



BalsamWest FiberNET, L.L.C
Residential Services Terms and Conditions

By signing the order (“Service Order”) for residential service (the “Service”) to which these terms and conditions are attached, the named customer(s) signing the Service Order (“You” or “Subscriber”) is(are) agreeing to the following terms and conditions (referred to herein as the “Agreement”), effective as of the date of Subscriber's signature on the Service Order.

1. ***Cumulative Terms of Service.*** In addition to the terms of this Agreement, You, individually, and every member of your household, current and future, every visitor to or guest in your household, and any other person who uses the Service, agree to be bound by the terms of service set forth in this Agreement as well as the BalsamWest FiberNET (“Carrier”) Terms of Service, Subscriber Privacy Policy, Acceptable Use Policy, and Network Use Disclosure, which may each be found at <https://www.balsamwest.net/service-use-policy-documents>, as such may be updated from time to time (collectively, the “Cumulative Terms of Service”) and are incorporated herein by this reference. In the event of any conflict between this Agreement, the Service Order, and those terms set out on the Carrier website referenced above, precedence will be given to the documents in the following order: (i) the Service Order, including any addendums thereto, (ii) this Agreement, and (iii) the Cumulative Terms of Service.

2. ***Term and Termination:*** The initial term of the Service Order is reflected by the term option selected in the signed Service Order, commencing on the date the Service is made available for use by Subscriber. Upon expiration of the initial term, the Service shall continue to be provided to Subscriber on a month-to-month basis at the same rate*, until such time as either party provides to the other party thirty (30) days written notice of termination. Should Subscriber terminate the Service prior to the end of the initial term for any reason other than an uncured default by Carrier, Subscriber will be responsible for payment of all charges (monthly or otherwise) which would be payable for the remainder of the initial term, together with any standard Service installation fees that may have been waived, which amount shall be paid to Carrier in one payment within ten (10) days after receipt of an invoice from Carrier. Under certain conditions, this requirement can be waived at the sole discretion of the Carrier, which waiver shall be in writing should Carrier elect to do so. Upon termination, Subscriber will return all of Carrier's Equipment to Carrier, and should Subscriber fail to return the Equipment within thirty (30) days of termination, Subscriber shall be liable for the cost of replacing the Equipment.

*Service being provided month-to-month shall remain at the existing rate until such time as Carrier's rates increase, as may occur from time to time, in which event Subscriber shall be subject to the new rate from the date that such new rate goes into effect.

3. ***Service Availability:***
 - a. ***WARNING:*** CARRIER DOES NOT GUARANTEE UNINTERRUPTED SERVICE. THE AVAILABILITY OF THE SERVICE IS SUBJECT TO POWER OUTAGES AND OTHER CONDITIONS AFFECTING THE PROVISION AND

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USE OF THE SERVICE, WHICH CONDITIONS (I) ARE EITHER OUTSIDE CARRIER'S CONTROL OR SUBJECT TO ONE OR MORE UNDERLYING AGREEMENTS THAT MAY CONTROL INTERNET ACCESS UPON WHICH THE SERVICE IS DEPENDENT, AND (II) MAY CAUSE AUTOMATIC AND IMMEDIATE TERMINATION OF THE SERVICE WITHOUT PRIOR NOTICE. BY ENTERING INTO THIS AGREEMENT, SUBSCRIBER WILL BE DEEMED TO HAVE CONSIDERED AND ACCEPTED THIS QUALIFICATION WITH RESPECT TO THE SUBSCRIBER'S APPLICATION OF THE SERVICE TO THE USE OF VOICE OVER INTERNET PROTOCOL ("VOIP") TELEPHONES, SECURITY SYSTEMS, HEALTH MONITORING SYSTEMS OR OTHER SYSTEMS REQUIRING PERMANENT, ALWAYS-ON CONNECTIONS. VOIP TELEPHONE LINES MAY NOT BE USED FOR MODEMS, FAX MACHINES, FIRE AND SECURITY EQUIPMENT, AND ELEVATORS.

CARRIER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE LOSSES OR DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES AND PERSONAL INJURIES THAT A SUBSCRIBER, OR SUBSCRIBER'S USERS, MAY SUFFER.

- b. ***Disruption of Service:*** Service is provided on an "AS IS" and "AS AVAILABLE" basis. Carrier shall not be liable or responsible for any delay or failure in performance of any obligations it may have under this Agreement or in providing the Service, arising from any cause beyond Carrier's reasonable control, including, without limitation, by reason of acts of God, war, labor dispute, acts of terrorism, civil riots or disturbances, pandemics, governmental imposed or recommended work-related or travel restrictions or limitations, medically self-imposed or governmentally required isolations, closures of businesses or governmental or private offices and institutions, that may hinder or prevent a party from fulfilling its obligations under this Agreement, actions by third party service providers, non-delivery by equipment suppliers, power failure, cable cuts by a party other than Carrier, fire, flood, legal enactment, federal, state or local governmental order, rule or regulation prohibiting or interfering with Carrier's ability to provide the Service. Subscriber releases Carrier from all claims for loss, damage, or expense arising from an interruption in Service due to any of the foregoing.
- c. ***Service Levels:*** The Service shall be provided by Carrier in accordance with those standards set forth on Exhibit A to this Service Order. Except as expressly provided in Exhibit A, there is no other service level agreement regarding the quality of Service being provided hereunder and there are no other refunds or credits, express or implied, to which Subscriber is entitled should Service not be provided in accordance with the standards provided in Exhibit A.
- d. ***Equipment:*** Subscriber is responsible for all internal wiring required to interface its computers and other equipment and Subscriber's network to the Carrier network

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equipment installed by Carrier provided as part of the Service (“Equipment”). Excluding certain Subscriber purchased devices sold by Carrier for which separate terms and conditions may apply, Carrier will repair and/or replace damaged or defective Equipment, if any, as long as such damage or defect was not caused by misuse or other improper operations or handling by Subscriber. Carrier shall have the right to presume misuse or other improper operations or handling by Subscriber in the event Subscriber requests repair or replacement more than twice in any twelve (12) month period, or more than three times in any twenty-four (24) month period, and shall have no obligation to fulfill any such repair or replacement. Carrier is not responsible for the maintenance or repair of Subscriber-provided equipment, including but not limited to, connected devices, mobile devices, home telephones, computers, modems, televisions, or any other related Subscriber-provided equipment. A service charge may be imposed upon the dispatch of a technician if there is damage to Equipment due to negligent use or abuse or if no fault is discovered in Carrier's system or Equipment. Carrier makes no warranties, with respect to Equipment or Service provided by Carrier or with respect to the compatibility of the Service or the Equipment with any Subscriber-provided equipment.

ALL EQUIPMENT AND WIRING ARE PROVIDED “AS IS”, AND CARRIER HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A SPECIFIC PURPOSE.

CARRIER SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING FROM THE USE, DEPLOYMENT, AND/OR FUNCTIONALITY OF ITS EQUIPMENT OR WIRING.

Carrier's sole obligation and Subscriber's sole remedy with respect to any liability or damage caused by Subscriber's use or deployment of Equipment shall be a refund of fees paid by Subscriber for such Equipment for the previous billing month/cycle.

CARRIER RESERVES THE RIGHT TO CREATE, IMPLEMENT, MODIFY OR REMOVE ANY CAPACITY LIMITATION WITH RESPECT TO THE QUANTITY OF DATA TRANSMITTED VIA ITS INTERNET SERVICES AS FUTURE TECHNOLOGIES, APPLICATION CONSUMPTION, OR OTHER UNFORESEEN SITUATIONS MAY

- e. **DEMAND.** Subscriber acknowledges and agrees to Carrier's Network Use Disclosure terms regarding data usage and Carrier's ability to regulate same provided for at <https://www.balsamwest.net/information>.

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4. **CPNI.** CPNI means information about the quantity, technical configuration, type, destination, and amount of use of the telecommunications services that Carrier may provide to Subscriber, including without limitation, information contained in the invoices prepared by Carrier for Subscriber. Under federal regulations, telecommunications providers such as Carrier have an obligation to protect the confidentiality of CPNI. By executing a Service Order, Subscriber grants permission to Carrier: (i) to use Subscriber's CPNI to evaluate Carrier's existing Services and new opportunities to serve Subscriber better, and (ii) to use Subscriber's CPNI to identify additional communications related services or products that Subscriber may desire that would complement the Services already provided by Carrier to Subscriber. Subscriber has the right to impose additional restrictions on Carrier's use of Subscriber's CPNI by "opting out". If Subscriber opts out, Carrier cannot use Subscriber's CPNI to market additional Services to Subscriber. Opting out will not affect the provision of any Service to which Subscriber subscribes, but it may prevent Subscriber from receiving certain information about additional Services from Carrier. Subscriber can choose to opt out at any time and Subscriber's decision whether or not to opt out will remain in effect until changed by Subscriber. To opt out, Subscriber must notify Carrier in writing at the notice address provided in the Agreement, and provide the following information: (1) Subscriber name, (2) Service billing address, (3) telephone number including area code, and (4) Service account number. Subscriber has read, understands and agrees to be bound by the terms and conditions of Carrier's Privacy Policy which is posted at [www.balsamwest.net/privacy /index.asp](http://www.balsamwest.net/privacy/index.asp), and is incorporated herein by this reference, as same may be modified from time to time.

5. ***Billing and Payment.***

- a. ***First Invoice Upon Activation:*** Payment is due on the next billing cycle after activation of the Service. On the first month's invoice, the Subscriber will be billed for (1) any installation charges applicable, (2) equipment purchased by Subscriber from Carrier, which may include, without limitation, routers and extenders, (3) the first full month's Service and any prorated amounts that may apply from time of Service activation until the first full billing period.
- b. ***Monthly Charges for Service:*** Monthly Service charges shall be billed monthly at the beginning of each month of Service and shall be paid within twenty-five (25) days of the date of each such invoice. Accounts are considered active until canceled by the Subscriber or otherwise terminated by Carrier.
- c. ***Enforcement; Expenses.*** If Carrier initiates legal proceedings to collect any amount due hereunder and Carrier substantially prevails in such proceedings, then Subscriber shall pay the reasonable attorneys' fees and costs incurred by Carrier in prosecuting such proceedings and any appeals therefrom. In the event Subscriber fails to pay any invoice when due, or provide Carrier with a notice of dispute, Carrier shall notify Subscriber regarding its failure to pay such invoice. If after Carrier has provided such notice, Subscriber continues to fail to pay such invoice(s) within five (5) days after such notice, Carrier may, in addition to any other rights and remedies available to Carrier, suspend Service under this Agreement until all

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outstanding invoice(s) are paid in full. In addition, in such case Carrier may elect to terminate this Agreement, and shall also be entitled to seek and exercise such rights and remedies that may otherwise be permitted hereunder or at law or in equity. Subscriber shall be responsible for any and all fees and expenses incurred by Carrier in enforcing this Agreement, including, without limitation, reasonable attorneys' fees and expenses.

6. **Taxes.** In addition to the rates and charges for the Service(s), Subscriber shall be responsible for payment of all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services and any Equipment, excluding taxes based on Carrier's net income. Subscriber shall be responsible for the payment of all surcharges in effect from time to time, including but not limited to Universal Service Fund and 911 taxes and/or fees applicable to VoIP Service (if applicable), as required or permitted by applicable law, regulation or tariff. Carrier reserves the right to pass new taxes, fees, and surcharges onto the Subscriber in the monthly billing should there be any new regulations or legislation enacted regarding same during the term of this Agreement.

7. **No Redistribution:** Subscriber is not permitted to resell or redistribute the Service to other parties without the prior written consent of Carrier, which it may withhold in its sole and absolute discretion. A violation of this term will result in the immediate termination of the Service. Notwithstanding the foregoing, hospitality service Carriers, including, without limitation, establishments such as hotels, resorts, clubs, and marinas, may provide temporary VoIP Service access to their on-premises customers and guests, subject to the overall bandwidth limitations of the VoIP Service plan provided.

8. **Subscriber responsibility:** After Carrier installs the Equipment necessary to provide the Service, Subscriber shall be fully responsible for all aspect of the operation, maintenance, and repair of Subscriber's network, including, without limitation, the following:
 - a. Ensuring that battery backup is available to Subscriber's equipment that may require power to operate during power outages (otherwise, Services will not be available during a power outage).

 - b. Ensuring the Equipment and Subscriber's equipment is disconnected or suitably protected from lightning strikes or power surges by use of surge protectors or otherwise. Subscriber is liable for damage to Carrier's Equipment resulting from failure to protect Carrier's Equipment in a prudent manner.

 - c. Providing adequate virus and spyware protection to the Subscriber's network to maintain a virus-free network and devices using the Service.

 - d. Providing all internal wiring required to interface Subscriber's network and equipment operating on its network, including computers, tablets, and other devices, to the Carrier's Equipment provided as part of the Service.

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9. **Network/System Integrity:** Subscriber shall not operate hardware or software that Carrier, in its sole and absolute discretion, deems harmful, hazardous or capable of causing interference, congestion or interruptions to Carrier's network, Equipment, or Service. Upon written or verbal notice from Carrier, Subscriber shall immediately remove any offending hardware or software. If such action is not taken promptly, but in any event, without twenty-four (24) hours after receiving such written or verbal notice, Carrier may (i) suspend Service until such action is taken, and (ii) terminate the Service and this Agreement on ten (10) days written notice if Subscriber fails to take such action during such ten (10) day period. If after having been given notice by Carrier, Subscriber operates any such offending hardware or software a second time, Carrier may terminate the Service and this Agreement immediately upon providing notice of same, without first providing any opportunity to cure. Carrier is not responsible for the maintenance or operation of any equipment belonging to the Subscriber.
10. **Common Use Policy:** Subscriber agrees that the Carrier's personnel will be allowed to install, upgrade, repair and maintain Carrier's Equipment to provide the Service to Subscriber. Subscriber specifically agrees:
- a. That Carrier may, in Carrier's sole and absolute discretion, mount Equipment to the side of Subscriber's residence, building, or roof, or at such other suitable location on Subscriber's property. If Subscriber is not the property owner, Subscriber must provide Carrier a written document from the property owner allowing Carrier to mount its Equipment before installation can be performed. Subscriber shall defend, indemnify, and hold harmless Carrier, its affiliates, and each of their officers, directors, employees, agents, representatives, contractors and subcontractors from and against any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorney's fees) by, or on behalf of, the property owner (if Subscriber is not the property owner) for Carrier's installation of its Equipment based on a writing provided by Subscriber that Subscriber represents to be property owner's permission and authority to allow Carrier to install its Equipment.
 - b. To provide reasonable care and protection for Carrier's Equipment used to provide the Service.
 - c. To not move, alter or modify Carrier's Equipment and prevent any other party from moving, altering or modifying Carrier's Equipment or any configurations thereof.
 - d. That Subscriber releases and forever discharges and holds harmless Carrier, and its employees, directors, agents, representatives, contractors, and subcontractors, from any liability, claims, and demands for any property damage arising from the installation, modification or alteration of any Equipment, unless said damage is the direct result of negligence in the installation of the Equipment required to provide the Service.
11. **Notice:** *Unless otherwise provided in this Agreement or a Service Order, all notices, requests, demands and other communications in connection with this*

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Agreement must be in writing and will be delivered by hand delivery, certified mail return receipt requested or any other delivery system which is capable of providing proof of delivery (e.g. overnight courier); provided, however, notice shall not be made by electronic mail unless expressly provided otherwise herein or in a Service Order. Any notice sent by certified mail will be effective on the day after the date of mailing. All other notices will be effective upon delivery. All notices will be addressed to Carrier at the address provided below and addressed to Subscriber at the address provided beneath its signature below (or at such other addresses as will be given in writing by the parties to one another in accordance with this provision):

Carrier: BalsamWest FiberNET, L.L.C.
35 Bonnie Lane
Sylva, NC 28779
Phone: (828) 339-2900
Email: contracts@balsamwest.net

12. **Service Calls:** Subscriber shall be charged \$150.00 per service call if there is a problem with the Service and the problem is determined to arise from anything other than Carrier's Equipment or installation thereof or if Subscriber schedules a service call and fails to cancel same no less than twenty-four (24) hours in advance and a service technician arrives at the applicable property (whether or not Subscriber is available to allow the service to be performed). Hourly rates may apply for additional services provided and equipment charges are extra.
13. **Amendment:** No subsequent agreement among the parties, concerning the Service or this Agreement, shall be effective or binding unless it is made in writing and signed by authorized representatives of the parties.
14. **Entire Agreement:** This Agreement, including the Cumulative Terms of Service, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings relating to the subject matter hereof, written or oral.
15. **No Third Part Beneficiaries:** This Agreement inures to the benefit of Carrier and Subscriber only, and no third party shall have any rights hereunder.
16. **Assignment:** Subscriber may not assign this Agreement or any rights hereunder without Carrier's prior written consent, which it may withhold in its sole and absolute discretion.
17. **Authority.** By signing this Agreement, You represent that you have read and understand the terms and conditions of this Agreement, the Cumulative Terms of Service, You are authorized to enter this Agreement and perform the Subscriber's obligations hereunder, and that the terms and conditions are enforceable against You in accordance herewith.

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Exhibit A

SERVICE LEVEL AND PERFORMANCE STANDARDS

In the event there is an outage or interference that does not arise from an Excused Outage (as defined below), resulting in any Service to be unavailable, if Subscriber has a Service Order with Carrier that is for a term other than month to month, Subscriber may be entitled to a Service credit to be applied against Subscriber’s monthly recurring fees for the affected Service (“Service Credit”). The Service Credit shall be based on the cumulative time that the affected Service is unavailable in a given calendar month beginning with the time that Subscriber notifies Carrier of an interference or outage until same has been resolved and the Service is active for the reporting Subscriber. Service Credits shall be as follows:

Cumulative Unavailability	Service Credit
0 –48 hours	No Credit
> 49 hours through 72 hours	3% of recurring charge
> 73 hours through 96 hours	7% of recurring charge
> 97 hours through 120 hours	10% of recurring charge
>121 hours through 144 hours	50% of recurring charge
>145 hours through 168 hours	100% of recurring charge

Upon receipt of Subscriber's request for Service Credits, which request must include the trouble ticket number assigned to the reported interference or outage, Carrier shall calculate the Service Credits for Subscriber for the month requested and shall apply the Service Credits on Subscriber's next monthly bill. If Subscriber does not (i) include the trouble ticket number or (ii) request Service Credits within the calendar month that immediately follows the month for which Subscriber is requesting Service Credits, Subscriber waives any rights to such Service Credits. Under no circumstances is a Subscriber receiving Services under a month-to-month term entitled to Service Credits.

In the event any Service is unavailable for reasons other than an Excused Outage (i) for more than seventy-two (72) hours on three (3) or more occasions during any one (1) month period, or (ii) for more than seven (7) consecutive days (“Chronic Outage”), then Subscriber may, in addition to its ability to receive Service Credits should it request same in the time provided, terminate such Service upon written notification to Carrier without further obligation or liability to Carrier, except for outstanding monthly recurring charges that are owed for Services previously provided.

No Service Credits are available nor may any other remedies be exercised for an Excused Outage, which is:

- Regularly scheduled maintenance windows or ad hoc maintenance windows.
- Emergency maintenance required of Carrier's network to prevent an outage or interruption.

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- Interference or outages caused by any cause outside of Carrier's reasonable control, including, without limitation, damage to Carrier's network by any party other than Carrier.
- Interference or outages caused by Subscriber or Subscriber-owned equipment.
- Interference or outages arising from any other provider of communications services over which any voice Services may be using outside of the Network.

If there is a report of an outage or interruption, and it is determined that the Carrier's network is open and fully functional, Carrier shall notify the Subscriber that the remote diagnostics show that the problem is not in or with the Carrier's network and is presumptively within the confines of the location to which the trouble report relates (e.g., the Subscriber's network). In such instances, Carrier shall not open a trouble ticket, and resolution of the issue giving rise to the trouble report shall be the Subscriber's responsibility. However, if Subscriber wishes to proceed with a service call when the Carrier's network appears to be functional, then Carrier will proceed in troubleshooting the issue further. If the issue is determined to be related to the Subscriber's equipment, then Carrier may bill Subscriber for a service call at its current standard rates. If the issue is revealed to be Carrier network related, then Subscriber will not be billed.

Response and Cure Times: Depending upon the type of outage or interference and how many customers it may be affecting, Carrier will respond to an outage or interruption in accordance with the following:

Carrier will respond by electronic mail or phone call to a trouble report for which a trouble ticket is opened within 12 hours after receipt of notification of the trouble ticket being entered. Carrier will attempt to cure the issue(s) identified in the trouble report within 48 hours after receipt of notification of the trouble ticket, provided that if such issues cannot reasonably be cured within such period, Carrier shall commence the cure of such issues within such period and thereafter diligently and expeditiously proceed to cure the same as soon thereafter as reasonably possible.

Any trouble report received after 5:00 pm will be considered as being received at 8:00 am on the following day.

Carrier will maintain and provide Subscriber with instructions on how to contact Carrier's Customer Service Center, which will include a Call Center located within the geographical borders of the United States, and which will be available by means of a toll-free number 24 hours per day, 7 days per week, 365 days per year to receive Subscriber's Service calls and provide Subscriber support as requested.

- All response, cure or other time periods provided for herein shall exclude Thanksgiving Day and Christmas Day.