

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 One-year Term of Agreement is required unless prior arrangements are made with Sierra, the initial term shall commence on installation date.
 - 2.2 After the one-year term, the term shall continue for successive one-month terms unless terminated by either party, 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.
 - 2.3 Early Termination Penalty: 100% of Contract during 1st year.
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 up to 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. Any contract with markings will not be accepted or countersigned unless the changes are made by an active employee of Provider.