



# INTERNET POLICIES

Acceptable Use Policy (pgs 1 - 3) and Internet Master Agreement (pgs 3 -12)

(E) Depending on the High-Speed Product Customer purchases, GWIS may provide at least one IP address for Customer's use with the High-Speed Product. Unless a static IP address is specifically set out on Customer's Order Form, this IP address will be dynamic and will change periodically. If you choose a static IP address, you will be charged an additional Fee. Upon termination of this Agreement, the IP address will be recycled. Customer has no ownership rights in the IP address.

(F) Unless Customer has entered into a resale agreement with GWIS, it may not resell the High-Speed Product. This restriction applies even if Customer is not collecting payment for its activities.

(G) Individuals, who are members of Customer's household, and Customer's employees or agents, may use the High-Speed Product to access the Internet. Customer may not use the High-Speed Product to provide Internet access to the general public. This restriction applies even if Customer is not collecting payment for its activities.

**(H) Equipment –**

i. Golden West will provide the equipment necessary to connect the High Speed Product to you (Leased Equipment). This Leased Equipment is provided by a third party and is leased. Customer's use and/or ownership of it are governed by the documents provided with the Leased Equipment. While GWIS may agree to help facilitate Customer's use of the Leased Equipment, and provide first level tech support, GWIS makes no warranties regarding the Leased Equipment.

Upon Termination, Customer agrees to return the Leased Equipment using GWIS returns procedures set out in paragraph 7(C) of the Master Agreement.

ii. Customer may not service, alter, modify or tamper with the Leased Equipment, or permit any person (other than GWIS or its authorized third parties) to do so. This prohibition includes, but is not limited to, altering the Leased Equipment to change the downloading or uploading capacity.

iii. Lessee will not relocate any equipment without prior consent of Golden West. All maintenance or repairs to the equipment resulting from normal wear shall be performed by Golden West. Lessee will be responsible for repairs to equipment resulting from negligence or intentional damage by subscriber.

(I) The High-Speed Product is location specific. That means that GWIS is not able to provide Internet access in all places. Should Customer request that GWIS provision the High-Speed Product to a location other than the one to which it was initially provisioned, the High-Speed Product may be interrupted, or, GWIS may not be able to provide the High-Speed Product at the newly requested location. Customer may not terminate this Agreement based on reasons of a move to a different location and GWIS inability, or unwillingness, to provide the High-Speed Product at that location.

**(J) Internet connections require landline service.**



Customer Service – Dial 777 | Trouble Report – Dial 611

(The above numbers must be dialed from a Golden West phone)

Toll-Free – 1-855-888-7777 | www.goldenwest.com | info@goldenwest.com

## Acceptable Use Policy

This is Golden West Acceptable Use Policy (AUP). Golden West is referred to as GWIS, us, we or our. Users of our Internet related products are referred to as customer, you or your. This AUP is part of each customer's contract with us, whether the contract is electronic or paper. By using our products, you agree to be bound by this AUP. Your End Users and their customers are also bound by this AUP.

You expressly understand that the evolving nature of the Internet and on-line commerce makes it necessary for us to reserve the right to make changes to this AUP at any time, and without notice. For this reason as well, this AUP may not represent all possible ways in which you or an End User (as defined in your contract) engage in unacceptable behavior. We reserve the right to determine, in our sole and exclusive judgment, what activities are unacceptable.

This AUP incorporates, either explicitly, or by reference, other policies from entities providing products through us to you. These policies must be "passed through" to you. These policies apply to you through this AUP. You are strongly encouraged to review these policies prior to agreeing to be bound by this AUP. They are listed at Policies and Information.

You violate this AUP when you, or your End Users, engage in activities prohibited by the AUP. It is your responsibility and contractual obligation to ensure that End Users comply with this AUP, and cooperate with us in the enforcement and administration of this AUP.

**1. Lawful Purpose –** The Services may be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of any applicable law, regulation, this AUP, or the Agreement, is prohibited. You may not use our products to directly facilitate the violation of any particular law or regulation.

The following list of prohibited uses is a partial list of uses prohibited by this AUP, and does not represent all unlawful uses of our products by you or End Users:

- instructing others in unlawful activities;
- forging, misrepresenting, omitting or deleting message headers, return mailing information, internet protocol addresses to conceal or misidentify the origin of a message;
- creating or sending Internet viruses, worms or Trojan horses, flood or mail bombs, or engaging in denial of service attacks;
- hacking, and/or subverting, or assisting others in subverting, the security or integrity of our products or systems;
- soliciting, or instructing in, the performance of any illegal activity, even if the activity itself is not performed;
- You and End Users may not engage in activity that infringes or misappropriates the intellectual property rights of others. This includes but is not limited to, copyrights, trade marks, service marks, trade secrets, software piracy and patents. You and End Users may not use our products to defame, harass, abuse or threaten third parties; and/or
- acting in any manner that might subject us to unfavorable regulatory action, subject us to any liability for any reason, or adversely affect our public image, reputation or goodwill, as determined by us in our sole and exclusive discretion.

**2. SPAM** – We have a zero tolerance approach to SPAM. This zero tolerance policy extends both to your using our products to disseminate SPAM, and the use of our products to send SPAM to our customers.

Customers, who send, disseminate or support SPAM will have their accounts suspended. We consider SPAM to be the sending or receipt of 200 or more email messages at one time. However, we reserve the right to determine, in our sole and absolute discretion, what constitutes SPAM. We also prohibit you, or End Users, from relaying email. In addition, should your use of our products cause us to be “black listed,” your account may be suspended.

We filter email for SPAM. We are not responsible for refused, expired or misdirected email as a result of this filtering. It is your sole and exclusive responsibility to properly configure your SPAM filter. Quarantined email will not be available to you indefinitely. It is your obligation to review your SPAM mailbox regularly.

**3. Copyright Infringement** – We are registered with the United States Copyright Office pursuant to the Digital Millennium Copyright Act (DMCA). If your site has been copied by our customer, or an End User, in a way that falls within the terms of the DMCA, you must provide us with proper notice of such an infringement. The DMCA contains very specific guidelines of what your notice must contain. These guidelines are available here: <http://www.copyright.gov/title17/92chap5.html#512>.

Our designated agent for receipt of notices pursuant to the DMCA is: Greg Oleson, Director of Member Services, Communications and Government Affairs.

**4. Violations of Rights, Other than Copyright** – Complaints about such activity by our customers or End Users may be directed to Golden West ([dmca@goldenwest.com](mailto:dmca@goldenwest.com)).

**5. Child Pornography, Child Erotica and Bestiality** – We take a zero-tolerance approach to using our products to disseminate or display images classified under U.S. law as child pornography, child erotica and/or bestiality. The contracts of customers who are themselves, or whose End Users are, using our products to disseminate or display child erotica, regardless of its literary merit, will be terminated.

**6. U.S. Export Laws** – You may not use the Services to engage in a violation of U.S. export laws. Violation of these laws may include selling products that may be legal to sell in the U.S., but illegal to export. You may not use our products to provide products to End Users with whom U.S. citizens may not do business.

**7. IP Addresses** – We administer the network on which our products are provided. You cannot use IP addresses which were not assigned to you by us. If it is determined that you are using IP addresses which were not officially assigned by us, you will be suspended from network access until such time as the IP address overlap can be corrected. We own the IP numbers and addresses that may be assigned to you by us. These addresses may not be assigned or transferred, and are recycled by us on termination of your use of the products. We may, in our sole discretion, change these addresses.

**8. Suspension and/or Termination of Products, and Credits** – Your or an End User’s failure to abide by any of the items set out in this AUP is grounds for suspension or termination of your contract. Any termination or suspension may be undertaken with, or without, notice to you or an End User.

We do not issue credits for outages incurred as a result of our decision to suspend or terminate service for a violation of this AUP. You agree to hold us harmless from any claims that a suspension or termination of products for this reason has damaged an End User.

**9. Monitoring Products, Cooperation with Law Enforcement and Legal Documents** – We may disclose information, including information that you or End Users may consider confidential, in order to comply with a court order, subpoena, summons, discovery request, warrant, regulation, or governmental request. We assume no obligation to inform you or an End User that information has been so provided, and in some cases may be prohibited by law from giving such notice. We may also disclose such information when it is necessary for us to protect our business, or others, from harm.

**10. Security** – You are solely responsible for ensuring that your data is secure, that confidential information remains confidential, and that you do not expose your business to risks you are not prepared to assume. We reserve the right to take immediate action to suspend or terminate your

account if, in our sole and exclusive discretion, you or an End User is engaging in activities that jeopardize our security, the security of other customers, or of the Internet in general. You may not be provided with advance notice that we are taking such action.

**11. Internet Access** – For dial-up connections, user names are restricted to one dial-in connection at a time. You may not use our dial-up products for multiple concurrent dial-in sessions. This product is not designed for continuous connection. You may only use the dial-up product while you are actually transacting business on the Internet. We reserve the right to terminate your dial-up connection if we determine that you have exceeded the amount of connection time typically associated with customers similar to you.

## Internet Master Agreement

This Master Agreement consists of the following: General Terms, Acceptable Use Policy (AUP), Product Page, Service Level Agreement (SLA), and Privacy Policy, each of which is incorporated into this Master Agreement by reference.

**General Terms** – This Master Agreement is applicable to all Internet related services, software licenses, and all other Internet related products (Service(s)) provided by Golden West Telecommunications and its subsidiaries including: Armour Independent Telephone Company; Bridgewater-Canistota Independent Telephone Company, Kadoka Telephone Company, Sioux Valley Telephone Company, Union Telephone Company of Hartford, Vivian Telephone Company and G.W. Wireless, Inc., dba Golden West (GWIS) to Customer. The unique components of each of the individual Services are set out on GWIS web site (Product Page). The Product Page for a particular Service also contains the charges and amounts due for that Service (Fees). The Term during which Customer agrees to purchase the Services, GWIS agrees to provide them to Customer, and the parties each agree to abide by this Agreement are set out on the order form Customer submits to GWIS to order the Services (Order Form).

**1. Services** – GWIS will provide the Services described on the Product Page. All equipment necessary to provide the Service is described on the Order Form (Equipment). Any additional Service must be purchased through a new Order Form and may result in additional Fees.

**(A)** This Master Agreement and/or the Product Page may contain descriptions of certain features of the Service related to speed and upload/download capacity. These descriptions assume that the Service is provisioned in the best possible environment. It may not be possible for the Service, as utilized by Customer, to meet or reach these descriptions. Because of factors beyond GWIS control, and network capacity restrictions, GWIS does not guarantee any speed and/or upload or download capacity. Customer may not terminate this Master Agreement based on the speed or capacity of the Service.

**(B)** Unless specifically set out in the Order Form, the terms “unlimited access,” “always on,” or similar terms simply refer to the fact that Customer can access the Internet at any time. These terms do not mean that Customer may use the Service to connect to the Internet for an unlimited period of time. GWIS reserves the right to limit Customer’s Internet connection time. Customer may not use software “pinging” or other devices to maintain a connection to the Internet. The amount of bandwidth and Customer’s upload/download capacity may also be limited.

**(C)** Should GWIS determine that Customer’s use of the Service exceeds that of a similarly situated customer (Fair Use); GWIS will notify Customer and adjust Customer’s account to a more appropriate Service. Customer may choose either **(i)** to accept this adjustment by paying the new Fee; or **(ii)** decline the adjustment in writing. By declining the adjustment, Customer represents to GWIS that Customer will modify its use of the Service so that it does not exceed Fair Use. If Customer’s efforts to modify its use are not successful, the Service will be automatically adjusted. Customer may not terminate this Master Agreement based on either a restriction on the amount of time it may use the Service, or an account adjustment.

(D) GWIS provides “dial-in” telephone numbers for certain types of Services (Dial In Number). Although Dial In Numbers may be designated as “local,” or appear when Customer types its location into software provided to Customer, it is Customer’s responsibility to verify that it can access the Dial In Numbers, and to determine whether its long distance carrier charges for that access. Dial In Numbers are subject to change at any time. This change may alter Customer’s ability to reach the Dial In Number. Customer may not terminate this Master Agreement based on the fact that its long distance carrier charges Customer to connect to the Dial In Number, or that Customer is prohibited from accessing Dial In Number by its long distance carrier.

**2. Third Party Software** – As part of Service, GWIS may supply to Customer or incorporate an object code version of software owned and/or licensed by a party other than GWIS (Third Party Software). Customer will acquire only those rights in the Third Party Software granted by applicable license and accorded by applicable law. If Customer’s Order Form includes Services provided by Vipre, Customer must affirmatively agree to their license agreement in order to install their Software.

**3. Security** –

(A) GWIS has designed a network security plan that meets industry standards. The goal of this network security plan is to establish the security and confidentiality of the Services; to protect the security and integrity of the Services; and to protect against unauthorized access to, or use of, the Services. GWIS will have the right, in its sole discretion, to suspend immediately any Services to prevent any harm to GWIS and its business, Customer, End Users, or GWIS network.

(B) In many cases Customer bears primary responsibility for ensuring the security and integrity of its account. For example, Customer agrees to maintain the security of its password. By revealing its password to other people, Customer compromises the integrity of its account, the Services and GWIS network. Customer agrees to release GWIS from any damages caused by a compromise of Customer’s password caused by Customer’s failure to keep the password secure, or its failure to change default passwords.

**4. Customer Materials** – Any content, data, services, equipment, customer information, software supplied by Customer, and, if applicable, Customer’s customer (End User), and any trademarks and domain names used by Customer (collectively, the Customer Materials) will be the sole responsibility of Customer or End User. Customer warrants and represents that it has the legal right and authority to use and to authorize GWIS to use all Customer Materials, and such use will not cause a breach of any third party agreement, violate any third party intellectual property right or applicable law or regulation, or unreasonably interfere with other GWIS customer’s use of the Services. Customer’s use of the Services will comply with all applicable laws and regulations as well as with the AUP, which can be found at [www.goldenwest.com/Policies](http://www.goldenwest.com/Policies).

**5. Payments** –

(A) Customer will pay, without deduction or set-off, the fees set out on the Product Page and/or Order Form for each of the Services purchased by Customer or an End User. Invoices are delivered monthly. GWIS bills in advance for Services to be provided during the upcoming month, except for charges that are dependent upon usage of Services, which are billed in arrears. Billing for partial months is prorated to the next calendar month. Current charges are due upon receipt.

**(B) Important Billing & Collection Dates** –

Golden West has two billing dates which help us serve the needs of our members. Using January as an example, the following dates apply for each billing option.

<b>Golden West Billing Cycles</b>	<b>Cycle 1</b>	<b>Example</b>	<b>Cycle 10</b>	<b>Example</b>
<b>Bills Mailed</b>	<b>1st</b> Current Month	<b>Jan. 1st</b>	<b>10th</b> Current Month	<b>Jan. 10th</b>
<b>Payments Due</b> A 1.5% late charge is assessed on unpaid balances after this date. Past Due notices will appear on the next month’s bill for accounts with unpaid balances.	<b>20th</b> Current Month	<b>Jan. 20th</b>	<b>1st</b> Next Month	<b>Feb. 1st</b>
<b>Final Notices Sent</b> for Past Due Accounts	<b>25th</b> Current Month	<b>Jan. 25th</b>	<b>5th</b> Next Month	<b>Feb. 5th</b>
<b>Late Payment Arrangements Required</b> to Avoid Disconnection	<b>6th</b> Next Month	<b>Feb. 6th</b>	<b>16th</b> Next Month	<b>Feb. 16th</b>
<b>Past Due Accounts Disconnected</b> in Accordance with South Dakota PUC and FCC Rules	<b>7th</b> Next Month	<b>Feb. 7th</b>	<b>17th</b> Next Month	<b>Feb. 17th</b>

**(C) Other Billing and Collection Guidelines** –

- Once a service is disconnected for nonpayment, the entire billing amount owed plus reconnect fees must be paid prior to reconnecting service(s). An advance payment may also be required at this time.
- Unbundled services (telephone, cable, Internet or long distance) will not be reconnected until the individual service has been paid in full.
- Bundled services disconnected due to nonpayment must be paid in full plus reconnection fees to reconnect any type of service.
- Deniable and Non-Deniable Charges:
  - Non-payment of the following charges will result in the disconnection of basic local telephone service: local telephone service or subscription to a bundled service.
  - Non-payment of the following charges will not result in the disconnection of local telephone service: cable television, Internet and long distance services.
- An administrative service fee up to the maximum allowed by the state shall be assessed for each non-sufficient fund check issued by a customer.
- Golden West does not accept post-dated or two-party checks.

(D) Customer shall pay any and all applicable federal, state and local sales, use, value added, excise, duty and any other taxes of any nature (except any taxes based on GWIS net income) assessed on the Services.

(E) Customer may choose to add Services that are provided by Third Parties (Third Party Services). As a convenience to Customer, GWIS may agree to add the fees for the Third Party Services to Customer’s invoice. Customer is responsible for these fees regardless of when they are invoiced to Customer.

**6. Term and Termination** – The Term of this Agreement will commence on the date Customer submits an Order Form (“Effective Date”) and continue through the latest date that any Order Form is in effect. Upon the expiration of the term of any particular Service, the term of that Service shall automatically renew for the same term as set out in the original Order Form. If Customer does not wish to renew a particular Service, Customer must provide GWIS with written notice of its intent to terminate that particular Service (“Termination Notice”). Customer’s Termination Notice must be provided to GWIS

at the address set out herein no later than thirty days prior to the expiration of a particular term. If Customer fails to provide GWIS with an accurate Termination Notice, and the term renews, Customer may be liable for early termination charges. If Customer is unsure how to provide GWIS with a Termination Notice, it is important, and Customer's responsibility, to contact GWIS to determine the proper termination method. Upon proper termination of this Agreement, prospective fees under this Agreement shall cease; provided, however, GWIS shall be entitled to immediate payment for fees due for periods and partial periods that occur before the effective date of termination and for which GWIS has not yet been paid.

#### **7. Early Termination –**

**(A)** Customer may terminate an Order Form prior at the end of its term upon thirty days prior written notice to GWIS. In the event that Customer terminates an Order Form (or in the event that the delivery of the Service is terminated by GWIS as the result of an uncured default by Customer pursuant to Section 8(B) of this Agreement), Customer shall pay GWIS a termination charge in a lump sum equal to the balance of the then-current monthly fee set forth in an Order Form which includes hosting, network, storage, and connection charges, times the number of months remaining under the Order Form. The parties acknowledge that the termination charges set forth in this (Section 7) are a genuine estimate of the actual damages that GWIS will suffer and are not a penalty.

**(B)** Upon termination, the particular Services will be terminated, and, if applicable, Customer's account will be closed. GWIS has no responsibility to forward email, or other communications, once Customer's account is closed. Any information stored by GWIS as part of a backup service will be deleted or otherwise made inaccessible. Customer is encouraged to keep the Services active during a transition period should Customer seek to forward its email or other communications. Customer is responsible for any Fees during that time.

**(C)** If GWIS provides Equipment to Customer to facilitate its access to the Service, Customer is required to return this Equipment to GWIS within ten days of the date the Service is terminated. Customer will be charged immediately for the equipment upon disconnect. Once the equipment is received by GWIS, the charge will be removed. It is Customer's obligation to ensure that the Equipment arrives in working order. If Customer has not previously notified GWIS that the Equipment no longer operates, Customer agrees that the Equipment was damaged in transit. Customer agrees to pay for the cost of replacement of any damaged Equipment. Because Customer is responsible for damage during transit, GWIS recommends that Customer ship any Equipment to GWIS using a reputable shipper, and procure insurance for the replacement value of the Equipment.

#### **8. Default and Effect of Default –**

**(A) Default By GWIS.** For the purposes of this Agreement, GWIS shall be deemed in default in the event that GWIS fails to observe and perform any material term (as understood within the Internet industry) of this Agreement and such failure continues for a period of thirty days after written notice from Customer; then Customer may terminate this Agreement and any Order Form in whole or in part, in which event Customer shall have no further duties or obligations under this Master Agreement.

**(B) Default By Customer.** For the purposes of this Agreement, Customer shall be deemed in default in the event that: (i) Customer becomes the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding; (ii) Customer makes an assignment for the benefit of creditors; (iii) Customer admits in writing its inability to pay debts when due; (iv) Customer fails to observe and perform any material term (as understood within the Internet industry) of this Agreement and such failure continues for a period of thirty days after written notice from GWIS; (v) Customer fails to make any payment required hereunder when due; (vi) Customer violates the AUP, Privacy Policy, or any other agreement incorporated into this Agreement; (vii) an End User violates the AUP and/or Privacy Policy, and Customer fails to secure cure of such a breach within

five days from written notice from GWIS; and/or (viii) Customer and/or End User fails to provide GWIS with written evidence of Required Licenses. In the event of Customer's default hereunder, GWIS may (a) suspend performance and/or terminate this Agreement and any Order Form in whole or in part and collect any early termination charges, after which GWIS shall have no further duties or obligations under this Master Agreement, and/or (b) pursue any remedies GWIS may have under this Agreement, at law or in equity.

**9. Confidentiality –** Any nonpublic information disclosed by a party or its affiliates, its related entities and/or agents (collectively, Disclosing Party) designated confidential or that, under the circumstances surrounding receipt, the receiving party (Receiving Party) should or would be reasonably expected to know is treated as confidential by Disclosing Party (Confidential Information), will be kept strictly confidential by Receiving Party and will not, without the Disclosing Party's authorization, be disclosed

to any third party or used by the Receiving Party for its own benefit except as set out in this Agreement. Confidential Information does not include information: (i) known to Receiving Party before receipt hereunder or later independently developed without reference to the Confidential Information;

(ii) lawfully obtained from a third party without restriction and without breach of an obligation to keep it confidential; or (iii) that becomes publicly available other than as a result of an act or omission of Receiving Party. If this Agreement expires or terminates for any reason, Receiving Party will delete, destroy, or return to Disclosing Party, at Disclosing Party's option, all copies and partial copies of any Confidential Information, and certify that it has done so by an officer's affidavit.

**10. Bill Disputes –** Customer has up to twenty-five days (commencing five days after the date of GWIS bill, or on the date on which Customer's credit card is charged) to initiate a dispute over charges, or to receive credits, if applicable. In order to dispute Customer's bill, Customer must send GWIS a written itemized description of the specific items it disputes in its bill. This itemization must be in sufficient detail for GWIS to identify the items in dispute. GWIS must receive this information prior to the date set out above. Customer agrees to pay all charges not specifically itemized in Customer's written notice of dispute by the Due Date.

**11. Contact Information –** Customer agrees to provide accurate, current and complete information about Customer, its company, and its End Users as may be required in the Order Form, GWIS control panel, and as otherwise requested or required by GWIS. It is Customer's obligation to ensure that this information is current, accurate and complete. GWIS relies on this information to contact Customer and administer its account. Customer's failure to provide current, accurate and complete information releases GWIS from any damages Customer may sustain, or claims made by Customer based on GWIS inability to contact Customer or otherwise provide the Services.

#### **12. Ownership –**

**(A) "GWIS Technology"** means GWIS proprietary technology, and any related intellectual property rights throughout the world (whether owned by GWIS or licensed to GWIS from a third party) used in the Services, including that which is based on Customer or End User feedback, or developed during the term of this Agreement which is not uniquely applicable to Customer or End User. Except for the rights expressly granted herein, this Agreement does not transfer from GWIS to Customer or End User any GWIS Technology, and all right, title and interest in and to GWIS Technology will remain solely with GWIS or its licensors. Except for the rights expressly granted herein, this Agreement does not transfer from Customer to GWIS any rights in the Customer Materials or Customer technology, and all right, title and interest in and to Customer Materials and Customer technology will remain solely with Customer. GWIS and Customer each agree that they will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party or any of its licensors. GWIS or its third party vendors will own all right, title and interest in the Equipment.

**(B) Licenses Customer Must Have.** Customer will promptly obtain, and upon GWIS request provide to GWIS, confirmation that Customer has received all "Required Licenses." "Required Licenses" means any licenses, consents or approvals required to use software, hardware and other items installed on the Equipment, or whose use is facilitated by the Service. If Customer fails to provide GWIS with the Required Licenses, and GWIS is unable to perform the Services as a result, Customer will remain responsible for the full amount of the Fees.

### 13. Operation of Certain Products

**(A) GWIS** may use software and other techniques to protect its network, Equipment and Services from viruses, SPAM and other items that GWIS, in its sole and exclusive judgment, believes may harm those specific elements or its business in general. However, GWIS is not responsible for any harm caused to Customer by these devices.

**(B) GWIS** is not responsible for the failure to process email that GWIS has labeled as in-bound SPAM or as otherwise harmful to GWIS network, Equipment and Services. GWIS is also not responsible for delivery failures caused by the operation of a third party recipient's SPAM filtering software. It is Customer's responsibility to review its "SPAM" folder from time-to-time and configure Customer's SPAM settings so that it receives the email it chooses. Email labeled as in-bound SPAM will only be available to Customer for a short period of time.

**(C) Installation of Certain Products** If set out on Customer's Order Form, GWIS will provide certain professional services to Customer to facilitate Customer's access to the Services (Professional Services). The specific terms pursuant to which these Professional Services are provided are set out in Section B.

#### **GWIS Obligations –**

- i. GWIS agrees to undertake and complete the Professional Services set out in the Order Form, and this paragraph, in accordance with, and on, the schedule set out on the Order Form.
- ii. GWIS will devote reasonable time and effort, skill and attention to the performance of the Professional Services.
- iii. The Professional Services set out on the Order Form shall be performed by GWIS as an independent contractor.

#### **Customer's Responsibilities –**

- i. Customer will furnish GWIS with all the data and information required by GWIS to perform the Professional Services. It is important that Customer be present during installation so that GWIS may show Customer how to use the Services, and, if necessary, provide information to GWIS that will allow it to perform its obligations.
- ii. Customer agrees to procure access to its home, business, or any other location in which the Professional Services will be performed, and warrants that it is authorized to give GWIS this access.

### 14. Representations and Warranties –

**(A) Mutual Warranty.** Customer and GWIS each warrant to the other that (i) each has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it; (ii) the performance of their individual obligations and duties hereunder does not and will not violate any agreement by which they are bound; and (iii) when executed and delivered, this Agreement constitutes the legal, valid and binding agreement as to the subject matter herein between the parties.

#### **(B) Warranties –**

**i. By GWIS.** GWIS represents and warrants that it will perform the Services in a commercially reasonable manner and that the Services will comply with quality and performance standards established under this Agreement and the applicable Order Form. Except to the extent that Customer's remedies for breach of an Service Level Agreement (SLA) are set forth in the SLA, GWIS sole obligation, and Customer's sole remedy, for any breach of this warranty shall be that GWIS shall, at GWIS option and as applicable, (a) use commercially reasonable efforts to re-perform the relevant Services; or (b) provide Customer with a service credit for the fees allocable to the time period and portion of the Services affected.

**ii. By Customer.** Customer represents and warrants to GWIS that: (a) Customer has the experience and knowledge necessary to use the Services; (b) Customer understands and appreciates the risks inherent to it, its business and its person that come from accessing the Internet;

**(C) Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GWIS DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. SERVICES ARE PROVIDED AS-IS. EXCEPT AS OTHERWISE EXPRESSLY SET OUT HEREIN, GWIS PROVIDES THE THIRD PARTY SERVICES AS-IS SUBJECT TO PROVIDER'S WARRANTY, AND THE WARRANTIES, INDEMNITIES AND REMEDIES SET FORTH HEREIN DO NOT APPLY TO THIRD PARTY SOFTWARE OR ANY BREACH, INFRINGEMENT, OR MISAPPROPRIATION TO THE EXTENT IT IS CAUSED BY SUCH THIRD PARTY SOFTWARE.

**15. Liability Limitation/Consequential Damages –** UNDER NO CIRCUMSTANCES WILL GWIS BE LIABLE TO CUSTOMER OR END USER FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF CUSTOMER, END USER, OR ANY OTHER PERSON OR ENTITY ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE. FURTHER, EXCEPT WITH RESPECT TO LIABILITY UNDER SECTIONS 8, 9, 10 AND 13, IN NO EVENT WILL GWIS OR THIRD PARTIES BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES PAID BY CUSTOMER FOR SERVICES THAT GAVE RISE TO SUCH DAMAGES OR LOSSES IN THE 180-DAY PERIOD PRIOR TO THE DATE ON WHICH THE EVENT GIVING RISE TO SUCH DAMAGES OR LOSSES OCCURRED. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURES BY GWIS TO PROVIDE SERVICES HEREUNDER SHALL BE THE SLA.

#### **16. Indemnification –**

**(A) By GWIS.** GWIS agrees, at its expense, to defend or settle any third party claim of infringement of U.S. patents resulting from Customer's use of the Services during the Term, provided that Customer: (i) promptly delivers to GWIS any notices or papers served regarding such claim; (ii) provides GWIS sole control over the defense and any negotiation for its settlement or compromise, so long as said settlement or compromise does not result in any liability to Customer; and (iii) provides such assistance as GWIS reasonably requests. GWIS will have no indemnification obligation to Customer for any infringement due to: (a) an unauthorized modification of the Services; (b) Customer's failure to promptly install an upgrade, update, or other fix or error correction provided by GWIS if prompt installation of such would have avoided the infringement; (c) the combination of the Services with any non-GWIS product or services, software, or equipment other than those provided by Third Parties if the Services would have avoided the infringement but for such combination; (d) if any part of the Services alleged to be infringing are provided, in whole or in

part, by a Third Party; or (e) if Customer or End User failed to procure any Required License. This states Customer's sole and exclusive remedy, and GWIS sole and exclusive liability, regarding infringement of any intellectual property rights of a third party.

**(B) By Customer.** Customer agrees, at its expense, to defend or settle (i) any third party claim of infringement of U.S. patents, copyrights, trademarks or trade names resulting from GWIS use of the Customer Materials during the Term, and (ii) any third party claim against GWIS resulting from Customer's or End User's breach of the AUP, provided that GWIS: (a) promptly delivers to Customer any notices or papers served regarding such claim; (b) provides Customer sole control over the defense and any negotiation for its settlement or compromise so long as said settlement or compromise does not result in any liability to GWIS; and (c) provides such assistance as Customer reasonably requests. Customer will have no indemnification obligation to GWIS for any infringement due to an unauthorized modification of the Customer Materials. This states GWIS sole and exclusive remedy, and Customer's sole and exclusive liability, regarding infringement of any intellectual property rights of a third party.

**17. Customer's Credit** – During the Term, GWIS may periodically review Customer's credit history. This review may consist of a review of Customer's payment history with GWIS, Customer's broader credit history as reported elsewhere, and the amount of fraud (including, but not limited to, SPAM complaints) reported to GWIS as originating with Customer's account, and those of its End Users. This credit review may lead to a change in the way Customer's Fees are paid. By entering into this Agreement, Customer consents to this review, any change in Customer's payment obligations, and the disclosure of Customer's credit history, at GWIS option, to recognized credit agencies.

**18. Assignment** – Either Party may assign this Agreement pursuant to a merger, acquisition, sale of all or substantially all assets, corporate reorganization, or other similar transaction, provided that assignee assumes, and is capable of assuming, all obligations (including financial) of the assigning party, and in the case of Customer, the scope of use of any Services provided hereunder will not be expanded beyond the business of Customer and its majority-owned subsidiaries and such an assignment is not to a competitor of GWIS. GWIS may assign its right to payment hereunder or grant a security interest in this Agreement or such payment right to any third party.

**19. Construction** – This Master Agreement, with all documents incorporated by reference, shall be construed as a whole, without reference to any other documents, other than those expressly incorporated by reference herein. It shall not be construed for, or against, a party based simply on the fact that a party drafted the Master Agreement or a provision thereof. Should a provision be determined to be contrary to law, that provision shall be removed, and the remaining terms and provisions construed without that provision, or, if removing a provision would render the Master Agreement meaningless, construed by a court in its judgment. Should this Master Agreement conflict with any agreement incorporated by reference, they shall have the following priority, in declining order: SLA, Privacy Policy, AUP, Product Page, and Master Agreement.

**20. Notices** – All notices will be deemed given as of the day received either by receipted, nationwide overnight delivery service, or in the U.S. mails, postage prepaid, certified or registered, return receipt requested, to the address and attention of each party's general counsel. Notices to Customer shall be sent to the address as set forth in Customer's record as set out in the Order Form, or as changed by Customer upon written notice to GWIS. Send notices to: Golden West, P.O. Box 411, Wall, SD 57790.

**21. Counterparts** – This Master Agreement may be executed in counterparts, each of which shall be considered a validly executed agreement. The parties may indicate their acceptance of this Master Agreement in any manner accepted by the laws governing the Master Agreement.

**22. Miscellaneous** – GWIS and Customer are independent parties. Nothing in this Agreement will be construed to make either party an agent, employee, franchisee, joint venturer, or legal representative of the other party. Except with regard to payments due GWIS, neither party will be

liable for any delays or failures in performance due to circumstances beyond its reasonable control that could not be avoided by its exercise of due care. GWIS may perform any obligation pursuant to this Agreement using agents and subcontractors. This Agreement will be governed by and interpreted in accordance with South Dakota law, excluding its conduct of law principles, and both parties consent to the jurisdiction of the federal and state courts of South Dakota, waiving any objection to forum non conveniens. GWIS will be entitled to its reasonable attorneys fees in addition to any other damages and amounts awarded to it in any action to collect unpaid Fees owed pursuant to this Agreement. No waiver, amendment, or other modification of this Agreement will be effective unless in writing and signed by the party against whom enforcement is sought. Sections (9, 12, 13, 15 and 23) of this Master Agreement will survive any expiration or termination of this Agreement. The United Nations Convention on the Sale of Goods shall not apply.

**23. Third Party Beneficiaries** – This Master Agreement is entered into by and between GWIS and Customer. There are no third party beneficiaries. Should Customer have End Users, Customer shall enter into an agreement containing terms and provisions at least as restrictive as those set out herein. Customer shall in no way make End User a third party beneficiary of this Master Agreement. Customer shall hold GWIS harmless from any claim that any individual or entity is a third party beneficiary of this Master Agreement.

#### **Section A – Specific Product Requirements: DSL, Cable Internet, and Fiber to Home (High-Speed Product) Services**

**(A)** The initial term for the High-Speed Product will begin on the Establish Date and will run for the length of time set out herein (Initial Term). The Establish Date is the date upon which the High-Speed Product is made available by GWIS to the Demarc Point for Customer to use.

**(B)** If set out on your Order Form, we will provision and install DSL service, or fiber to home, to the demarcation point set out on your Order Form (Demarc Point). Our responsibility is solely to ensure that the Product is capable of connecting to the Demarc Point. It is the customer's obligation to make sure that the telecommunications equipment the customer uses to reach the Demarc Point is capable of supporting the High-Speed Product. We do not provide in-home support to troubleshoot issues the customer may have reaching the Demarc Point.

**(C)** GWIS agrees to provision and provide the High-Speed Product to Customer on a best efforts basis, according to, and limited by, the provisions of this Agreement. However, it may not be possible to provide High-Speed Product to Customer in spite of GWIS best efforts. This inability may be based on factors that are within GWIS control, but which, in GWIS sole and exclusive judgment, make it difficult for GWIS to provide the High-Speed Product. If GWIS is unable to provide the High-Speed Product to Customer, GWIS will refund any Fees Customer has paid to GWIS in connection with the High-Speed Product. Under no circumstances shall GWIS: (i) be compelled to provide the High-Speed Product to Customer; and/or (ii) have any liability to Customer, or third parties, based on GWIS inability, or unwillingness, to provide the High-Speed Product.

**(D)** This Agreement may contain descriptions of certain features of the High-Speed Product related to speed and upload/download capacity. These descriptions assume that the High-Speed Product is provisioned in the best possible environment. It may not be possible for the High-Speed Product, as utilized by Customer, to meet or reach these descriptions. GWIS does not guarantee speed and/or upload or download capacity. However, if the speed and/or capacity is reduced in such a manner that Customer would qualify for a lower capacity High-Speed Product, GWIS agrees to adjust Customer's account, including Fees, accordingly. Customer may not terminate this Agreement based on the speed and/or capacity of the High-Speed Product, or the fact that its account has been changed to a lower speed and/or capacity Product.