



Megabits, LLC  
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### Equipment Placement Agreement

This Equipment Placement Agreement ("Agreement") is made and entered into by and between Megabits, LLC, an Ohio limited liability company ("Megabits"), and \_\_\_\_\_, and Ohio \_\_\_\_\_ ("Merchant"). The "Effective Date of this Agreement shall be the date on which it has been executed by all parties.

Megabits is a wireless, high-speed Internet service provider and the owner of wireless antennae and access point equipment. Merchant has accepted placement of such equipment at its premises and acknowledges that its use is for the sole purpose of providing wireless Internet access to Merchant's invitees and employees (the "End Users") on an individual subscription basis. This is **not** a service agreement, and no Internet service is provided to Merchant by virtue of this Agreement.

- 1. Use of Premises.** Merchant agrees to permit Megabits to install, operate and maintain wireless communications transmission and reception equipment, including but not limited to, cabling or wiring and related electronic devices, wireless modems, multimedia terminal adaptors, wireless gateways/routers, and any other hardware and software (the "Equipment") for the use by Megabits in conjunction with its primary business. Megabits shall not sublease any space within Merchant's premises to any other party. Megabits shall bear sole responsibility for furnishing and paying for all labor, materials, equipment and supplies used in conjunction with the exercise by Megabits of any right granted in this Agreement. Megabits shall have the right to connect to Merchant's existing electrical service, or to obtain electrical service directly from the servicing utility company, including the right to install a separate meter and main breaker where required. Merchant agrees to provide access to the Premises during normal business hours or at other reasonable times for the purpose of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Equipment. If Merchant is not the owner of the premises, it is responsible for obtaining any necessary approval from owner to permit Megabits to access the premises and install the Equipment. Merchant shall provide the owner's name, address and telephone number and evidence that the owner has authorized the access to the premises and installation of the Equipment.
- 2. Equipment Ownership.** Megabits has agreed to provide and install the Equipment on Merchant's premises, and Merchant has agreed to permit Megabits to provide and install the Equipment at its premises, solely for the purpose of providing wireless Internet access to Merchant's invitees and employees on an individual subscription basis. Title to the Equipment will at all times remain with Megabits, and the Equipment shall not be deemed fixtures or in any way part of Merchant's premises. Megabits may remove or change the Equipment at its sole discretion at any time. Merchant shall not permit sell, lease, abandon, remove, repair or replace the Equipment unless expressly authorized by Megabits. Merchant shall not permit any other provider of high speed Internet to use Megabits' Equipment. Merchant shall be responsible for the repair or replacement for damage to Equipment caused by Merchant or its employees or agents.
- 3. Interference; Non-disturbance.** After the execution of this Agreement, Merchant shall not install or permit the installation of any broadcasting or other communications equipment on the premises which interferes with, alters or restricts the operations of Megabits, including without limitation, radio frequency interference and permitted cumulative radio frequency emissions.
- 4. Term and Termination.** This Agreement shall commence upon the Effective Date and shall continue until terminated. This Agreement shall terminate upon the first to occur of the following: (i) Upon ninety (90) days prior written notice from one Party to the other Party; or (ii) Immediately upon written notice by one Party to the other Party if the other Party: (a) ceases or

suspends its business; (b) becomes subject to any bankruptcy or insolvency proceeding under foreign, federal or state law; (c) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority; (d) has wound up or liquidated its business voluntarily or otherwise; (e) any material breach of this Agreement which the breaching Party has failed to cure within ten (10) days following receipt of written notice of such breach from the non-breaching Party; or (f) either Party's engagement in fraud, material misrepresentations or unlawful activities.

5. **Effect of Termination.** Upon termination of this Agreement, Megabits shall remove the Equipment from Merchant's premises and repair any damage to the premises caused by Megabits within thirty (30) days of termination.
6. **Disclaimer of Warranty.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, MEGABITS DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER RELATED TO THE EQUIPMENT OR ANY OTHER MATTER, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE OR WORKMANSHIP. Megabits does not warrant that the Equipment or the service provided to End Users will perform at a particular speed of bandwidth or data throughput rate, or will be provided indefinitely or without interruption. Service is provided on a best-effort, as available basis. Service speeds may vary, and Megabits is not liable for any loss of data.
7. **Limitation on Liability.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, MEGABITS WILL NOT BE LIABLE TO MERCHANT OR ANY THIRD PARTY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY THEORY OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES. IN NO EVENT SHALL MEGABITS TOTAL LIABILITY HEREUNDER FOR ANY AND ALL CAUSES, WHETHER ARISING OUT OF NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE, EXCEED \$100.
8. **Relationship of the Parties.** This Agreement is not intended, and shall not be construed, to constitute either Party the joint venture or franchising partner, agent or legal representative of the other, and neither Party shall have any authority, expressed, implied or apparent, to assume or create any obligations on behalf of or in the name of the other Party.
9. **Assignment.** Megabits shall have the right to assign or transfer its rights under this Agreement to any person or business entity which is a parent, subsidiary or affiliate of Megabits, controls or is controlled by or under common control with Megabits, is merged or consolidated with Megabits, or purchases more than fifty percent (50%) ownership interest in or assets of Megabits. Merchant shall not assign this Agreement without the prior written consent of Megabits.
10. **Miscellaneous Provisions.** This Agreement shall be governed by the laws of the State of Ohio. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations, and other agreement of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties. If any provision of this Agreement is deemed invalid or unenforceable, the remainder of the Agreement shall remain in force and effect to the fullest extent as permitted by law.

**MERCHANT**

**MEGABITS, LLC**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_