



LMI.net Business Subscriber Agreement

The Service Order and these Terms and Conditions form the Subscriber Agreement (“Agreement”) between LMI.net, Inc.. (“LMI.net” or the “Provider”), a California Corporation, and the Customer, defined below, for the provision of connectivity, bandwidth, and related IP data services (the “Service”) to the Customer, as set forth in the Service Order.

Definitions

- I. **“Standard Installation”**, for purposes of this Agreement, shall be defined as the equipment and pricing set forth in the Service Order including up to two and a half (2 ½) hours of labor costs by Provider. If any additional labor or materials are needed to perform the install, the customer will be notified during the installation and billed separately after installation is complete.
- II. **“Completed Installation”**, for purposes of this Agreement, shall be defined by a successful connectivity test performed by the provider, or its designee, at the customer location at the time of installation of Service. If, in the professional opinion of Provider, or its designee, adequate signal is available, this Agreement shall remain in full force and effect.
- III. **“Customer”**, for purposes of this agreement, shall be defined as a single individual, corporation, partnership, or other entity, or any subsidiary or branch office, which operates or resides at a single physical location (street address) and makes use of a device or devices at that single location in order to use the services provided by LMI.net under this agreement. Customer is at least 18 years of age, is legally able to enter into contracts and is responsible for this subscriber account. Customer shall pay all fees, taxes, charges and other expenses incurred in connection with this account.

Acceptance of Terms and Conditions. By signing the Agreement, Customer agrees to be bound by all of the terms, conditions, notices, and acknowledgements contained herein. Customer agrees to pay all fees, taxes, charges, and other expenses incurred in connection with this account, and to use the service in compliance with the terms of this Agreement and LMI.net’s Acceptable Use Policy. Once executed by both parties, this Agreement shall be effective as of the Effective Date below.

Acceptance of Service. The installation and operation of the Customer Equipment by Customer shall be conclusive evidence that Customer accepts the Services “as is”, and that the Service is in acceptable condition and is thus suitable for the use intended by the Customer.

Monthly Service Fees and Billing

- I. **Monthly Service Fees.** Customer agrees to pay the monthly service fees, as set forth in the Service Order, effective once Agreement is signed and upon Completed Installation of Service. At the time of Completed Installation, Customer will be billed the installation fee (if applicable), equipment costs (if applicable), the prorated monthly service charge, as well as the first full month of Service. Thereafter, the Service fee will be billed to the Customer monthly, in advance. All payments shall be due in full and within 20 days after receipt of invoice.
- II. **Late Payments; Failure to Pay.** Accounts are in default if payment of all amounts due is not received within twenty (20) days after receipt of invoice. Past due charges shall accrue interest at a rate of one and one-half percent (1 ½ %) per month or, if less, the highest rate allowed by law. Accounts unpaid forty-five (45) days after receipt of invoice may have the Service interrupted or terminated at the sole discretion of Provider. Such interruption of Service for failure to pay does not relieve Customer of the obligation to pay for the outstanding balance and for the remaining balance owed under the Service Order term for Service. For any customer account that has been suspended, Customer agrees to pay a Fifty Dollar (\$50.00) reconnection fee in addition to all past due charges before the Service is reconnected. For any returned checks, Customer agrees to pay a Twenty-Five Dollar (\$25.00) service fee and may be terminated for non-payment.
- III. **Billing Errors.** Customer is responsible for any valid charges to their account. All charges are considered valid unless disputed in writing within ninety (90) days of receipt of the disputed bill. Any claims not made within said ninety (90) days, shall be deemed waived.
- IV. **Price Changes.** LMI.net reserves the right to change its Service fees and installation charges at any time in accordance with the provisions set forth within. LMI.net will use all reasonable efforts to notify

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Customer in writing thirty (30) days in advance of any changes in pricing. If any such changes in pricing are to Customers detriment, Customer may terminate this Agreement by giving thirty (30) days written notice, and Customer will remain liable only for balance remaining on the account.

Term and Termination

- I. **Term.** The terms of this Agreement shall remain in effect for the term indicated on the Service Order and shall automatically renew for successive periods equal in length to the initial term until terminated in accordance with this Agreement.
- II. **Termination Conditions.** This Agreement and Service provided hereunder may be terminated:
By LMi.net:
 - (a) At any time without prior notice if Customer fails to comply in full with any Term of this Agreement; or
 - (b) At any time without prior notice if the operations or efficiency of LMi.net's network is impaired by the use of the Service from the Customer's account; or
 - (c) For any other reason upon thirty (30) days written notice to Customer**By Customer:**
 - (a) At any time upon thirty (30) days written notice to LMi.net. Early termination fees may apply.
- III. **Notification.** Any requests from Customer for cancellation of Service must be submitted to LMi.net in writing thirty (30) days prior to the next billing date. This statement must include Customer Name, Billing Address, Contact Phone Number, and Customer's Signature. Termination fees will be assigned as follows:
- IV. **Termination of Accounts**
 - (a) **Termination of Month-to-Month Accounts.** Customer remains responsible for payment of all fees for Service through the conclusion of the month during which service is terminated. If the Customer cancels service, or vacates the location without the required notice, the entire month is billed and no refunds or credits will be issued.
 - (b) **Early Termination for Contracted Accounts.** Should Customer terminate this Agreement for any reason during a contracted term, as indicated on the Service Order, Customer acknowledges and agrees to pay the total remaining balance of the Service Order, including all remaining monthly recurring charges associated with the terminated Service(s), through the full term of the contract.
- V. **Effect of Termination.** Upon cancellation or the effective termination of this Agreement, all rights granted under the applicable Agreement(s) shall be terminated, and neither party shall have any further obligation under the terminated agreement, except for Customer's obligation to pay LMi.net for services which have been performed or are then in progress up to the effective date of such termination.

Service

- I. **Service Availability.** Service Availability requires that you have, and maintain, a radio "line of site" path from the antenna at the Customer site to the Access Point antenna providing the service signal. Changes in vegetation densities or other obstructions may interfere with this signal path. Customer accepts that they may require extra hardware and/or setup as a result of such obstructions. Provider shall not be held liable for any changes to radio path which may have a negative impact on Service Availability, nor will customer be entitled to any type of refund as a result of such changes.
- II. **Service Speed.** Customer acknowledges that bandwidth is shared and that experienced bandwidth and service speed can vary depending on a number of factors including location, line of site, Internet traffic, Customer hardware, and other backhaul factors beyond the control of Provider. Customer acknowledges that Provider does not guarantee a specific bandwidth and connection speed during normal operation.
- III. **Burstability.** Customer acknowledges that Business service plans are burstable in nature and thus are not designed to maintain maximum burst rate over a sustained period of time. If Customer sustains usage in excess of the following thresholds, this may have a negative impact on additional LMi.net customers. As a result, should LMi.net notice sustained usage exceeding the below thresholds, LMi.net reserves the right to request Customer to limit their average usage, or request that customer upgrade to a higher capacity service plan. Should the network be negatively impacted by sustained usage, LMi.net reserves the right to arbitrarily and without notice limit the Customers maximum bandwidth in order to reduce network impact. **Thresholds for sustained usage:**
 - 12/3 plan is 500 kbps (62.5 KB/s) down / 500 kbps (62.5 KB/s) up

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- 17/6 plan is 1 mbps (125 KB/s) down / 1 mbps (125 KB/s) up
- 22/8 plan is 3 mbps (375 KB/s) down / 3 mbps (375 KB/s) up

IV. **File Sharing/Digital Media.** Due to the nature of file sharing applications (such as BitTorrent, etc) and digital media devices (such as Roku, Apple TV, etc), specific configuration is required when using these protocols. Applications and devices such as these may attempt to utilize all of the available bandwidth on the network and may result in network congestion. As a result, when using the aforementioned applications or devices, LMi.net requires that they be configured with maximum upload and download speeds not to exceed the following thresholds. If the user does not set this limit, LMi.net may arbitrarily and without notice limit the Customer's maximum bandwidth in order to reduce impact to the overall network. **Threshold levels for File Sharing/Digital Media:**

- 12/3 plan is 500 kbps (62.5 KB/s) down / 500 kbps (62.5 KB/s) up
- 17/6 plan is 1 mbps (125 KB/s) down / 1 mbps (125 KB/s) up
- 22/8 plan is 3 mbps (375 KB/s) down / 3 mbps (375 KB/s) up

Equipment

- I. **Required Equipment.** Customer understands and agrees that the Service requires certain equipment provided by the Customer such as computer equipment, software, networking hardware, or other materials (the "Customer Equipment"), as well as certain equipment that customer will purchase or lease from Provider or its designee such as a radio modem, antenna, and co-axial cable (the "Provider Equipment"), at prices to be agreed in the Service Order. Customer agrees to connect only Provider approved equipment to the Service and represents that it owns the Customer Equipment or otherwise has the right to use it in connection with the Service.
- II. **Ownership of Provider Equipment.** All equipment, (radios, antennas & standard mounting equipment), except for equipment purchased and paid for in full, or otherwise provided by the Customer, will at all times remain the property of the Provider. Customer may not sell, transfer, lease, encumber or assign any or all of the equipment to any third party. Customer shall pay for the full retail cost, or the repair or replacement cost, of any Provider Equipment that is lost, stolen, un-returned, damaged, sold, transferred, leased, encumbered or assigned.
- III. **Customer Responsibility for Provider Equipment.** Customer is responsible for any changes to Provider Equipment and configuration after Provider has completed Service setup and tested the signal. Customer agrees to restrict access to the Equipment to only those representatives and agents authorized by Provider. Customer agrees not to, nor allow any other party to, move, dispose of, modify, re-aim, or adjust the Equipment, and Customer agrees to takes reasonable steps to protect the Equipment from damage, loss or theft.
- IV. **Access to Customer's Premises.** Customer authorizes Provider and its employees, agents, contractors, and representatives, to enter Customer's premises (the "Premises") in order to install, maintain, inspect, repair, and if necessary, remove, all or part of the Provider Equipment. All such services will be conducted at reasonable times and upon reasonable notice to the Customer. If Customer is not the owner of the Premises, Customer acknowledges responsibility to obtain all necessary approvals from property manager or owner, and all applicable permits and/or use fees, to gain approval for the installation, placement, maintenance, and removal of Provider Equipment on, or in, the Customer's building prior to installation and throughout the term of Service, unless noted otherwise in the Agreement. Customer agrees to indemnify and hold Provider harmless from any claim resulting from a breach of this warranty.
- V. **Maintenance of Purchased Equipment.** Equipment purchased from Provider and paid for in full by Customer for use of the Service shall be maintained by Provider for one full year from the Customer's signature date, so long as maintenance is not required as a result of Customer's misuse or abuse, in which case Customer shall be responsible for any maintenance and/or repair costs and liable to Provider for any damages thereto. Once a full year has passed from the signature date below, Customer shall be solely responsible for all maintenance, repairs, and/or replacement costs thereto.
- VI. **Customer Equipment Configuration.** Customer is solely responsible for all Customer Equipment and Customer network configurations including, but not limited to, Customer's business router. Provider may supply courtesy troubleshooting or initial connection of the Ethernet to the Customer's primary computer, however, additional network updates, fixes, enhancements, router troubleshooting or router configuration are the responsibility of the Customer. Any third party involvement in the setup of Customer Equipment is at the sole discretion and responsibility of the Customer.

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- VII. **Local Area Network Requirements.** In the event the Customer's computers are configured in a Local Area Network, Customer agrees that it shall be responsible to configure, at its expense, Customer's Network so that data requests intended to be confined to its LAN are not broadcast across the Provider's Network.
- VIII. **Email accounts.** At the time of installation and upon the request of the Customer, LMI.net shall generate a specified number of e-mail accounts for the Customer's use on a temporary basis. The number of e-mail accounts created may be limited by the type of Service plan the Customer has requested. Free E-mail accounts may be limited to a total mailbox size of 70Mb, at Provider's discretion. If Customer desires additional mailbox capacity, this can be purchased at an additional cost. Unless specified in writing by Provider, Customer agrees that it will have no right to use the designated e-mail accounts upon termination of this Agreement. Customer shall have full responsibility to save any pertinent e-mails or data in an alternative location prior to termination of Service.
- IX. **IP Addresses.** LMI.net may designate for the Customer's use on a temporary basis, the number of Internet Protocol Addresses ("IP Addresses") specified on the Agreement from the address space assigned to LMI.net. The Customer acknowledges that the IP Addresses are the sole property of LMI.net, and are temporarily designated for the Customer to use as part of the Service, and are not transferable. LMI.net reserves the right to change the IP Address designations at any time and that such modifications or amendments shall be binding upon the Customer. LMI.net will use reasonable efforts to minimize inconvenience to the Customer resulting from such changes. The Customer agrees that it will have no right to use IP Addresses assigned to LMI.net upon termination of this Agreement, and that any change in IP Addresses the Customer may need to make after termination of this Agreement shall be the sole responsibility of the Customer.
- X. **Additional Fees.** In the event that special construction, third-party contractors (as required by property manager or building owner) or additional equipment including but not limited to, longer cable, additional grounding, mast hardware, or specialized antennas are needed, an additional fee will be required for said equipment as well as any additional labor costs or third-party contractor costs not included in the Standard Installation. Any additional labor or material costs will be itemized in a Service Order addendum prior to installation, if feasible, or discussed with Customer at the time of installation, for approval. Additional labor supplied by Provider is billed at \$85/hr and additional equipment will be billed at cost.

Acceptable Use

- I. **Acceptable Use Policy.** Customer expressly agrees not to use the Customer Equipment, Provider Equipment, or the Service, directly or indirectly, to undertake or accomplish any unlawful purpose or in violation of any posted LMI.net policy applicable to the Service, including without limitation any LMI.net Acceptable Use Policy (the "AUP") or other policy posted on the Provider's web site at <http://www.lmi.net/about/aup> or on another web site about which you have been notified, and that the AUP or other policy may be modified by LMI.net from time to time, and LMI.net shall post all updates on Provider website. LMI.net strives to provide its customers with the highest quality service available, while at the same time respecting the standards that have been created both within the Internet community, and by legislation. To that end, inappropriate or abusive activities and conduct will not be tolerated on LMI.net's networks. In the event Customer violates the LMI.net's Acceptable Use Guidelines, LMI.net shall have the right to immediately suspend service.
- II. **Customer Content.** The Customer is solely responsible for the content of any postings, data or transmissions using the Service, or any other use of the Service by the Customer or by any other person the Customer permits to access the Services (a "User"). The Customer represents and warrants that neither it nor any User will use the Service for unlawful purposes (including, without limitation, infringement of copyright or trademark, misappropriation of trade secrets, wire fraud, invasion of privacy, illegal pornography, obscenity, defamation, or transportation or sale of controlled substances and firearms), or to interfere with, or disrupt, other network users, network services, or network equipment. Disruptions include, without limitation, distribution of unsolicited advertising or chain letters, repeated harassment of other network users, wrongly impersonating another user, falsifying one's network identity for improper or illegal purposes, sending unsolicited mass e-mailings, propagation of computer viruses, using the network to make unauthorized entry to any other machine accessible location, via the network, and distributing of tools designed for compromising security (i.e. including, but not limited to, password guessing programs, cracking tools or network probing tools). LMI.net may suspend or terminate the Service immediately, without prior notice to the Customer, if LMI.net believes, in good faith, that the Customer or a User is utilizing the Service for any such illegal or disruptive purpose.

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- III. **Monitoring Service.** LMi.net shall have no obligation to monitor postings or transmissions made in connection with the Services. However, Customer acknowledges and agrees that LMi.net and its agents shall have the right to monitor any such activity including without limitation e-mail, newsgroups, chat, IP audio and video, and web space content, from time to time, and to disclose information regarding use of the Services if Provider, in its sole discretion, believes that it is reasonable to do so, including to: satisfy laws, regulations, or governmental or legal requests; operate the Service properly; or protect itself, its employees, its customers or others. Provider reserves the right to immediately remove Customer material from LMi.net's servers, or to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in Provider's sole discretion, is unacceptable, undesirable, or in violation of this Agreement.
- IV. **Illegal Use.** Customer will cooperate in any investigation of Customer's alleged illegal use of LMi.net's facilities or other networks accessed through LMi.net. If Customer fails to cooperate with any such investigation, LMi.net may suspend Customer's Service.

Limitations of Liability

- I. **Maintenance.** From time to time, LMi.net may conduct routine tests, maintenance, upgrade or repair on any part of the System, and LMi.net shall give the Customer prior notice thereof. The Customer acknowledges that there may be instances where it is not practicable for LMi.net to give advance notice of a disruption, for example, in the event of an emergency, and LMi.net shall be entitled to disrupt the Services to conduct restoration and remedial works without prior notice. Provider will take all reasonable steps to keep its Service in full, working order. However, nothing in this Agreement shall be construed as a guarantee of continuous, uninterrupted service.
- II. **Damage to Customer Data and Equipment.** The installation, use, inspection, maintenance, repair, and removal of the Provider Equipment may result in service outages or potential damage to Customer Equipment or Property. Additionally, various Internet failures beyond Provider's control such as changes in network conditions, RF path loss, forced relocation of equipment, power surges, lightning, fire, flood and acts of God may temporarily or permanently impact Customer's Service. Customer shall have full responsibility for protecting all Customer Equipment, software, and data from loss or damage. Customer is expected to back up all existing files, and maintain any needed backup Internet access, if desired. Except for gross negligence or willful misconduct by Provider, neither Provider nor its Underlying Providers shall have any liability whatsoever for any damage, loss, or destruction to Customer Equipment, Property, software or data. In the event of such gross negligence or willful misconduct by Provider, Provider shall pay for the repair or replacement of the damaged parts, or the total amount paid by Customer to LMi.net for two month's service, whichever is lower, which shall constitute customer's sole remedy relating to such activity.
- III. **Third-Party Providers.** Customer acknowledges that in order to provide Service, Provider has contracted with communications and network operators for Internet access. Customer further acknowledges that Provider will only supply uninterruptible continuous Service to Customer pursuant to this Agreement to the extent which Provider receives such service from linked communications and network operators.
- IV. **Force Majeure and Acts of Nature.** Other than with respect to failure to make payments due hereunder, neither party shall be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, court order, acts or regulations of governmental bodies, acts of Nature, or failure or loss of supply or market. Additionally, LMi.net shall not be liable for any loss of connectivity to customer location for any reason including without limitation, loss of line of sight, Radio Frequency interference, legal restrictions, physical restrictions or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause; and/or (b) uses its commercially reasonable efforts to promptly correct such failure or delay in performance; and (c) gives further notice, within a reasonable amount of time, where failure or delay in performance is not commercially reasonable to correct therefore resulting in a permanent failure.
- V. **Limited Warranty.** THE PROVIDER EQUIPMENT AND SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. LMI.NET DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR OPERATE AT A GUARANTEED SPEED.
- VI. **Disclaimer of Warranties.** LMi.net specifically disclaims all warranties, representations and conditions, statutory or otherwise, express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose with regard to any merchandise, information or service

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provided through the software, site or informational databases. Except as otherwise provided in this Agreement, any written materials by LMI.net, or information on LMI.net's company web site, shall be for informational purposes only and, whether delivered or disseminated before or after the date of this Agreement, shall not create any express or implied warranties, guaranty of performance, or contractual obligations.

- VII. **Maximum Liability.** Notwithstanding anything to the contrary in the Agreement, LMI.net's maximum aggregate liability to Customer related to or in conjunction with this Agreement whether under theory of contract, tort (including negligence), strict liability, or otherwise, will be limited to the total amount paid by Customer to LMI.net for one month's service.

Miscellaneous Provisions

- I. **Indemnification.** Customer agrees to indemnify and hold harmless LMI.net, all of its officers, directors, stockholders, members, agents, managers, employees, and its affiliate companies, from and against any and all losses, claims, damages, costs and expenses, including legal fees, which result from, or are in any way connected with, the use of the Customer's Service, by anyone, or any breach of this Agreement, without limitation. Customer's release of LMI.net includes any actions or inaction by LMI.net, which amounts to negligence.
- II. **Changes.** Customer accepts that LMI.net may change or withdraw any element of the Service from time to time and will use all reasonable efforts to notify Customer of any necessary change in the Service.
- III. **Governing Law and Dispute Resolution.** The laws of the State of California shall govern the terms of this Agreement.
- IV. **Arbitration.** Any controversy, claim, or dispute between the parties arising out of or in connection with this Agreement, which cannot be amicably settled between the parties, shall be settled by binding arbitration. Before commencing arbitration, Customer must first present any claim or dispute to LMI.net in writing to allow Provider the opportunity to resolve the dispute. If the claim or dispute is not resolved within 60 days, Customer may request arbitration. The arbitration award shall be final and binding on both parties of this Agreement and shall not be subject to any appeal.
- V. **Relationship of the Parties.** Customer and LMI.net are, and shall remain, independent contractors. Neither party will have the authority to make any representations, claims or warranties of any kind on behalf of the other party or on behalf of such party's licensors or suppliers.
- VI. **Survival of Obligations.** The restrictions and obligations of this Agreement shall survive any expiration, termination, or cancellation of this Agreement, and shall continue to bind Customer, and Customer's successors, personal representatives, heirs and assigns. Failure on the part of LMI.net to insist upon or enforce any provision of this Agreement shall not be construed as a waiver of any provision or right. Additionally, should any provision of this Agreement be found as invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

Entirety of Agreement

This Agreement, the Service Order(s), and all references herein constitute the entire Agreement between the parties with respect to the subject matter hereof, and supersedes all prior or current Agreements, discussions, proposals, oral or written, all previous negotiations, and all other communications between the parties with respect to the subject matter hereof. The terms of this Agreement may be modified only in writing, signed by authorized representatives of both parties. The Agreement is non-assignable by either party except to a successor-in-interest provided that the non-assigning party shall then have the right to terminate this Agreement upon thirty (30) day's notice.

Customer and LMI.net may enter into subsequent Service Order(s), which will automatically become part of this Agreement.

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Customer Information

Business Contact	
Name/Title	
Address	
City, State, Zip	
Phone/Fax	
E-Mail	
Installation Address / Rooftop Access Contact	
Address	
City, State, Zip	
Floor Number	
Contact	
Phone	
Fax	

CUSTOMER HAS READ AND AGREES TO THE TERMS OF SERVICE

Client Signature: _____ Date: _____

Client Name (Please Print): _____ Date: _____

Provider Signature: _____ Date: _____
(Signed by an officer or authorized agent of LMi.net.)

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