

## DSL/WIRELESS Terms and Conditions

These DSL/WIRELESS Terms and Conditions, together with any applicable service agreement signed by Customer, including the service agreement included with the application form (collectively, the "Internet Access Agreement") govern Community Digital Wireless, LLC's (CDW) provision and Customer's use of CDW's DSL/WIRELESS Services.

### 1. Definitions.

1.1. "Customer" means any person or entity that has completed and signed an application form with service agreement for use of CDW's DSL/WIRELESS Services.

1.2. "DSL/WIRELESS Services" or "Services" means all Internet related services provided by CDW including, but not limited to, access to the Internet, domain hosting, anti-spam and anti-virus filtering, any equipment provided by CDW or purchased by Customer from CDW in order to connect to the Internet, and any software provided by CDW in order to connect to the Internet.

1.3. "Term Contract" means a service agreement between CDW and Customer, whereby CDW agrees to provide and Customer agrees to purchase DSL/WIRELESS Services for a minimum fixed period of time.

1.4. "User" means any person or entity that makes use of CDW's DSL/WIRELESS Services under Customer's login/username, regardless of whether said use was authorized.

### 2. DSL/WIRELESS Services.

2.1. CDW shall provide and Customer shall accept DSL/WIRELESS Services at the applicable rates and charges, subject to the terms and conditions of the Internet Access Agreement.

2.2. CDW shall only provide DSL/WIRELESS Services to Customer in the geographic areas currently served by CDW.

2.3. Customer must be at least 18 years old to apply for DSL/WIRELESS Services. By accepting CDW's DSL/WIRELESS Services, Customer represents that Customer meets this age requirement.

2.4. Customer and any persons authorized by Customer are the only individuals who are authorized to use CDW's DSL/WIRELESS Services or access the Internet through Customer's CDW account.

### 3. Acceptable Use Policy.

3.1. Customer shall not do any of the following or permit any User to do the following:

3.1.1. Use DSL/WIRELESS Services in violation or contravention of any applicable law, regulation, order, or other governmental directive, including, but not limited to, the Telecommunications Act of 1996 and the U.S. export control laws and regulations.

3.1.2. Use DSL/WIRELESS Services in violation or contravention of any underlying communications carrier's acceptable use policy.

3.1.3. Abuse or fraudulently obtain or use DSL/WIRELESS Services in any way.

3.1.4. Restrict or inhibit any other user from using and enjoying CDW's DSL/WIRELESS Services and/or the Internet.

3.1.5. Post or transmit any unlawful, illegal, obscene, or pornographic information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, national, or international law.

3.1.6. Post or transmit any information or software which contains a virus, worm, cancelbot, or other harmful component.

3.1.7. Upload, post, publish, transmit, reproduce, distribute, or participate in the transfer or sale, or in any way exploit any information, software, or other material, obtained through the Internet which is protected by copyright, patent, trade secret and trademark rights or other proprietary rights or derivative works with respect thereto, without obtaining permission of the copyright owner or right holder.

3.1.8. Post a single article or advertisement to more than ten (10) Usenet or other newsgroups, fora, e-mail mailing lists or similar groups of lists.

3.1.9. Post to any Usenet or other newsgroup, fora, e-mail mailing list, or similar group, or list articles that are off-topic according to the charter or other public statement of the group list.

3.1.10. Send unsolicited mass mailings to more than twenty-five (25) e-mail users, if such unsolicited electronic mailings provoke complaints from the recipients.

3.1.11. Falsify or "spoof" user information provided to other users of the Internet.

3.1.12. Subject CDW to liability of any kind.

3.2. CDW reserves the right to immediately terminate Customer's account and DSL/WIRELESS Services to Customer, without prior notice, if CDW believes, in its sole discretion, that Customer or any User has violated this Acceptable Use Policy, regardless of Customer's or User's knowledge or intent of such violation.

3.3. CDW reserves the right to immediately and without prior notice remove any material or information that CDW believes, in its sole discretion, violates this Acceptable Use Policy, regardless of Customer's or User's knowledge or intent of such violation.

4. Obligations of Customer.

4.1. Customer shall not permit any unauthorized persons to use the DSL/WIRELESS Services or access the Internet through Customer's CDW account.

4.2. Customer shall be solely responsible, at its own expense, for all equipment necessary to connect to the Internet. Customer understands that even where a Wireless Internet Radio or DSL Modem is provided by CDW at no additional charge, additional equipment may be necessary to use the DSL/WIRELESS Services. Customer shall be responsible for the use and compatibility of any Customer provided equipment with any CDW provided equipment and CDW's DSL/WIRELESS Services. If any equipment used by Customer to connect to the Internet impairs Customer's use of the DSL/WIRELESS Services, Customer shall nonetheless be liable for all payments and obligations including, but not limited to, the monthly fee for DSL/WIRELESS Services.

4.3. Customer shall be solely responsible, at its own expense, for all software necessary to connect to the Internet. Customer shall be responsible for the use and compatibility of any such software with CDW's DSL/WIRELESS Services, even where the software is provided to Customer by CDW. If any software, including software provided by CDW, used by Customer to connect to the Internet impairs Customer's use of the DSL/WIRELESS Services, Customer shall nonetheless be liable for all payments and obligations including, but not limited to, the monthly fee for DSL/WIRELESS Services.

4.4. Customer is solely responsible for any charges incurred while using the Internet (e.g., for using on-line information services and shopping on-line).

4.5. Customer agrees that CDW's primary communication with the Customer for DSL/WIRELESS Services and updates or modifications to the Internet Access Agreement and other CDW policies will be given via the CDW home page ([www.cdwwireless.com](http://www.cdwwireless.com)) and/or the Customer's e-mail address. Customer is encouraged to periodically view the CDW home page and their CDW e-mail account on AT LEAST a monthly basis. CDW is responsible for posting updates and changes to the Internet Access Agreement on these mediums. Customer is responsible for reading such information. If Customer does not agree to be bound by updates to the Internet Access Agreement, Customer should proceed directly to Section 8 of these DSL/WIRELESS Terms and Conditions, Termination of DSL/WIRELESS Services, and follow the appropriate directions to terminate the Internet Access Agreement and cease using CDW's DSL/WIRELESS Services.

4.6. Customer agrees to notify CDW within ten (10) days of any change of Customer's address.

## 5. Equipment Acceptance Terms

5.1. Equipment Purchased by Customer. Customer's use of any equipment purchased from CDW shall constitute Customer's acceptance of and agreement to the following terms and conditions of such use.

5.1.1. The provisions of these DSL/WIRELESS Terms and Conditions, including without limitation: Section 13, No Warranties; Section 14, Limitation of Liability; Section 15, Indemnification; and Section 16, Resale of DSL/WIRELESS Services, apply to Customer's use of any equipment purchased by Customer from CDW in order to connect to the Internet.

5.1.2. Customer agrees to abide by any terms and/or conditions for use imposed by the equipment manufacturer.

5.1.3. Customer is solely responsible for paying all charges pertaining to or resulting from the installation and use of any equipment purchased from CDW. Charges include, but are not limited to, maintenance, installation and support service fees charged by CDW or third parties.

5.2. Equipment Provided by CDW at No Additional Charge. Customer's use of any equipment provided by CDW at no additional charge shall constitute Customer's acceptance of and agreement to the following terms and conditions of such use.

5.2.1. Wireless Radios, DSL Modems, and any other equipment provided to Customer by CDW for the provision of DSL/WIRELESS Services shall remain CDW's sole property. Title to the equipment shall remain with CDW at all times and Customer shall have no property rights or interest therein except as set forth in the Internet Access Agreement. Customer agrees to keep the equipment in good condition.

5.2.2. The provisions of these DSL/WIRELESS Terms and Conditions, including without limitation: Section 13, No Warranties; Section 14, Limitation of Liability; Section 15, Indemnification; and Section 16, Resale of DSL/WIRELESS Services, apply to Customer's use of any equipment provided by CDW to Customer in order to connect to the Internet.

5.2.3. Customer agrees to abide by any terms and/or conditions for use imposed by the equipment manufacturer.

5.2.4. Customer must notify CDW promptly of any equipment failure or malfunction. CDW shall, at its sole cost and expense, replace defective or damaged equipment provided by CDW, except that Customer shall be responsible for all costs incurred by CDW for repairing or replacing the equipment if such repair or replacement is caused by Customer's intentional or negligent conduct. Customer agrees that no other party besides CDW shall repair or replace any equipment provided by CDW without the express written consent of CDW.

5.2.5. Upon termination of the Internet Access Agreement pursuant to Section 8 of these DSL/WIRELESS Terms and Conditions, Customer agrees to return all equipment to CDW within five (5) business days of the date of termination. If Customer fails to return in good condition any item of equipment within five (5) business days of the date of termination, Customer will be liable for the equipment replacement charges outlined below, plus, to the extent permitted by law, any reasonable collection costs, including without limitation attorneys' fees, that may be incurred. The replacement charges for unreturned or damaged equipment shall be: Wireless Internet Radio - \$800.00/per Radio; DSL Modem - \$99.95/per unit; and for all other equipment – the then current replacement cost.

## 6. Software Acceptance Terms.

Customer's use of any software provided by CDW shall constitute Customer's acceptance of and agreement to the following terms and conditions of such use.

6.1. The provisions of these DSL/WIRELESS Terms and Conditions, including without limitation: Section 13, No Warranties; Section 14, Limitation of Liability; Section 15, Indemnification; and Section 16, Resale of DSL/WIRELESS Services, apply to Customer's use of any software provided by CDW to Customer to connect to the Internet.

6.2. Customer has no obligation to accept and install any software furnished by CDW; however, by accepting and installing the software furnished by CDW, Customer agrees to abide by any terms and/or conditions for use imposed by the software manufacturer.

6.3. Customer is solely responsible for paying all charges pertaining to or resulting from the installation and use of the software distributed by CDW. Charges include, but are not limited to, maintenance, installation and support service fees charged by third parties.

## 7. Fees and Billing.

7.1. Customer shall be responsible for payment of charges for all DSL/WIRELESS Services furnished by CDW, including any federal, state or local tax, fee, surcharge or other tax-like charge (e.g., sales and use taxes) required or permitted by law. Charges shall be based on prices in effect at the time DSL/WIRELESS Services are furnished. Current prices for DSL/WIRELESS Services may be obtained by calling (563) 539-2122, (563) 382-9889, (877) 638-2122, or by e-mailing CDWel@CDWel.net.

7.2. Customer's liability for DSL/WIRELESS Services shall commence on the date DSL/WIRELESS Services are provided to the Customer and will continue until DSL/WIRELESS Services are terminated in accordance with Section 8 of these DSL/WIRELESS Terms and Conditions. Customer shall pay CDW, in advance, the monthly fee (i.e., base rate) applicable for DSL/WIRELESS Services to be provided each month. Customer shall pay CDW a prorated amount of the monthly fee for DSL/WIRELESS Services provided in the initial month of the Internet Access Agreement, where one day of service equals one-thirtieth (1/30th) of said monthly fee. Any accrued overtime charges will be billed in arrears.

7.3. Monthly payments are due on the twentieth (20th) of each month. If Customer does not pay an outstanding balance by the due date, Customer's account will be considered to be in default and the DSL/WIRELESS Services provided to Customer will be suspended upon five (5) days notice. If an account is suspended for non-payment, Customer must continue to pay the monthly fee for DSL/WIRELESS Services.

7.4. Once an account has been suspended, it is the Customer's responsibility to contact CDW's billing department at (563) 539-2122, or (877) 638-2122 to make the necessary payment arrangements and to re-activate DSL/WIRELESS Services. Customer will be subject to a fifteen dollar (\$15.00) service charge to re-activate DSL/WIRELESS Services.

7.5. If any instrument received in payment is returned to CDW unpaid, Customer's account will be considered to be in default, and in addition to the amount due, Customer will be subject to a thirty dollar (\$30.00) service charge.

7.6. If Customer's account is in default, Customer is subject to an interest charge of 1.5% per month, or the maximum allowable rate under state law, whichever is less, on any past-due balances.

7.7. If Customer defaults on an account, Customer agrees to pay, to the extent permitted by law, CDW's reasonable costs of collection, including, without limitation, any attorneys' fees that may have been incurred.

7.8. After thirty (30) days of having an account suspended for non-payment, CDW may disconnect Customer's account and terminate DSL/WIRELESS Services. If Customer wishes to re-establish DSL/WIRELESS Services, Customer will be required to do the following prior to receiving DSL/WIRELESS Services: submit a new application with the then applicable application fee, and pay any outstanding charges including, but not limited to, any early termination charges due and owing, and to the extent permitted by law, expenses incurred in attempting to collect unpaid fees, late charges and interest.

7.9. Unless Customer gives written notice to CDW of a good faith billing dispute within sixty (60) days after payment of the disputed amount is due, Customer waives any right to challenge the disputed amount and releases CDW from all liabilities and claims resulting from any such billing dispute.

## 8. Termination of DSL/WIRELESS Services.

8.1. Termination of DSL/WIRELESS Services, whether by Customer or CDW, shall be in accordance with this Section 8 of these DSL/WIRELESS Terms and Conditions and the provisions of the service agreement signed by Customer. In the event of a conflict between the provisions of this Section 8 of these DSL/WIRELESS Terms and Conditions and the provisions of the service agreement signed by Customer, the provisions of these DSL/WIRELESS Terms and Conditions shall control.

### 8.2. Termination by Customer.

8.2.1. Subject to Section 8.1 above, Customer may terminate the Internet Access Agreement and DSL/WIRELESS Services provided pursuant thereto at any time, with or without cause, upon written notice to CDW or by calling (563) 539-2122, (563) 382-9889 or (877) 638-2122. Charges to Customer's account will continue to accrue until notice has been given to CDW.

8.2.2. If Customer provides CDW with notice of termination before the fifteenth (15th) of the month, Customer shall be entitled to a refund for one-half of the monthly fee Customer paid in advance, subject to offset of any outstanding amounts owed. If Customer provides CDW with notice of termination after the fifteenth (15th) of the month, Customer shall not be entitled to a refund of any monthly fee Customer paid in advance.

### 8.3. Termination by CDW.

8.3.1. Subject to Section 8.1 above, CDW may terminate the Internet Access Agreement and DSL/WIRELESS Services provided pursuant thereto for cause, immediately and without prior notice, if: (i) thirty (30) days after an account is suspended for non-payment, where Customer remains in default; (ii) CDW believes, in its sole discretion, that Customer or User has violated the Acceptable Use Policy

(Section 3 above); (iii) Customer or User commits a breach of any other terms and conditions of the Internet Access Agreement and said breach is not cured within ten (10) days after CDW provides Customer with notice of such breach; (iv) in response to a court or government demand; or (v) if CDW determines, in its sole discretion, that the integrity or normal operations of CDW's network is at imminent risk.

8.3.2. CDW may terminate DSL/WIRELESS Services under a month-to-month contract without cause, upon ten (10) days prior notice. CDW may not terminate DSL/WIRELESS Services provided under a Term Contract without cause.

8.3.3. Charges to Customer will continue to accrue until the date of termination.

8.3.4. If terminated without cause, Customer will be issued a refund for the prorated portion of the monthly fee Customer paid in advance, for the portion of the month after the date of termination, subject to offset of any outstanding amounts owed.

8.4. Early Termination Charges. In the event CDW is providing DSL/WIRELESS Services to Customer under a Term Contract, and prior to the expiration of the initial term of said Term Contract: (i) Customer terminates the Internet Access Agreement; or (ii) CDW terminates the Internet Access Agreement pursuant to Section 8.3.1, Customer shall pay an early termination charge that is equal to the applicable installation fee waived at installation, plus any fees assessed by the local exchange carrier to CDW as a result of early termination.

8.5. Upon termination of the Internet Access Agreement, all rights granted to Customer shall immediately cease and terminate.

8.6. Termination of the Internet Access Agreement does not release Customer from the obligation to pay all accrued charges under the Internet Access Agreement.

9. Change in Rates, Terms and Conditions. To the extent permitted by law, CDW reserves the right to change, in its sole discretion, the rates, terms and conditions applicable to its DSL/WIRELESS Services (i.e. the Internet Access Agreement) including, but not limited to, any features of such DSL/WIRELESS Services. Any change shall be effective thirty (30) days after providing written notice to Customer. Customer's use of CDW's DSL/WIRELESS Services after the effective date of any change shall constitute Customer's acceptance of and agreement to such change. If Customer does not agree to be bound by such change, Customer should proceed directly to Section 8 of these DSL/WIRELESS Terms and Conditions, Termination of DSL/WIRELESS Services, and follow the appropriate directions to terminate the Internet Access Agreement and cease using CDW's DSL/WIRELESS Services. Early termination charges under Section 8.4 of these DSL/WIRELESS Terms and Conditions shall not apply to Customers who terminate the Internet Access Agreement as a result of a change in rates, terms and conditions under this Section 9 of the DSL/WIRELESS Terms and Conditions, where the change in rates, terms, and conditions materially alters the DSL/WIRELESS Services.

10. Vacation Status.

10.1. Customers may not temporarily suspend (i.e., place on Vacation Status) DSL/WIRELESS Services for any period.

#### 11. Login/Username and E-mail Addresses.

11.1. Any means of identification assigned to Customer by CDW including, but not limited to, login/usernames and e-mail addresses, will remain the property of CDW and at CDW's sole discretion may be altered or replaced at any time. Customer has no right to continued use of the login/username or e-mail address.

11.2. Upon termination of DSL/WIRELESS Services, Customer's login/username and e-mail address will be eligible for reassignment immediately.

11.2.1. If DSL/WIRELESS Services are terminated by Customer or by CDW without cause, CDW will, upon request, forward e-mail to a destination of Customer's choice at cost to Customer. Upon said termination of forwarding, by Customer thereafter, CDW will refuse to accept or forward incoming e-mail messages.

11.2.2. If DSL/WIRELESS Services are terminated by CDW for cause, CDW will not provide e-mail forwarding, and will refuse to accept incoming e-mail messages.

#### 12. E-mail Message Retention Policy.

CDW will not delete any read or unread e-mail messages that remain on its server(s) except that, if Customer is over their specified storage limit, any new messages will be rejected by the server(s).

#### 13. NO WARRANTIES.

13.1. CUSTOMER ASSUMES FULL RESPONSIBILITY AND RISK FOR ITS' OWN OR ANY USER'S USE OF CDW'S DSL/WIRELESS SERVICES AND THE INTERNET.

13.2. **CDW'S DSL/WIRELESS SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. CDW MAKES NO WARRANTIES OR GUARANTEES AS TO THE CONTINUOUS AVAILABILITY OF THE DSL/WIRELESS SERVICES, ANY SPECIFIC FEATURES OF THE DSL/WIRELESS SERVICES, TRANSMISSION SPEEDS OF THE DSL/WIRELESS SERVICES, OR THAT DSL/WIRELESS SERVICES WILL BE PRIVATE, UNINTERRUPTED OR ERROR FREE.**

13.3. SERVICES ARE "UP TO" THE TRANSMISSION SPEEDS PROVIDED UNDER THE DSL/WIRELESS SERVICE AGREEMENT, BUT MAY BE LOWER FOR A VARIETY OF REASONS INCLUDING, BUT NOT LIMITED TO: THE PERFORMANCE OF, AND HIGH DEMAND ON, THE INTERNET, PARTICULARLY DESTINATIONS OR NETWORKS NOT DIRECTLY CONNECTED TO CUSTOMER; THE SPEED OF THE DESTINATION WEBSITE; THE PERFORMANCE OF CUSTOMER-OWNED COMPUTER(S) AND NETWORK EQUIPMENT; THE TYPE OF CONNECTION BETWEEN CUSTOMER EQUIPMENT AND THE MODEM, NETWORK TERMINAL OR RADIO; HIGH DEMAND ON THE CDW NETWORK; AND THE CUSTOMER LOCATION. CDW HAS CONSTRUCTED AND OPERATES ITS NETWORK TO MINIMIZE THE IMPACT OF HIGH DEMAND, BUT IN CERTAIN AREAS, AT



SOME TIMES, DEMAND MAY EXCEED THE NETWORK'S ABILITY TO DELIVER THE SPEEDS SET FORTH IN THE DSL/WIRELESS SERVICE AGREEMENT. CDW RECOMMENDS THAT CUSTOMER TEST THE TRANSMISSION SPEED AT THE LOCATION WHERE CUSTOMER WILL BE RECEIVING SERVICES PRIOR TO SIGNING THE DSL/WIRELESS SERVICE AGREEMENT. CDW WILL ASSIST WITH THIS TESTING UPON CUSTOMER REQUEST.

13.4. CDW MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OR TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE WITH RESPECT TO ITS DSL/WIRELESS SERVICES. THIS DISCLAIMER SHALL APPLY TO ALL ADVICE, ASSISTANCE, DATA, INFORMATION, OR SERVICES, NOW OR SUBSEQUENTLY FURNISHED, DELIVERED OR MADE AVAILABLE BY CDW, ITS AFFILIATES, CONTRACTORS, EMPLOYEES OR AGENTS. NO ADVICE OR INFORMATION GIVEN BY CDW, ITS AFFILIATES, CONTRACTORS, EMPLOYEES OR AGENTS SHALL CREATE A WARRANTY.

#### 14. LIMITATION OF LIABILITY.

14.1. DSL/WIRELESS SERVICES ARE SUBJECT TO OCCASIONAL TEMPORARY INTERRUPTIONS OR IRREGULARITIES, AND TRANSMISSION LIMITATIONS CAUSED BY ATMOSPHERIC, TOPOGRAPHICAL AND OTHER LIKE CONDITIONS. ADDITIONALLY, DSL/WIRELESS SERVICES MAY BE TEMPORARILY REFUSED, LIMITED, INTERRUPTED OR CURTAILED DUE TO GOVERNMENT REGULATIONS OR ORDERS, SYSTEM CAPACITY LIMITATIONS, LIMITATIONS IMPOSED BY AN UNDERLYING COMMUNICATIONS CARRIER, OR BECAUSE OF EQUIPMENT MODIFICATIONS, UPGRADES, REPAIRS OR REALLOCATION OR OTHER SIMILAR ACTIVITIES NECESSARY OR PROPER FOR THE OPERATION, REPAIR, MAINTENANCE OR IMPROVEMENT OF CDW'S NETWORK. CDW SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY DAMAGES OF WHATEVER TYPE OR NATURE WHICH MAY RESULT, EITHER DIRECTLY OR INDIRECTLY, FROM ANY SUCH TEMPORARY INTERRUPTIONS OF DSL/WIRELESS SERVICES.

14.2. CDW SHALL NOT BE LIABLE IN ANY WAY FOR ANY LOSS OR DAMAGE SUSTAINED BY CUSTOMER CAUSED BY THE ACT OR OMISSION TO ACT OF ANY THIRD PARTY OR ANY ACT OR OMISSION TO ACT WHICH IS BEYOND CDW'S CONTROL.

14.3. IN NO EVENT WILL CDW BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, RELIANCE, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES, FOR LOSS OF GOOD WILL, WORK-STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE CDW'S DSL/WIRELESS SERVICES, EVEN IF CDW OR ITS AUTHORIZED REPRESENTATIVE(S) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.4. CUSTOMER ACKNOWLEDGES THAT INTERNET SYSTEMS USE PUBLIC ACCESS FACILITIES TO TRANSMIT VOICE AND DATA COMMUNICATIONS AND THAT THE DSL/WIRELESS SERVICES MAY NOT BE COMPLETELY PRIVATE. CDW IS NOT LIABLE TO CUSTOMER FOR ANY CLAIMS, LOSS, DAMAGES OR COST

WHICH MAY RESULT FROM LACK OF PRIVACY WHILE ACCESSING THE INTERNET VIA CDW'S DSL/WIRELESS SERVICES.

14.5. CDW EXERCISES NO CONTROL WHATSOEVER OVER THE FORM, CONTENT OR NATURE OF THE INFORMATION, SOFTWARE, GRAPHICS, PHOTOGRAPHS, VIDEO, SPEECH, SOUNDS, MUSIC, AND OTHER MATERIAL AND SERVICES COMMUNICATED THROUGH THE INTERNET (HEREINAFTER COLLECTIVELY REFERRED TO AS "DATA").

14.5.1. CDW MAKES NO REPRESENTATIONS, WARRANTIES, OR PROMISES AS TO, AND CUSTOMER MUST BEAR THE RISK OF RELYING ON, THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY DATA. EXCEPT AS PART OF ANY ANTI-SPAM AND ANTI-VIRUS FILTERING SERVICE, CDW DOES NOT SCREEN OR FILTER ANY DATA. CDW HAS NO OBLIGATION TO SCREEN, FILTER OR MONITOR DATA. ACCORDINGLY, CDW SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY ACTION OR INACTION BY CDW WITH RESPECT TO DATA.

14.5.2. CDW RESERVES THE RIGHT (BUT SHALL HAVE NO OBLIGATION) TO MONITOR DATA AND TO REMOVE DATA THAT CDW DEEMS UNACCEPTABLE, UNDESIRABLE, OR IN VIOLATION OF THE INTERNET ACCESS AGREEMENT INCLUDING, BUT NOT LIMITED TO, CDW'S ACCEPTABLE USE POLICY. CDW RESERVES THE RIGHT TO DISCLOSE ANY DATA AND TO IDENTIFY THE RESPONSIBLE CUSTOMER AS MAY BE REQUIRED BY LAW, OR TO OPERATE CDW'S DSL/WIRELESS SERVICES PROPERLY, OR TO PROTECT ITSELF OR ITS OTHER CUSTOMERS.

14.5.3. CUSTOMER ACKNOWLEDGES THAT INTERNET SYSTEMS MAY CARRY MATERIAL WHICH MAY BE CONSIDERED ABUSIVE, PROFANE OR SEXUALLY OFFENSIVE AND THAT CDW IS NOT LIABLE TO CUSTOMER FOR ANY CLAIMS, LOSS, DAMAGES OR COST WHICH MAY RESULT FROM SUCH MATERIAL.

14.5.4. EXCEPT AS REQUIRED BY LAW, CDW SHALL HAVE NO DUTY OR OBLIGATION TO ADVISE CUSTOMER OF ANY RISK THAT MAY ARISE FROM THE AVAILABILITY, USE, POSSESSION OR TRANSMISSION OF DATA OR PROVIDE ANY INFORMATION TO CUSTOMER RELATING THERETO, EVEN IF AT ANY TIME CDW MAY ATTEMPT TO DO SO.

14.6. WITHOUT LIMITING THE EFFECT OF ANY OTHER PROVISION IN THIS SECTION 14, CDW'S SOLE LIABILITY, IF ANY, FOR LOSS OR DAMAGE ARISING OUT OF THE MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE DSL/WIRELESS SERVICES OR TRANSMISSION OF DSL/WIRELESS SERVICES PROVIDED BY CDW OR ANY UNDERLYING COMMUNICATIONS CARRIER, OR FOR LOSSES OR DAMAGES ARISING OUT OF THE FAILURE OF CDW OR ANY UNDERLYING COMMUNICATIONS CARRIER TO MAINTAIN PROPER STANDARDS OF MAINTENANCE AND OPERATION, OCCURRING IN THE COURSE OF FURNISHING DSL/WIRELESS SERVICES AND NOT CAUSED BY THE NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS OF THE CUSTOMER OR ANY USER, SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO CDW FOR SAID DSL/WIRELESS SERVICES FOR THE MONTH DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT OCCURS.

14.7. EXCEPT AS PERMITTED UNDER SECTION 14.6, IF CUSTOMER IS DISSATISFIED WITH THE DSL/WIRELESS SERVICES OR WITH ANY TERMS, CONDITIONS, RULES, POLICIES, GUIDELINES OR

PRACTICES OF CDW IN OPERATING THE DSL/WIRELESS SERVICES, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THE INTERNET ACCESS AGREEMENT.

15. Indemnification.

15.1. Customer shall at all times defend, indemnify and hold harmless CDW, its officers, directors, employees, agents, vendors, contractors, underlying communications carriers, including upstream Internet Service/access providers, from and against any and all claims, liabilities, losses, judgments, costs, damages and expenses, including reasonable attorney's fees, related to or arising from the following:

15.1.1. Any violation of the Internet Access Agreement including, but not limited to, the Acceptable Use Policy, by Customer or User;

15.1.2. Customer's or User's use of CDW's DSL/WIRELESS Services or the Internet or the placement or transmission of any Data or other materials on the Internet, for any claim including, but not limited to, claims for libel, slander, invasion of privacy, infringement of any patent, trademark, copyright or trade secret, and invasion and/or alteration of private records or data;

15.1.3. Negligent or willful acts or omissions of Customer's or User's officers, directors, employees, agents, vendors, contractors in connection with or arising out of, among other things, the construction, installation, maintenance, presence, use, or removal of equipment or software, whether or not provided by CDW, which are connected or to be connected to CDW's DSL/WIRELESS Services;

15.1.4. Negligent or willful acts or omissions of Customer's or User's officers, directors, employees, agents, vendors, contractors in connection with or arising out of, among other things, use of CDW's DSL/WIRELESS Services; and

15.1.5. Any claims for infringement of any third party proprietary right, including copyright, patent, trade secret and trade mark rights, arising from the use of CDW's DSL/WIRELESS Services and any services, equipment or software not provided by CDW, or Customer's alteration of any equipment or software provided by CDW.

15.2. CDW shall promptly notify Customer of any claim or litigation to which this indemnity applies, and Customer shall assume the defense of any such claim or litigation. CDW reserves the right, at its own expense, to assume the exclusive defense and control of any matter for which CDW is entitled to indemnification under the Internet Access Agreement.

16. Resale of DSL/WIRELESS Services. Customer is prohibited from reselling any of the DSL/WIRELESS Services provided by CDW.

17. Copyright Violation Reporting Information. In compliance with the Digital Millennium Copyright Act of 1998, CDW offers information for the reporting of a copyright violation on, or using, CDW's DSL/WIRELESS Services. CDW's Copyright Violation Reporting Information is available at <http://neitel.com/legal/aup.pdf>.

18. Assignment. Customer may not assign its rights or delegate any obligations under the Internet Access Agreement, in whole or in part, without the prior written consent of CDW. CDW may assign its rights and delegate its obligation under the Internet Access Agreement, in whole or in part, at any time, upon notice, but without consent of Customer.

19. Force Majeure. CDW shall in no event be liable or responsible to Customer for any delay or failure in the performance of any part of the Internet Access Agreement to the extent such delay or failure is caused by fire; flood; explosion; war; strike; power blackout; earthquake; volcanic action; water; embargo; labor dispute; government requirement; civil or military authority; acts of God; public enemy; terrorist act; or inability to secure raw materials, products, labor permits, rights of way or transportation facilities; breakage or accident to equipment or facilities; temporary failure of equipment or facilities; freezing of equipment or facilities; acts or omissions of carriers or suppliers; acts or failure to act of any government authority; or any other cause beyond the reasonable control of CDW or any underlying communications carrier, whether or not similar to the foregoing. CDW shall endeavor to give Customer prompt notice of any such delay or failure.

20. Notice. Except as otherwise provided herein, all notices hereunder shall be in writing, to the following addresses:

20.1. If to CDW:

20.1.1. by personal delivery: 800 South Main Street  
Monona, IA 52159

20.1.2. by certified U.S. Mail, CDW  
postage pre-paid, return P.O. Box 835  
receipt requested: Monona, IA 52159

20.1.3. by e-mail: [info@cdwwireless.com](mailto:info@cdwwireless.com)

20.2. If to Customer:

20.2.1. CDW home page ([www.cdwwireless.com](http://www.cdwwireless.com));

20.2.2. Customer's e-mail address; or

20.2.3. The address identified on the application form signed by Customer, by certified U.S. Mail, postage pre-paid, return receipt requested.

20.3. Notice shall be deemed to have been given on the date that the same is personally delivered; three (3) days after, deposited in the U.S. Mail, postage pre-paid, certified mail, return receipt requested or the date of actual receipt, whichever is earlier; or on the same date sent via e-mail if sent before 5:00 p.m. (if the e-mail is not sent before 5:00 p.m., notice shall be deemed to have been given on the next calendar day).

20.4. CDW and Customer may change their addresses for purposes of notice by giving written notice to the other party of such change in the same manner as is provided above.

21. Non-Waiver. No waiver shall be implied by the failure of CDW or Customer to insist on performance of any of the terms or conditions of the Internet Access Agreement or to exercise any right or privilege granted to such party. No express waiver by CDW or Customer shall be construed as waiving any breach of the Internet Access Agreement or the performance of any of the terms or conditions not specified in the express waiver, and then only for the time and to the extent stated therein. One or more waivers of any covenants, term or condition shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

22. Severability. If any provision of the Internet Access Agreement shall be held to be invalid under any applicable laws, such invalidity shall not affect any other provision of the Internet Access Agreement that can be given effect without the invalid provision, and to this end, the provisions hereof are severable.

23. Governing Law. The Internet Access Agreement, and the rights and obligations of the parties thereto, shall be governed by and construed in accordance with the laws of the State of Iowa.