

Service Terms and Conditions

1. Purpose of this Document. This document sets forth the terms and conditions under which Cloudnet agrees to provide Internet related services (the "Services") described in detail in our Services and Pricing Schedules which may change from time to time. This document constitutes an agreement between Cloudnet and you, our Customer, as to the following terms and conditions of our service set forth below.

2. Users Responsibilities.

2.1. Right to Contract. By contracting with Cloudnet for our Services, you are stating that you affirm that you have the right or permission to have Cloudnet Services and materials installed as necessary at the Service address (the "Premises"), and you agree to comply with the terms and conditions of this agreement. If you rent rather than own the Premises being serviced by Cloudnet, you agree to reimburse, indemnify, and hold Cloudnet harmless from all loss, damage, cost, expense, and liability, including reasonable attorneys' fees, should the owner or his/her lawful representative make a claim against Cloudnet arising from or related to its performance of the agreement.

2.2. Right to Premises Access. You agree that Cloudnet will have the right to enter or cross the Premises at all reasonable times to install, maintain, service, monitor, audit, repair, replace and remove any or all Cloudnet provided or leased equipment (the "Equipment") to an affected customer or for monitoring the Services for the purpose of billing.

2.3. Leased Equipment. None of the Equipment supplied by Cloudnet, nor any cabling placed outside your home, business, or property in connection with the installation of the Equipment and Service, shall be deemed fixtures, or in any way part of your real property, unless you purchase the Equipment to the extent permitted by law when Service ends. The Equipment supplied by Cloudnet may be removed, at our option, at any time during or following the termination of your Service due to nonpayment for Service or otherwise.

2.4. Maintenance. You agree to exercise reasonable care to prevent damage or loss to Cloudnet network interface units, modems, etc. You may not loan out or remove our Equipment from your Premises without permission of Cloudnet. Except for the inside wiring, which is your responsibility, the title to the Equipment shall remain with Cloudnet, unless you purchase the Equipment.

2.5. Loss. You are responsible for preventing the loss of or damage to, the Equipment within your home or business. We recommend that your insurance covers the Equipment while in your possession.

3. Account Policy. Cloudnet provides communication services to its customers and maintains network connections to outside services. Cloudnet makes no claims as to the content of services beyond its control and does not limit its customers except in the following cases, which have been deemed necessary to the secure operation of Cloudnet.

3.1. Applicable Laws. Use of Cloudnet services must comply with all applicable laws. Violation may result in termination of the account.

3.2. Harassment. Harassing or threatening material is unacceptable. Unsolicited advertising is only allowed where explicitly noted.

3.3. Security. Any attempt to breach the security of Cloudnet or the security of any other service accessible through Cloudnet is forbidden. Similarly, anything deemed disruptive to Cloudnet, its users, or any remote networks or their users is unacceptable. Use of any remote services must comply with the terms set forth by the owners of that service.

3.4. **Abuse.** Cloudnet will consider any cases of abuse of privileges on a case-by-case basis and may terminate any account found to be in violation of any part of this policy.

3.5. **Responsibility.** You agree that any use of Cloudnet resources through your account is solely your responsibility. This includes the responsibility for all charges incurred to the account.

3.6. **Service Changes.** Your username and password are necessary when requesting changes to your service.

4. Statements and Invoicing.

4.1. **Statements.** The statements you receive from Cloudnet will be clear, concise and understandable. Statements will be fully itemized, with itemizations including, but not limited to any and all service and equipment charges for the period as applicable. Statements will also clearly state any and all activity during the period, including optional charges, rebates, credits and special messages.

4.2. **Partial Billings.** In situations where you add or delete services from Cloudnet within a given statement period, your next invoice will reflect any amounts for any partial billings if applicable.

4.3. **Notification.** You may notify Cloudnet by telephone or in writing (either first-class mail or e-mail) that you wish to terminate a month-to-month service. Your billing for said Service will end the earlier of (i) the date Cloudnet disconnects the Service; or (ii) five (5) days following receipt by Cloudnet of your request to terminate.

4.4. **Payments.** You agree to pay Cloudnet invoices within twenty-one (21) days of the date of an invoice.

4.5. **Late Payments.** In the event you fail to pay us in accordance with the payment terms specified in the agreement, we reserve the right to impose a late payment fee of \$5.00 per statement period on any unpaid balances until payment in full is received. We do not extend credit to customers and the late payment fee is not an interest or a finance charge, but instead is intended to cover the costs of late payment only.

4.6. **Taxes and Fees.** You are solely responsible for payment of all sales, use, property, gross receipts, excise, access, bypass, franchise, value added, communications, Universal Service Fund, or other local, state and federal taxes, fees, charges, or surcharges, however designated, imposed by any domestic or international government entity on or based upon the provision, sale or use of services delivered by Cloudnet.

4.7. **Partial Payments.** If you do not pay your bill in full, Cloudnet reserves the right to disconnect all Services due to non-payment of your bill.

4.8. **Overdue Accounts.** Cloudnet reserves the right to suspend service to you without notice on accounts thirty (30) days or more overdue.

4.9. **Non-payment Service Fee.** If we dispatch Cloudnet representatives to your Premises to disconnect/discontinue Service due to non-payment, and you pay the past-due amount in order to avoid service interruption, we may at our option impose a service fee of up to \$50 per occurrence.

4.10. **Service Disconnection.** If service has been disconnected for non-payment, your account is subject to a reconnection charge. Your service will be restored after the past due amount, plus reconnection charges, one-month's advanced service fees, and service deposits are paid to Cloudnet. This payment must be in cash, a cashier's check, money order, or by credit card.

4.11. Refund or Application of Deposits. When the Service is terminated or an application is cancelled and there are charges due to Cloudnet, where applicable, any deposits collected plus interest will be applied to these charges. If there is a remaining balance, it will be returned to you within thirty (30) days.

4.12. Billing Disputes. If there is a dispute on any portion of your bill, please request an investigation and review of the disputed bill from Cloudnet Customer Service at 26 6th Ave N. Suite 110, St. Cloud, MN 56303, or email us at info@cloudnet.com. Notification must be received within thirty (30) days of the initial date of the disputed invoice. The undisputed portion of the bill is due and payable, and may become subject to a late payment charge if not paid as required. If after our review, we are not able to reach a resolution, any claim, controversy or dispute arising out of this agreement, other matters in question between the parties to this Agreement arising or relating to this Agreement or the breach thereof, shall be settled by discussion between the parties and, failing resolution, by a competent court of law.

4.13. Returned Check and Failed Electronic Payment Charges. Cloudnet will impose a \$30.00 charge for checks returned to us as unpaid, and a \$10.00 fee for credit card or automatic payments that are denied. Returned checks that remain unpaid after notice, and a reasonable period for response, may be submitted for potential legal action, which could include prosecution.

4.14. Damaged or Unreturned Equipment / Recovery of Unpaid Amounts. Upon terminating your service for any reason, you are responsible for the safe return of any Cloudnet property. You will be charged for any Cloudnet Equipment you have damaged or have not returned to Cloudnet after discontinuing service with us. The charges will be based on the most current price guide on file with Cloudnet. If we are required to incur expenses to collect money you owe us, to obtain the return of Cloudnet equipment or to assert any other right, you agree to pay any expenses incurred by Cloudnet (including the costs of a collection agency, reasonable attorneys' fees prior to and at trial and the cost of obtaining possession of any Equipment or payment of amounts due). These prices may change from time to time. To obtain the most current equipment prices, contact Cloudnet at (320) 240-8243.

4.15. Time and Material Charges. If you have Cloudnet repair or maintain any additional equipment or items not specifically stated within this agreement or associated addenda for services, we will charge you additionally for these items under our current time and materials consulting rates.

5. Warranty of Services. You understand that the general reliability of the Internet and of connections to and from the Internet may be controlled by factors beyond the control of Cloudnet; because of this it is impossible for Cloudnet to guaranty the Cloudnet provision of the Services will be uninterrupted, that the Customer will be able to properly access and use the Services or that the Services will be provided without error. Cloudnet warrants that it will make every reasonable effort to promptly correct any such Services problems brought to its attention during the Service Term. Cloudnet shall have no obligation to remedy any such interruptions, inabilities or errors that were caused by or resulted from: (a) the failure of the Customer's computer hardware and/or software; (b) Customer's failure to use the Services within the operational guidelines established by Cloudnet (as such guidelines may be established and changed at the sole discretion of Cloudnet; (c) the acts or omissions of regional, national, or global Internet carriers that provide transport services to Cloudnet; or (d) Cloudnet's provision of scheduled maintenance activities (Cloudnet will make every reasonable effort to schedule maintenance at a time which will minimize the impact on the Customer.)

THE WARRANTY SET FORTH IN THIS SECTION 4 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES DO NOT ALLOW LIMITATIONS OR EXCLUSIONS OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

6. Third Party Equipment. Certain of the Services offered by Cloudnet may require that you purchase or license certain computer hardware and software provided by third parties. **Cloudnet does not manufacture the Equipment.** Some of the Equipment may be purchased, leased or licensed through Cloudnet. To the extent possible, Cloudnet will assign or pass through to you all warranties related to the Equipment that are purchased or licensed through Cloudnet. Risk of loss or damage to any Equipment purchased, leased or licensed by you through Cloudnet shall pass to you upon delivery. You will be solely responsible for both the selection and maintenance of the Equipment. The only obligation of Cloudnet as it relates to your use of the Equipment is to reasonably assist you with warranty claims in those instances where the Equipment has been licensed, leased or purchased through Cloudnet. **THE ABOVE OBLIGATION OF CLOUDNET TO ASSIST YOU WITH EQUIPMENT WARRANTY CLAIMS IS IN LIEU OF ALL OTHER OBLIGATIONS OR WARRANTIES, IMPLIED OR EXPRESS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

7. Disruption of Service. Maintenance and scheduled interruptions of service, to the extent possible, will be preceded by notice and will occur during periods of minimum system activity, usually between midnight and 6:00 AM. We will interrupt your service only when necessary, and for the shortest time possible.

8. Service Access and Application Availability Levels - Professional Accounts Only.

8.1. Goal of Service Access Level. Cloudnet is not responsible for loss of access to Services or Software for reasons that are beyond its reasonable control. With the exception for loss of access that is beyond Cloudnet's reasonable control, Cloudnet shall maintain a level of access to the Services and Software (excluding periods of scheduled maintenance, emergency maintenance and scheduled upgrades) of 99.9% Access Availability. Access Availability is defined as: $1 - (\text{Total Access Outage minutes per month}) / (\text{24 hours} \times \text{60 minutes} \times \text{30 days per month})$. An Access Outage is defined as the unscheduled inability of all Customers subscribed to the Service to access their entire Service. Access Outage Duration is defined as the period of time beginning when the User reports an Access Outage to the Provider help desk (Trouble Ticket initiation) and ending when the Provider help desk closes the Trouble Ticket with the User. A Trouble Ticket is defined as the official method used by a User to advise Provider of a perceived Access Outage. If the Customer does not initiate a Trouble Ticket with Provider or release the Service for Cloudnet testing, Cloudnet will not be obligated to issue credits for the Access Outage. From time to time, unscheduled Access Outages and Service disruptions may occur due to unforeseen events or influences outside of the control of Cloudnet. Cloudnet will monitor its Services to detect Service impacting incidents. Incidents that are detected by and under the purview of Provider will be addressed as quickly as commercially reasonable in the circumstances. Detected incidents outside of the purview of Cloudnet will be referred back to the customer. Cloudnet will use commercially reasonable efforts to attempt to correct major service interruptions within 24 hours after the discovery of the incident and to attempt to correct minor interruptions within 5 business days after the incident. A "major interruption" means that the service is not operational or accessible. All interruptions other than "major interruptions" are classified as "minor interruptions."

8.2. Exclusive Remedy for Failure to Meet Service Access Goal. Should the level of Access Availability fall below the goal of 99.9% as set forth in Section 7.1 for any given calendar month for which customer has paid for Service, customer may request a pro-rata credit on charges for the month's Services and Fees in proportion to the amount the level of access was below 99.9% for the month. For each day which the customer experiences an Access Outage or Outages, the customer shall be eligible to receive a credit of 1/30 of the monthly Service bill. Customers shall have the right to terminate this Agreement without penalty, if 1) the level of Access falls below 99.9% for any two consecutive months; or 2) three months out of any six months period.

8.3. Limits to Remedies for Failure to Meet Access Goals. Claims for any and all Service credits must be submitted by customer to Cloudnet in writing within thirty (30) days of the last day of the month for which credit is claimed. In the event a customer has coincident rights to a credit based on Access Availability and/or Application Availability only one credit shall apply. Total credits a customer can receive in a month under

section 7.3 shall not exceed the amount paid by customer in such month. In each case, where the customer attains the right to terminate for failure to meet Access Availability, customer must exercise the right within 60 days of attaining the right, or lose the right to terminate associated with each case. Any credit and/or right of termination shall be customer's sole remedies for Cloudnet's breach of this Section 7 of the Agreement regarding level of Access Availability and Application Availability.

9. Indemnification. You warrant that your use of Cloudnet's Services will not violate any law, regulation, Cloudnet's Acceptable Use Policy, or violate or infringe upon the rights of any other party, including, without limitation, contractual rights, intellectual property rights, publicity and privacy rights, and the rights against libel, defamation, and slander. You agree to indemnify and hold Cloudnet and its successors, assigns, agents, and licensees harmless from any claim, demand, liability, cost and expense (including reasonable attorney's fees and disbursements) that arises out of, or results from, your use of the Services.

10. Domain Names. The Services Cloudnet provides may include certain Internet domain name registration and maintenance services. You acknowledge that such services do not include any research or determination of any sort regarding whether your selection of a domain name will infringe, dilute, or otherwise violate the scope of another party's rights in a trademark (or any other type of mark), trade name, or personal or legal entity name. You agree to assume any and all risks associated with your selection of an Internet domain name. You should consult an attorney familiar with trademark law and the Internet domain name registration process prior to selecting an Internet domain name.

11. Term and Termination.

11.1. Either party may terminate this Agreement for convenience by giving the other party thirty (30) days notice or as otherwise specified elsewhere in this document. In any event, either party may also terminate this agreement for default if the defaulting party fails to cure a breach of this Agreement within thirty (30) days of the date that such party is notified of such breach.

11.2. If our services are terminated by you for convenience or terminated by Cloudnet for default as stated elsewhere in this document, you will pay Cloudnet a termination charge equal to fifty percent (50%) of the total of remaining charges for all months remaining in the Service Term after the date of termination.

11.3. If Cloudnet terminates this Agreement for convenience or if this Agreement is terminated by the Customer for default, as stated elsewhere in this agreement, Cloudnet may refund to the Customer a pro rata portion of those pre-paid Service Fees for Services that were to be performed after the date of termination. There will be no refunds for termination of Services that are provided on a month to month basis.

11.4. Cloudnet may terminate the Agreement immediately, without notice, if the Customer breaches any of the provisions as stated in this Agreement.

11.5. Upon termination of this Agreement, Cloudnet shall disable all User's passwords and/or access codes provided pursuant to this Agreement and shall be entitled to remove all User's Software and User Data from its servers. In the event that this Agreement is terminated, Cloudnet will return User's Software and User's Data in a commercially reasonable form from Cloudnet's most recently available backup at User's expense provided User requests such return within thirty (30) days after termination. Cloudnet shall have no obligation to retain or maintain any User Software or User Data after such thirty day period or after its return to User.

12. Security and use of information.

12.1. The Customer shall be responsible for all security related to the Customer's use of, and access to, the Services. Cloudnet will provide no user access security with respect to the Customer's facilities, or the facilities of others.

12.2. The access codes and user passwords provided by Cloudnet to the Customer (Collectively the "User Codes") are for the exclusive use of the Customer. The Customer is responsible for the confidentiality of the User Codes and agrees not to provide them to any third party. The Customer is responsible for all statements made, and acts of omissions that occur, while the User Codes are being used. The Customer agrees to notify Cloudnet immediately in the event of the loss or theft of the User Codes, or if the confidentiality of the User Codes has been compromised in any manner.

12.3. Cloudnet does not monitor, control, or edit the information available to the Customer on the Internet. The Customer agrees to assume all risks associated with the use of information downloaded from the Internet. Cloudnet specifically denies any responsibility for the accuracy, quality, or nature of information that may be obtained by the Customer from the Internet through the use of its Services.

13. Privacy Notice

13.1. This notice makes reference to the Electronic Communications Policy Act of 1986 ("ECPA") and the Online Copyright Infringement Liability Limitation Act of 1998 ("Copyright Act"), and the USA Patriot Act of 2001 (the "Act"). This notice pertains only to personally identifiable information about you that you have furnished to Cloudnet, or that we have collected, in order that we may provide service to you. Personally identifiable information does not include aggregate data that does not identify you. It also does not include information about you that is collected other than in the course of providing services or that is obtained from publicly available sources.

13.2. **Collection and Use of Personally Identifiable Information.** In order that we may provide service to you and operate efficiently, we collect the following types of information about you that may constitute personally identifiable information: your name, home and work addresses, telephone numbers, social security number, and credit information. Depending on the services we provide to you, our records may also include information on billing, payment, damage and security deposits, the service options you have chosen and the types of equipment you have installed in your home or business. We also keep records of research concerning customer satisfaction with the service, which are obtained from customer interviews and questionnaires. Additionally, we may have a record of whether you rent or own your service location in the event that landlord permission is required prior to installing our services and equipment. We also maintain customer correspondence (via e-mail or otherwise) and, if you are an Internet subscriber, records of violations and alleged violations of your Internet Service Agreement.

13.3. The personally identifiable information described in the preceding paragraph is used for purposes to make sure you are being billed properly for the services you receive such as the following: to send you pertinent information about Cloudnet services; to improve the quality of Cloudnet services; to answer questions from subscribers such as troubleshooting; to ensure compliance with relevant law and contractual provisions; and for tax and accounting purposes. Additionally, Internet service automatically collects information on the choices made among the range of services offered, the timing of visits to sites, and the length of visits to sites. Cloudnet, in providing service to you, also has access to personally identifiable information, as described above, about you or your account, including the name and address associated with a given IP address or e-mail accounts. We may collect personally identifiable information over our system without your consent if it is necessary to provide services to you, or to prevent unauthorized access to services or customer data. However, if you are a Cloudnet customer, you have consented to the collection of such information by Cloudnet as described above.

13.4. **Disclosure of Personally Identifiable Information.** Personally identifiable information that we maintain related to our subscribers will be disclosed without the prior written or electronic consent of subscribers only if: (1) it is necessary to render, or conduct a legitimate business related to the services that are provided to you; (2) such disclosure is required by law or legal process as described below; or (3) for mailing lists as described below. The types of persons to whom information about you may be disclosed in the course of providing service to you including the employees of Cloudnet and its related legal entities, agents, repair and installation

subcontractors, sales representatives, accountants, billing and collection services and credit reporting agencies, consumer and market research firms, and authorized representatives of governmental bodies. Also upon reasonable request, personally identifiable information is disclosed to persons or entities with an equity interest in legal entities related to Cloudnet when they have a legal right to inspect our books and records. Information for billing purposes is generally provided on a monthly basis. Information for other purposes is provided as it is needed.

13.5. Security. In accordance with applicable laws, Cloudnet will notify any customer if there is a security breach regarding any of their unencrypted, electronically stored personal information. Cloudnet will notify each customer in a timely manner upon discovery of any such security breach. Electronically stored personal information includes an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted: (1) Social security number. (2) Driver's license number or Legal Identification Card number. (3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

13.6. Disclosure of Information to Government Entities and Other Legal Process. Federal law requires us to disclose personally identifiable information to a governmental entity or other third party pursuant to a court order. If the court order is sought by a governmental entity, you may be afforded the opportunity to contest in court any claims made in support of the court order sought. At such a proceeding, the governmental entity is required to offer clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case. In addition, pursuant to an administrative subpoena, state welfare agencies may obtain the names and addresses of individuals as they appear in the subscriber records of companies such as us with respect to those who owe, or are owed, welfare support. Such information may be obtained without a court order and does not require that a subscriber be given notice of and the opportunity to contest the disclosure.

13.7. USA Patriot Act. Under the USA PATRIOT Act of 2001 (the "Act"), a governmental entity may require Cloudnet to disclose certain information concerning your account without notice to you. Upon receipt of a Federal or State administrative, grand jury or trial subpoena, or otherwise as set forth in the Act, we are required to disclose to the government the following information records: your name and address; records of your Internet sessions (including session times and duration); how long you have subscribed to our service(s) (including start date and the type(s) of service(s) utilized; your telephone number or other subscriber account identifying number(s), including any Internet or network address(es) assigned to you by our network; and the means and source of your payment(s) (including any credit card or bank account number). In addition, upon receipt of a Federal or State search warrant or court order, we are required to disclose to law enforcement agencies the content of and other records relating to electronic mail messages (including attachments to electronic mail messages and records relating to your electronic mail and Internet use), without advance notice to you. Additionally, law enforcement agencies may, by Federal or State court order, and without notice to you, obtain the right to install a device that monitors the addressing and routing of your Internet and electronic mail use, but not the contents of your electronic mail. The Act also allows us to voluntarily disclose certain information to law enforcement agencies and governmental entities in circumstances of immediate danger. If we reasonably believe that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay, where permitted by law, we may voluntarily disclose to law enforcement agencies, without advance notice to you, the contents of your cable Internet subscriber communication. The Act, under certain conditions, also allows the government, at our request, to intercept the communications of a computer trespasser, without obtaining a court order or search warrant. Finally, we may also disclose to law enforcement agencies the contents of Internet subscriber communications that were inadvertently obtained and appear to pertain to the commission of crime. As before, a governmental entity may obtain records revealing your selection of video programming by court order only if it offers clear

and convincing evidence that such records are material to a criminal case and if you are given the opportunity to appear and contest the evidence.

13.8. Time Period That We Retain Personally Identifiable Information. We maintain personally identifiable information about our subscribers for as long as it is necessary for our business purposes. This period of time lasts as long as you are a customer and up to ten additional years so that we can comply with tax and accounting requirements or as otherwise required by law.

13.9. Your Online Communications. You agree that Cloudnet and its providers may monitor content of Internet service; and may disclose any information in the possession of either to protect their respective rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril. When you use Cloudnet service to transmit information we may disclose information to an addressee or intended recipient (or his or her agent); to a person involved in forwarding such information to its destination; when it is necessarily incidental to providing service or to protect our rights or property; to others with the consent of the subscriber or an addressee or intended recipient (or his or her agent); to law enforcement if such information appears to be evidence of child pornography or was inadvertently obtained and appears to pertain to a crime; or as otherwise provided by law.

14. Assignment. This Agreement may not be assigned or transferred by the Customer without the prior written consent of Cloudnet. Any purported assignment of delegation of the whole or any portion of the Agreement will be null and void and a breach of this Agreement. Without in any way limiting the general nature of the foregoing prohibition against assignment, the Customer agrees that the Services may not be resold, shared with, or made available to any third party by the Customer.

15. Severability. Any element of this agreement held to violate a law or regulation shall be deemed void and all remaining provisions shall continue in force. Cloudnet and Customer will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable and which comes as close as possible to expressing or achieving the intent of the original provision.

16. General. This Agreement, any Exhibits and Cloudnet's Acceptable Use Policy, constitute the entire agreement between Cloudnet and the Customer related to Cloudnet's provision of the Services and Equipment described in this Agreement. This Agreement supersedes all prior understandings, agreements, and contracts related to the Services. Modifications or amendments to this Agreement shall be enforceable only if they are in writing and are signed by authorized representatives of both parties. If any action at law or equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled. The laws of the state of Minnesota will govern this Agreement, except in regard to that state's choice of law provisions. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

17. Limitation of Liability. IN NO EVENT SHALL CLOUDNET BE LIABLE TO THE CUSTOMER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, LOSS OF USE, INTERRUPTION IN SERVICES, BREACH OF NETWORK SECURITY, AND LOSS OF REVENUES. CLOUDNET'S TOTAL LIABILITY TO THE CUSTOMER, WHETHER BASED IN CONTRACT OR TORT, WILL BE LIMITED TO THE TOTAL OF THE SERVICES FEES PAID BY THE CUSTOMER TO CLOUDNET IN THE LAST 12 MONTHS UNDER THIS AGREEMENT. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY.