

Agreement for the Provision of Residential Broadband Wireless Service (“Agreement”)

- 1) Pixius Communications, LLC (“Seller”) will install and maintain Provisioned Broadband Wireless Access Transport Service (“Service”) to or between the customer’s premise(s). Seller agrees to provide Service commencing on the date testing by the Seller is complete and the Service is available for use by you (the “Buyer”). This period will hereinafter be referred to as the “Initial Term.” The length of the Initial Term is specified on page one of this Agreement (Order Form). Thereafter this Agreement will automatically renew in the last month of the initial term and upon every anniversary thereafter for an additional one (1) year at the then current one (1) year rates.
- 2) To avoid having the Agreement renews automatically, the Buyer must notify the Seller in writing of their intent to terminate. Seller must receive this notification no later than thirty (30) days prior to the expiration of this Agreement.
- 3) Buyer agrees to pay Seller, during the initial term and all renewal terms, a monthly recurring charge (mrc) at the commencement of said term, as well as any one-time charges when applicable.
- 4) In the event that the entire Service is terminated by the Buyer prior to the end of the term of this Agreement, Buyer will notify Seller in writing as of the effective date of the termination, will pay that month’s recurring charge in full and agrees to pay the Seller fees as follows based on the Buyer’s original date of Service installation or as noted on Order Form:
 - a) Months 1-6: \$750
 - b) Months 7-36: Fee is reduced by \$25 per month
- 5) Any actions by the Buyer that causes alteration of any technical parameters for the Service, without the prior written permission of the Seller, shall terminate this Agreement and the Buyer will be subject to the cancellation charges outlined in paragraph 4.
- 6) Installation of the Service and all required equipment will be per the Seller’s current Installation Standards document unless otherwise provided in writing by Seller. The customer owned router will be considered the point of demarcation between Seller’s and Buyer’s responsibility.
- 7) Seller shall exclusively repair and maintain the Service up to the point of demarcation as provided by Seller. Maintenance of the Service shall be at the Seller’s expense except if required because of the conduct of the Buyer, Acts of God or any person using the Buyer’s facilities which are connected to the Seller’s facilities on the Buyer’s side of the point of demarcation. In such an event, Buyer shall pay Seller cost of labor and materials as determined in the normal course of business in accordance with the Seller’s cost accounting system.
- 8) Buyer shall be responsible for the maintenance and configuration of all equipment on the Buyer’s side of the point of demarcation. If in the course of performing service or making repairs on the Service, the Seller determines that the condition and/or configuration of the Buyer’s equipment is the cause of the problem, the Buyer will be charged for a service call at the then current rates.
- 9) Buyer acknowledges that no one is authorized to move or relocate the Service other than the Seller. Buyer can schedule this service by contacting Pixius Communications, LLC. Pixius Communications, LLC will charge the then current rates for moves or relocations.
- 10) All of the equipment provided up to the point of demarcation shall remain the property of Pixius Communications, LLC and will be removed from the Buyer’s premise in the event of termination of this Agreement. In the event the Buyer moves or fails to make scheduled payments, Seller may reclaim all equipment up to the point of demarcation. If Service is terminated for any reason, it is the Buyer’s responsibility to return the equipment to Seller within forty-five (45) days of termination. At Buyer’s request, Seller will remove equipment from Buyer’s premise for a fee of one hundred (\$100.00) U.S. Dollars or the cost to remove equipment, whichever is greater.
- 11) Buyer authorizes Seller, and its employees, agents, contractors, and representatives to enter Buyer’s premises, “Premises”, in order to install, maintain, inspect, repair and remove all the equipment and/or Services. If buyer is not the owner of the Premises, upon request, Buyer will supply Seller with the owner’s name and address, evidence that the Buyer is authorized to grant access to the Premises on the owner’s behalf, and, if needed, written consent from the owner of the Premises. This Agreement is contingent upon Seller, and its employees, agents, contractors, and representatives obtaining a right of entry onto the Premises.
- 12) Buyer and Seller will take reasonable precautions in the location, construction, and maintenance of their facilities so as not to interfere with the Service or facilities furnished by the other.
- 13) No subsequent Agreement between Buyer and Seller concerning the Service shall be effective or binding unless made in writing and approved by both parties. No representation, promise, inducement, offer, or statement of intention has been made by either party, which is not embodied herein.
- 14) The failure of either party hereto to give written notice of default, or to strictly enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or conditions of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement. This Agreement and each of its provisions shall remain at all times in full force and effect until modified by both parties in writing.
- 15) Neither party shall be liable to the other or any third parties claiming through or for such party any indirect, special or consequential damages even if advised of the possibility of such damages.
- 16) Neither party shall assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other, said consent not to be unreasonably withheld; provided, however, each party shall have the right to assign this Agreement to any present or future affiliates, subsidiary or parent corporation of such party without securing the consent of the other party and may grant to any such assignee the same right and privileges such assigning party enjoys under this Agreement. Any attempted assignments not assented to in the manner as prescribed herein shall be void.
- 17) In the event either party shall be in breach or default of any terms, conditions or covenants of this Agreement, and said breach or default shall continue for a period of ten (10) days after the giving of written notice to the defaulting party thereof, or if said breach or default is not capable of being cured within said 10 day period and the defaulting party shall not commence the cure within said period of time and shall not thereafter diligently prosecute to completion the curing of such breach or default, then in addition to all other rights and remedies at law or in equity, the non-defaulting party shall have the right to cancel this Agreement.
- 18) Agreement may be terminated by Seller should Seller determine to cease providing the Service in any given market as part of a change in business planning without notice.
- 19) Seller shall be authorized to discontinue the Service upon notice from any official charged with the enforcement of the law stating the Service is being used as an instrument to violate the law. Seller will notify the Buyer and such discontinuance of Service will not be considered a service interruption for the purpose of credit allowance and all applicable charges will be due.
- 20) This Agreement shall be effective, as of the date of execution by Seller.
- 21) This Agreement shall be a contract under and governed by the laws of the State of Kansas.
- 22) Payment is due before the due date shown on the invoice. Invoices are sent via e-mail or United States Postal Service twenty (20) days before the due date. Accounts are placed on hold if payment is not received prior to five (5) days after due date. If the subscriber’s payment is returned to us unpaid, the subscriber is immediately in default and subject to a returned check charge of \$35. Accounts determined to be in default will have their service suspended. Such interruption does not relieve the subscriber from their obligation to pay. Accounts in default are subject to a re-connection charge of \$25.00 plus all past due balances. If the subscriber defaults, the subscriber agrees to pay the provider its reasonable expenses, including attorney and collection agency fees, incurred in enforcing its rights under these terms and conditions. The provider reserves the right to change the rates and fees without notice. Rate and fee changes may be effective immediately. Cancelled accounts will be terminated at the end of the term. We do not issue refunds for any unused portion.
- 23) If Service is disconnected under any terms and conditions of this Agreement, other than as provided under paragraph 2, Seller reserves the right to disconnect Service at any location where Buyer, its affiliates, successors, assigns, partners, and associated enterprises have Service from Seller.

- 24) Buyer agrees to read and abide to all provisions of the Acceptable Use Policy so far as it relates to Services under this Agreement. This policy may be found at www.pixius.com. Seller reserves the right to modify this policy at its discretion without notice and Buyer accepts sole responsibility to consult this document regularly to ensure that all Buyer activities conform to the then current version.
- 25) Limited Warranty: ANY SELLER EQUIPMENT AND SERVICE ARE PROVIDED BY SELLER "AS IS" WITHOUT WARRANTY OF ANY KIND. SELLER DOES NOT WARRANT UNINTERRUPTED USE OF THE EQUIPMENT OR THE SERVICE. SELLER DOES NOT WARRANT THAT ANY DATA OR ANY FILES SENT BY OR TO BUYER 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 NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY EXCLUDED AND DISCLAIMED.
- 26) Seller will make commercially reasonable effort to deliver a high quality Internet access service. Buyer is purchasing a best-effort data service with no performance or reliability warranty either expressed or implied. Seller may suspend service briefly for routine maintenance or reconfiguration of network components that could cause disruption of service to Buyer. The standard maintenance window is from 12:00 A.M. to 6:00 A.M. Every effort is made by Seller to limit both maintenance occurrences and any associated downtime to Buyer. Seller reserves the right to perform emergency preventive maintenance at any time. Data transfer rates may vary and are affected by variables not under Seller's control including, but not limited to, the remote server, Internet traffic, Buyer's network and Buyer's computer. Seller is responsible only for that portion of the data transfer rate on Seller's network. Seller may, at its option, install new or reconditioned Equipment, including swapping existing Seller's equipment for upgraded equipment, for which the Buyer may incur a pre-approved charge. Seller reserves the right to manage its network for the greatest benefit of its subscribers. Management techniques include, but are not limited to the following actions: rate limiting, traffic prioritization, and protocol filtering. Buyer expressly acknowledges and accepts that such action on the part of Seller may affect the performance of the Service. Seller reserves the right to cancel the Service at its sole discretion for any reason and to enforce limits on specific features of the Service, including, but not limited to, e-mail storage and web hosting maximums. Pixius defines up to in regards to download and upload speeds as follows: the upper limit at which an advertised rate is allowed to transfer data.
- 27) By submitting contact information, Buyer agrees to allow Seller the right to communicate with/to Buyer to inform of (a) changes or additions to products and services and/or Buyer service agreement or fees, (b) violations of Buyer Service Agreement or actions relating to Buyer's privilege to access and use the products or services provided by Seller, or (c) any other matter related to Seller, or products or services offered by Seller. Buyer agrees that Seller may, but is not obligated to, monitor or record any of Buyer telephone conversations, email communications, and instant message chat texts with Seller for (a) quality control purposes, (b) training Seller employees and (c) Seller's own protection. Buyer further agrees that any account users or anyone else Buyer authorizes to use Buyer's account consents to these terms as well. Buyer acknowledges that not all telephone lines or calls are recorded by Seller and that Seller does not guarantee that recordings of any particular telephone call(s) will be retained or are capable of being retrieved. By submitting Buyer information, Buyer acknowledges that Seller may contact Buyer using the information provided, which may include but not be limited to emails, direct mailings, and phone calls (either by a live person, automatic dialer, prerecorded message or a combination of the foregoing) to discuss all products and services offered by Seller. Further Buyer consents to receive such phone calls at the telephone number Buyer provides, including mobile phone numbers. Agreement to this provision is not required in order to use or purchase products or services from Seller; to avoid contact by telephone, send an email to donotcall@pixius.com. However, if Buyer opts out of this provision, Seller may still contact Buyer via telephone (including by automatic dialer or prerecorded message), email, or text in order to provide Buyer with any requested information.
- 28) Damage to and Encumbrances on Premises and/or Equipment:
a) Buyer may not sell, transfer, lease, encumber or assign all or part of the Seller's Equipment to any third party. Buyer shall pay the full retail cost for the repair or replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Seller's Equipment or part thereof, together with any full retail costs incurred by Seller's in obtaining or attempting to obtain possession of any such Seller's Equipment. With regard to such equipment, Buyer agrees: (1) To use the equipment only for the purpose of receiving the Services ordered from Seller and for no other purpose (2) To prevent any connections to the equipment which are not expressly authorized by Seller (3) To prevent tampering, altering or repair of the equipment by any person other than Seller's authorized personnel (4) To assume complete responsibility for improper use, damage or loss of such equipment regardless of cause, including Acts of God. (5) To return the equipment in good condition, ordinary wear and tear resulting from proper use accepted, without undue delay upon discontinuance of Service.
b) If Seller damages the Buyer's Premises or computer hardware during the installation or maintenance of the Service, Seller will, at its sole discretion, either repair or cause to be repaired, said damage or compensate the owner for reasonable, actual and documented costs of necessary repair, not to exceed \$1,000. Seller shall have no liability whatsoever for any damage to or loss or destruction of any software, files or data. Buyer is solely responsible for any and all back-ups of Buyer's computer files.
- 29) Indemnification: Buyer shall have the right to cancel all or part of this agreement if the Service is of such poor quality as to make usage of the Service inadequate for Buyer's originally expressed purpose. Buyer shall notify Seller of any such problem and Seller shall have 20 calendar days to rectify expressed problem to Buyer's satisfaction. If said problem is not rectified within the 20-day period, Buyer shall have the right to cancel all or part of the Service with no early cancellation penalty or additional costs to Buyer.
- 30) Inability to Perform: Neither Party shall be responsible for delays in the performance of its obligations hereunder caused by events including but not limited to those events caused directly or indirectly from Acts of God or any other causes beyond its reasonable control (Force Majeure).
- 31) This agreement sets forth the entire understanding of the parties and supersedes any and all prior agreement or understandings relating to Service.