



Commercial Services Agreement

2019

The City of Mont Belvieu and MB Link Broadband are proud to serve you!

The following is an Agreement between you and MB Link Broadband under which you agree to use and we agree to provide MB Link Broadband services.

ACCEPTANCE OF THIS AGREEMENT

MB Link Broadband (“MB Link”) commercial fiber-optics Internet, associated services (“Services”) and any equipment that is owned and provided by MB Link (“MB Link Equipment”) in connection with the Services will be provided to the Customer as designated on a Service Order. The Customer named on the Service Order shall be the customer of record for the MB Link bill (collectively “Customer”, “you” or “your”) and shall be solely responsible for complying with all the terms and conditions of this Agreement. The address on the Service Order shall be the address of record (“Premises”) and shall be the location(s) where MB Link provides the Services and MB Link Equipment to Customer. The agreement for a Customer’s use of the Services and MB Link Equipment shall consist of the Service Order and this Agreement for commercial fiber-optic Services (collectively the “Agreement”). If Customer uses or otherwise accepts any Services or MB Link Equipment, the Customer is accepting this Agreement and agrees to be bound by its terms. The Customer may not modify this Agreement by making any typed, handwritten, or any other changes for any purpose.

ACCEPTABLE USE OF SERVICES

The Services and MB Link Equipment provided to Customer shall only be used by the Customer for commercial, non-residential use. Customer shall not: (i) make the Services and/or MB Link Equipment available, nor permit the Services and/or MB Link Equipment to be made available or to provide television, Internet, telephone or similar services to one or more third parties; (ii) resell or transfer the Services or MB Link Equipment to any other person for any purpose, or charge others to use the Services or MB Link Equipment; (iii) use the Services in any manner that is contradictory to MB Link’s Acceptable Use Policy; (iv) tamper with, disrupt, or “hack” any Service or MB Link Equipment; (v) make use of the Services or MB Link Equipment in any way that is inconsistent with their intended purpose. A Customer’s use of the Services is subject to MB Link’s Acceptable Use Policy and Privacy Notice and you agree to be bound by these policies. Copies of this Agreement, the Acceptable Use Policy and the Privacy Notice are available at www.mblinktx.net. A Customer who violates any terms contained in this Agreement or in any applicable policy are subject to have their Services suspended or terminated. It is Customer’s responsibility to read and understand this Agreement and all applicable policies prior to accepting any Services and MB Link Equipment. It is Customer’s sole responsibility for ensuring that other users of the Services and MB Link Equipment understand and comply with this Agreement and all applicable policies.

UNAUTHORIZED USE OF THE SERVICES OR TAMPERING

Customer agrees not to use or assist any other person to use any unauthorized equipment or device to access or tamper with MB Link’s fiber optic network, the Services, or MB Link Equipment for any purpose including, but not limited to, the unauthorized use and reception of the Services. MB Link may terminate the Services and seek damages from Customer if you perform any action described above. The unauthorized use, access or tampering of the MB Link fiber optic network, Services, or MB Link Equipment may result in criminal prosecution.

SERVICE ORDER

A Service Order must be completed to initiate Services or for MB Link Equipment to be installed at the Premises. A Customer’s request for Services and/or MB Link Equipment shall be signed and submitted by Customer to MB Link on an MB Link designated Service Order. A Service Order shall become binding when signed by the Customer. When a Service Order becomes binding it shall be deemed part of, and shall be subject to, this Agreement.

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INSTALLATION AND ACCESS

Customer agrees that MB Link, its employees, contractors, and agents may enter the Premises where the Services are provided and/or MB Link Equipment is installed at reasonable times for the purposes of installing, adjusting, repairing, replacing, maintaining, upgrading, moving, auditing, or removing any MB Link Equipment, as necessary. A Service Order shall be reviewed by MB Link to determine whether facilities need to be built or upgraded to provide the Services and/or MB Link Equipment to the Premises. MB Link may charge an installation fee in order to provide the Services and MB Link Equipment. Customer represents that you either own the Premises or have the proper rights and permissions from the Premises owner to grant MB Link access to perform the activities specified above. Customer also agrees to allow access for the purpose of checking the operation and performance of the Services and MB Link Equipment. Customer may always ask for proper identification anytime an MB Link employee, contractor, or agent requests entry to the Premises. If identification is not provided, please do not allow access to the Premises.

MB LINK OWNED EQUIPMENT

All MB Link Equipment that is issued and not sold to Customer by MB Link which includes, but not limited to, devices, software, and hardware shall remain the property of MB Link at all times and will not be deemed a fixture or in any way a part of the Premises. Customer expressly agrees that you will use the MB Link Equipment exclusively for the Services. Customer agrees to be responsible for any loss, theft, or damage to the MB Link Equipment. MB Link may replace or remove any MB Link Equipment, at MB Link's discretion, at any time the Services are active or following the termination of the Services. Customer understands that if you make any addition to, removal of, or change to the MB Link Equipment this may interrupt the Services. Customer may not sell, lease, abandon, or give away any MB Link Equipment. The Services and MB Link Equipment may only be used at the Premises unless expressly authorized by MB Link. At Customer's request, MB Link may relocate the MB Link Equipment for a charge. Customer understands and acknowledges that if you attempt to install or use the Services or MB Link Equipment at a location other than the Premises or as otherwise expressly authorized by MB Link, the Services and MB Link Equipment may fail to function or may function improperly.

CUSTOMER OWNED EQUIPMENT

MB Link is not responsible for the maintenance, operation, service, repair, or replacement of any equipment owned by Customer that is connected to or used in conjunction with to the Services and MB Link Equipment including, without limitation, televisions, computers, tablets, telephones, routers, or any other equipment you own. Customer agrees to allow MB Link and its contractors to send software and application updates to your equipment and to configure your equipment when necessary to provide the Services, even if doing so changes, adds, or removes features or functionality or impacts the performance of such equipment. MB Link makes no representation or warranty that any software or application installed or downloaded on Customer equipment does not contain a virus or other harmful software. It is Customer's sole responsibility to take appropriate precautions to protect your equipment from damage to its software, files, and data as a result of any such virus or other harmful software. Upon Customer's request, MB Link may install or run virus check software on your equipment. MB Link makes no representation or warranty that the virus check software will detect or correct any or all viruses. Customer acknowledge that you may incur additional charges for any service call related to a virus or other harmful feature detected on your equipment. Absent gross negligence or willful misconduct, MB Link will not be responsible for any damage to Customer equipment arising from such activities. If Customer is not the owner of the equipment, you are responsible for obtaining any necessary approval from the owner to allow MB Link to access this equipment and to perform the activities listed above.

3 WIRING

All inside wiring located in the Premises is owned by the Customer and is the Customer's responsibility regardless if MB Link installed the inside wiring. Ownership of the inside wiring begins twelve (12) inches from where the wiring enters the outside of

the Premises. MB Link has no responsibility for the operation, maintenance, repair, replacement, or support of any inside wiring. At Customer's request, MB Link may install or repair your inside wiring and will charge you for this service.

TERM

The term of this Agreement shall commence on the date the Service Order was signed and this Agreement shall expire at the end of the stated term in the Service Order ("Contract Term") or upon other termination as provided for in this Agreement. Upon the expiration of the Contract Term, this Agreement shall automatically renew on a month-to-month basis for as long as the Customer continues to receive Services or has MB Link Equipment. MB Link may change any prices for the Services and MB Link Equipment as set forth in a Service Order at any time this Agreement is renewing on a month-to-month basis and shall be effective upon thirty (30) days prior notice to the Customer. Customer will have thirty (30) days from the day of such notice to cancel the Services and MB Link Equipment without a Termination Charge. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the change in pricing.

TERMINATION

Customer shall have the right to terminate a Service Order or this Agreement, in whole or part, at any time during the Contract Term upon thirty (30) days prior written notice to MB Link subject to the payment of all outstanding amounts due for the Services up to the date of termination, a Termination Charge, and the return of all MB Link Equipment. The Termination Charge shall be fifty percent (50%) of the remaining monthly charges that would have been payable to MB Link under a Service Order or this Agreement if the Services and MB Link Equipment would have been provided until the end of the Contract Term plus any installation charges or other charges that were waived by MB Link ("Termination Charge"). A Customer may terminate the Services and Equipment without a Termination Charge at any time after the expiration of the Contract Term by providing MB Link thirty (30) days prior notice of termination subject to the payment of all outstanding amounts due for the Services up to the date of termination. MB Link may terminate any Service Order or this Agreement if Customer is in breach of a payment obligation (including failure to pay a required deposit) for any undisputed charges. Either party may terminate a Service Order or this Agreement immediately, if the other party becomes insolvent, involved in liquidation or termination of its business, adjudicated bankrupt, or has been involved in an assignment for the benefit of its creditors. Customer agrees that immediately upon termination Customer will stop using the Services and call MB Link Customer Operations Center to schedule the retrieval of MB Link Equipment.

CUSTOMER SERVICE

Customer may call the MB Link Customer Operations Center at 1-844-4MB-LINK at any time for customer service inquires. Customer agrees that when contacting the Customer Operations Center, MB Link may monitor and record any telephone calls or other voice, data, or communications that are transmitted between MB Link and its agents and you, your agents, or any user of your Services or MB Link Equipment. MB Link may use procedures to verify Customer identity when calling into the MB Link Customer Operations Center.

CREDIT POLICY AND DEPOSIT

By signing a Service Order, Customer agrees that MB Link may review your previous billing history with MB Link and you authorize MB Link to make credit inquires and access your credit history from third parties if required. Customer further authorizes MB Link to disclose this credit information to appropriate third parties for reasonable business purposes according to applicable law. MB Link may require Customer to pay a deposit acceptable to MB Link for the Services and/or the MB Link Equipment prior to activation of the Services or providing you with the MB Link Equipment. The deposit will be refunded to Customer upon the termination of all Services and after all MB Link Equipment is returned and all charges up to the date of termination have been paid. The deposit may be applied to the Customer bill according to applicable law if all charges are not paid upon termination or the Customer is adjudicated bankrupt.

BILLING AND PAYMENTS

MB Link will bill all charges associated with the Services and MB Link Equipment as set forth in the Service Order or as billed by MB Link monthly in advance (except for usage based charges, which will be billed monthly in arrears) plus applicable federal, state, and local taxes, and all other regulatory and governmental fees including, but not limited to, public, educational, governmental access, and universal service fees. Some regulatory and government imposed fees and taxes may be imposed or become applicable retroactively and Customer will be responsible for paying any such fees and taxes. By using the Services, Customer is solely responsible for all charges payable to third parties that Customer may incur such as, but not limited to, calling phone numbers that charge for services, purchasing or subscribing to offers through the Internet, or for television content that is available but separate and apart from the Services charged by MB Link. If Customer is exempt from certain taxes, you must provide MB Link with an original certificate that satisfies all applicable legal requirements for tax-exempt status. A tax exemption will only apply from and after the date, MB Link receives it. Customer agrees to pay all charges as shown on your bill on or before the 10th day of the month following the date the bill is due. Customer's failure to pay the total bill balance when due will result in a late fee of 10% of the amount that is past due. The late fee charged is liquidated damages for the reasonable estimate of MB Link's costs resulting from late payments or nonpayment of bills. MB Link may, in its sole discretion and according to applicable law, suspend or terminate the Services and remove MB Link Equipment from the Premises if you fail to pay the total bill balance when due. If the Services are suspended or terminated for failing to pay the total bill balance when due, MB Link may require Customer to pay a reactivation fee. This reactivation fee is in addition to all past due charges. If Customer pays by credit card but MB Link does not receive payment from your credit card issuer or its agents, you agree to pay this amount upon MB Link demand. MB Link, in its sole discretion, may limit the option for a Customer to pay by credit card or to discontinue the acceptance of credit cards at any time. To the extent allowed by law, MB Link may charge a reasonable fee for all returned checks, credit and debit card chargebacks, or other instrument used by Customer to pay a bill that has been rejected by a bank or other financial institution. MB Link reserves the right to require any payment that has been rejected by a bank or other financial institution plus the late fee to be paid by cash, cashier's check, or money order. If a bank or other financial institution more than once rejects Customer's payment, MB Link may require Customer to make all future payments by cash, cashier's check, or money order. If MB Link retains an agency or attorney to collect any amount owed by Customer, you will be obligated to pay all of MB Link's costs of collection, including court cost and reasonable attorneys' fees. If Customer disputes any charge on your bill or if you are eligible to receive a bill credit, you must contact the MB Link Customer Operations Center at 1-844-4MB-LINK within one hundred twenty (120) days after the date on your bill or you waive such dispute or credit.

THIRD PARTY LICENSES

The Services and MB Link Equipment may require the use of third party licenses and may be subject to end-user license agreements. All such licenses and agreements are incorporated herein by reference. Customer is granted a revocable, nonexclusive, nontransferable, limited license to use the third party licenses solely to the extent necessary to use the applicable Services and MB Link Equipment and strictly in accordance with this Agreement. Customer agrees to comply with all end-user license agreements that accompany the Services and MB Link Equipment or are otherwise applicable to your use of the Services. Customer may not claim title to, or any ownership interest in any third party license. Upon termination of the Services, all third party licenses and end-user license agreements shall terminate, Customer agrees to return all MB Link Equipment to MB Link, and Customer agrees to return or destroy all property including, but not limited to, software and hardware received related to third party licenses and end-user license agreements.

CHANGES TO SERVICE TERMS AND CONDITIONS

- 5 Subject to applicable law, MB Link has the right to change this Agreement and any applicable policies at any time. MB Link may also change, add, or remove features or offerings contained in the Services including, by not limited to, changes in programing, functionality, equipment requirements, and any terms and conditions related to the Services. MB Link shall provide notice of the changes by posting a revised Agreement for commercial fiber optic services ("Revised Agreement") on MB Link's website at

www.mblinktx.net. Notice may also be provide by mail to Customer's billing address, by email to your email address associated with your account, or by including notice in your bill for the Services. Customer agrees that by posting a Revised Agreement on MB Link's website shall constitute sufficient and effective notice under this Agreement. Customer shall have thirty (30) calendar days from the date the Revised Agreement is posted to provide MB Link written notice that the Revised Agreement is not acceptable and Customer may terminate a Service Order and this Agreement without a Termination Charge. This shall be Customer's sole and exclusive remedy regarding MB Link changes to this Agreement.

INTELLECTUAL PROPERTY

All intellectual property associated with the Services and MB Link Equipment including, but not limited to, all content, firmware, software, trademarks, trade names, and service marks are owned by MB Link, its suppliers, or their licensors and noting in this Agreement or the use of the Services or MB Link Equipment shall grant Customer any right, title, license or any other interest in the intellectual property. Upon termination of the Services, Customer agrees to return to MB Link or destroy all intellectual property in the possession of the Customer.

NO WARRANTIES

MB LINK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICES OR THE MB LINK EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS. THE SERVICES AND THE MB LINK EQUIPMENT ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. THE SERVICES ARE NOT FAIL-SAFE AND MAY BE DISRUPTED. THE SERVICES ARE NOT DESIGNED OR INTENDED FOR USE IN SITUATIONS IN WHICH AN ERROR OR INTERRUPTION COULD LEAD TO INJURY TO BUSINESS, PERSONS, PROPERTY, OR THE ENVIRONMENT. WITHOUT LIMITING THE FOREGOING, MB LINK DOES NOT WARRANT THAT THE SERVICES AND MB LINK EQUIPMENT WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF QUALITY AND PERFORMANCE, OR LOSS OF CONTENT, DATA OR INFORMATION. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICES OR MB LINK EQUIPMENT, IF ANY, BY MB LINK OR BY MB LINK'S AUTHORIZED REPRESENTATIVES ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

LIMITATION OF LIABILITY

IN NO EVENT SHALL MB LINK, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, AND SERVICE PROVIDERS BE LIABLE TO CUSTOMER OR TO ANY USER OF THE SERVICES AND EQUIPMENT FOR LOSS OF PROFITS OR FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SERVICES AND EQUIPMENT PROVIDED BY MB LINK UNDER THIS AGREEMENT, OR THE DELIVERY OR FAILURE TO DELIVER THE SERVICES AND EQUIPMENT EVEN IF MB LINK HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. WITHOUT LIMITATION OF THE FOREGOING, MB LINK SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM (i) OTHERS ACCESSING THE SERVICES OR ANY EQUIPMENT RELATED TO THE SERVICES; (ii) SECURITY BREACHES, VIRUSES, EAVESDROPPING, OR INTERCEPTION OR INTERRUPTION OF THE SERVICES; (iii) ANY MISTAKES, OMISSIONS, FAILURES, MALFUNCTIONS, THEFT, DELETION, CORRUPTION OF FILES, ERRORS, DEFECTS, OR FAILURES OF PERFORMANCE RELATED TO THE SERVICES AND EQUIPMENT; AND (iv) ANY USE OF THE SERVICES OR EQUIPMENT THAT INFRINGES UPON ANY PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, CONTRACTUAL RIGHTS OR ANY INTELLECTUAL PROPERTY RIGHTS OF ONE OR MORE THIRD PARTIES. IT IS EXPRESSLY AGREED THAT MB LINK SHALL HAVE NO LIABILITY FOR ANY DAMAGE TO CUSTOMER OR ANY OTHER PERSON CLAIMED TO HAVE RESULTED FROM THE USE OF THE SERVICES AND/OR MB LINK EQUIPMENT. IN THE EVENT THAT MB LINK IS HELD LIABLE FOR DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES, THIS AGREEMENT, OR ITS OBLIGATIONS UNDER THIS AGREEMENT FROM A COURT WITH JURISDICTION; MB LINK'S AGGREGATE LIABILITY SHALL NOT

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EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO MB LINK FOR THE SERVICES FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH LIABILITY.

INDEMNITY

CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS MB LINK FROM ALL LIABILITIES, DAMAGES, CLAIMS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) THAT ARISE FROM (i) CUSTOMER'S USE OR MISUSE AND FROM ALL OTHER PERSONS WHO MAY USE OR MISUSE THE SERVICES AND EQUIPMENT; (ii) ANY VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY OF ANY THIRD PARTY FROM CUSTOMER'S USE OF THE SERVICES OR USE OF ANY EQUIPMENT IN CONJUNCTION WITH THE SERVICES; (iii) FROM USE OR FAILURE OF THE 911/E911 FUNCTIONALITY OR ANY OTHER DIALING ASSOCIATED WITH A HOME SECURITY, HOME DETENTION, MEDICAL MONITORING OR OTHER SIMILAR SYSTEM; (iv) AND FROM CUSTOMER'S BREACH OF ANY PROVISION OF THIS AGREEMENT OR APPLICABLE POLICY. WHERE CUSTOMER IS OBLIGATED TO INDEMNIFY OR HOLD MB LINK HARMLESS ANYWHERE IN THIS AGREEMENT, THOSE OBLIGATIONS RUN NOT ONLY TO MB LINK, BUT ALSO TO ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, AND SERVICE PROVIDERS.

MISCELLANEOUS

This Agreement and any other documents incorporated by reference constitutes the final, complete, and entire written agreement between MB Link and Customer and supersedes all previous communications, representations, agreements, promises, statements, proposals, and specifications, whether written or oral. If any provision of this Agreement is held to be unenforceable, the unenforceable provision shall be replaced with a valid provision in accordance with applicable law and shall have substantially the same commercial effect as the unenforceable provision to reflect the original intentions of the parties, and the remainder of this Agreement shall remain in full force and effect. If MB Link fails to insist upon or enforce strict performance of any provision of this Agreement, it shall not thereby waive any provision or right. Any waiver by MB Link with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Any waiver of this Agreement shall only be valid if provided in writing. Neither the course of conduct between the parties nor trade practice shall modify this Agreement. This Agreement may not be assigned without the express written consent of MB Link. MB Link and Customer hereby certify that they are independent parties and nothing herein shall be construed to create a partnership, joint venture, agency, or any other type of fiduciary or service relationship between MB Link and Customer, and neither party shall have the authority to bind the other party in any respect.

FORCE MAJEURE

Without affecting any other limitation on liability or disclaimer contained herein, MB Link shall in no case be liable for any harm caused to Customer or to others or to your successors and assigns if the event or circumstance causing such harm is beyond MB Link's reasonable control, including, but not limited to, acts of God, fire, earthquake, flood, the elements or other catastrophes; strikes, lock-outs, work stoppages or other labor difficulties; utility curtailments, power failures, explosions, insurrections, riots, wars or civil disturbances; any law, order, regulation, or requests of any government or of any civil or military authority; national emergencies; shortages or failure of equipment or supplies; unavailability of transportation; acts or omissions of third parties; or any other cause beyond MB Link's reasonable control.

GOVERNING LAW

- 7 This Agreement and the relationship between Customer and MB Link shall be governed by the laws of the State of Texas without regard to conflict of laws principles and Customer agrees to the personal jurisdiction of the courts of West Chambers County, Texas and that these courts shall be the exclusive venue for resolution of any dispute that may arise out of the Services or this Agreement.

SURVIVAL

Certain obligations under this Agreement by their terms shall continue beyond termination of the Services including, but not limited to, provisions dealing with payment for the Services and MB Link Equipment, access to the Premises, disclaimers of warranties, limitations of liability, and indemnity. The suspension, termination, expiration, or cancellation of the Services under this Agreement shall in no way affect the survival of such obligations.

ADDITIONAL REPRESENTATIONS AND WARRANTIES

In addition to representations and warranties Customer made elsewhere in this Agreement, Customer also represents and warrants that: (i) you have provided MB Link with information that is accurate, complete, and current, including, without limitation, your legal name, address, telephone number(s), email address(es), the number of devices on which or through the Services are being used, and payment information; (ii) you agree to immediately notify MB Link if there is any change in the information that you have provided to MB Link; (iii) you own or have a legal right to occupy the Premises; and (iv) that the Services and MB Link Equipment shall not be used for any illegal purpose or in any way that may violate the law.

Effective Date: 02.01.2019

Last Updated: 05.01.2019