

# Acceptable Use Policy

## Important Note:

Multiband may revise this Acceptable Use Policy (the "Policy") from time to time without notice by posting a new version of this document on the Multiband Web site at <http://www.Multiband.tv> (or any successor URL(s)). All revised copies of the Policy are effective immediately upon posting. Accordingly, customers and users of the Multiband High-Speed Internet Service should regularly visit our web site and review this Policy to ensure that their activities conform to the most recent version. In the event of a conflict between any subscriber or customer agreement and this Policy, the terms of this Policy will govern. Questions regarding this Policy and complaints of violations of it by Multiband customers and users can be directed to Email address: [info@multiband.tv](mailto:info@multiband.tv).

## Introduction

Multiband provides Internet service to residential customers (the "Surf"), which allows subscribers to connect to the Internet through the network of Multiband and other underlying providers of the Service. Use of the Service is subject to the terms of this Policy. As a customer or user of the Service, you are responsible for ensuring that your use of the Service complies in all respects with this Policy. **ANY CUSTOMER OR USER WHO DOES NOT AGREE TO BE BOUND BY THIS POLICY SHOULD IMMEDIATELY STOP USE OF THE SERVICE AND NOTIFY THE MULTIBAND CUSTOMER SERVICE DEPARTMENT SO THAT THE CUSTOMER'S OR USER'S ACCOUNT MAY BE CLOSED.**

## Illegal Activity

The use of the Service for any activity that violates any local, state, federal or international law, order or regulation is a violation of this Policy. Prohibited activities include, but are not limited to:

Posting or disseminating material, which is unlawful (such as child pornography or obscene material);

Disseminating material, which violates the copyright or other intellectual property rights of others;

Pyramid or other illegal soliciting schemes;

Any fraudulent activities, including impersonating any person or entity in person or electronically or forging anyone else's digital or manual signature.

## Security

You are responsible for any misuse of the Service, even if a friend, family member, guest, employee or customer committed the misuse with access to your Service account. Therefore, you must take steps to ensure that others do not use your account to gain unauthorized access to the Service by, for example, strictly maintaining the confidentiality of your Service login and password.

The Service may not be used to breach the security of another customer or user or to attempt to gain access to any other person's computer, software or data, without the consent of such person. The Service may not be used in any attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other networks. Use or distribution of tools designed for compromising security, such as password guessing programs, cracking tools, packet sniffers or network probing tools is prohibited. The Service may not be used to collect, or attempt to collect, personal information about third parties without their consent.

You may not disrupt the Service. The Service may not be used to interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to "crash" a host. The transmission or dissemination of any information or software, which contains a virus or other harmful feature, is prohibited. The Service may not be used to violate the rules, regulations, or policies applicable to any network, server, computer database, or web site that you access. In all cases, you are solely responsible for the security of any device you choose to connect to the Service, including any data stored or shared on that device. Multiband recommends against enabling file or printer sharing of any sort unless you do so in strict compliance with all security recommendations and features provided by the manufacturer of the

applicable file or printer sharing devices. Any files or devices you do choose to make available for remote access should be protected with a strong password or as otherwise appropriate.

### **Inappropriate Content**

There may be content on the Internet or otherwise available through the Service which may be offensive to some individuals, or which may not be in compliance with all local laws, regulations and other rules. For example, it is possible to obtain access to content, which is pornographic or offensive, particularly to children. Neither Multiband nor any of its underlying providers assume any responsibility for the content contained on the Internet or otherwise available through the Service. You expressly assume the risk of accessing content through the Service, and neither Multiband nor any of its underlying providers shall have any liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content. Parents may wish to use a program capable of restricting access to sexually explicit material on the Internet. Content questions or complaints should be addressed to the content provider.

You are solely responsible for any information that you publish, disseminate, or make available on the Internet. You must ensure that any content that you disseminate is appropriate for its intended recipient(s). For example, you must take proper precautions to prevent minors from receiving inappropriate content. Multiband reserves the right, but not the obligation, to refuse to post or to remove or block any information or materials, in whole or in part, that it, in its sole discretion, deems to be offensive, indecent, or otherwise inappropriate, regardless of whether such material or its dissemination is unlawful.

Neither Multiband nor any of its underlying providers have any obligation to monitor transmissions made on the Service. However, Multiband and its underlying providers have the right to monitor such transmissions from time to time for violations of this Policy and to disclose, block or remove the same in accordance with your Subscriber Agreement and any other applicable agreements and policies.

By using the Service to reproduce, publish, display, transmit and distribute content, a user is warranting that any content that the user may reproduce, publish, display, transmit, or distribute complies with this Policy. Through these actions, a user also authorizes Multiband and its underlying providers to reproduce, publish, display, transmit and distribute such content as necessary to deliver the content in a timely manner.

### **Electronic Mail**

The Service may not be used to send unsolicited bulk or commercial messages. This includes, but is not limited to, bulk mailing of commercial advertising, informational announcements, charity requests, petitions for signatures, and political or religious messages. Such messages may only be sent to those who have explicitly requested them.

You agree that you will not use email for the propagation of chain letters, junk mail or "spam." The Service may not be used to send messages to any individual who has indicated that he/she does not wish to receive messages from you. You agree not to use email to send any message or material that is unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. Continuing to send email messages to anyone that has expressly requested not to receive email from you is considered to be harassment. The Service may not be used to collect responses from unsolicited email sent from accounts on other Internet hosts or email Services that violate this Policy or the acceptable use policy of any other Internet service provider. Moreover, unsolicited email may not direct the recipient to any web site or other resource, which uses the Service. Activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email whether or not such email is commercial in nature, are prohibited.

Forging, altering or removing electronic mail headers is prohibited.

You may not reference Multiband or the Multiband network (e.g. by including "Organization: Multiband" in the header or by listing an IP address that belongs to Multiband or the Multiband network) in any unsolicited email even if that email is not sent through the Multiband network.

You may not send numerous copies of the same or substantially similar messages, nor may you send very large messages or files to a recipient with the intent to disrupt or affect of disrupting a server or account.

Multiband is not responsible for forwarding email sent to any account which has been suspended or terminated. Such email will either be returned to sender, ignored, deleted, or stored temporarily at Multiband's sole discretion.

In the event that Multiband believes in its sole discretion that any subscriber name, account name, or e-mail address (collectively, an "identifier") on the Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, Multiband (i) reserves the right to block access to and prevent the use of any such identifier and (ii) may at any time require any customer to change his or her identifier. In addition, Multiband may at any time reserve any identifiers on the Service for Multiband's own purposes.

### **Newsgroups**

Messages posted to newsgroups must comply with the written charters or FAQs for those newsgroups as well as any other terms and conditions applicable to any particular newsgroups or provider of newsgroups. Advertisements, solicitations, or other commercial messages should be posted only in those newsgroups whose charters or FAQs explicitly permit them. You are responsible for determining the policies of a given newsgroup before posting to it. Multiband reserves the right to discontinue access to any newsgroup at any time for any reason. Multiband permits users of the Service to download a maximum of one gigabyte (1GB) of newsgroup content in any one month, unless users are subject to a Service plan that permits downloading more content.

### **Network, Bandwidth and Other Limitations**

You must comply with all then current bandwidth and other limitations on the Service established by Multiband and its vendors and providers. In addition, you may only access and use the Service with a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). You may not access or use the Service with a static IP address or using any protocol other than DHCP unless you are subject to a Service plan that expressly permits otherwise.

You must ensure that your activity does not improperly restrict, inhibit, or degrade any other user's use of the Service, nor represent (in the sole judgment of Multiband) an unusually large burden on the network. In addition, you must ensure that your activities do not improperly restrict, inhibit, disrupt, degrade or impede Multiband's ability to deliver the Service and monitor the Service, backbone, network nodes, and/or other network Services.

You may not resell, share, or otherwise distribute the Service or any portion thereof to any third party. For example, you cannot provide Internet access to others through a dial up or wireless connection, host shell accounts over the Internet, provide email or news service, or send a news feed. You may not use the Service for commercial purposes. The Service offering is a residential consumer product designed for your personal, non-commercial use of the Internet. For example, the Service does not provide the type of security, upstream performance and total downstream throughput capability typically associated with commercial use.

**You may not run a server in connection with the Service**, nor may you provide network services to others via the Service unless you are subject to a Service plan that permits otherwise. Examples of prohibited uses include, but are not limited to, running servers for mail, http, ftp, irc, wifi, and dhcp, and multi-user interactive forums.

### **Excessive Bandwidth Use.**

Multiband reserves the right to monitor bandwidth use of its customers and may suspend or terminate the account of any customer using excessive bandwidth, excessive downloads, uploads and/or file transfers, servers other than Multiband or hosting websites which are not hosted by Multiband. Multiband provides its service based on standard Internet burst speeds and is not intended for continual, maximum upload or download usage. If a customer has excessive downloads, uploads and/or file transfers, Multiband may suspend or terminate use of the services immediately or additional charges may apply

### **Copyright Infringement**

Multiband is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Service to comply with these laws. Accordingly, you may not store any material or content on, or

disseminate any material or content over, the Service (or any part of the Service) in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is Multiband's policy in accordance with the DMCA and other applicable laws to reserve the right to terminate the Service provided to any customer or user who is either deemed to infringe third party copyright or other intellectual property rights, including repeat infringers, or who Multiband believes in its sole discretion is infringing such rights. Multiband may terminate the Service at any time with or without notice for any such customer or user.

Copyright owners may report alleged infringements of their works made on or over the Service by sending Multiband's authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon Multiband's receipt of a satisfactory notice of claimed infringement, Multiband will either remove the allegedly infringing work(s) from the Service or will block access to the work(s). Multiband will then notify the affected customer or user of the Service that it has removed or blocked access to the work(s). If the affected customer or user believes in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then that person may send a counter notification to Multiband. Upon Multiband's receipt of a counter notification that satisfies the requirements of DMCA, Multiband will provide a copy of the counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. In all events, you expressly agree that Multiband will not be a party to any disputes or lawsuits regarding alleged copyright infringement.

Copyright owners may send Multiband a notification of claimed infringement to report alleged infringements of their works made on or over the Service to:

Steve Bell

Multiband, Inc.

9449 Science Center Drive

New Hope, MN 55428

Phone: (763) 504-3000

Fax: (763) 504-3060

E-mail: [info@multiband.tv](mailto:info@multiband.tv)

Copyright owners may view and print a notification of claimed infringement form in either PDF or HTML format. Complete the form and return it to Multiband. Multiband doesn't require that you use this form, and copyright owners may use their own notification of claimed infringement form that satisfies the requirements of Section 512(c)(3) of the U.S. Copyright Act. Under the DMCA anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to Multiband, the alleged infringer, and the affected copyright owner for any damages incurred in connection with the removal, blocking, or replacement of allegedly infringing material.

If a notification of claimed infringement has been filed against you, you can file a counter notification with Multiband's designated agent using the contact information shown above. All counter notifications must satisfy the requirements of Section 512(g)(3) of the U.S. Copyright Act.

### **Violation of Acceptable Use Policy**

Multiband does not routinely monitor the activity of accounts for violation of this Policy. However, in our efforts to promote good citizenship within the Internet community, we will respond appropriately if we become aware of inappropriate use of our Service. Although Multiband has no obligation to monitor the Service and/or the network, Multiband and its underlying providers reserve the right at any time to monitor bandwidth, usage, transmissions, and content from time to time to operate the Service; to identify violations of this Policy; and/or to protect the network, the Service and Multiband users.

Multiband prefers to advise customers of inappropriate behavior and any necessary corrective action. However, if the Service is used in a way, which Multiband or its underlying providers, in their sole discretion, believe violate this Policy, Multiband or its underlying providers may take any responsive actions they deem appropriate. Such actions include, but are not limited to, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Service. Neither Multiband nor its underlying providers will have any

liability for any such responsive actions. The above-described actions are not Multiband's exclusive remedies and Multiband may take any other legal or technical action it deems appropriate.

Multiband reserves the right to investigate suspected violations of this Policy, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on Multiband's servers and network. During an investigation, Multiband may suspend the account or accounts involved and/or remove or block material, which potentially violates this Policy. You hereby authorize Multiband and its underlying providers to cooperate with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) and system administrators at other Internet service providers or other network or computing facilities in order to enforce this Policy. Such cooperation may include Multiband providing available personally identifying information about you to law enforcement or system administrators, including, but not limited to, username, subscriber name, and other account information. Upon termination of your account, Multiband is authorized to delete any files, programs, data and email messages associated with your account.

The failure of Multiband or its underlying providers to enforce this Policy, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this Policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect. This Policy shall be exclusively governed by, and construed in accordance with, the laws of the state of residence where the Service is provided to the customer.

## **Multiband Abuse Policy**

The Multiband IP Network Abuse Department is responsible for supporting and enforcing the policies set forth in the Multiband Acceptable Use Policy ("AUP") and Multiband High-Speed Internet ("HSI") Service Customer Agreement ("Customer Agreement"). The policies set forth in the AUP and Customer Agreement have been put in place to protect the Multiband Network and Multiband High-Speed Internet service customers from the adverse impact that can result from intentional violations of the AUP and/or Customer Agreement. If you believe you have been the victim of activities, which are in violation of the Multiband AUP or the Customer Agreement, the Multiband Network Abuse Department will take appropriate action to investigate and attempt to resolve the alleged violation.

If you feel that you have been a victim of Internet abuse which took place in part or completely on the Multiband Network, please report the incident to [info@multiband.tv](mailto:info@multiband.tv). Make sure to include the date and time of the incident, log files, spam examples or any other information that may be useful to the investigation and verification of the incident as well as your name and phone number or e-mail address so we may contact you directly.

Listed below are typical types and examples of activities, which are in violation of the Multiband AUP and the Customer Agreement. If you are unsure whether you have been the victim of Internet abuse, the following examples may help in your determination. You may also refer directly to the Multiband AUP and Subscriber Agreement

**Illegal Activities** - Any activity, which violates local, state, federal, or international law. Examples include: Posting or disseminating illegal material (such as child pornography or obscene material) or using the Multiband Network to facilitate pyramid or other illegal solicitation schemes.

**Security** - Attempting to gain unauthorized access to the Multiband network, Multiband subscriber or a Multiband affiliated service provider's network resources; attempting to disrupt network services or services of external networks using the Multiband High-Speed Internet service; attempting to gather third party personal information without consent. Examples include: DoS attacks, computer virus distribution or the transmission of any other software or application that contains features harmful to the Multiband network or Multiband's subscribers or any other network service provider's subscribers.

**Inappropriate Content** - Distribution of content, which is inappropriate for its intended recipient. Examples include: Distributing inappropriate content to minors and posting content that Multiband deems offensive on personal Web space.

**Electronic Mail** - Any e-mail related infractions. Examples include: Sending unsolicited bulk mail or 'spam'; sending e-mail that contains threatening, abusive, illegal or libelous material.

**Bandwidth and Other limitations** - Use of the Multiband network infrastructure in a manner that (i) exceeds the then current bandwidth, data storage or other limitations on the Multiband High-Speed Internet service or (ii) puts an excessive burden on the limitations of the network. Examples include: Using the Multiband network to run a Web-hosting server or any other commercial enterprise.

# Multiband High-Speed Internet Service Subscriber Agreement

Multiband High-Speed Internet service (the "Service") will be provided to you ("you," "your," or "Customer") on the terms and conditions set forth in this Subscriber Agreement (the "Agreement").

## 1. Equipment; Access.

**Required Equipment:** You understand and agree that the Service requires certain equipment provided by you such as a personal computer, an Ethernet device, if required, and an appropriate operating system (the "Customer Equipment"), as well as certain equipment provided by Multiband or its designee such as software and external wiring and related electronic equipment installed by Multiband up to the point twelve inches from where the wiring enters your residence ("Multiband Equipment"). If you are leasing a cable modem from us, the cable modem is Multiband Equipment. If you have purchased a cable modem (whether from us or from a third party) the cable modem is Customer Equipment. If you purchase your own cable modem, it must meet the DOCSIS compatibility requirements established by CableLabs, Multiband, and its underlying providers. Multiband reserves the right to provide the Service only to the extent that you use a cable modem compatible with the Service. Whether the cable modem is owned by you or us, we have the unrestricted right, but not the obligation, to upgrade or change the firmware in the cable modem at any time that we, in our sole discretion, determine is necessary or desirable. We may perform these upgrades or changes remotely or on the Premises as we determine in our sole discretion.

**Access to Customer's Premises:** You authorize Multiband and its employees, agents, contractors, and representatives to enter your premises at which the Service will be accessed (the "Premises") in order to install, maintain, inspect, repair and remove the Multiband Equipment and any equipment used in connection with the Service. All such access will occur at a time agreed to with you. You warrant that you are the owner of, or a tenant in, the Premises, and that you have the authority to enter into this Agreement. If you are not the owner of the Premises, upon request, you will supply us with the owner's name and address, evidence that you are authorized to grant access to the Premises on the owner's behalf and (if requested by Multiband) written consent from the owner of the Premises. You agree to indemnify, defend and hold harmless Multiband and its affiliates and agents against all claims and expenses (including reasonable attorney fees) arising out of any breach of this Section 1(b).

**Multiband Equipment:** The Multiband Equipment will at all times remain the property of Multiband or its designee. You acknowledge that the Multiband Equipment is merely a means through which the Service is provided by us and may be removed or changed by us at our discretion as we deem appropriate, including through "downloads" to your computer(s) or otherwise. You agree not to use the Multiband Equipment for any purpose other than to use the Service pursuant to this Agreement. During the term of this Agreement, Multiband will repair and maintain all Multiband Equipment and you agree that the Multiband Equipment will not be serviced by anyone other than Multiband employees or agents. You shall not sell, transfer, lease, encumber or assign all or part of the Multiband Equipment to any third party. You will not relocate the Multiband Equipment. At your request, we may, at an additional charge, relocate the Multiband Equipment within the Premises at a time agreed to with you. If you change residences or disconnect your Service, you must contact Multiband for additional information concerning disconnecting the Service, the possibility, costs and procedures for transferring the Multiband Equipment and Service to your new residence. You shall pay to Multiband the full manufacturer's suggested retail price for the replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Multiband Equipment or part thereof, together

with any incidental costs incurred by us relating to the replacement of the Multiband Equipment or part thereof.

**1. Customer Equipment:** You represent that you own the Customer Equipment or otherwise have the right to use such equipment in connection with the Service. Multiband shall have no obligation to provide, maintain or service the Customer Equipment. The current minimum technical and other requirements for Customer Equipment (including without limitation required computer hardware) in connection with the Service are posted on the Service's web site at [www.Multiband.tv](http://www.Multiband.tv) or on another web site about which you have been notified. We may revise these minimum requirements from time to time. If you proceed with the installation of or use the Service in conjunction with Customer Equipment that does not meet the minimum requirements (a "Non-Recommended Configuration"), you agree that (i) you will not be entitled to customer support relating to any issues other than the quality of the signal delivered to the cable modem, and (ii) the following limitation of liability shall apply: NEITHER MULTIBAND NOR ANY OF ITS AFFILIATES OR AGENTS WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICE. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT, INCLUDING WITHOUT LIMITATION CUSTOMER'S COMPUTER, PERIPHERALS, SOFTWARE OR DATA. NEITHER MULTIBAND NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

## **2. Intellectual Property Rights.**

**End User Licenses:** You agree to comply with the terms and conditions of all end user license agreements accompanying any software or plug-ins to such software distributed or used in connection with the Service. All such agreements are incorporated in this Agreement by reference. All end user licenses will terminate upon the termination of this Agreement, and, at such time, you shall destroy all versions and copies of all software received by you in connection with the Service.

**Ownership of Addresses:** You acknowledge that use of the Service does not give you any ownership or other rights in any Internet/on-line addresses provided to you, including but not limited to Internet Protocol ("IP") addresses, e-mail addresses and web addresses. We may modify or change these addresses at any time without notice and shall in no way be required to compensate you for these changes.

**Authorization:** Multiband does not claim any ownership of any material that you publish, transmit or distribute using the Service. By using the Service to publish, transmit or distribute material or content, you (i) warrant that the material or content complies with the provisions of this Agreement, (ii) consent to and authorize Multiband, its agents and affiliates to reproduce, publish, distribute, and display the content worldwide and (iii) warrant that you have the right to provide this authorization. You acknowledge that material posted or transmitted using the Service may be copied, republished or distributed by third parties, and you agree to indemnify, defend and hold harmless Multiband, its agents and affiliates for any harm resulting from these actions.

**Copyright in the Service:** Title and intellectual property rights to the Service are owned by Multiband, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material and are protected by copyright laws and treaties. The copying, redistribution, reselling or publication of any part of the Service without express prior written consent from Multiband or other owner of such material is prohibited.

**Material Downloaded from the Service:** In addition to any content that may be provided by us, you may access material through the Service that is not owned by Multiband. Any such material may be downloaded from the Service only for your personal, non-commercial use, and you are not allowed to redistribute that material over any network (other than a residential home network located in the Premises) or sell or offer for sale that

material. Unless other terms and conditions expressly apply to specific content, you may make: (a) one machine readable copy, (b) one backup copy, and (c) one print copy of any material downloaded from the Service; any other copying, or any redistribution or publication of any downloaded material, including, without limitation, posting to any other online service, must be with the express permission of the relevant copyright holder. In any permitted copying, redistribution or publication of copyrighted material, any changes to or deletion of any copyright notice are prohibited. Other terms and conditions may apply to your use of any content or material made available through the Service that is not owned by Multiband. You should read those terms and conditions to learn how they apply to you and your use of any non-Multiband content.

**3. Fees and Charges:** You agree to pay all charges and fees associated with the use of the Service, which charges may include, without limitation, monthly service fees, charges for the use of Multiband Equipment, installation charges, charges for service calls and other charges. In addition, you agree to pay all applicable federal, state and local fees and taxes. A copy of the fees and charges applicable on the date of installation of the Service were delivered or available to you at the time of installation. You acknowledge receipt of this price list. The current applicable schedule of fees and charges is posted on the Service's web site at [www.Multiband.tv](http://www.Multiband.tv) or on another web site about which you have been notified. Multiband shall have the right to change the amount of fees and charges from time to time at its discretion and upon reasonable advance notice. Monthly service, equipment and other fees shall be payable monthly in advance. Installation and other charges will be billed according to our then current billing policies. Your Multiband invoice may also contain charges for other services provided by us or our subsidiaries or affiliates. If we receive partial payment of any such invoices, we will apply such payment in the amounts and proportions to the outstanding charges as we determine. Our acceptance of any partial payment by you does not mean that we waive our rights to collect the full balance owed to us.

**Credit Card:** If authorized by you, Multiband shall charge all amounts payable by you to Multiband pursuant to this Agreement to your credit card in accordance with the credit card information provided by you. By providing a credit card number to us, you authorize us to continue charging the credit card for all monthly fees (including without limitation monthly service fees and equipment charges, as well as applicable taxes and fees) payable to Multiband, and any other charges incurred by you and payable to Multiband pursuant to this Agreement, until this Agreement is terminated. Monthly service fees and equipment fees may be charged up to thirty (30) days in advance of the first day of the month for which the charges relate. You agree to inform us immediately of any change in credit card information (including without limitation a change in expiration date). Your card issuer agreement governs use of the credit card in connection with the Service, and you must refer to that agreement with respect to your rights and liabilities as a cardholder. If Multiband does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand by us.

**Late Payments: Failure to Pay:** You agree to pay Multiband, as set forth in this Agreement, for any fees or charges due to Multiband, including any administrative late fee(s) and related fees, charges and assessments due to late payments or non-payments. If Multiband does not receive any required payment from you by the date on which the payment is due, or you pay less than the full amount due Multiband where we provide more than one product or service to you, you may be charged such fees, charges and assessments and the Service may be disconnected. If the Service is disconnected, in addition to the rights and remedies of Multiband under this Agreement or otherwise, you may be required to pay a reconnect fee in addition to all past due charges before the Service is reconnected. Any administrative late fee(s) and related fees, charges and assessments due to late payment and nonpayment are not penalties. Rather, they are liquidated damages intended to be a reasonable advance estimate of our costs resulting from late payments or non-payments by our customers, which costs will not be readily ascertainable, and will be difficult to predict or calculate, at the time that such administrative late fee(s) and related charges are set because it would be difficult to know in advance: (a) whether you will pay for the Service on a timely basis, (b) if you do pay late, when you will actually pay, if ever, and (c) what costs we will incur because of your late payment or non-payment. Multiband will inform you of the amount of these fees and other separate or additional charges by posting notice of such charges on the Service's web site at [www.Multiband.net](http://www.Multiband.net) or on another web site about which you have been notified, or by sending notice via e-mail or first class U.S. postal mail to your address of record or e-mail address on our account records, prior to Multiband assessing any new or changed fees. You may avoid these fees and other separate or additional

charges relating to late payment and non-payment by complying with the payment provisions of this Agreement and by complying with Multiband's current billing policies. If you fail to pay for the Service when due (because of a failure to comply with the payment provisions of this Agreement or for any other reason), you agree to voluntarily pay all administrative late fee(s) and related fees, charges and assessments due to late payment and non-payment. Multiband does not anticipate that you will fail to pay for the Service on a timely basis. We do not extend credit to customers and the administrative fee(s), related fees; charges and assessments are not interest, a credit service charge or a finance charge. Multiband's late fee practices may be revised to comply with applicable state or local laws, rules or regulations. If we are required to use a collection agency or attorney to collect money owed by you or to assert any other right that we may have against you, you agree to pay the reasonable costs of collection or other action. These costs might include, but are not limited to, the costs of a collection agency, reasonable attorneys' fees and arbitration or court costs.

**Additional Charges:** The Service will allow you to access the Internet, content providers, providers of services, on-line services and other information. You acknowledge that you may incur charges on account of such access or usage through the Service separate and apart from the amounts charged by us. In addition, you may incur charges as a result of accessing on-line services or purchasing or subscribing to other offerings via the Internet or otherwise. You agree that all charges payable to third parties, including all applicable taxes, are your sole responsibility. In addition, you are solely responsible for protecting the security of credit card information provided in connection with such transactions.

**Alternate Billing Arrangements:** In certain cases, Multiband may agree to provide billing services on behalf of content providers, service providers or other third parties. If such billing services are provided by Multiband, we shall be acting as the agent of the third party. Any such third party charges shall be payable pursuant to any contract or other arrangement between you and the third party. We shall not be responsible for any dispute regarding these charges between you and any third party for whom Multiband bills. You must address all such disputes directly with the third party.

**Credit Inquiries:** You authorize Multiband to make inquiries and to receive information about your credit experience from others, enter this information in your file, and disclose this information concerning you to appropriate third parties for reasonable business purposes.

**Billing Errors:** Subject to applicable law, you must notify us of any billing errors or other requests for refund within sixty (60) days of the date on which the error occurred.

**Account Access:** In order to protect the privacy of your account information, we may require that you use a security code, designated in accordance with our policies, to confirm your identity when requesting or otherwise accessing account information, making changes to the Service or performing other functions related to the Service.

#### **4. Customer Information and Privacy**

**Customer Privacy:** Your privacy interests, including your ability to limit disclosure of certain information to third parties, is described in the Multiband High-Speed Internet Privacy Policy which we delivered to you at the time of the original installation of the Service, and will deliver to you annually as long as you receive the Service. You acknowledge your receipt of the Multiband High-Speed Internet Privacy Policy and your express consent to the terms of that privacy policy.

**Information Provided To Third Parties:** The Service will allow you to access third parties, including without limitation, content providers, on-line services and other providers of goods, services and information. Some of these goods, services and information may be accessible directly from the Service, and others may be accessible from the third parties referenced above. In connection with this third party access, you may be requested or required to provide your name, address, telephone number, credit card number and other personally identifiable information to such third parties. Multiband is not responsible for any such information provided by you to third parties, and this information is not subject to the privacy provisions of this Agreement or the. You assume all privacy and other risks associated with providing personally identifiable information to third parties via the Service. For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

## 5. Acceptable Use Policy; Prohibited Uses of the Service

**Acceptable Use Policy:** You expressly agree not to use the Multiband Equipment or the Service, directly or indirectly, to undertake or accomplish any unlawful purpose or in violation of any posted Multiband policy applicable to the Service, including without limitation any Multiband Acceptable Use Policy (the "AUP") or other policy posted on the Service's web site at [www.Multiband.net](http://www.Multiband.net) or on another web site about which you have been notified, and that the AUP or other policy may be modified by Multiband from time to time.

Notwithstanding anything to the contrary in this Agreement, you acknowledge and agree that the terms of the AUP and any other applicable Multiband policies may be put into effect or revised from time to time without notice by posting a new version of the AUP or the other policy as set forth above. Accordingly, you and other users of the Service should consult the AUP and all other posted policies regularly to conform to the most recent version.

**Prohibited Uses of the Service:** Use of the Multiband Equipment or the Service for transmission or storage of any information, data or material in violation of any federal, state or local law or regulation is prohibited. In addition, unless you are subject to a Service plan that expressly permits otherwise, the Service is to be used, and you expressly agree to use it, solely in a private residence, living quarters in a hotel, hospital, dormitory, sorority or fraternity house, or boarding house, or the residential portion of a premises which is used for both business and residential purposes. Without limiting the generality of the foregoing, the Service is for personal and non-commercial use only and you agree not to use the Service for operation as an Internet service provider, a server site for ftp, telnet, rlogin, e-mail hosting, "web hosting" or other similar applications, for any business enterprise, or as an end-point on a non-Multiband local area network or wide area network.

## 6. Representations and Warranties of Customer.

You represent and warrant that

Age: You are at least 18 years of age.

**Customer Information:** The Customer information that you have provided and will provide to Multiband during the term of this Agreement, including without limitation your legal name, address, telephone number(s), the number of computers on which the Service is being accessed and payment data (including without limitation credit card numbers and expiration dates) is accurate, complete and current. You agree to promptly notify us, in accordance with the terms of this Agreement, if there is any change in the information that you have provided to us. Failure to provide and maintain accurate information constitutes a breach of this Agreement.

**Multiple Users:** The Service and the Multiband Equipment shall be used only by you and by members of your immediate household living with you at the same address. You acknowledge that you are executing this Agreement on behalf of all persons who use the Multiband Equipment and/or Service by means of the Customer Equipment. You shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement. You further acknowledge and agree that you are solely responsible for and liable for any and all breaches of the terms and conditions of this Agreement, whether the breach is the result of use of the Service and/or the Multiband Equipment by you or by any other user of the Customer Equipment. You agree to indemnify, defend and hold harmless Multiband and its affiliates and agents against all claims and expenses (including reasonable attorney fees) arising out of the use of the Service and/or the Multiband Equipment or the breach of this Agreement by you or any other user of the Customer Equipment.

**Export Laws:** You will comply with all export and re-export control laws, including but not limited to the Export Administration Act, the Arms Export Control Act and their implementing regulations, and you will not transfer, by electronic transmission or otherwise, any content derived from the Service to either a foreign national or a foreign destination without first obtaining any required government authorization. You further agree not to upload to the Service any data or software that cannot be exported without prior written government authorization. The terms "export" and "re-export" mean transferring or releasing technology to another country or to a national of another by any means - physical, electronic or otherwise. This includes the electronic transmission of information and software to foreign countries and to certain foreign nationals.

**No Tampering:** You will not service, alter, modify or tamper with the Multiband Equipment or with the Service, or permit any other person (unless authorized by Multiband) to do so. This prohibition includes, without limitation, altering a cable modem to change the downloading or uploading capacity of the cable modem.

**IP Addresses:** Multiband will provide you with dynamic Internet protocol ("IP") address(es) as a component of the Service and these IP address(es) can and do change over time. You will not alter, modify, or tamper with these dynamic IP address(es) or those of any other customer. You agree not to use a dynamic domain name server or DNS to associate a host name with the dynamic IP address(es) for any commercial purpose. You also agree not to use any software on or in conjunction with any computer(s) or network device connected to the Service that provides for static IP address(es). If applicable, Multiband will release and/or recover the dynamic IP address(es) upon disconnection, discontinuance, or termination of the Service or this Agreement.

**Theft of Service:** You will not connect the Service or any Multiband Equipment to more computers, either on or outside of the Premises, than are reflected in your account with us. You acknowledge that any unauthorized receipt of the Service constitutes theft of service, which is a violation of federal law and can result in both civil and criminal penalties. In addition, if the violations are willful and for commercial advantage or private financial gain, the penalties may be increased.

## **7. Termination and Expiration.**

**Term:** The term of this Agreement shall commence upon the installation of your Service, and shall continue on a month-to-month basis thereafter until terminated as provided for in this Agreement or until superseded by a revised Subscriber Agreement.

**Termination by Customer:** You may terminate this Agreement for any reason at any time by providing Multiband with verbal or written notice of termination, in accordance with the terms of this Agreement. In the event of your termination, any applicable fees and charges will accrue through the date of termination but all prepaid monthly service fees for Service not received will be refunded (less any outstanding amounts due Multiband for equipment or other applicable fees and charges).

**Termination by Multiband:** We may terminate this Agreement (i) at any time without prior notice if you fail to comply in full with any term of this Agreement, or (ii) for any other reason upon thirty (30) days notice to you. In the event Multiband terminates the Service for any reason other than your violation of this Agreement, any fees and charges will accrue through the date of termination but any prepaid monthly service fees for Service not received will be refunded (less any outstanding amounts due Multiband for equipment or other applicable fees and charges).

**Customer Obligations Upon Termination.** You agree that upon termination of this Agreement: You will immediately cease use of the Service and the Multiband Equipment, and uninstall and destroy all copies of any software provided to you pursuant to this Agreement or otherwise used by you to access the Service.

You will pay in full for your use of the Service and the Multiband Equipment up to the later of the effective date of termination of this Agreement or the date on which the Service is disconnected and the Multiband Equipment has been returned. You agree to pay on a pro-rated basis for any use by you of the Multiband Equipment or Service for a part of a month.

You shall return the Multiband Equipment (including without limitation the modem if you are leasing a modem from Multiband) to Multiband, by any method reasonably requested by us, within 10 days after termination of the Agreement. Upon our request, you will permit us, and our employees, agents, contractors, and representatives, to access your premises during regular business hours to remove the Multiband Equipment and other material provided by Multiband. This removal will be conducted at an agreed to time; and you will ensure the return of all Multiband Equipment to Multiband. If any Multiband Equipment is not returned, you

agree that Multiband may bill you for the charges referred to in Section 1(c) above, including without limitation charging you credit card if applicable.

**Retention of Rights:** Nothing contained in this Agreement shall be construed to limit Multiband's rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, Multiband and its suppliers reserve the right to delete all your data, files, electronic messages or other Customer information that is stored on Multiband's or its suppliers' servers or systems. In addition, you may forfeit your account user name and all e-mail, IP, and web space addresses. We shall have no liability whatsoever as the result of the loss of any such data, names or addresses.

**Survival:** All representations, warranties, indemnifications and limitations of liability contained in this Agreement shall survive the termination of this Agreement, as well as any other obligations of the parties hereunder which, by their terms, would be expected to survive such termination or which relate to the period prior to termination.

### **8. Limitation of Liability; No Warranties; Warnings.**

**Limited Warranty:** THE MULTIBAND EQUIPMENT AND THE SERVICE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER MULTIBAND NOR ITS AFFILIATES OR AGENTS WARRANT THAT ANY CONNECTION TO, TRANSMISSION OVER, OR RESULTS OF THE MULTIBAND EQUIPMENT OR THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR WILL PROVIDE UNINTERRUPTED USE OR WILL OPERATE AS REQUIRED, UNINTERRUPTED, AT ANY MINIMUM SPEED, OR ERROR FREE. YOUR SOLE REMEDY FOR SERVICE INTERRUPTION SHALL BE LIMITED TO A PRORATED CREDIT UPON REQUEST ONLY IN THE EVENT OF COMPLETE FAILURE OF THE SERVICE DUE TO A TECHNICAL MALFUNCTION FOR TWENTY-FOUR (24) CONSECUTIVE HOURS OR MORE. TO QUALIFY FOR SUCH CREDIT, YOU MUST REQUEST THE CREDIT FROM MULTIBAND WITHIN THIRTY (30) DAYS OF THE FAILURE. CREDITS SHALL BE APPLIED ONLY AGAINST CURRENT AND FUTURE FEES PAYABLE BY YOU FOR THE SERVICE AND ANY CREDITS PROVIDED BY MULTIBAND ARE AT OUR SOLE DISCRETION AND IN NO EVENT SHALL CONSTITUTE OR BE CONSTRUED AS A COURSE OF CONDUCT BY MULTIBAND. NEITHER MULTIBAND NOR ITS AFFILIATES OR AGENTS WARRANT THAT ANY DATA OR FILES SENT BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED.

**Limitation of Liability:** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, IN NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (INCLUDING WITHOUT LIMITATION TORT, CONTRACT, AND OTHERWISE), SHALL MULTIBAND OR ITS AFFILIATES OR AGENTS HAVE ANY LIABILITY TO CUSTOMER OR TO ANY PERSON OR ENTITY FOR (i) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES AND PERSONAL INJURIES (INCLUDING DEATH), RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, REMOVAL OR USE OF THE SERVICE OR THE MULTIBAND EQUIPMENT OR CUSTOMER'S RELIANCE ON OR USE OF THE MULTIBAND EQUIPMENT OR THE SERVICE, INCLUDING WITHOUT LIMITATION ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE FAILURE OR MALFUNCTION, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE MULTIBAND EQUIPMENT OR THE SERVICE; OR (ii) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, ANY ALLEGATION, CLAIM, SUIT OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE MULTIBAND EQUIPMENT OR THE SERVICE BY CUSTOMER OR ANY OTHER PERSON OR

ENTITY INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.

**No Liability For Viruses:** Multiband makes no representation or warranty that any software or content installed on your computer(s) or downloaded from the Service does not contain a virus or other harmful feature and it is your sole responsibility to take appropriate precautions to protect any computer or other hardware of yours from damage to its software, files or data as a result of any such virus or other harmful feature. We may, but are not required to, terminate all or any portion of the installation or operation of the Service if a virus is found to be present on your system. We are not required to provide you with any assistance in removal of the virus. If we decide, in our sole discretion, to install or run virus check software on your computer(s), we make no representation or warranty that the virus check software will detect or correct any or all viruses. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus or other harmful feature detected on your system. NEITHER MULTIBAND NOR ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

**Customer's Hardware and Software:** The installation, use, inspection, maintenance, repair and removal of the Multiband Equipment and certain Customer Equipment used in connection with the Service may result in service outage or potential damage to your computer(s) and other Customer Equipment. Except for gross negligence or willful misconduct by us, neither Multiband nor any of its affiliates and agents shall have any liability whatsoever for any damage, loss or destruction to the Customer Equipment (including without limitation your computer(s) and peripherals). In the event of such gross negligence or willful misconduct by Multiband, at our sole discretion we shall pay for the repair or replacement of the damaged parts up to a maximum of \$1,000 and this shall be your sole remedy relating to such activity. In addition, as part of the installation process for the software and other components of the Service, system files on your computer may be modified. Multiband does not represent, warrant or covenant that these modifications will not disrupt the normal operations of any Customer Equipment including without limitation your computer(s), or cause the loss of files. FOR THESE AND OTHER REASONS, IT IS RECOMMENDED THAT YOU BACK-UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE ASSOCIATED RISKS OF ANY DECISION BY YOU NOT TO DO SO. NEITHER MULTIBAND NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, FILES OR DATA. In addition, the opening of your computer may void warranties provided by the computer manufacturer or other parties relating to the computer's hardware or software. You understand that your computer may need to be opened, either by you or by our agents, in connection with the installation or repair of the Service or us. NEITHER MULTIBAND NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

**Not Liable For Third Parties:** You acknowledge that we may use the services, equipment and infrastructure and content of others in providing the Service and those third parties may provide components of the Service. We are not responsible for the performance (or non-performance) of such services, equipment, and infrastructure or content of others whether or not they constitute components of the Service. In addition, you understand that you will have access to the services and content of third parties through the Service, including without limitation that provided by content providers (whether or not accessible directly from the Service). Services, equipment, infrastructure and content that are not provided by us (even if they are components of the Service) are not the responsibility of Multiband, and we shall have no liability with respect to such services, equipment, infrastructure and content. You should address questions or concerns relating to such services, equipment, infrastructure and content to the creators of such services, equipment, infrastructure and content. We do not endorse or warrant any third-party products, services or content that are distributed or advertised over the Service. No undertaking, representation or warranty made by an agent or employee of Multiband or

our underlying third party providers in connection with the installation, maintenance, or provision of the Service, which is inconsistent with the terms of this Agreement, shall be binding on Multiband. The limitations of liability set forth in Section 8(b) apply to the acts, omissions, and negligence of Multiband and its underlying third party providers (and their respective officers, employees, agents, contractors or representatives) which, but for that provision, would give rise to a cause of action in contract, tort or any other legal doctrine.

**Customer Responsibility for Content:** You acknowledge that there is some content and material on the Internet or otherwise available through the Service which may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules or regulations or may violate your protected rights or those of others. We assume no responsibility for this content or material. All content and material accessed by you or others through the Service is accessed and used by you or such others at their own risk, and neither Multiband nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content or material by you or others. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs claiming to be capable of restricting access to sexually explicit material on the Internet are commercially available. We make no representation or warranty regarding the effectiveness of such programs.

**Monitoring of Postings and Transmissions:** Multiband shall have no obligation to monitor postings or transmissions made in connection with the Service. However, you acknowledge and agree that Multiband and its agents shall have the right to monitor any such postings and transmissions, including without limitation e-mail, newsgroups, chat, IP audio and video, and web space content, from time to time and to use and disclose them in accordance with Sections 4 and 5 of this Agreement, and as otherwise required by law or government request. We reserve the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in our sole discretion, is unacceptable, undesirable or in violation of this Agreement.

**Eavesdropping:** Our facilities are used by numerous persons or entities including, without limitation, other subscribers to the Service. As a result, there is a risk that you could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor your use of the Service. This risk of eavesdropping exists not only with our facilities, but also on the Internet and other services to which access is provided as a part of the Service. Any sensitive or confidential information posted, stored, transmitted or disseminated by you is done so at your sole risk, and neither Multiband nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions by you. You acknowledge that software programs claiming to be capable of encryption are commercially available. We make no representation or warranty regarding the effectiveness of these programs.

**FTP/HTTP Service Setup:** You acknowledge that when using the Service there are certain applications such as FTP (File Transfer Protocol) or HTTP (Hyper Text Transfer Protocol), which may be used, by other persons or entities to allow such other persons or entities to gain access to Customer's Equipment. You are solely responsible for the security of the Customer Equipment or any other equipment you choose to use in connection with the Service, including without limitation any data stored on such equipment. Neither Multiband nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings resulting from, arising out of or otherwise relating to the use of such applications by you, or the access by others to the Customer Equipment or other equipment of yours.

**File and Print Sharing:** The Service functions in some ways as a Local Area Network (LAN) with each Customer constituting a node on the network. As such, users outside of the Premises may be able to access the Customer Equipment and other equipment connected in some way to the Customer Equipment. In addition, some available software includes capabilities that will permit other users to gain access to the Customer Equipment and other equipment connected in some way to the Customer Equipment, and to the software, files and data stored on such equipment. For example, operating systems such as Windows and Macintosh include

file sharing and print sharing capabilities which, when enabled, will permit other users to gain access to the Customer Equipment and other equipment connected in some way to the Customer Equipment, even if you are not using the Service. Unless you are subject to a Service plan that expressly provides otherwise, we recommend that you connect only a single computer to the Service and that you disable file and print sharing and other capabilities that allow outside users to gain access to the Customer Equipment. You acknowledge that if you choose to run these applications, you should take appropriate security measures, and that any failure by you to follow this recommendation is at your sole risk. Neither Multiband nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings resulting from, arising out of or otherwise relating to access by others of the Customer Equipment or any other equipment connected in some way to the Customer Equipment, or to the software, files and data stored on such equipment.

**High Risk Activities:** The Service is not fail-safe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service could lead to severe injury to business, persons, property or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risks of any damages resulting from High Risk Activities.

**Facilities Allocation:** Multiband reserves the right to determine, in its discretion, and on an ongoing basis, the nature and extent of its facilities allocated to support the Service, including, but not limited to, the amount of bandwidth to be utilized and delivered in conjunction with the Service.

**Cookies:** You acknowledge that accessing certain web sites through the Service may result in a "cookie" being placed on your computer system. Cookies are small files stored on a computer's hard drive to simplify and improve a user's Web experience. It is your responsibility to disable or restrict the placement of cookies through whatever procedures are available on your browser if you don't want them placed on your computer system.

**Sole Remedy:** Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Some states do not allow the exclusion or limitation of implied warranties, and some states do not allow the limitations or exclusion of incidental or consequential damages, so certain of the above exclusions may not apply. In such states, the liability of Multiband and its affiliates and agents is limited to the maximum extent permitted by law.

## **9. Mandatory and Binding Arbitration.**

**Binding Arbitration:** If you and Multiband are unable to resolve informally any claim or dispute related to or arising out of this Agreement or the services provided, you and Multiband agree to binding arbitration except as provided below. You must contact us within one (1) year of the date of the occurrence of the event or facts giving rise to a dispute (except for billing disputes, which are subject to Section 3), or you waive the right to pursue a claim based upon such event, facts or dispute.

**Parties:** All parties to the arbitration must be individually named. There shall be no right or authority for any claims to be arbitrated on a class action or consolidated basis or on bases involving claims brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other subscribers, or other persons similarly situated unless your state's laws provide otherwise.

**Arbitration Services and Procedures:** You may select the service to arbitrate the dispute. Please refer to the Arbitration Supplement that is attached to this Agreement as Exhibit B (or contact your Multiband local office) for more information on the various arbitration services and other important terms and conditions. The arbitration will take place at a location, convenient to you, in the area where you receive service from us. Multiband will advance all reasonable arbitration filing fees and arbitrator's costs and expenses, except that **YOU ARE RESPONSIBLE FOR ALL COSTS THAT YOU INCUR IN THE ARBITRATION,**

INCLUDING, BUT NOT LIMITED TO, EXPERT WITNESSES OR ATTORNEYS. IF THE ARBITRATION IS DECIDED IN MULTIBAND'S FAVOR, YOU AGREE TO REIMBURSE MULTIBAND FOR ALL FILING FEES, COSTS AND EXPENSES ADVANCED. You and Multiband agree that a single arbitrator will resolve the dispute. Moreover, participating in arbitration may result in limited discovery.

**Exclusions from Arbitration:** You and Multiband agree that the following will not be subject to arbitration: (1) any claim filed by Multiband to collect outstanding balances for unpaid service or the theft of any service or equipment; (2) any dispute over validity of either party's intellectual property rights or our licenses to operate our business; and (3) any dispute involving violations of 47 U.S.C. § 551 or 18 U.S.C. §§ 2510-2521.

## 10. Miscellaneous

**Contacting Us:** For any inquiries or notices required in connection with this Agreement, you may contact us via e-mail at <http://online.Multiband.net/contactus/> (or such other e-mail address as Multiband may designate) or in writing to Multiband High-Speed Internet, Attn: Customer Service, 1500 Market Street, Philadelphia, PA 19102-2148.

**Notice:** Multiband may deliver any required or desired notice to you by posting it on the Service's web site at [www.Multiband.net](http://www.Multiband.net) or on another web site about which you have been notified, or by sending notice via e-mail, first class U.S. postal mail, or overnight mail to your physical address of record or the e-mail address on Multiband's account records. You agree that any one of the foregoing will constitute sufficient notice. Because we may from time to time notify you about important information regarding the Service and the Agreement by these methods, you agree to regularly check your postal mail, e-mail and all postings on the Service's web site at [www.Multiband.net](http://www.Multiband.net) or on another web site about which you have been notified and bear the risk of failing to do so.

**Changes to the Service and the Agreement:** Multiband may, in its sole discretion, change, add to or remove portions of the Service (including without limitation content, functionality, hours of availability, equipment requirements, speed, and upstream and downstream rate limitations) at any time without notice. In addition, we may modify this Agreement at any time in our sole discretion upon thirty (30) days prior notice to you. We will notify you of any such modifications as set forth in Section 10(b) above. You agree that any one of the foregoing will constitute sufficient notice of these changes. Your continued use of the Service following notice of these changes shall be deemed to be your acceptance of any the changes. If you do not agree to any changes, you must immediately stop using the Service and notify Multiband that you are terminating this Agreement. You will then be entitled to a refund of any unused portion of any monthly service fee for the Service that has been paid by you in advance (less any outstanding amounts due Multiband for equipment or other applicable fees and charges).

**No Relationship:** Nothing in this Agreement will create any joint venture, joint employer, franchisee-franchiser, employer-employee or principal-agent relationship between Multiband, any content, backbone, network, circuit and other technology or communications providers, software and other licensors, hardware and equipment suppliers or other third party providers of elements of the Service, nor impose upon any such companies any obligations for any losses, debts or other obligations incurred by the other.

**Assignment:** Multiband may assign its rights and obligations under this Agreement, without notice, to (i) any affiliate of Multiband, (ii) to any party (or its affiliate) acquiring all or substantially all of the assets or stock, by merger or otherwise, of Multiband or any affiliate of Multiband, or (iii) to any person or entity purchasing or otherwise acquiring the Multiband system serving the Premises. This Agreement may not be assigned or transferred by Customer without Multiband's prior consent.

**General:** This Agreement and all exhibits hereto constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement, and supersede and replace any and all prior

written or verbal agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. Multiband's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.