



Bluepeak Residential User Agreement

BY PLACING AN ORDER WITH CLARITY TELECOM, LLC D/B/A BLUEPEAK, OR ANY OF ITS AFFILIATES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "BLUEPEAK"), CUSTOMER HEREBY AGREES TO THE TERMS OF THIS BLUEPEAK RESIDENTIAL USER AGREEMENT (THIS "AGREEMENT").

1. OVERVIEW. The terms and conditions of this Agreement apply to the provision of any and all telecommunications and related services ("Services") provided by Bluepeak to Customer. See our Residential User Terms for the complete terms and conditions applicable to Customer, which are each incorporated herein by this reference.

2. TERM AND TERMINATION. The term of this Agreement shall commence upon the initial installation or activation of any Service and shall continue in full force and effect on a month-to-month basis unless earlier terminated in accordance with the terms of this Agreement. Customer may terminate this Agreement by providing thirty (30) days' advance written notice to Bluepeak. Bluepeak may terminate this Agreement at any time upon written notice to Customer. Customer shall pay to Bluepeak, immediately upon request, all sums then due and unpaid at the time of termination and return all Bluepeak Equipment to Bluepeak within ten (10) days of the date on which the Services are disconnected. Customer must return all Bluepeak Equipment in working order, with the exception of normal wear and tear. If Customer fails to return the Bluepeak Equipment or returns the Bluepeak Equipment other than in good working order, Bluepeak may charge Customer its then-current standard replacement fee for such Equipment. Bluepeak has the right to retrieve any Bluepeak Equipment you fail to return.

3. RATES AND CHARGES. The rates and charges for the Services are set forth in the Residential User Terms, together with any and all of Bluepeak's tariffs, as applicable and as amended from time to time. With respect to any Service provided by Bluepeak to Customer for which a rate is not specified in the Residential Customer Terms, Bluepeak's standard retail rates shall apply. Customer shall make all payments when due as set forth in Section 5 below.

4. TAXES AND SURCHARGES. In addition to the rates and charges for the Services, Customer shall be responsible for payment of all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services and any related equipment, excluding taxes based on Bluepeak's net income. Customer shall be responsible for payment of all surcharges in effect from time to time, including but not limited to USF surcharges, as required or permitted by applicable law, regulation or tariff and/or as specified on the Bluepeak website at www.mybluepeak.com.

5. BILLING AND PAYMENT. Billing for any Service shall commence immediately following delivery of the Service to Customer's service address(es). Customer will receive a bill on or about the 1st of each month for the prior month's usage-based Services (including pro-rata charges for new services added during the prior month) and in advance for the current month's monthly charges. All bills are due and payable upon receipt. If Customer's bill is not paid by the date listed on the bill (the "Due Date"), Customer shall pay Bluepeak, in addition to the amount of the bill, a monthly late charge of \$10. Customer must provide Bluepeak with written notice of any disputed charge(s) within thirty (30) days after the invoice date listed

on the bill or Customer shall be deemed to have waived its right to dispute the charges. Customer shall pay the invoiced amount by the Due Date, provided that payment of an invoice shall not be deemed a waiver of Customer's right to later dispute an invoice within the time period established in this Section. The dispute notice must be in writing and include reasonable detail information concerning the disputed charges and reasons for the dispute. Bluepeak and Customer shall attempt in good faith to promptly resolve any objection to the invoiced amount. If the dispute is resolved in favor of Customer, Bluepeak shall issue a credit on Customer's subsequent invoice for the disputed amount. If Bluepeak initiates legal proceedings to collect any amount due hereunder and Bluepeak substantially prevails in such proceedings, then Customer shall pay the reasonable attorneys' fees and costs incurred by Bluepeak in prosecuting such proceedings and any appeals therefrom. In the event Customer fails to pay any invoice when due, or provide Bluepeak with a notice of dispute, Bluepeak shall notify Customer regarding its failure to pay such invoice. If, after Bluepeak has provided such notice, Customer fails to pay such invoice(s) within 5 days after receipt of such notice, Bluepeak may, in addition to any other rights and remedies available to Bluepeak, suspend service under this Agreement until all outstanding invoice(s) are paid in full. In addition, Bluepeak may elect to terminate this Agreement and shall be entitled to seek and exercise such rights and remedies that may otherwise be permitted hereunder or at law or in equity. One-time, non-recurring online payments will be charged a \$1.99 processing fee.

6. CUSTOMER PREMISES AND EQUIPMENT. To provide the Services, Bluepeak may need to enter Customer's home or other property where the Services will be provided (the "Premises"). Bluepeak may enter the Premises to install, configure, maintain, inspect, upgrade, replace, and remove the Services or to retrieve Equipment. Customer represents and warrants that Customer owns the Premises or has obtained the authority to give Bluepeak access to the Premises. Customer represents and warrants that Customer owns the Customer Equipment or has obtained the authority to give Bluepeak access to the Customer Equipment. Bluepeak may certify certain Customer Equipment or recommend particular configurations. Any other Customer Equipment or configuration may not meet Bluepeak's minimum technical or other specifications (a "Non-Recommended Configuration"). Bluepeak reserves the right to deny support for the Services, or terminate the Services, if Customer uses a Non-Recommended Configuration. BLUEPEAK SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LOSS, OR DESTRUCTION TO THE CUSTOMER EQUIPMENT, EXCEPT DUE TO BLUEPEAK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NOR DOES BLUEPEAK MAKE ANY REPRESENTATIONS OR WARRANTIES ABOUT NON-RECOMMENDED CONFIGURATIONS. IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY BLUEPEAK THAT CAUSES DAMAGE, LOSS, OR DESTRUCTION TO THE CUSTOMER EQUIPMENT, BLUEPEAK WILL PAY, AT BLUEPEAK'S SOLE DISCRETION, FOR THE REPAIR OR REPLACEMENT OF THE DAMAGED CUSTOMER EQUIPMENT UP TO A MAXIMUM OF \$500. THE FOREGOING REPRESENTS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY RELATING TO SUCH ACTIVITY.

7. BLUEPEAK EQUIPMENT. "Bluepeak Equipment" means all new or reconditioned equipment that Bluepeak provides or leases to Customer, including without limitation cabling or wiring, electronic devices, set-top boxes, adapters, telephones, gateways, optical network terminals, extenders, antennas, modems, routers, CableCARDS, and any other hardware, software, and programs contained within Bluepeak Equipment or downloaded to Customer Equipment by Bluepeak. Customer may use the Bluepeak Equipment exclusively in connection with Customer's authorized use of the Services. Bluepeak Equipment does not constitute a fixture, and shall not be deemed affixed to or a fixture of, the Premises. Bluepeak shall determine, in its sole discretion, which models of Bluepeak Equipment it provides to Customer and may remove or change the Bluepeak Equipment at Bluepeak's discretion at any time the Services are active or following the termination of the Services, which removal or change may interrupt the Services. Customer may not tamper with, sell, lease, abandon, or give away the Bluepeak Equipment, or permit any other service provider to use the Bluepeak Equipment, at any time. The Bluepeak Equipment may only be used on the Premises unless expressly permitted by Bluepeak. IF CUSTOMER ATTEMPTS TO

INSTALL OR USE THE BLUEPEAK EQUIPMENT OR SERVICES AT A LOCATION OTHER THAN THE PREMISES OR A LOCATION OTHERWISE EXPRESSLY AUTHORIZED BY BLUEPEAK, THE SERVICES MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. Customer may not allow anyone other than Bluepeak or its agents to service the Bluepeak Equipment. Customer is solely responsible for loss, repair, replacement, and other costs, damages, fees, and charges if Customer does not return the Bluepeak Equipment to Bluepeak in undamaged, good working condition (normal wear and tear excepted). Bluepeak at all times shall retain title to and ownership of the Equipment. For purposes of clarity, Customer at all times shall retain title to and ownership of the "cable home wiring", as such term is defined at 47 C.F.R. §76.804, and Customer shall at all times be solely responsible to inspect, maintain, repair, upgrade and replace such cable home wiring as required to receive Services.

8. CREDIT APPROVAL. Bluepeak's provision of Services is subject to the credit approval of Customer. As part of the credit approval process, Bluepeak may require Customer to provide a deposit or other security. Additionally, if Customer's financial circumstances or payment history becomes reasonably unacceptable to Bluepeak, Bluepeak may require adequate assurances of future payment as a condition of continuing provision of the Services. Customer's failure to provide adequate assurances required by Bluepeak is a material breach of this Agreement. Bluepeak may provide Customer's payment history or other billing information to any credit reporting agency or industry clearinghouse.

9. SECURITY. Bluepeak has adopted and implemented, and will maintain, a corporate information security program designed to protect Customer information, materials and data accessed and possessed by Bluepeak from loss, misuse and unauthorized access or disclosure. Such program includes formal information security policies and procedures. The Bluepeak information security program is subject to reasonable changes by Bluepeak from time to time. Bluepeak's standard service offerings do not include managed security services such as encryption, intrusion detection, monitoring or managed firewall. Customer is responsible for selecting and using the level of security protection needed for all Customer data stored or transmitted via the Service and using reasonable information security practices, including those relating to the encryption of data.

10. CUSTOMER RESPONSIBILITIES. Customer acknowledges that operation of the Services is dependent on the following, each of which Customer shall be solely responsible for providing: (a) broadband Internet connectivity; (b) all equipment, software, facilities and/or Internet Protocol connectivity necessary to reach and interoperate with the Service and the Bluepeak network, including a direct, wired connection to the ONT (Optical Network Terminal); and (c) all other equipment, software and other facilities to be installed, including without limitation, cables, routers, ethernet adapters and/or ports. Customer will reasonably cooperate with Bluepeak or its agents to install the Services. Customer is responsible for damage to Bluepeak-owned facilities and equipment located on Customer premises, excluding reasonable wear and tear, or damage caused by Bluepeak. Bluepeak may refuse to install Services or may discontinue and disconnect Services without notice, if any condition on Customer's premises is unsafe or likely to cause injury to any person using Services.

11. CUSTOMER NOTIFICATION AUTHORIZATION. Customer agrees by submitting a mobile number and or email address, Customer is consenting to Bluepeak's communications with Customer by phone, text, and email. Communication will include but will not be limited to installation / service reminders, account status, payment due date, payment confirmation, account changes, promotional offers and outage information. This is a free service from Bluepeak. However, a customer's mobile service provider may charge Customer to send/receive text messages depending on the terms of Customer's mobile account.

12. UNAUTHORIZED USE OF SERVICES. Customer will not use Services: (a) for fraudulent, abusive,

unlawful or destructive purposes, including unauthorized or attempted unauthorized access to, or alteration, abuse or destruction of, any Bluepeak or third party information; (b) in any manner that causes interference with Bluepeak's or another's use of the Bluepeak- provided network; or (c) for any other purpose not specifically authorized by this Agreement. Customer will cooperate promptly with Bluepeak to prevent third parties from gaining unauthorized access to the Services via Customer's facilities. Bluepeak shall have the right (but not the obligation) to take protective action against Customer in order to protect Bluepeak's network from any unauthorized use, which protective action may include, without limitation, the temporary blocking of Customer's traffic until the applicable problem is resolved in Bluepeak's reasonable discretion.

13. INDEMNIFICATION. Customer will indemnify and defend Bluepeak, Bluepeak's officers, directors, agents, and employees and their successors, against all third-party claims for damages, losses, liabilities or expenses, including reasonable attorneys' fees, arising out of Customer's transmissions, or transmissions by parties authorized by Customer, of, information, data, or messages over the Bluepeak-provided network leading directly or indirectly to third-party claims: (a) for libel, slander, invasion of privacy, infringement of copyright, and invasion or alteration of private records or data; (b) for infringement of patents arising from the use of equipment, hardware or software not provided by Bluepeak; and (c) based on transmission and uploading of information that contains viruses, worms, other destructive media or other unlawful content.

14. NO WARRANTY; LIMITATION OF LIABILITY. BLUEPEAK MAKES NO WARRANTIES ABOUT THE SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BLUEPEAK DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON BLUEPEAK'S BEHALF AND THE CUSTOMER MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY OF BLUEPEAK. THIRD-PARTY ITEMS ARE PROVIDED AS IS AND WITHOUT WARRANTY. IN NO EVENT SHALL BLUEPEAK (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THIS AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, AND REGARDLESS OF THE NATURE OF THE CLAIM OR FORM OF ACTION, WHETHER IN CONTRACT OR TORT INCLUDING NEGLIGENCE. BLUEPEAK'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY SERVICE PROVIDED TO CUSTOMER (INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE INSTALLATION, DELAY, PROVISION, TERMINATION, MAINTENANCE, REPAIR, INTERRUPTION, OR RESTORATION OF ANY SUCH SERVICE) OR BREACH OF THIS AGREEMENT, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, INCLUDING NEGLIGENCE, INDEMNITY OR STRICT LIABILITY, SHALL BE LIMITED TO A MAXIMUM OF A TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO BLUEPEAK IN THE MOST RECENT THREE-MONTH PERIOD HEREUNDER. THE PROVISIONS OF THIS SECTION 11 CONSTITUTE AN ALLOCATION OF RISK BETWEEN THE PARTIES AND THE PRICE CHARGED CUSTOMER IS BASED ON SUCH ALLOCATION OF RISK. THE TERMS OF THIS SECTION 11 SHALL SURVIVE THE FAILURE OF AN EXCLUSIVE OR LIMITED REMEDY OR THE TERMINATION OF THIS AGREEMENT FOR ANY REASON.

15. CPNI. Under federal law, Customer has the right, and Bluepeak has a duty, to protect the confidentiality of information about the amount, type, and destination of Customer's service usage (CPNI). Customer hereby consents to the sharing of Customer's CPNI or other personal information with Bluepeak, Inc. and its affiliates, agents and contractors, solely for the purpose of developing or bringing to Customer's attention any products and services, or in the event of any merger, sale of some or all of the company assets or acquisition as well as in any insolvency, bankruptcy or receivership proceeding in which

CPNI or other personal information would be transferred as one of the business assets of the company. This consent survives the termination of Customer's Service and this Agreement, and is valid until revoked by Customer. To revoke this consent at any time, Customer must notify Bluepeak in writing at 5100 S. Broadband Lane, Sioux Falls, SD 57108, Attn: Customer Service and provide the following information: (a) Customer name; (b) Service billing address, (c) telephone number including area code; and (d) service account number. Revoking consent will not affect the Customer's current Services.

16. INTERNET SERVICES DISCLOSURE STATEMENT. Bluepeak makes every effort to support advertised speeds and will dispatch repair technicians to Customer sites to perform speed tests as needed to troubleshoot and resolve speed and application performance caused by Bluepeak's network. Bluepeak measures availability, latency, and aggregate utilization on the network and strives to meet internal service level targets. Internet speeds are not guaranteed and may vary. However, the bandwidth speed at which a particular distant website or other Internet resources may be downloaded, or the speed at which Customer's information may be uploaded to a distant website or Internet location is affected by factors beyond Bluepeak's control, including the speed of the connection from a distant web server to the Internet, congestion on intermediate networks, and/or limitations on Customer's computer equipment, including a wireless router. In addition, Customer's Service performance may be affected by the inside wiring on Customer's premises. Other factors include, without limitation, the number of workstations and/or devices using a single connection. Accordingly, Customer must consider the capabilities of Customer's own equipment when choosing a Bluepeak Service. Customer's computers and/or wireless or other networks in Customer's homes or offices may need an upgrade in order to take full advantage of the chosen Bluepeak plan.

17. 911 SERVICE. BY ACTIVATING AND PAYING FOR THE SERVICES, CUSTOMER AGREES TO THE LIMITATIONS OF BLUEPEAK'S 911 EMERGENCY DIALING SERVICE (THE "911 SERVICE") SET FORTH HEREIN AND UNDERSTANDS THE DISTINCTIONS BETWEEN SUCH 911 SERVICE AND TRADITIONAL 911 or E911 CALLS. Bluepeak is not responsible for any 911 Service failures or outages, including such failures or outages related to the loss of electrical power, connectivity, suspension or termination by Customer's broadband or Internet service provider, the blocking of ports by Customer's broadband or Internet service provider, or resulting from local or national disasters. Emergency personnel do not receive Customer's phone number or physical location when a 911 call using the 911 Service is routed to a national emergency call center. Customer acknowledges and agrees that a national emergency call center may disclose Customer's name and address to all third parties with providing emergency services, including, without limitation, call routers, call centers and local emergency centers. Customer must register with Bluepeak each primary phone number and address that Customer uses for the 911 Service and will receive an email confirmation from Bluepeak that the 911 Service has been activated for that primary phone number. If Customer fails to update such phone number and address or uses the 911 Service prior to receiving such email confirmation from Bluepeak, any 911 calls made using the 911 Service may be sent to an emergency center near the previously registered address. Customer may only register one address at a time for each corresponding phone number.

18. NOTICES. All notices and communications required or permitted under this Agreement shall be in writing and shall be given by personal delivery, recognized national overnight courier service (i.e. Federal Express), by registered or certified mail, return receipt requested, or by email, addressed to: (a) in the case of Customer, to the address provided at the time of Customer's purchase of the Services; and (b) if to Bluepeak, to 5100 S. Broadband Lane, Sioux Falls, SD 57108, Attn: Compliance Officer, or if by email, to customerservice@mybluepeak.com. Notice shall be deemed given upon receipt.

19. FORCE MAJEURE. Neither party shall be liable to the other, nor shall any remedy be extended, for

any failure of performance under this Agreement (other than failure to make payments) proximately due to causes beyond that party's reasonable control, including but not limited to: acts of God, fire, explosion, flood, earthquake, tornado, storms, any law, order, regulation, action or request of any government or regulatory entity or agency, or any civil or military authority; emergencies; civil unrest, insurrections, riots, wars; power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like. Upon the occurrence of any such events, the affected party shall use its reasonable efforts to notify the other Party of the nature and extent of any such condition.

20. MISCELLANEOUS. This Agreement, along with the Residential User Terms, represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the parties relating to the Services. Customer may not assign any rights or obligations under this Agreement without Bluepeak's prior written consent. Bluepeak may freely assign this Agreement, in whole or in part, without Customer's prior written consent. Any modification to this Agreement shall be in writing signed by authorized representatives of both parties. No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the Party to which it is attributed. No consent by a Party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default. If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render this Agreement unenforceable, but rather this Agreement shall be construed as if not containing the invalid or unenforceable provision. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of South Dakota, without regard to its conflict of laws principles. Each party consents to personal jurisdiction in the state and federal courts of the State of South Dakota.

