



INDEPENDENT SALES AGENCY TERMS AND CONDITIONS

This Agreement is made between Bandwave Systems, LLC (hereinafter referred to as "Bandwave Systems") and "Agent", located at the respective addresses indicated on the "last page of this document" and shall be affected upon execution by Bandwave Systems.

1.) RECITALS.

- a. Bandwave Systems is a Broadband Service Provider (BSP) and provides Broadband services and various other Internet-related solutions, and desires in the United States of America (hereinafter the "Territory") to have others possessing the necessary marketing capabilities, integrity, and dedication to customer satisfaction, assist Bandwave Systems in marketing certain Bandwave System products and services to customers, and desires to appoint the individual or entity signing this agreement (hereinafter "Agent") as a non-exclusive independent sales Agent for the limited purpose of marketing Bandwave Systems' business products and services to the general business community (hereinafter "Customers") in accordance with the terms and conditions of this Agreement. The services comprising business products and services may change from time to time. Bandwave Systems reserves the right to change, without prior notice, the services under its service mark.
- b. Agent desires to market Bandwave Systems' products and services, and represents that he or she has the necessary marketing capabilities, integrity, and dedication to do so in a manner that reflects favorably on the quality image of Bandwave Systems and its products and services, accepts such appointment, and agrees to comply with the terms and conditions of this Agreement. Agent agrees to conform to the best of Agent's ability with the rules, regulations, and instructions of Bandwave Systems now in force or that may be adopted and communicated to Agent orally, by fax, or by regular mail to the Agent's address or Agent's email address.

2.) INDEPENDENT CONTRACTOR:

- a. Agent is an outside sales representative, and is declared to be an independent contractor, and has no authority to act for or on behalf of Bandwave Systems, or to bind Bandwave Systems to any contract on any matter without the express prior written approval of Bandwave Systems, or to accept debts or obligations on its behalf. No other relationships intended to be created between the parties, and nothing herein, shall be construed to give Agent any rights as partner in the business of Bandwave Systems or entitle Agent to control, in any manner, the conduct of Bandwave Systems' business, other than as specified. Both Agent and Bandwave Systems agree that the relationship created is that of an independent contractor and not that of employee and employer, or franchisor and franchisee, or joint ventures.
- b. Taxes: Agent is responsible for the payment of any taxes, including, without limitation, all federal, state, and local personal and business income taxes, sales and use taxes, and any other business taxes and license fees arising out of the activities of Agent.
- c. Insurance: Agent is responsible for holding and maintaining all necessary public liability insurance and vehicle insurance with carriers which are satisfactory to Bandwave Systems and shall hold Bandwave Systems harmless from all claims, demands, and suits arising out of the performance of services and the sale of goods under this Agreement.
- d. Indemnification: Agent shall indemnify Bandwave Systems, and any affiliate, partner or subsidiary company of Bandwave Systems, as well as all its officers, directors, shareholders, successors, and assigns of each of the foregoing from all attendant losses, costs, liabilities, obligations, damages, and out-of-pocket costs or expenses including interest, penalties, and reasonable attorney's fees and expenses incurred in the investigation or defense of any of the same or in asserting any alleged act or omission of Agent, or the Agent's employees, subcontractors or sub-Agents in the performance of the activities contemplated hereby or any failure or inability of Agent to abide by any of the covenants set forth herein, including, but not limited (i) for all damages to person or property, (ii) for personal injuries, property damage or death that may be suffered or sustained by any third party, and (iii) for any claims against, or losses or liability of, Bandwave Systems or any affiliate company for any cause arising out of, or resulting from, default in the performance of, or the negligent performance of, any obligations of Agent under this Agreement.
- e. Expenses: All expenses for traveling, entertainment, office, clerical, maintenance, marketing, and general selling expenses that may be incurred by Agent in connection with this Agreement will be borne wholly by Agent. In no case shall Bandwave Systems be responsible or liable for such expenses or costs, unless explicitly agreed to by Bandwave Systems in writing prior to incurring said expenditure.

Agent Initials _____

3.) DURATION AND TERMINATION:

This Agreement shall be in force until such time as either party tenders written notice to the other as to the termination of the Agreement. Agent must tender such notice 30 (THIRTY) business days prior to the date of termination. Bandwave Systems must tender such notice 15 (FIFTEEN) business days prior to the date of termination. Upon termination for any reason, Agent shall notify and arrange for all publishers, websites, and others who may indemnify, list, or publish Agent's name as an Agent for the services or products of Bandwave Systems, including but not limited to, publishers of telephone and trade directories and publications, yellow pages, business directories, and websites, to discontinue such listing. Bandwave Systems has consented to Agent's use of Bandwave Systems' name and service marks in Agent's business and activities under this Agreement. At any time on request of Bandwave Systems or on termination of this Agreement for any reason, Agent shall immediately and completely cease to use, and return to Bandwave Systems all customer lists, customer data, trademarks, insignia, symbols, and intellectual property. Termination of this Agency shall be without prejudice to any rights and obligations of the parties to this Agreement that have vested prior to the effective date of termination. On termination, however, Bandwave Systems shall pay Agent commissions only on orders received by Bandwave Systems prior to the effective date of termination. The acceptance of such orders and the liability of Bandwave Systems for the payment of commissions on such orders are to be subject to the terms and conditions provided in this Agreement. The commissions which were retained on a quarterly basis will be held by Bandwave Systems as a deposit and security for good faith and to protect Bandwave Systems against loss of amounts charged back against Agent's account, whether by returns or cancellation of service or hardware by customers, uncollected debts, or for any other recognized reason, for a period of 6 (SIX) months from the date of notice of cancellation. The balance, if any, remaining in Bandwave Systems' possession at the end of this period shall be paid to Agent at that time.

4.) AGENT'S DUTIES:

- a. Agent's duties shall include, but are not limited to, using Agent's best efforts to solicit orders and contracts, complete order and registration forms, obtain customer credit information, transmit completed contracts, orders and credit information received by Agent to Bandwave Systems, and assisting Bandwave Systems in resolving customer complaints, billing disputes, and collecting delinquent customer accounts.
- b. Agent is authorized to receive but is not authorized to "accept" customer offers to purchase services or products.
- c. All costs and expenses incurred by Agent in performing any services under this Agreement, including but not limited to, rentals, salaries, booth or stall fees, telephone, traveling and living expenses, entertainment, office, clerical, maintenance, displays and advertisements, and other marketing and sales expenses shall be borne solely by Agent and shall not be reimbursed by Bandwave Systems. In no case shall Bandwave Systems be responsible or liable for such expenses or costs.
- d. Agent shall identify itself as an authorized Agent of Bandwave Systems only with respect to Bandwave Systems services and shall otherwise identify itself as an independent business or operator.
- e. Agent represents that it is not, by law or agreement with others, prohibited from entering into this Agreement with Bandwave Systems.
- f. Agent shall not slander or libel Bandwave Systems or its affiliates or employees or vendors or their products or services, nor shall Agent slander or libel Bandwave Systems' competitors or the services or products of such competitors.
- g. Agent shall ensure that each product and service marketed to each customer is appropriate to the customer's requirements.
- h. Agent shall avoid deceptive, misleading, or unethical practices, and shall refrain from making any false or misleading representations, which are or might be detrimental to Bandwave Systems, its products or services.
- i. Agent shall not attempt to impose a fee or charge on any customer in connection with the marketing or installation of Bandwave Systems' products or services that is not expressly authorized in writing by Bandwave Systems.
- j. Bandwave Systems reserves the right to contact directly any customer to whom Agent has sold services or products to determine their satisfaction with Agent and the services or products.

Agent Initials _____

- k. All work performed hereunder by Agent shall be of the highest professional standards and performed to satisfaction.

5.) CONTENTS OF ORDERS, ACCEPTANCE:

All orders for Bandwave Systems' service shall be taken on printed or online forms furnished by Bandwave Systems, and all such orders shall be sent to Bandwave Systems immediately after being signed by purchasers. The orders shall contain all terms, conditions, and agreements of every nature whatsoever between the parties to the sale, it being agreed that Bandwave Systems shall not be responsible for promises or conditions not specified on the orders. Any discrepancy therefore shall be at the sole cost of Agent. Bandwave Systems' product shall not be sold for more or less than the list price established by Bandwave Systems. If Bandwave Systems is compelled to make any concessions to customers or incur any expense by reason of a violation of these requirements, the amount of the expense may be charged to Agent's account. Orders taken by Agent shall not be binding until accepted by Bandwave Systems. Bandwave Systems reserves the right to reject any offer for any reason whatsoever.

6.) AGENT TRAINING:

Agent must be qualified to properly represent the features, limitations, and technical requirements of the services it sells, and may be required to attend training seminars that Bandwave Systems may hold for the benefit of its Agents.

7.) USE OF NAME:

Bandwave Systems has consented to Agent's use of Bandwave Systems' name and its service marks for the purpose of selling certain Broadband Services. Agent agrees to use Bandwave Systems' name and service marks without alteration and without dilution to Bandwave Systems' proprietary rights. Agent, at any time on request of Bandwave Systems or termination of this Agreement, shall immediately cease using Bandwave Systems' name or other service marks in any Agent activities.

8.) COLLECTION OF ACCOUNTS:

Bandwave Systems shall have full control of and discretion as to the collection, adjustment, or compromise of any or all accounts for Bandwave Systems services sold by Agent. If Bandwave Systems requests Agent to make any collection, or to obtain possession of Bandwave Systems' equipment or other property, related to a sale made by Agent, Agent shall do so promptly. Bandwave Systems shall not be liable to Agent for any loss of commission or other claim by reason of any compromise or adjustment of any account or accounts or notes for services sold by Agent, or any failure for any reason to collect any part of the account or notes. Charges shall be deemed uncollectible if not collected within 60 (SIXTY) days after they are due. In the event that Bandwave Systems compensates Agent based on uncollected charges subsequently deemed uncollectible, Bandwave Systems may, in its sole discretion, deduct the amount of the commission paid on such charges from future Agent commissions, or from commissions due but not yet paid, and may cancel commissions against charges to Agent's account.

9.) AGENT'S BEST EFFORTS:

Agent agrees to conform to the best of Agent's ability with the rules, regulations, and instructions of Bandwave Systems now in force or that may be adopted and communicated to Agent orally, by fax, email, or regular mail. All work performed hereunder by Agent shall be of the highest professional standards.

10.) WARRANTY AGAINST PRIOR EXISTING RESTRICTIONS:

Agent represents and warrants to Bandwave Systems that Agent is not a party to any agreement containing a non-competition clause or other restriction with respect to:

- a. the services which Agent is required to perform hereunder; or
- b. the use or disclosure of any information directly or indirectly related to Bandwave Systems' business, or to the services Agent is required to render pursuant hereto.

Agent Initials _____

11.) NOTICES & AMENDMENTS:

Any notice required or desired to be given under or with respect to this Agreement shall be deemed given if in writing and sent to both the mailing address and the fax number or email of the other party given below. Any amendments or modification hereto shall be sent to Agent in writing at least 15 (FIFTEEN) days before the amendment or modification takes effect.

12.) WAIVER OF BREACH OR RIGHTS:

Bandwave Systems' waiver of a breach of any provision of this Agreement by Agent shall not operate or be construed as a waiver of any other breach, subsequent or prior, by Agent. No waiver shall be valid unless in writing and signed by an authorized officer of Bandwave Systems. If, in one or more instance, either party fails to insist that the other party perform any of the terms of this Agreement, such failure shall not be construed as a waiver by such party of any past, present, or future right granted under his Agreement, and the obligations of both parties under this Agreement shall continue in full force and effect

13.) CHOICE OF LAW AND FORUM, ARBITRATION:

The parties agree to attempt to resolve all disputes arising out of, or related to, this Agreement through good-faith negotiation. Any controversy or claim arising out of, or relating to, this Agreement, or its breach, where the claim damages are equal to or less than \$5,000.00 (five thousand dollars), shall be settled by arbitration in the County of Burlington, in accordance with the governing rules of the American Arbitration Association. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction. The costs of the dispute resolution shall be incurred by each party subject to section 17 hereunder. Any and all disputes or causes of action arising under this Agreement, where the damages claimed are more than \$5,000.00 (Five thousand dollars), shall only be adjudicated in any New Jersey State Court within the County of Burlington, or in the Federal District Court in the State of New Jersey. All disputes shall be settled under the laws of the Commonwealth of New Jersey. In the event of litigation between parties, the losing party shall pay to the non- defaulting party all of the non-defaulting party's costs and expenses, including attorneys' fees, incurred by that party in enforcing the terms of this Agreement. For the purposes of this Agreement, Agent agrees to consider each and every sale, commission, and charge-back as a separate and individual cause of action or dispute for arbitration. Agent may not sum up or join any two instances, even if they are related, into one cause of action or dispute.

14.) ASSIGNMENT:

Agent acknowledges that its services are unique and personal. Accordingly, Agent may not assign its rights or delegate its duties or obligations under this Agreement. Bandwave Systems' rights and obligations under this Agreement shall inure to the benefit of, and shall be binding upon, Bandwave Systems' successors and assigns, executors, administrators, and personal representatives.

15.) REMEDIES:

Agent acknowledges that: a) compliance with this Agreement and Security Rider herein is necessary to protect Bandwave Systems' business and goodwill; b) a breach of those paragraphs will irreparably and continually damage Bandwave Systems; and c) an award of money damages will not be adequate to remedy such harm. Consequently, Agent agrees that, in the event it breaches or threatens to breach any of these covenants, Bandwave Systems shall be entitled to both: (i) a preliminary or permanent injunction in order to prevent the continuation of such harm; and (ii) money damages, insofar as they can be determined, including, without limitation, all reasonable costs and attorney's fees incurred by Bandwave Systems.

16.) CONSTRUCTION:

Nothing contained herein shall obligate Bandwave Systems to make any payment for any period after the termination of this Agreement, except as indicated in paragraph 3 hereunder.

17.) SEVERABILITY:

If any provision, paragraph, or subparagraph of this Agreement is adjudged by any court to be void or unenforceable in whole or in part, this adjudication shall not affect the validity of the remainder of the Agreement, including any other provision, paragraph, or subparagraph. Each provision, paragraph, and subparagraph of this Agreement is separable from every other provision, paragraph, and subparagraph, and constitutes a separate and distinct covenant.

Agent Initials _____

18.) **SURVIVAL:**

The obligations contained in paragraphs shall survive the termination of this Agreement. In addition, the termination of this Agreement shall not affect any of the rights or obligations of either party arising prior to, or at the time of, the termination of this Agreement, or which may arise by any event causing the termination of this Agreement.

19.) **ENTIRE AGREEMENT:**

This Agreement contains the entire understanding of the parties including any and all prior and contemporaneous oral and written agreements between the parties. It may not be changed orally but only by an agreement in writing signed by both parties.

20.) **HEADINGS:**

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

21.) **AGENT COMPENSATION:**

Agent is paid a 10% residual commission on all recurring circuit revenue charges to end users. Customized agent commissions are available on a case-by-case basis.

IN WITNESS WHEREOF, having read and understood all provisions and terms contained above, **Agent** and **Bandwave Systems** acknowledge their acceptance and agreement hereto, and to the attached Terms and Conditions of Sales Agency.

Signature of Authorized Representative of **Agent**

Address 1

Printed Name

Address 2

Title

E-mail

Agent Company Name

Telephone

Federal Tax ID # or Social Security #

Fax