

## **BANDWIDTH LOGIC, INC.**

### **INTERNET DATA SERVICES AND EQUIPMENT TERMS AND CONDITIONS**

These Terms and Conditions govern Customer's ordering and use of the Service and Equipment (as defined below) provided by Bandwidth Logic, Inc. ("Reseller"). The Terms and Conditions and the Service Order Form executed by Customer and Reseller shall be referred to collectively as the "Agreement."

1. **Definitions.** The following definitions apply to this Agreement:

"**Account**" means the account established by Customer for the use of the Services and/or Equipment.

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by or is under common control with the subject entity. "Control", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Contractor**" means a person or entity, other than Reseller, who is retained or used by Reseller to assist in the sales, marketing, delivery, installation, provision, maintenance, servicing, repair, or operation of any Services and/or Equipment.

"**Customer**" or "**you**" or "**your**" means the firm, corporation, or other entity which orders Services and/or Equipment and executes a Service Order Form ("Service Order Form").

"**Customer Equipment**" means any Customer-provided equipment or wiring used in conjunction with and/or is connected to the Service. Customer Equipment includes, without limitation, all customer premises equipment (e.g., Private Branch Exchange (PBX), Key System and computers). Customer Equipment also includes all equipment purchased by Customer from Reseller or any third party. Customer Equipment does not include any Reseller Equipment.

"**Customer Location**" means the Customer location(s) at the Real Property where Reseller provides the Services.

"**Equipment**" means any equipment used to provide Services to the Customer Location, including but not limited to any equipment purchased by Customer from Reseller and any Reseller Equipment. Customer acknowledges that Reseller shall not provide any telephones, handsets or other voice-related equipment.

"**In-Service Date**" means the date appearing on Customer's invoice that states when any Service was installed and made available for Customer's use at any Customer location.

"**Internet Protocol**" or "**IP**" means a standard protocol designed for use in interconnected systems of packet-switched computer communication networks.

"**Real Property**" means the real property located at the site commonly known as Adventure Crossing USA, a commercial real estate development and sports and entertainment venue with address 567 Monmouth Road, Jackson, New Jersey 08527.

"**Reseller Equipment**" means any and all facilities, equipment or devices provided by Reseller or its Contractors at the Real Property that are used to deliver the Services. Notwithstanding the foregoing, Customer Equipment shall not be considered Reseller Equipment.

"**Reseller Network**" means the distributed antenna system located at the Real Property including, without limitation, all Equipment, fiber optic, coaxial cable, electronics and other equipment and items located at

the Real Property and used to provide the Services, including any such equipment not located on or at the Customer Location.

"Service" or "Services" means the services provided to Customer by Reseller, including data and all other types of Internet communications services, but excluding any voice, telephone, "Voice over Internet Protocol" or "VoIP" services. Reseller shall not be providing any voice, telephone, Voice over Internet Protocol or VoIP services. The specific services to be provided by Reseller to Customer are listed in the Service Order Form executed by Customer. Reseller shall arrange for the provision of Services to Customer from a licensed telecommunications carrier.

"Service Order Form" or "Service Order" shall mean the Service Order Form executed by Customer and Reseller, including any Service Order Form Addendum, other addendum, or schedules to such Service Order Form.

"User" means any person or entity that obtains or uses Reseller's Service and/or Reseller Equipment provided under this Agreement and/or any Service Order, regardless of whether such person or entity is authorized by Customer.

"Website" means the Reseller website identified by the domain name [www.bwlogic.com](http://www.bwlogic.com), along with any content set forth therein, as updated from time to time by Reseller in its sole discretion.

## **2. Terms and Conditions.**

(a) Acceptance. By executing the Service Order Form, ordering, activating, using, or paying for the Service or Equipment, Customer agrees to be bound by the Terms and Conditions.

(b) Use. Customer is responsible for all use of the Service and Equipment associated with the Account. Customer accepts full responsibility and liability for such use. Customer and all Users shall not utilize the Service or Equipment for any unlawful purpose. Customer shall not use Service for transmitting or receiving any communication or material of any kind when the transmission, receipt or possession of such communication or material (i) would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national, or international law, or (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national, or international law. Reseller, in its sole discretion, may terminate Service immediately and without advance notice if Customer violates any of the above restrictions, leaving Customer responsible for any and all charges as set forth in Section 3(b).

(c) Fraudulent or Unauthorized Use of Services. Customer is responsible for ensuring that all Customer premises equipment (CPE) (e.g., Private Branch Exchange (PBX), Key System or any other equipment connected to the Service), regardless of whether such equipment is provided by Customer or Reseller, is protected from fraudulent or unauthorized access and use. Customer is responsible for all charges attributable to Customer with respect to the Services, even if incurred as the result of fraudulent or unauthorized use of the Services. Customer agrees to notify Reseller promptly if it becomes aware of any fraudulent or unauthorized use of any Service. Reseller may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. Reseller reserves the right to restrict, suspend or discontinue providing any Service in the event of any suspected or actual fraudulent or unauthorized use by Customer. Reseller shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of any Service.

(d) Availability. The Service and Equipment are offered subject to the availability of the necessary facilities, power, services, and equipment, and subject to the provisions of this Agreement. Reseller shall

not be responsible or liable for any delay(s) in installing, providing or using any Service or Equipment ordered or used by Customer.

(e) Compatibility. The Service and Equipment may not be compatible with Customer Equipment, and Reseller is not required to maintain or repair Customer Equipment, or modify the Service to make it compatible with Customer Equipment.

(f) Limitations of Service and Equipment. Customer or any User may not be able to utilize the Service or Equipment, if: (i) the Customer Equipment fails; (ii) the power required to operate Customer's or any User's computer, router, modem, or any other equipment, if applicable, fails; (iii) Customer's or any User's computer experiences hardware or software problems and/or viruses; (iv) in situations where Reseller is not the internet service provider, Customer's or any User's internet service provider fails to provide adequate services for any reason; (v) Customer's or any User's hardware or software is improperly installed; or (vi) Customer or any User is blocked or otherwise unable to access the Reseller Network. By using the Service and Equipment, Customer and its Users acknowledge that the Service and/or Equipment may be limited in certain circumstances and may not be available 100% of the time. Reseller will not be liable for errors in transmission or for failure to establish connections. In addition, Customer acknowledges and agrees that the Service and/or Equipment may not be compatible with certain fax machines or firewalls.

(g) Customer Responsibilities. By using the Service and/or any Equipment, Customer, on behalf of itself and all Users, agrees to abide by all rules and regulations, including the exportation of data from the U.S. or other applicable jurisdictions. With respect to Customer's use of the Service and/or any Equipment, Customer shall be responsible for any claim or damages arising from or related to: libel; slander; invasion of privacy; infringement or unauthorized use of any copyright, trademark, trade name, service mark, or any other intellectual property right; interference with or misappropriation or violation of any proprietary or creative right; any injury to any person, property, or entity arising out of the material, data, information, or other content used, received, or transmitted by Customer or any User; and any act, error, or omission by Customer or any User. Unless caused by the gross negligence or willful misconduct of Reseller, Customer shall also be responsible and liable for any personal injury, property damage, or death of any person caused, directly or indirectly, by Customer, any User, or any Customer employee, agent, or contractor, arising from or related to the installation, maintenance, location, condition, operation, failure, presence, use, or removal of the Service and Equipment.

(h) Additional Responsibilities. Customer is also responsible for all internal wiring, Customer Equipment, installation of hardware and software on Customer Equipment, and arrangement of access rights for Reseller including space for cables, conduits, and equipment as necessary for Reseller-authorized personnel to install, repair, inspect, maintain, replace, or remove any and all facilities and equipment provided by Reseller. Upon request by Reseller, Customer will work directly and in good faith with its building owner or property management firm and Reseller to secure a written building access agreement. Customer shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for equipment. Customer is responsible for ensuring that Customer Equipment is compatible with the Service and the Reseller Network.

(i) Service Issues. Reseller shall not be responsible for any service interruption, degradation, delay, transmission error, operational failure, and/or unavailability (individually and collectively referred to as "Service Problem") at any location where Reseller is not the internet service provider for Customer. This includes any situation where, instead of routing data traffic on Reseller Network, Customer uses a service or circuit (e.g., T-1, DSL, cable, Ethernet) to route traffic over the public internet or a third party network. Although Reseller agrees to take commercially reasonable efforts to work with Customer to try to identify, address, and resolve any Service Problem at an off-net service location (i.e., not on the Reseller Network), Reseller is unable to control the reliability or quality of traffic routed from an off-net service location. Reseller is not responsible for any Service Problem experienced by Customer at any location where Customer orders or uses an off-net service. Customer shall not be entitled to any service credits or

any other remedy, including, without limitation, a termination right under Section 3(d), for any Service Problem at any off-net service location.

(j) Information and Installation Responsibilities. Reseller will notify Customer on the In-Service Date, i.e., the date when the Service has been successfully installed and is available for Customer's use. Customer shall have three (3) business days to accept or advise Reseller in writing of any service level concern regarding the Service ("Acceptance Period"). If Reseller makes the Service available to the Customer, but Customer, for whatever reason, is not ready to accept and use the Service, billing for the installed Service shall nonetheless commence on the In-Service Date. This applies to circumstances including, but not limited to, if Customer does not have its Equipment installed to begin using the Service. Failure by Customer to accept the Service or notify Reseller in writing of any service level concern within the Acceptance Period shall be deemed as an automatic acceptance of Service. Any use of a Service, other than for verification and acceptance testing, shall constitute immediate acceptance of the Service. The payment obligation as of the In-Service Date shall not apply if Customer provides written notice to Reseller of any service level concern regarding the Service during the Acceptance Period. In such situation, Customer's payment obligation shall commence on the date when the Service operates in accordance with the applicable technical specifications or would have been installed except to the extent any delay is caused by Customer's (i) failure to provide any requested information and/or documentation to Reseller in a timely manner; and/or (ii) Customer cancels the installation or requests that the installation date for any service or circuit be moved to a later date.

(k) Required Maintenance/Customer Requests for Installation or Technical Support at Customer's Location. Reseller reserves the right to perform maintenance on or upgrade the Network, its infrastructure, the Service, and/or Equipment, without prior notice or liability, even if such actions cause a partial or full disruption of the Service; however, subject to Reseller's business needs, Reseller will use commercially reasonable efforts to perform maintenance on and upgrades to the Network, infrastructure, Service, and Equipment in a manner so as to avoid unduly interfering with Customer's use of the Service. Reseller may, in its sole discretion, add, change, or delete features or functionality of the Service and/or Equipment. In the event that Customer requests any installation, assistance, trouble-shooting, repairs, maintenance or upgrade at the Customer Location including, without limitation, for purposes of installing, repairing or maintaining any Equipment (including, without limitation, any Customer Equipment) on the Network or providing technical support at the Customer Location ("Customer Technical Support Service"), Reseller shall charge, and the Customer shall remit, the applicable fees and costs for each such Customer Technical Support Service as set forth in the Service Order Form.

(l) Equipment. Unless otherwise agreed to in writing between Customer and Reseller or purchased and fully paid for by Customer from Reseller as set forth in a Service Order Form signed by both parties or other written agreement between Reseller and Customer, all Equipment provided to Customer by Reseller or a Reseller-designated vendor and used for the provision or support of any data service shall be Reseller Equipment and at all times remain the property of Reseller. Upon discontinuance or termination of Service or this Agreement for any reason, all Reseller Equipment shall be returned by Customer to Reseller within ten (10) days of the final day of Service or Customer shall promptly pay to Reseller the full replacement cost of any such Reseller Equipment based on the current market price to purchase new replacement Reseller Equipment.

(m) Reseller Network; Intellectual Property; IP Addresses.

(i) Reseller Network is and shall remain the property of Reseller regardless of whether installed within, upon, overhead, above, or underground at or near the Customer Location and shall not be considered a fixture or an addition to the land or the Customer Location(s) located thereon. Customer agrees that it shall take no action that directly or indirectly impairs Reseller's title to the Reseller Network, or any portion thereof, or exposes Reseller to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the parties. Nothing in this Agreement shall preclude Reseller from using the Reseller Network for services provided to other Reseller customers, it being understood that, with respect to any

Ethernet Services, the access circuit between a Customer Location and the Reseller Network gateway switch shall be solely used to provide the applicable Ethernet Services to Customer.

(ii) Title and intellectual property rights to (i) the Services and (ii) any computer software or code provided by Reseller to use the Services, including, but not limited to, associated documentation, and all updates thereto (“Licensed Software”) are, in each case, owned by Reseller, its agents, suppliers, Contractors, or affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, bundling, or publication of the Services, in whole or in part, without the express prior written consent of Reseller or other owner of such material, is prohibited.

(iii) The Agreement provides no right to use any party’s or its Affiliates’ trademarks, service marks, or trade names, or to otherwise refer to the other party in any marketing, promotional, or advertising materials or activities.

(n) License Grant. If Customer requires the use of Licensed Software from Reseller or its Contractors in order to use the Services, Customer shall have a nonexclusive, nontransferable, and limited license to use such Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. Customer may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto), and Customer shall execute any documentation reasonably required by Reseller or its Contractors, including, without limitation, end-user license agreements, for the Licensed Software. Customer shall not: (i) copy the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Reseller or its Contractors; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software. Customer acknowledges that the use of Service may periodically require, and consents to Reseller’s provision of, updates and/or changes to the Licensed Software resident in the Equipment.

### **3. Term and Termination.**

(a) Term. Unless terminated pursuant to the terms of this Agreement, this Agreement shall remain in effect for as long as Reseller is providing any Service or Equipment to Customer or until the expiration of all Service Order Forms executed by Customer. Unless otherwise terminated pursuant to this Agreement, the Service is offered for an initial term of service (the “Initial Term”) specified in the Service Order Form, which term shall be three (3) years unless otherwise agreed to in writing by Reseller and could be longer depending on the length of term set forth in the Service Order Form. The Initial Term shall begin on the In-Service Date and continue until the expiration of the Initial Term. Following the expiration of the Initial Term, each Service Order Form shall automatically continue on a month-to-month basis (each month shall be referred to as a “Renewal Term”) at the then applicable fees and charges (which fees and charges shall be subject to adjustment by Reseller on thirty (30) days prior notice to Customers), unless and until either party notifies the other party in writing at least sixty (60) days prior to the end of the Initial Term, or at least thirty (30) days prior to the end of any Renewal Term then in effect, that it does not wish to renew the Service Order Form. Any such written notice of non-renewal or termination provided by Customer must be sent to Reseller via an email message sent to: [accounting@bwlogic.com](mailto:accounting@bwlogic.com) . Any notice of non-renewal or termination by Customer will not be deemed accepted or valid until Customer receives a confirming email message from Reseller containing a termination case number. If, during the Initial Term or any Renewal Term, Customer adds any additional services or circuits to its use of the Service, the amount of Customer’s monthly recurring charges shall increase in accordance with Reseller’s prevailing rates in effect at the time. The term for any such additional services must be mutually agreed upon by Reseller and Customer in a Service Order Form Addendum to be executed by both parties. To the extent that the term for any such additional services extends beyond the Initial Term or any Renewal Term, the provisions of this Agreement shall remain in full force and effect with respect to such additional services until the expiration of the term for such additional services.

(b) Early Termination. (i) If this Agreement and/or any Service Order Form is terminated by Customer prior to the expiration of the Initial Term or any Renewal Term then in effect and such termination is not due to Reseller's uncured breach as set forth in Section 3(d) or if Reseller terminates this Agreement and/or any Service Order Form pursuant to Section 2(b) or due to Customer's uncured breach pursuant to Section 3(c), Customer shall pay to Reseller an early termination charge, which Customer agrees is reasonable, equal to all non-recurring and monthly recurring charges for Service and Equipment set forth in each Service Order Form which would otherwise be due through the end of the Initial Term or Renewal Term in effect at the time, including all applicable taxes and fees plus an accelerated lump sum payment equal to the total amount which would be due for all construction related costs and all remaining payments which would be payable by Customer for any and all Equipment being purchased by Customer in monthly installments. For avoidance of doubt, Customer agrees and acknowledges that the foregoing early termination charges shall apply even if Customer terminates the Agreement and/or any Service Order Form prior to commencement of the Initial Term and/or prior to the In-Service Date. The parties agree that the precise damages resulting from an early termination by Customer or termination by Reseller due to Customer's breach are difficult to ascertain and the early termination charge set forth in this Section 3(b) is a reasonable estimate of anticipated actual damages and not a penalty. The early termination charge shall be due and payable within ten (10) days of the effective date of termination.

(c) Termination for Breach. Either party may terminate this Agreement (and/or any Service Order) if the other party is in material breach of this Agreement and such breach is not cured within thirty (30) days after the breaching party's receipt of written notice thereof. Except for any unpaid amount owed by Customer to Reseller, each party must exercise its right of termination for the other party's uncured breach within thirty (30) days of discovering the other party's breach of this Agreement or any applicable Service Order Form or such specific breach shall be deemed to have been waived. Notwithstanding any other provision of this Agreement, Reseller has the right to suspend Service, and terminate this Agreement for Customer's material breach, immediately upon written notice if any amount owed by Customer is delinquent for more than twenty (20) days from the invoice date.

(d) Effect of Termination. Reseller shall have no liability from any termination of this Agreement provided that it is conducted in accordance with the terms of this Agreement. Sections 1 through 5 and Sections 8 through 23 shall survive any termination or expiration of this Agreement.

#### 4. Limitation of Liability.

(a) Reseller's liability for damages arising out of any mistake, interruption, omission, delay, error, or defect which occurs in the course of installing, providing, maintaining, or modifying Service and/or Equipment or for any other reason, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the time period during which the fault(s) occurred. In the event that Customer experiences a loss of service due to Reseller's fault, negligence, act, error, or omission, Reseller will provide Customer with a credit on a pro-rata basis for the period of time that the Service was unavailable to Customer. In order to receive a credit, Customer must provide Reseller written notice within ten (10) days of the service interruption and the credit will be applied to a future Customer invoice.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT WILL RESELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, VENDORS, AND CONTRACTORS, BE LIABLE TO CUSTOMER, ANY USER, OR ANY THIRD PARTY FOR ANY CLAIM, LOSS, EXPENSE, OR DAMAGE DUE TO LOSS OF REVENUES, PROFITS, SAVINGS, BUSINESS, OR GOODWILL, NOR WILL RESELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, AND CONTRACTORS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, EXEMPLARY, PROXIMATE, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY, WITHOUT LIMITATION, TO ANY CLAIM, LOSS, EXPENSE, OR DAMAGE, RELATING TO OR ARISING FROM: (I) ANY

MALFUNCTION OF ANY SERVICE, EQUIPMENT, RESELLER NETWORK, ANY CONTRACTOR'S OR OTHER THIRD PARTY'S NETWORK, OR ANY FACILITY PROVIDED BY RESELLER OR ANY CONTRACTOR; AND (II) RESELLER'S SUSPENSION OR TERMINATION OF SERVICES IN ACCORDANCE WITH THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION 4 APPLY TO ALL CLAIMS, DAMAGES, AND ALLEGATIONS WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY.

(c) Except for Reseller's gross negligence or willful misconduct, in no event shall Reseller's total aggregate liability to Customer, any User, and any person or third party whose claim or claims are based on or derived from a right or rights claimed by Customer or any User, for any and all claims arising from or relating to any Service Order, this Agreement, or any other claim or cause of action, whether in contract, tort, any theory of liability, or otherwise, exceed the aggregate amount of charges paid by Customer to Reseller during the three (3) month period immediately preceding the date of the occurrence of the event giving rise to the claim or cause of action. Reseller shall have no liability whatsoever for any damage to, or loss of, any equipment or other property under the care, custody or control of Customer or any User unless caused by Reseller's gross negligence or willful misconduct, in which case Reseller's maximum liability is set forth above in this Section 4(c).

(d) Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the limitations set forth in this Section 4 may not apply to Customer if prohibited by law.

(e) No action against either party arising out of this Agreement may be brought by the other party more than one (1) year after the cause of action has first arisen.

**5. No Warranty.** EXCEPT FOR THIRD PARTY MANUFACTURERS' WARRANTIES WHICH MAY BE APPLICABLE TO THE EQUIPMENT, THE EQUIPMENT AND SERVICE ARE PROVIDED BY RESELLER ON AN "AS IS" BASIS, AND CUSTOMER'S AND ANY USER'S USE OF THE EQUIPMENT AND SERVICE ARE AT CUSTOMER'S OWN RISK. WITHOUT LIMITING THE FOREGOING, RESELLER DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FUNCTION AND NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED. RESELLER MAKES NO WARRANTY THAT THE SERVICE OR EQUIPMENT WILL OPERATE UNINTERRUPTED OR ERROR FREE. RESELLER DOES NOT WARRANT THAT ANY SERVICE WILL BE AVAILABLE ON A SPECIFIED DATE OR TIME OR THAT THE RESELLER NETWORK, OR ANY CONTRACTOR'S OR OTHER THIRD PARTY'S NETWORK, WILL HAVE THE CAPACITY TO MEET THE DEMAND OF CUSTOMER OR ANY USERS DURING SPECIFIC HOURS.

**6. Customer Infrastructure Responsibilities.** Customer is responsible for all costs at its premises, including, without limitation, its personnel, wiring, computer equipment, internet access (in situations where Reseller is not the internet service provider), electrical power, and the like, necessary for the use of the Service and any Equipment.

**7. Network Usage.**

(a) Use of Internet. Reseller makes no representation that the internet or any third party network used by Reseller will adequately protect the privacy of Customer's or any User's personal information, and Reseller expressly denies any liability associated therewith.

(b) Monitoring. Reseller may monitor Customer's Account and Customer's User's use of the Service to respond to service or technical problems; to monitor compliance with the Agreement; if there has been an actual or suspected violation of the Agreement; to assess or determine that the Service and any Equipment are properly implemented and configured; at Customer's request; or to protect the integrity of the Reseller Network or Customer's use of the Service, in any emergency situation, or any other situation in which Reseller, in its good faith judgment, deems appropriate under the circumstances.

Customer acknowledges that the Service has been ordered, configured, and installed based on the specific information provided by Customer including, without limitation, the expected number of Users and Customer's anticipated capacity needs. Accordingly, and based on Reseller's reliance on the information provided by Customer as well as the need to protect the integrity and reliability of the Reseller Network and mitigate against potential service issues, Customer shall not resell any portion of the Service without Reseller's prior written consent.

## **8. Financial Terms.**

(a) Prices and Charges. In addition to paying for all applicable non-recurring and professional services charges as set forth in any Service Order Form, Customer shall, throughout the Initial Term and any Renewal Term, pay the monthly recurring charges, and any other fees and costs including, without limitation, for any Customer Technical Support Service, set forth in each Service Order Form. Subject to Section 3(c), all such monthly recurring charges, fees and costs shall apply irrespective of whether Customer decreases, abandons, and/or cancels its use of the Service during the Initial Term or any Renewal Term.

(i) Taxes. Federal, state, local, county, municipal, and other government or regulatory agencies may assess taxes, including, without limitation, excise, franchise, sales, value-added, use, personal and real property taxes, surcharges and/or fees ("Taxes") on Customer's purchase and/or use of the Service and/or Equipment. These Taxes may change from time to time, with or without notice to Customer. Except for Taxes on Reseller's net income, Customer is responsible for the payment of all applicable Taxes now in force or enacted in the future. Such amounts are in addition to the charges paid for the Service and Equipment. If Customer is exempt from any or all Taxes, it must provide Reseller with an original certificate that satisfies applicable legal requirements attesting to its tax exempt status. Tax exemption shall only apply from and after the date that Reseller receives such valid certificate. The imposition of or increase in any Taxes shall not constitute a rate increase and shall not give Customer a right to terminate this Agreement, including any Service Order Form.

(ii) Fees. In addition to any Taxes imposed by governments or regulatory agencies, Reseller reserves the right at any time to charge or increase various fees ("Fees"), including, without limitation, activation fees, universal service fees, and regulatory recovery fees as well as recover costs associated with complying with government or regulatory programs. The imposition of or increase in any Fees shall not constitute a rate increase and shall not give Customer a right to terminate this Agreement including any Service Order Form.

### **(b) Billing and Payment.**

(i) Payment. All Reseller invoices are due within thirty (30) days of the invoice date and all payments must be made in U.S. currency. Customer shall pay monthly recurring charges for any partial month during the Initial Term or any Renewal Term on a pro rata basis. Customer is solely responsible for any and all charges, fees and costs incurred as the result of the use of the Services associated with Customer's Account, whether or not such charges were authorized or intended. Unless otherwise agreed to in writing by Reseller, all monthly recurring charges for Service and Equipment will be billed and paid one calendar month in advance. All usage and related charges, and all other fees and costs including, without limitation, in connection any Customer Technical Support Service, will be billed and paid in arrears as and when they are incurred and remain subject to the payment terms set forth in this Agreement. Reseller has the right to bill and Customer shall pay for all non-recurring and Equipment charges and all Customer Technical Support Service charges when the applicable Service and/or Equipment is installed by Reseller. All professional services shall be paid by Customer once rendered by Reseller. Reseller may suspend, restrict, or cancel use of the Service and Equipment, if Customer does not make full payment of all billed charges by the due date. Any amounts not paid to Reseller within thirty (30) days of the date of the applicable invoice shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Returned checks are subject to a twenty-five dollar



(\$25) fee. Customer shall also reimburse Reseller for all attorneys' fees and other costs incurred by Reseller in connection with bringing any action to collect any delinquent payments or arising from any Customer breach of this Agreement.

(ii) Invoice Delivery. Unless otherwise agreed to in writing, all invoices shall be delivered electronically via the email address on file for Customer's Account. Customer is obligated to keep its Account information accurate and current. An incorrect or obsolete email address shall not release Customer from any of its payment obligations.

(iii) Methods of Payment. Customer shall pay for all fees and other charges associated with paying a Reseller invoice exclusively by either (i) electronic payment, namely by ACH or wire transfer including, without limitation, any wire transfer fees, or (ii) credit card including, without limitation, any credit card processing fees. Reseller reserves the right to discontinue acceptance of payment by credit card, ACH transfer, and/or wire transfer at any time.

(iv) Billing Errors. Reseller's obligation with respect to any errors resulting in Customer overpayment for Service and/or Equipment is limited to granting invoice credits equal to the dollar amounts of the overpayment. Under no circumstances will any billing error affect Customer's obligation to pay for Services and/or Equipment provided by Reseller.

(vi) Billing Disputes. If Customer believes that it has been charged in error, or if Customer believes that it is due a credit or refund, Customer must notify Reseller in writing within thirty (30) business days of the invoice date. Any billing disputes must be in writing and include a detailed statement describing the nature and amount of the disputed charge(s) and the reason(s) why a credit or refund is being requested, and sent via email to [accounting@bwlogic.com](mailto:accounting@bwlogic.com). Customer shall cooperate fully with Reseller to promptly address and attempt to resolve the disputed charge(s). If Customer fails to provide written notice of dispute within the enumerated thirty (30) business day deadline, the charges and invoice will be considered correct and binding on Customer. Irrespective of the foregoing, Customer shall pay the undisputed portion of any disputed invoice in a timely manner and in accordance with the payment terms set forth in this Agreement.

(c) Service Suspension, Termination and Restoration. Reseller may suspend or terminate Customer's Service, and may terminate this Agreement, if Customer fails to meet any of its payment obligations or if Customer or any User uses the Service in violation of this Agreement or in violation of any law. If Service is suspended for non-payment of charges, it will only be restored when all charges are paid in full and at Reseller's discretion. However, Reseller may, at its sole option, choose to restore or re-establish Customer's Service prior to the payment of all charges due. Such restoration or re-establishment shall not be construed as a waiver of Reseller's right to receive full payment for all charges due or as a waiver of any rights to suspend or disconnect Service for non-payment of any such charges due and unpaid or for the violation of any provision of this Agreement; nor shall the failure to suspend or disconnect Service for non-payment of any past due amount operate as a waiver or estoppel to suspend or disconnect Service for non-payment of any invoice or of any other past due amount.

(d) Authorization to Verify Credit Rating. At Reseller's request, Customer shall promptly provide Reseller with the information necessary to verify Customer's credit rating prior to providing Customer with access to any Service and/or Equipment.

(e) Deposit. Reseller in its sole discretion has the right to conduct a review of Customer's credit rating, credit history, and payment history at any time prior to the In-Service Date or at any time while Reseller is providing any Service or Equipment to Customer. Upon Reseller's request, Customer shall promptly provide Reseller with financial statements or other indications of Customer's financial and business circumstances and cooperate in good faith so that Reseller may review Customer's credit standing. Reseller, in its sole discretion, may at any time, as a condition of providing new Service and/or Equipment or continuing to provide any Service and/or Equipment, require Customer to tender a security deposit or

other form of security acceptable to Reseller. Reseller may apply Customer's deposit to past due obligations as well as to any fees or other assessments to Customer's Account.

9. **Indemnification.** Customer shall, at its expense, indemnify, defend and hold harmless Reseller, its officers, directors, employees, agents, and contractors, from and against any and all Claims arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct of Customer or any User of the Service or Equipment; (ii) any breach by Customer of any term or condition of the Agreement; (iii) any claim by any employee or invitee of Customer or User other than a claim based on the gross negligence or willful misconduct of Reseller; (iv) any claim by any customer of Customer, User, or any other third party relating to, or arising from, Customer's use of the Service and/or Equipment; or (v) violation of any law or regulation by Customer, any User, or any Customer employee, contractor, or agent.

#### 10. **Confidentiality.**

(a) Each party (a "Receiving Party") acknowledges that it and its employees, contractors, or agents may, in the course of providing or using the Service, Equipment, and/or otherwise satisfying its obligations hereunder, be exposed to and/or receive information which is proprietary or confidential to the other party (a "Disclosing Party"). Any and all such information in any form obtained by a Receiving Party or its employees, contractors, or agents in the provision or use of the Services, Equipment, or the satisfaction of such party's obligations under this Agreement, including but not limited to the financial terms of this Agreement or any Service Order, product and business information, financial information, trade secrets, know-how and information regarding processes, shall be deemed to be the confidential and proprietary information ("Confidential Information") of the Disclosing Party. The Receiving Party shall: (i) hold all of Disclosing Party's Confidential Information in strict confidence; (ii) disclose Disclosing Party's Confidential Information only to employees and/or contractors who have a need to know such Confidential Information and who are obligated to hold such Confidential Information in strict confidence; and (iii) not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose such Confidential Information to third parties, or to use such Confidential Information for any purposes whatsoever other than in connection with the Receiving Party's performance and obligations under this Agreement.

(b) Confidential Information shall exclude all information, which (i) is at the time of disclosure or thereafter becomes a part of the public domain through no act or omission of the Receiving Party, its employees, contractors, or agents; (ii) was in the Receiving Party's possession as shown by written records prior to the disclosure and had not been obtained by Receiving Party either directly or indirectly from the Disclosing Party; (iii) is hereafter disclosed to the Receiving Party by a third party who did not acquire the information directly or indirectly from the Disclosing Party hereunder; (iv) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information, as evidenced by written records; or (v) was required by law to be disclosed, but only to the extent and for the purposes of such required disclosure.

#### 11. **Governing Law and Dispute Resolution.**

(a) This Agreement, including and the terms of any Service Order Form, shall be governed by and enforced according to the laws of the State of New Jersey without giving effect to any conflicts of laws rules.

(b) In the event of any controversy or claim arising from or related to this Agreement, its performance or interpretation, the parties, in good faith, will initially attempt to resolve the dispute between them. Any and all disputes, controversies and claims arising out of or relating to this Agreement including any Service Order Form, including its/their validity, shall be handled, determined, and resolved exclusively in the federal or state courts located in Newark, New Jersey. Each party consents and submits to the exclusive jurisdiction and venue of such courts and, with respect to proceedings commenced in such courts, each party waives any objection or defense based on lack of personal jurisdiction, improper venue or *forum non*

*conveniens*. The parties waive any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. Furthermore, Reseller shall be entitled to an award of, and to prompt payment from Customer for, all attorney's fees and costs in the event Reseller institutes any action to collect any amounts owed for Service and/or Equipment under this Agreement.

12. **Severability**. In the event that any of the provisions of this Agreement or any part thereof shall be determined by a competent authority to be invalid, unlawful or unenforceable to any extent, such provision or part thereof shall to that extent be severed from the remaining provisions of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

13. **Notice**.

(a) **To Customer**: Unless expressly stated otherwise in this Agreement, in the event Reseller is required or desires to provide Customer with notice under this Agreement, it will provide electronic notice to the e-mail address on file. In the event that Customer changes its e-mail address, Customer shall advise Reseller immediately in writing. By Customer's acceptance of this Agreement, Customer agrees to electronic delivery of all required notifications including invoices, unless otherwise provided for herein.

(b) **To Reseller**: Unless expressly stated otherwise in this Agreement, in the event Customer is required or desires to provide Reseller with notice, all correspondence must be in writing and sent, via certified mail, return receipt requested, or overnight courier service, to the following address:

Bandwidth Logic, Inc.  
28 Valley Road, Suite 149  
Montclair, NJ 07042

14. **Waiver.** Subject to Sections 3(d) above, the failure of either party to enforce or insist upon compliance with any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment of any other provision of this Agreement.

15. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and any User who uses the Services.

16. **Assignment.** Customer shall not assign any of its rights or obligations under this Agreement, or transfer ownership of the Account or any Service, without Reseller's prior written consent.

17. **Amendment.** Reseller reserves the right, upon written notice, to amend this Agreement by posting such amended version of the Agreement on the Website. Reseller shall provide Customer with written notice of any such amendment(s) in a monthly invoice sent within two (2) billing cycles of posting the revised Agreement on the Website. If the amendment(s) to the Agreement adversely and materially affects Customer's use of the Services, Customer may elect to terminate the Agreement by giving written notice of termination to Reseller within fifteen (15) business days of receipt of the invoice containing the written notice of the amendment(s) to the Agreement and Customer will not be liable for any early termination charge for a termination on these grounds. The written notice must be sent by Customer to the following email address: [accounting@bwlogic.com](mailto:accounting@bwlogic.com). If Customer does not elect to terminate the Agreement on the grounds stated above during the enumerated fifteen (15) business day time period, then the amendment(s) to the Agreement will become effective as to Customer as of the end of the fifteen (15) business day period. If Customer gives Reseller written notice of termination of the Agreement within the enumerated fifteen (15) business day period, Reseller has the right to waive the application of the amendment(s) as to Customer and keep the existing Agreement in place for the remainder of the Initial Term or Renewal Term then in effect and, in such situation, Customer will continue to be subject to the prior version of the Agreement.

18. **Entire Agreement and Merger.** This Agreement, along with the Service Order Forms, supersedes and merges all prior agreements, promises, understandings, statements, representations, warranties, indemnities, covenants, and all inducements to the making of this Agreement relied upon by either party, whether written or oral, and embodies the parties' complete and entire agreement with respect to the subject matter hereof. Subject to Sections 17, no statement or agreement, oral or written, shall vary or modify the written terms hereof in any way whatsoever.

19. **Independent Contractors.** Reseller and Customer are independent contractors and any Service Order(s) and this Agreement do not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party has the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent,

20. **Basis of Bargain; Failure of Essential Purpose.** Customer acknowledges and agrees that Reseller has established its prices and entered into one or more Service Order Forms in reliance upon the limitations and exclusions of liability and the warranty disclaimers set forth in this Agreement are an essential basis of the bargain between the parties and are material terms of this Agreement. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed their essential purpose, and Customer hereby waives its right to contest the enforceability of any provision of this Agreement by reason of such failure.

21. **No Third Party Beneficiaries.** This Agreement does not extend to any third party and there are no third party beneficiaries to this Agreement.

22. **Facsimile Transmission/Counterparts**. Any Service Order Form, and any other document pertaining Reseller's provision of Services or Equipment to Customer may be executed and delivered by facsimile, email, or other electronic means and, upon receipt, such transmission shall be deemed delivery of an original. Any Service Order Form and any other document pertaining Reseller's provision of Services or Equipment to Customer may be executed in several counterparts each of which when executed shall be deemed to be an original, and such counterparts shall each constitute one and the same instrument.

23. **Force Majeure**. Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including, without limitation, acts of God, flood, fire, labor difficulties, governmental action, or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

24. **Interpretation of Agreement**. This Agreement will be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there will be no presumption or inference against the party drafting this Agreement in construing or interpreting any of the provisions contained in this Agreement. In the event of any inconsistency between or among any Service Order Form and the Terms and Conditions, the Terms and Conditions shall take precedence and apply.