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Terms of Service

Niagara Broadband Network Limited

Fibre to the Home Internet Service

The following terms and conditions (“Terms of Service”) apply to your use of the Services as defined below. The Service Agreement, any NRBN documents incorporated by reference, together with these Terms of Service constitute our agreement (“Agreement”) with you. If there is any inconsistency between such other NRBN documents and these Terms of Service, these Terms of Service will prevail.

I. Defined Terms

1. In this Agreement, the following terms have the meanings ascribed below:
 - a) “Acceptable Use Policy” (or “AUP”) means NRBN’s rules that govern the use of the high speed Internet service;
 - b) “*Fibre to the Home Service*” (or “FTTH”) means the high speed Internet service provided to Customer pursuant to the Service Agreement;
 - c) “*Services*” means, the FTTH Service and any other Services provided to you by NRBN;
 - d) “*Service Location*” means the location specified on the Service Agreement, where the FTTH Service is provided;
 - e) “*Rental Equipment*” means the modem with built-in Wi-Fi, or other rental equipment provided by NRBN to Customer, in order to access the FTTH Service;
 - f) “*Software*” means any software used to access the Service or used in conjunction with the Service, and may include Software supplied through NRBN, and/or the manufacturer(s) of the Rental Equipment and includes all documentation.

II. Consequences of These Terms of Service and the Use of the Services

2. By entering into this Agreement, you:
 - a) Authorize NRBN to obtain information about your credit history and agree that NRBN may provide information to others about your credit history with NRBN;
 - b) Agree to cause all persons who use Services under your account or with your authorization to comply with this Agreement (including the AUP);
 - c) Acknowledge that the acts or omissions of all persons who use Services under your account or with your authorization will be treated as your acts or omissions;

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- d) Acknowledge that you have received and have had the opportunity to review a copy of the Service Agreement, these Terms of Service, and the AUP.
 - e) **Acknowledge that you may not resell the Services. You may not share the Services with another party who is located outside of your household or the Service Location. You may not assign, resell or transfer the Rental Equipment to any person without prior written consent of NRBN.**
 - f) Will ensure that adequate passwords are utilized to protect your account and the Services, including but not limited to encrypted passwords to access Wi-Fi equipment.
3. The Services may only be used in accordance with the NRBN Acceptable Use Policy.
 4. Canadian copyright law provides severe civil and criminal penalties for the unauthorized reproduction, distribution or exhibition of copyrighted motion pictures, television programming, software, and various other forms of audio and visual content. NRBN shall not be liable for such unauthorized use of intellectual property, nor does NRBN grant you any rights in that regard.

III. Rental Equipment

5. NRBN may install or cause to be installed, the Rental Equipment in the Service Location. The Rental Equipment is provided for your use of the Services and will at all times remain the property of NRBN. You will not sell, lease, transfer or assign the Rental Equipment. You may use the Rental Equipment only at the Service Location address you have indicated to NRBN at the time you subscribe to the Services. You will not re-arrange, disconnect, remove, repair or otherwise interfere with the Rental Equipment nor will you relocate the Rental Equipment to another address without NRBN's prior written consent.
6. Rental Equipment provided by NRBN will be charged as part of the monthly Service Fee, plus applicable taxes. NRBN may require you to pay a Rental Equipment deposit prior to providing you with the Rental Equipment. You agree to keep all of the Rental Equipment free and clear of any lien or encumbrance of any kind whatsoever. If you become aware that any lien or encumbrance has been placed on the Rental Equipment you are responsible to notify NRBN immediately and to assist NRBN in removing it.
7. You are responsible for the safekeeping of the Rental Equipment. If, while in your care, the Rental Equipment is damaged, lost or stolen you shall immediately notify NRBN and you agree to pay NRBN the full cost, including the costs incurred by NRBN to recover, repair and/or replace the Rental Equipment. You hereby authorize NRBN to charge your account and process payment for all Rental Equipment charges, plus applicable taxes, using any of the payment methods accepted by NRBN for your account (including pre-authorized credit card or bank withdrawal).

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8. Any unauthorized attachments to the Rental Equipment or interfering or tampering with the Rental Equipment or unauthorized use of the Rental Equipment are prohibited and may constitute theft under the Criminal Code of Canada.
9. You are required to return the Rental Equipment to NRBN in good working order as follows (i) if your Services have expired or are terminated, within thirty (30) days of your Services being disconnected, (ii) if NRBN has replaced your Rental Equipment, within thirty (30) days of the replacement order, or (iii) if NRBN has provided you Rental Equipment for self-install and you do not install such Rental Equipment, within thirty (30) days of the self-install order.
10. In the event that the Rental Equipment is not returned to NRBN as set out above, you agree to pay to NRBN a "**Rental Equipment Non-Return Fee**", in an amount equivalent to the undiscounted retail value of the Rental Equipment, which amount will vary based on the type and model of the Rental Equipment, plus applicable taxes. The Rental Equipment Non-Return Fee will be applied and appear as a charge on your account on the date (i) your Services have expired or are terminated, (ii) a replacement order for Rental Equipment has been processed, provided however that if the Rental Equipment has been returned to NRBN within thirty (30) days as set out above payment will not be processed and the Rental Equipment Non-Return Fee charged to your account will be reversed. If the Rental Equipment has not been returned to NRBN as set out above, payment for the Rental Equipment Non-Return Fee will be processed using any of the payment methods accepted by NRBN for your account (including preauthorized credit card or bank withdrawal).
11. All Equipment and devices purchased and paid for by you, which are neither returnable to nor refundable by NRBN and that you are required to supply for access and use of the Services or that you use in connection with the Services, such as audio devices, streaming devices, television, telephones, home security and/or medical devices, fax machines, computer equipment, Wi-Fi extenders, or any other equipment and/or associated devices (collectively, "**Your Equipment**") shall be and remain your responsibility. You agree that NRBN is not responsible for any damage or loss to Your Equipment arising from your use of the Services. You further acknowledge and agree that NRBN is not responsible for the installation, operation, maintenance, use or support of Your Equipment, including without limitation, the compatibility of Your Equipment with any Rental Equipment or the Services.

III. Term and Renewal

12. Services are sold on the basis of: i) month-to-month; or a Fixed Term (i.e. 1-year; 2-year, 3-year; 4-year; or a 5-year Fixed Term, which is stated on the Service Agreement. At

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the end of any Fixed Term, NRBN will continue to provide the Services to you without a set period at NRBN's then-applicable rates, unless you cancel the Services.

IV. Billing & Payment

13. You agree to pay NRBN the total charges for access to and/or use of the Services, including, without limitation: fees applicable to installation; Rental Equipment rental, deposits, or non-return charges; processing fees, costs incurred by NRBN and interest charges, if your account is past due; service calls, plus any applicable federal, provincial or regulatory taxes or surcharges, incurred in connection with the access to and/or use of the Services (as all such fees may be changed from time to time).
14. NRBN will bill you each month in advance for the Services.
15. You agree to pay all amounts by the due date indicated on your invoice by using any of the payment methods accepted by NRBN. Payments made after the statement date on your invoice will be reflected on your next invoice. Amounts owing after the due date are subject to a late payment interest charge calculated and compounded monthly on the outstanding amount at 2% per month (26.8% per year) from the date of the first bill on which it appears until paid in full. If your account remains unpaid for 60 days, NRBN may refer your account to a collections agency and you agree to pay a fee of \$20.00 for services relating to the administration, processing, or service costs for your account (for example, collections efforts due to non-payment or suspension, disconnection or reactivation of your Services). You agree to pay NRBN \$25.00 if your credit card, debit card, or pre-authorized payment is denied or if your cheque is returned due to non-sufficient funds. Payment of the full amount due will be required before the Services may be restored, provided NRBN is not under any obligation to restore the Services to any person who continues to fail to make timely payment of the amounts due or abuses NRBN's Acceptable Use Policy applicable to the Services.
16. You are responsible to ensure that the billing information you provide NRBN is accurate. You agree to promptly notify NRBN of any changes in your billing information including expiration or replacement of debit cards or credit cards.
17. You are responsible for any costs, including legal fees and expenses, collection agency fees or payments and Court costs incurred by NRBN to collect any amounts owing under these Terms of Service.
18. You must bring billing invoice questions and disputes to NRBN's attention within 60 days of the invoice date. Your failure to contact NRBN regarding any invoice will constitute your acceptance of the invoice. NRBN maintains discretion to disconnect services during a dispute if payment arrangements satisfactory to NRBN, have not been made by you.

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V. Software and Firmware Updates

19. You expressly agree to receive software and firmware updates in relation to the Services. Such updates may change, add or remove features and/or functionalities of the Rental Equipment and/or the Services. During the implementation of such updates, you may experience a brief service outage.

VI. Moving and Service Relocation

20. If you are moving, you are responsible to notify NRBN at least 30 days prior to the date you are moving. If you move to a location that is outside of the area served by NRBN and is not serviced by the NRBN FTTH Internet Service, these Terms of Service shall be terminated and you must return all Rental Equipment to NRBN. The ability to transfer the Services to a new location is dependent on the availability of the Services at the new location, and may be subject to an installation charge (Note: early termination fees may be applicable see section IX below).

VII. Termination of Service by Customer

21. In relation to your account, you may terminate the Services by notifying NRBN by telephone at 1-877-331-6726, or by contacting NRBN at www.nrbn.ca, or 4343 Morrison Street, Niagara Falls, ON L2E 3N8 and advising NRBN of your desire to terminate (Note: early termination fees may be applicable see section IX below);

VIII. Obligations of Customer Upon Termination of Services

22. You agree that if the Services are terminated for any reason you will:
- (a) pay NRBN in full for any amounts due and outstanding for your use of the Services, plus applicable taxes, including any applicable early termination fees; and
 - (b) return the Rental Equipment to NRBN within thirty (30) days of termination of the Services.
23. On or after expiry or termination of the Services for any reason, if your account has a credit balance less than ten dollars (\$10.00), this credit balance will not be automatically

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refunded to you when Services expire or are terminated. If your account has a credit balance of ten dollars (\$10.00) or more, we will refund that balance to you within thirty (30) days (i) by mailing a refund cheque to the last known address that we have for you in our records or any other address that you instruct us to mail to or (ii) by processing the refund to the credit card on your account. It is your responsibility to keep us informed of any change in your mailing address or credit card details. Your failure to inform us of any such changes will, in the event that any refund cheque mailed to you is returned as undeliverable or any refund to your credit card is unsuccessful, result in the forfeiture to NRBN of the credit balance amount.

IX. Early Cancellation Fees

24. THE PRICING FOR THE SERVICES IS DISCOUNTED BASED ON THE LENGTH FIXED TERM, AS SPECIFIED ON THE SERVICES AGREEMENT. IN THE EVENT THAT YOU TERMINATE THE SERVICES, PRIOR TO THE END OF THE FIXED TERM, YOU WILL BE CHARGED AN EARLY CANCELLATION FEE WHICH IS CALCULATED ON THE BASIS OF THE RECURRING MONTHLY SERVICE FEE, PLUS APPLICABLE TAXES, MULTIPLIED BY THE NUMBER OF MONTHS REMAINING ON THE SERVICE TERM.

X. Termination or Suspension of the Services by NRBN

25. NRBN may restrict, block, suspend or terminate all or any part of the Services immediately if you:

(a) fail to make timely payment on your account for the Services and, in the case of a termination, such failure has continued for more than 60 days; provided, however, that in the case of suspension or termination when your account balance is more than \$50, such failure has continued for more than 30 days;

(b) become bankrupt or otherwise insolvent;

(c) fail to provide NRBN with reasonable entry and safe access to install, inspect, repair, replace or to perform necessary maintenance on the Rental Equipment, or NRBN's facilities or network;

(d) are in breach of any term or condition of these Terms of Service or of NRBN's Acceptable Use Policy applicable to the Services that you subscribe to; or

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- (e) if you relocate, alter, abuse or disconnect the Rental Equipment.
 - (f) if you resell the Services or share the Services with another party who is not located within your household or Service Location.
26. Prior to disconnecting or suspending the Services, NRBN will attempt to notify you using the information shown on your account stating the reason and amount owing (if any); the date scheduled for the suspension or disconnection; the amount of the reconnection charge and contact information for a NRBN representative with whom disconnection or suspension can be discussed. Disconnection may occur on weekdays between 8 a.m. and 9 p.m. or on weekends between 9 a.m. and 5 p.m. unless the weekday or weekend day precedes a statutory holiday, in which case disconnection may occur before noon.
27. Notwithstanding the conditions listed above, NRBN will not provide you notice of a proposed restriction, block, suspension or termination:
- (a) If immediate action must be taken to protect NRBN's facilities, Rental Equipment, or network, or if suspension is required by legal requirement, court order, ordinance or regulatory authority;
 - (b) If NRBN believes that extreme circumstances exist, or that there is an abnormal risk of loss involved in delaying the suspension or termination;
 - (c) If you misuse or abuse or permit others to misuse or abuse the Services for purposes that are contrary to law, these Terms of Service or NRBN's Acceptable Use Policy applicable to the Services.
 - (d) In an emergency situation.
28. If the Services are restricted, blocked, suspended or terminated for cause, NRBN is not obligated to restore the Services. If NRBN agrees to restore your Services, a reconnection service charge may be applied to your account.

XI. **NRBN's Liability**

29. NRBN shall not be liable for:
- (a) any interruption or unavailability of the Services, including, without limitation, any interruption or unavailability of emergency 9-1-1 service if you utilize a Voice Over

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Internet Protocol (“VoIP”) telephone service in conjunction with the Services, public alerts or special needs telecommunications services;

(b) any act or omission of any third party including, but not limited to, any other provider of connections, facilities or services;

(c) your conduct, acts or omissions;

(d) any event beyond the reasonable control of NRBN including acts of God, severe weather (including lightning), wind storms, power failures, labour disputes, riots or civil disputes, war or armed conflict, any law, governmental order, decision or regulation, or order of any court of competent jurisdiction;

(e) NRBN’s failure, for any reason, to activate the Services on the activation date you requested or date provided to you by NRBN;

(f) any defacement of, or damage to, the Service Location resulting from the attachment of any wiring and/or the Rental Equipment furnished by NRBN, or removal thereof, when such defacement or damage is not wholly caused by NRBN’s negligence; and

(g) any damages you incur as a result of the operation or failure of Your Equipment, facilities, wiring or other devices you use with the Services, including without limitation if any of Your Equipment, facilities, wiring or other devices that you use with the Services are now or later become incompatible with the Rental Equipment and/or the Services.

30. IN THE EVENT OF ANY BREACH BY NRBN, INCLUDING ANY BREACH OF A FUNDAMENTAL TERM OR ANY NEGLIGENCE BY NRBN, YOUR EXCLUSIVE REMEDY SHALL BE TO RECEIVE FROM NRBN PAYMENT UPON REQUEST, FOR ACTUAL AND DIRECT DAMAGES TO A MAXIMUM AMOUNT OF TWENTY (\$20) DOLLARS.
31. UNDER NO CIRCUMSTANCES SHALL NRBN BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR REVENUE, LOSS OF BUSINESS OPPORTUNITIES, THAT RESULT IN ANY WAY FROM THESE TERMS OF SERVICE, INCLUDING YOUR USE OF THE RENTAL EQUIPMENT AND/OR SERVICES, OR YOUR RELIANCE ON OR USE OF ANY INFORMATION, SERVICE, MERCHANDISE OR MATERIAL VIEWED OR PROVIDED ON OR THROUGH USE OF THE SERVICES, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR SOFTWARE, LOSS OF DATA, BREACH OF PRIVACY OR SECURITY; ANY

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LOST OR STOLEN PASSWORDS, IDENTIFIER OR CODES; ERRORS, DEFECTS, DELAYS IN RECEPTION OR TRANSMISSION OR TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE SERVICES.

32. NRBN SHALL NOT BE LIABLE FOR, AND YOU SHALL INDEMNIFY AND SAVE NRBN HARMLESS FROM AND AGAINST ALL SUITS, CLAIMS OR JUDGMENTS HOWSOEVER ARISING OUT OF ANY OF THE FOLLOWING;

(a) CLAIMS FOR LIBEL, SLANDER, INFRINGEMENT OF COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY OR BASED ON ANY OTHER LEGAL THEORY HOWSOEVER ARISING FROM THE MATERIAL, DATA OR OTHER CONTENT FROM THE SERVICES;

(b) ANY LOSSES, DAMAGES, EXPENSES OR COSTS (INCLUDING LEGAL FEES) ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM, OR OTHER PROCEEDING BASED ON A CONTENTION THAT THE USE OF THE RENTAL EQUIPMENT AND/OR THE SERVICES BY YOU OR A THIRD PARTY INFRINGES ANY INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY; OR

(c) CLAIMS BY THOSE TO WHOM YOU PROVIDE ACCESS TO THE RENTAL EQUIPMENT AND/OR THE SERVICES.

33. FOR THE PURPOSES OF THIS SECTION, ANY REFERENCE TO "NRBN" SHALL INCLUDE NIAGARA REGIONAL BROADBAND NETWORK LIMITED, ITS PARTNERS OR ASSOCIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS OR AGENTS.

XII. **Limited Warranty & Service Limitations**

34. ALL RENTAL EQUIPMENT AND THE SERVICES ARE PROVIDED BY NRBN "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. NRBN DOES NOT WARRANT UNINTERRUPTED USE OR OPERATION OF THE RENTAL EQUIPMENT AND/OR THE SERVICES. NRBN DOES NOT WARRANT THAT ANY DATA OR COMMUNICATION SENT BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME, OR THAT ANY CONTENT OR OTHER MATERIAL ACCESSIBLE ON OR FROM THE SERVICES ARE FREE OF DEFECT, ERROR OR VIRUSES. NRBN DOES NOT WARRANT THE CONTENT, INCLUDING WITHOUT LIMITATION CONTENT OF ANY PROGRAMMING

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AND/OR ADVERTISING THAT IS ACCESSIBLE ON OR FROM THE SERVICES. ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF TITLE OR NONINFRINGEMENT, OR ANY IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY WITH REGARD TO ANY MERCHANDISE, INFORMATION, PROGRAMMING, ADVERTISING, CONTENT OR SERVICE AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY EXCLUDED.

35. The Services provided to you, includes the services specified on your Service Agreement and any other services you may purchase from NRBN from time to time. NRBN provides the Services on a “reasonable efforts” basis and does not guarantee upload or download speeds. Due to the design of the NRBN’s network, and the external Internet network, NRBN cannot guarantee a specific speed to subscribers when navigating particular sites. There are many factors that affect Internet speed, including but not limited to the subscriber’s location, weather, Internet traffic, Your router capability, the specific technical configuration of the Your Equipment including computer, and other peripherals, (other factors affecting speed include but are not limited to: browser configuration, firewall settings, antivirus programs, anti-spam settings, etc.) as well as other technical factors such as demands on the network and/or network congestion that are not within NRBN’s control.
36. NRBN has established an Acceptable Use Policy (“AUP”), which forms part of the Service Agreement. The purpose of the AUP is to safeguard the Internet service provided to all of NRBN’s subscribers, and to ensure that all subscribers have equitable access to the Internet Service. NRBN may, from time to time, implement traffic management protocols in accordance with CRTC policies, in order to ensure that all of its customers are able to access the Internet on an equitable basis.
37. NRBN reserves the right to place reasonable limitations on your data consumption if in NRBN’s opinion, such data consumption negatively impacts the operation of its network and/or Services provided to other customers.

XIII. **DISPUTES AND GOVERNING LAW**

38. If you have a dispute regarding our Services or a claim ("Claim") it is our goal to resolve the issue quickly. If you have a Claim you should give written notice to NRBN at 4343 Morrison Street, Niagara Falls, ON, L2E 3N8 attention: General Manager.

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39. If NRBN has a Claim, we will give you notice at your billing address. If the Claim relates to a matter that should be brought before the Canadian Radio- television and Telecommunications Commission (CRTC) or other customer complaints body set up to address such matters, you agree that the CRTC or such body will resolve the claim. This paragraph is subject to any prohibitions under applicable law.
40. These Terms of Service shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. These Terms of Service constitute the entire understanding between the parties with respect to the subject matter of these Terms of Service and supersede and replaces any and all prior written or verbal understandings.
41. If you are a consumer with a monthly bill under \$2,500, you may escalate the claim externally to the Commissioner for Complaints for Telecommunications Services ("CCTS"). CCTS is an independent agency whose mandate is to resolve complaints of individual and small business customers about their broadcasting and telecommunications services, free of charge. If you have a complaint about your Services, you must first try to resolve it directly with you service provider (NRBN). If you have done so and have been unable to reach a satisfactory resolution, CCTS may be able to help you.
42. To learn more about CCTS, you may visit its website at www.ccts-cprst.ca or call toll-free at 1-888-221- 1687.

XIII. CONFIDENTIALITY

43. NRBN may provide your account information to our organization and to our agents in order to service your account. Subject at all times to NRBN'S Privacy Policy, <http://nrbn.ca/privacy/>. NRBN may disclose any information as is necessary to:
- (a) satisfy any legal or regulatory requirement or governmental request;
 - (b) obtain, deliver, operate and market the Services; or
 - (c) protect NRBN or its customers.

XV. GENERAL

44. You understand and acknowledge that when using home networking equipment, there are certain risks. For example, other users might gain access to your Equipment, your Services and your Accounts. NRBN is not liable for any claims or damages relating to

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- the use of home networking, even if the Rental Equipment and/or home networking equipment is provided, installed, maintained or supported by NRBN.
45. The IP Address associated with your Services assigned to you by NRBN, shall remain our property at all times and may be changed or withdrawn at any time in our sole discretion. IP Addresses may change each time your modem is powered off, or any time at our discretion.
 46. These Terms of Service will ensure to the benefit of, and be binding upon, your respective heirs, executors, administrators, successors and permitted assignees and, for the purpose of NRBN these Terms of Service shall benefit to any party that controls, is controlled by or under common control with NRBN.
 47. Upon termination of these Terms of Service, all accrued obligations or liabilities and the provisions, which by their nature are intended to continue beyond such termination, will remain in effect. Without limiting the generality of the foregoing, the terms of NRBN'S Acceptable Use Policy applicable to the Services you subscribed to shall survive the expiration and/or earlier termination of these Terms of Service.
 48. The failure of either party to insist upon strict interpretation of these Terms of Service or to exercise any options set out in these Terms of Service, shall not act as a waiver of any right or option, but the same shall continue to be in full force and effect. No waiver by either party of any breach shall be effective unless expressed in writing.
 49. NRBN does not grant you any right to use NRBN's logos, trademarks or trade names in any manner unless NRBN gives you prior written consent and/or grants you an appropriate license to use.
 50. The standard installation consists of a modem with Wi-Fi capability. If you require a Wi-Fi mesh extender system to cover a larger area in the Service Location, such equipment may be available at an additional monthly cost. The installer will run up to 50 feet of cable from the point of entry to the computer's location in the Service Location. In most cases a small hole is required to be drilled in the outside of the wall to allow entrance of the cable. If the installer is required to run a longer cable within the Service Location, or from the street to the Service Location, additional fees may be applicable. The installer will provide you with information pertaining to additional installation charges, at the time of installation.