



## **Kern Valley Wireless Inc. Subscriber Agreement**

The Service Order and these Terms and Conditions form the Subscriber Agreement ("Agreement") between Kern Valley Wireless Inc. ("KVW" 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. Any additional labor incurred during installation, if any, will be billed separately to customer after installation is complete.
- II. **"Completed Installation"**, for purposes of this Agreement, shall be defined by a successful signal 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 KVW 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 KVW'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, and that the Service is in an 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 pay the installation fee, the first full month of Service fee.** If applicable, customer will also pay any prorated monthly service charges and any equipment costs. **Thereafter, the Service fee will be billed (Invoiced by email) to the Customer monthly.**

**All payments shall be due in full and within 15 days after date of invoice**

II. **Late Payments; Failure to Pay. Accounts are in default if payment of all amounts due is not received within fifteen (15) days of invoice date and service may be suspended until payment is made. Billing does not stop when services are suspended; the customer will still be responsible for monthly fees as long as KVW equipment is still at customer's residence.**

Accounts unpaid forty-five (45) days after date 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. KVW reserves the right to retrieve any equipment from customer that was assigned during installation on accounts unpaid forty-five (45) days or more. For any returned checks, Customer agrees to pay a Thirty-Five Dollar (\$35.00) service fee. After 45 days of non-payment customer 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.** KVW reserves the right to change its Service fees and installation charges at any time in accordance with the provisions set forth within. KVW will notify Customer in writing thirty (30) days in advance of any changes in pricing. If any such changes in pricing are not satisfactory to the Customer, Customer may terminate this Agreement by giving thirty (30) days written notice, and Customer will remain liable only for balance remaining on the account.

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**You will receive your bill each month by EMAIL. You can check the status of your account anytime via your customer portal at: <https://www.kernvalleywireless.com/>**

**Our system does its invoicing by email, so please be sure to keep us updated with your current email address. **\*\*Please note that if you have to have a paper invoice sent in the regular mail, there will be an additional \$2.00 monthly charge.\*\*****

Visit [www.kvwireless.com](http://www.kvwireless.com) for information on what PPPoE is and how it differs from your customer portal and how we bill and receive payments. For tech support regarding your Internet connection please call **760-376-2246. We provide support for your Internet connection as it relates to our service. After hours emergency support is available at this phone number although this may incur charges to your account if it is not related to our service (computer problems, customer owned equipment failure etc.) or deemed non emergent.**



### **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 KVW:**

- (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 KVW'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 KVW. Customer will remain liable only for balance remaining on the account prior to the termination.

III. **Notification.** Any requests from Customer for cancellation of Service must be submitted to KVW 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.

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 KVW 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 sight" 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 sight, 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.



## **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 allows any other party to, move, dispose of, modify, re-aim, or adjust the Equipment, and Customer agrees to take 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 KVV will make every reasonable effort to give reasonable notice to the Customer prior to removal of equipment. 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.** Once signal is confirmed at Provider's network, Customer is solely responsible for all Customer Equipment and Customer network configuration. Provider may supply courtesy troubleshooting or initial connection of Ethernet to the Customer's primary computer, however, additional network updates, fixes, or enhancements, 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.

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. **IP Addresses.** KVV 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 KVV. The Customer acknowledges that the IP Addresses are the sole property of KVV, and are temporarily designated for the Customer to use as part of the Service, and are not transferable. KVV reserves the right to change the IP Address designations at any time and that such modifications or amendments shall be binding upon the Customer. KVV 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 KVV 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.



### **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 KVV policy applicable to the Service, including without limitation any KVV Acceptable Use Policy (the "AUP") or other policy posted on the Provider's web site at [www.kernvalleywireless.com](http://www.kernvalleywireless.com) or on another web site about which you have been notified, and that the AUP or other policy may be modified by KVV from time to time, and KVV shall post all updates on Provider website. KVV 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 KVV's networks. In the event Customer violates the KVV's Acceptable Use Guidelines, KVV 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). KVV may suspend or terminate the Service immediately, without prior notice to the Customer, if KVV believes, in good faith, that the Customer or a User is utilizing the Service for any such illegal or disruptive purpose.

III. **Illegal Use.** Customer will cooperate in any investigation of Customer's alleged illegal use of KVV's facilities or other networks accessed through KVV. If Customer fails to cooperate with any such investigation, KVV may suspend Customer's Service.



### **Limitations of Liability**

I. **Maintenance.** From time to time, KVW may conduct routine tests, maintenance, upgrade or repair on any part of the System, and KVW shall make every effort to give the Customer prior notice thereof. The Customer acknowledges that there may be instances where it is not practicable for KVW to give advance notice of a disruption, for example, in the event of an emergency, and KVW 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 any 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

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, KVW 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.



### **Miscellaneous Provisions**

I. **Indemnification.** Customer agrees to indemnify and hold harmless KVV, 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.

II. **Changes.** Customer accepts that KVV may change or withdraw any element of the Service from time to time and will use all reasonable efforts to provide Customer a 30 day notice of any necessary change in the Service, and will provide an opportunity for Customer to cancel service with a 30 day notice.

III. **Governing Law and Dispute Resolution.** The laws of the State of California shall govern the terms of this Agreement.

IV. **Relationship of the Parties.** Customer and KVV 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.

V. **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 KVV 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 KVV may enter into subsequent Service Order(s), which will automatically become part of this Agreement.