

## **CUSTOMER AGREEMENT WITH LIGHTWAVE WIRELESS FOR HIGH SPEED INTERNET SERVICE**

### **1. AGREEMENT**

The documents consisting of the Customer Agreement, Installation Agreement, Acceptable Use Policy, and Privacy Policy collectively make up the Lightwave Wireless Service Agreement [the Agreement] between you [the Customer] and Lightwave Broadband LLC dba Lightwave Wireless [Lightwave] to provide you with High Speed Internet Service [the Service]. By establishing an account or using the Service or equipment, you agree to abide by this Agreement and to use the Service in compliance with the entire and current Service Agreement as posted on the Lightwave Wireless website: <https://www.lightwavebroadband.net/support/white-papers/>

Lightwave reserves the right to modify the terms of this Agreement and may discontinue or revise any or all other aspects of the Service in its sole discretion at any time by posting changes on the Lightwave Wireless website at: <https://www.lightwavebroadband.net/support/white-papers/> Your continued use of the Service after changes are posted constitutes your acceptance of this Agreement as modified by the posted changes. The updated, online version of this Agreement shall supersede any prior version of this Agreement that may have been included in any software or related materials provided by Lightwave Wireless. This Agreement should be read in conjunction with our Acceptable Use Policy, the Privacy Policy, the Installation Agreement, the Customer Agreement, and other applicable policies, terms, and conditions.

**IF YOU DO NOT AGREE TO ABIDE BY THE TERMS OF THIS AGREEMENT, AS FOUND HEREIN AND ON OUR WEBSITE, YOU SHOULD IMMEDIATELY STOP THE USE OF THE SERVICE AND NOTIFY OUR BILLING DEPARTMENT SO THAT YOUR ACCOUNT MAY BE CLOSED.**

### **2. TERM OF AGREEMENT / TRANSFER OF SUBSCRIPTION**

The term of this Agreement is month-to-month, beginning on the ending date of your Trial Period, as stated on your Installation Agreement, and continuing to the same date of the following calendar month. Lightwave reserves the right to change the Service fees upon 30 days notice. Fee changes will be posted on our website. Fee information may be obtained by calling the Billing Department at 760-749-3995.

Your Installation Agreement is personal to you, you agree not to assign, transfer, share, resell, or sublicense your rights as a customer unless specifically allowed by this Agreement. Landlords are not permitted to sell or to share the Service with their tenants without written authorization from Lightwave. You agree that you are solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach results from your use of the Service or by another using your computer or Service. You agree to contact Lightwave immediately upon the occurrence of any change in the status of your account (e.g., change in individuals authorized to use your account) for the purpose of updating your account information. Your executed Installation Agreement entitles you to use the Service.

### **3. THE SERVICE**

The Service consists of Wireless Internet access to Customer's location inclusive with the high speed Internet service equipment [the Equipment] required for use of the Service. Lightwave retains ownership of the Equipment. Customers must provide a wireless router of their choice to enable Wi-Fi connectivity. Although Lightwave may as a courtesy configure Customer's router upon installation, Lightwave will not provide maintenance for Customer's router or of Customer's Internal Network. Lightwave does not claim expertise in Internal Networking.

To ensure fair and equal Internet access for all Customers, Lightwave maintains a running fair access policy which applies to all Service

Levels. In most cases, Lightwave does not limit data usage. Should Customer's usage become excessive to the extent that the connection quality of other Lightwave customers is adversely affected as determined by Lightwave, Lightwave may take any action that in its discretion it deems appropriate, including requesting that Customer upgrade to a higher Service Level.

Customer acknowledges that the speed of the Service can vary depending upon external interference levels and other factors which are beyond the control of Lightwave. Lightwave provides the Service on a "best efforts" standard. Lightwave cannot guarantee upload or download speeds, latency, or packet loss on its network. Eligibility for the higher Service Levels varies by location.

#### **4. MAINTENANCE WINDOW**

Lightwave's regular maintenance window is between the hours of 11:00pm and 4:00am Pacific Standard Time. Other maintenance will take place after notice to Customer via telephone or email except for Emergency maintenance which will take place as time permits.

#### **5. NETWORK DOWNTIME**

If network downtime occurs due to malfunction of Lightwave's network, affected Customers are eligible for a credit for each day of disruption. Network downtime is defined as an outage to Lightwave's network exceeding ten (10) minutes between the hours of 6am and 10pm.

##### **Exceptions:**

Customers will not receive any credit in connection with any network failure or deficiency that is caused by or associated with:

- a) Circumstances beyond Lightwave's control including but not limited to: acts of any governmental body, sabotage, war, terrorism, weather, fire, flood, strike, prolonged interruptions to the power grid, frequency interference, radar, cyber attacks, unavailability of or interruption or delay in telecommunications or third party services, failure to

obtain supplies, hardware or materials needed to maintain Lightwave's network.

- b) Failure of Lightwave's backbone network to the Internet.
- c) Scheduled maintenance or emergency maintenance.
- d) DNS issues outside the direct control of Lightwave Broadband.
- e) Failure of Customer owned equipment, network, internal wiring, power source, or computers.
- f) Customer acts or omissions, including without limitation, any negligence, willful misconduct or use of Lightwave's equipment, network or services in breach of Lightwave's Acceptable Use Policy, Customer Agreement, or Service Agreement.

#### **6. CANCELTION**

If Customer becomes dissatisfied with the Service or any related terms, conditions, rules, policies, guidelines, or practices of Lightwave, Customer's sole remedy is to email a written notice of cancelation to Lightwave, discontinue using the Service, and pay any account fees that apply. Lightwave retains ownership of the Equipment and will promptly remove this Equipment upon cancelation. Customer agrees that s/he will not attempt to remove the Equipment.

Lightwave entitles its residential Customers to a Trial Period of one (1) month commencing on the date of installation date and concluding on the same date of the following month. Cancelation by Customer within the Trial Period will not result in any charges to Customer.

To cancel the Service you must mail Lightwave a letter of cancelation. Cancelation will be effective upon receipt by Lightwave of the written notice.

Lightwave may suspend or terminate the Agreement, your account, or your use of the Service for any reason at any time, including, and without limitation, if Lightwave in its sole and complete discretion, believes that you have

violated any of the terms or conditions of the Agreement or if you fail to pay any fees when due. Should Lightwave find cause to terminate your Service, a termination notice will be provided to you by email, U.S. Mail, or personal service to the address you provided for the Service.

All notices to you shall be deemed effective on the fourth (4th) day following the date mailed or on the date emailed. Sections 1, 2, 6, 8, 10, 12, 13, 14, 15 and 16 of this Customer Agreement shall survive termination of the Agreement.

#### **7. MINIMUM CONDITIONS FOR RECEIPT OF THE SERVICE**

- You must be at least 18 years old.
- Your computer must have a 10 Base T or 10/100 port (RJ4S)

#### **8. PAYMENT POLICY**

Customer is responsible for all fees to Customer's account. Customer agrees to be responsible for any and all fees, charges, damages and costs that you or anyone using your account incurs. Customer agrees to pay all monthly fees and installation charges including, but not limited to, customer service fees, late fees, returned check fees, and door collection fees.

Lightwave will invoice its Customers monthly by email at the end of the usage period. Fees for the Service are payable by check or credit card each month. Lightwave is not responsible for any charges or expenses incurred by Customer, such as account overdrafts or exceeding credit card limits, which may result from fees billed by Lightwave. Payment by check is due within fourteen (14) days of the invoice date. Customer agrees to provide Lightwave with accurate billing information including legal name, address, telephone number, and credit card number (when applicable) and will immediately report to Lightwave any changes to this information. Questions regarding Service fees

should be directed to Lightwave's Billing Department at 760-749-3995.

All fees are considered valid unless disputed in writing within sixty (60) days of the billing date. Adjustments will not be made for fees that are more than 60 days old.

Service to delinquent accounts may be suspended or terminated at Lightwave's sole and absolute discretion; however, fees will continue to accrue until the account is closed by Customer. Lightwave may bill an additional charge to reinstate a suspended account.

#### **9. SPAM**

Lightwave may immediately terminate any account that it determines, in its sole discretion, is transmitting or is otherwise connected with any "spam" or other unsolicited bulk email. In addition, if actual damages cannot be reasonably calculated, Customer agrees to pay Lightwave liquidated damages of five dollars (U.S. \$5.00) for each piece of "spam" or unsolicited bulk email transmitted from or otherwise connected with Customer's account. Otherwise, Customer agrees to pay Lightwave's actual damages to the extent such actual damages can be reasonably calculated. Lightwave reserves the right to block, reject, or remove what it considers to be "spam" or other unsolicited bulk email from the Service and Lightwave shall have no liability for blocking any email considered to be "spam."

#### **10. INSTALLATION / EQUIPMENT**

Lightwave Broadband retains ownership of the Equipment. Customer retains ownership of any router provided by Customer. High Speed Internet Service Equipment is highly sophisticated and must be installed professionally. The antenna is subject to stringent installation requirements. Customer authorizes Lightwave or its technician(s) to install the necessary Equipment required for the Service on the premises [the Premises] specified by Customer at the time of installation and customer agrees not make any adjustments or modifications to the Lightwave Service Equipment.

The installation, use, inspection, maintenance, repair, and removal of the Equipment may result in service outage or potential damage to your computer. Customer is solely responsible for backing up all existing computer files. Lightwave and its employees, agents, contractors, and representatives shall have no liability whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data, or peripherals.

Customer acknowledges and agrees that the Service is provided on a fixed-location basis. If Customer moves to another location, the Service will need to be repositioned at Customer's new location. This may result in substantial interruption of the Service and will result in fees associated with a new installation.

Customer will not remove any Lightwave owned Equipment from the Premises or connect the Equipment to any outlet other than the outlet to which the Equipment was initially connected by the Lightwave technician. Lightwave may relocate the Equipment for Customer within the Premises at Customer's request for an additional charge. Customer will not connect any equipment, other than Equipment authorized by Lightwave, to the cable modem outlet. Customer understands that failure to comply with this restriction may cause damage to the Lightwave network and subject Customer to liability for damages and/or criminal prosecution. Customer may not alter, modify or tamper with the Equipment or the Service, or permit any other person to do that which is not authorized by Lightwave.

Lightwave will make its best efforts to provide the Service. Because of the complex nature of wireless high speed Internet services and the underlying infrastructure, it may not be possible to provide the Service to everyone. In its sole and absolute discretion, Lightwave may cancel the installation process will notify Customer of its intent to cancel as soon as commercially possible. Customer acknowledges that it

may take three (3) or more days to determine if Lightwave is able to provide the Service. Lightwave shall have no responsibility whatsoever for claims arising out of its failure or refusal to complete the installation or provide the Service.

## **11. MONITORING THE SERVICE / LINKS**

Lightwave has no obligation to monitor Customer's Service and will not do so. Lightwave reserves the right to disclose Customer's information if Lightwave has a good faith belief that it is necessary to: (1) comply with the law; (2) protect Lightwave's rights or property or those of others; (3) respond to fraud, abuse or unauthorized reception; (4) enforce Lightwave's standards and policies; or (5) act in an emergency to protect Customer's safety or that of another. Lightwave may also transfer Customer's information as a part of a sale, merger, or transfer of business operations. Please see our Privacy Policy and Acceptable Use Policy. Lightwave may immediately remove Customer's material or information, in whole or in part from Lightwave's servers, which Lightwave in its sole and absolute discretion, determines to infringe another's property rights or to violate our Acceptable Use Policy or Privacy Policy.

During the use of the Service, Customer may encounter various types of links that enable the visiting of websites operated or owned by third parties [Third Party Site(s)] and which links are provided by Third Party Sites as a convenience. Third Party Sites are not under the control or ownership of Lightwave. The inclusion of any link to a Third Party Site is not (i) an endorsement by Lightwave of the Third Party Site, (ii) an acknowledgement of any affiliation with its operators or owners, or (iii) a warranty of any type regarding any information or offer on the Third Party Site. Customer's use of any Third Party Site is governed by the various legal agreements and policies posted at that Website.

## **12. WARRANTIES / DISCLAIMERS / LIMITATION OF LIABILITY**

Lightwave Equipment is subject to third party warranties which will be passed through Lightwave to Customer at no additional charge. Lightwave will comply with all reasonable requirements to effect the pass-through of the warranty to its Customers. At its sole option, Lightwave may replace defective Equipment. The warranty does not cover defects resulting from use contrary to specifications or instructions, acts outside of Lightwave's control, or repair or modification by anyone other than Lightwave or its technician(s). Lightwave reserves the right to modify this warranty at anytime. The foregoing limitation applies to the acts and omissions of Lightwave, its members, officers, employees, agents, contractors, or representatives which, but for these acts and/or omissions, would give rise to a cause of action against Lightwave in this Agreement, tort or any legal doctrine. Customer's sole and exclusive remedies under this Agreement are as expressly set out in this Agreement. Any warranty gives Customer specific legal rights; Customer may also have rights which vary from State to State.

Customer expressly agrees that Lightwave is not responsible or liable for any content, act or omission of any third party including, without limitation, any threatening, defamatory, obscene, offensive, or illegal conduct, or any infringement of another's rights including, without limitation, privacy and intellectual property rights, and Customer hereby releases Lightwave for any such claims based on the activities of third parties.

The Service is provided to Customer "as is" without warranty of any kind. Neither Lightwave, nor its affiliates, nor any of its suppliers or licensors, employees or agents warrant that installation, Lightwave's compliance with special customer installation requests, or the Service will be uninterrupted or error free or free from viruses or other harmful malicious agents even if anti-virus mechanisms are deployed. Lightwave does not warrant that any data or any files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time. All representations and warranties of any kind express or implied,

including without limitation, any warranties of title, noninfringement, fitness for a particular purpose and merchantability are hereby excluded and disclaimed. Lightwave and its employees, representatives and agents are not liable for any costs or damages arising directly or indirectly from the installation, Lightwave's compliance with customer installation requests or use of the licensed software, the Service (including e-mail), Equipment furnished by Lightwave, or Lightwave's provision of technical service and support for the Service; even if such damage results from the negligence or gross negligence of a Lightwave installer, technician, or customer service representative, including any indirect, incidental, consequential, exemplary, special, or punitive damages, regardless of whether or not Lightwave has been advised of the possibility of such damages. In any event, Lightwave's cumulative liability to Customer for any and all claims relating to the use of the Service shall not exceed the total amount of Service fees paid during the immediately preceding month. Customer hereby releases Lightwave from any and all obligations, liabilities, and claims in excess of this limitation. Lightwave is also not liable for any costs or damages arising from or related to Customer's breach of this Agreement. Customer's sole and exclusive remedies under this Agreement are as expressly set forth herein. Some states do not allow the exclusion or limitation of implied warranties, so the above exclusions or limitations may not apply to you.

### **13. INDEMNIFICATION**

Customer agrees to indemnify and hold Lightwave, its parents, subsidiaries, members, affiliates, officers and employees, harmless from any claim, demand, or damage, including costs and reasonable attorneys' fees, asserted by Lightwave or any third party due to or arising out of Customer's use of or conduct on the Service. Lightwave will notify Customer within a reasonable period of time of any third party claim for which Lightwave seeks indemnification and will afford Customer

the opportunity to participate in the defense of such claim, provided that Customer's participation will not be conducted in a manner prejudicial to Lightwave's interests, as reasonably determined by Lightwave.

#### **14. JURISDICTION**

Under California Civil Code Section 1789.3, Customers who are residents of California are entitled to the following specific consumer rights information: the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 1020 N Street, #501, Sacramento, CA 95814 or by telephone at 1-916-445-1254.

This Agreement is governed by California law without regard to conflict of law provisions. The federal and state courts located in San Diego, California alone have jurisdiction over all disputes arising out of or related to this Agreement and the Service. You consent to the personal jurisdiction of such courts sitting in San Diego, California with respect to such matters or otherwise between you and Lightwave, and you waive your rights to removal or consent to removal.

#### **15. MISCELLANEOUS**

The Lightwave Service Agreement, consisting of the Customer Agreement, Installation Agreement, Acceptable Use Policy, and Privacy Policy, as posted on our website at: <http://www.lightwavewireless.net> constitutes the entire Agreement and understanding between the parties with respect to Customer's use of the Service and supersedes and replaces any and all prior written or oral agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of its provisions shall remain in full force and effect. Nothing contained in this Agreement shall be construed to limit Lightwave's rights and remedies available at law or in equity.

Lightwave's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement. This Agreement may not be assigned or transferred by Customer. This Agreement is freely assignable by Lightwave to third parties.

Lightwave may revise, amend, or modify the agreement at any time and in any manner. Notice of any revision, amendment, or modification will be posted on Lightwave's website and/or in our various publications and mailings to Customer.

#### **16. ADDITIONAL TERMS AND CONDITIONS**

**YOUR USE AND ACTIVATION OF THE SERVICE SHALL CONSTITUTE AN ACCEPTANCE OF THE TERMS BELOW. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS, DO NOT ACTIVATE THE LIGHTWAVE SERVICE.**

Lightwave will provide Wireless High Speed Internet Service [the Service] to You, the Customer, upon request, on the following terms and conditions. You will be bound by the Lightwave High Speed Internet Service Agreement, which collectively includes the Installation Agreement, Customer Agreement, Acceptable Use Policy, and Privacy Policy as posted on our website at the following URL: <http://www.lightwavewireless.net>.

##### **A. Lightwave's Obligations:**

1. Install in a workmanlike manner, the Lightwave necessary Equipment and materials.
2. Maintain Lightwave Equipment in accordance with reasonable industry standards and applicable regulations.
3. These obligations do not include responsibility for loss of stored content on any devices or for any damage to

your devices as a result of pin defects or alignment.

**B. Customer's Obligations:**

1. Pay all installation, service or other fees upon receipt of Lightwave's invoice. Fees are determined according to Customer's Installation Agreement as signed at the time of installation. If Customer or Lightwave terminates Service, Lightwave may transfer outstanding balances for the Service provided under this Agreement to other accounts Customer may have with Lightwave.
2. If Customer fails to make timely payment, Lightwave may suspend or terminate the Service, remove Lightwave Equipment and impose late fees and collection trip fees, if applicable. Late fees and collection trip fees will not exceed the maximum amount permitted by law.
3. Provide Lightwave's employees and representatives with a safe working environment.
4. Assume complete responsibility for improper use, damage or loss of any Equipment furnished by Lightwave.
5. Allow Lightwave access into your Premises to install, maintain, or repair, upgrade (if any), and remove Lightwave Equipment. Lightwave personnel have identification which Customer may request and examine. If Customer is not home at the time of a service call, Customer authorizes any other adult resident or guest to grant Lightwave access to Customer's Premises.
6. Any attempted assignment or transfer of the Service is a breach of this Agreement.
7. If Customer does not own the Premises, Customer represents that s/he has obtained permission from the owner to install Lightwave's Equipment (including, without limitation, Equipment attached to the outside of the Premises), and Customer will indemnify Lightwave from all claims of the owner in connection with the installation and provision of the Service.

**C. Equipment:** All Lightwave Equipment and imbedded Software [Equipment] provided to Customer by Lightwave or its agent will remain the property of Lightwave. Lightwave shall have the unrestricted right, but not the obligation, to install or modify the software in any of the Equipment. It is a material breach for Customer to copy, duplicate, reverse engineer or in any way tamper with or interfere with any Software provided to Customer by Lightwave. Customer also agrees:

1. To use the Equipment only for receiving Services ordered from or through Lightwave.
2. To promptly allow Lightwave to pick up the Equipment immediately upon termination of the Service. Equipment shall be in good condition and without any encumbrances, except for ordinary wear and tear resulting from proper use.

If Customer does not allow Lightwave the opportunity to promptly obtain its Equipment, [Unreturned Equipment], or if it is damaged or encumbered, the damages Lightwave will incur will be difficult to ascertain. Therefore, Customer agrees to pay, and Lightwave may charge Customer's account, a liquidated damages amount equal to Lightwave's reasonable estimates of the replacement costs and incidental costs that Lightwave incurs; provided, however, that such amount will not exceed the maximum amount permitted by law [the Unreturned Equipment Charge]. This provision shall survive the termination or expiration of this Agreement.

**D. LIMITATION OF WARRANTIES AND LIABILITY: LIGHTWAVE, ITS PARENTS, AFFILIATES, SUBSIDIARIES, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, AND AGENTS, COLLECTIVELY AND INDIVIDUALLY [LIGHTWAVE], MAKE NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE EQUIPMENT FURNISHED TO YOU AND/OR SERVICES PROVIDED. LIGHTWAVE SHALL NOT BE LIABLE FOR DAMAGES FOR FAILURE TO FURNISH, OR THE**

DEGRADATION OR INTERRUPTION OF ANY SERVICES, FOR ANY LOST DATA OR CONTENT, IDENTITY THEFT, FILES OR SOFTWARE DAMAGE, REGARDLESS OF CAUSE. LIGHTWAVE SHALL NOT BE LIABLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION, MAINTENANCE OR REMOVAL OF EQUIPMENT, SOFTWARE, WIRING OR THE PROVISION OF SERVICES. NOR SHALL LIGHTWAVE BE LIABLE FOR FAILURE TO PROVIDE SERVICE IF THE CAUSE IS DUE TO THE ACT OF AN UNAFFILIATED THIRD PARTY. YOU HEREBY INDEMNIFY AND HOLD HARMLESS LIGHTWAVE FROM ANY CLAIMS, ACTIONS, PROCEEDINGS, DAMAGES AND LIABILITIES, INCLUDING ATTORNEYS' FEES, ARISING OUT OF (i) SUCH DAMAGE OR INJURY RESULTING FROM ANY CLAIM THAT YOUR USE OF THE SERVICE INFRINGES ON THE PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY, (ii) ANY BREACH OR ALLEGED BREACH BY YOU OF THIS AGREEMENT; OR INJURY TO PERSON OR PROPERTY RESULTING FROM YOUR GROSS NEGLIGENCE. UNDER NO CIRCUMSTANCES WILL LIGHTWAVE BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. LIGHTWAVE'S MAXIMUM TOTAL LIABILITY TO YOU ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE PRIOR MONTH OF SERVICE.

E. **Breach of Agreement:** If Customer breaches this Agreement, or any other agreement referenced herein, Lightwave has the right to terminate this Agreement and retrieve its Equipment. Lightwave's failure to require Customer's strict performance of any term of this Agreement shall not be a waiver of Lightwave's right to require strict performance of any term or condition herein.

F. **Entire Agreement:** This Agreement, any applicable tariffs and other agreements specifically referenced herein, constitute the entire Agreement between Lightwave and Customer for the Services and Equipment. The invalidity or unenforceability of any term of this Agreement shall not affect the

validity or enforceability of any other provision.



