

ISLESBORO MUNICIPAL BROADBAND

SUBSCRIBER AGREEMENT

THIS SUBSCRIBER AGREEMENT (“AGREEMENT”) DESCRIBES THE TERMS AND CONDITIONS UNDER WHICH THE TOWN OF ISLESBORO, D/B/A ISLESBORO MUNICIPAL BROADBAND (“IMB,” “WE,” “US”) WILL PROVIDE ITS BROADBAND INTERNET SERVICE TO YOU. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE.

IF YOU ARE A NEW SUBSCRIBER, YOUR ACTIVATION OF AN ACCOUNT AND RECEIPT OF THE SERVICE SHALL CONSTITUTE YOUR ACCEPTANCE OF THIS AGREEMENT AND ITS TERMS AND CONDITIONS WILL BE LEGALLY BINDING UPON YOU.

IF YOU ARE AN EXISTING IMB SUBSCRIBER, YOUR CONTINUED RECEIPT OF THE SERVICE FOLLOWING RECEIPT OR PUBLICATION BY IMB ON ITS WEB SITE OF THIS AGREEMENT SHALL CONSTITUTE YOUR ACCEPTANCE OF ITS TERMS AND CONDITIONS, AND, ACCORDINGLY, THEY WILL BE LEGALLY BINDING ON YOU.

For purposes of this Agreement, the terms “You,” “Your” and “Subscriber” refer to you, the IMB subscriber.

IMB will answer any questions you may have and provide you with technical and other Subscriber support through the following telephone number and email address:

(207) 734-2253
imb@townofislesboro.com

Or you may write to:

Islesboro Municipal Broadband
P.O. Box 76
Islesboro, ME 04848

For general information, visit our website at www.townofislesboro.com/imb. Also at that address are the following documents:

- Current Subscriber Agreement
- Acceptable Use Policy
- Service Level Agreement
- Fee Schedule

1. Definitions.

- a. "Acceptable Use Policy" means the IMB Acceptable Use Policy, including all future revisions, which is posted at www.townofislesboro.com/imb.
- b. "Board of Selectmen" means the Town of Islesboro Board of Selectmen.
- c. "Broadband Internet Service" means the services provided to the Subscriber by IMB, including access to the high-speed fiber optic broadband network that is owned by IMB, as well as the related installation, support and repair of the same.
- d. "Demarcation Point" means the boundary between the IMB Equipment and the Subscriber Equipment, and will typically be the Ethernet, Wi-Fi or phone connections on the IMB Optical Network Terminal or ONT.
- e. "Fee Schedule" means the Town of Islesboro Fee Schedule that is set by the Board of Selectmen and as may be amended from time to time. The Fee Schedule is available at www.townofislesboro.com/imb.
- f. "IMB" means Islesboro Municipal Broadband and its employees, contractors and agents. IMB is owned and operated by the Town of Islesboro for the benefit of its residents and businesses.
- g. "IMB Equipment" means any equipment provided by IMB to the Subscriber including, but not limited to, the Optical Network Terminal, wire, fiber optic cable, equipment boxes, any equipment attached to fiber optic cable, and any other equipment or materials provided to the Subscriber by IMB for use in connection with the receipt of Broadband Internet Service.
- h. "Optical Network Terminal" or "ONT" means the device and its uninterruptable power supply that is installed on or in the Subscriber's building, is necessary for the delivery of Broadband Internet Service from the high-speed fiber optic network, and is powered by the Subscriber's working electrical service and a functional 110-volt receptacle at the Premises. The ONT transforms the fiber optic Internet broadband signals to wired Ethernet, Wi-Fi and phone connections.
- i. "Owner" means any individual(s) or entity(ies) that possess record title ownership of the Premises.
- j. "Premises" means the parcel of land and buildings owned and/or occupied by the Subscriber where Broadband Internet Service is provided, as well as any contiguous parcel(s) of land in common ownership.

- k. "Subscriber Equipment" means any equipment provided by the Subscriber and located on the Subscriber's side of the Optical Network Terminal including, but not limited to, inside wiring and outlets, powered electrical outlets, modems, computers, tablets and other personal electronic devices, and any other equipment provided by the Subscriber for purposes of utilizing the Broadband Internet Service under this Agreement.
- l. "Taxes" means foreign, federal, State and local taxes, surcharges, other similar charges, and any other imposition that may be passed on by IMB to the Subscriber.

2. Service Provided. The Broadband Internet Service consists of the provision of access to the high-speed fiber optic broadband network that is owned by IMB, which services are further described in the Service Level Agreement available at www.townofislesboro.com/imb (or at an alternate site if we so notify you). This Agreement incorporates by reference any pricing included on the IMB website and/or in the Fee Schedule. IMB's contractors may perform some or all of IMB's duties and obligations under this Agreement.

3. Subscriber Responsibilities.

- a. The Subscriber shall pay the annual Subscriber Fee for the Broadband Internet Service, as set forth in Section 4(b) of this Agreement.
- b. The Subscriber shall be solely responsible for acquiring, maintaining and servicing the Subscriber Equipment, and IMB shall have no obligation to provide, maintain, or service the Subscriber Equipment, third-party services or software. The Subscriber agrees that any Subscriber Equipment that is used in connection with the Broadband Internet Service must meet IMB's minimum technical and other requirements and applicable electrical codes.
- c. At all times during this Agreement, the Subscriber agrees to provide and maintain, at the Subscriber's sole expense, working electrical service and a functional 110-volt receptacle located within ten (10) feet of the Optical Network Terminal at the Premises. The ONT includes an Uninterruptible Power Supply (UPS) that can keep the Broadband Internet Service operating for short periods of time (a few hours) during a disruption of the electrical power at the Premises. If the Subscriber voluntarily shuts down the power at the Premises for a period of longer than a few hours, including a seasonal power shutdown, the Subscriber shall follow the IMB guidelines, available at www.townofislesboro.com/imb, for an extended period power shutdown and the subsequent power-up. Failure to follow these guidelines may result in an Installation Fee, as set forth in Section 4(a), when reestablishing service.

- d. The Subscriber shall comply with all other terms and conditions of this Agreement, including the terms of use set forth in Section 5.

4. Payment of Fees; Billing.

- a. **Installation Fee.** Prior to receiving Broadband Internet Service, the Subscriber shall pay the Installation Fee to IMB. After submitting an application for installation, IMB will provide an estimate of the Installation Fee to the Subscriber on a time and materials basis. The Installation Fee must be pre-paid, but if the installation cannot be performed by IMB for any reason within thirty (30) days of payment of the Installation Fee, the Subscriber may request a refund of the entire payment and no service will be delivered.
- b. **Subscriber Fee.** The Subscriber agrees to pay all amounts billed for the Broadband Internet Service, including the Subscriber Fee as set forth in the Fee Schedule (available at www.townofislesboro.com/imb); all taxes, fees and other charges, if any, which are now or may in the future be assessed on the Broadband Internet Service received from IMB; and any amounts that IMB may be required by governmental or quasi-governmental authorities to collect from or to pay to others in support of statutory or regulatory programs such as universal service fees, 911/E911 surcharges, telecommunications relay service surcharges, franchise fees, right-of-way fees, and the like.
- c. **Billing.** IMB will bill the Subscriber on an annual basis for the Broadband Internet Service used by the Subscriber, or anyone who uses the IMB Equipment, on a recurring basis until the Subscriber cancels the Broadband Internet Service. Payment of the Subscriber Fee shall be due by June 30 in order to receive the Broadband Internet Service in the ensuing fiscal year (July 1 to June 30). All payments are nonrefundable, and in the event of early termination of this Agreement and cancellation of the Broadband Internet Service, the Subscriber will not be entitled to any refund of fees paid. However, any remaining active service period may be transferred to a new Subscriber at the same Premises, and the new Subscriber's continued receipt of the Broadband Internet Service shall constitute acceptance of the terms and conditions in this Agreement.
- d. **Late Payment.** In the event that the Subscriber fails to pay the Subscriber Fee on or before June 30 in any year, IMB will disconnect the Subscriber's Broadband Internet Service immediately. In order to reconnect Broadband Internet Service, the Subscriber shall pay a Reconnection Fee as set forth in the Fee Schedule. If the Broadband Internet Service has been disconnected for sixty (60) days or more, the Subscriber shall be required to order a new installation of Broadband Internet Service and pay an Installation Fee in accordance with Section 4(a) herein.

5. Use of Service.

- a. **Acceptable Use Policy.** The Subscriber agrees to abide by and accept the terms of the IMB Acceptable Use Policy, as may be amended from time to time, and which is posted on the IMB website at www.townofislesboro.com/imb and incorporated herein by reference. Any violation of the Acceptable Use Policy constitutes a breach of this Agreement and may result in the Subscriber's Broadband Internet Service being suspended or terminated. Any such violation and subsequent suspension or termination of service shall not relieve the Subscriber of the obligations set forth in this Agreement.
- b. **Scope of Use.** IMB provides this Broadband Internet Service to the Subscriber in accordance with the specifications set forth in the Service Level Agreement (available at www.townofislesboro.com/imb) for typical residential or island business use. Any use beyond that may be permitted subject to a separate subscriber agreement with IMB. The Subscriber agrees that the Broadband Internet Service provided will not be utilized beyond the Premises, as defined above. The Broadband Internet Service may not be resold, shared with, or given to anyone other than those within the Premises. If IMB determines that the Subscriber has sold, leased or otherwise given possession of the Broadband Internet Service to a third party, or is using the Broadband Internet Service in excess of the specifications set forth in the Service Level Agreement, IMB may terminate the Broadband Internet Service immediately. The termination of Broadband Internet Service shall not prejudice IMB's ability to exercise any other rights and remedies it may have under this Agreement.
- c. **Password Protection.** To the extent the Subscriber utilizes a wireless router or other means to furnish wireless access to the Broadband Internet Service within the Premises, the Subscriber agrees to limit such access by establishing and using a secure password or similar means for the use of the members of the Subscriber's household or guests.
- d. **No Interference.** Except for the modification of Subscriber configuration settings (*i.e.*, Wi-Fi SSID name), the Subscriber agrees not to service, alter, modify, or tamper with IMB Equipment or with the Broadband Internet Service, or permit any other person not expressly authorized by IMB to do so. In addition, the Subscriber agrees not to interfere with IMB's ability to provide the Broadband Internet Service to other Subscribers.

6. Property Access.

- a. From time to time, IMB may need to enter the Premises in order to install, maintain, inspect, repair, or remove the IMB Equipment. Accordingly, during the

term of this Agreement and after its termination, the Subscriber agrees to provide IMB and its authorized agents, upon reasonable notice, access to the Premises during regular business hours in order to install, connect, inspect, maintain, repair, replace, alter, disconnect or remove the IMB Equipment, to install software, to conduct service theft audits, or to check for password protection of wireless access. The Subscriber agrees that IMB may have reasonable access to any IMB Equipment located on the Premises.

- b. The Subscriber agrees that IMB may place IMB Equipment on the Premises to facilitate the provision of Broadband Internet Service to the Subscriber and to other locations in the area. The license granted under this section shall survive the termination of this Agreement and until the Subscriber notifies IMB in writing that such license has been revoked.
- c. IMB shall not be held liable for any damage to the Subscriber's property that occurs as a result of routine actions taken by IMB to install, maintain, inspect, repair, or remove the IMB Equipment from the Premises, except to the extent that such damage is caused by the gross negligence or willful misconduct on the part of IMB, its employees, contractors or agents.

7. Service and Repairs.

- a. IMB shall repair and maintain all IMB Equipment during the term of this Agreement as described in the Service Level Agreement. The Subscriber agrees not to allow the IMB Equipment to be serviced by anyone other than IMB's employees, contractors or agents. None of the IMB Equipment shall be deemed fixtures or part of the Subscriber's real property. The Subscriber shall have no right to pledge, sell, mortgage, give away or remove, relocate, alter or tamper with the IMB Equipment at any time. Any reinstallation, return of or change in location of the IMB Equipment must be approved by IMB and performed by IMB at the service rates in effect at the time of service. Upon termination of the Broadband Internet Service, the Subscriber shall contact IMB to schedule the return the IMB Equipment.
- b. The Subscriber shall notify IMB promptly of any defect in, damage to, or accident involving the IMB Equipment. All maintenance and repair of the IMB Equipment shall be performed by IMB or its designees. IMB may charge the Subscriber for any repairs that are caused by the Subscriber's misuse of the IMB Equipment on a time and materials basis as set forth in the Fee Schedule.
- c. To optimize the performance of its network, IMB reserves the right to interrupt service in order to maintain, alter or upgrade the IMB Equipment and/or software from time to time. IMB will use commercially reasonable efforts to

schedule these activities in a manner that results in the least amount of interference with or interruption to the Subscriber's Broadband Internet Service.

8. Term; Termination.

- a. The Subscriber's Broadband Internet Service will continue until terminated by either party under the terms of this Agreement.
- b. IMB has the right to terminate the Agreement and cancel the Broadband Internet Service at any time without providing notice to the Subscriber if: (i) the Subscriber fails to pay the Subscriber Fee when due; (ii) IMB determines that the Subscriber has received the Broadband Internet Service, or any part of the Broadband Internet Service, without paying for it; (iii) IMB determines that the Subscriber has violated the Acceptable Use Policy; or (iv) the Subscriber otherwise violates any of the terms of this Agreement.
- c. In the event that this Agreement is terminated for any reason, and the Subscriber's Broadband Internet Service is discontinued, the Subscriber shall remain responsible for payment of all outstanding balances accrued, including any applicable fees. The Subscriber understands and agrees that charges for the Broadband Internet Service, once charged to an account, are nonrefundable.

9. Disclaimer of Warranties. THE BROADBAND INTERNET SERVICE IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE TOWN OF ISLESBORO NOR IMB, ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS WARRANT THAT THE EQUIPMENT OR SERVICES WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, BE SECURE OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NEITHER THE TOWN OF ISLESBORO NOR IMB, ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF TITLE, PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, ACCURACY, NON-INTERFERENCE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING OR COURSE OF TRADE, ARE HEREBY DISCLAIMED AND EXCLUDED UNLESS OTHERWISE REQUIRED BY THE APPLICABLE LAW. NO ADVICE OR INFORMATION GIVEN BY IMB OR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS WILL VARY THE TERMS OF THIS SECTION 9 OR CREATE ANY FORM OF A WARRANTY.

10. Limitation of Liability.

- a. IMB will not be liable for any interruptions in service or liable for any delay or failure to perform, if such delay or nonperformance arises in connection with or relating to the termination of all or a portion of the Broadband Internet Service, the relocation of all or a portion of the Broadband Internet Service to different transmitter(s), a change in the features available with your equipment, any acts of God (including lightning), fires, earthquakes, floods, power or technical failure, uplink failure, theft or vandalism, acts of any governmental body, or any other cause beyond the sole control of IMB.
- b. By accepting this Agreement, the Subscriber waives all claims against the Town of Islesboro or IMB for interference or disruption of service, or incompatibility between the IMB Equipment or Broadband Internet Service and any other service, systems, or equipment. In the event of such interference, disruption, or incompatibility, the Subscriber's sole remedy shall be to terminate the services in accordance with Section 8(a) of this Agreement.
- c. Except as specifically provided in this Agreement, neither the Town of Islesboro, nor IMB, its affiliates, suppliers, employees, agents, or contractors shall under any circumstances or under any legal theory (including, but not limited to, tort or contract) have any liability to the Subscriber or to any other person or entity for the following claims, losses, damages, or costs:
 - i. Any special, indirect, incidental, reliance, treble, punitive, or consequential damages (including, but not limited to, loss of use, loss of business, lost or imputed profits or revenues, loss of information or data, costs of cover, interrupted service, or reliance upon the software and/or associated documentation) that result directly or indirectly from or in connection with (a) the Subscriber's reliance on or use of the Broadband Internet Service or (b) the installation, self-installation, maintenance, failure, or removal of the services (including, but not limited to, any mistakes, omissions, interruptions, computer or other hardware or software breach, failures or malfunctions, deletion or corruption of files, work stoppage, errors, defects, delays in operation, delays in transmission, or failure of performance of the service, the IMB Equipment, or the Subscriber Equipment, or any other mistakes, omissions, loss of call detail, e-mail, voicemail, or other information or data);
 - ii. Any direct or actual damages to real or personal tangible property or bodily injury or death unless directly caused by the willful misconduct or gross negligence of IMB or its affiliates, suppliers, employees, agents, or contractors. Any direct or actual damages to real or personal tangible

property or bodily injury or death caused by willful misconduct or gross negligence shall be limited by subsection (i) above. However, the Town of Islesboro and IMB, its affiliates, suppliers, employees, agents, or contractors shall have no liability whatsoever for any damages or modification to or loss or destruction of any of your software, files, data, or peripherals, regardless of the cause.

- iii. Any losses, claims, damages, expenses, liabilities, legal fees, or other costs that result directly or indirectly from or in connection with any allegation, claim, suit, or other proceeding based upon a contention that the use of the IMB Equipment or Broadband Internet Service by the Subscriber or any other person or entity infringes upon the contractual rights, privacy, confidentiality, copyright, patent, trademark, trade secret, or other intellectual property rights of any third party.

11. Indemnification. The Subscriber agrees to defend, indemnify and hold IMB and/or the Town of Islesboro, their officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable attorney's fees and costs, arising out of or in any way connected with (a) the Subscriber's access to or use of the Broadband Internet Service; (b) the Subscriber's violation of any terms of the Acceptable Use Policy; (c) the Subscriber's violation of any third party right, including without limitation any intellectual property right or any publicity, confidentiality, property or privacy right; or (d) any claim that your use of the Broadband Internet Service caused damage to any third party. The Subscriber agrees that IMB shall not be responsible for any third-party claims that arise from the Subscriber's use of the Broadband Internet Service or IMB Equipment. Further, the Subscriber agrees to reimburse IMB for all costs and expenses related to the defense of any such claims.

12. Miscellaneous.

- a. **Sovereign Immunity.** Nothing in this Agreement shall be construed as a waiver of immunity under the Maine Tort Claims Act, 14 M.R.S.A. §§ 8101-8118, by IMB and/or the Town of Islesboro.
- b. **Amendments.** IMB may amend this Agreement at any time by posting the amended Subscriber Agreement online at www.townofislesboro.com/imb. By continuing to use the Broadband Internet Service, the Subscriber signifies acceptance of and assent to the terms and conditions contained in the amended Subscriber Agreement.
- c. **No Assignment.** The Subscriber agrees that the Broadband Internet Service is being provided only to the Premises as identified on the Subscriber's application for service, and that the Subscriber is not permitted to transfer or assign all or

any portion of the Broadband Internet Service, or the IMB Equipment, to any other location, including a new residence. The Subscriber agrees that it may not assign this Agreement without the prior written consent of IMB. In the event of a sale of the Premises, the new owner may continue to use the Broadband Internet Service subject to the terms and conditions contained in this Agreement.

- d. **Applicable Law.** This Agreement shall be construed under and in accordance with the laws of the State of Maine and venue for any litigation or arbitration to resolve any dispute or disagreement related to this Agreement shall be Waldo County, Maine.

- e. **Force Majeure.** IMB shall not be liable for any delay or failure in performance due to “force majeure,” which for purposes of this Agreement shall include, without limitations, acts of God, earthquake, labor disputes, changes in law, regulation or government policy, riots, war, fire, epidemics, acts or omissions of vendors or suppliers, equipment failures, transportation difficulties, or other occurrences which are beyond IMB’s reasonable control. The Subscriber is responsible for all Subscriber network security systems, firewalls and any other network security necessary to protect the Subscriber’s data, systems or networks.