

## Wideband 360 Internet Service Agreement

### 1.0 General Description of Services – NEXSTREAM will provide reliable broadband internet access (“Service”).

This Service offering allows broadband internet access subject to this Agreement, the Acceptable Use Policy, Privacy, Policy, and Open Internet Compliance Statement. See [www.Nexstream.net](http://www.Nexstream.net) for legal for copies of those policies.

**1.1 Changes.** The capabilities and service available through the internet as a whole regularly change and expand. In order to improve and adapt the internet access to these changing conditions, NEXSTREAM may add, delete or change the internet access Service, at its sole discretion, by providing fifteen (15) days prior written notice; provided. NEXSTREAM also reserves the right to increase pricing under this contract if its underlying provider raises the circuit cost. On delivery and testing of a circuit, if NEXSTREAM determines a stable connection at the contracted speed can not be provided (due to sometimes inaccurate pre-qualification results), the customer may re-contract with NEXSTREAM for the deliverable service, or refuse service, thus voiding the original contract. In the event that NEXSTREAM makes a material change to the internet access which Customer elects not to accept, Customer may terminate this Agreement as provided for in Section 3.0 below without penalty. If Customer elects to move services from its contracted physical location to another location during the term of this contract, Customer may be charged a fee to move the services equivalent to the costs incurred by NEXSTREAM.net to accommodate the move. Customer will be apprised of the charges before any work is done in preparation for the move.

**2.0 Contra-indications** – Users must comply with NEXSTREAM’s Acceptable Use Policy (AUP) and all accepted internet access policies of all upstream networks. The AUP contains NEXSTREAM’s content responsibility and internet service use restrictions. Due to the inherent nature of network protocols, customer’s maximum throughput will never meet the contracted physical link speed.

**Payment** – All payments are due on the 1<sup>st</sup> of each month and will be billed in advance.

Payment is due within fifteen (15) days of invoice date (“Due Date”). If payment is not received by the 7<sup>th</sup> day after the Due Date, a late fee of \$25 will be applied to the account. If payment is not received by the 10<sup>th</sup> day after the Due Date, service will be interrupted until payment is received. If NEXSTREAM still has not received payment by the 30<sup>th</sup> day after the Due Date, Service will be disconnected and early termination fee will be applied. Customer may elect to pay \$75 re-connect fee to reinstate service and early termination fees will not be applied. Customer is responsible for full service agreement term. Billing is done by US mail or e-mail. Fees are due even if you do not receive an invoice. The agreed upon costs of the Service cannot be altered, modified, or changed in any way without the express written consent of both parties.

**3.0 Indemnification and Liability** – Customer shall defend, indemnify, and hold harmless NEXSTREAM, it’s partners, employees and agents from and against any and all lawsuits, claims, demands, penalties, losses, fines, and liabilities, damages, and expenses (including attorney’s fees) of any kind, without limitation, caused by Customer in connection with Customer’s operations, installation or maintenance of equipment and facilities contemplated by this agreement, or otherwise arising out of or in any way connected with NEXSTREAM’s provision of service of performance under this agreement. This Section shall not apply to the

extent that any loss or damage is caused by the gross negligence or willful misconduct on the part of NEXSTREAM

**3.1** NEXSTREAM will not be liable for any act, omission to act, negligence or defect in the quality of service of any underlying carrier or other service whose facilities or services are used in furnishing any portion of the service received by the Customer. NEXSTREAM will not be liable for any failure of performance that is caused by or the result of any act or omission by customer or any entity other than NEXSTREAM that furnishes services, facilities, or equipment used in connection with NEXSTREAM's services or facilities

**3.2** NEXSTREAM shall provide 99.99% total system availability. Pro-rated fee adjustments will be provided only for periods of service loss greater than twenty-four (24) consecutive hours.

**4.0 CONFIDENTIALITY.** This agreement, rates and terms shall be held in confidence by all parties, except as allowed in writing by NEXSTREAM. If either party discloses such information to a person within that party's company on a need to know basis, such person will be advised of the confidential nature of said information.

#### **5.0 DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

**6.1** NEXSTREAM provides services hereunder strictly on an "AS IS" and "AS AVAILABLE" basis without any express guarantee or assurance of quality, reliability or functionality. Except as expressly set forth herein, Customer accepts all risk, including all risk with respect to suitability, use and performance of internet Connection Service. NEXSTREAM DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In any instance involving performance or nonperformance by NEXSTREAM with respect to services provided hereunder, Customer's sole remedy shall be refunded of a pro-rate portion of the price paid for internet access which was not provided. Refunds will be provided only for periods of service loss greater than twenty-four (24) consecutive hours.

**6.2** NEXSTREAM will not be liable for any damage that Customer may suffer arising out of use, or inability to use, the internet access Service except for willfully negligent acts by NEXSTREAM personnel, NEXSTREAM will not be liable for unauthorized access to Customer's transmission facilities or Customer's Customers' data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of NEXSTREAM's negligence. NEXSTREAM shall not be liable for indirect, consequential, incidental, or special damages even if advised of the possibility in advance. NEXSTREAM shall not be liable for any lost property or data of Customer or Customer's Customers. NEXSTREAM's liability for damages to Customer for any cause whatsoever, regardless of form of action, shall be limited to the greater of the total amounts paid by Customer to NEXSTREAM hereunder.

#### **6.0 TERMINATION**

**7.1** *Term.* This contract is for a one-year (12) month term. Early termination will result in a charge for service through the remainder of the term committed.

**7.2** *Termination by Either Party.* If any of the events below occur with respect to one party, then the other party may terminate this Agreement effective immediately upon the delivery or written notice:

1. A party becomes insolvent; files a voluntary petition in bankruptcy, proposed any dissolution, liquidation, reorganization or recapitalization; has filed against it an involuntary petition in bankruptcy, or receiver is appointed or takes possession of the party's property, and such petition is not dismissed or stayed

within ten (10) calendar days of such filing, appointment or taking possession; makes an assignment for the benefit of creditors, or is adjudicated as bankrupt; or takes any similar action under the law of any jurisdiction.

2. Material breach of this Agreement which is not remedied within ten (10) calendar days after written notice (describing the breach with particularity) has been given.

3. Customer is merged into or acquired by another entity or there is a substantial change in Customer's direct or indirect ownership or control of its voting securities or the sale of substantially all of its assets.

**7.3** *Effect of Termination.* Upon termination Customer agrees to cease all use of the internet access and to return any NEXSTREAM-provided equipment and software. Failure to do so will result in additional charges on your final bill. Equipment can be shipped to:

Nexstream  
Attention: Service Termination  
415 S Washington St  
Fredericksburg, TX 78624

**8.0 FORCE MAJEURE** – Neither Party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

**9.0 NOTICE AND PAYMENT** – Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified, registered or Express mail, return receipt requested or by overnight delivery. Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

**10.0 JURISDICTION/DISPUTES** – This Agreement shall be governed in accordance with the laws of the State of Texas. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Texas, County of Gillespie including the state and federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdiction or venue defenses otherwise available to it.

**11.0 AGREEMENT BINDING ON SUCCESSORS** – The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

**12.0 ASSIGNABILITY** – Neither party may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of the other party which shall not be unreasonably withheld.

**13.0 WAIVER** – No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of the other provisions of this Agreement.

**14.0 SEVERABILITY** – If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

**15.0 INTEGRATION** – This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement, it shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.


**Customer:** \_\_\_\_\_

**NEXSTREAM**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Signature:**  \_\_\_\_\_  
VP of Business Development