

**AIRbaud Wireless Internet Service**

I. Internet Subscriber and Service Terms Agreement

and

II. Service Schedule

## **I. Internet Subscriber and Service Terms Agreement**

### **I. Preamble**

AirBaud, Inc. ("AirBaud") is a high-speed Internet Service Provider ("ISP") which will provide its Customers wireless internet service upon the terms and conditions set forth in this document.

- "Customer" is the individual or entity ordering services from AirBaud, and Customer and AirBaud shall be collectively referred to as the "Parties".
- "Agreement" means this Internet Subscriber and Service Terms Agreement, the documents titled "Authorization Form", and "Service Schedule", collectively or individually.
- "Service" means a service which AirBaud provides under the Agreement, together with any and all AirBaud Equipment and Software.
- "Equipment" includes all hardware used by AirBaud to provide a Service, together with all user manuals and other documentation.
- "Software" includes all software, computer code, imbedded firmware, and any updates, upgrades and other modifications to same, as well as any associated user manuals and other documentation.
- AirBaud will provide a Service in accordance with the Authorization Form and the service levels and other requirements described in its Service Schedule.

### **II. Service Delivery**

- Customer shall cooperate with AirBaud in AirBaud's delivery of a Service, including allowing AirBaud access to the Customer's real or personal property for the purpose installing Equipment or Software, or for performing diagnostic or maintenance activities.
- AirBaud reserves the right to modify a Service, at any time, without prior notice.

### **III. Charges, Payment and Credit Terms**

- Customer shall pay AirBaud for any and all fees, expenses and charges owing for a Service ("Charges"), in United States Currency, and in the amount as shown on the Authorization Form.
- Should Customer provide a credit card number to AirBaud, Customer thereby authorizes AirBaud to continue charging said credit card for all Charges due and payable to AirBaud pursuant to the terms of the Agreement, together with any other Charges as the parties may agree, until this Agreement is terminated. Customer agrees to pay to AirBaud, upon demand, all Charges not received from Customer's credit card issuer, or its agents.
- Customer will pay any and all applicable taxes, fees and surcharges that apply to the Charges and/or a Service, together with any other amounts which AirBaud may be required by law or regulation to collect from or pay to others to support any statutory or regulatory programs with respect to a Service ("Fees and Taxes"), except to the extent that Customer provides AirBaud with proper proof of exemption to said Fees and Taxes.
- Customer may cancel a Service by providing AirBaud with 30 days advanced notice, in writing. In such event, AirBaud may require that Customer pay an early termination fee as set forth in the Authorization Form and/or Service Schedule. Customer shall pay said termination fee within 30 days after Customer provides AirBaud with notice of such termination, and if Customer fails to pay same, the termination fee may be deducted by AirBaud from the Security Deposit set forth in Paragraph III, above.
- AirBaud may terminate, suspend or block access to a Service or all Services, without notice to the Customer, for any reason, including but not limited to, one or more of the following:
  - A. to comply with any law, regulation, court order or governmental request or order requiring such immediate action;
  - B. to prevent interference with, damage to, or degradation of AirBaud's Internet network;
  - C. to eliminate a hazardous condition;
  - D. a Service is used in any matter which will, does or may expose AirBaud to legal liability, or a Service is used in any manner which violates any Federal, State or Local law, ordinance or regulation, or which violates AirBaud's Acceptable Use Policy as set forth in the Agreement or as posted on AirBaud's website ([www.airbaud.net](http://www.airbaud.net)). [NOTE: AirBaud reserves the right to change its Acceptable Use Policy at any time, without notice]; or,
  - E. Customer fails to pay any amount due to AirBaud, and continues to fail or refuse to pay within 10 days after receiving written notice from AirBaud that an amount is past due.

- Upon termination, Customer shall forfeit Customer's account username and all email, I.P. and web space addresses.
- Upon termination, AirBaud, its successors, assigns, affiliates and designees reserve the right to erase and delete all Customer data, files, electronic messages or other information which may be stored on AirBaud, its successors, assigns, affiliates and designees' servers or systems. AirBaud shall not have any liability whatsoever as a result of the loss of any such data, files, messages or other information.
- Customer shall be invoiced as described in the Authorization Form and/or Service Schedule.
- Customer will pay, in full, the Charges due, within 30 days of each invoice date.
- AirBaud may assess a late fee of 1½% per month of the Charges on all Charges 30 days or more past due.
- Should Customer incur Charges as a result of accessing Internet Online Services or purchasing or subscribing to other services not provided by AirBaud, Customer shall indemnify and hold AirBaud and its affiliates from any liability therefore, including attorney fees, court costs and taxes.
- Unless otherwise prohibited by law, Customer shall notify AirBaud of any billing errors, discrepancies, or other billing requests or for a refund, within 60 days of the date in which such error or dispute occurs.
- At any time before or after a Service is delivered by AirBaud to Customer, AirBaud may require that Customer pay or prepay a security deposit ("Security Deposit") in an amount reasonably requested by AirBaud (which sum shall not exceed an amount equal to 3 months of Charges as described in the Authorization Form and/or Service Schedule) to secure a Service. AirBaud may apply the Security Deposit to past due Charges or other balances owed by Customer upon termination of a Service.
- If there are no past due Charges or other balance owed by Customer to AirBaud at the time of termination of a Service, said Security Deposit shall be refunded to Customer within 45 days of the last invoice date following said termination of a Service.
- AirBaud shall not be required to pay interest on any Security Deposit collected from Customer, and AirBaud shall not be required to keep any Security Deposit in escrow or in trust or otherwise segregated from its general business operating funds.
- In lieu of a Security Deposit, AirBaud may, at AirBaud's sole discretion, require a Customer to provide a letter of credit, in an amount reasonably required by AirBaud and in the form and with an institution acceptable to AirBaud, to secure payment of a Service upon the same terms and conditions as set forth in this Paragraph III.
- Customer authorizes AirBaud to make inquires and to receive information regarding Customer's credit history (e.g., a credit report).

#### **IV. Term of Agreement and Termination**

- The initial term ("Initial Term") for a Service will be as shown on the Authorization Form and/or Service Schedule. Unless otherwise set forth in the Authorization Form and/or Service Schedule, a Service's term will renew automatically at the expiration of the Initial Term for an equal term thereafter ("Renewal Period").

#### **V. Use of Service, Equipment and Software**

- Title to all AirBaud supplies, equipment ("Equipment") and software ("Software") shall vest and shall at all times remain with AirBaud, AirBaud's successors, assigns, agents, or designees. Customer does not obtain any ownership rights in or to the Equipment or Software provided by AirBaud for a Customer's use of a Service. Customer shall not allow any liens, or other encumbrances, to be placed on or upon the Equipment and AirBaud shall have the right to retake possession of the Equipment and Software, at any time, in order to protect its ownership interest in same.
- Customer shall bear all risk of loss for the Equipment and Software after the Equipment's and Software's delivery to the Customer or the Customer's premises.
- Customer may not, at any time, disassemble, reverse engineer, reproduce, modify or repair the Equipment or Software for any reason whatsoever.
- Customer may only use the Software supplied by AirBaud with the Equipment supplied by AirBaud.
- Customer shall abide by all terms of any third party Software license agreements provided with any Equipment.
- Customer shall not provide a Service to any third party under any circumstances whatsoever, whether same be for a fee, for free, in barter or like kind exchange, gift, or in any other manner or for any other reason, whatsoever.

- Customer shall provide all security and/or privacy measures which Customer may require for its computer, computer network and/or data storage for a Service. Customer assumes all risk of loss for Customer's data, whether said data is stored or otherwise.
- Customer assumes all liability, and indemnifies and holds AirBaud harmless for any claims for losses associated with Customer's use of a Service, unauthorized access by a third party via a Service to a Customer's computer, computer network and/or data.
- Customer acknowledges that there are risks that Customer's computer, computer network and/or data may become corrupted by third parties violating Customer's individual computer or network security. Customer shall notify AirBaud, immediately, upon Customer learning of a security lapse or breach in Customer's computer, computer network or data.
- Customer shall be solely and exclusively responsible for, and shall indemnify and hold AirBaud harmless from, any damages, claims or causes of action associated with Customer's use of a Service and Customer's use of the Internet in general, including but not limited to, messaging, posting, downloading, uploading, searching, receiving or sending e-mail, or other use of a Service or the Internet.
- This Agreement does not constitute a license for the Customer to copy, reproduce, distribute, or otherwise use or appropriate any proprietary information provided or accessible through a Service.

#### **VI. Prohibited Uses**

- Customer shall not, directly or indirectly, use any AirBaud Equipment or a Service for any unlawful purpose whatsoever, or for any purpose which would violate any posted AirBaud Acceptable Use Policy.
- AirBaud reserves the right to amend, revise, change or delete, in whole or in part, any provision of its Acceptable Use Policy. Customer's use of a Service and/or AirBaud Equipment constitutes Customer's acceptance and acknowledgment of AirBaud's Acceptable Use Policy.
- Customer's use of any AirBaud Equipment or Service in violation of any federal, state, or local law, rule or regulation is strictly prohibited and shall be grounds for immediate termination of a Service or Services and shall require immediate return or surrender of any AirBaud Equipment and Software in Customer's possession or at or on Customer's property.
- Only Customer and members of Customer's household (in the case of a Residential Service) or Customer's employees (in the case of a Commercial Service) may use any AirBaud Equipment and Service provided under this Agreement. Customer is strictly prohibited from allowing any unauthorized usage of AirBaud Equipment or a Service. Customer shall have the sole and exclusive responsibility for insuring that all members of Customer's immediate household using AirBaud Equipment or a Service comply with the terms and provisions of the Agreement.
- Customer shall be solely responsible for any and all breaches of the terms and conditions set forth in this Agreement, and Customer shall indemnify and hold AirBaud, its agents, successors, assigns, and designees from and against any and all claims and expenses (including reasonable attorney fees) arising out of the use of AirBaud Equipment and/or a Service by Customer or any other individuals accessing a Service or using AirBaud Equipment at or on Customer's property.
- Customer may not alter, modify, or tamper with AirBaud Equipment or Service, or permit any other person not authorized by AirBaud to do so.
- Customer shall not allow the Service or any AirBaud Equipment to be connected to more computers, either on or outside the premises, than are authorized by AirBaud.
- Any unauthorized receipt of a Service by Customer shall constitute a theft of Service, all of which may be in violation of State and Federal law and can result in both civil and criminal penalties.
- AirBaud reserves the right to refuse to upload, post, publish, transmit, store, disseminate, distribute or retain any information, data or materials that, in AirBaud's sole discretion, is, in whole or in part, unacceptable, undesirable, or in violation of law or the Agreement.
- Customer shall not provide to minors, or allow minors access to, any material which may be unsuitable for children, obscene, or which may violate the protected rights of any minors.
- Customer shall not eavesdrop or surreptitiously access any content, material, data or any sensitive or confidential information posted, stored, transmitted or disseminated by any other entity or individual, unless said entity or individual provides Customer with written consent for such access. Customer also acknowledges that third parties may eavesdrop or surreptitiously access

content, material, data or any sensitive or confidential information of the Customer. NEITHER AIRBAUD, NOR ITS AFFILIATES, SHALL HAVE ANY LIABILITY WHATSOEVER FROM ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH ANY AFORESAID EAVESDROPPING OR SERIOUS ACCESS TO CONTENT AND MATERIAL OF THIRD PARTIES OR CUSTOMER.

#### **VII. Warranties, Warnings and Limitations of Liability**

- LIMITED WARRANTY: The AirBaud Equipment and the Service are provided hereunder in “as is” condition, without any Warranties, whatsoever, either expressed or implied. Neither AirBaud nor its affiliates warrant that any connection to, transmission over, or other use of AirBaud Equipment or 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 pro-rated credit, upon Customer’s request, and only in the event of a complete failure of Service for a period of 24 consecutive hours or more due to a technical malfunction of equipment under the direct control of AirBaud. To obtain such a credit, Customer must notify AirBaud of said interruption of Service and a request for proration within 30 days of such failure of Service. Credits shall be applied only against future fees payable by the Customer to AirBaud for a Service. Provided, however, AirBaud shall not, in any way, be responsible for, nor shall Customer be entitled to any credit or credits contemplated by this paragraph, if any Service interruption is caused, in whole or in part, by an Act of God, by an act or acts any third party or parties not under the direct control of AirBaud, or for any other reason whatsoever which is beyond the direct control of AirBaud.
- NEITHER AIRBAUD, NOR ANY OF ITS AFFILIATES, SHALL HAVE ANY LIABILITY WHATSOEVER TO CUSTOMER OR ANY THIRD PARTY FOR DAMAGE, LOSS OR DESTRUCTION OF OR TO ANY HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARM, OR FROM ANY ATTEMPT TO REMOVE, CURE, REHABILITATE OR REPAIR SAME, NOTWITHSTANDING OF THE FACT THAT SUCH VIRUS OR HARM MAY HAVE BEEN CONTRACTED, OBTAINED OR DOWNLOADED FROM A SERVICE PROVIDED BY AIRBAUD.
- EXCEPT FOR CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY AIRBAUD, NEITHER AIRBAUD, NOR ANY OF ITS AFFILIATES, SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE, LOSS OR DESTRUCTION TO CUSTOMER’S EQUIPMENT. CUSTOMER ACKNOWLEDGES THAT EQUIPMENT, WHEN INSTALLED, MAY RESULT IN SERVICE OUTAGES OR POTENTIAL DAMAGE TO CUSTOMER’S COMPUTER AND OTHER CUSTOMER HARDWARE OR SOFTWARE. IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON BEHALF OF AIRBAUD, AIRBAUD SHALL PAY TO CUSTOMER FOR THE REPAIR OR REPLACEMENT OF THE DAMAGED CUSTOMER HARDWARE OR SOFTWARE BASED ON UP TO A MAXIMUM OF \$1,000.00 AND SAME SHALL BE CUSTOMER’S SOLE REMEDY RELATING TO AFORESAID NEGLIGENCE OR MISCONDUCT.
- It is Customer’s responsibility to back up all Customer data which Customer deems necessary to safeguard. Customer shall conduct such backup prior to the installation of any AirBaud Equipment or Software. NEITHER AIRBAUD, NOR ITS AFFILIATES, SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSS OR DESTRUCTION OF ANY CUSTOMER SOFTWARE, FILES OR DATA.
- Customer understands that Customer’s computer may need to be physically opened, either by the Customer or by AirBaud or its agents, for the purposes of installation of certain AirBaud Equipment. Customer further acknowledges that opening of Customer’s computer may void certain warranties provided by Customer’s computer manufacturer or other parties as they relate to the computer’s warranty. NEITHER AIRBAUD, NOR ANY OF ITS AFFILIATES, SHALL HAVE ANY LIABILITY WHATSOEVER AS A RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.
- Customer’s sole and exclusive remedies under the Agreement are as expressly set forth in the Agreement
- Neither AirBaud nor its affiliates warrant that any data or files sent by or to the Customer will be transmitted in uncorrupted form or within a reasonable period of time. All representations and warranties of any kind, expressed or implied, including without limitation, any warranties of performance, fitness for a particular purpose or merchantability, and not infringement are hereby excluded.
- AirBaud assumes no responsibility for any content received by Customer over the Internet or a Service. All content and material accessed by Customer through a Service, or through the Internet in general, is accessed and used by the Customer at

Customer's own risk and peril, and neither AirBaud nor its affiliates makes any representations as to the quality, legality, appropriateness or suitability of such content and materials so accessed by Customer.

- Customer assumes and incurs all risks associated with Customer's use of a Service. It is Customer's sole and exclusive responsibility to take preventative measures to ensure protection of any computer, peripherals or other hardware from damage on account of software viruses or any other harm or risk now known or unknown.
- Customer shall be responsible for providing Customer's own firewall protection to prevent a contamination of Customer's computer, computer network or other systems from computer viruses. Customer acknowledges that computer viruses are a known risk of internet usage beyond the control of AirBaud. Customer shall, at Customer's own expense, remove any viruses on Customer's hardware or software, at no cost to AirBaud.

#### **VIII. Customer Privacy and Information Provided to Third Parties**

- Customer's privacy interest, including Customer's ability to limit disclosure of certain information to third parties, is safeguarded by , among other laws, the subscriber privacy provisions of the Communications Act of 1934, as amended (the "Cable Act"), and the Electronic Communications Privacy Act. Customer's rights under the Cable Act, and AirBaud's privacy practices, are described in the Subscriber Privacy Notice which AirBaud delivered to Customer at the time of the original installation of the Service, and will deliver to Customer annually as long as Customer is receiving the Service. Customer hereby acknowledges receipt of the Subscriber Privacy Notice.
- The Service will allow Customer to access third parties, including without limitation, content providers, on-line services and other providers of goods, services and information. Some of these goods, services and information may be accessible directly from the Service, and others may be accessible from the third parties referenced above. In connection with such third party access, Customer may be requested or required to provide his or her name, address, telephone number, credit card number and other personally identifiable information to such third parties. AirBaud is not 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. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Service. For a description of the privacy protections associated with providing information to such third parties, Customer should refer to the privacy policies, if any, provided by such third parties.

#### **IX. Arbitration of Disputes**

- Any and all disputes regarding this Agreement, except those involving AirBaud's collection of current and/or past-due Charges, shall be resolved through binding arbitration, by a single arbitrator, pursuant to the rules of the American Arbitration Association in effect as of the date the request for arbitration is filed. These procedures and rules may limit the amount of discovery and/or recovery available to Customer or AirBaud. The arbitrator will apply all relevant statutes of limitation, and will honor all claims recognized by law. Both Customer and AirBaud shall have the right to be represented by counsel in any arbitration proceeding. Any arbitrator conducting arbitration or making any award under this Agreement shall be bound by and strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. THE ARBITRATOR CANNOT AWARD DAMAGES THAT ARE NOT EXPRESSLY AUTHORIZED BY THIS AGREEMENT. UNLESS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, THE ARBITRATOR CANNOT AWARD ATTORNEY FEES, AND CUSTOMER AND AIRBAUD BOTH WAIVE ANY CLAIMS FOR AN AWARD OF DAMAGES OR ATTORNEY FEES THAT ARE EXCLUDED OR LIMITED UNDER THIS AGREEMENT.
- Notwithstanding the above arbitration provision, arbitration shall not be required in cases where AirBaud seeks or is seeking to recover current and/or past-due Charges from Customer which are due and payable as set forth in Paragraph III, above, and as set forth in any other provision or provisions of the Agreement. AirBaud may collect such current and/or past-due Charges in any manner allowed by law and at AirBaud's sole discretion.

#### **X. Miscellaneous.**

- This Agreement shall be governed pursuant to the law of the State of Indiana, and all disputes and/or controversies involving the interpretation of this Agreement, the provision of a service, or any other dispute and/or controversy between AirBaud and

Customer, shall be resolved within the State of Indiana, and the parties stipulate and agree that Lake County, Indiana, shall be the sole appropriate and convenient venue and/or forum to resolve any such disputes and controversies.

- This Agreement and its exhibits constitute the entire Agreement and understanding between the parties with respect to the subject matter contained in the Agreement. The Agreement supersedes all prior written or verbal agreements between the parties.
  - In the event that any portion or provision of the Agreement shall be held to be unenforceable, the unenforceable provision shall be stricken from the terms of the Agreement as if same were never incorporated therein, and the remaining portions of the Agreement shall remain in full force and effect.
  - AirBaud's failure to exercise any remedy available to it under law shall not be deemed a waiver of the right to exercise any such remedy at any subsequent time.
  - Customer may only modify the terms of the Agreement, in writing, by a document executed by Customer and an authorized AirBaud representative.
  - AirBaud may modify any term or provision of the Agreement (except any guaranteed terms set forth in the Authorization Form and/or Service Schedule) at any time, and in its sole discretion, upon providing reasonable advance notice to Customer of any such changes or modifications. Customer's continued use of a Service following notice of such changes and modifications shall be deemed to be Customer's acceptance and acquiescence to such changes and modifications. Should Customer disagree with any such changes, Customer shall immediately discontinue using the Service, and shall notify AirBaud that Customer is terminating this Agreement.
  - Nothing contained in this Agreement shall be construed to limit AirBaud's rights and/or remedies available at law or in equity.
  - All representations, warranties, indemnifications and limitations of liability contained in this Agreement shall survive the termination of this Agreement.
  - AIRBAUD ASSUMES NO RESPONSIBILITY FOR ANY CONTENT RECEIVED BY CUSTOMER OVER THE INTERNET OR A SERVICE. ALL CONTENT AND MATERIAL ACCESSED BY CUSTOMER THROUGH A SERVICE, OR THROUGH THE INTERNET IN GENERAL, IS ACCESSED AND USED BY THE CUSTOMER AT CUSTOMER'S OWN RISK AND PERIL, AND NEITHER AIRBAUD NOR ITS AFFILIATES MAKE ANY REPRESENTATIONS AS TO THE QUALITY, LEGALITY, APPROPRIATENESS OR SUITABILITY OF SUCH CONTENT AND MATERIALS ACCESSED BY CUSTOMER.
- AirBaud shall not, in any way, be held liable or responsible, in whole or in part, for any Acts of God, or for any acts of third parties not under the direct control of AirBaud, or for any other reason whatsoever which is beyond the direct control of AirBaud.

## Service Schedule: AIRbaud BIZ

### A. Definitions:

A capitalized term used in this document that is not defined here has the same meaning as in AIRbaud's *Internet Subscriber and Service Terms Agreement*.

### B. Service Description:

1. AIRbaud BIZ is an Internet access service that provides dedicated connections from Customer's premises (each, a "**Customer Site**") to the Internet using a data radio ("**Access Facilities**"). At the originating Customer Site, Customer's equipment will place data into Internet Protocol (IP) packets and give each packet a terminating address. The Service then transports the IP packets over the Access Facilities to AIRbaud's Internet network and then to the terminating Internet.

2. AIRbaud will arrange for the provision of the Access Facilities as shown on the Authorization Form. Customer will pay AIRbaud for the Access Facilities as shown on the Authorization Form. Customer also will pay AIRBAUD the network connection charge shown on the Authorization Form ("**Base Rate**")

3. AIRbaud will implement a roof-mounted radio for Internet access.

4. AIRbaud will provide Primary Domain Name Service (PDNS)(for up to 3 domain names).

5. If the Authorization Form indicates that Customer has selected the option for AIRBAUD to furnish a router as AIRbaud CPE ("**CPE Router Option**"), then for the router:

(a) AIRbaud will configure its static default route and its WAN port IP address.

(b) Customer will design, implement, manage and archive its configuration of internal IP routing protocols, LAN information and access lists. The CPE Router Option does not include proactive device monitoring or IOS software configuration updates and/or upgrades.

6. AIRbaud will provide reasonable assistance to Customer in registering Customer's domain name(s) if so requested by Customer. If Customer makes this request, Customer will be considered to have (a) represented and warranted to AIRbaud that any name Customer submits for registration and all intellectual property rights in these names are owned exclusively by Customer or that Customer has all necessary rights to register the names, and (b) agreed that AIRBAUD is not responsible if Customer is not able to register a domain name.

### C. Service Objectives:

#### 1. Availability:

(a) A "**Service Outage**" is when Service is completely unavailable or inaccessible for Customer's use for 10 or more consecutive minutes. A "**Network Service Outage**" is a Service Outage caused by a problem with the Access Port or AIRBAUD Access Router used to provide Service, or due to a problem with AIRBAUD's Internet network (not including the following: (i) Access Facilities, (ii) AIRBAUD CPE and AIRBAUD CPE Software; (iii) any Internet network or backbone other than AIRBAUD's; (iv) any equipment provided by a party other than AIRBAUD; (v) any server connected to the Internet; and (vi) any packet delivery to or from AIRBAUD's Internet network). The "**Access Port**" is the port on AIRbaud's Internet network to which the Access Facilities connect and through which Service is provided for Customer; the "**Access Router**" is the router to which the Access Port is directly connected. A "**Local Loop Service Outage**" is a Service Outage caused by a problem with Local Loop Access Facilities ordered or provided by AIRBAUD. "**Local Loop Access Facilities**" are Access Facilities implemented by use of local loops.

(b) If there is a Network Service Outage (resulting in Service not being available for Customer's use 100% of the time during a calendar month) and if within 10 days of the end of that month Customer requests the AIRBAUD account team assigned to Customer to issue a credit, AIRBAUD will issue to Customer (subject to the limitations described below) a "**Network Service Outage Credit**" for that month determined by the duration of the Network Service Outage as shown in the table below.

Duration of Network Service Outage (From opening of trouble ticket)	Amount of Network Service Outage Credit
10 Minutes to 60 minutes	1/30 <sup>th</sup> of monthly base rate
More than 60 minutes	1/30 <sup>th</sup> of monthly base rate for each full 60 minutes of Network Service Outage

(c) The following limits apply to AIRBAUD’s issuance of credits: (i) no more than one credit will be issued for a 24-consecutive-hour period, no matter how many Service Outages occur during that time; (ii) credits in any monthly period for a given Access Port will not exceed the Maximum Monthly Credit amount described in Section C.3(a) below; (iii) credits not issued due to the limits in (i) and (ii) will not carry over to subsequent 24-hour or monthly periods; and (iv) credits will not be issued for a Service if it is unavailable for use because of service release time needed by AIRBAUD for regularly scheduled maintenance, service reconfigurations, testing and network upgrades/migrations or if due to events beyond AIRBAUD’s reasonable control.

(d) PING tests that Customer may perform can be used by Customer to request AIRBAUD to open a trouble ticket; however, these tests will not be used exclusively to determine if there is a Service Outage.

**2. AIRBAUD CPE and AIRBAUD CPE Software:**

AIRBAUD will use reasonable efforts to respond with an onsite technician to correct (either by repair or replacement with equivalent new or used equipment) a failure of any AIRBAUD CPE or AIRBAUD CPE Software within 24 hours from when Customer first contacts AIRBAUD Customer Care to open a trouble ticket for the failure. This 24-hour correction period will start upon AIRBAUD opening a trouble ticket.

**3. Additional Credit Provisions:**

(a) The total amount of Network Service Outage Credits and Local Loop Service Outage Credits that will be issued in any given calendar month for a particular Access Port and its associated Access Facilities will not be more than 7 x 1/30<sup>th</sup> of the monthly charge for that Access Port or the monthly charge for the associated Access Facilities (“**Maximum Monthly Credit**”).

(b) The monthly charge used to calculate a Network Service Outage Credit amount for an Access Port billed on a usage basis will be determined in the same manner as described in Section D.3 below.

**D. Charges:**

1. AIRBAUD will invoice Customer monthly in advance, except for usage-based charges which will be invoiced monthly in arrears.

2. AIRBAUD will assess Charges for a Service starting as of the earlier of (i) 10 days after both the Access Port and Access Facilities have been physically provisioned (the completion date is referred to as “PCOMP”), or (ii) the day AIRBAUD first completes logical provisioning for the Service (such date is referred to as “LCOMP”). The date that Charges start accruing is the “**Term Start Date**”.

3. Customer will pay AIRBAUD’s then-current standard charge (each, an “**Additional Charge**”) if AIRBAUD dispatches a technician to a Customer Site:

(a) To correct a problem with any AIRBAUD CPE and upon arrival at the site, the technician is not given immediate access to the AIRBAUD CPE;

(b) In response to a request from Customer and it is determined that there was no problem with any AIRBAUD CPE;

and

(c) To install AIRBAUD CPE on an agreed-upon installation date and the technician must return to the site to complete the installation because Customer was not ready when the technician first arrived at the site.

4. AIRBAUD may modify its Charges from time to time upon 7 days notice. This notice may be given by mail, statements added to or included with monthly invoices, by posting at a AIRBAUD web site or other means selected by AIRBAUD.

**E. Term and Termination:**

1. The **Initial Term** for a Service will begin on the Term Start Date for the Service, and will continue for the period of time shown on the Authorization Form.

2. **Renewal Periods** will be successive periods equal in length to the Initial Term, with the first Renewal Period starting on the day following the end of the Initial Term, unless specified differently on the AIRbaud Service Authorization Form. An upcoming Renewal Period will not go into effect if AIRBAUD or Customer notifies the other in writing that it does not desire the term to renew and this notice is given at least 30 days before the end of the Initial Term or the Renewal Period then in effect.

3. The **Early Termination Charge** for a Service will be (a)the number of months (or portion thereof) in the Service 's Initial Term if the termination goes into effect before the Term Start Date,(b)the number of months (or portion thereof) remaining in the Service's Initial Term if the termination goes into effect after the Term Start Date, or (c)the number of months (or portion thereof) remaining in any Renewal Period then in effect if the termination goes into effect during a Renewal Period, multiplied by the sum of the following:

- (a) 50% of the base monthly charges for the Access Port as shown on the Authorization Form (for an Access Port subject to usage-based charges, the "**base monthly charge**" will be considered to be the base monthly charge for the Access Port's minimum usage level);
- (b) 100% of the monthly charges for any Access Facilities that AIRBAUD arranges for; and
- (c) If AIRBAUD provides any AIRBAUD CPE and/or AIRBAUD CPE Software, 100% of the "Final" monthly charge for each item of AIRBAUD CPE and AIRBAUD CPE Software used with the Service as shown on the Authorization Form.

4. **Early Termination** of contracted service is authorized if AIRbaud fails to remedy a **Network Service Outage** for a period of ten (10) consecutive days.

## ***AIRbaud Acceptable Use Policy***

### **1. INTRODUCTION**

AIRbaud's Acceptable Use Policy ("AUP") is intended to help enhance the use of the Internet by preventing unacceptable use. All users of AIRbaud's Internet services (the "Services")-those who access some of our Services but do not have accounts ("Visitors"), as well as those who pay a monthly service fee to subscribe to the Services ("Members")-must comply with this AUP. We support the free flow of information and ideas over the Internet and do not actively monitor use of the Services under normal circumstances. Similarly, we do not exercise editorial control over the content of any Web site, electronic mail transmission, news group, or other material created or accessible over or through the Services, except for certain proprietary websites. However, in accordance with our Internet Service Agreement, we may remove any materials that, in our sole discretion, may be illegal, may subject us to liability, or which may violate this AUP. AIRbaud may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Your violation of this AUP may result in the suspension or termination of either your access to the Services and/or your AIRbaud account or other actions as detailed in Section 3. This AUP is to be read in conjunction with and made part of our Internet Service Agreement and other policies.

### **2. VIOLATIONS OF AIRBAUD'S ACCEPTABLE USE POLICY**

The following constitute violations of this AUP:

- a. **Illegal use.** Using the Services to transmit any material (by email, uploading, posting, or otherwise) that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated thereunder.
- b. **Harm to minors.** Using the Services to harm, or to attempt to harm, individuals under 18 years of age in any way.
- c. **Threats.** Using the Services to transmit any content (by email, uploading, posting, or otherwise) that threatens or encourages bodily harm or the damage of property.
- d. **Harassment.** Using the Services to transmit any material (by email, uploading, posting, or otherwise) that harasses or repeatedly annoys another individual.
- e. **Fraudulent activity.** Using the Services to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as "pyramid schemes," "Ponzi schemes," and "chain letters."
- f. **Forgery or impersonation.** Adding, removing or modifying identifying network header information in an effort to deceive or mislead another individual or organization is prohibited. Attempting to impersonate any person by using forged headers or other identifying information is prohibited. The use of anonymous remailers or nicknames does not constitute impersonation. Using deliberately misleading headers ("munging" headers) in news postings in order to avoid spam email address collectors is allowed.
- g. **Unsolicited commercial email/Unsolicited bulk email.** Using the Services to transmit any unsolicited commercial email or unsolicited bulk email. Activities that have the effect of facilitating

unsolicited commercial email or unsolicited bulk email whether or not that email is commercial in nature, are prohibited.

- h. Unauthorized access. Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of AIRbaud's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data.
- i. Copyright or trademark infringement. Using the Services to transmit any material (by email, uploading, posting, or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of any third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorized transmittal of copyrighted software. AIRbaud is registered under the Digital Millennium Copyright Act of 1998.
- j. Collection of personal data. Using the Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent.
- k. Reselling the services. Reselling the Services without AIRbaud's authorization.
- l. Network disruptions and unfriendly activity. Using the Services for any activity which adversely affects the ability of other people or systems to use AIRbaud Services or the Internet. This includes "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. It is the Member's responsibility to ensure that their network is configured in a secure manner. A Member may not, through action or inaction, allow others to use their network for illegal or inappropriate actions. A Member may not permit their network, through action or inaction, to be configured in such a way that gives a third party the capability to use their network in an illegal or inappropriate manner.
- m. News. AIRbaud Members should use their best judgment when posting to any newsgroup. Many groups have charters, published guidelines, FAQs, or "community standards" describing what is and is not considered appropriate. Usenet can be a valuable resource if used properly. The continued posting of off topic articles is prohibited. Commercial advertisements are off-topic in most newsgroups, especially regional groups not specifically named for such. The presence of such articles in a group is not indicative of the group's "intended" use. Please familiarize yourself with basic Usenet netiquette before posting to a newsgroup. AIRbaud considers "multiposting" to 10 or more groups within a two week sliding window to be excessive. AIRbaud servers currently limit the number of allowable "cross-posts" to 9.

AIRbaud Members may not cancel messages other than their own messages. A Member may cancel posts forged in that Member's name. We may cancel any postings which violate this AUP.

- n. Long Connections and Multiple Logins. Using a personal account for high volume or commercial use is prohibited. The Services are intended for periodic, active use of email, newsgroups, file transfers, Internet chat, games, and browsing the World Wide Web. Members may stay connected so long as they are actively using that connection for the above purposes. Members may not use the Services on a standby or inactive basis in order to maintain a connection. Pinging, which is a protocol for testing whether a particular computer is connected to the Internet

by sending a packet to its IP address and waiting for a response, is expressly prohibited. Accordingly, AIRbaud maintains the right to terminate any member's connection following any extended period of inactivity as determined by AIRbaud.

- o. Exceeding Web Site Size and Traffic Limitations: All AIRbaud Members receive free webspace for use with their AIRbaud Internet access account. Each member's free webspace is allocated a certain amount of traffic per month (traffic is calculated on a formula multiplying the number of hits that your site receives by the size of your files). If a site exceeds its maximum monthly allotment of traffic, the site will become unavailable until the beginning of the next calendar month. A site that exceeds the AIRbaud Member's maximum allotment in size will also become unavailable. Unavailability includes but may not be limited to the inability to access the site publicly or to publish to or modify the site's contents via certain Web creation tools.

### **3. REPORTING VIOLATIONS OF AIRBAUD'S AUP**

AIRbaud requests that anyone who believes that there is a violation of this AUP direct the information to Director-Abuse Department, at: [abuse@airbaud.net](mailto:abuse@airbaud.net).

If available, please provide the following information:

1. The IP address used to commit the alleged violation
2. The date and time of the alleged violation, including the time zone or offset from CST
3. Evidence of the alleged violation

Email with full header information provides all of the above, as do syslog files. Other situations will require different methods of providing the above information.

AIRbaud may take any one or more of the following actions in response to complaints:

1. Issue warnings: written or verbal
2. Suspend the Member's newsgroup posting privileges
3. Suspend the Member's account
4. Terminate the Member's account
5. Bill the Member for administrative costs and/or reactivation charges
6. Bring legal action to enjoin violations and/or to collect damages and attorney fees and costs, if any, caused by violations.

### **4. REVISIONS TO THIS ACCEPTABLE USE POLICY**

AIRbaud reserves the right to revise, amend, or modify this AUP, our Internet Service Agreement and our other policies and agreements at any time and in any manner. Notice of any revision, amendment, or modification will be posted in accordance with the Internet Service

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## AIRbaud Subscriber Policy Notice

### AIRbaud protects online customer-identifiable information as follows:

**Collection and Use:** AIRbaud will collect and use customer-identifiable information for billing and ordering purposes, to provide and change service, to anticipate and resolve problems with your service, to inform you of changes to your service, to manage awards programs, or to create and inform you of products and services that better meet your needs. This means that AIRbaud may use your customer-identifiable information, in conjunction with information available from other sources, to market new services to you that we think will be of interest to you, but we will **NOT** disclose your customer-identifiable information to third parties who want to market products to you.

When you access the Internet, the computers that host web sites you visit (web servers) automatically receive some anonymous information. This "usage data" may include a record of which pages a web browser has visited. AIRbaud servers receive usage data when customers visit the Web Sites. AIRbaud may use usage data to provide advertising about goods and services that may be of interest to AIRbaud customers, or to provide customized features and services. AIRbaud will not use information about your activities on the Internet together with any information that identifies you without your consent.

AIRbaud and its advertisers may use various kinds of software devices to collect information about Internet use. Small files called "cookies" may be attached to your web browser. These files identify your browser and save information such as passwords so that web sites can recognize you. You can set your browser to disable cookies, but some Web Sites (including our web mail server) may not work properly if you do this.

In addition, on some Web Sites, AIRbaud and its advertisers may use small bits of code called "one-pixel gifs," "clear gifs" or "Web beacons" embedded in some web pages, to allow the Web site to count users who have visited that page or to make cookies more effective. AT&T may use information collected through these devices to report aggregate demographic and usage information but will not associate this information with your name or e-mail address.

**Disclosure:** AIRbaud will not sell, trade or disclose to third parties any customer-identifiable information derived from the registration for or use of the AIRbaud Web site - including customer names and addresses - without the consent of the customer (except as required by subpoena, search warrant or other legal process or in the case of imminent physical harm to the customer or others). When AIRbaud uses other agents, contractors or companies to perform services on its behalf, AIRbaud will ensure that the company protects your customer-identifiable information consistent with this policy.

**Customer Choice:** A customer may choose not to receive direct marketing communications from AIRbaud in connection with the Web Sites. Upon such choice, AIRbaud (a) will not contact that customer directly with online marketing messages about AIRbaud services and (b) will not use customer-identifiable information obtained from that customer's registration for or use of the Web Sites to contact that customer with marketing messages about any AIRbaud products or services. A customer may choose not to receive such messages by clicking where indicated on any page where the Company collects personally-identifiable information from such customers.

**Security:** AIRbaud has implemented technology and security features and strict policy guidelines to safeguard the privacy of your customer-identifiable information from unauthorized access or improper use. AIRbaud uses Secure Socket Layer (SSL) protocol to ensure the security of your information. Customer-identifiable information is kept in a secure area of our network, not located directly on the Internet.

**Email Contents:** The Company will not read or disclose to third parties private e-mail communications that are transmitted in connection with the Web Sites, except as required to operate the service or as otherwise authorized by law operate the service or as otherwise authorized by law.

**Account Information:** AIRbaud honors requests from customers to review all customer identifiable information maintained in reasonably retrievable form, which currently consists of your name, address, e-mail address,

telephone number and/or billing information - and will correct any such information which may be inaccurate. Customers may verify that appropriate corrections have been made.

**Changes in Practices:** AIRbaud will keep this policy current. Any changes in this policy shall be effective upon publication.

**Additional Privacy Protections for Children Using the Internet**

AIRbaud joins the industry in recognizing that children, including young teens, may not be able to make informed choices about personal information requested online.

Accordingly, AIRbaud does not target children or teenagers (younger than 18 years of age) for collection of information online. AIRbaud does not solicit or collect customer-identifiable information targeted at children and teenagers under 18 and does not allow anyone else to do so on any of the Web Sites. In addition, the editorial content of the Web Sites designed for children will not knowingly promote or link to any third-party web site that collects customer-identifiable information unless that web site publishes a privacy policy that is easily accessible.

In addition, on all of its Web Sites, AIRbaud will encourage children to seek the consent of their parents before providing any information about themselves or their households to anyone on the Internet.

AIRbaud encourages parents to take an active role to protect the privacy and security of their children and to prevent the inappropriate use of information about their children. AIRbaud supports the development of technologies that help parents to control the collection and use of personal information from children who use online services in their households.

Finally, AIRbaud complies with all Federal laws and regulations, including the Children's Online Privacy Protection Act, which requires the consent of a parent or guardian for the collection of personally identifiable information from children under thirteen (13) without the consent of a parent or guardian.