

# THE NEXUS GROUP INTERNET SERVICE SUBSCRIBER AGREEMENT

The Nexus Group (“Nexus”) Internet Service Subscriber Agreement

Nexus Connect Internet Service (the “Service”) is provided to you (the “Customer”) by Nexus, in accordance with the terms of this Agreement (the “Agreement”). Please read this Agreement very carefully, because by accepting the Service, you agree to all of these terms.

The Service is delivered over the broadband or wireless system and accessed by your personal computer or other customer device using a wireless access point. The term “Customer” or “Subscriber” includes you and also each member of your household and any other individual who uses the Service whether or not the individual is named on the account or owns, rents or uses the Premises on which the computer or other device used to access the Service is located. You agree that you are responsible for all individuals using the Service and for ensuring that they understand and comply with the terms of this Agreement. You also agree that you shall be liable for any and all breaches of the terms and conditions of this Agreement by anyone accessing the Service from your computer or other device.

## **1. Equipment; Access.**

(a.) Required Equipment. The Service requires certain equipment provided by Customer such as a personal computer, other broadband device, if required, and an appropriate operating system (the “Customer Equipment”). The Service also requires certain equipment provided by Nexus or its designee such as software and external wiring and related electronic equipment installed by Nexus (“Nexus Group Equipment”). Wireless Access Points (“WAP”) leased from Nexus shall be Nexus Group Equipment. Nexus shall have the unrestricted right, but not the obligation, to upgrade the firmware in the WAP at any time that Nexus, in its sole discretion, determines it is necessary or desirable. Nexus Group Equipment may be removed or changed by Nexus at its discretion, at any time, including through “downloads” to Customer’s WAP or computer(s) or otherwise.

(b.) Access to Customer’s Premises. Nexus and its employees, agents, contractors, and representatives are authorized to enter Customer’s Premises at which the Service will be accessed (the “Premises”) in order to install, maintain, inspect, repair and remove the Nexus Group Equipment, and any equipment used in connection with the Service. Nexus will arrange access without undue inconvenience and at times agreeable to the Customer. Customer warrants and represents that: Customer is the owner of, or a tenant in, the Premises; Customer has the authority to enter into this Agreement; and, if Customer is not the owner of the Premises, Customer will, upon request, supply Nexus with the owner’s name and address and evidence that Customer is authorized to grant access to the Premises on the owner’s behalf (including, if requested, written consent from the owner of the Premises).

(c.) Nexus Group Equipment. Nexus Group Equipment is the sole property of Nexus Group or its designee, and is provided to Customer merely as a means through which the Service may be provided. Customer acknowledges that it has no ownership in the Nexus Group Equipment. Customer agrees:

- Not to use the Nexus Group Equipment for any purpose other than to use the Service pursuant to this Agreement.
- Not to sell, transfer, lease, encumber or assign all or part of the Nexus Group Equipment to any third party.

- Not to relocate the Nexus Group Equipment outside the Premises. (Upon Customer request, Nexus may relocate the Nexus Group Equipment within the Premises, but additional charges may apply.)

## **2. Intellectual Property Rights.**

(a.) End User Licenses. Customer agrees to comply with the terms and conditions of all end user license agreements accompanying any software or plug-ins to such software distributed or used in connection with the Service as such agreements may be amended from time to time. All such agreements are incorporated in this Agreement by reference. All end user licenses will terminate upon the termination of this Agreement, and, at such time, Customer shall destroy all versions and copies of all software received by it in connection with the Service.

(b.) Ownership of Addresses. Customer acknowledges that use of the Service does not give Customer any ownership or other rights in any Internet/online addresses provided to Customer, including but not limited to Internet Protocol (“IP”) addresses, domain names, e-mail addresses and web addresses. The Nexus Group may modify or change such addresses at any time and shall in no way be required to compensate Customer for such changes.

(c.) Authorization. Nexus does not claim any ownership of any material that Customer publishes, transmits or distributes using the Service. By using the Service to publish, transmit or distribute material or content, Customer (i) is warranting that the material or content complies with the provisions of this Agreement, (ii) is authorizing Nexus, its agents and affiliates to reproduce, publish, distribute, and display such content worldwide and (iii) is warranting that Customer has the right to provide such authorization. Customer acknowledges that material posted or transmitted using the Service may be copied, republished or distributed by third parties, and Customer agrees to indemnify, defend and hold harmless Nexus, its agents and affiliates for any harm resulting from such actions.

- Consistent with these limitations, Customer may make: (a) one machine-readable copy, (b) one backup copy, and (c) one print copy of any material downloaded from the Service. Any other copying, or any redistribution or publication of any downloaded material, including, without limitation, posting to any other communications service, must be with the express permission of the relevant copyright holder.

- In any permitted copying, redistribution or publication of copyrighted material, any changes to or deletion of any copyright notice are prohibited.

## **3. Payment Terms.**

(a.) Fees and Charges. Customer agrees to pay all charges and fees for the Service, including applicable monthly service fees, installation charges, charges for service calls and other charges and all applicable federal, state and local fees and taxes. Customer acknowledges, if applicable, receipt of the schedule of applicable fees and charges delivered on the date of installation of the Service. Nexus shall have the right from time to time to change the amount of fees and charges and/or its method of billing for services at its discretion and upon reasonable advance notice. Such changes may include imposing separate charges for bandwidth usage, data storage or other services. In addition Nexus may impose additional charges for exceeding bandwidth usage, data storage and other limitations on the Service that are in effect from time to time and may impose separate charges or penalties (including limiting or terminating Customer’s Service) for reducing transmission speed or other Service parameters. Monthly service, equipment and other fees shall be payable monthly in advance. Installation and other charges will be billed according to Nexus’ then current billing policies.

(b.) All amounts payable by Customer to Nexus will be via Customer's credit card. By providing appropriate credit card information, Customer authorizes Nexus to continue charging the credit card for all monthly fees (including without limitation monthly service fees and equipment charges, as well as applicable taxes and fees) payable to Nexus, and any other charges incurred by Customer and payable to Nexus pursuant to this Agreement. Monthly service fees and equipment fees may be charged up to thirty (30) days in advance of the first day of the month for which the charges relate. Customer agrees to inform Nexus immediately of any change in credit card information (including without limitation a change in expiration date). Customer acknowledges and agrees that Customer use of the credit card and rights and liabilities in connection with that use are governed solely by Customer's credit card agreement. Customer also unconditionally guarantees payment of any amounts billed by Nexus on Customer's credit card; if Nexus does not receive payment from Customer's credit card issuer or its agents, for any reason, Customer agrees to pay all amounts due upon demand by Nexus.

(c.) Late Payments; Failure to Pay. Customer agrees to timely pay Nexus for all fees and all other charges due to Nexus under this Agreement, including any administrative late fee(s) and related fees, charges and assessments due to late payments or non-payments. Customer agrees that the following terms and conditions shall apply to late payments:

- If Customer does not pay all charges by the due date, Customer may be charged late fees and other charges and assessments and the Service may be disconnected or downgraded whichever is applicable. If the Service is disconnected or downgraded, Customer may be required to pay a reconnect fee in addition to all past due charges before the Service is reconnected. Nexus may also pursue any other remedies available to it under this Agreement or applicable law.
- Any administrative late fee(s) and related fees, charges and assessments due to late payment and non-payment are not penalties. Rather, they are liquidated damages intended to be a reasonable advance estimate of Nexus' costs resulting from Customer's late payments or non-payments. These costs will not be readily ascertainable, and will be difficult to predict or calculate, at the time that such administrative late fee(s) and related charges are set because it would be difficult to know in advance: (a) whether Customer will pay for the Service on a timely basis, (b) if Customer does pay late, when Customer will actually pay, if ever, and (c) what costs Nexus will incur because of Customer's late payment or non-payment. If Nexus is required to use a collection agency or attorney to collect money owed by Customer or to assert any other right which Nexus may have against Customer, Customer agrees to pay the reasonable costs of collection or other action, including, but not limited to, the costs of a collection agency, reasonable attorneys' fees and arbitration or court costs.

(d.) Additional Charges. By using the Service, Customer will also have access to the Internet and various content providers, providers of services, online services and other information. As a result of such access or usage, Customer acknowledges that Customer may incur additional charges separate and apart from the amounts charged by Nexus. Customer may also incur charges as a result of accessing online services or purchasing or subscribing to other offerings via the Internet or otherwise. Customer fully understands and agrees that all such charges payable to third parties, including all applicable taxes, is the sole responsibility of Customer. Customer also acknowledges that it is Customer's sole responsibility to protect the security of personal and financial information (including credit card information) provided by Subscriber in connection with such transactions.

(e.) Credit Inquiries. By subscribing to the Service, Customer accepts the terms of this Agreement and authorizes Nexus to make inquiries and to receive information about Customer's credit experience from others, to enter this

information in Customer's file, and to disclose such information concerning Customer to appropriate third parties for reasonable business purposes.

(f.) Billing Errors. Subject to applicable law, Customer must notify Nexus, in accordance with the provisions of this Agreement, of any billing errors or other requests for refund within six (6) months of the date on which the error occurred.

(g.) Account Access. In order to protect the privacy of Customer's account information, Nexus may assign each Customer a unique security code and require that Customer use a security code to confirm Customer's identity when requesting or otherwise accessing account information, making changes to the Service or performing other functions related to the Service.

#### **4. Customer Information and Privacy.**

(a.) Customer Privacy. Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, is governed by federal law and regulation, including, among other laws, the Electronic Communications Privacy Act. Customer's rights under Nexus' privacy practices are described in the Subscriber Privacy Notice posted at the Nexus web site, [nxs.net/legal/](http://nxs.net/legal/). Such practices and policies may be revised by Nexus from time to time.

(b.) Information Provided To Third Parties. The Service will allow Customer to directly and indirectly access third parties, including without limitation, content providers, online services and other providers of goods, services and information. Such third parties may request or require Customer to provide certain personally identifiable information such as name, address, telephone number, and credit card number. Nexus is not, under any circumstances, responsible for any such information provided by Customer to third parties, and such information is not subject to the privacy provisions of this Agreement or the Subscriber Privacy Notice. The Customer assumes all risks of providing any personally identifiable or other information to third parties. Customer must refer to individual third party privacy policies, if any, to determine any privacy protections applicable to personally identifiable information provided by Customer to third parties.

#### **5. Prohibited Uses of the Service; Acceptable Use Policy.**

The following uses of the Service are prohibited:

- Customer shall not use the Nexus Group Equipment or the Service, directly or indirectly, to undertake or accomplish any unlawful purpose. Customer shall not use the Nexus Group Equipment or the Service, directly or indirectly, in violation of any posted policy applicable to the Service, including without limitation any Nexus Acceptable Use Policy (the "AUP") or other policy posted on the Service web site [nxs.net/notices/](http://nxs.net/notices/) or posted on another web site about which Customer has been notified. Customer acknowledges that the terms of the AUP and any such other policies may be put into effect or revised from time to time without notice by posting a new version of the AUP or such other policy on the Service web site as set forth above. Accordingly, Customer and other users of the Service should consult the AUP and such other posted policies regularly to conform to the most recent version.

#### **6. Representations and Warranties of Customer.**

Customer acknowledges that Nexus is relying upon Customer's representations and warranties in order to offer the Service to Customer in accordance with the terms of this Agreement. Customer represents and warrants that:

(a.) Age. He or she is at least 18 years of age.

(b.) Customer Information. All information provided by Customer to Nexus is complete and accurate in all respects, including, without limitation, Customer's legal name, address, telephone number(s), , and credit card and payment information. Customer agrees to keep all information current and accurate and to promptly notify Nexus of any change. Failure to comply with these terms will constitute a breach of this Agreement.

(c.) Multiple Users. The Service and the Nexus Group Equipment shall be used only by Customer and by members of Customer's immediate household living with Customer at the same address. Customer additionally acknowledges and agrees that:

- Customer is executing this Agreement on behalf of all persons who use the Nexus Group Equipment and/or Service by means of the Customer Equipment.
- Customer agrees to indemnify, defend and hold harmless Nexus and its affiliates against all claims and expenses (including reasonable attorney fees) arising out of the use of the Service and/or the Nexus Group Equipment or the breach of this Agreement by Customer or any other user of the Customer Equipment.

(d.) No Tampering. The Nexus Group Equipment and the Service are the sole property of Nexus and its affiliates and may only be serviced or modified by Nexus or its authorized representatives. Customer will not service, alter, modify or tamper with the Nexus Group Equipment or with the Service (including, without limitation, altering a WAP to change the downloading or uploading transmission speed of the wireless device) or permit any unauthorized person to do so.

(e.) IP Addresses. Nexus will provide Customer with dynamic IP connection(s) as a component of the Service. Upon termination, disconnection or other discontinuance of the Service or this Agreement, Nexus will, if applicable, take back any dynamic IP connections. Customer will not alter, modify, or tamper with such dynamic IP connection(s) or those of any other customer. Customer agrees not to use a dynamic DNS to associate a host name with such dynamic IP connection(s) for any commercial purpose. Customer also agrees not to use any software on or in conjunction with any computer(s) or network device connected to the Service that provides for static IP connection(s).

## **7. Termination and Expiration.**

(a.) Term. This Agreement will continue in effect for one year and then will continue on a month to month basis until terminated by either party according to the terms of this Agreement

(b.) Termination by Customer. Customer may terminate this Agreement for any reason at any time after having the Service for six months by giving notice to Nexus. Upon termination by Customer, Customer will be responsible for any and all applicable fees and charges up to and including the date of termination. Prepaid monthly service fees for Service not received will be refunded. If Customer terminates the Service prior to the twelve month initial term an early termination fee equal to 75% times the monthly fee times the remaining months of service will be applied to the Customer's final bill.

(c.) Termination by Nexus. Nexus may terminate this Agreement immediately at any time for any reason, whether or not Customer has violated this Agreement. Without in any way limiting the scope of Nexus' right to terminate this Agreement for any reason, Customer understands and agrees it is the policy of Nexus to terminate a subscriber's account in the case of repeat copyright infringement. In the event Nexus terminates the Service for

any reason, Customer will be responsible for any and all applicable fees and charges up to and including the date of termination. Prepaid monthly service fees for Service not received will be refunded.

(d.) Customer Obligations Upon Termination. Upon termination of this Agreement, by Customer or The Nexus, Customer agrees that:

- Customer immediately will cease use of the Service and the Nexus Group Equipment, and destroy all copies of any software provided to Customer pursuant to this Agreement or otherwise used by Customer to access the Service.
- Customer will pay in full for Customer's use of the Service and the Nexus Group Equipment up to the effective date of termination of this Agreement or the date on which the Service and the Nexus Group Equipment have been disconnected, whichever is later. Monthly service charges for use of the Nexus Group Equipment or the Service will be paid by Customer on a pro-rata basis.
- Within 10 days following the termination of this Agreement, Customer shall return the Nexus Group Equipment to Nexus, by any method reasonably requested by Nexus. In addition, Customer will, upon request of Nexus, arrange an agreeable time to permit Nexus, and its employees, agents, contractors, and representatives, to access Customer's Premises during regular business hours to remove the Nexus Group Equipment and other material provided by Nexus. If any of the Nexus Group Equipment is not returned, Customer agrees that Nexus may bill Customer for the charges referred to in Section 1(c) above, and may charge Customer's credit card if applicable. Any failure by Nexus to remove its equipment shall not be considered abandonment of the Nexus Group Equipment.
- Upon termination of this Agreement, Nexus and its suppliers reserve the right to delete all Customer's data, files, electronic messages or other Customer information that is stored on servers or systems of Nexus or its suppliers.
- Upon termination, Customer may forfeit all components of his/her account including, without limitation, user name and all e-mail, IP and web space addresses.

(e.) Retention of Rights. Nothing contained in this Agreement shall be construed to limit any rights or remedies of Nexus available at law or in equity.

(f.) Survival. All representations, warranties, indemnifications and limitations of liability contained in this Agreement shall survive the termination of this Agreement, as well as any other obligations of the parties hereunder which, by their terms, would be expected to survive such termination or which relate to the period prior to termination.

#### **8. Limitation of Liability; No Warranties; Warnings.**

(a.) Limited Warranty. THE NEXUS GROUP EQUIPMENT AND THE SERVICE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER NEXUS NOR ITS AFFILIATES WARRANT THAT ANY CONNECTION TO, TRANSMISSION OVER, OR RESULTS OF THE NEXUS GROUP EQUIPMENT OR THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR WILL PROVIDE UNINTERRUPTED USE OR WILL OPERATE AS REQUIRED, UNINTERRUPTED OR ERROR FREE. CUSTOMER'S SOLE REMEDY FOR SERVICE INTERRUPTION SHALL BE LIMITED TO A PRORATED CREDIT UPON REQUEST ONLY IN THE EVENT OF COMPLETE FAILURE OF THE SERVICE DUE TO A TECHNICAL MALFUNCTION CAUSED BY NEXUS FOR TWENTY-FOUR (24) CONSECUTIVE HOURS OR MORE. TO QUALIFY FOR SUCH CREDIT, CUSTOMER MUST REQUEST THE CREDIT FROM NEXUS WITHIN THIRTY (30) DAYS OF THE FAILURE. CREDITS SHALL BE APPLIED ONLY AGAINST FUTURE FEES PAYABLE BY CUSTOMER FOR THE SERVICE.

WITHOUT LIMITING THE FOREGOING, NO CREDITS WILL BE ISSUED FOR ANY OTHER FAILURES DUE TO ANY OTHER CAUSES; FOR EXAMPLE, EVENTS SUCH AS FORCE MAJEURE OR THE INABILITY TO ACCESS THE SERVICE FOR REASONS OTHER THAN A TECHNICAL FAILURE CAUSED BY NEXUS SHALL NOT ENTITLE SUBSCRIBER TO ANY CREDIT. NEITHER NEXUS NOR ITS AFFILIATES WARRANT THAT ANY DATA OR FILES SENT BY OR TO CUSTOMER WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. (b.) Limitation of Liability. Except as specifically provided in this Agreement, in no circumstance and under no legal theory (including without limitation tort, contract, and otherwise), shall Nexus or its affiliates have any liability to Customer or to any person or entity for (i) any direct, indirect, incidental, special, treble, punitive, exemplary or consequential losses or damages, including without limitation loss of profits, loss of earnings, loss of business opportunities and personal injuries (including death), resulting directly or indirectly out of, or otherwise arising in connection with, the installation, maintenance, failure, removal or use of the Service or the Nexus Group Equipment or Customer's reliance on or use of the Nexus Group Equipment or the Service, including without limitation any mistakes, omissions, interruptions, computer or other hardware or software failure or malfunction, deletion or corruption of files, work stoppage, errors, defects, delays in operation, delays in transmission, or failure of performance of the Nexus Group Equipment or the Service; or (ii) any losses, claims, damages, expenses, liabilities or costs (including legal fees) resulting directly or indirectly out of, or otherwise arising in connection with, any allegation, claim, suit or other proceeding based upon a contention that the use of the Nexus Group Equipment or the Service by Customer or any other person or entity infringes the copyright, patent, trademark, trade secret, confidentiality, privacy, or other intellectual property rights or contractual rights of any third party. In addition to, and without limiting any other limitation of liability contained herein, Nexus shall have no liability whatsoever as the result of the loss of any Customer files, messages, names or addresses or other data of any nature resulting from the deletion of such data upon termination of this Agreement.

(c.) No Liability For Viruses. NEITHER NEXUS NOR ITS AFFILIATES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

- It is Customer's sole responsibility to protect Customer's computers and hardware from damage to its software, files or data as a result of any virus or other harmful feature, and Nexus makes no representation or warranty that any software or content installed on Customer's computer(s) or downloaded from the Service does not contain such virus or other harmful feature.
- Customer agrees to pay any additional charges for any service call made or required on account of any problem related to a virus or other harmful feature detected on Customer's system.

(d.) Customer's Hardware and Software.

- Customer understands that the installation, use, inspection, maintenance, repair and removal of the Nexus Group Equipment and certain Customer Equipment used in connection with the Service may result in service outage or potential damage to Customer's computer(s) and other Customer Equipment. EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY NEXUS, NEITHER NEXUS NOR ANY OF ITS AFFILIATES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE, LOSS OR DESTRUCTION TO THE CUSTOMER EQUIPMENT [INCLUDING WITHOUT LIMITATION CUSTOMER'S COMPUTER(S) AND PERIPHERALS]. In the event of such gross negligence or willful misconduct by Nexus, Nexus shall pay for the repair or replacement of the damaged parts UP TO A MAXIMUM OF \$1,000 and Customer agrees to accept such payment as Customer's sole remedy relating to such activity.

- Customer understands and agrees that the installation process for the software and other components of the Service may modify certain system files on Customer's computer(s). Customer specifically understands and agrees that Nexus does not represent, warrant or covenant that such modifications will not cause the loss of files or disrupt the normal operations of any Customer Equipment including without limitation Customer's computer(s). FOR THESE AND OTHER REASONS, IT IS RECOMMENDED THAT CUSTOMER BACK-UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES, AND CUSTOMER ASSUMES ALL RISKS AND TAKES FULL RESPONSIBILITY FOR NOT DOING SO. NEITHER NEXUS NOR ANY OF ITS AFFILIATES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, FILES OR DATA.

(e.) Not Liable For Third Parties.

- Customer acknowledges that the Service may contain services, equipment and infrastructure, content and other components licensed from or otherwise provided by independent third parties. In addition, Customer will be able to use the Service to access the services and content of third parties.

- Customer agrees that Nexus is not responsible for and has no liability whatsoever for the performance (or non-performance) of any services, equipment, infrastructure or content of third parties. Additionally, services, equipment, infrastructure and content that are not provided by Nexus are not the responsibility of Nexus, and Nexus shall have no liability with respect to such services, equipment, infrastructure and content. All questions concerning third-party services, equipment, infrastructure and content must be addressed to the creators or providers of such services, equipment, infrastructure and content. Nexus does not endorse or warranty any third-party products, services or content that are distributed or advertised over the Service.

(f.) Customer Responsibility for Content. Customer acknowledges that there is some content and material on the Internet or otherwise available through the Service which may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules or regulations or may violate the protected rights of Customer or others. Nexus assumes no responsibility for such content or material. All content and material accessed by Customer or others through the Service is accessed and used by Customer or such others at their own risk, and neither Nexus nor its affiliates shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content or material by Customer or others. Questions or complaints regarding content or material should be addressed to the content or material provider. Customer acknowledges that software programs claiming to be capable of restricting access to sexually explicit material on the Internet are commercially available. Nexus makes no representation or warranty regarding the effectiveness of such programs.

(g.) Monitoring of Postings and Transmissions. Nexus shall have no obligation to monitor postings or transmissions made in connection with the Service. However, Customer acknowledges and agrees that Nexus and its agents shall have the right to monitor any such postings and transmissions, including without limitation e-mail, newsgroups, chat, IP audio and video, and web space content, from time to time and to disclose them in accordance with the Nexus terms of this Agreement, applicable law or government request. Customer further acknowledges and agrees that Nexus reserves the right to refuse to upload, post, publish, transmit or store any information or material, in whole or in part, that, in its sole discretion, is unacceptable, undesirable or in violation of this Agreement or applicable law.

(h.) Eavesdropping. The Customer's use of the Service may be subject to eavesdropping by other persons or entities, including other subscribers to the Service, that use the Nexus Group facilities. This means that other persons or entities may be able to access and/or monitor Customer's use of the Service. This risk of eavesdropping



also exists on the Internet and other services to which access is provided as a part of the Service. Any sensitive or confidential information posted, stored, transmitted or distributed by Customer is done so at Customer's sole risk, and neither

Nexus nor its affiliates shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions by Customer. Customer acknowledges that software programs claiming to be capable of encryption are commercially available, but that Nexus makes no representation or warranty regarding the effectiveness of such programs.

(i.) FTP/HTTP Service Setup. Certain data transfer protocols, such as FTP (File Transfer Protocol) and HTTP (Hyper Text Transfer Protocol), may allow other Service and Internet users to gain access to the Customer's computer and stored data. Each Customer is solely responsible for the security of his or her Customer Equipment and any other equipment Customer chooses to use in connection with the service and for any stored data, and any unauthorized access resulting from his or her use of such transfer protocols or otherwise. Neither Nexus nor its affiliates shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings resulting from, arising out of or otherwise relating to the use of such applications by Customer, or the access by others to the Customer Equipment or other equipment of Customer.

(j.) File and Print Sharing. Use of the Service presents the risk that other persons or entities may be able to gain access to the Customer Equipment and other equipment connected to the Customer Equipment.

- The Service functions in some ways as a Local Area Network (LAN) with each Customer constituting a node on the network. As such, users outside of the Premises may be able to access the Customer Equipment and other equipment connected in some way to the Customer Equipment.
- Some available software includes capabilities that will permit other users to gain access to the Customer Equipment and other equipment connected in some way to the Customer Equipment, and to the software, files and data stored on such equipment. For example, operating systems such as Windows and Macintosh include file sharing and print sharing capabilities which, when enabled, will permit other users to gain access to the Customer Equipment and other equipment connected in some way to the Customer Equipment, even if Customer is not using the Service. Nexus recommends that Customer disable file and print sharing and other capabilities that allow outside users to gain access to the Customer Equipment. Customer acknowledges and agrees that if Customer chooses to run such applications, Customer should take appropriate security measures, and that any failure by Customer to follow this recommendation is at Customer's sole risk. Neither Nexus nor its affiliates shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings resulting from, arising out of or otherwise relating to access by others of the Customer Equipment or any other equipment connected in some way to the Customer Equipment, or to the software, files and data stored on such equipment.

(k.) Cookies and Other Tracking Technologies. Customer acknowledges that accessing certain web sites through the Service may result in an http header (commonly known as a "cookie") being stored or entered into the memory of Customer's browser that may track all or part of a Customer's Internet usage. If Customer does not want such "cookies" to be used or does not want a web site operator to use other methods to track Customer's usage, it is the sole responsibility of Customer to determine if any such methods are used by any web site visited and to prevent or disable them through whatever procedures, if any, are available on Customer's browser.

(l.) High-Risk Activities. The Service is not fail-safe and is not designed or intended for use in situations where absolutely accurate data or information is required. Nexus is not liable for any consequence if the Service is used for such activities, even if such consequence results from an error or Service interruption or failure.

(m.) Sole Remedy. Customer's sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Some states do not allow the exclusion or limitation of implied warranties, and some states do not allow the limitations or exclusion of incidental or consequential damages, so certain of the above exclusions may not apply. In such states, the liability of Nexus and its affiliates is limited to the maximum extent permitted by law.

## **9. Miscellaneous.**

(a.) Notice. Notices to Customers from Nexus may be delivered by: posting the notice on the Service web site [nxs.net/notices/](https://nxs.net/notices/); by posting the notice on another web site about which Customer has been notified; or by sending notice via first-class U.S. postal mail, or overnight courier service to Customer's address of record or via e-mail to the e-mail address listed on the Nexus account. Customer agrees that any one of the foregoing will constitute sufficient notice. Customer acknowledges that, from time to time, Nexus may notify Customer about important information regarding the Service and the Agreement using one or more of the methods set forth in this Agreement. Customer agrees to regularly check his or her postal mail, e-mail and all postings on the Service web site and on any other web site about which Customer has been notified and bear the risk of failing to do so.

(b.) Changes to the Service and the Agreement. Nexus may, in its sole discretion, change, add to or remove portions of the Service (including without limitation content, functionality, hours of availability, equipment requirements, speed, and upstream and downstream rate limitations) at any time without notice. In addition, Nexus may modify this Agreement at any time in its sole discretion upon reasonable advance notice to Customer. Nexus will notify Customer of any such modifications by one or more of the methods set forth in this Agreement, and Customer agrees that such will constitute sufficient notice of such changes. Customer's continued use of the Service following notice of such changes shall be deemed to be Customer's acceptance of any such changes. If Customer does not agree to any such changes, Customer must immediately stop using the Service and notify Nexus that Customer is terminating this Agreement, and the appropriate procedures for termination, as described in this Agreement, will apply.

(c.) Management and Maintenance of the Service. Subject to applicable law and to the limitations of liability set forth in this Agreement, Nexus reserves the right, in its sole discretion and without any obligation to Customer, to undertake any activities it deems necessary to test, modify, update, manage, inspect, maintain, repair, or monitor the Service and its infrastructure and all of its related components. This may include, but is not limited to, activities relating to administration, system security and intrusion detection, technical performance, and monitoring customer use and compliance. Customer also agrees to comply with the bandwidth usage, data storage and other limitations on the Service that are in effect from time to time. If usage exceeds these limitations, Nexus may, at its sole discretion, take any appropriate action including, without limitation, charging Customer for the excess usage, reducing transmission speed or other Service parameters; or limiting or terminating Customer's Service. These rights are in addition to and do not limit any other rights of Nexus and/or its parent or affiliated entities.

(d.) No Relationship. Nothing in this Agreement will create any joint venture, joint employer, franchisee-franchisor, employer-employee or principal-agent relationship between Nexus, any content, backbone, network, circuit and other technology or communications providers, software and other licensors, hardware and equipment suppliers or other third-party providers of elements of the Service, nor impose upon any such companies any obligations for any losses, debts or other obligations incurred by the other.

(e.) Assignment. Nexus may assign its rights and obligations under this Agreement, without notice, to (i) any affiliate of Nexus, (ii) to any party (or its affiliate) acquiring all or substantially all of the assets or stock, by merger

or otherwise, of Nexus or any affiliate of Nexus, or (iii) to any person or entity purchasing or otherwise acquiring the broadband distribution system serving the Premises. This Agreement may not be assigned or transferred by Customer without Nexus' prior consent.

(f.) General. This Agreement and any attachments, schedules, and exhibits constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement, and supersede and replace any and all prior written or verbal agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. Nexus' failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.