

# RESIDENTIAL SUBSCRIBER AGREEMENT

## MIDWEST CONNECTIONS, INC.

This Residential Subscriber Agreement (“**Agreement**”) is between Midwest Connections, Inc., a Kansas corporation (“**Midwest**”) and each person (“**Customer**”) who accepts this Agreement and utilizes the Internet Services (defined below) provided by Midwest to Customer. Midwest and Customer are collectively referred to as the “parties.”

**By clicking the “Agree” button below and by completing the registration process, you are stating that you are 18 years or older, that you have read and understand this Agreement, that you agree to be bound by the terms in effect and as updated by Midwest from time to time. To obtain the most current version of this Agreement check <http://www.midwest-connections.com/policies/rsa.html>.**

### 1. Services

Midwest shall provide to Customer a high-speed connection to the Internet for lawful uses via Midwest’s network and computer facilities, which shall be operated seven (7) days a week, twenty-four (24) hours per day (the “**Services**”), subject to temporary unavailability or interruption due to service requirements, network maintenance, repair and modification, facility upgrades, acts or omissions outside of Midwest’s control and *force majeure*. The Services provided by Midwest pursuant hereto are subject to all of the terms and conditions of this Agreement.

### 2. Equipment

*a. Maintenance of Midwest Equipment.* Midwest shall during the time of this Agreement repair and maintain all Midwest’s wireless equipment, including without limitation indoor radio or antenna (“**Midwest Equipment**”). Customer agrees that the Midwest Equipment shall not be serviced by anyone other than Midwest employees or agents and that Customer shall not relocate, tamper with or modify any Midwest Equipment or the installation of the Services.

*b. Access to Customer’s Premises.* Customer grants to Midwest the right, at reasonable times and upon reasonable notice, to enter Customer’s property and home (“**Premises**”) for purposes of connecting, disconnection, inspecting, repairing, replacing in whole or in part, updating and/or removing any Equipment and the Services. Midwest shall have the option of removing any or all of the Midwest Equipment during or after its relationship with Customer, but Midwest shall not have the obligation to do so. Customer warrants that (s)he is the owner or a tenant of the Services address and that (s)he is authorized to grant access to the Premises. Customer agrees to indemnify and hold Midwest harmless from any claim resulting from a breach of this warranty.

*c. Customer Equipment and Software.*

(i) Customer understands and agrees that use of the Services requires certain equipment provided by the Customer such as a personal computer and an appropriate operating system as established by Midwest (“**Customer Equipment**”). Customer represents that (s)he owns the Customer Equipment or otherwise has the right to use it in connection with the Services. Customer is permitted to connect any Customer Equipment to the Services.

(ii) Customer shall have sole responsibility for protecting all Customer Equipment and software from loss or damage, including, but not limited to, power surges, lightning, fire, flood and acts of God.

(iii) The installation, use, inspection, maintenance, repair and removal of the Equipment may result in service outages or potential damage to Customer Equipment. If Customer does not back-up all existing computer files by copying them to another storage medium prior to such activities, Customer understands and accepts the associated risks of such a decision.

(iv) Except for gross negligence or willful misconduct, neither Midwest nor its Underlying Providers shall have any liability whatsoever for any damage, loss or destruction to Customer Equipment, peripherals, software or data. **NEITHER MIDWEST NOR ITS UNDERLYING PROVIDERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO, OR LOSS OR DESTRUCTION OF, ANY SOFTWARE, COMPUTER PERIPHERALS, FILES OR DATA.**

*d. Installation and File Modification.* Midwest or its agent will install Midwest Equipment and a connection to the Service. If the installation of an Ethernet or wireless card is required, it will be necessary to open Customer Equipment. As part of the installation process for the software, system files on Customer Equipment may be modified. Midwest does not represent, warrant, or covenant that such modifications will not disrupt the normal operations of Customer Equipment. For these and other reasons, Midwest recommends that Customer back-up all files prior to installation of the Services. If Customer does not back-up all existing computer files, Customer understands and accepts the associated risks of such a decision such as loss of files, software or data. **MIDWEST SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE RESULTING FROM FILE MODIFICATIONS.**

*e. Midwest's Repair Services.* Midwest provides repair and support services for the Services. In the event Customer Equipment requires servicing or otherwise causes a failure in the Services or damages Midwest Equipment, maintenance and repair services provided by Midwest shall be billed at Midwest's then current standard rate for such services on a time and materials basis. In the event Midwest, in its sole discretion, determines that Services failures are solely the result of Midwest Equipment, Customer will not be charged for such additional services. Customer hereby authorizes Midwest to initiate an ACH debit or charge Customer's credit card of record, if any, for such additional services.

### **3. Payment**

Customer shall pay Midwest a one-time installation charge for the installation of the Services and any Midwest Equipment. **THIS INSTALLATION CHARGE SHALL BE NONREFUNDABLE UNDER ANY AND ALL CIRCUMSTANCES.** Thereafter, Customer shall pay Midwest a fee in accordance with the terms of Customer Services Order Form and the particular Service Plan provided to Customer. Customer shall provide Midwest the necessary information and authorizations as part of the Services Order Form to permit Midwest, or its third party billing company, to initiate ACH debits (automatic withdrawals from Customer's bank account) for all charges and fees incurred by Customer. Any other payment options, including credit card payments or check, may only be accepted in writing by Midwest and additional fees may apply. Customer acknowledges that there will be a service charge in the amount of \$30.00 for ACH debit payments rejected by Customer's bank for any reason, including without limitation, insufficient funds. If payment is denied, for any reason, Customer will be sent a notice by e-mail. If payment is not secured by the due date, Midwest may suspend Customer's service or terminate the Agreement as provided in Section 4(b) below. Funds will attempted to be withdrawn one week before the due date. The due date is the date each month that the agreement was signed on. **THERE ARE NO REFUNDS FOR ANY PORTION OF AN UNUSED PAYMENT UPON CANCELLATION OR TERMINATION OF THE SERVICES BY EITHER PARTY FOR ANY REASON.** Midwest shall not be responsible for the payment of any telephone equipment or service charges or taxes incurred by Customer in connection with Customer's utilization of the Services, which such expenses are, and shall remain, the sole liability and responsibility of Customer. Customer acknowledges, covenants and agrees

that it shall pay all of Midwest's attorneys fees, court costs and expense of litigation if Midwest incurs same in enforcing this Agreement or because Customer failed to pay any amount due hereunder on or before the due date therefore, whether or not litigation is actually commenced. Any and all amounts not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, in addition to five percent (5%) late charge for each month, or portion thereof, said amount remains unpaid or the maximum amount as allowed by law. Customer authorizes and consents to Midwest obtaining a credit report on Customer, and acknowledges that the acceptability to Midwest of said credit report is a condition precedent to any of Midwest's obligations arising under this Agreement.

#### **4. Term and Termination; Early Termination Fee**

*a.* The Term of this Agreement shall commence on the day and year installation of Services are complete and continue for the period of time set forth in Customer's Services Order Form (the "**Term**"); provided, however, that the Term of this Agreement (including any renewal Terms) shall automatically renew on a month to month basis unless the customer gives written notice to Midwest Connections of their intention to terminate this Agreement at least fourteen (14) days prior to the end of the then-current Term. Customer agrees to return the Midwest Equipment within five (5) days of termination of this Agreement and/or allow Midwest access to the Premises within five (5) days of termination of this Agreement for the purpose of removing such Midwest Equipment.

*b.* Midwest may terminate this Agreement and its obligations to provide Services pursuant hereto without notice to Customer upon: (i) Customer's failure to pay any amounts due and owing pursuant hereto; or (ii) Midwest's determination that Customer has used the Services fraudulently, unlawfully or abusively, and has failed or refused to cease such fraudulent, unlawful or abusive use within two (2) days after Midwest's sending of notice thereof to Customer, or at any time after such notice is given, if Customer recommences such fraudulent, unlawful or abusive uses; or (iii) Customer's breach of the terms and conditions hereof, and/or those set forth in Midwest's Acceptable Use Policy ("**AUP**"), incorporated herein by this reference as if fully set forth herein (available at <http://www.midwest-connections.com/policies/aup.html>) and failure or refusal to cure any breach of this Agreement and/or AUP (other than as set forth in subparagraph (b)(i) and (b)(ii)) within two (2) days after notice of such breach has been sent by Midwest to Customer. Upon such termination, Customer acknowledges and understands that Midwest shall remove and delete all of Customer's electronically stored data from Midwest's facilities without further notice or any liability of any kind, nature or description whatsoever to Customer, and Customer hereby expressly authorizes Midwest to undertake such removal and deletion.

*c.* In addition to the remedies described above, Midwest may, in its sole absolute discretion, elect to suspend or interrupt Services under this Agreement upon: (i) Customer's failure to pay any amounts due and owing hereunder within twenty (20) days after the date of the invoice therefore; or (ii) Midwest's determination that Customer has used the Services fraudulently, unlawfully or abusively. Upon its determination to suspend provision of Services hereunder, Midwest shall notify Customer that the Services hereunder have been suspended and the reason therefore, but covenants and agrees not to remove any of the Customer's electronically stored data from Midwest's facilities unless and until this Agreement is cancelled. **Customer acknowledges and understands that its obligation to make payment hereunder for the Services is and shall not be abrogated, delayed, excused or otherwise relieved by a suspension of the Services provided by Midwest or termination of the Agreement by Midwest.**

*d.* **Early Termination Fee: Customer acknowledges and understands that once the Services are activated, Midwest may charge you an early termination fee of \$200.00 in the event the Services are interrupted or terminated within the contract period. Midwest may, at its discretion, bill you or submit an ACH debit for this early termination fee. Your use of the Services provided by Midwest shall confirm your acknowledgment of this early termination fee.**

e. The rights and remedies provided by this Agreement are given in addition to any other rights or remedies Midwest may have by law, statute, ordinance or otherwise. All such rights and remedies are intended to be cumulative, and the use of any one right or remedy by Midwest shall not preclude or waive its right to use all other rights and remedies.

## 5. Ownership

Midwest owns all the Services and all rights to the Services, including the Midwest Equipment installed at the Customer's site that enables the Services. Midwest owns all right, title and interest in and to the Services and the Midwest Equipment provided by Midwest. Customer agrees to return the Midwest Equipment within five (5) days of termination of this Agreement and/or allow Midwest access to the Premises within five (5) days of termination for the purpose of removing such Midwest Equipment. During the Term of this Agreement and for so long as Customer is in possession of such Midwest Equipment, Customer shall hold the Midwest Equipment in trust and exercise reasonable care in handling the Midwest Equipment. Customer agrees that an **\$600.00 Midwest Equipment return fee shall apply if the Midwest Equipment is not returned to Midwest or the Customer does not give Midwest access to the Premises for the purpose of removing such Midwest Equipment. Midwest may, at its discretion, bill you or submit an ACH debit for this Midwest Equipment return fee. Your use of the Services provided by Midwest shall confirm your acknowledgment of this Midwest Equipment return fee.**

## 6. Restrictions

Midwest's obligation to provide Services under this Agreement, and Customer's use of the Services provided by Midwest hereunder, are expressly subject to the following limitations and restrictions:

a. *Unlawful, Inappropriate Content Prohibited.* Customer covenants, agrees, warrants and represents that it shall not use the Services provided by Midwest to create, store, transmit or duplicate data which violates any federal, state, local or municipal law, statute, regulation, rule, ordinance or other government regulation, including, but not limited to, those dealing with libel, slander or defamation of character; intellectual property (including copyright, trademark, patent, or trade secret rights) or obscenity.

b. *Compliance with AUPs.* Customer at all times during the use of Services covenants and agrees to abide by Midwest's AUPs as established and modified from time to time, and the AUPs of all other networks which Customer may traverse in the course of its use of the Services.

c. *Bulk Mailings.* In general, Customer shall not use Midwest's mail facilities to send unsolicited e-mail ("**Spam**") to any persons. Customer shall not use Midwest's mail servers to send bulk mailings. If Customer desires to send bulk mailings, Customer covenants and agrees to provide, at its sole cost and expense, its own mail server for such purposes. Customer agrees that Midwest, in its sole discretion and without liability to Customer, may terminate this Agreement if Customer is using the Services in association with Spam.

d. *Unrelated Third Parties.* Customer may not authorize the use of its account to any unrelated third parties or neighbors.

## 7. Indemnification

Customer covenants and agrees to defend, indemnify and hold harmless Midwest, its parents, affiliates and subsidiaries, and its and their respective officers, directors, shareholders, employees, contractors, agents and representatives, of, from and against any and all actions, causes of action, claims, costs, damages, expenses, interest, judgments, liabilities, penalties, and suits whatsoever (including, but

not limited to, reasonable attorneys fees, court costs, expert witness fees and expenses of litigation) whatsoever imposed upon, incurred by or asserted against Midwest and/or any of its parents, affiliates, subsidiaries, officers, directors, shareholders, employees, contractors, agents and representatives, which arise, directly or indirectly, out of any use by Customer of the Services provided by Midwest or from Customer's breach or violation of any of the terms and conditions hereof.

## **8. Disclaimer of Warranties**

Customer acknowledges, understands and agrees that Midwest exercises no control whatsoever over the content, accuracy or quality of the data and information passing through its network or any products or services ordered by Customer via its network. THE SERVICES, AND ANY INFORMATION, PRODUCTS OR SERVICES OBTAINED BY CUSTOMER THROUGH ITS USE OF THE SERVICES, ARE PROVIDED "AS-IS". **MIDWEST MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY NATURE OR DESCRIPTION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES TO BE PROVIDED HEREUNDER INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.**

## **9. LIMITATION OF LIABILITY**

*a.* **UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (TORT, CONTRACT OR OTHERWISE) SHALL MIDWEST BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR PARTY FOR DAMAGES OF ANY KIND OR NATURE INCLUDING, BUT NOT LIMITED TO, ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER WHATSOEVER, ARISING OUT OF ITS PROVISION OF THE SERVICES HEREUNDER, OR ITS FAILURE TO PROVIDE THE SERVICES HEREUNDER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR LOSSES OF DATA OR INFORMATION DUE TO DELAYS, NON-DELIVERIES, MISDELIVERIES OR INTERRUPTIONS IN SERVICE, REGARDLESS OF THE CAUSE THEREFORE.** However, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply.

*b.* To the extent that any exclusion of damages described above is not valid or does not apply, Customer acknowledges and agrees that Midwest's total liability to Customer under or related to this Agreement shall be limited to the amount having actually been paid by Customer to Midwest under this Agreement for the twelve (12) months immediately preceding the day Midwest receives notice of the claim. Customer hereby **RELEASES AND DISCHARGES** Midwest from all obligations, liabilities, claims or demands relating to the Services, or otherwise related to this Agreement, in excess of the limitation provided for in this paragraph. Customer acknowledges and understands that the limitations set forth in this paragraph are integral to amount of fees charged by Midwest in connection with the Services rendered hereunder and that, were Midwest to assume any liability in excess of that set forth herein, such fees, of necessity, would be substantially higher.

## **10. No Archival Services**

Customer acknowledges and understands that Midwest provides only temporary storage of Customer's data and information. Customer acknowledges and agrees that Midwest shall have no responsibility for failure to backup, or loss of, any of Customer's data or information. Customer warrants, represents, covenants and agrees that it shall be solely and completely responsible for providing

any archival history services with respect to its data and information, whether created by Customer or a third party.

#### **11. Force Majeure**

Neither party to this Agreement shall be held liable for failure to comply with any of the terms of this Agreement to the extent such failure is caused by fire, labor dispute, strike, war, insurrection, terrorist action, government restriction, act of God, or other force majeure beyond the control and without fault on the part of the party involved. The foregoing shall not apply to the payment of fees by Customer described in paragraph 3 hereof.

#### **12. Headings**

The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to paragraphs or attachments shall, unless otherwise provided, refer to paragraphs hereof or attachments hereto, all of which are incorporated herein by this reference. In the event of a conflict between an exhibit and the body of this Agreement, the body of this Agreement shall prevail.

#### **13. Binding Effect**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective legal and personal representatives, voluntary and involuntary successors and permitted assigns.

#### **14. Entire Agreement; Waiver; Modification**

This Agreement, together with all schedules hereto, constitutes the entire understanding and agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter. No delay or failure by Midwest to exercise or enforce at any time any right or provision of this Agreement will be considered a waiver thereof of Midwest's rights thereafter to exercise or enforce each and every right and provision of this Agreement. No single waiver will constitute a continuing or subsequent waiver. No waiver, modification or amendment of any provision of this Agreement will be effective unless it is in writing and signed by all of the parties hereto, but it need not be supported by consideration in order to be effective.

#### **15. Nature of Relationship**

The parties acknowledge that they are independent contractors and that nothing in this Agreement shall be construed to create a partnership, joint venture, franchise, employer/employee or other similar arrangements between the parties. Neither party has the authority to enter into any agreement, or make any warranty or representation, on behalf of the other party.

#### **16. Third Party Rights or Benefits; Assignment**

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action against any party to this Agreement. Customer shall not assign any of its rights, duties or obligations hereunder without the prior written consent of Midwest, which may be withheld for any reason, and any attempted assignment or delegation without such consent will be void. Midwest shall have the right to assign any or all of its rights, duties

and obligations hereunder without consent from any party, and shall give fifteen (15) days prior written notice thereof to Customer.

#### **17. Notices**

All notices required or permitted to be given under this Agreement shall be in writing and delivered: (a) by United States mail, postage prepaid, or (b) by e-mail to a party's last known e-mail address, provided the sender possesses a written receipt reflecting a successful transmission of the notice to the recipient, or to such other address for which notice has been given by the other party in the manner set forth above. All notices shall be deemed received by e-mail, on the date of transmission; if mailed, on the earlier of three (3) days after mailing, a refusal being deemed delivery on the date of refusal.

#### **18. Severability**

If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by any court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties. The parties further agree that any such invalid or unenforceable provisions shall be deemed replaced with valid and enforceable provisions that achieve, to the extent possible, the business purposes and intent of such invalid and unenforceable provisions.

#### **19. Survivability**

The provisions that by their terms survive, all payment obligations and the provisions contained in paragraphs 5 through 9, 17, 19 and 20 shall survive expiration or termination of this Agreement.

#### **20. Governing Law; Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, exclusive of its conflict of law provisions. The parties hereto expressly agree, consent to and designate the jurisdiction and venue of Miami County District Court, as the case may be, as the situs for any dispute, controversy or claim arising out of or in connection with this Agreement, or breach or alleged breach hereof.

#### **21. Customer Representations and Warranties**

Customer represents and warrants to Midwest that Customer has the full right, power and authority to enter into this Agreement. Customer is not a party to any agreement or understanding which would conflict with this Agreement or the rights granted, or duties, obligations and responsibilities undertaken, herein. This Agreement, when executed and delivered by Customer, shall constitute the valid and binding obligation of Customer, enforceable in accordance with its terms.