



Sierra Communications, Inc.
 a subsidiary of Baca Valley Telephone Company, Inc.
 PO Box 67 ♦ Des Moines, NM ♦ 88418
 575.278.2101 www.bacavalley.com 888.682.2101



DSL Service User Application And Agreement

Application Date: _____ (Office use only – **Installation date**): _____

Name (herein, "Client"): _____

Physical Address: _____

Billing Address: _____ **City:** _____ **State:** _____ **Zip:** _____

Telephone #: _____ **Social Security or Tax ID Number:** _____

Payment Method: Monthly Billing _____ (Please enclose 1st month's payment)
 Credit Card _____ (Please call.)
 Bank Draft _____ (Please attach a voided check to this application.)

Operating System(s): Windows _____ Mac _____ Other _____ **Have Network Card:** Yes No

Client requests that Sierra provide the use of DSL equipment and related service described below for:

- A minimum of one year On a month to month basis

subject to the Terms and Conditions of Agreement. Client agrees to the following fees for the services defined below:

- Digital Subscriber Line (DSL) basic service: (Voice / Data)
- Digital Subscriber Line (DSL) basic service: (Data Only)
 - Annual fee of \$_____ payable in monthly installments of : \$ _____
 - Monthly fee of : \$ _____
- Monthly Static IP Address fee: \$ _____

Total Monthly Charges: \$ _____

- Installation Fee \$ _____
- Additional Fees: _____ \$ _____

Total Installation Charges: \$ _____

Total initial payment, including installation fee and monthly charge: \$ _____

Email Address: _____@bacavalley.com **Password:** _____
 (5 to 15 characters) (Must be 6 or more characters and contain 3 of the following criteria: numbers, uppercase letters, lowercase letters, and special characters.)
 (Up to 10 Email Accounts are provided with service)



Please initial here. By doing so Client acknowledges that:

- This service is intended for a single end-user's network. Client is prohibited from reselling or distributing DSL or Internet service purchased by Client pursuant to this agreement. Client is responsible for networking. Any service call relating to networking will be billed to Client.
- Sierra shall retain title to all equipment provided pursuant to this agreement, and Client does not acquire any interest in such equipment beyond the right to the use of such equipment while Client is not in default of the Terms of this Agreement.
- Sierra Communications will maintain all equipment owned by Sierra Communications. Any modifications, tampering, or programming of Sierra Communications' equipment by individuals other than Sierra Communications' employees can result in additional charges and/or termination of services. Client will be billed for all technical assistance that is not related to the equipment owned by Sierra Communications.

I acknowledge that I have read this Agreement in its entirety and agree to the Terms and Conditions of Agreement. I agree Sierra Communications, Inc. may obtain my credit report. I represent that I am 18 years old or older and will provide verification of age if requested.

Client Signature: _____ **Printed:** _____ **Date:** _____

Sierra Representative: _____ **Printed:** _____ **Date:** _____

Additional Information needed for email set-up:

Domain Suffix and SMTP/POP3 Mail Server Name: **mail.bacavalley.com**
 SMTP Server Authentication is required.

Office use: crck___ ip___ server___ billing___ ssn___ list___ bk/cc___ cso___ ntfld___ e-mail___ file___ cs___

Modem User Name: _____

HIGH SPEED TERMS AND CONDITIONS OF AGREEMENT

1. **TITLE TO EQUIPMENT** Title to all of the equipment provided pursuant to this Agreement shall remain in Sierra at all times and shall not vest in Client.
2. **TERM OF AGREEMENT:**
 - 2.1 If Client has selected a one year or a two year term of Agreement, the initial term shall commence on installation date, and will be followed by a month to month subscription.
 - 2.2 If Client has selected a month-to-month term of Agreement, then the term shall be one month. Thereafter, the term shall continue for successive one month terms unless terminated by either party by written notice given not less than thirty (30) days prior to the end of the month at which termination is to occur, unless terminated for the reasons set forth in paragraph 3 below. Sierra will have no obligation to contact Client regarding the extension of the Agreement term pursuant to this paragraph.
3. **INCREASE OF FEES:** Sierra may, at any time and from time to time after the initial year of the term of this Agreement, impose reasonable increases on the annual or monthly rate, subject to the right of the Client upon notice of any such rate increase to terminate the Agreement without refund of any payments previously made for service. Such rate increases shall be based upon Sierra's determination, in its sole and absolute discretion, of the amount necessary to return a reasonable profit and may take into account, among other factors, increases in taxes, fees or other charges which may be hereafter imposed on Sierra by any governmental authority or provider of services to Sierra. Sierra shall give not less than sixty (60) days notice of such increase.
4. **TERMINATION FOR REASONS OTHER THAN EXPIRATION OF TERM:** This Agreement shall be deemed terminated without further obligation on the part of either party if Sierra's originating equipment is destroyed or permanently incapacitated. Client may terminate this Agreement without further obligation in the event Sierra elects, pursuant to paragraph 3, to increase the rate. In addition, this Agreement may be terminated by Sierra in the event the Client fails to make the monthly payment as provided herein or fails to perform any act or fulfill any condition imposed upon the Client by the terms of this Agreement, in either of which events the total amount due for the remaining portion of the then current term of the Agreement shall be accelerated and become immediately due and payable, in addition to which Sierra shall have all rights available under New Mexico law, including all rights of a secured creditor under the New Mexico Uniform Commercial Code, together with the right to pursue any and all judicial remedies, to recover attorneys' fees and costs, and to collect interest on all amounts past due, including amounts due by acceleration, at the rate of twenty-four percent (24%) per annum. Client agrees that acceleration of the amount due shall constitute a reasonable measure of Sierra's damages arising from Client's breach of this Agreement, which damages shall constitute liquidated damages for such breach in lieu of damages which are otherwise difficult or impossible to calculate with reasonable certainty. In the event of the repossession of any equipment pursuant to this paragraph, Sierra shall have no obligation of repair of the Client Premises upon removal of equipment, or obligation to restore the Client Premises to any pre-installation condition, nor will Sierra have any obligation for damages of any kind whatsoever following removal based upon any claim that Client has suffered loss that might have been prevented by continued use or availability of the equipment on Client Premises had such equipment not been removed, without regard to whether or not Sierra was legally entitled to make such removal under the terms of this Agreement. Time is of the essence of this Agreement.
5. **NONASSIGNABILITY OF THIS AGREEMENT BY CLIENT:** Client may not assign this Agreement or transfer any interest therein without the consent of Sierra. Client shall remain liable to Sierra even if Client premises are sold or otherwise transferred unless Client's remaining obligation hereunder is fully assumed by an assignee upon prior approval of Sierra, following application to Sierra by such proposed assignee.
6. **OBLIGATIONS OF SIERRA:** During the term of this Agreement and while Client is compliance with Client's obligations hereunder, Sierra agrees:
 - 6.1 to install the equipment necessary to provide high speed access upon the schedule represented by Sierra to Client, or within a reasonable time thereafter, subject to circumstances not within the control of Sierra, including unanticipated conditions encountered upon Client Premises;
 - 6.2 to test the service for proper operation immediately following installation;
 - 6.3 to provide services described above; and
 - 6.4 following notice to Sierra of any defect or malfunction, to maintain at its cost the high speed equipment and repair or replace malfunctioning equipment, with the exception of equipment damaged by Client, persons other than Sierra, weather, lightning, fires, burglary, water, or any other means not within Sierra's control, including but not limited to acts of God.
7. **OBLIGATIONS OF CLIENT:** Client agrees:
 - 7.1 to pay the amount due, as set forth above, and as modified pursuant to paragraph 3, in advance upon receipt of the monthly invoice;
 - 7.2 to promptly notify Sierra of any defect or malfunctioning of the equipment;
 - 7.3 to take all reasonable measures to protect the equipment from damage by any means;
 - 7.4 to indemnify Sierra and hold Sierra harmless from any claim by any party based upon, arising from or relating to the reliance of any such party upon the equipment or service;
 - 7.5 to pay Sierra at Sierra's then prevailing rates the cost of replacing or repairing the equipment for any defect or malfunction which it is not the responsibility of Sierra to maintain, replace or repair;
 - 7.6 to assume all risk of loss to equipment following installation;
 - 7.7 to abide by all local, state, federal and international law which is or may be applicable to use of the Internet or the information accessed by use of the Internet and to comply with all reasonable rules imposed by networks to which Client gains access through Sierra, in addition to which Client agrees not to commit any Internet bad practice, including, but not limited to, issuing unsolicited mass e-mails (spamming), advertising on discussion boards or in news groups, or harassment of other users;

7.8 that Sierra may monitor compliance by Client with the provisions of paragraph 7.7; and
7.9 to hold Sierra harmless, and indemnify Sierra from any and all attorneys fees, liability, loss, damage, costs, injury, expense, obligation, claim, demand or pretension arising out of the Client's use of the Internet or the information accessed by use of the Internet through Sierra.

8. **DISCLAIMER OF WARRANTIES:** CLIENT ACKNOWLEDGES THAT THERE ARE NO TERMS, CONDITIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE QUALITY, FITNESS, CAPACITY OR OTHERWISE WITH RESPECT TO THE DESCRIBED EQUIPMENT OR THE SERVICES PROVIDED WITH RESPECT THERETO EXCEPT AS MAY BE EXPRESSLY PROVIDED IN THIS AGREEMENT. CLIENT SPECIFICALLY ACKNOWLEDGES THAT SIERRA HAS MADE NO WARRANTY OF MERCHANTABILITY OR HABITABILITY. CLIENT EXPRESSLY WAIVES, AND ACKNOWLEDGES SIERRA'S DISCLAIMERS OF ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR THE SERVICES PROVIDED WITH RESPECT THERETO, AS TO QUALITY, FITNESS, CAPACITY, MERCHANTABILITY OR HABITABILITY EXCEPT AS MAY BE EXPRESSLY PROVIDED IN THIS AGREEMENT.

9. **LIMITATION OF LIABILITY:** Client agrees that Sierra shall have no liability for loss or damage of any kind whatsoever, including but not limited to compensatory, incidental, consequential, or special damages, whether to person or property, arising from or relating to any failure of Sierra to perform its obligations under the terms of this Agreement or arising from or relating to any failure of the equipment to perform as represented or expected, with the exception of refund of any monetary consideration paid by Client to Sierra pursuant to the terms of this Agreement, which monetary consideration shall be the limit and extent of Sierra's liability with respect to this Agreement and any claim of damages made by Client or any third party. This Agreement shall not be construed as a third party beneficiary contract. Client acknowledges that Client has obtained or may obtain insurance coverage to insure against any such loss or damages, and waives claim for such loss or damage against Sierra. Client further agrees that Sierra shall have no liability whatsoever for loss or damage of any kind to equipment owned, used or leased by Client that sustains damage through the instrumentality of equipment installed by Sierra due to an act of God, such as but not limited to lightning strike or storm damage to Sierra's equipment which in turn causes damage to Client's equipment.

10. **SEVERABILITY OF PROVISIONS OF AGREEMENT:** In the event any provision of this Agreement is held to be void, voidable or invalid by a court of competent jurisdiction, the remaining provisions of the Agreement shall nevertheless remain in full force and effect.

11. **AMENDMENTS TO AGREEMENT:** This Agreement shall be amended only in writing signed by Sierra and Client, with the exception of an increase of fees pursuant to paragraph 3.

12. **PROVISIONS RELATING SPECIFICALLY TO INTERNET SERVICE:** Client acknowledges and agrees that Sierra's responsibility hereunder is limited to providing Client with access to the Internet, subject to the terms and conditions of this Agreement, and that Sierra has no responsibility for:

12.1 Content of the Internet, which Client acknowledges may contain material, information, and pictures which might be regarded by some to be offensive, pornographic, racist, illegal or otherwise inappropriate, immoral or improper;

12.2 The capacity, speed, or general suitability of Client's equipment or operating system for accessing the Internet;

12.3 Maintenance of or troubleshooting equipment or operating systems used by Client to access the Internet;

12.4 Client's privacy, which is a function of the security of the sites contacted by Client and the security of Client's site, for which purpose Client acknowledges that Sierra does not and cannot assure the privacy of email;

12.5 Use of the Internet by minors or others without authorization and supervision by Client;

12.6 Any consequence of Client's use of the Internet, including use which violates or may violate the law or rights of other persons;

12.7 Any damages which Client may suffer by use of or inability to use the Internet, any services or information accessed through the Internet;

12.8 Interruption of Internet services whether caused by Sierra or by sources not within the control of Sierra;

12.9 Any virus which may enter Client's system as a consequence of Client accessing the Internet;

12.10 Connection speeds, which are not guaranteed; or

12.11 Virus or hacker damage arising from Client's failure to provide Client's own protection from such risk and which Client acknowledges to exist as a risk from the "always on" nature of the service.

Client waives any claim against Sierra for any loss or damages arising from any of the foregoing, including foreseeable, unforeseeable, special, incidental or consequential damages.

13. **ENTIRE AGREEMENT:** This Agreement constitutes the entire contract between the parties hereto, and Sierra is not liable nor bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the subject matter of this Agreement or any other matter whatsoever made or furnished by any person unless such warranties, guarantees, promises, statements, representations or information are expressly and specifically set forth in this Agreement.