



This agreement is entered into by and between the **Bellefontaine-Logan County Finance and Development Authority dba PeakFiber**, an Ohio Port Authority, with offices at 100 S. Main St., Bellefontaine Ohio 43311 (“**PeakFiber**”) and you (“**Client**”) for business broadband fiber service. Both parties agree to the terms and conditions provided within this document and any other supplemental documents that may be referenced.

1. **Services, Products and Expenses Overview**

- a. **Scope of Services** – PeakFiber will provide fiber-based Broadband Service (“Service”) and, if selected, enabled Wi-Fi connectivity (“Wi-Fi”) that allows you to access the Internet connected directly or indirectly to the PeakFiber network. Current business enterprise speeds offered are 250Mbps (\$134.99/mo), 500 Mbps (\$179.99/mo), and 1000Mbps (\$249.99/mo). Faster speeds may be provided at our discretion. Managed Wi-Fi can be provided for an additional monthly service fee of \$14.99 and Static IP address for an additional monthly service fee of \$14.99. Prices are subject to change with minimum 30-day notice to Clients. Additional services may be provided directly by PeakFiber or indirectly through resale or agent arrangements PeakFiber has made with third parties. By using or paying for the Service, you are agreeing to the terms and conditions in this Agreement.
- b. **Term of Agreement** - PeakFiber business service has no contractual term. A Client may choose to terminate Service at any point by contacting PeakFiber via phone, email, or mail. Service termination will take effect at the end of the current billing cycle in which the termination request is processed. PeakFiber can be contacted by email at info@peakfiber.net, by phone at 937-599-7220, or by mail at: 100 S. Main St. Bellefontaine, OH 43311.

2. **Change Requests**

If Client desires a change in Services or Products delivered under this agreement, Client shall notify PeakFiber electronically at info@peakfiber.net or by phone at 937-599-7220 of the change request. Upon receipt of a change request, PeakFiber shall, update the Client account within ten (10) business days to reflect the updated Services. Any changes in billing will take effect on the next monthly invoice.

3. **Client Responsibilities**

Client’s use of the Services (including all content transmitted via the Services) shall comply with all applicable laws and regulations, the terms of this Agreement, and any Terms of Use, which are incorporated here by reference.

Client shall be responsible for any PeakFiber Equipment and Devices in use at the Client’s Premises. Client shall not alter, misuse, repair, or in any manner tamper with the Equipment or outlets or remove from the Equipment any markings or labels. Equipment cannot be removed from Client Premises and used in another location. Client is responsible for the safekeeping of all Equipment. If any Equipment is destroyed, damaged, lost or stolen while

in Client possession, Client shall be liable for the cost of repair or replacement of the Equipment.

As between the parties, Client is solely responsible for (a) all use (whether or not authorized) of the Service, which use shall be deemed Client's use for purposes of this Agreement; and (b) all content that is stored or transmitted via the Service. Client shall not upload, post, transmit or otherwise make available on or via the Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law or regulation. PeakFiber may remove, or demand the removal of, content that in its judgment violates these standards.

Client agrees to: (a) conform its Equipment and Software to PeakFiber's then-current Network specifications and system requirements for the Services; (b) allow PeakFiber, at its sole opinion and in its sole discretion, to monitor traffic and content on its Network, including through the use of automatic content filters (including without limitation spam, virus and adult language sniffers and filters). PeakFiber shall have the right but not the obligation, to upgrade, modify and enhance the Equipment (including related firmware) and the Services and take any action that PeakFiber deems appropriate to protect the Services and its facilities.

4. **Acceptable Use Policy**

The Service may only be used for lawful and appropriate purposes. Client and its Users may not transmit, retransmit, redirect, or store material in violation of federal or state laws or regulations or industry or community standards, including, but not limited to, obscenity, indecency, defamatory or material infringing trademarks or copyrights. Client and its Users may not abuse or fraudulently use the Service or Equipment, nor allow such use by others. The following illustrate some, but not all, uses that are prohibited under this Acceptable Use Policy:

- (1) **Child Pornography:** It is illegal under federal and state child exploitation statutes to possess, produce, receive, transport or distribute by any means, including computer, visual depictions of "sexual intercourse" and/or "sexually explicit conduct" involving persons under the age of 18.
- (2) **Inappropriate Content:** Using the services to transmit, distribute, redirect, or store material that, as reasonably determined by PeakFiber, is inappropriate, obscene, defamatory, libelous, threatening, abusive, hateful or which contains or incites violence.
- (3) **Denial of Service:** Engaging in activity that may or will interfere with the Service of another user, host or network on the Internet. Users are also prohibited from activity considered a precursor to attempted security violations including, but not limited to, any form of scanning, probing, or other testing or information gathering activity, without prior express written consent from PeakFiber.
- (4) **Distribution of Viruses:** Distribution of software, programs or messages that may cause damage or annoyance to persons, data, and/or computer systems. Hosts not timely secured or removed by Client may be blocked by PeakFiber from accessing the Network.

- (5) **Forging Headers:** Forging or misrepresenting a message header of an electronic transmission originating or passing through PeakFiber's Network.
- (6) **E-mail Spamming [or Mail-bombing]:** The transmitting of unsolicited e-mail to multiple recipients, sending large amounts of e-mail repeatedly that annoys, harasses or threatens another person or entity, or attempts to use PeakFiber servers as a mail drop or name server for SPAM. Sending unsolicited bulk e-mail from another Internet service provider's network advertising or implicating any Service hosted or provided by PeakFiber, including without limitation e-mail, web hosting, FTP and DNS services. The sending of e-mail with added words/characters in an attempt to bypass Bayesian filters is prohibited. For bulk e-mailers on the PeakFiber Network - removal of complainants is required, as is the creation of a master no-send list. Bulk e-mailers may also be required to provide the complete confirmed opt-in information for each complainant within 24 hours of the request. Bulk e-mailers will also be required to demonstrate a definitive prior business relationship between the sender and the recipient. Utilizing a Client affiliate program to generate leads makes the Client responsible for the actions of its Affiliates. This control includes, but is not limited to, blocking Affiliate links and sending the affiliate traffic to a 404-error type page.
- (7) **Fraudulent Activities:** Fraudulent activities include, but are not limited to, intentional misrepresentations or misleading statements, writings or activities made with the intent that the person receiving it will act upon it; obtaining services with the intent to avoid payment; and hosting of phishing websites.
- (8) **Unauthorized Access:** Unauthorized access includes, but is not limited to, the illegal or unauthorized access to other computers, accounts, or networks; accessing or attempting to access computer resources belonging to another party; attempting to penetrate security measures of other systems; using PeakFiber Services not included in Client's contract; devising ways to circumvent security in order to access unsubscribed Services; using the Services in a manner that encumbers disk space, processors or other system resources beyond amounts allowed by the specific type of Service; and/or interfering with a Service, overloading a Service or attempting to disable a host not assigned to Client.
- (9) **Network Sabotage:** Use of PeakFiber Equipment and Services in a manner that interferes with others' use of the Internet or PeakFiber's Network.
- (10) **Pyramid Schemes:** Use of a fraudulent system of achieving financial gain, which requires an endless stream of recruits for success.
- (11) **Unlawful Acts:** Use of PeakFiber Equipment and Services to violate the law or to aid any unlawful act.
- (12) **Non-e-mail Based Spamming:** Posting of messages to newsgroups/blogs/services that are irrelevant, blanket posting of messages to multiple newsgroups/blogs/services, and the posting of annoying, harassing and/or threatening messages. Violation of any rules, policies or charters posted online by any search engine, subscription web service, chat area, bulletin board, webpage, or any other service accessed via the PeakFiber Network is prohibited.
- (13) **Facilitating a Violation of this AUP:** Advertising, transmitting, or otherwise making available any software, program, Product, or Service that is designed to allow a user to violate this AUP. This includes, but is not limited to, the facilitation of the means to spam, initiation

of pinging, flooding, mail bombing, denial of service attacks, and piracy of software.

- (14) **Blacklisting:** Behavior by a Client that causes or could cause blacklisting must be remedied within 48 hours of written, electronic or telephonic notice from PeakFiber. Activities that result in re-listing are prohibited and must be stopped immediately. Known spammers, previously unidentified, will be removed from the network once identified.

VIOLATIONS AND ENFORCEMENT.

At PeakFiber's sole and reasonable discretion, violations of any element of this AUP may result in a warning to the offender followed by suspension or termination of the Service if Client does not cease the violation. PeakFiber may immediately suspend or terminate Service with or without notice if PeakFiber reasonably determines that a violation of the AUP has occurred. PeakFiber will enforce this AUP according to the severity of the offense and violator's history of prior AUP infringements. Severe and/or repeated offenses will result in immediate termination of Service. PeakFiber is not liable for damages of any nature suffered by any Client, end-user, or any Third-Party resulting in whole or in part from PeakFiber exercising its rights under this AUP. PeakFiber has no practical ability to monitor all conduct, communications, or content that might violate this AUP prior to its transmission over the PeakFiber Network but, where possible and necessary, may do so at its discretion. Therefore, PeakFiber does not assume liability for others' violations of the AUP or failures to terminate those violations. PeakFiber reserves the right to assess time and materials charges to resolve Client issues that are not resolved by the Client in a timely manner.

Because PeakFiber acts only as a conduit for transmission of data it is not subject to the Health Insurance Portability and Accountability Act (as per 65 FR 82476), or Gramm-Leach-Bliley Act (as per 16 C.F.R. §314.2(d)); Client is solely responsible for complying with all such statutes, rules and regulations.

PeakFiber reserves the right to modify this AUP at any time without prior notification to Client.

**TO REPORT A VIOLATION OF THIS AUP OR AN ABUSE OF PEAKFIBER'S SERVICES,
PLEASE E-MAIL: INFO@PEAKFIBER.NET**

5. Service Agreement Term and Termination

PeakFiber business service has no contractual term. A Client may choose to terminate Service at any point by contacting PeakFiber via phone, email, or mail. Service termination will take effect at the end of the current billing cycle in which the termination request is processed. PeakFiber can be contacted by email at info@peakfiber.net, by phone at 937-599-7220, or by mail at: 100 S. Main St. Bellefontaine, OH 43311.

Upon the termination or the agreement: (a) PeakFiber's obligations shall cease; (b) Client immediately shall pay all amounts due and owing to PeakFiber for Services and/or Products delivered prior to the date of termination or expiration, plus any applicable Equipment removal Fees; (c) PeakFiber shall disable access to all PeakFiber Equipment; and (d) Client shall return to PeakFiber, or permit PeakFiber to remove, in PeakFiber's sole discretion, the Equipment in the same condition as when received, ordinary wear and tear expected. Client shall be responsible for reimbursing PeakFiber for the repair or replacement, at PeakFiber's discretion, of any Equipment not returned timely and in good condition.

6. Transfer of Account/Change of Location.

The Service shall only be provided at the address where PeakFiber completes installation (Service Address). Account holder may not transfer Client's rights or obligation to the Service to any successor tenant or occupant, or to any other address without providing PeakFiber with written consent from both parties (unless previous party is deceased, and in that case a death certificate is required).

7. Charges and Fees, Invoicing, Late Payment, Credit Reporting and Suspension

a. Charges and Fees.

All monthly recurring Charges and Installation Fees will be stated at the time of Client order and will be shown in monthly payment reminders.

b. Monthly Payment Reminders/Invoice.

PeakFiber will auto bill you monthly for all charges associated with the Service for the coming month. Payment in full is due via automatic ACH or credit card pre-authorization no later than the due date indicated on your bill. You are responsible for paying any taxes, surcharges, fees and assessments imposed from time to time in connection with these Services. All payments are required to be made via recurring autopayment tied to an active bank account, debit card, or credit card. The payment will be deducted on the date provided by the Client as specified in the Payment Authorization Form or account information provided through the Customer Portal as completed at the time of account setup. PeakFiber may, in its sole discretion, retroactively bill you for Services or other fees and charges if it determines the prior billing was missed, incomplete or incorrect. For payments authorized by credit card or by debiting a bank account, no additional notice or consent is required before we invoice the credit card or debit the bank account for all amounts due to us for any reason. We may accept late payments, settlement of any dispute without losing any of our rights under this Agreement.

c. Invoice Dispute.

Should Client dispute in good faith any portion of an invoice, Client shall notify PeakFiber, in writing and prior to the due date of the invoice, of the disputed amount, the nature and basis of the dispute. Each party shall use its best efforts to resolve the dispute prior to the invoice due date. However, if the parties are unable to resolve the dispute prior to the invoice due date, Client shall pay the full invoice amount, including the disputed portion, to PeakFiber on or before the due date.

d. Late Payment/Default and Other Charges.

If Client defaults or does not timely pay a PeakFiber invoice within terms, PeakFiber will charge Client a \$15 Late Payment Fee on all past due invoice amounts. PeakFiber does not extend credit to Clients and the Late Fee is not interest or a finance charge. If Service is disconnected, PeakFiber may impose a Reactivation Fee and/or security deposit, in addition to collecting any outstanding balance, including any Late Fee, before service is restored. If Client's check or ACH payment is returned for insufficient funds, PeakFiber may impose a service charge up to \$30.00. If Client has not paid amounts due within 30 days of the due date, a collection agency and/or attorney may be engaged to collect amounts due. Client agrees to pay PeakFiber for any amounts due, and all reasonable agency and attorney fees incurred, including, without limitation, court costs.

e. Credit Reporting.

In order to establish an account with PeakFiber and/or obtain or modify the Service, you hereby authorize us to obtain a report from a business credit reporting agency and to exchange information with others in connection with determining your creditworthiness. If you operate a sole-proprietorship or single member LLC, you also hereby authorize us to obtain a report from a consumer credit reporting agency to determine your creditworthiness. PeakFiber or its agents may report information about your Service account, including unpaid balances, to business and consumer credit bureaus as applicable. If you are late or delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to business or consumer credit reporting agencies as applicable. Late payments missed payments or other defaults on your account may be reflected in your credit report. We may also charge you a Reactivation Fee or decline to reinstate Service if Service is suspended or terminated.

f. Suspension of Services.

In the event that Client fails to comply with: (i) any applicable law or regulation; (ii) the terms of this Agreement; (iii) any Terms of Use; or (iv) if Client fails to pay PeakFiber all invoiced amounts when due, Client agrees that, without prior written notice to Client, PeakFiber may, in addition to any other remedies available at law or in equity, suspend delivery of Services and/or Products, in whole or in part, under this Agreement without notice to Client. PeakFiber's right to suspend Services under this Section is in addition to PeakFiber's right to terminate as provided elsewhere in this Agreement.

8. Changes in Services/Charges.

PeakFiber may change or eliminate Services and charges in conformance with applicable law, and/or, that are not under contract by Client. PeakFiber shall provide Client with 30 days' notice of increases or other changes in charges.

9. Internet Access Speeds.

The internet access speeds quoted are the best-effort maximum rates by which downstream internet access data may be transferred between PeakFiber facilities and the fiber gateway (the network point of demarcation) at Client Premises. The maximum rate is not guaranteed and may vary. The quoted speeds should not be confused with the speed at which Client receives and sends internet access data through the public internet as such speeds are impacted by many factors beyond the control of PeakFiber. Actual internet speeds vary due to many factors, including the capacity or performance of a computer and its configuration, wiring and any wireless configuration, destination and traffic on the internet, internal network or other factors at the internet site with which Client is communicating, congestion on the network, and the general speed of the public internet. The actual speed may affect Client online experience, including ability to view streaming video and speed of downloads. Except as otherwise provided by law, PeakFiber reserves the right to implement network management controls to optimize and ensure that adequate speed and data transfer is available to all internet service Clients.

10. Services and Repairs

PeakFiber will make reasonable efforts to maintain its system and respond to service calls in a timely manner. PeakFiber will repair Equipment damaged due to reasonable wear and tear or technical malfunction. Physical damage to Equipment caused by intentional or negligent misuse is Client's sole responsibility and Client is responsible to pay cost of repair or replacement in such cases. Technical issue and service requests can be made by contacting PeakFiber at 937-599-7220.

11. Access on Premises and Right of Entry

As a condition of receiving services, Client grants to PeakFiber and their respective employees, agents, and contractors a non-exclusive right of entry for ingress and egress to the Property, including building roof top(s), located on the Property - for the purpose of installing, attaching, operating, repairing, replacing, removing, and maintaining all of the necessary equipment, such as lines, wires, poles, conduits, system equipment and facilities necessary to provide Services. The rights granted hereunder shall be deemed to include use of available power, along with a right for PeakFiber to have access to and a right to use, all risers in the building, building wiring, utility easements, conduits, ducts, building entrance facilities, building utility entrance facilities, utility closets in the building, whether in common areas or in an Occupant's premises (with Occupants' approval), rights-of-way, private roads and other areas on the Property as reasonably required for the purposes set forth above.

1. Client represents and warrants to PeakFiber that Client: (a) is the fee simple owner of the Property and has full power and authority to grant to PeakFiber the rights set forth in this Agreement; or (b) through written agreement with the fee simple owner of the Property, has the full power and authority to grant the rights set forth in this Agreement.
2. In further consideration of the mutual benefits and obligations set forth herein, Client grants to PeakFiber and their respective employees, agents, and contractors a non-exclusive right to attach PeakFiber's fiber-optic cable to any existing cable strength member and cable from any pole on or adjacent to the Property for ingress and egress to the Property.
3. PeakFiber shall be responsible for all material damages directly caused to the Property by PeakFiber's installation, operation, maintenance and removal of the System.
4. PeakFiber agrees to maintain Commercial General Liability Insurance, with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, sickness or death, and property damage.
5. Client reserves the right to grant other easements or rights of access to the Property but agrees that such other grants shall not interfere with the rights conveyed in this Agreement.
6. Right of Entry shall remain in full force and effect until: (a) PeakFiber desires to remove the System from the Property; or (b) the date that is ten (10) years after the date that PeakFiber ceases to provide Services to Client or other Occupant(s) at the Property, whichever occurs later.

12. Warranty & Warranty Disclaimers

PeakFiber warrants that all Services and Supplemental Services provided by PeakFiber to Client shall be performed in a good and workmanlike manner, in accordance with accepted industry standards.

THE SERVICES, PRODUCTS, AND RELATED EQUIPMENT USED OR PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE NOT COVERED BY ANY OTHER PEAKFIBER WARRANTIES OF ANY KIND; AND PEAKFIBER DISCLAIMS ANY WARRANTIES NOT EXPRESSLY STATED HEREIN, EITHER EXPRESS OR IMPLIED,

INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OUT OF A COURSE OF DEALING, USAGE OR TRADE PRACTICE. NO ADVICE OR INFORMATION GIVEN BY PEAKFIBER, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY.

CLIENT ASSUMES ALL RISK AND RESPONSIBILITY FOR USE OF ALL SERVICES INCLUDED THAT INVOLVE THE USE OF THE INTERNET. PEAKFIBER HAS NO CONTROL OVER CONTENT APPLICABLE OR ACTIONS OCCURRING THROUGH ANY SERVICE; AND PEAKFIBER DISCLAIMS ALL RESPONSIBILITY FOR SUCH CONTENT AND ACTIONS. PEAKFIBER DOES NOT WARRANT THAT ANY SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE OR MEET CLIENT'S REQUIREMENTS. IN ADDITION, CLIENT ACKNOWLEDGES AND AGREES THAT PEAKFIBER'S THIRD-PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CLIENT UNDER THIS SERVICE ATTACHMENT, AND PEAKFIBER DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

13. Limitations of Liability

PEAKFIBER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT REGARDLESS OF WHETHER OR NOT PEAKFIBER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF PEAKFIBER FOR ANY AND ALL REASONS AND FOR ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF: (1) THE FEES PAID TO PEAKFIBER UNDER THIS AGREEMENT IN THE TWO (2) MONTHS PRECEDING THE DATE THAT THE CLAIM OR CAUSE OF ACTION AROSE; OR (2) PEAKFIBER'S LIMITS OF LIABILITY INSURANCE. IN NO EVENT SHALL PEAKFIBER'S AFFILIATES, CONTRACTORS OR THIRD-PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY UNDER THIS AGREEMENT.

14. Independent Contractor

PeakFiber may subcontract any or all of the Services hereunder; provided that the use of any such subcontractor shall not relieve PeakFiber of any of its obligations hereunder. Neither party nor their respective Affiliates, employees or agents shall be authorized to act or appear to act as a representative of the other party, whether in performing Services or otherwise.

15. Property Rights

a. Ownership. All PeakFiber Property shall remain the sole and exclusive property of PeakFiber and/or its suppliers. Client shall acquire no interest in the PeakFiber Property by virtue of the payments provided for herein.

Ownership of all parts of the System shall be and remain the personal property of the PeakFiber. No entity or person, other than PeakFiber, may use any part of the System. Client shall not, and Client shall not authorize any third party to, tamper with, make alterations to, or remove any components of the System. The System is not, and shall not be deemed to be,

affixed to or a fixture of the Property. PeakFiber shall install, operate and maintain the System on the Property at its own expense and in accordance with all applicable laws.

b. Use. If applicable, Client may use PeakFiber Property intended by PeakFiber to be provided in conjunction with its delivery of Services. Client may not reproduce, modify or distribute PeakFiber Property, nor use it for the benefit of any Third-Party. All rights in the PeakFiber Property not expressly granted to Client are reserved to PeakFiber. Client will not open, alter, misuse, tamper with or remove any Equipment. All Equipment shall remain as-is and where-is installed by PeakFiber, and Client will not remove any markings or labels from the Equipment indicating PeakFiber (or its Third-Party suppliers) ownership or serial numbers.

16. Waiver

A party's delay or failure to enforce any provision of this Agreement or of any Service Attachment shall not be deemed a waiver of that party's rights with respect to that provision or any other provision of this Agreement or the Service Attachment. A party's waiver of any of its rights under this Agreement or a Service Attachment is not a waiver of any of its rights with respect to a prior, contemporaneous or future occurrence, whether similar in nature or not.

17. Force Majeure

Except for the obligations to make payments hereunder, either party shall be relieved of its obligations under this Agreement to the extent that its performance is delayed or prevented by a Force Majeure event.

Upon the occurrence of a Force Majeure event, the party whose performance is affected shall give written notice to the other party describing the affected performance; and the parties shall confer within two (2) business days, in good faith, to agree upon equitable, reasonable action to minimize the impact on both parties, including without limitation implementing disaster recovery services.

The party whose performance is affected shall use commercially reasonable efforts to minimize the delay caused by the Force Majeure event and to re-commence its performance as if no Force Majeure event had occurred.

18. Governing Law and Jury Waiver

This Agreement and all Service Attachments shall be governed and construed in accordance with the laws of the State of Ohio, without reference to its conflicts of law principles. Both parties agree to submit to the jurisdiction of the courts of the state of Ohio; and further agree that jurisdiction and venue of any action between them shall be exclusively vested in the state courts located in Logan County, Ohio. Both parties specifically waive any other choice of venue.

PEAKFIBER AND CLIENT HEREBY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION, PROCEEDING, COUNTER-CLAIM, CROSS-CLAIM OR THIRD-PARTY CLAIM BROUGHT BY EITHER PEAKFIBER OR CLIENT AGAINST THE OTHER PARTY.

19. Client Indemnification

Client hereby releases and agrees to indemnify, defend or at its option settle, protect and hold harmless PeakFiber, from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, interest, expenses and costs of all kinds, including without limitation, all reasonable attorney's fees, brought by PeakFiber under any

legal theory arising out of or related to an actual or threatened breach, in whole or in part, of this Agreement, by Client.

In addition to any indemnification set forth in this Business Services Agreement, Client agrees to defend, indemnify, and hold harmless PeakFiber, its officers, directors, employees, agents, subsidiaries and Affiliates from and against all third party claims, liabilities, damages and expenses, including attorney's fees (collectively "Claims") arising out of or relating to: (i) Client's use of the Services provided hereunder, except to the extent that: (a) mere provision of the Services by PeakFiber constitutes the basis for the claim or liability; or (b) PeakFiber, its Affiliates, its service providers or suppliers, or their respective officers, directors, employees, or agents direct or recommend in writing that Client take such steps or actions upon which the Claim is based; (ii) any injury to person or property caused by any products sold or otherwise distributed in connection with Client's web site or data network accessible via or in connection with the Service; or (iii) any content or other materials supplied or transmitted by Client or its employees, including, but not limited to, any domain name or content provided by Client to PeakFiber for registration or use with Client's web site or data network, which infringes or allegedly infringes the proprietary rights of a third party.

20. Severability

If a court of competent jurisdiction finds any portion of this Agreement is illegal, invalid or unenforceable, the offending portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein, and the remainder of this Agreement shall remain in full force and effect.

21. Definitions

As used in this Agreement and in the Service Attachments, the below terms are defined as follows:

"Acceptable Use Policy" or **"AUP"** shall mean the portion of specific Terms of Use relating to one or more Services, as amended.

"Affiliate" shall mean an Entity or Person that directly or indirectly: (i) controls; (ii) is controlled by; or (iii) is under common control with either Client or PeakFiber, as appropriate. For purposes of this definition, "control" means by any means including without limitation asset ownership, agreement, de facto management, or otherwise.

"Agreement" shall mean this Business Services Agreement

"Client" shall mean the Person identified in this Agreement as the party responsible for paying and/or using PeakFiber services.

"Client Premises" shall mean the business location where Service is received

"Device" or **"Devices"** shall mean any and all hardware and related firmware, including without limitation all Network Devices, Specialty Servers, Servers, PCs, Printers, and/or IP Phones.

"Equipment" shall mean all PeakFiber Property provided by PeakFiber to Client under the terms of this agreement

“Fees” shall mean all fees owed by Client to PeakFiber as a result of delivering Services or Products to Client.

“Occupants” shall mean the Client and/or other individuals which occupy the Property, today or in the future.

“Product” or “Products” shall mean goods delivered by PeakFiber to Client in accordance with this agreement or Supplemental Services.

“Property” shall mean all Intellectual Property, Devices and Software belonging to PeakFiber.

“Reactivation Fee” shall mean the Fee for Services required to validate, inventory and return each Covered Device to PeakFiber’s standards, after a suspension of Services.

“Service” or “Services” shall mean, individually and collectively, any and all services provided, or to be provided, by PeakFiber to Client, including without limitation all services set forth in this agreement and any Supplemental Services.

“Supplemental Services” are a type of limited Services provided by PeakFiber to Client on a “one-off” or emergency basis, which Services are not included within this agreement.

“System” shall mean, all of the necessary equipment (both inside and outside the Client Home), such as lines, wires, poles, conduits, system equipment and facilities necessary to provide Services.

“Terms of Use” shall mean all policies, including without limitation Acceptable Use Policies, and other terms and conditions established by this Agreement or any agreements that regulates Users’ conduct.

“Third-Party” or “Third-Parties” shall mean one or more Persons or Entities other than PeakFiber, Client, or their respective Affiliates.

“Users” shall mean all individuals who use the Client’s Network or Devices.

22. Amendment

This Agreement may be modified or amended at any time by PeakFiber, without prior notice to Client and any amendments become effective as of the date and time this Agreement is posted to PeakFiber’s website.

Last Updated July 25, 2022