



Sparkplug, Inc. Terms of Service Agreement (Business and Enterprise Broadband Services)

PLEASE READ THIS SPARKPLUG, INC. TERMS OF SERVICE AGREEMENT CAREFULLY. BY ORDERING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION THE PRIVACY POLICY, ACCEPTABLE USE POLICY, AND ALL POLICIES AND GUIDELINES INCORPORATED BY REFERENCE IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOTIFY SPARKPLUG, INC. IN WRITING WITHIN FIVE (5) DAYS OF ORDERING THE SERVICE THAT YOU DO NOT WANT TO USE THE SERVICE.

This Terms of Service Agreement (the "Agreement") governs your purchase and use of the broadband services (the "Services") and the use of the subscriber module and any additional equipment required (the "Sparkplug Equipment") provided by Sparkplug, Inc., a Delaware corporation and its affiliates (collectively, "Sparkplug") in accordance with the Service Agreement submitted by you to Sparkplug (the "Service Agreement"). This Agreement includes, and incorporates by this reference, the Service Agreement, Sparkplug's [Privacy Policy](#), the [Acceptable Use Policy](#), the terms and conditions described in any service plan (each, a "Service Plan") ordered by you and all other policies or guidelines referenced below. This Agreement describes the terms and conditions that apply to your purchase and use of the Service and use of the Sparkplug Equipment. You must accept the terms of this Agreement to use the Services and Sparkplug Equipment. If you are acting as an employee, you acknowledge that you are authorized by your employer to use the Services and Sparkplug Equipment and bind your employer to the terms and conditions of this Agreement. As used in this Agreement, "you" or "your" includes you and your employer. If you would like to print this Agreement, please click the print button on your browser toolbar.

1. Broadband Services.

During the Term, Sparkplug will provide the Services to you in accordance with the Service Plan you selected in your Service Agreement, provided that you comply with the terms and conditions of this Agreement. Sparkplug will provide you with connections to the Sparkplug network. Sparkplug's responsibility for the Services ends at the Sparkplug Equipment. The Services are provided to you for your use only.

2. Restrictions.

Without limiting the generality of the foregoing, you will not, directly or indirectly, (a) enable any personnel other than authorized users to access and use the Services or Sparkplug Equipment; (b) lease, rent, sublicense, transfer, resell, or otherwise grants rights to the Services to any third party without the express written consent of Sparkplug; (c) use the Service in a manner prohibited by any federal, state, or local law or regulation, or Sparkplug's policies and guidelines described in this Agreement, or (d) use the Sparkplug Equipment or Service for any abusive purpose or in any way that damages Sparkplug's property or interferes with or disrupts Sparkplug's network or other users: (f) attempt to circumvent user authentication or security of any host, network, or account (including, but not limited to, accessing data not intended for you, logging into a server or account that you are not expressly authorized to access, or probing the security of other networks); (g) attempt to interfere with service to any user, host, or network (including, without limitation, "flooding" of networks, deliberate attempts to overload a service, and attempts to "crash" a host); (h) use any kind of program or script or command, or send messages of any kind, designed to interfere with a users session, by any means, locally or via the Internet; (i) use the Service or take any action that may weaken network performance, or which adversely affects the performance of the Services for other Sparkplug customers, all as determined in Sparkplug's sole discretion; or (j) engage in or permit any use or other activity involving the Services or the Sparkplug Equipment that is not expressly authorized under this Agreement or otherwise in writing by Sparkplug. Sparkplug has the right but not the obligation to restrict any uses of the Sparkplug Equipment or Service that Sparkplug believes in its sole discretion violate the Agreement or applicable law. You will immediately notify Sparkplug in writing or by email to the email address noted on our Web site at www.sparkplug.net, of any unauthorized use of the Services, if the Sparkplug Equipment is stolen or if you become aware at any time that your Service is being stolen or fraudulently used.

3. Orders.

You must be at least 18 to order the Services. Sparkplug will treat all activities under an account to be those of the registered subscriber. If you are acting as an employee, you acknowledge that you are authorized by your employer to use the Services and Sparkplug Equipment and bind your employer to the terms and conditions of this Agreement. To order the Services, you must complete a Service Agreement and submit your Service Agreement to Sparkplug for acceptance. The Service Agreement will include, among other things, (a) your name and, if applicable, the name of your company; (b) the address of the location where the Services will be provided and the Sparkplug Equipment will be installed (the "Premises"); (c) your billing address, phone number and email address; (d) the Service Plan you have selected and the applicable installation charges (the "Set-up Fee"); and (e) a valid credit card number or other billing information. You are solely responsible for any changes made to your account.

4. Modifications to Service.

Sparkplug has sole discretion as to the operation, availability and scope of the Service. Sparkplug reserves the right to change or modify the Services, the terms and conditions of this Agreement, or any policy or guideline applicable to the Services, at any time in its sole discretion. Sparkplug will post a notice of such changes on Sparkplug's Web site at www.sparkplug.net. Changes to this Agreement or a Service Plan will be effective fifteen (15) days after posting on the Sparkplug Web site. Changes to any policy or guidelines governing the Service, including the [Acceptable Use Policy](#), shall be effective upon posting to the Sparkplug Web site. If you do not agree to any change to this Agreement, the Service Plan, or any governing policy or guideline, your sole remedy is to immediately terminate this Agreement pursuant to Section 21 (notwithstanding any notice period). Your continued use of the Service following Sparkplug's posting on Sparkplug's Web site of any changes to this Agreement, the Service Plan, or any policy or guideline will constitute your acceptance of such changes or modifications.

5. Equipment, Facilities and Services.

You are solely responsible for providing, installing and maintaining at your expense, an Ethernet broadband router, or other suitable Ethernet device (the "Subscriber Equipment"). You are solely responsible for the adequacy and accuracy of all the Subscriber Equipment. Sparkplug is not responsible for troubleshooting, repairing, or configuring the Subscriber Equipment. You are responsible for providing appropriate systems, procedures and safeguards, including system backups to protect the Subscriber Equipment and prevent the loss of data or software. Sparkplug shall not be responsible and have no liability for the protection, modification or loss of your Subscriber Equipment, data, information or programs (including the cost of restoring or recreating such data, information or programs) resulting from the use of the Service.

6. Third Party Services.

You acknowledge that in the performance of the Services, Sparkplug may utilize certain third party service providers.

7. Privacy.

Sparkplug's current [Privacy Policy](#) describes Sparkplug's policies and procedures for the collection, storage, processing, access and use of information associated with the Service. The [Privacy Policy](#) is posted on the Sparkplug Web site at www.sparkplug.net and may be updated from time-to-time. You should carefully read the [Privacy Policy](#) to understand Sparkplug's privacy practices.

8. Support.

Sparkplug shall provide telephone support and email support to you and authorized users relating to the use and operation of the Services (other than problems with Subscriber Equipment, Internet or online access, operating system software or any other software). While Sparkplug will use reasonable efforts to respond to your inquiries, Sparkplug assumes no responsibility to resolve any problem or defect in the Services, except as expressly provided herein. You are responsible for integrating and troubleshooting your local area network and internal network, as necessary. Sparkplug will not be responsible for any loss of use of Service or degradation in performance resulting from your use of incompatible equipment or for any damage to any additional equipment you connect to the Sparkplug Equipment. Sparkplug Customer Care will troubleshoot and support you on Service and Sparkplug Equipment issues pertaining to the Sparkplug network and Service only, and reserves the right to determine that a problem or issue is your responsibility. In the event that you request a service call to your Premises and Sparkplug determines that the problem is your responsibility, Sparkplug reserves the right to charge you for the cost of the service call.

9. Availability of Service.

Sparkplug will use commercially reasonable efforts to make the Service available in accordance with your Service Plan, any Service Level Agreement ("SLA") and the other terms and conditions of this Agreement. You acknowledge that the quality and availability of the Service may vary depending on location, network traffic volume, and equipment failure (including the Sparkplug Equipment and Subscriber Equipment). In the event of a Service interruption as defined in the SLA, Sparkplug will make a credit allowance to your account in the amount of 1/30th of the monthly Subscription Fee for the Services for each full hour that the Service Level described in the SLA is not met. You must request the credit allowance in writing to Sparkplug within thirty (30) days of the beginning of the Service interruption. The credit allowance will be your only remedy for any Service interruption, and will not be available where the Service interruption was due to any acts or omissions caused by you or any equipment not provided by Sparkplug. The credit allowance will not be available if the Service interruption was a result of any occurrence outside the control of Sparkplug including, but not limited to, acts of God (fire, storm, floods, earthquakes, etc.), civil disturbances, disruption of telecommunications, power or other essential Service, or interruption or termination of service by the third party service provider being used by Sparkplug to link its servers to the Internet, or any malicious or unlawful acts of any third party, government restrictions, performance failures of parties outside the control of Sparkplug and/or any other cause beyond Sparkplug's reasonable control.

10. Reservation of Rights.

As between you and Sparkplug, Sparkplug or its suppliers are the exclusive owners of and retain all right, title and interest (including, but not limited to, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights thereto (collectively, "Proprietary Rights")) to all materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Sparkplug or its suppliers pursuant to this Agreement, and any know-how, methodologies, equipment, or processes used by Sparkplug to provide the Service to you.

11. Installation.

As necessary, Sparkplug or its authorized third party service provider will install the Sparkplug Equipment (the "Installation Services") at the Premises. If necessary, you will provide access to the Premises as scheduled with Sparkplug for the appropriate preparation and maintenance of the Premises to allow for proper installation, maintenance, and other activities of Sparkplug in connection with the Sparkplug Equipment, Installation Services and Service. Sparkplug warrants that the Installations Services shall be performed in a professional and workmanship type manner. Sparkplug shall use commercially reasonable efforts to correct any Installation Services that do not comply with the foregoing warranty, provided that you notify Sparkplug of such noncompliance within thirty (30) days after performance of such Installation Services. THE WARRANTY AND REMEDY REGARDING THE INSTALLATION SERVICES SET FORTH IN THIS PARAGRAPH ARE EXCLUSIVE. EXCEPT AS SET FORTH IN THIS PARAGRAPH, SPARKPLUG MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO THE INSTALLATION SERVICES (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE). Sparkplug will not maintain or in any way be responsible for any software, cables, or hardware attached to the Sparkplug Equipment or in any way related or unrelated to the use of Service, including your internal network. By authorizing the Installation Services, you represent and warrant to Sparkplug that you either own the Premises or have received permission from the owner of the Premises to make any changes to the Premises or outside the Premises necessary to install the Sparkplug Equipment and receive the Service, including, without limitation, securing riser or roof rights, if necessary. Further, you represent and warrant that the installation of the Sparkplug Equipment at the Premises will not violate any restrictions or agreements applicable to the Premises. You acknowledge that Sparkplug or the third party service provider performing the Installation Services may refuse to perform any custom installation

work, or may require inside or external wiring to complete Installation Service at additional hourly or other charges. In the event you fail to keep an installation appointment or the Premises are not prepared to accept installation of the Sparkplug Equipment and Services, Sparkplug may charge you a fee to recover any costs associated with an additional installation appointment. Sparkplug will not be liable for any alterations or damage to the Premises that result from the Installation Services, use, or removal of the Sparkplug Equipment, including, but not limited to, holes in walls or ceilings, cable wiring, or antenna mounting brackets, and will not be responsible for removing any of the Sparkplug Equipment or any costs related to the removal of the Sparkplug Equipment (including antennas and related cabling) upon expiration or termination of the Term for any reason. You agree to indemnify Sparkplug from any claims or liabilities associated with Sparkplug's performance of the Installation Services, including, but not limited to, claims by the owner of the Premises.

12. Subscriber and Third-Party Content.

You are solely responsible for all Content that you permit to be posted or transmitted onto or through the Service or Sparkplug network ("Subscriber Content"). You will indemnify and hold harmless Sparkplug from any claim, action, demand, loss, or damages (including attorneys' fees) made or incurred by any third party arising out of or relating to your conduct and any Content you store, process, or transmit using the Service. Sparkplug has no control over any goods, services, links or Content provided by a third party that is accessible through the Service (collectively, "Third-Party Content"). Sparkplug makes no claim or representation regarding, and accepts no responsibility for, the quality, contents, nature or reliability of any Subscriber Content or Third-Party Content. Sparkplug does not endorse or adopt any Subscriber Content or Third-Party Content and can make no guarantee as to its accuracy or completeness. Sparkplug does not represent or warrant the accuracy of any information contained therein, and undertakes no responsibility to update or review any Subscriber or Third Party Content. You should be aware that when accessing any Third-Party Content, different terms, conditions and policies apply, and, therefore, you should carefully review such terms, conditions, and policies. Sparkplug exercises no control over, and accepts no responsibility for, Subscriber Content, Third-Party Content or other information passing through the Sparkplug network, network hubs and points of presence, or the Internet. YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. YOU ASSUME FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM YOUR DOWNLOADING, ACCESS, OR USE OF ANY THIRD-PARTY CONTENT.

13. Acceptable Use.

You shall at all times adhere to all applicable laws, rules, and regulations and to Sparkplug's then current [Acceptable Use Policy](#) located at www.sparkplug.net (or such other location as Sparkplug may specify).

14. Sparkplug's Rights.

Sparkplug may monitor the Service, inspect any Content accessible through the Service (including Subscriber Content), or investigate any alleged violation of this Agreement, Sparkplug's policies and guidelines or any third-party complaints. Sparkplug may access or monitor electronic communications only as permitted by applicable law. Sparkplug may access and disclose any information or Content it considers necessary or appropriate (including, without limitation, registration information, IP addressing and traffic information, and usage history) to (a) comply with applicable law (e.g., a lawful subpoena, warrant or court order); (b) enforce or apply Sparkplug's customer agreements; (c) initiate, render, bill, and collect for services; (d) protect Sparkplug's rights or property (including the integrity and operation of the Sparkplug network); (e) protect other users of the Service from fraudulent, abusive, or unlawful use of, or subscription to, the Service; or (f) if Sparkplug reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of communications or justifies disclosure of records without delay. In the event that Sparkplug determines in its sole and reasonable discretion that any Subscriber Content or conduct or actions of any subscriber (including its employees and users) are objectionable, unlawful, potentially infringing or otherwise violate this Agreement, Sparkplug may take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, subscribers and/or third parties. Such corrective action includes, but is not limited to: (a) issuing a warning; (b) immediately suspending or terminating the Service; (c) restricting or prohibiting access to any Subscriber Content that is objectionable or otherwise violates this Agreement; and/or (d) disabling or removing hypertext links, Subscriber Content or the content of any third party from the Sparkplug network. In the event Sparkplug takes corrective action, Sparkplug shall not refund any fees paid in advance of such corrective action. Without limiting the foregoing, it is Sparkplug's policy to terminate its Service for repeated violations of Sparkplug's [Acceptable Use Policy](#).

15. Fees.

You (or your company for corporate accounts) will pay Sparkplug's then-current subscriber fees in accordance with the Service Plan you ordered as set forth in your Service Agreement (the "Subscription Fees") according to the payment terms specified below. You (or your company for corporate accounts) also will pay the amounts set forth in your Service Agreement for the Set-up Fee and Additional Sparkplug Equipment (if any) as set forth in your Service Agreement and any and all additional costs and expenses incurred by you in connection with your use of the Service according to the payment terms specified below.

16. Payment Terms.

Unless you and Sparkplug separately agree to different payment terms in writing, you will pay the Subscription Fees for your use of the Services and the fees, charges and other amounts for the Set-up Fee and such additional costs and expenses incurred by you in connection with your use of the Service by credit card. When you order the Services, you must provide your credit card information to Sparkplug. You will promptly notify Sparkplug of any changes to your credit card, or in the event you decide to terminate or change your Credit Card account. For the charges due for the Set-up Fee, you authorize Sparkplug to charge your credit card when you sign the Agreement. For the charges due for the first month of the Subscription Fee, you authorize Sparkplug to charge your credit card upon the completion of the Installation. Thereafter, you authorize Sparkplug to charge your credit card for the monthly Subscription Fee on the same day of each subsequent month. For any other fees, charges and other amounts due under this Agreement, you authorize Sparkplug to charge your credit card at the time the fees, charges and other amounts are incurred. Any amount not paid when due will be subject to finance charges equal to one and one-half percent (1.5%) per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. All amounts payable under this Agreement are denominated in United States Dollars. Payment of such finance charges will not excuse or cure your breach or default for late payment. Further, you

will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Sparkplug to collect any amount which is not paid when due.

17. Taxes.

You agree to pay all federal, state, and local sales, use, value added, excise, duty and any other applicable taxes assessed with respect to the Sparkplug Equipment and Service. You will pay or reimburse Sparkplug for all such amounts upon demand or provide certificates or other evidence of exemption.

18. Failure to Pay; Suspension of Services.

If you (or your company for corporate accounts) fail to pay any amount under this Agreement when due, in addition to any other remedies available at law or in equity, Sparkplug will have the right, in its sole discretion, to immediately suspend your and your authorized users' access to and use of the Services. Any termination by Sparkplug for your failure to pay will not relieve you or your company from paying past due fees plus interest. To reestablish Service suspended or terminated for delinquency, you must pay all past due amounts in full and you may be charged an activation fee and may be required to prepay fees.

19. Charges; Disputed Charges.

All charges are considered valid unless disputed in writing within fifteen (15) days after you receive your credit card statement. If you do not dispute such charges within the fifteen-day period, you agree that you waive your right to dispute the charges and release Sparkplug from any and all liability and claims of loss resulting from any error or discrepancy. You may only dispute charges that you believe are a result of a billing error or a problem relating to the Service. Sparkplug shall not be responsible for any charges or expenses that you may incur resulting from overdrawing your bank account or exceeding a credit card limit as a result of an automatic charge generated by Sparkplug pursuant to this authority. If your account incurs charges that are denied by your financial institution, Sparkplug reserves the right to rebill you, regardless of your account status.

20. Term of Service.

Unless earlier terminated pursuant to this paragraph or otherwise as set forth in this Agreement, the term of this Agreement (the "Subscription Period") will be as noted on your Service Agreement and will commence as of the date Sparkplug completes the Installation of your service. Thereafter, the Subscription Period will renew for successive one-year periods unless you give Sparkplug written notice of termination at least thirty (30) days prior to the expiration of the then-current Subscription Period that you do not wish to renew. On the date of the renewal of a Subscription Period, Sparkplug will charge your credit card the applicable renewal Subscription Fee for the first month of Services based on the then-current fee schedule. If Sparkplug is unable to charge your credit card, Sparkplug will suspend your use of the Services until the required payment is made.

21. Termination.

Termination for Convenience by you. You may terminate this Agreement for any reason by providing Sparkplug thirty (30) days prior written notice. You will be responsible for the costs and risks associated with returning the Equipment to Sparkplug. Upon any termination of this Agreement under this section, (a) Sparkplug will not refund any fees, charges or amounts you have paid and (b) you authorize Sparkplug to immediately charge your credit card for the entire remaining Subscription Fee and any other fees, charges or other amounts due and payable. In addition, you must return the Sparkplug Equipment in good working condition or you will be subject to a non-returned equipment fee. You will permit Sparkplug to access the Premises to remove the Sparkplug Equipment at your expense, or you may remove the Sparkplug Equipment and return it to Sparkplug within 5 days of the effective date of termination or you will be subject to a non-returned equipment fee. Such removal by Sparkplug will be billed Sparkplug's then current hourly rates for on-site services.

Termination for Convenience by Sparkplug. Sparkplug may terminate this Agreement for any reason by providing you thirty (30) days prior written notice. Upon any termination of this Agreement by Sparkplug under this paragraph, you will be responsible only for Subscription Fees related to the period up to and including termination plus any other fees that are due and payable at that time.

Termination by Sparkplug prior to Installation. Sparkplug may terminate this Agreement prior to completing the Installation if it is determined that the Services cannot be provided to you for any reason. Upon any termination of this Agreement by Sparkplug under this paragraph, you will be refunded any amounts that you have paid for the Set-up Fee.

Termination by You for SLA Non-Performance. You may terminate this Agreement, upon prior written notice to Sparkplug, if You experience three (3) or more Network Outages that qualify for credit allowances of four (4) hours or more each during any consecutive thirty (30) day period. For purposes of this section, a Network Outage is defined as an occurrence within the Sparkplug network that results in the inability of the network to transmit IP packets on your behalf.

Termination for Material Breach or Default. Sparkplug may immediately terminate this Agreement or suspend the Service upon written notice to you for your or any of your authorized user's violation of any term of this Agreement or policy, including the [Acceptable Use Policy](#). Upon any termination of this Agreement pursuant to this section, you will be responsible and you authorize Sparkplug to charge your credit card for the entire remaining Subscription Fee for the then current Subscription Period and any other fees, charges or other amounts due and payable. Sparkplug will not refund, and you are not eligible for, any remaining portion of any fee that already has been charged.

Effect of Termination. Should this Agreement be terminated for any reason, Sparkplug will not be liable to you for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with your use of the Service, or for any other reason whatsoever flowing from such termination. Except as set forth herein, any termination of this Agreement shall not relieve you of any obligations to pay fees and costs accrued prior to the termination date and any other amounts owed by you to Sparkplug as provided in this Agreement. The provisions contained in this Agreement that by their context are intended to survive termination or expiration will survive, including without limitation, the sections entitled Restrictions, Privacy, Reservation of Rights, Purchase of Sparkplug Equipment, Installation, Acceptable Use, Disputed Charges, Term of Service, Disclaimers; Limitation of Liability, Indemnification, Jurisdiction; Applicable law, Arbitration and General Provisions.

22. Disclaimers.

EXCEPT AS SET FORTH IN SECTION 11, YOU ACKNOWLEDGE THAT THE SERVICE, SPARKPLUG EQUIPMENT, INSTALLATION SERVICES AND THE SPARKPLUG NETWORK (INCLUDING ANY SOFTWARE AND ANY OTHER ITEMS USED OR PROVIDED BY SPARKPLUG IN CONNECTION WITH ANY SERVICE HEREUNDER) ARE PROVIDED "AS IS" OR "AS AVAILABLE." SPARKPLUG, ITS RESELLER, SERVICE PROVIDERS AND SUPPLIERS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF THE SERVICE, SPARKPLUG EQUIPMENT, INSTALLATION SERVICES AND THE SPARKPLUG NETWORK, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. FURTHER, SPARKPLUG, ITS RESELLER, SERVICE PROVIDERS AND SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT THERE WILL BE ADEQUATE CAPACITY OR COVERAGE TO PROVIDE THE SERVICE, THAT THE SERVICE WILL PROVIDE CERTAIN TRANSMISSION SPEEDS (UPLOAD OR DOWNLOAD), OR THAT THE SERVICE AND THE SPARKPLUG NETWORK WILL BE UNINTERRUPTED, DELAYED, ALWAYS ACCESSIBLE OR AVAILABLE AT TIMES AND LOCATIONS OF YOUR CHOOSING, FREE OF HARMFUL COMPONENTS, ACCURATE OR ERROR-FREE.

23. Limitation of Liability.

SPARKPLUG, ITS RESELLER, SERVICE PROVIDERS AND SUPPLIERS SHALL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF SPARKPLUG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SPARKPLUG, ITS RESELLER, SERVICE PROVIDERS AND SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF ANY INFORMATION OR DATA THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. THE TOTAL LIABILITY OF SPARKPLUG TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO SPARKPLUG BY YOU UNDER THIS AGREEMENT DURING THE MONTH IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICE SET BY SPARKPLUG HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. IF YOU ARE DISSATISFIED WITH THE SERVICE OR WITH ANY APPLICABLE TERM OR CONDITION GOVERNING ITS USE, YOUR SOLE AND EXCLUSIVE REMEDY IS NOT TO ESTABLISH AN ACCOUNT WITH SPARKPLUG OR TO TERMINATE YOUR ACCOUNT.

BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SPARKPLUG'S LIABILITY SHALL BE LIMITED AS PERMITTED BY LAW IN SUCH STATES.

24. Indemnification.

You agree to indemnify, defend and hold harmless Sparkplug and all employees, officers, directors and agents of Sparkplug and any of its affiliates from and against any and all claims, suits, actions, demands or proceedings (whether threatened, asserted, or filed) and all related damages, losses, liabilities, cost and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or relating to: (a) any violation or breach by you of any term, representation or warranty, or policy of this Agreement; (b) your unlawful or improper use of the Service; (c) any damages caused to the Sparkplug network by your Subscriber Content; (d) any actual or alleged violation of any Proprietary Rights or non-proprietary rights (including, but not limited to, defamation, libel, rights of privacy or publicity) by you or your Subscriber Content.

25. Jurisdiction; Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois notwithstanding any choice of law principles to the contrary. You expressly agree that the exclusive jurisdiction for any claim or dispute with Sparkplug arising from your use of the Service shall be in a federal or state court of competent jurisdiction located in Cook County, Illinois, USA. You further consent to the exercise of personal jurisdiction of such courts in connection with any such dispute.

26. Arbitration.

ALL DISPUTES ARISING UNDER THIS AGREEMENT (OTHER THAN YOUR FAILURE TO MAKE PAYMENTS IN ACCORDANCE WITH THE AGREEMENT AND ANY ACTION TO COLLECT AMOUNTS DUE TO SPARKPLUG UNDER THIS AGREEMENT, WHICH MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION) WILL BE SETTLED BY BINDING ARBITRATION USING THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") THEN IN EFFECT. THE PLACE FOR ARBITRATION WILL BE COOK COUNTY, ILLINOIS, UNLESS THAT LOCATION IS PROHIBITED BY LAW, IN WHICH CASE THE ARBITRATOR SHALL SELECT THE LOCATION OF THE ARBITRATION. ONE (1) ARBITRATOR SELECTED IN ACCORDANCE WITH THE AAA RULES WHO HAS EXPERTISE IN THE SUBJECT MATTER HEREOF WILL CONDUCT THE ARBITRATION. UNLESS OTHERWISE REQUIRED BY LAW, EACH PARTY WILL BEAR ITS OWN EXPENSES, INCLUDING ATTORNEYS' FEES, IN CONNECTION WITH THE ARBITRATION EXCEPT THAT PAYMENT OF THE FEES AND EXPENSES OF THE ARBITRATOR SHALL BE GOVERNED BY THE RULES OF THE AAA. THIS DUTY TO ARBITRATE WILL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON. ALL CLAIMS WILL BE ARBITRATED INDIVIDUALLY AND THERE WILL BE NO CONSOLIDATION OR CLASS

TREATMENT OF ANY CLAIM UNLESS PREVIOUSLY AGREED TO IN WRITING BY SPARKPLUG. THE ARBITRATOR SHALL NOT HAVE ANY AUTHORITY TO AWARD ANY SPECIAL OR PUNITIVE DAMAGES OR ANY OTHER DAMAGES EXCEPT AS PERMITTED BY THIS AGREEMENT. YOU WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIMS OR DISPUTES RELATING TO THIS AGREEMENT OR THE SERVICES. YOU WAIVE ANY RIGHT TO PARTICIPATE AS A PLAINTIFF OR AS A CLASS MEMBER IN ANY CLAIM ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY. YOU AND SPARKPLUG AGREE THAT ANY CLAIM ARISING OUT OF OR RELATED TO THE SERVICE, SPARKPLUG EQUIPMENT, ADDITIONAL EQUIPMENT, INSTALLATION SERVICES OR OTHERWISE UNDER THIS AGREEMENT MUST BE COMMENCED WITHIN TWO (2) YEARS AFTER THE CLAIM ARISES, OR THE CLAIM WILL BE PERMANENTLY BARRED.

27. General Provisions.

Force Majeure. Sparkplug shall be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control, including but not limited to, acts of God (fire, storm, floods, earthquakes, etc.), civil disturbances, disruption of telecommunications, power or other essential Service, or interruption or termination of service by the third party service provider being used by Sparkplug to link its servers to the Internet, or any malicious or unlawful acts of any third party.

Independent Contractors; No Third-Party Beneficiaries. Sparkplug and its personnel, in performance of the Service, are acting as independent contractors and not as employees or agents of you or Sparkplug's suppliers. Nothing expressed or mentioned in or implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions and provisions hereof are intended to be and are for the sole and exclusive benefit of the parties hereto.

Waiver; Amendment. Except as expressly provided herein, the failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. Except as expressly provided by this Agreement, no term or condition of this Agreement may be modified without the prior written consent of the parties.

No Assignment. You may not assign, without the prior written consent of Sparkplug, any rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be void. Sparkplug may assign this Agreement at any time without notice to you.

Notice. All notices and other communications required or permitted hereunder shall be in writing and delivered via e-mail. Notice shall be effective when sent. Sparkplug shall send notice to you in accordance with the information in your Service Agreement or as otherwise specified by you in writing. You will promptly notify Sparkplug of any changes to any contact information contained on the Service Agreement. You shall provide notice to Sparkplug at the email address noted on Sparkplug's web site at www.sparkplug.net.

Entire Agreement; Construction. This Agreement, the incorporated policies and guidelines and the Service Plan selected by you constitute the complete and exclusive statement of agreement between the parties, and supersedes and merges all prior proposals and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Headings herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.

Last Updated: March 4, 2008