

NETWAY INTERNET STANDARD TERMS AND CONDITIONS

This agreement (“**Agreement**”) covers the provision of Services by Netway “**Netway**” or “**Provider**”) to _____ (“**Customer**”) and is incorporated into each CSA.

DEFINITIONS

Customer: The person, firm, or corporation that orders Service and is responsible for the payment of charges and compliance with this Agreement.

Customer Service Agreement (“CSA”): The request for Netway Service can be verbal, or submitted by Customer in a format devised by Netway. Written CSAs are valid only if signed by Customer and Netway management; any electronic Customer Service Agreements (CSA) that Netway may make available are valid only if properly completed and submitted by Customer and approved by Internet & Telephone (collectively, “CSAs”).

Services: Any Netway service, product, equipment, or material offered, sold, licensed, or leased to Customer pursuant to a CSA.

1. SERVICE ORDERS

1.1 CSAs are used for the provision of Services desired by Customer. The creation of a CSA initiates the respective obligations of the parties as described in this Agreement, the CSA, any applicable Netway tariffs, Netway’s published acceptable use policy, and any collocation or peering agreement between Internet & Telephone and Customer. Any change to the original CSA must be pursuant to a new CSA. One month’s port charges, installation, and other applicable non-recurring charges must be paid at the time the Customer submits the CSA; these charges are non-refundable. The CSA creates a relationship between the Customer and Netway and the services cannot be resold, rebranded or rebilled without the express written consent of Netway.

1.2 **Changed Condition.** If during the course of the performance of the Services under this Agreement, conditions or circumstances develop or are discovered which were not contemplated by Netway at the commencement of this Agreement, and which materially affect Netway’s ability to perform the Services and /or which would materially increase the costs to Netway of performing the Services, then Netway shall notify Customer in writing of the newly discovered conditions or circumstances, and Netway and Customer shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after notice, Netway may terminate this Agreement without further obligation and be compensated as set forth under Termination, herein.

2. BILLING AND COLLECTION

2.1 **Monthly Statements** Netway issues a monthly statement at the first of each month which includes the upcoming month’s recurring charges as well as any non-recurring charges that may have been incurred in the previous month. If Customer subscribes to Netway’s metered or usage-based Services, the statement also will contain the previous month’s usage charges. If Service commences after the first of the month, the initial month’s recurring charges will be pro-rated assuming a 30-day month and billed at the start of the next month.

2.2 **Payment** Customer payment is due upon receipt of the invoice. In all cases, customer must make each monthly payment so that it is received by Netway no later than 15 days from the date the statement is issued (“**Due Upon Receipt**”). Unless properly disputed as described below, Customer will consider the statement correct and payable in full. Any portion of the statement not paid in full by the Due Date will be considered overdue and incur a penalty (“**Late Payment Fee**”) of 1.5% per month (0.050% per day), or the maximum amount permitted by law, until the statement is paid in full. In the event Netway incurs fees or expenses, including attorney’s fees, in collecting or attempting to collect any charges owed Netway, Customer will be liable to Netway for the payment of all such fees and expenses reasonably incurred.

2.3 **Disputed Bills** If Customer disputes any portion of the statement, Customer must pay the undisputed portion of the statement in full by the Due Date and within 30 days of Invoice Receipt, submit a written claim fully documenting the reasons the remaining amount is disputed. After receipt of such claim, Netway will undertake an investigation of the disputed charges. At the conclusion of the investigation, Netway will notify Customer of any amount determined by Netway to be correctly charged and such amount will become immediately due and owing. Amounts determined by Netway to have been correctly charged will be subject to the Late Payment Fee. Unless such a claim is submitted in this manner and received by Netway within 45 days from the date the statement is issued, Customer waives all rights to dispute such charges, unless otherwise provided by law.

3. RATES AND FEES

3.1 **Customer Responsibility** Customer is responsible for paying all applicable rates and charges listed on the CSA Form as well as any applicable fees, taxes, deposits, and tariff charges.

3.2 **Taxes and Assessments** Customer is responsible for the payment of all taxes (including, without limitation, sales, use, excise, and transfer taxes), governmental assessments, surcharges and fees pertaining to the Services (collectively, “**Taxes**”). Provided that Customer provides Netway with a valid and properly executed certificate of exemption, Customer is not responsible for Taxes covered by such certificate and accessed after such certificate is provided to Netway.

3.3 **Inside Plant Installation Charges** Customer is responsible for paying all non-recurring charges, determined at the time of installation, incurred to extend inside plant wiring from the telephone company’s demarcation point to the Customer’s equipment or facilities space, regardless of whether such charges are specified in the CSA.

4. SERVICE INTERRUPTION CREDIT

Non-T-1 service from Netway, which includes wireless Internet and DSL service, is a Best Efforts service. Customer agrees that the use of these services is solely at Customer’s risk and that the service is not warranted to be uninterrupted or error-free. The Internet speeds indicated on the CSA are a “burst up to” speed and are not a guaranteed committed information rate (CIR). Solely for Internet T-1s, Netway policies and procedures are governed by its FCC Tariff as filed and amended from time to time. In the event of an interruption in services under these conditions, Customer may be given a pro-rated credit for the time during which service is interrupted.

5. DISPATCH SUPPORT

At Customer’s request, Netway will dispatch support personnel to the Customer’s premise and attempt to resolve all problems of connectivity. If it is determined that all facilities, systems and equipment furnished by Netway are functioning properly and that the connectivity problem arose from some other cause, Customer is responsible for paying Netway’s labor and materials fees for the dispatch services. Netway’s labor fees are \$125.00 per hour per technician dispatched between 7 AM to 7 PM weekdays (2 hour minimum charge) and \$175.00 per hour technician dispatched at all other times (2 hour minimum charge).

6. NETWAY FACILITIES

6.1 **Protection** Customer must not cause or allow any facility, equipment, system, or material of Netway (“**Netway Facilities**”) to be rearranged, tampered with, moved, removed, disconnected, altered, or repaired without Netway’s prior written consent.

6.2 **Liens** Customer may not create or allow any liens or other encumbrances to be placed on any Netway Facilities.

6.3 **Title** Title to all Netway Equipment and/or Facilities (except such products sold to Customer under a CSA) shall be and remain with Netway.

6.4 **Resources** Customer is responsible for providing at no charge any reasonable personnel, equipment, space, power, and level of heating and air conditioning, specified from time to time by Netway, to operate Netway Facilities at the Customer’s premise and to maintain the proper operating environment for such Facilities.

6.5 **Safety** Customer is responsible for providing and maintaining safe working conditions in the areas of its premises where Netway employees, agents and/or suppliers will be installing or maintaining Netway Facilities. Customer is responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. asbestos) prior to any construction or installation work by Netway employees, agents and/or suppliers.

6.6 **Permits** Customer is responsible for obtaining, and maintaining compliance with, all consents, approvals, licenses and permits necessary under federal, state, and local laws, rules, regulations and ordinances for the location of Netway Facilities at the Customer’s premises.

6.7 **Access** Customer is responsible for granting or obtaining permission for Netway employees, agents and/or suppliers to enter the Customer’s premises, as necessary, to install, inspect, maintain, and repair Netway Facilities.

7. CUSTOMER EQUIPMENT

Irrespective of any one-time “Installation”, “Start-Up” or “Non Recurring Charges”, Customer acknowledges that all equipment utilized for integrated T-1s, dedicated access and all wireless internet equipment is and shall remain the property of Netway including without limitation the Integrated Access Device (IAD), wireless radio, panel, antennae, related software and any mounting gear. Further, Customer, and not Netway, is responsible for (i) the operation and maintenance of any its equipment, hardware, and/or software Customer provides (“**Customer Equipment**”) and (ii) for ensuring that Customer Equipment complies with Subpart D of Part 68 of the Federal Communications Commission’s Rules and Regulations. Netway is not responsible for the reception or transmission of signals by Customer Equipment or for the quality of, or defects in, such receptions or transmissions. Netway is not responsible if any changes in its hardware, software, or services cause Customer Equipment to become obsolete or to require modification or alteration.

8. INDEPENDENT CONTRACTOR

Netway is and shall be an independent contractor in the performance of the Services set forth in this Agreement. Customer shall not exercise control over Netway, its employees, subcontractors, or agents, except in so far as may be reasonably necessary to ensure performance of Services and compliance with this Agreement. Nothing in the Agreement shall be construed to designate Netway, its subcontractors, agents, or assigns as the employees, subcontractors, partners, or agents of Customer or Customer’s affiliates, subsidiaries, or partners.

9. TERM AND TERMINATION CHARGES

9.1 **Initial Term:** The CSA, LOA and this Agreement are effective and the Parties’ obligations commence upon the date of execution by Netway (“**Effective Date**”) and continues in effect for a period of **one** (1) year (“**Initial Term**”) from the earlier of the date any of the Services are first utilized by Customer (as determined by Netway’s records), or the 90th day after the Effective Date, which date shall be deemed the “**Start of Service Date**”.

9.2 **Automatic Renewal:** This Agreement renews automatically for successive one-year (1) periods at the expiration of the Initial Term, unless otherwise canceled in writing ninety (90) days prior to the expiration of any then-current term. Failure to provide 90 day notice will result in termination charges equal to 120 days plus any remaining balance of the then current monthly period such that the termination fee shall not exceed 4 months billing.

9.3 **Termination For Nonpayment** After written notice to Customer that its account is past due, Netway reserves the right to terminate Service without incurring any liability.

9.4 Termination For Violation of Acceptable Use Policy Netway reserves the right to terminate Service upon notice if Customer violates the then-current version of Netway's published acceptable use policy, which is available at <http://www.netway.com>

9.5 Termination For Returned Checks In addition to assessing a returned check fee, Netway is entitled to terminate Service, without notice or liability, if a Customer's check or draft is returned unpaid for any reason.

9.6 Termination For Violations of Law Netway reserves the right to terminate Service, without notice or liability, (i) if Netway's provision of such Service will cause Netway to violate any law, rule, regulation, or governmental policy, (ii) to prevent and protect against Customer fraud or acts that may cause immediate harm to the network or other Netway offerings, or (iii) if Customer subjects Netway employees, agents, or suppliers to hazardous conditions.

9.7 Termination For Bankruptcy Netway may terminate Service, without notice or liability, for any Customer filing for bankruptcy or reorganization or failing to discharge an involuntary petition for bankruptcy or reorganization within the time permitted by law.

9.8 Effect of Termination Termination of Service does not relieve Customer of any obligation to pay Netway for charges due and owing for Services furnished up to the time of termination. In addition to all other remedies that may be available to Netway at law or in equity, upon termination, for any reason other than for service interruption pursuant to Paragraph 4 of this Agreement, Customer agrees to pay Netway the following: (i) all recurring charges specified in the CSA for the balance of the term of the CSA, (ii) a recapture of any discounts provided to Customer in connection with the ordering of Services, (ii) all non-recurring charges specified in the CSA and in Paragraph 3.3 of this Agreement that have been expended to establish Service to Customer, (iii) a recapture of any non-recurring charges that had been waived by Netway for the installation of the terminated Service, as well as (iv) reimbursement for all expenses, including capital expenses, incurred by Netway in installing any facilities required to deliver the terminated Services. Such amounts are immediately due and payable, upon written notice by Netway. In addition, Customer is responsible for returning to Netway within 10 days any hardware and software Netway supplied Customer before, during, or after termination.

9.9 Resumption of Service If Service has been terminated, and Customer requests that Service be restored, Netway has the sole and absolute discretion to restore such Services and may condition restoration upon satisfaction of such conditions as Netway determines is necessary for its protection, including requiring Customer to pay all past due statements, passing Netway credit approval, and/or to make advance recurring charge payments. New nonrecurring charges also may apply to restored Services.

10. WARRANTIES AND LIMITATIONS OF LIABILITY

10.1 Warranties INTERNET & TELEPHONE DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED IN FACT OR BY OPERATION OF LAW INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

CUSTOMER WARRANTS AND REPRESENTS TO NETWAY THAT THE INFORMATION IT SUPPLIES TO NETWAY UPON WHICH SERVICES MAY BE BASED IS TRUE AND CORRECT TO THE BEST OF CUSTOMER'S KNOWLEDGE.

10.2 Limitations of Liability The liability of Netway for damages arising out of the furnishing of Service, including but not limited to mistakes, omissions, interruptions, delays, tortious conduct or errors, defects, representations, use of Service or arising out of the failure to furnish Service, whether caused by acts of commission or omission, shall be limited to the extension of credit allowances or refunds of sums paid under each applicable CSA. The extension of such credit allowances or refunds shall be the sole remedy of Customer and the sole liability of Netway. Netway shall in no event be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including, but not limited to, damages for lost profits or revenues) Customer may suffer, regardless of whether Internet & Telephone has been informed of the possibility or likelihood of such damages. Netway assumes no liability for the content or quality of information accessed by Customer.

10.3 Indemnification With respect to any Netway Service or Facility, Customer must indemnify, defend and hold harmless Netway, its present and future officers or directors, employees and agents, from and against all claims, suit, actions, damages, liabilities, injury, costs and expenses, including reasonable attorneys' fees for: (i) any loss, destruction or damage to property of Netway or any third party, or the death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of Customer, their employees, agents, representatives or invitees; (ii) any claim, loss, damage, expense, or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by Customer; and (iii) any unauthorized use of Netway's Services or Facilities; (iv) any breach of this Agreement by Customer.

11. FORCE MAJEURE

Netway is not liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to natural catastrophe, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond Netway's reasonable control. Once Netway has implemented services to Customer premise, a Service Call to correct or resume service based upon adjustments to the equipment or Netway service which are deemed by Netway to have been caused by Acts of God or the public enemy, natural catastrophe or any other Force Majeure will be charged to Customer according to paragraph 5 ("Dispatch Support") above.

12. SURVIVAL

Any obligation of the parties relating to monies owed, confidentiality, indemnification and limitations of liability shall survive termination of Service or of this Agreement.

13. AMENDMENT

Except as may be otherwise provided herein, this Agreement may not be amended or modified, in whole or part, except in writing signed by both parties.

14. WAIVERS

Failure of either party to enforce or insist upon compliance with the provisions of this Agreement, or waive compliance with any provisions of this Agreement in any instance, shall not be construed as a general waiver or relinquishment of any provision or right of this Agreement.

15. ASSIGNMENT OR TRANSFER OF SERVICE

Customer may not assign or transfer its rights or duties in connection with Netway Services or Facilities without the prior written consent of &T. Netway may assign its rights and duties without prior notice to or consent of Customer (a) to any subsidiary, parent company, or affiliate of Internet & Telephone, (b) pursuant to any sale or transfer of substantially all the assets of Netway, or (c) pursuant to any financing, merger or reorganization of Netway. Netway also is entitled to pledge this Agreement as collateral for financing.

16. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement or any breach thereof, shall be settled by arbitration in Essex County, Massachusetts in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered into any court having jurisdiction thereof. Upon the written application by either party for the hearing and adjudication of a dispute or claim, the recipient of the application will proceed with arbitration hearings. The parties agree to abide by and be bound by the decision and award of the arbitrators, and that a judgment may be entered in court upon the award made in pursuance of this submission.

17. GOVERNING LAW

This Agreement shall, in all respects, be governed by and enforced in accordance with the laws of the Commonwealth of Massachusetts.

18. VENUE

Any dispute, claims, causes of action, or litigation concerning any question of fact or law under this agreement which is not disposed of by Agreement between Netway and Customer shall be decided in a court of competent jurisdiction in Essex County, MA.

19. NOTICES

All notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including Statements) shall be in writing and shall be deemed to be properly given when delivered, if delivered in person, or when sent, if transmitted facsimile, overnight courier, electronic mail, or when mailed with proper postage via U.S. first class mail to the following address or such other address as each party may notify the other in writing:

Notices to Netway:

Netway Internet
P.O. Box 368
North Andover, MA 01845

Notices to Customer:

Customer notices will be sent to the Customer billing contact name and address listed on the CSA

20. SEVERABILITY

If any provision of this Agreement shall for any reason be held illegal, invalid or unenforceable, such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way impair the validity or enforceability of the remaining provisions of this Agreement.

21. HEADINGS.

The paragraph headings as to the contents of a particular article herein are inserted only for convenience and are in no way construed as a part of the Agreement or as a limitation of the scope of the particular articles to which they refer.

22. ENTIRE AGREEMENT

This Agreement, the CSA, any Netway tariffs, Netway's published acceptable use policy, and any collocation or peering contract between Customer and Netway ("collocation contract") represent the entire agreement between Netway and Customer and supersede all prior agreements, promises, understandings, statements, proposals, representations, warranties, indemnities and inducements whether written or oral, and may be updated from time to time by Netway on its web site. In the event of any inconsistency between a Netway tariff and either this Agreement, the CSA, Netway's published acceptable use policy or any collocation or peering contract, Netway's tariff shall prevail. In the event of any inconsistency between Netway Terms and Conditions and those of the Customer, Netway's Terms and conditions shall prevail.

Customer

Netway

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____