

TERMS AND CONDITIONS

1. Parties and Description of Services: Michigan Broadband Services, hereinafter referred to as "MBS" and [Company Name], hereinafter referred to as "Customer", and MBS and Customer being referred to collectively as "Parties" or individually as a "Party", have agreed to enter into this Agreement for Services ("Agreement"). MBS will support this system as the single point of contact for the Customer. Service issues can be reported to MBS's customer care department by calling 906-639-5000.

The services provided by MBS under this Agreement are MBS's voice/data transmission services:

- a) MBS will provide and install on Customer's premises the devices and equipment set forth on the attached services schedule ("MBS Provided Equipment"), all of which will remain MBS's property (Customer purchased equipment excluded). Customer will return the MBS Provided Equipment to MBS in good operating condition, reasonable wear and tear from ordinary operations excluded, upon termination of this Agreement for any reason.
- b) Customer will provide the Customer premises, devices and equipment set forth on the attached services schedule ("Customer Provided Equipment"), all of which will remain Customer's property.
- c) The equipment at Customer's premises will access the outside world by way of Customer Internet facilities (and analog telephone lines for disaster/back up if applicable), which may be third party facilities. Any Internet facilities to be provided by MBS will be set forth on the attached services schedule and otherwise those facilities are outside the scope of this Agreement.
- d) Except for the Internet facilities described above, switches and other equipment and systems to permit the ordinary use of the services will be provided or made available by MBS (unless Customer provided the equipment under the specificity from MBS).
- e) Installation and training services to be provided to Customer are set forth on the attached services schedule.
- f) Any special terms of service will be set forth on the attached services schedule.
- g) Customer may add sites and/or additional stations to the services provided under this Agreement upon reasonable notice and request to MBS. Customer agrees to pay the prevailing installation rate(s) at the time of order, plus all applicable line services, per-minute and monthly recurring charges for the specific services ordered at then prevailing rates.

2. Term: The term of this Agreement with respect to each service described in the Service Agreement shall be __ months from the date the MBS equipment is fully installed and certified as operational by MBS and service begins. Estimated time to provision the public access is approximately 30 days after execution of this Agreement. Provisioning time does not apply if this is a renewal agreement. This Agreement shall renew in 12-month intervals at the then current rate(s) including per minute and monthly recurring charges unless either Party provides the other Party with thirty (30) days written notice of cancellation or changes to the scope of the Agreement prior to the last month of service this Agreement then covers. Any changes to the scope of the Agreement are subject to mutual agreement of the Parties.

3. Payment: Customer agrees to pay MBS a monthly charge at the rate(s) set forth under the attached "Service Charges Terms of Payment" schedule. Payments for recurring charges will begin with the commencement of services as described herein. Any installation charges are due with the first invoice. Line services (facilities) are billed one month in advance. Any payment received by MBS later than 20 days after invoice shall be considered late and will be subject to an additional service fee on delinquent amounts at the rate of 1½% per month on the outstanding balance.

4. Additional Charges: Any applicable federal, state, county or local use, excise, sales, property, gross receipts, franchise or privilege taxes, duties or similar charges, including applicable surcharges and fees, that are chargeable against MBS by any governmental entity or authority because of the services provided to Customer (other than income taxes) shall be charged to and are payable by the Customer in addition to the regular charges under this Agreement.

5. Suspension or Termination of Service: When payment in full is not made by Customer on or before any due date, MBS shall have the right, on or after the 30th calendar day after the "due date", after notification by MBS of non-payment to Customer and Customer's failure to remedy such non-payment within ten (10) calendar days, to suspend service to Customer (either completely or only with respect to any affected service as MBS may at its option elect) until such time as Customer has paid all arrearages, including any additional service charges as specified herein. Further, the service provided Customer is subject to the condition that it is not to be used for any unlawful purpose or in any unlawful manner or in violation of MBS's acceptable use policy, and may be terminated or suspended by or at MBS's option, upon notification by MBS to Customer and Customer's failure to remedy such prohibited use within one (1) business day, if any such prohibited use occurs. The rights of MBS set forth in this paragraph are not an exclusive remedy for Customer's breach, and MBS's exercise of any right set forth in this paragraph does not constitute a waiver of any other right or remedy of MBS under this Agreement.

6. Early Termination by Customer: Notwithstanding proposed time restricted performance guarantees, Customer has the right to terminate this Agreement prior to term with thirty (30) days' written notice, provided that Customer pays MBS an early termination fee consisting of the following, which sum shall be due and payable by Customer upon receipt of invoice from MBS:

- a) Customer agrees to pay MBS the full amount of the monthly recurring charges for the leased lines (if applicable) at the monthly charge then effective under this Agreement multiplied by the months remaining in the term to satisfy the fulfillment of the Agreement. In the event customer has documentation of service related issues unresolved by MBS, termination fees may be waived.
- b) Customer agrees to pay MBS for the refurbishment cost of the Polycom instruments provided by MBS under this Agreement (Customer purchased equipment excluded). The amount charged to Customer shall be determined by the then current costs for instrument refurbishment multiplied by the number of units associated with the service. Customer further agrees to pay MBS's out of pocket costs for deinstallation of the system(s) (if applicable) at the then current labor rates, including travel time and expenses portal to portal, to the location(s) terminated from this Agreement.
- c) Damages to instruments or equipment furnished by MBS (Customer purchased equipment excluded) that is nonfunctional or damaged beyond our ability to obtain repair and/or refurbishment shall be chargeable to Customer at the then in effect replacement cost.
- d) Customer agrees to pay MBS installation charges, if waived at the time of initial installation. Installation charges shall be rated at \$150.00 per instrument at a single location installed and \$250.00 per instrument for multiple location installations.
- e) In all events herein pertaining to Section #6 (Customer purchased equipment excluded), customer agrees to return all equipment supplied to MBS and allow MBS access to its location(s) to retrieve its equipment that remains in the condition it was delivered.
- f) Customer agrees to pay MBS the full amount of the charges, whichever apply, within 15 days of invoice.

7. Early Termination by MBS: If by formal order by the FCC or other governmental agency with jurisdiction over the service that MBS supplies to Customer, MBS is unable to provide services to Customer under the provisions of this Agreement or at the rates contained herein, MBS shall retain the right to terminate services without liability to itself or Customer. Formal order shall be tendered to Customer for inspection including the wind-down period and date the service shall end. All provisions for payment to MBS by Customer as contained in Section 6 shall remain in full force and effect through the date the service ends.

8. Limitation of Liability: MBS shall have no obligation to provide alternative routing with respect to any transmission capacity provided pursuant to the Agreement unless stipulated herein. **In no event shall MBS be liable to the Customer or any other person, firm, or entity in any other respect, including, without limitation, for any damages, either direct or indirect, consequential, special, incidental, actual, punitive, or any other damages, or for any lost profits of any kind or nature whatsoever, arising out of mistakes, accidents, errors, omissions, interruptions or defects in transmission, or delays including those which may be caused by regulatory or judicial authorities, or in any other way arising out of or relating to this Agreement or the obligations of MBS pursuant to this agreement, except in the case of gross negligence on the part of MBS. MBS makes no warranty, whether express, or implied, or statutory, as to the description, quality, merchantability, completeness or fitness for any purpose of the service(s) or the transmission access, or as to the MBS Provided Equipment, or as to any other matter, all of which warranties by MBS are hereby excluded and disclaimed.** Customer's sole and exclusive remedy for material breach of the agreement by MBS shall be cancellation of this Agreement pursuant to Section 6 of this Agreement. Ongoing maintenance of the

services included in this Agreement excludes misuse, abuse, improper operation, Customer LAN or port failures or any other failure not related with the service stipulated and provided by MBS herein.

MBS, shall, in no event, be liable for any general, special or consequential damages for loss or expense either directly or indirectly arising from Customer's inability to use service(s) provided by MBS in conjunction with any Customer or third party equipment, either separately or in combination with, any other equipment from any other source. MBS shall not be held responsible for any misuse of service(s) as provided pursuant to this Agreement or access or use via DISA, auto attendant, voice mail system and/or remote diagnostic access via a modem, credit cards, or any other service in conjunction with the service(s) provided by MBS as described herein. All charges for any fraudulent use of the service(s) described herein shall be borne solely by the Customer. In no case shall MBS assume any form of responsibility for any use, authorized or unauthorized, of Customer services.

Customer assumes responsibility for the MBS Provided Equipment installed on Customer's premises and for all risk, loss and damage to such MBS Provided Equipment (other than reasonable wear and tear from ordinary operations). Customer agrees to insure the MBS Provided Equipment for casualty and other risks on a commercially reasonable basis, to provide MBS with an insurance certificate to such effect showing MBS as an additional insured and to return the MBS Provided Equipment to MBS upon the termination of this Agreement in the condition required under this Agreement. Customer shall provide MBS upon request with a waiver from any lender or landlord of Customer disclaiming any lien or security interest upon the MBS Provided Equipment.

Force Majeure: Neither Party shall be liable for failure to perform the Party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo; provided that the foregoing shall in no event release or relieve Customer of Customer's obligation to pay service or other charges due to MBS, or from any other obligation of Customer for the payment of money, under this Agreement. No party is entitled to terminate this Agreement by reason of a force majeure under the circumstances described in the preceding sentence. If a Party asserts Force Majeure as an excuse for failure to perform an obligation, then the nonperforming Party must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the Party substantially fulfilled all non-excused obligations, and that the other Party was timely notified of the reasonable likelihood or actual occurrence of the Force Majeure event.

9. Additional Provisions:

- A. The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of the Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified and accepted by the Parties in writing.
- B. No subsequent agreement between Customer and MBS concerning the services shall be effective or binding unless it is made in writing, and no representation, promise, inducement or statement of intention has been made by either party, which is not embodied herein. This Agreement supersedes all other discussions, correspondence and agreements relating to the subject matter of this Agreement, whether oral or written, and any previous proposals for services that include pricing, descriptions, availability, functionality, or any other thing tendered by MBS to Customer whether made verbally or in writing.
- C. This Agreement excludes any and all customer premise equipment (including the Customer Provided Equipment), unless supplied by MBS as stipulated herein, and in no event shall MBS be liable for the failure or improper provisioning of any equipment of any kind whatsoever that Customer supplies to be affixed at the end points of the services stipulated herein and supplied by MBS. In no event shall the performance of MBS's service performance be claimed as sub-standard due to any equipment that Customer supplies for connection to MBS provided hosting services. In no event shall MBS be liable for sub-standard performance due to performance latencies caused by off network equipment such as file servers, hubs, routers, cabling that does not meet specifications, gateways, firewalls, virus detection programs, congestion due to over-utilization or any other equipment, programs, or media transport services external to the services provided by MBS. Should MBS provide the Internet access facility as part of the services incorporated herein, that portion of the service has specific restrictions on transport specifications. In no event shall MBS be liable for overutilization by Customer of these services, which may cause sub-standard performance of the overall system performance. In no event shall MBS be liable for any content or data transmitted (or failed to be transmitted) by Customer by way of these services (or for any claims arising out of such content or data, including but not limited to claims of libel, slander or defamation, breach of national security or obscene or pornographic content) or for the confidentiality or security of any thereof.

- D. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without affecting the remaining part of said provision or remaining provisions of this Agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable on the behalf of both Parties.
- E. Portions of voice and/or data services, if applicable, and incorporated herein, may be provided by one or more common carriers. These services are tariffed or published offerings that can change in cost or characteristic with notification. The Customer will be provided with a minimum of thirty (30) days' written notification of such change in costs or services (or, if such change is initiated by a third party upon lesser notice, upon such notification by MBS as is reasonably possible). The Customer has the option to discontinue these services in such event by notice to MBS within fifteen (15) calendar days of notification pursuant to "Early Termination" under Section 6. MBS reserves the right to transfer service(s) as provided under this Agreement to any other carrier for any reason MBS deems necessary. Customer does not have the right to discontinue service(s) as provided herein, due to any changes in service provider(s), which MBS may elect to make in its best interests, provided the class of service and rate(s) of service do not materially change. MBS will make every effort to notify Customer in advance of any such transfer of service(s).
- F. Confidentiality: The parties agree not to disclose to any person or persons any information that would be reasonably considered to be confidential or proprietary, including but not limited to any designs, techniques, and methods of operation, trade secrets, customer lists, pricing schedules, employee lists or names of employees, during the term of the Agreement and for a period of two years after termination for any reason.
- G. MBS assumes no liability for security of Customer's network even if MBS supplies security to Customer as part of this service. Customer assumes all responsibility for ingress/egress to its network via the services provided by MBS and under no circumstances will MBS assume any liability for fraudulent use of Customer's network, computer viruses, access breach, phishing, or any other means of unauthorized access whether it be via the MBS access point or its vendor(s) access points unless caused by gross negligence on the part of MBS. Customer is solely responsible for firewall and virus protection and protecting its network and computer assets from unauthorized access.
- H. Customer shall be exclusively responsible for providing a safe, clean and properly heated and cooled area for the installation of the MBS Provided Equipment and the Customer Provided Equipment and to provide all necessary electrical and other hook-ups necessary for the safe and proper operation of the MBS Provided Equipment and the Customer Provided Equipment in accordance with applicable manufacturer requirements and specifications.
- I. Customer shall indemnify, defend and hold MBS harmless from and against any and all loss, claim, liability, damage, cost or expense (including, without limitation, court costs and reasonable attorney fees) arising in connection with the receipt and use of the services provided under this Agreement or Customer's breach or failure to perform or observe any representation, warranty, covenant or agreement of Customer set forth in this Agreement, excepting only any loss, claim, liability, damage, cost or expense to the extent the same arises out of the gross negligence or willful misconduct of MBS.
- J. Customer shall use the services provided under this Agreement in accordance with all applicable federal, state and local laws and in accordance with acceptable use policies from time to time adopted and promulgated by MBS.
- K. Customer may not assign this Agreement or any of Customer's rights or responsibilities under this Agreement without the prior written consent of MBS, which may be provided or withheld by MBS at its discretion.
- L. Maintenance Services for the HostNet™ services are included in the monthly subscription fees. Availability of service for non-emergency services (regular service period) is between the hours of 7:00 AM and 4:30 PM Central Time, Monday through Friday. Emergency service is also available in the case of customer operation beyond regular service periods where a "major failure" is declared. A major failure is classified as total loss of services where Customer is unable to make or receive calls that is directly related to the equipment and services supplied to the Customer by MBS. Access line(s) supplied by MBS will be remediated by MBS. Access lines provided by others used in conjunction with the HostNet™ service shall be remediated by the supplier of that service. Emergency service declaration by Customer where MBS technicians are called out on-site for outages outside the scope of the services MBS provides to Customer, as incorporated herein, may be billed to Customer at the then current emergency

service rates.

10. Governing Law; Arbitration: The laws of the State of Michigan shall govern this Agreement. Any dispute arising out of or relating to this Agreement or the breach thereof shall be subject to binding arbitration and may be referred to arbitration by either Party for final settlement and resolution in accordance with the rules of the American Arbitration Association as the exclusive means of dispute resolution. Unless otherwise agreed by the Parties, the arbitrator shall consist of a single arbitrator appointed under the procedures of the American Arbitration Association at a proceeding in Escanaba, Michigan. The arbitration award shall be final, binding upon the Parties, not subject to any appeal, and shall deal with the question of the costs of arbitration and all matters related thereto. Judgment upon the arbitration award may be entered in any court having jurisdiction and application may be made to such court for judicial recognition of the award or for an order for the enforcement thereof. The prevailing Party in any proceeding brought for the enforcement of this Agreement shall be entitled to recover reasonable attorney fees and other costs and expenses incurred in such action or proceeding.

11. Notices: Notices under this Agreement must be given in writing and to a Party at the following address (or to such other address as a Party shall have identified by notice):

If by Customer to MBS:

Michigan Broadband Services
397 US 41 N; P.O. Box 86
Carney, Michigan 49812
E-mail to: customer@nichbbs.com

If by MBS to Customer:

12. Authorization: The persons signing below for each Party represent and warrant to the other Party that the signer is authorized and has the right, power and authority to bind such Party.

For Michigan Broadband Services:

For [Customer Name]:

Bruce K. Moore
Its General Manager

Its _____

Date _____

Date _____

This document is legal and binding and must be executed by an officer or individual that is authorized to bind their company to the terms and conditions contained herein.

This document becomes null and void in its entirety if not executed within 45 days from the date presented.

Service Schedule, Charges & Terms of Payment

[Company Name]

Service charges as contained herein will be invoiced monthly. The service period is from the first of every month to the last day of each month (and shall be prorated for partial months at the beginning or end of the Agreement). MBS shall provide detailed consolidated billing that itemizes all calls, number called, duration of call, and cost per call (if applicable). Any call that is disputed must be made in writing to MBS within 30 days of occurrence. Customer acknowledges that payment for all calls made from the customer facility is the responsibility of the customer regardless of the nature of the call or destination called.

Customer agrees to pay MBS for services rendered no later than the due date stated on each monthly billing, and customer may be charged a finance charge for any invoice that remains unpaid past 30 days from the date of billing on each invoice. Long distance calling outside the local calling area shall be billed at 1.9¢ per minute used.

Location		[Insert City] – Per Station Pricing – Assumes 36-Month Agreement		
Quantity	Description		Monthly	Extended Monthly
Total Monthly Charges (excludes cabling, government fees and taxes)				
Estimated Monthly Charges				
Estimated Monthly Call Charges (out of the local calling area)				
Total New Monthly Charge				
Current Charges (AT&)				
Upgraded Services Additional Costs				

Customer is responsible for dedicated AC outlet and adequate environmental location for the provided equipment and suitable Internet Access Service with a minimum speed of 6Mbps down speed and 2Mbps up speed. Cabling and all other outside equipment, other than listed above, is excluded from the installation and service program. Although quality of service for all voice calling will be present on the network, Customer should be advised that heavy usage of Internet access for large file transfers might affect the quality of the inbound and/or outbound voice call.

Customer acquired equipment shall carry the warranties offered by the specific manufacturers for repair/replacement and MBS provides a full two-year warranty in addition to the warranty offered by the manufacturer. Warranty repair/replacement does not include labor costs.

In addition, Customer is responsible for any applicable federal, state, county or local use, excise, sales, property, gross receipts, franchise or privilege taxes, duties or similar charges, including applicable surcharges and fees, that are chargeable against MBS by any governmental entity or authority because of the services provided to Customer (other than income taxes) throughout the term of this Agreement.

For billing questions or services to your account, call MBS at 906-639-5000. Or contact us on the web at www.michbbs.com. **Thank you for selecting Michigan Broadband Services as your communications partner.**