service under the affected Service Orders, and/or require a deposit, advance payment, or other satisfactory assurances in connection with any or all Service Orders as a condition of continuing to provide the Services. However, APX Net, Inc will not take any such action as a result of Customer's non-payment of a charge that is the subject of a timely billing dispute, unless the parties have reviewed the dispute and determined in good faith that the charge is correct.

**(b)** If either party breaches any material term of this Agreement and the breach continues without remedy for thirty (30) days after notice of default, the non-defaulting party may terminate for cause any Service Order materially affected by the breach.

**(c)** A Service Order may be terminated by either party immediately upon notice if the other party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors.

**(d)** Termination by either party of a Service Order does not waive any other rights or remedies that it may have under this Agreement.

**5.3 Effect of Expiration or Termination of the Agreement or a Service Order.** Upon the expiration or termination of a Service Order for any reason: (i) APX Net, Inc may disconnect the applicable Service; (ii) APX Net, Inc may delete all applicable data, files, electronic messages or other information stored on APX Net, Inc's servers or systems; (iii) if Customer has terminated the Service Order prior to the expiration of the Service Term for convenience, or if APX Net, Inc has terminated the Service Order prior to the expiration of the Service Term as a result of material breach by Customer, APX Net, Inc may assess and collect from Customer applicable Termination Charges; (iv) Customer shall, permit APX Net, Inc access to retrieve from the applicable Service Locations any and all APX Net, Inc Equipment. If Customer fails to permit access, or if the retrieved APX Net, Inc Equipment has been damaged and/or destroyed other than by APX Net, Inc or its agents, normal wear and tear excepted, APX Net, Inc may invoice Customer for the full



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replacement cost of the relevant APX Net, Inc Equipment, or in the event of minor damage to the retrieved APX Net, Inc Equipment, the cost of repair, which amounts shall be immediately due and payable; and (v) if used in conjunction with the terminated Service, Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return the Licensed Software to APX Net, Inc.

**5.4 Regulatory and Legal Changes.** The parties acknowledge that the respective rights and obligations of each party as set forth in this Agreement upon its execution are based on law and the regulatory environment as it exists on the date of execution of this Agreement. APX Net, Inc may, in its sole discretion, immediately terminate this Agreement, in whole or in part, in the event there is a material change in any law, rule, regulation, Force Majeure event, or judgment of any court or government agency, and that change affects APX Net, Inc's ability to provide the Services herein.

## **ARTICLE 6. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES; WARNINGS**

**6.1 NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT, WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT, PROVIDED, HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY APX NET, INC OR FOR EARLY TERMINATION CHARGES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ENTIRE LIABILITY OF APX NET, INC AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS OR CONTRACTORS FOR LOSS, DAMAGES AND CLAIMS ARISING OUT OF THE DELIVERY OF THE SERVICES INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR THE APX NET, INC EQUIPMENT SHALL BE LIMITED TO A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.**

**6.2 THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, APX NET, INC EQUIPMENT, OR LICENSED SOFTWARE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, APX NET, INC DOES NOT WARRANT THAT THE SERVICES, APX NET, INC EQUIPMENT, OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES, APX NET, INC EQUIPMENT, OR LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES, APX NET, INC EQUIPMENT, OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.**

**6.3 APX NET, INC MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES, APX NET, INC EQUIPMENT, OR LICENSED SOFTWARE FOR USE BY THIRD PARTIES.**

**6.4 IN NO EVENT SHALL APX NET, INC, OR ITS ASSOCIATED PARTIES, SUPPLIERS, CONTRACTORS OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (i) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (ii) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (iii) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH**

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**APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (iv) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.**

**6.5 DISRUPTION OF SERVICE.** Notwithstanding the performance standard as identified in a PSA, the Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment (“High Risk Activities”). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. Customer expressly assumes the risks of any damages resulting from High Risk Activities. APX Net, Inc shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances, including, but not limited to, causes attributable to Customer or Customer-Equipment; inability to obtain access to the Service Locations; failure of a communications satellite; loss of use of poles or other utility facilities; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; fire, flood, lightning, earthquake, wind, ice, extreme weather conditions or other acts of God; failure or reduction of power; or any court order, law, act or order of government restricting or prohibiting the operation or delivery of the Services.

**6.6 Customer’s sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement.** Certain of the above exclusions may not apply if the state in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of APX Net, Inc and its affiliates and agents is limited to the maximum extent permitted by law.

## **ARTICLE 7. INDEMNIFICATION**

**7.1** Subject to Article 6, each Party (“Indemnifying Party”) will indemnify and hold harmless the other Party (“Indemnified Party”), its affiliates, officers, directors, employees, stockholders, partners, providers, independent contractors and agents from and against any and all joint or several costs, damages, losses, liabilities, expenses, judgments, fines, settlements and any other amount of any nature, including reasonable fees and disbursements of attorneys, accountants, and experts, arising from any and all claims, demands, actions, suits, or proceedings whether civil, criminal, administrative, or investigative (collectively, “Claims”) relating to: (i) any Claim of any third party resulting from the negligence or willful act or omission of Indemnifying Party arising out of or related to the Agreement, the obligations hereunder, and uses of Services, APX Net, Inc Equipment, and Licensed Software; and (ii) any Claim of any third party alleging infringement of a U.S. patent or U.S. copyright arising out of or related to this Agreement, the obligations hereunder, and the use of Services, APX Net, Inc Equipment, and Licensed Software.

**7.2** Indemnification Process. The Indemnifying Party agrees to defend the Indemnified Party for any loss, injury, liability, claim or demand (“Actions”) that is the subject of Article 7 hereof. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The Indemnifying Party shall assume the defense of any Action with counsel of its own choosing, but which is reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ its own counsel in any such case, and shall pay such counsel’s fees and expenses. The Indemnifying

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Party shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 8. SOFTWARE & SERVICES**

**8.1 License.** If and to the extent Customer requires the use of Licensed Software in order to use the Services supplied under any Service Order, Customer shall have a personal, nonexclusive, nontransferable, and limited license to use the Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. Customer may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto) and Customer shall execute any documentation reasonably required by APX Net, Inc, including, without limitation, end-user license agreements for the Licensed Software. APX Net, Inc and its suppliers shall retain ownership of the Licensed Software, and no rights are granted to Customer other than a license to use the Licensed Software under the terms expressly set forth in this Agreement.

**8.2 Restrictions.** Customer agrees that it shall not: (i) copy the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of APX Net, Inc; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

**8.3 Updates.** Customer acknowledges that the use of the Services may periodically require updates and/or changes to certain Licensed Software resident in the APX Net, Inc Equipment or Customer-Provided Equipment. If APX Net, Inc has agreed to provide updates and changes, APX Net, Inc may perform such updates and changes remotely or on-site, at APX Net, Inc's sole option. Customer hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by APX Net, Inc. If customer fails to agree to such updates, APX Net, Inc will be excused from the applicable Service Level Agreement and other performance credits, and any and all liability and indemnification obligations regarding the applicable Service.

**8.4 Ownership of Numbers and Addresses.** Customer acknowledges that use of the Services does not give it any ownership or other rights in any number or Internet/on-line addresses provided, including but not limited to Internet Protocol ("IP") addresses, e-mail addresses and web addresses.

**8.5 Intellectual Property Rights in the Services.** Title and intellectual property rights to the Services are owned by APX Net, Inc, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, reselling, bundling or publication of the Services, in whole or in part, without express prior written consent from APX Net, Inc or other owner of such material, is prohibited.

**8.6 Request of Technical Support.** In the event technical support is requested, the customer must (a) be current in its obligations with APX, Net Inc; (b) open a trouble ticket by calling 1-877-658-2724 or via email [ttsupport@apxnet.com](mailto:ttsupport@apxnet.com); (c) provide customer name, APX, Inc account number; (d) service address & service description; (e) circuit id.

# CUSTOMER TERMS AND CONDITIONS



## **ARTICLE 9. CONFIDENTIAL INFORMATION AND PRIVACY**

**9.1 Disclosure and Use.** All Confidential Information shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using the Services, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

**9.2 Exceptions.** Notwithstanding the foregoing, each party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law or regulation.

**9.3 Remedies.** Notwithstanding any other Article of this Agreement, the non-breaching party shall be entitled to seek equitable relief to protect its interests pursuant to this Article 9, including, but not limited to, injunctive relief.

**9.4 Monitoring.** Except as otherwise expressly set forth in a PSA, APX Net, Inc shall have no obligation to monitor postings or transmissions made in connection with the Services, however, Customer acknowledges and agrees that APX Net, Inc and its agents shall have the right to monitor any such postings and transmissions from time to time and to use and disclose them in accordance with this Agreement, and as otherwise required by law or government request. APX Net, Inc reserves the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in APX Net, Inc's sole discretion, is unacceptable, undesirable or in violation of this Agreement.

**9.5 Publicity.** The Agreement provides no right to use APX Net's trademarks, service marks or trade names, or to otherwise refer to APX Net in any marketing, promotional, or advertising materials or activities. Customer shall not issue any publication or press release relating to, or otherwise disclose the existence of, the terms and conditions of any contractual relationship between APX Net, Inc and Customer, except as permitted by the Agreement or otherwise consented to in writing by APX Net.

**9.6 Passwords.** APX Net, Inc may furnish Customer with user identifications and passwords for use in conjunction with certain Services, including without limitation, for access to certain non-public APX Net, Inc website materials. Customer understands and agrees that such information shall be subject to APX Net, Inc's access policies and procedures.

**9.7 Survival of Confidentiality Obligations.** The obligations of confidentiality and limitation of use described in this Article 9 shall survive the expiration and termination of the Agreement for a period of two (2) years (or such longer period as may be required by law).

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## **ARTICLE 10: USE OF SERVICE; USE AND PRIVACY POLICIES**

**10.1 Prohibited Uses and APX Net Use Policies.** Customer is prohibited from using, or permitting the use of, any Service (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of any Use Policy (as defined below); (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, and permits; or (iv) to interfere unreasonably with the use of APX Net service by others or the operation of the Network. Customer is responsible for assuring that any and all of its users comply with the provisions of the Agreement. APX Net reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if APX Net determines that such use is prohibited as identified herein, or information does not conform with the requirements set or APX Net reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. Furthermore, to the extent applicable, Services shall be subject to APX Net's acceptable use policies ("Use Policies") that may limit use. The Use Policies and other security policies concerning the Services are posted on the Website, and are incorporated into this Agreement by reference. APX Net may update the Use Policies from time to time, and such updates shall be deemed effective immediately upon posting, with or without actual notice to Customer. APX Net's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other users' use or information.

**10.2 Privacy Policy.** In addition to the provisions of Article 9, the privacy policy posted on the APX Net website [https://apxnet.com/pdfs/APXnet\\_Privacy\\_Policy.pdf](https://apxnet.com/pdfs/APXnet_Privacy_Policy.pdf) applies to APX Net, Inc's handling of Customer confidential information. In the event of a conflict between the provisions of Article 9 and any provision of the privacy policy, the applicable provision of the privacy policy shall prevail in the resolution of the conflict.

**10.3 Privacy Note Regarding Information Provided to Third Parties.** APX Net, Inc is not responsible for any information provided by Customer to third parties, and this information is not subject to the privacy provisions of this Agreement or the privacy policies. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

**10.4 Resale.** Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof.

**10.5 Violation.** Any breach of this Article 10 shall be deemed a material breach of this Agreement. In the event of such material breach, APX Net, Inc shall have the right to restrict, suspend, or terminate immediately any or all Service Orders, without liability on the part of APX Net, Inc, and then to notify Customer of the action that APX Net, Inc has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

## **ARTICLE 11. MISCELLANEOUS TERMS**

**11.1 Force Majeure.** Neither party shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way, unavailability of services or materials upon which the Services rely, or other causes beyond the party's reasonable control, except that Customer's

# CUSTOMER TERMS AND CONDITIONS



obligation to pay for Services provided shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.

**11.2 Assignment and Transfer.** Neither Party shall assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of the other Party, which shall not be unreasonably conditioned, delayed or withheld. The foregoing notwithstanding, APX Net, Inc may assign this Agreement to any affiliate, related entity, or successor in interest without Customer's consent. In addition, APX Net, Inc may partially assign its rights and obligations hereunder to any party that acquires from APX Net, Inc all or substantially all of the Services deployed to Customer. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party.

**11.3 Notices.** Except as otherwise provided in this Agreement, any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via electronic delivery, overnight courier, or via U.S. Certified Mail, Return Receipt Requested. Notices to Customer shall be sent to the Customer billing email address provided by customer; notices to APX Net, Inc shall be sent to CustomerService@apxnet.com, or to 2 School Street, Berwick Maine, 03901, Attn: Director of Business Customer Operations. All such notices shall be deemed given and effective on the day when delivered by overnight delivery service or certified mail.

**11.4 Entire Understanding.** The Agreement constitutes the entire understanding of the parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the parties' rights or obligations relating to the Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not expressly provided for in this Agreement are of no effect. Terms or conditions contained in any purchase order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect. Only specifically authorized representatives of APX Net, Inc may make modifications to this Agreement or this Agreement's form. No modification to the form or this Agreement made by a representative of APX Net, Inc who has not been specifically authorized to make such modifications shall be binding upon APX Net, Inc. No subsequent agreement among the parties concerning the Services shall be effective or binding unless it is executed in writing by authorized representatives of both parties.

**11.5 Construction.** In the event that any portion of this Agreement is held to be invalid or unenforceable, the parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the parties, and the remainder of this Agreement shall remain in full force and effect.

**11.6 Survival.** The rights and obligations of either party that by their nature would continue beyond the expiration or termination of this Agreement or any Service Order, including without limitation representations, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement or any Service Order.

**11.7 Choice of Law.** The domestic law of the state of Maine shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law.

**11.8 No Third-Party Beneficiaries.** This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

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**11.9 No Waiver.** No failure by either party to enforce any rights hereunder shall constitute a waiver of such right(s).

**11.10 Independent Contractors.** The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

**11.11 Article Headings.** The article headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

**11.12 Compliance with Laws.** Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

**11.13 Severability.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

**December 1, 2018**