

## **ConnectMAXX Terms and Conditions**

NextWave Metropolitan, Inc. ("Nextwave"), a wholly owned subsidiary of NextWave Wireless, Inc., provides, either directly or through authorized third parties, various wireless local area network broadband communications services and related services and features offered primarily under the CONNECTMAXX™ and BOINGO™ brand names (the "Services"). The ConnectMAXX Terms and Conditions set forth below are applicable to all of the Services that are available from or through Nextwave, regardless of the brand name under which the Service is offered (certain additional terms and conditions that are applicable solely to the BOINGO™ products and service and related software can be found on the website maintained by Boingo Wireless, Inc. at [www.boingo.com](http://www.boingo.com).)

**IMPORTANT NOTICE: BY USING THE NEXTWAVE SERVICES, FEATURES OR ACTIVATING USE OF THE NEXTWAVE SYSTEMS YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND THE ADDITIONAL PROVISIONS BELOW. PLEASE READ THESE TERMS AND CONDITIONS AND THE ADDITIONAL PROVISIONS BELOW CAREFULLY AS THEY, AMONG OTHER THINGS, LIMIT OUR LIABILITY (Secs. 18 and 19) AND REQUIRE MANDATORY ARBITRATION OF DISPUTES (Sec. 24). IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS AND THE ADDITIONAL PROVISIONS BELOW, YOU MAY NOT USE OR ACTIVATE THE CONNECTMAXX SERVICES, FEATURES OR SYSTEMS.**

This is a binding agreement between you and Nextwave (referred to herein alternately as "Nextwave" "we," "our," or "us") for use of any and all of the Services that are or may be offered from time to time by or through Nextwave in accordance with the ConnectMAXX Terms and Conditions set forth below (the "Terms"), any applicable ConnectMAXX Service or Wi-Fi Rate Plan (the "Wi-Fi Plan"), Nextwave Acceptable Use Policy and such other policies as Nextwave may adopt (collectively, "Policies"), each as they may be amended from time to time and as may be posted from time to time at the ConnectMAXX website at [www.connectmaxx.com](http://www.connectmaxx.com).

- **1. Agreement Governing Use of Service.**

These ConnectMAXX Terms, any Wi-Fi Plan you have agreed to, and the Policies, including any materials you received in connection with your account (together, the "Agreement"), govern the use of the Services. If any of the Services, in whole or in part, is subject to any tariffs filed by Nextwave ("Tariffs"), then you further agree that such affected Service(s) will also be governed by the terms of any such Tariffs, which Tariffs are incorporated in this Agreement by reference. In the event of a direct inconsistency, except as otherwise expressly stated in any of the foregoing, the Terms will control. You do not have the authority to vary, alter or amend any of the provisions of this Agreement. The provisions of this Agreement will control over any statement appearing as a restrictive endorsement or other language which purports to modify a right, obligation or liability of either party on any document you may send to Nextwave. Read below for terms that specifically apply to certain services or plans that you choose. As these provisions of the Agreement may be updated from time to time, you agree to regularly check your postal mail, e-mail and all postings on the ConnectMAXX website at [www.connectmaxx.com](http://www.connectmaxx.com) or on another website about which you have been notified by us, and bear the risk of failing to do so. You agree Nextwave may change the provisions of the Agreement from time to time, and such changes will become binding on you on the date posted to the ConnectMAXX website and no further notice by Nextwave is required.

- **2. Acceptance of Agreement by Use/Activation.**

You acknowledge that you have read and understood, and you agree to, each of the provisions of the Agreement, and you represent and warrant that you are of legal age and authorized to enter the Agreement and to accept and agree to become bound by the terms of the Agreement. The Agreement applies to you and to anyone who uses the Services. By (a) initiating, activating or using the Services, and/or (b) providing or authorizing a written or electronic signature or otherwise so indicating electronically, you will have been deemed to have accepted the current version of the provisions of the Agreement (i.e., the Terms, any Wi-Fi Plan, any applicable Tariffs, and the Policies) (or ratified any previous consent to the same). If you do not agree to the terms of the Agreement, you may not use the Services.

- **3. Changes to the Agreement or Charges.**

We may change or increase any applicable charges for the Services or any other charges at any time. However, if we: (a) increase the charges for a Service and you would be charged a termination or other fee to cancel that Service, or (b) we modify a material term of our Agreement with you and the modification would be materially adverse to you, we will notify you of the increase or modification (as provided in Sec. 16) and you can cancel the affected Service(s) without paying the termination or other fee (which is your only remedy) by following the cancellation instructions in the notice. If you do not cancel the affected Service(s) by following the instructions in the notice, then you agree to the increase or modification, even if you paid for Services in advance. If we increase charges for Services to which no termination or other fee to cancel service applies, we will notify you of the increase, but you will still be responsible for any termination fee applicable to any other Services you may have to which a termination or other fee applies if you also cancel such other Services.

- **4. Service Availability; Required Device.**

An 802.11b-compatible computer, card and/or device (collectively, the "Device") is required to enable the Services to operate. Other requirements to enable use of the Services may be posted from time to time on the ConnectMAXX website at [www.connectmaxx.com](http://www.connectmaxx.com). You are responsible for supplying and ensuring that your Device is compatible with the Services and meets federal and other applicable standards. The availability and performance of the Services is subject to all memory, storage and other limitations in your Device. Services are available to your Device only when it is within the operating range of the Nextwave network. Service access location lists and/or maps may be provided and updated from time to time; actual Services coverage, locations and quality may vary. The Services are subject to unavailability, including unavailability due to emergencies, collocation failures, transmission and equipment limitations, or maintenance and repair, and may be interrupted, refused, limited, or curtailed. We are not responsible for data, messages or pages that you may lose or that become misdirected because of interruptions or performance issues with the Services or wireless communications networks more generally. We may impose usage or Services limits, suspend access to the Services, or block certain kinds of usage in our sole discretion to protect users or our business. Network speed is no indication of the speed at which your Device or the Services send(s) or receive(s) data. Actual network speed will vary based on your Device's configuration, data compression and network congestion. The accuracy and timeliness of data received is not guaranteed; delays or omissions may occur.

- **5. Intended Use of Service: Prohibited Uses.**

Unless otherwise authorized by us in writing, you may only use a single user account solely for your use of the Services through one unit per login session. You may not reproduce, duplicate,

copy, sell, provision, resell, rent, lend, pledge, directly or indirectly transfer, distribute or exploit any portion of the Services without Nextwave's prior written consent. You will not use the Services in a manner prohibited by any federal, state, or local law or regulation, and will abide by Nextwave's Policies, which set forth additional rules that govern your activity in connection with the Services. Without limiting the foregoing, you may not use the Services, or allow the Services to be used, for any abusive purpose or in any way that damages Nextwave's property or interferes with or disrupts Nextwave's network or other users or subscribers. You agree not to share your IP address or Internet connection with anyone, or, unless authorized in writing by us, access the Services simultaneously through multiple units or to authorize any other individual or entity to use the Services. You agree that any unauthorized sharing of the Services with another party breaches the Agreement and may constitute fraud or theft, for which Nextwave, its affiliates, and their agents reserve all rights and remedies. You have no proprietary or ownership rights to a specific IP or other address, log-in name, or password that you use on our network. We may change your address, log-in name or password at any time. We will assign you an IP address each time you access the Services, and it will vary. You shall not program any other IP address into your Device or any other equipment. You may not assign your log-in name, password or IP address to any other person or Device or other equipment. You agree that we (including any of our authorized representatives) may access your unit and information stored on it (such as drivers, software, etc.) to troubleshoot issues related to the unit or network; enable, operate and update the Services and software; investigate activity that may be in violation of this Agreement; and/or to comply with law. In addition, you agree not to use or attempt to use the Services, the Nextwave network or the ConnectMAXX website, or your Device for any fraudulent, unlawful, harassing or abusive purpose, or so as to damage or cause risk to our business, reputation, employees, subscribers, facilities, or to any person. Improper uses include, but are not limited to: (a) Violating any applicable law or regulation; (b) Posting or transmitting content you do not have the right to post or transmit; (c) Posting or transmitting content that infringes a third party's trademark, patent, trade secret, copyright, publicity, privacy, or other right; (d) Posting or transmitting content that is unlawful, untrue, stalking, harassing, libelous, defamatory, abusive, tortious, threatening, obscene, hateful, abusive, harmful or otherwise objectionable as determined in our sole discretion; (e) Attempting to intercept, collect or store data about third parties without their knowledge or consent; (f) Deleting, tampering with or revising any material posted by any other person or entity; (g) Accessing, tampering with or using non-public areas of the Services or any Nextwave website (including the ConnectMAXX website) or Nextwave computer systems and network; (h) Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures; (i) Attempting to access or search the Services or any Nextwave network or website (including the ConnectMAXX website) with any engine, software, tool, agent, device or mechanism other than the software and/or search agents provided by us or other generally available third party web browser; (j) Sending or attempting to send unsolicited messages, including without limitation, promotions or advertisements for products or services, "pyramid schemes", "spam", "chain mail" or "junk mail"; (k) Using or attempting to use the Services or any Nextwave website (including the ConnectMAXX website) to send altered, deceptive or false source-identifying information; (l) Attempting to decipher, decompile, disassemble or reverse engineer any of the software comprising or in any way making up a part of the Services or any Nextwave website (including the ConnectMAXX website); (m) Interfering or attempting to interfere with the access of any user, host or network, including without limitation, sending a "virus" to or through the Services or any Nextwave website (including the ConnectMAXX website), overloading, "flooding," "spamming," "crashing," or "mailbombing" the Services or any Nextwave website (including the ConnectMAXX website); (n) and/or Impersonating or misrepresenting your affiliation with any person or entity. You will defend, indemnify and hold Nextwave, its affiliates, and their agents harmless against any and all claims, losses, or liability arising under this section 5. The foregoing sentence will survive termination or expiration of the Agreement for any reason.

If we suspect violations of any of the above, we may: a) institute legal action, b) immediately, without prior notice to you, terminate the Agreement with you and/or your rights to access or use

the Services, c) terminate any other Nextwave agreements between us and you and the Nextwave service provided under those agreements, and d) cooperate with law enforcement authorities in bringing legal proceedings against violators. You agree to reasonably cooperate with us in investigating suspected violations.

Nextwave reserves the right to install, manage and operate, directly or through authorized third parties, one or more software, monitoring or other solutions designed to assist us in identifying and/or tracking activities that we consider to be illegal or violations of these Terms, including but not limited to any of the activities described in this section 5. We may, but are not obligated to, in our sole discretion, and without notice, remove, block, filter or restrict by any means any materials or information (including but not limited to emails) that we consider to be actual or potential violations of the restrictions set forth in these Terms, including but not limited to those activities described in this section 5 and any other activities that may subject Nextwave or its customers to any type of harm, injury or liability. Nextwave, its affiliates, and their agents disclaim any and all liability for any failure on its part to prevent such materials or information from being transmitted over the Services and/or into your Device.

- **6. Content Disclaimer: Cautions and Restrictions.**

We do not control, nor are we responsible or liable for, data, content, services, or products (including software) that you access, download, receive or buy via the Services. We may, but do not have to, block information, transmissions or access to certain information, services, products or domains to protect us, our network, the public or our users. Therefore, messages and other content may be deleted before delivery. The Internet contains unedited materials, which may not be in compliance with all federal, state, and local laws and regulations, and which may be offensive to you. We are not a publisher of third-party content accessed through the Services, and are not responsible for the content, accuracy, timeliness or delivery of any opinions, advice, statements, messages, services, graphics, data or any other information provided to or by third parties as accessible through the Services. You access such materials at your own risk. If you decide to let children under the age of eighteen access the Services, we strongly recommends that you supervise their usage. You are responsible for paying all fees and charges of third party vendors whose sites, products or services you access, buy or use via the Services. If you choose to use the Services to access web sites, services or content, or purchase products from third parties, your personal information may be available to the third-party provider. How third parties handle and use your personal information related to their sites and services is governed by their security, privacy and other policies (if any) and not ours. We have no responsibility for third party provider policies, or their compliance with them. If you elect to download into your Device or otherwise enable any software, including any client-based software designed to facilitate your access of the Services, you shall be solely responsible for, and shall be deemed to have reviewed and, to the extent applicable, acknowledged, accepted or waived, any disclosures, notices or options otherwise made available to you for viewing as part of the log-in process for the Services. In no event, will Nextwave, its affiliates, and/or their agents be liable for any lack of privacy which may be experienced with regard to the Services. For additional information, please refer to Section 26 below, which sets forth our privacy policy statement applicable to you, for additional information.

If you are the owner or proprietor of an establishment at which BOINGO™ branded "Hot Spot" Services are provided by or through Nextwave, and you are entitled to free or complimentary usage of such "Hot Spot" Services, you agree that such usage is granted upon, and will remain subject to, the other terms of your Agreement with us, the **terms and conditions that are applicable solely to the BOINGO™ products and service and related software that can be found on the website maintained by Boingo Wireless, Inc. at [www.boingo.com](http://www.boingo.com)** and the following additional terms and conditions, which you hereby acknowledge and agree to: such free or complimentary Hot Spot Services usage (1) is made available solely for usage by you; and (2) is

not to be made available to or otherwise shared with any other persons. Your failure or refusal to comply with such exclusive use requirement and restrictions on availability and sharing will be considered a material breach of the Agreement, which will entitle us to (in addition to any other rights or remedies available to us): (a) charge you at the then applicable daily rate, for each day of unauthorized usage, for end user access to the Hot Spot Services for all such unauthorized use by third parties, (b) suspend and/or terminate your free or complimentary usage rights and/or (c) terminate the Agreement, remove access to the Hot Spot Services and all associated equipment from your premises and assess you for any applicable early termination fees, cancellation charges or similar amounts.

You will defend, indemnify and hold Nextwave, its affiliates, and their agents harmless against any and all any and all claims, losses, or liability arising under this section 6. The foregoing sentence will survive termination or expiration of the Agreement for any reason.

- **7. Term; Termination of Services.**

The Agreement begins on the date your Services are initiated, activated or used (or is otherwise deemed to have been accepted as provided in section 2) and will continue until terminated by you or us in the manner provided in the Agreement. You understand that if at any time you are not current in paying any amounts owed to us, or if your credit or debit card ("Card") expires, does not process payment or is otherwise rejected, we may terminate the Services immediately in our discretion without notice. In such circumstances, despite termination you will be liable for payment of any amounts due or other obligations incurred before or upon termination, whether the Agreement is ended by you or us.

- **8. Loss of Service Due to Power Failure.**

You acknowledge that the Services do not function in the event of power failure or a failure or disruption of our own or any third party's communications networks that we may utilize to send or receive transmissions to or from your Device. A power failure, or a failure or disruption of such networks, may require you to reset or reconfigure your Device prior to utilizing or reutilizing the Services.

- **9. Service Distinctions.**

You acknowledge and agree that the Services are not telephone services. Important distinctions exist between telephone services and the Services offering provided by Nextwave. The Services are subject to different regulatory treatment than telephone services. This treatment may limit or otherwise affect your rights of redress before federal, state or local telecommunications regulatory agencies.

- **10. Back Up.**

You acknowledge that you are solely responsible for backing up all computer files by copying them to another storage medium. Neither Nextwave, its affiliates, nor their agents will be liable for any loss of data or damage to hardware, software, or files, including any Device.

- **11. Copyright / Trademark / Firmware / Software.**

The Services, and any firmware or software used to provide the Services, or used in connection with the Services, and all other services, information, documents and materials delivered to you by Nextwave or located on any of Nextwave's websites, including the ConnectMAXX website, are

protected by trademark, copyright and other intellectual property laws and international treaties. All names, service marks, trademarks, trade names, logos and domain names (collectively "Marks") of Nextwave are and will remain the exclusive property of Nextwave and nothing in the Agreement grants you the right or license to use any of such Marks. You acknowledge that you are not given any license to use any firmware or software under this Agreement. You represent and warrant that you possess all required rights, including software and/or firmware licenses, to use that equipment with the Services, including your Device, and you agree to defend, indemnify and hold Nextwave, and its affiliates, and their agents harmless against any and all any and all claims, losses, or liability arising out of your use of such equipment, including your Device, with the Services. The foregoing sentence will survive termination or expiration of the Agreement for any reason. You agree not to reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of any firmware or software used to provide the Services or used in connection with the Services.

- **12. Credit Reporting Agencies.**

You authorize us to ask consumer reporting agencies or trade references to furnish us with employment and credit information, and you consent to our rechecking and reporting personal and/or business payment and credit history, as well as to enter this information in your file and disclose this information concerning you to appropriate third parties for reasonable business purposes. Upon receipt of adverse credit information about you at any time, Nextwave reserves the right to suspend or terminate Services to you or require a deposit for Services, at our option.

- **13. Termination/Discontinuance of Service.**

Nextwave reserves the right to suspend or discontinue providing the Service generally, or to terminate your Service, either in whole or in part, at any time in its sole discretion. If Nextwave discontinues providing the Services generally, or terminates your Services in its discretion without a stated reason, your sole remedy will be (i) to elect to terminate any other Services you are then receiving from us (in which case you will not be assessed any cancellation charge or similar fee) and (ii) to be released from your obligations under the Agreement to pay us any amount charged in respect or any of the terminated Services from and after the date on which such Services are terminated (or to receive from us a pro-rated refund of any charges you previously paid for such terminated Services that are allocable to any period from and after the date on which such Services are terminated). Except as stated in the immediately preceding sentence, Nextwave shall have no liability or other obligation to you, under the Agreement or otherwise, by reason of or otherwise arising from or related to any such termination of Services.

- **14. Default; Termination.**

You will be in default under the Agreement if you do not pay any sum when due, breach the Agreement or any other agreement between you and us, become the subject of any proceeding under the Bankruptcy Code or become insolvent. In any such case, you shall remain responsible for payment of all charges and fees (including any early termination fee) due under the Agreement (including charges incurred after a bankruptcy filing), which charges will be immediately due and payable. We have the right to discontinue Services and/or terminate the Agreement without prior notice if you default under the Agreement. If we agree to renew Services to you after discontinuing Services, you agree to pay any applicable reactivation charges. Our remedies hereunder are not exclusive but are in addition to all other remedies provided by law or equity.

- **15. Complaint Resolution/Notices.**

In order to resolve a complaint regarding the Services or to receive further information regarding the use of the Services, please contact Nextwave Customer Care as set forth at [www.ConnectMAXX.com](http://www.ConnectMAXX.com). Written notices to you will be effective three (3) days following the date deposited in the U.S. Mail addressed to your address as kept in our files. You are responsible for notifying us of any changes in your address. Written notice to Nextwave will be effective when directed to Nextwave's Customer Care Department and received at the address set forth at [www.connectmaxx.com](http://www.connectmaxx.com). Notices must be in writing to be effective. Notices sent by us via email to you at your email address stated in the Order Form will constitute written notice.

- **16. Amendments.**

Subject to applicable law, Nextwave may in its sole discretion amend any part of the Services or provision of the Agreement. Nextwave will provide notice to you of any material modification. Such notice will be effective by posting it on the Nextwave website at [www.connectmaxx.com](http://www.connectmaxx.com) or on another web site about which you have been notified, or by sending notice via e-mail, first class U.S. postal mail, or overnight mail to your physical address of record or the e-mail address on Nextwave's account records. You agree that any one of the foregoing will constitute sufficient notice. If you do not agree to a modification that is materially disadvantageous to you, you may terminate the Agreement within twenty (20) days of the date we send our notice. If you use the Services or make any payment to us after Nextwave provides notice as specified above of a material modification, and do not provide termination notice to us within the specified time period, you agree to that change, retroactive to the announced effective date of the modification. Without limiting the foregoing, Nextwave may revise any Policy at any time, and such revisions will be effective immediately upon posting on Nextwave's website at [www.connectmaxx.com](http://www.connectmaxx.com), or providing written notice, whether electronic or otherwise, to you.

- **17. Notices and Procedure for Making Claims of Copyright Infringement.**

Pursuant to Title 17, United States Code, Section 512(c)(2) (as amended), notifications of claimed copyright infringement should be sent to Service Provider's Designated Agent at [support@connectmaxx.com](mailto:support@connectmaxx.com). Note that inquiries relevant to the following procedure only will receive a response.

- **18. DISCLAIMER OF WARRANTIES AND DAMAGES.**

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND NEXTWAVE DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES AND THERE ARE NO CONDITIONS OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF NON-INTERFERENCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, SECURITY, VIRUSES, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEXTWAVE ALSO DISCLAIMS ANY COMMON-LAW DUTIES RELATING TO ACCURACY OR LACK OF NEGLIGENCE. IN ADDITION, THERE IS NO WARRANTY OF TITLE, AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SERVICES OR AGAINST INFRINGEMENT. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR USE OF THE SERVICES. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. ANY STATEMENTS MADE IN ANY PACKAGING, MANUALS OR OTHER DOCUMENTS, WRITTEN OR ELECTRONIC, OR BY ANY NEXTWAVE EMPLOYEES OR REPRESENTATIVES OR AGENTS, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS REPRESENTATIONS OR WARRANTIES OF ANY KIND BY

NEXTWAVE. NEITHER NEXTWAVE NOR IT AFFILIATES, THEIR AGENTS OR SUPPLIERS WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR FREE FROM SERVICE DEGRADATION, OR THAT ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE ON OR THROUGH THE SERVICES ARE FREE FROM VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MANIFESTS CONTAMINATING, INTERFERING OR DESTRUCTIVE PROPERTIES. WITHOUT LIMITING THE FOREGOING, THE QUALITY OF THE SERVICES MAY BE AFFECTED BY CONDITIONS WITHIN OR BEYOND OUR CONTROL, INCLUDING ATMOSPHERIC, GEOGRAPHIC, OR TOPOGRAPHIC CONDITIONS, OVERALL NETWORK USAGE LEVELS, NETWORK SIGNAL QUALITY, USER AND THIRD PARTY EQUIPMENT PERFORMANCE, INCLUDING THE DEVICE(S), INTERNET TRAFFIC LEVELS, AND OTHER FACTORS. WITHOUT LIMITING THE FOREGOING, NEXTWAVE WILL NOT BE RESPONSIBLE FOR ANY DELAY OR FAILURE IN PERFORMANCE DUE TO EVENTS OUTSIDE NEXTWAVE'S REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION ANY FLOOD, FIRE, ACCIDENT, EMBARGO OR OTHER GOVERNMENTAL ACT OR DIRECTIVE, ABSENCE OF GOVERNMENTAL APPROVAL OR CONSENT, MATERIAL CHANGES IN APPLICABLE LAW OR REGULATION, OR DECREE OF ANY COURT, DELAY OR DEFECT IN DELIVERY BY SUPPLIERS, TRANSPORTATION DELAY OR UNAVAILABILITY, RIOT, WAR, ACT OF TERRORISM OR OF THE PUBLIC ENEMY, POWER OUTAGE, LABOR DISPUTE OR SHORTAGE, THIRD PARTY NETWORK PROBLEMS, ACTS OR OMISSIONS OF UNDERLYING CARRIERS OR OTHER THIRD PARTIES, OR ACTS OF GOD. SERVICES ARE ONLY AVAILABLE WITHIN THE COVERAGE AREA OF THE NEXTWAVE NETWORK, WHICH IS SUBJECT TO CHANGE. YOU ACKNOWLEDGE THAT SERVICES MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED OR UNSCHEDULED MAINTENANCE, EQUIPMENT MODIFICATIONS OR UPGRADES, AND FOR OTHER REASONS WITHIN AND WITHOUT THE DIRECT CONTROL OF NEXTWAVE. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR THE ACCURACY OF DATA INPUT AND OUTPUT, AND FOR MAINTAINING A MEANS EXTERNAL TO THE SERVICES FOR THE RECONSTRUCTION OF ANY LOST DATA OR FILES. NEXTWAVE CANNOT AND DOES NOT GUARANTEE THE SECURITY OR INTEGRITY OF DATA TRANSMISSION OR STORAGE, PRIVACY, OR THAT VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MANIFESTS CONTAMINATING OR DESTRUCTIVE PROPERTIES WILL BE DETECTED OR REMEDIATED BY THE SERVICES. Some states do not allow the disclaimer of implied warranties, so the above exclusion may not apply to you in whole or in part.

- **19. LIMITATION OF LIABILITY.**

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER NEXTWAVE NOR ITS AFFILIATES, THEIR AGENTS OR SUPPLIERS WILL BE LIABLE OR OBLIGATED UNDER ANY SECTION OF THIS AGREEMENT OR UNDER ANY THEORY, WHETHER CONTRACT, TORT, NEGLIGENCE, PRIVACY, SECURITY, STRICT OR PRODUCT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY FEES PAID TO NEXTWAVE HEREUNDER IN EXCESS OF THOSE ACTUALLY PAID BY THE AFFECTED SUBSCRIBER TO NEXTWAVE DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO LIABILITY, (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES, PRODUCTS, OR RIGHTS, (III) FOR ANY LOSS OR CORRUPTION OF DATA OR DELAYED OR INTERRUPTED USE OF THE SERVICES OR ACCESS TO THE INTERNET, (IV) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, OR (V) FOR ANY LACK OR BREACHES OF SECURITY OF THE SERVICES OR IN THE STORAGE OR INTEGRITY OF YOUR DATA OR ANY USER'S DATA. THESE EXCLUSIONS AND LIMITATIONS APPLY WHETHER THE CLAIM IS BASED ON BREACH OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE,

PRODUCT LIABILITY, OR ANY OTHER BASIS, AND APPLY WHETHER OR NOT NEXTWAVE WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES . IN ADDITION, THESE EXCLUSIONS AND LIMITATIONS WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IF YOU ARE DISSATISFIED WITH THE SERVICES OR IF YOU HAVE ANY OTHER DISPUTE WITH NEXTWAVE, OR CLAIM AGAINST NEXTWAVE, THEN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES AND ANY LIABILITY (IF ANY) WILL BE LIMITED TO THE RECOVERY OF YOUR DIRECT DAMAGES INCURRED IN REASONABLE RELIANCE, LIMITED TO THE AMOUNT AND BY THE EXCLUSIONS SET FORTH HEREIN. Some states do not allow the exclusion or limitation of incidental or consequential damages, or other modifications of or limitations to certain remedies, so the above exclusion or limitation may not apply to you, in whole or in part.

- **20. Indemnification.**

You will defend, indemnify, and hold Nextwave, its affiliates, and their directors, officers, employees, agents, and shareholders and any other service provider or supplier (collectively, the "Nextwave Parties") harmless against any and all claims, losses, damages, and liabilities sustained by the Nextwave Parties resulting from, arising out of the Agreement, the Services, any breach or non-fulfillment of any representation, warranty, or covenant by you set forth in the Agreement or from your use or misuse of the Services. You also agree to pay Nextwave's reasonable attorneys' and expert witness fees and costs incurred in enforcing the Agreement, including any such fees incurred in connection with any appeal. This section will survive termination or expiration of the Agreement for any reason.

- **21. Assignment and Successors in Interest.**

All of the provisions of the Agreement will be binding upon, inure to the benefit of, and be enforceable by, your respective successors and permitted assigns. Except as specifically stated herein, neither the Agreement nor any of your or Nextwave's rights, interests, or obligations may be assigned or delegated by you without the prior written consent of Nextwave. Any unauthorized assignment or delegation will be null and void. Notwithstanding the foregoing, Nextwave may assign or otherwise transfer its rights and obligations under the Agreement without restriction.

- **22. Privacy and Security.**

Wireless systems use radio channels to transmit voice and data communications over a complex network. Privacy cannot be guaranteed, and we are not liable to you or any other party for any lack of privacy you experience while using the Services. We have the right, but not the obligation, to monitor, intercept and disclose any transmissions over or using our facilities, and to provide subscriber billing, account, or use records, and related information under certain circumstances (for example, in response to lawful process, orders, subpoenas, or warrants, or to protect our rights, users or property). Please consult the Nextwave Privacy Policy statement appearing in Section 26 below for additional information on the use and disclosure of information. You acknowledge that the Services are not inherently secure and that wireless communications can be intercepted by equipment and software designed for that purpose. Notwithstanding any efforts to enhance security with respect to the Services, we cannot guarantee the effectiveness of these efforts and will not be liable to you or any other party for any lack of security that may result from your use of the Services. You acknowledge that you are responsible for taking such precautions and providing such security measures best suited for your situation and intended use of the Services. We strongly encourage and support certain customer-provided security solutions, such as virtual private networks, encryption and personal firewalls, but do not provide these to our users and are

not responsible for their effectiveness. You agree to protect your username and password and you are responsible for any usage of your account. You agree to immediately notify us of any unauthorized use of your account or other security breach.

- **23. Signing Authority; Authorized User.**

You acknowledge that you are of legal age, have received a copy of the Agreement and have read and clearly understand the terms of the Agreement and, if activating on behalf of a corporation or other entity, are fully authorized to legally bind such entity. You acknowledge that you are responsible for all charges incurred by any person you authorize to access your account, or to use your Device or the Services.

- **24. ARBITRATION; CHOICE OF LAW; STATUTE OF LIMITATIONS; JURY WAIVER.**

THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES. ALL DISPUTES ARISING UNDER THIS AGREEMENT (OTHER THAN YOUR FAILURE TO MAKE PAYMENTS IN ACCORDANCE WITH THE AGREEMENT AND ANY ACTION TO COLLECT AMOUNTS DUE TO NEXTWAVE UNDER THIS AGREEMENT, WHICH MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION) WILL BE SETTLED EXCLUSIVELY BY BINDING ARBITRATION USING THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") THEN IN EFFECT. THE SOLE PLACE FOR ARBITRATION WILL BE LOUDOUN COUNTY, VIRGINIA, UNLESS THAT LOCATION IS PROHIBITED BY LAW, IN WHICH CASE THE ARBITRATOR WILL SELECT THE LOCATION OF THE ARBITRATION. ONE (1) ARBITRATOR SELECTED IN ACCORDANCE WITH THE AAA RULES WHO HAS EXPERTISE IN THE SUBJECT MATTER HEREOF WILL CONDUCT THE ARBITRATION. THE DECISIONS OF THE ARBITRATOR WILL BE BINDING AND CONCLUSIVE UPON ALL PARTIES INVOLVED AND JUDGMENT UPON ANY AWARD OF THE ARBITRATOR MAY BE ENTERED BY ANY COURT HAVING COMPETENT JURISDICTION. THIS PROVISION WILL BE SPECIFICALLY ENFORCEABLE IN ANY COURT OF COMPETENT JURISDICTION. UNLESS OTHERWISE REQUIRED BY LAW, YOU AND NEXTWAVE WILL EACH BEAR THEIR OWN EXPENSES, INCLUDING ATTORNEYS' FEES, EXCEPT THAT PAYMENT OF THE FEES AND EXPENSES OF THE ARBITRATOR WILL BE GOVERNED BY THE RULES OF THE AAA. THIS DUTY TO ARBITRATE WILL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR ANY REASON. ALL CLAIMS WILL BE ARBITRATED INDIVIDUALLY AND THERE WILL BE NO RIGHT OR BASIS FOR CONSOLIDATION, CLASS TREATMENT OR CLAIMS BROUGHT IN A REPRESENTATIVE CAPACITY (SUCH AS A PRIVATE ATTORNEY GENERAL) OF ANY CLAIM UNLESS PREVIOUSLY AGREED TO IN WRITING BY NEXTWAVE. THE ARBITRATOR WILL NOT HAVE ANY AUTHORITY TO AWARD ANY SPECIAL OR PUNITIVE DAMAGES OR ANY OTHER DAMAGES EXCEPT AS PERMITTED BY THE AGREEMENT. YOU WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIMS OR DISPUTES RELATING TO THIS AGREEMENT OR THE SERVICES. YOU WAIVE ANY RIGHT TO PARTICIPATE AS A PLAINTIFF OR AS A CLASS MEMBER IN ANY CLAIM ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY. YOU AND NEXTWAVE AGREE THAT ANY CLAIM ARISING OUT OF OR RELATED TO THE SERVICES OR THE AGREEMENT MUST BE COMMENCED WITHIN TWO (2) YEARS AFTER THE CLAIM ARISES, OR THE CLAIM WILL BE PERMANENTLY BARRED. NOTHING IN THE AGREEMENT WILL PREVENT NEXTWAVE FROM SEEKING CONSERVATORY, PROTECTIVE OR INJUNCTIVE RELIEF WITH RESPECT TO A VIOLATION OF ITS INTELLECTUAL PROPERTY RIGHTS IN ANY COURT OF COMPETENT JURISDICTION PENDING THE OUTCOME OF THE ARBITRATION, OR ENFORCEMENT OR RECOGNITION OF ANY AWARD OR ORDER IN ANY COURT OF COMPETENT JURISDICTION.

- **25. Network Outsourcing.**

Nextwave may outsource the operation of the Nextwave network and related services and functions, such as billing and customer care, to third parties, which shall act as authorized representatives of Nextwave for and in connection with such purposes and functions. Such third parties, in their capacities as authorized representatives of Nextwave, will be entitled to contact you for or in connection with any issue related to billing, customer relationship management as well as technical or operational issues relating to the Nextwave network, any of the Services or any of your Devices.

- **26. Privacy Policy Statement**

ConnectMAXX is a branded wireless broadband service offered by or through NextWave Metropolitan, Inc. We are committed to protecting your privacy and while giving you a powerful and safe online experience. This Privacy Policy statement applies to the ConnectMAXX service and its related website and governs data collection and usage. By using the ConnectMAXX service (including other service offerings provided to you through our wireless network, such as the Boingo™ branded service offering) and related websites, you consent to the policies and data practices described in this Privacy Policy statement. Certain additional terms and conditions concerning any privacy policies or statements that are applicable solely to the BOINGO™ products and service and related software may be found on the website maintained by Boingo Wireless, Inc. at [www.boingo.com](http://www.boingo.com).

**Collection of your Personal Information**

We collect certain items of your personally identifiable information, such as your e-mail address, name, home or work address or telephone number, in connection with the initiation of your ConnectMAXX service, the establishment of your billing account and your use of the ConnectMAXX service and related website. We also collect anonymous demographic information, which is not unique to you, such as your ZIP code, age, gender, preferences, interests and favorites, in connection with your use of the ConnectMAXX service and related website.

There is also information about your computer hardware and software that is automatically collected by use of the ConnectMAXX service offering. This information can include: your IP address, browser type, domain names, access times and referring Web site addresses. This information is used by us or our authorized representatives for the operation of the ConnectMAXX service, to maintain quality of the service, and to provide general statistics regarding use of that service and/or the related website.

Please keep in mind that if you directly disclose personally identifiable information or personally sensitive data while using the ConnectMAXX service, such as through public message boards, this information may be collected and used by others. Note: neither we nor any of our authorized representatives read any of your private online communications.

We encourage you to review the privacy policies and/or statements of other websites you choose to link to from or through the ConnectMAXX service so that you can understand how those websites collect, use and share your information. We are not responsible for the privacy policies and/or statements, or any of the other content, on websites outside of the ConnectMAXX service websites.

**Use of your Personal Information**

We and/or our authorized representatives collect and use your personal information to operate the ConnectMAXX service (including the related websites) and to deliver the services you have requested. We and/or our authorized representatives also use your personally identifiable information to inform you of other products or services available from or through us (including our affiliates) and/or the ConnectMAXX service. We and/or our authorized representatives may also contact you via surveys to conduct research about your opinion of current services or of potential new services that may be

offered.

We do not sell, rent or lease our ConnectMAXX customer lists to third parties. We (including our affiliates) and/or our authorized representatives may, from time to time, contact you on behalf of external business partners about a particular offering that may be of interest to you. In those cases, your unique personally identifiable information (e-mail, name, address, telephone number) is not transferred to the third party. In addition, we (including our affiliates) and/or our authorized representatives may share data with trusted partners to help us perform statistical analysis, send you email or postal mail, provide customer support, or arrange for deliveries. All such third parties are prohibited from using your personal information except to provide these services to us and/or our authorized representatives, and they are required to maintain the confidentiality of your information.

Neither we nor our authorized representatives will use or disclose sensitive personal information, such as race, religion, or political affiliations, without your explicit consent.

Our ConnectMAXX service offering includes the capability to keep track of the websites and pages that our customers visit within or through the ConnectMAXX service, in order to determine what ConnectMAXX services and/or topical websites and pages are the most popular. This data may be used to deliver customized content and advertising within the ConnectMAXX service offering to customers whose behavior indicates that they are interested in a particular subject area.

We and/or our authorized representatives will disclose your personal information, without notice, only if required to do so by law or in the good faith belief that such action is necessary to: (a) conform to the edicts of the law or comply with legal process served on us, our affiliates or our authorized representatives or the websites related to the ConnectMAXX service; (b) protect and defend our rights or property; and (c) act under exigent circumstances to protect the personal safety of users of the ConnectMAXX service offering, or the public.

#### **Use of Cookies**

We and the websites related to the ConnectMAXX service use "cookies" to help you personalize your online experience. A cookie is a text file that is placed on your hard disk by a web page server. Cookies cannot be used to run programs or deliver viruses to your computer. Cookies are uniquely assigned to you, and can only be read by a web server in the domain that issued the cookie to you.

One of the primary purposes of cookies is to provide a convenience feature to save you time. The purpose of a cookie is to tell the particular web server that you have returned to a specific page. For example, if you personalize ConnectMAXX service pages, or register with a particular ConnectMAXX service or site, a cookie helps our relevant ConnectMAXX service web server to recall your specific information on subsequent visits. This simplifies the process of recording your personal information, such as billing addresses, shipping addresses, and so on. When you return to the same ConnectMAXX service website or web page, the information you previously provided can be retrieved, so you can easily use the ConnectMAXX service features that you customized.

You have the ability to accept or decline cookies. Most web browsers automatically accept cookies, but you can usually modify your browser setting to decline cookies if you prefer. If you choose to decline cookies, you may not be able to fully experience the interactive features of the ConnectMAXX service offerings or those of the other services or websites you visit by or through the ConnectMAXX service.

#### **Security of your Personal Information**

We and/or our authorized representatives take reasonable measures and precautions to secure your personal information from unauthorized access, use or disclosure. We and/or our authorized representatives secure the personally identifiable information you provide on computer servers in a controlled, secure environment, protected from unauthorized access, use or disclosure. When personal information (such as a credit card number) is transmitted to other websites, it is protected through the

use of encryption, such as the Secure Socket Layer (SSL) protocol.

**Changes to this Privacy Policy Statement**

We may, from time to time, update this Privacy Policy statement to reflect company and customer feedback. We encourage you to periodically review this Privacy Policy statement information to remain informed of how we and/or our authorized representatives are collecting, using, sharing and protecting your information.

**Contact Information**

We welcome your comments regarding this Privacy Policy statement. If you believe that we and/or our authorized representatives have not adhered to this statement, please contact us at [support@connectmaxx.com](mailto:support@connectmaxx.com). We will use commercially reasonable efforts to promptly determine whether a problem exists and, if so, to remedy the problem.