

## **Midwest Telecom of America, Inc Agreement for Residential Services**

This Agreement is between you as our Subscriber (“You”, “your”, or “Customer”) and Midwest Telecom of America, Inc. (“MTA” “We” “us” or “Our”) and sets forth the terms and conditions under which you agree to use, and we agree to provide Residential Internet Access Services and/or Residential Voice Services (“Service or “Services”).

### **1. AUTHORIZED USER, ACCOUNT USE, AND RESPONSIBILITIES.**

- A. You acknowledge that you are eighteen (18) years of age or older and that you have the legal authority to enter into this Agreement. You agree promptly to notify us whenever your personal or billing information changes.
- B. You are responsible for all use of your Service and account, whether by you or someone using your account with or without your permission, including all secondary or sub-accounts associated with your primary account, and you are responsible for paying for all MTA Service activity associated with your account whether such activity was authorized by you or not. You agree to comply with all applicable laws, regulations and rules regarding your use of the Service.
- C. You agree the Service is a consumer grade service and is not designed for or intended to be used for any commercial purpose. You may not resell, re-provision or rent the Service, (either for a fee or without charge) or allow third parties to use the Service. For example, you may not provide Internet access to third parties through the MTA connection, or use the Service to facilitate Internet access to the general public (such as through a Wi-Fi hotspot). You may connect multiple computers/devices within a single home to your modem and/or router to access the Service, but only through a single MTA issued IP address. You also may not exceed the bandwidth usage thresholds that MTA may establish from time to time for the Service, or use the Service to host any type of server. Violation of this section may result in bandwidth restrictions on your Service or suspension or termination of your Service.
- D. The MTA Acceptable Use Policy (“AUP”) governs your use of MTA Internet Services and is are posted at <http://www.pickmta.com>(or an alternative website if we so notify you). You agree your use of the Service is conditioned upon adherence to the AUP and you agree to comply with its terms and conditions. You further agree MTA may modify the AUP or other policies from time to time. Notwithstanding anything to the contrary in this Agreement, **YOU ACKNOWLEDGE AND AGREE THAT THE**

TERMS OF THE AUP MAY BE REVISED FROM TIME TO TIME WITH OR WITHOUT NOTICE BY POSTING A NEW VERSION OF THE AUP OR POLICY AS SET FORTH ABOVE.

## 2. GENERAL TERMS AND CONDITIONS

- A. You will have accepted this Agreement and to be bound by its terms and conditions by your signature of the MTA Residential Service Agreement, and by your use of the Services.
- B. Unless otherwise stated in writing by MTA, Services are provided to you for an initial term of 24 months, commencing upon the date of installation of the Services. After the initial term, services shall continue on a month to month basis, subject to 30 day advance notice by you or by MTA of service termination.
- C. Service Pricing can be found at [www.pickmta.com/residentialpricelist](http://www.pickmta.com/residentialpricelist).
- D. You may use MTA Service for lawful purposes only. You may not use the Services for any illegal, improper, or fraudulent activity. You may not use the Services for the purpose of sending bulk or spam email messages, telemarketing, continuous or excessive chat line access, or fax or voice mail broadcasting. You must comply with our acceptable use policy located at [www.pickmta.com/aup](http://www.pickmta.com/aup).
- E. We reserve the right to modify the terms and conditions of this Agreement including service charges and fees, and will provide thirty (30) days prior notice of such changes via invoice notice, US mail, email, website, or other legally acceptable means. If you disagree with the modification to the terms and conditions of this Agreement, you have the right to cancel our services within the 30 day notice period. If you continue to receive or use our services after the end of the 30 day notice period, you will be considered to have accepted the changes and you agree to be bound by such modifications to this Agreement.
- F. **Notices.** All Customer notices pursuant to this agreement shall be delivered in writing and provided to Midwest Telecom of America, Inc at 1567 E. 93<sup>rd</sup> Avenue, Merrillville, IN 46410 via certified mail or overnight delivery service requiring signature verification. Any attempted notice not delivered via the methods described herein is deemed to be invalid.

### **3. INVOICE PAYMENT, TERMINATION OF SERVICES FOR NON-PAYMENT AND INVOICE DISCREPANCIES.**

- A. **Charges, Fees and Taxes.** You agree to pay all charges associated with the Services as invoiced by MTA. Invoices are due upon receipt and are payable via credit card auto-deduction, bank auto-deduction, or other method acceptable to us. Charges include but are not limited to installation charges, monthly service charges, toll charges, technician service call charges, equipment charges, applicable federal, states and local taxes and fees, regulatory recovery fees imposed upon MTA including municipal, state, or federal government assessed fees or surcharges, early termination charges if applicable, and late fees if applicable. You agree to pay any all taxes and or government mandated fees that may be assessed retroactively.
- B. **Discontinuation of Service for Nonpayment.** We may discontinue your Service without notice if you fail to make payment when due, if your credit card or electronic funds transfer is declined by your financial institution, or (if paying by credit card) you fail to provide us with a new charge card expiration date before the existing date expires. Discontinued service may be reinstated upon payment in full of all outstanding MTA invoices and a \$30 reconnection charge. If services are discontinued for non-payment, and if payment is not remitted by you within 15 days of the date of disconnection, you will be deemed to have cancelled the services and, if applicable, the early termination fee will apply.
- C. **Late Fees.** If any portion of your bill is not paid by the due date, we may charge you a late fee on unpaid balances, and in addition we may also discontinue or suspend your Service as described in section B above. The late fee will be the greater of 1.5 % per month or the highest rate permitted by law. In the event we utilize a collection agency or legal action to recover monies due, you agree to reimburse us for all expenses we incur to recover such monies, including court costs and attorneys' fees.
- D. **Termination of Services.** Except as described in Section 2E of this Agreement, if services are terminated prior to your completion of the initial term of 24 months, whether due to your decision to change service providers, due to your non payment of our invoices, or due to a change of residence to a location outside of the MTA service area, applicable early termination fees, due upon the date of the invoice, will apply. Early termination fees are calculated as the amount of one hundred percent (100%) of the remaining monthly service fees that would have been payable if the terminated service had been provided until the end of the initial service term. After the initial term has completed, services may be

terminated upon 30 day notice to MTA in accordance with the Notices section of this agreement.

- E. **Billing Disputes and Inquiries.** In the event you dispute an MTA invoice and/or request an invoice credit, you must contact us within sixty (60) days of the date of the invoice. Any such disputes to your invoice shall be delivered to MTA in written format. You agree to waive and disputes or credits that you do not report within sixty (60) days of your receipt of invoice.

#### **4. ACCESS TO YOUR PREMISES, REPAIR AND MTA/CUSTOMER RESPONSIBILITIES.**

- A. **Access.** You agree to allow us and/or our agents the right to enter your property at which the Service and Equipment will be provided for the purpose of installing, configuring, maintaining, upgrading, repairing, replacing, or removing the equipment. You warrant that you are the owner of the premise or that you have the authority to provide us access to the premise. If you are not the owner, you warrant that you are responsible for, and have obtained, approval from the owner to allow us onto the premise to perform activities as described herein. You agree to provide to us or to our agent, upon request, the owner's name and contact information and/or evidence that the owner has authorized you to grant access to us and/or our agents to the premise.
- B. **Company Equipment.** The term "Company Equipment" means any hardware, antenna, router, gateway, wiring, or other device installed by us at your premise to enable the Services to function. You agree that Company Equipment shall remain the property of MTA at all times. You agree that Company Equipment installed at your premise shall be used only for the purpose of rendering the Service under this Agreement. You agree you will not tamper with Company Equipment or attempt to move or maintain the equipment, nor will you allow any third parties to do. You agree that you will not attach anything to Company Equipment which impairs the integrity of our network or degrades the networks strength or signal quality. At your request, we may relocate the Company Equipment upon your premise for an additional charge, and at a time agreeable to you and us. You agree to either return Company Equipment to us, or to allow us access to the premise to remove Company Equipment upon termination of services, and you agree to compensate us at our replacement cost if our access to the premise is refused for the purpose of equipment removal and/or if you fail to return any Company Equipment within ten (10)

business days from the date the Services are terminated. In addition, if any Company Equipment is damaged while in your possession, you agree to pay its replacement cost. We recommend the Company Equipment we install at your premise be covered by your homeowners or renters insurance policy, however in any such event of damaged, lost, or stolen equipment it is solely your responsibility to compensate us directly at our replacement cost whether Company Equipment was covered by insurance or not, whether reimbursed by your insurance company or not.

- C. **Customer Equipment.** MTA shall have no obligation to install, maintain, or repair any customer owned or customer provided equipment. You as our customer shall be solely responsible for providing the maintenance, repair, operation, and replacement of all inside telephone wiring, your router, computer equipment, and all other facilities owned and controlled by you.
- D. **Service Calls.** In the event of a service affecting matter whereby services do not function according to reasonable expectations, you may contact our service center at 1-800-935-2181. If upon remote diagnosis we are able to determine that the network signal and Company Equipment are properly functioning, we will recommend that you trouble shoot your own computer, your telephone equipment and/or your internal wiring. If you prefer that an MTA technician come to your premise to diagnose the trouble in person, and if the MTA technician is unable reproduce the issue directly from MTA equipment, then service technician charges will be assessed to you for dispatch. If the MTA technician is able to reproduce the issue from MTA equipment, then MTA will be responsible for repair of services at our expense.
- E. **MTA responsibility.** Our responsibility for the function of service ends at the point of MTA's network interface, which may either be an MTA analogue to telephone adapter, or MTA router. If the Services are effectively functioning up to the point of the MTA network interface, then the MTA Service is deemed to be functional and working properly per the terms of our Agreement. If MTA service is functional up to the point of our network interface, but you are unable to access the internet or make telephone calls, MTA recommends you repair your internal equipment. MTA does not work on or repair Customer owned computers or telephones.
- F. **Inside Wiring.** You may install wiring inside your Premises ("Inside Wiring"), such as additional cable wiring and outlets, provided it does not interfere with the normal operations of our network. If you have us install Inside Wiring, we will charge you for that service. Regardless of who installed it, we consider the Inside Wiring your property or the property of

whomever owns the Premises. If you have us repair or maintain the Inside Wiring, we will charge you for that service.

## 5. DISCLAIMER OF WARRANTY AND SERVICE LIMITATIONS

- A. **No warranty.** You understand that Services under this Agreement are provided “as is” and without warranty of any kind whether express or implied. You agree that your use of the Services under this Agreement is at your sole risk. Neither MTA nor its affiliates, suppliers, employees, or agents warrant that the Equipment or the Services will meet your requirements, provide uninterrupted use, or operate error free. ALL REPRESENTATIONS, GUARANTEES OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PUPOSE OR MERCHANTABILITY, ARE HEREBY DISCLAMINED AND EXCLUDED UNLESS OTHERWISE PROHIBITED BY APPLICABLE LAW.
- B. **Not Failsafe.** You understand and agree that Services under this Agreement are not failsafe and are not designed or intended for any uses that require fail safe-safe performance or for which any error or interruption of Services could lead to injury to persons or property.
- C. You understand and agree if there is an electrical power outage to the MTA network in your area, your service will cease to function during the outage. Such outages may be beyond the control of MTA.
- D. You agree that MTA shall not be liable for any loss, liability, inconvenience, or damage resulting from any interruption of Service under this Agreement, whether directly or indirectly caused by, or whether resulting from the failure of any radio signal, failure of any equipment, failure of any fiber optic transmission circuit, failure of any 3<sup>rd</sup> party service suppliers to MTA, failure of any utility facilities, strike, labor dispute, riot or insurrection, malicious mischief, war, explosion, fire, flood, earthquake, wind, tornado, ice, extreme weather conditions or other acts of God, failure or reduction of power, or any court order, act or order of government restricting or prohibiting the operation or delivery of the Service. In all other cases of an interruption of the Service, you shall be entitled upon request made within thirty (30) days of such interruption, to a pro rated credit for the period any Service interruption. Such credit shall not exceed the fixed monthly charges for the month of Service interruption and excludes non-recurring charges, one time charges, regulatory fees or

surcharges, taxes or other government imposed fees. EXCEPT AND AS OTHERWISE PROHIBITED BY LAW, SUCH CREDIT SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICE.

- E. THERE ARE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ASSOCIATED WITH SERVICE PROVIDED BY MTA, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED TO THE EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MTA DOES NOT WARRANT THAT THE SERVICES AND/OR COMPANY EQUIPMENT WILL OPERATE UNINTERRUPTED, WILL BE ERROR FREE, FREE OF LATENCY, OR THAT THE SERVICES WILL MEET YOUR NEEDS, OR THAT THE SERVICES, MTA EQUIPMENT, OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.
  
- F. YOU AGREE THAT IN NO EVENT SHALL MTA, ITS AGENTS, SUPPLIERS OR CONTRACTORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING FROM OR RELATED TO: (1) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (2) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS, OR THIRD PARTIES; (3) ANY LACK OF OPERABILITY OR INTERCONNECTION OF MTA SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, OR NETWORKS PROVIDED BY ANY THIRD PARTIES OR THE CUSTOMER; OR (4) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS, COMPUTER WORMS, MALWARE, OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.
  
- G. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER MTA NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TRESPASS, CONVERSION, TORT OR CONTRACT) HAVE ANY LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS: (1) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES, OR

DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (a) YOUR RELIANCE ON OR USE OF OUR EQUIPMENT OR SERVICE(S); (b) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, OR REMOVAL OF THE SERVICE(S) (INCLUDING, BUT NOT LIMITED TO, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE BREACH, FAILURES OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE SERVICE(S), THE MTA EQUIPMENT, OR THE CUSTOMER EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, LOSS OF CALL DETAIL, EMAIL, VOICEMAIL, OR OTHER INFORMATION OR DATA); (c) THE USE OF MTA EQUIPMENT OR CUSTOMER EQUIPMENT TO PROVIDE THE SERVICES, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM OTHERS ACCESSING YOUR EQUIPMENT, OUR NETWORK, OR THE CONTENTS OF YOUR TRANSMISSIONS MADE THROUGH THE SERVICE(S), OR YOUR USE OF FILE SHARING, PRINT SHARING, OR OTHER CAPABILITIES THAT ALLOW OTHERS TO GAIN ACCESS TO YOUR COMPUTER NETWORK.

## 6. ADDITIONAL PROVISIONS APPLICABLE TO MTA VOICE SERVICES

- A. E911 service may function differently over MTA's network than E911 services furnished by other providers. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS OF 911 / E911 SERVICE ASSOCIATED WITH YOUR USE OF MTA VOICE SERVICES. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY HAVE OCCASION TO PLACE CALLS OVER MTA SERVICES.
- B. **Correct Address.** You must provide your correct address in order for 911/E911 calls to be properly directed to emergency services.
- C. **Service Interruptions.** You understand and accept that MTA Voice Services cannot function if there is an electrical power outage, and that 911 calling may not be functional in this situation. If you have a battery backup, 911 calling may not be functional if the battery backup fails, if the Company Equipment locks up due to power failure. In addition, you understand and accept that calls, including calls to E911 may not be completed if there is a problem with network equipment and facilities, network or equipment power failure, or other technical problem.



D. **Limitation of Liability and Indemnification.** YOU ACKNOWLEDGE AND AGREE THAT MTA WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICE, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL USING THE SERVICE. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS MTA AND ITS AFFILIATES, EMPLOYEES, SUPPLIERS OR AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES INCLUDING THOSE RELATED TO 911/E911.

E. **Directory Listings.** IF WE MAKE AVAILABLE AN OPTION TO LIST YOUR NAME, ADDRESS, AND/OR TELEPHONE NUMBER IN A PUBLISHED DIRECTORY (WHETHER IN PRINT OR ONLINE) OR DIRECTORY ASSISTANCE DATABASE, AND ONE OR MORE OF THE FOLLOWING CONDITIONS OCCURS: (1) YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE OMITTED FROM A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS INCLUDED IN EITHER OR BOTH; (2) YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE INCLUDED IN A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS OMITTED FROM EITHER OR BOTH; OR (3) THE PUBLISHED OR LISTED INFORMATION FOR YOUR ACCOUNT CONTAINS MATERIAL ERRORS OR OMISSIONS, THEN THE AGGREGATE LIABILITY OF MTA AND ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL NOT EXCEED THE MONTHLY CHARGES, IF ANY, WHICH YOU HAVE ACTUALLY PAID TO US TO LIST, PUBLISH, NOT LIST, OR NOT PUBLISH THE INFORMATION FOR THE AFFECTED PERIOD. YOU SHALL HOLD US HARMLESS AND ANY AFFILIATES, SUPPLIERS OR AGENTS AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS REFERENCED ABOVE.

## **7. ADDITIONAL PROVISIONS APPLICABLE TO MTA INTERNET SERVICES**

A. **Speed.** You understand and agree that MTA bandwidth is provided on a best effort basis and that actual speeds may vary based on various factors

including, but not limited to, the number of computers or simultaneous users accessing the network at any given point in time. You understand and agree that MTA does not guarantee any particular speed or amount of bandwidth will be continuously available under this Agreement.

- B. **Bandwidth Threshold.** Bandwidth thresholds are 350 Gigabytes per month per customer. If your usage is above this threshold MTA reserves the right to assess additional charges on the following billing cycle equal upon written notice or disconnect services upon a 30 day notice to you.

## 8. ASSIGNABILITY

This Agreement and the Service(s) furnished hereunder may not be assigned by you. You agree to notify us immediately of any changes of ownership or occupancy of the Premises. We may assign our rights and obligations under this Agreement with or without notice to you.

## 9. VENUE

This agreement shall be governed according to the laws of the State of Indiana, with venue for any legal action undertaken residing in Lake County Indiana. Customer agrees in the event of unpaid invoices for services rendered or unpaid invoices for Company Equipment that is damaged or not returned, the venue for MTA to seek legal redress shall be the Circuit and Superior Courts of Lake County Indiana. Customer agrees that MTA shall be entitled to recover reasonable attorney fees in its effort to collect any unpaid balance due, including any unpaid invoices for early termination fees or invoices for unreturned or damaged equipment.

## 10. AGREEMENT SCOPE AND SEVERABILITY

- A. **Entire Agreement.** This Agreement and any other documents incorporated by reference herein constitute the entire agreement between you and us, and shall replace any prior written or verbal agreements. If any portion of the Agreement is unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of both parties to this Agreement, and the remainder of the provisions shall remain in full force and effect.

B. **Severability.** If any clause or section of this agreement is found to be illegal or unenforceable, that clause will be severed from this Agreement, and the remainder of the Agreement shall be given full force and effect.