

# CROSSROADS INTERNATIONAL COMMUNICATIONS, INC. MEMBER SERVICE AGREEMENT FOR LOCAL LOOP INTERNET LINKUP SERVICE TERMS AND CONDITIONS

THIS AGREEMENT IS MADE AND ENTERED BY AND BETWEEN CROSSROADS INTERNATIONAL COMMUNICATIONS, INC. AN IOWA CORPORATION WITH OFFICES AT 317 SIXTH AVENUE, SUITE 700, DES MOINES, IOWA 50309-4113, ("CICI") AND THE UNDERSIGNED CUSTOMER ("MEMBER").

## Section 1 - Provision of Services; Billing

- 1.1 CICI will provide member with access to Internet, together with data transmission through CICI's network. CICI will monitor MEMBER'S access line and router or wireless link in accordance with standard practices as defined in attachment A, which is made a part of this agreement, and announce MEMBER'S IP number to fully facilitate Internet connectivity.
- 1.2 MEMBER agrees to pay all costs and charges associated with the service(s) as specified in this agreement or by separate instrument. MEMBER shall provide CICI with MEMBER'S service location(s). Quantities, number of lines, type and monthly recurring local rates, as well as the applicable one-time charges for initial installation shall be as provided in this agreement and as amended from time to time. CICI records are incorporated into this agreement by reference. In addition to the monthly line charge(s), the MEMBER agrees to pay all applicable FCC end user common line charges, federal and state taxes, plus any annual or monthly subscription service charges, as stated in the applicable tariff and/or catalogue/price list for the state or federal jurisdiction in which service is provided.
- 1.3 MEMBER agrees to pay each statement/invoice in full at location specified on invoice by the payment due date. Late payment charges will be billed at 1.5% per month on the unpaid balance. Accounts in default may have their service interrupted. Service interruption does not relieve MEMBER of its obligation to pay charges, current and past due.
- 1.4 The term of this agreement shall commence and will remain in effect from the day in which service begins to the Member's site ("Service Activation Date") for a period of two years. Should CICI continue to provide service after this term without further agreement, the service will continue under the terms of the applicable tariff or catalogue/price list then in effect and charges will convert to the applicable CICI month-to-month rate, in effect at that time.
- 1.5 From time to time CICI may suspend service for routine maintenance or rearrangement of facilities. Such suspension will be for a short period of time and whenever possible CICI will give member advance notification.
- 1.6 MOST FAVORED MEMBER. In the event comparable products and services with similar terms and conditions become generally available, as determined by CICI, CICI may elect to match these products or services, or transition member to a better CICI product or service.

## Section 2 - Use of Service, Restrictions

- 2.1 MEMBER agrees to use the services provided by CICI in compliance with local, state and federal laws, and in compliance with CICI policies. Any transmission in violation of any laws and regulations, including (without limitation) threatening or obscene materials, is prohibited.
- 2.2 Some materials available on the Internet may be subject to laws and treaties relating to copyrights and intellectual property laws, and member shall not violate any such laws. In addition, CICI does not control the content of information available through its network and cannot be responsible for the accuracy or quality of information obtained through its services. Accordingly, MEMBER is solely responsible for determination of all suitability and propriety of its use of all materials available through the Internet, and assumes all risks related to use of information or data.
- 2.3 Any use of CICI network or system resources which materially disrupts or interferes with normal operations or with other members or which uses the CICI network to make unauthorized attempts to access the systems and networks of others, is prohibited. MEMBER is solely responsible for compliance with all rules applicable to MEMBER'S access to any other networks. Any MEMBER engaging in such practices, or otherwise in violation of these terms and conditions, will be subject to termination of services.
- 2.4 CICI intends to provide an open computing environment, but internetworking (Network of Networks/Internet) is a shared system and respect, courtesy and cooperation is necessary. Member shall not intentionally or unintentionally, improperly configure its equipment, violate any laws, regulations, policies or rules governing use of the system, interfere, harass, or disrupt other users, networks or systems, or post or mail obscene materials. CICI shall have the right to interrupt or terminate service if it believes such interruption or termination is necessary.
- 2.5 MEMBER may from time to time receive or view certain information from CICI which CICI deems as a "trade secrets" as defined by applicable State and Federal law, and therefore, highly proprietary and confidential. CICI believes such trade secrets are not generally available to the public, have significant independent economic value, and are not readily ascertainable by proper means. CICI uses reasonable efforts to maintain the security of its trade secrets, which have been developed at a great expense and cost. The unauthorized use or disclosure of such trade secrets violates the intellectual property rights of CICI, and user agrees that the trade secrets will only be used by MEMBER for authorized purposes without further disclosure or use, and MEMBER agrees to pay all damages incurred by CICI for any violation.
- 2.6 MEMBER may request changes to location, quantity, type, or grade of Service and CICI shall grant, at its discretion, such requests subject to the availability of facilities and the terms and conditions of the applicable Tariff and Price List/Cost.
- 2.7 MEMBER shall not under any circumstance sell/resell, transfer, or assign this Agreement and Service without the prior written consent of CICI. Any act in violation of the foregoing shall be null and void, and the MEMBER shall remain obligated under this Agreement.
- 2.8 All TCP/IP (Transmission Control Protocol and Internet Protocol) addresses and numbers provided to the MEMBER by CICI shall remain the sole property of CICI and shall be promptly surrendered to CICI upon CICI's written request or if either party terminates this Agreement. CICI reserves the right to terminate and or substitute the TCP/IP addresses five (5) days after notice by CICI.

## Section 3 - Disclaimers; Limitations of Liabilities; Indemnification

- 3.1 NO WARRANTIES. CICI MAKES NO WARRANTIES OR ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE SERVICES IT PROVIDES TO CUSTOMER OR RELATING TO THE QUALITY, ACCURACY, OR VALIDITY OF THE DATA AND/OR INFORMATION RESIDING ON OR PASSING THROUGH CICI NETWORK. CICI GIVES NO WARRANTIES RELATING TO ITS SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 3.2 CICI does not own or control other networks or the transmission lines and facilities of providing Carriers and therefore, CICI cannot guarantee access, complete data transmission or the results expected from the system.
- 3.3 CICI SHALL NOT BE LIABLE, EITHER IN CONTRACT OR IN TORT, FOR UNAUTHORIZED ACCESS TO MEMBER'S TRANSMISSION FACILITIES OR MEMBER'S PREMISES EQUIPMENT; OR FOR UNAUTHORIZED ACCESS OR ALTERATION, THEFT OR DESTRUCTION OF MEMBER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD.
- 3.4 LIMITATION OF LIABILITY. MEMBER AGREES THAT CICI SHALL NOT BE LIABLE TO MEMBER FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OR HARM TO BUSINESS, LOST SAVINGS OR LOST PROFITS SUFFERED BY MEMBER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, OR FOR ANY CLAIM BY ANY THIRD PARTY, EVEN IF CICI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, CICI'S ENTIRE LIABILITY AND MEMBERS EXCLUSIVE REMEDY FOR ANY CLAIM, LOSS, DAMAGES OR EXPENSE FROM ANY CAUSE WHATSOEVER WILL IN NO EVENT EXCEED THE RETURN OF SERVICE FEES PAID BY MEMBER FOR THE CURRENT MONTH. NO ACTION OR PROCEEDING AGAINST CICI WILL BE COMMENCED MORE THAN ONE YEAR AFTER SERVICE IS RENDERED. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.
- 3.5 MEMBER AGREES TO INDEMNIFY AND HOLD CICI HARMLESS FROM ANY CLAIM OR DAMAGES, including attorney's fees, resulting from MEMBER'S use or misuse of CICI service or breach of the terms and conditions in this Agreement, including (without limitation) MEMBER'S causation of damages or injury, directly or indirectly to any other party.
- 3.6 FORCE MAJEURE. If CICI's performance of this Agreement or any obligation hereunder is prevented, restricted or interfered with by any causes including, failure or malfunction of member-supplied equipment, acts of God, storms, fire, floods or other catastrophes, power failure, natural emergencies, insurrection, riot, or wars, strike, lockouts, boycotts, work stoppages or other labor difficulties or any law order, regulation or other actions of any governmental authority or agency thereof, then CICI shall be excused from such performances on a day-to-day basis to the extent of such restriction or interference. CICI shall use reasonable efforts under the circumstances to avoid or remove such causes or nonperformance with reasonable dispatch.
- 3.7 LAWFULNESS. If a court or a government agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement is unlawful, or if CICI determines that this Agreement or provision of this Agreement is inconsistent with or contradictory to the law or other Agreements that CICI is obligated under, this Agreement, or that provision of this Agreement, shall terminate on written notice to MEMBER to that effect.

#### **Section 4 - Equipment**

- 4.1 CICI will retain management rights of terminating equipment (whether provided by MEMBER or by CICI) at all times. Terminating equipment is comprised of a router a CSU/DSU and/or a wireless bridge connected to MEMBER's corresponding equipment/network.
- 4.2 ALL WARRANTIES ON EQUIPMENT SHALL BE LIMITED TO THE APPLICABLE WARRANTIES PROVIDED BY THE ORIGINAL MANUFACTURER AND UNDER NO CIRCUMSTANCES SHALL EXCEED THE ORIGINAL VALUE OF THE PRODUCT(S) PROVIDED, IF THE EQUIPMENT IS NO LONGER COVERED BY THE MANUFACTURER'S WARRANTY, THEN MEMBER WILL ASSUME ALL REPAIR/REPLACEMENT AND TRANSPORTATION COSTS OF SAID EQUIPMENT.
- 4.3 MEMBER is responsible for establishing the inside wiring required to connect its router to the terminating equipment. Provisioning or placement of any necessary cross connects on the MEMBER side of the local access company's point of demarcation is the responsibility of the MEMBER.
- 4.4 MEMBER shall properly use and care for the terminating equipment provided by CICI, and shall be liable for any damages or loss of said equipment. MEMBER will not allow said equipment to be rearranged, moved, or altered, without CICI's prior written consent. MEMBER will not create or allow any liens or other encumbrances to be placed on any terminating equipment.
- 4.5 RE-TERMINATION OF CIRCUIT. Re-terminating the circuit refers to relocating the termination point of the telephone company's dedicated leased line at the MEMBER's premises. The leased line connects the MEMBER to the service. Should the MEMBER deem it necessary to re-terminate the circuit, the MEMBER will be responsible for additional CICI and telephone company fees. CICI is not responsible for service disruption caused by the re-termination. MEMBER must request re-termination in writing.

#### **Section 5 - Personal Identification**

MEMBER will identify personnel for the Institutional Representative, Technical Representative and User Services Representative in Attachment A, Representative Form. In addition CICI must have in its records the Name(s) and 24 hour phone number(s) of at least one Technical Representative that can act on behalf of the MEMBER. CICI may elect, at any time in any given 24 hour period, to contact this individual in cases of imminent Network emergencies as deemed necessary by CICI.

#### **Section 6 - Term and Termination**

- 6.1 Unless otherwise provided herein, the term of this Agreement is two (2) years from the service activation date and shall be automatically renewed for additional one (1) year periods ("renewal date(s)") at the rates in effect by CICI, 30 days prior to the renewal date.
- 6.2 This Agreement will terminate upon written notice from CICI in the event of MEMBER's abandonment, fraud, insolvency, willful misconduct, or breach of this Agreement which is not cured within thirty (30) days of notice of such breach.
- 6.3 USE AS ACCEPTANCE. Acceptance of this Agreement by CICI may be subject, in CICI's absolute and sole discretion, to satisfactory completion of a credit check. Activation of Service shall indicate CICI's acceptance of the terms of this Agreement. USE OF CICI SERVICE DESCRIBED IN THIS AGREEMENT CONSTITUTES MEMBER'S ACCEPTANCE OF ALL TERMS UNDER THIS AGREEMENT.

#### **Section 7 - Miscellaneous Terms**

- 7.1 NOTICES. Notices under this Agreement may be sent by certified mail with return receipt requested. If sent by certified mail, the notice shall be deemed delivered as of the date of mailing.
- 7.2 HEADINGS. Headings in this Agreement are for convenience and reference only, and are not deemed to be a part hereof.
- 7.3 SURVIVAL. Section 3 of this Agreement shall survive the termination of this Agreement.
- 7.4 CHOICE OF LAW AND WAIVER OF TRIAL BY JURY. This agreement shall be governed by the laws of the State of Iowa and the parties consent to personal jurisdiction of and venue in and agree that all litigation shall be brought in the District Court of Polk County, Iowa. Each party waives a jury trial in any matter arising out of this Agreement.
- 7.5 SEVERABILITY. If any provision of this Agreement is held by a court or governmental agency with proper jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement will nevertheless remain unimpaired and in effect.
- 7.6 WAIVER. The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.
- 7.7 BINDING EFFECT. This Agreement shall benefit and be binding upon the parties to this Agreement and their respective successors and assigns.
- 7.8 ENTIRE AGREEMENT. This Agreement represents the complete agreement and Understanding of the parties with respect to the subject matter herein, and supersedes any other agreement or understanding, written or oral. This agreement may be modified only through a written instrument signed by both parties. Both parties acknowledge that they have read and understand this Agreement and agree to be bound by its terms. Both parties represent and warrant, if applicable, that they have full corporate power and authority to execute and deliver this Agreement and perform their obligations thereunder, and that the person whose signature appears below is duly authorized to enter into this Agreement on behalf of the party.