



800 Westchester Ave.
Suite N-501
Rye Brook, NY 10573
800-405-2200

Product-Specific Terms & Conditions

Broadspeed[®] Dynamic

(Capitalized terms herein shall have the same meaning as such capitalized term shall have in the Master Terms and Conditions)

Term: The Term shall commence on the earlier of (i) the date the Services are activated by Customer or Company, or (ii) fifteen (15) days after written notice by Company of its readiness to schedule service turn-up. The Term shall be minimally twelve (12) months or longer, as set forth in the Order Form. Billing shall commence on the commencement of the Term.

Early Termination:

- (a) With the exception of Customer's who have Broadspeed[®] Dynamic over Dedicated Internet Access DS3 ("DS3"), If Customer cancels an order for Broadspeed[®] Dynamic Service before Company has accepted a circuit on Customer's behalf, Customer shall be subject to a \$2,000 Order Cancellation Fee for each canceled circuit. DS3 Customers shall be charged a cancellation fee of \$4000 if Customer cancels an order before Broadview has accepted the circuit on Customer's behalf.

If Customer cancels an order after Company has accepted a circuit on Customer's behalf but before installation is complete, Customer shall be subject to an Early Cancellation Fee for each terminated Service in an amount equal to the Monthly Recurring Charge (MRC) for the Broadspeed[®] Dynamic Service multiplied by the number of months remaining in the then-current Term.

If Customer terminates Broadspeed[®] Dynamic Service, in whole or in part, or if Company terminates Broadspeed[®] Dynamic Service for Cause, before the expiration of the Term, Customer shall be subject to an Early Cancellation Fee for each terminated Service in an amount equal to the MRC for the Service multiplied by the number of months remaining in the then-current Term.

- (b) Order Cancellation and Early Cancellation Fees shall be immediately due and payable upon order cancellation or Service Termination.

Termination:



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- (a) In the event Customer elects to disconnect a circuit, Customer shall provide written notice to Company using a Company-provided Letter of Disconnect (available at www.ecarenterprise.com), which shall be effective thirty (30) days from the date of Company's receipt thereof.
- (b) All Company-provided equipment must be returned in good working order, normal wear and tear excepted. Customer shall ship equipment to Company within three (3) business days of disconnection of the Broadspeed[®] Dynamic Services. For equipment not returned, Customer shall be liable for the full retail value or, in Company's discretion, the replacement value of the equipment. Company-provided equipment remains the property of Company.

Customer Obligations:

- (a) Customer must supply a 120 VAC receptacle for Customer Premises Equipment (CPE). Networking protocol must be TCP/IP. Customer must supply own Ethernet hub or router and connect it to the Company CPE and ensure there is an available port. Each PC MUST have a Network Interface Controller (NIC) card installed (Customer must supply and install NIC card if missing). Company does not support Customer's PC's or LAN unless contracted separately via Professional Services Agreement. Company does not connect PC's and/or hubs to the CPE nor configure PC's to work on a network.
- (b) Sale of Dynamic IP services is contingent upon Customer subscribing to Broadview Networks local, regional, long distance and Internet access services for a minimum quantity of six (6) total voice channels and continuing to subscribe to these services throughout the service term.
- (c) Customers who exceed the Allowance per Dynamic IP per month will be charged the above Overage per minute rate. Customers who violate the restrictions on use or who exceed the Allowance per Dynamic IP for three (3) consecutive months may have their rates adjusted to a Measured Plan.
- (d) For DS3 Customers, Internet port is provisioned on a dedicated T3 facility from Customer premises to nearest Broadview Networks Fiber Node and then transported via Sonet backbone to BVN Data Center/Internet Access Central Office and to the Public Internet.
- (e) If necessary, Broadview Networks will make commercially reasonable efforts to have the CPE installed at a specific location at the site, i.e. the DMARC location. However, additional inside wiring costs may be required, with prior customer approval. Cross-Connect(s) between Broadview Networks and customer cross-connect block is not



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included. Any additional inside wiring required at the time of installation will be billable at a rate of \$75 per 30 minute increment(s), 1 hr. minimum, plus the cost of materials.

Installation:

- (a) **Broadspeed[®] Dynamic Service Generally:** Due date for service is approximately 60 business days from date of order. Customer must accept both voice and data services on installation date or no services will be provisioned and customer will be assessed \$149 Missed Appointment Fee.

- (b) **Broadspeed Dynamic over DS3:** Due date for service is approximately 90 business days from date of order. Customer must accept both voice and data services on installation date or no services will be provisioned and customer will be assessed \$149 Missed Appointment Fee.

- (c) Monthly CPE Maintenance Fee applies for the use of Broadview Networks-owned Integrated Access Device (IAD) for duration of contract term. IP router functionality configured with one static, routable IP address and Network Address Translation (NAT) enabled.

- (d) Provided IAD cannot support a CAS or PRI handoff on 6.0 Mb/s port packages, FXS handoff only. Managed (Non-Standard) Equipment is available at an additional cost. Consult your Broadview Sales Representative for more info.

- (e) Internet bandwidth bursts up to full provisioned bandwidth when voice lines are not in use.

- (f) Service is provisioned on a Dedicated Facility from Broadview Networks collocation to customer premises.



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- (g) PRI handoff always requires one Voice Channel (per PRI) reserved for D-Channel.

Services:

- (a) Monthly fees for Broadspeed[®] Dynamic Service includes up to four (4) routable IP addresses at no additional charge. (If necessary, Customer must justify any requests for additional IP addresses)
- (b) Dynamic Simplicity base package price includes up to 18 (1.5 Mb/s ports) or 24 (3.0 Mb/s + ports) lines, along with surcharges for the included and any additional lines. Additionally, PRI Caller ID w/ Name, Call Re-Direct and the first block of DIDs are available for order at no additional charge.
- (c) Internet bandwidth bursts up to the full provisioned bandwidth are available when voice lines are not in use.

Service Quality:

- (a) Service Level Assurance for Data Products (not MPLS or FlexConnect):
Company's Network Availability Objective is to make the Company network available to its eligible Dedicated Service(s) Customers 99.9% of the time, subject to the conditions and restrictions set forth below.

This *Network Availability Objective* covers all Company Managed: (1) Dedicated Services & Facilities (including access). (2) Hardware, CPE, and Software Platforms/Systems. (3) Physical plant and "Core" infrastructure facilities. The Network Availability Objective calculations will not include any unavailability that Dedicated Service(s) Customers fail to report to Broadview immediately upon a service outage by initiating a trouble ticket, or any unavailability resulting from: (a) standard Company maintenance, (b) any Customer and/or 3rd party ordered facilities and/or provided hardware, (c) Customer controlled applications and/or equipment, (d) acts or omissions of Customer, or any use or user of the service authorized by Customer or (e) reasons of Force Majeure as defined in Agreement.

In the event Company fails to meet the *Network Availability Objective* for any given month, Customers may request an "Outage Credit" of five percent (5%) of the applicable MRC for each calendar day in which an outage of thirty (30) minutes or more occurs. Customer's request must be issued within thirty (30) calendar days of Outage, and any "Outage Credit" shall be credited on Customer's next monthly invoice. In no event shall Broadview liability for "Outage Credits" exceed one hundred percent (100%) of the affected MRC(s).



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Service Credits:

- (a) Customer acknowledges the possibility of an unscheduled, continuous and/or interrupted period of time during which Broadspeed[®] Dynamic Service does not conform to SLA objectives as set forth above. An Outage shall begin upon immediate notice (trouble ticket initiated) from Customer, provided that Customer has released all or part of the Broadspeed[®] Dynamic Service for testing if requested by Company to do so. In the event Company fails to conform to SLA objectives as set forth above, Customer shall be entitled to an "Outage Credit" upon request. Company must receive Customer's request within thirty (30) calendar days of Outage, and any "Outage Credit" shall be credited on Customer's next monthly invoice. If Company does not receive Customer's request within such thirty (30) calendar day period, Customer shall be deemed to waive Customer's right to the "Outage Credit".
- (b) The amount of any applicable "Outage Credit" for Broadspeed[®] Dynamic Service shall be calculated as follows: Port Availability, Latency, Packet Delivery and Jitter, for any given month, Broadspeed[®] Dynamic Customers may request an "Outage Credit" of 5% of the applicable MRC for each calendar day in which affected Broadspeed[®] Dynamic Port(s) fail(s) to conform for thirty (30) minutes or more, with the SLA objective criteria set forth above. In no event shall Broadview's liability for an Outage exceed one hundred (100%) of the MRC for the affected MRC(s).
- (c) Because a service interruption can affect several SLA's at the same time, Company shall only issue an "Outage Credit" for one (1) missed SLA objective for availability on the same port within the same calendar month.
- (d) Customer shall not receive an "Outage Credit" if the Outage is: (i) caused by Customer or others authorized by Customer to use the Broadspeed[®] Dynamic Service under the Agreement, including the failure to comply with all installation requirements including environmental requirements for the applicable equipment; (ii) due to the failure of power, facilities, equipment, systems or connections not provided by Company; (iii) the result of network maintenance activity, or (iv) due to a Force Majeure event as defined in the Agreement; (v) due to bandwidth saturation or other resource exhaustion or outage caused by malicious traffic such as Viruses, Worms, Trojan horses, Denial of Service (DOS) attacks, etc; (vi) due to service suspension for non-payment; or (vii) the customer is in breach of its obligations under the Agreement; or (viii) customer knowingly or unknowingly attempts to alter or manipulate QoS policies, routing or signaling protocols, or other parameters necessary to the Service. Customer's exclusive remedy for failure to achieve any of the SLA objectives contained herein shall be Outage Credits on Customer's monthly invoice.



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**SPECIAL PROVISIONS FOR Broaspeed Dynamic over Fiber To The Internet ("FTTI")
Transport**

EUSA TERMS:

A. NO WARRANTIES. WE DO NOT GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE. THE PROVISIONING, PERFORMANCE AND SPEED OF THE SERVICE ARE SUBJECT TO CIRCUIT OR OTHER NETWORK FACILITY AVAILABILITY AND OTHER FACTORS, INCLUDING WITHOUT LIMITATION, LOOP LENGTH AND CONDITION, THE CONDITION OF WIRING INSIDE YOUR LOCATION, COMPUTER OR DEVICE CONFIGURATIONS AND CAPABILITIES, AS WELL AS NETWORK OR INTERNET CONGESTION, AMONG OTHER FACTORS. IN THE EVENT YOUR SERVICE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR WE SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY EQUIPMENT PROVIDED TO YOU). WE DO NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY US WILL MEET YOUR NEEDS, PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE.

ADVICE OR INFORMATION GIVEN BY US OR ANY OF OUR REPRESENTATIVES, SUPPLIERS, SUBCONTRACTORS OR AGENTS, OR THEIR RESPECTIVE EMPLOYEES, AGENTS AND SUPPLIERS, SHALL NOT CREATE A WARRANTY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, WE AND EACH OF OUR AGENTS, THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS DISCLAIM, WITH RESPECT TO ALL SERVICES, ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR ARISING BY COURSE OF PERFORMANCE, DEALING, CUSTOM OR TRADE USAGE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE KNEW OR SHOULD HAVE KNOWN SUCH PURPOSE) AND NONINFRINGEMENT. YOU AGREE THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.



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- B. Third Party Beneficiaries.** YOU AGREE THAT ALL OF OUR RIGHTS, LIMITATIONS AND DISCLAIMERS STATED IN THIS AGREEMENT ALSO APPLY TO AND MAY BE EXERCISED OR ENFORCED BY OUR THIRD PARTY LICENSORS, PROVIDERS, SUBCONTRACTORS AND SUPPLIERS AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.
- C. Use of Service.** You acknowledge and agree that you are solely responsible for all use of the Service (including without limitation the use of any assigned IP addresses and any secondary or sub-accounts associated with a primary account) and the manner in which the Service is used by you or anyone who uses the Service, with or without your permission. If you use a wireless router or similar device, you are responsible for securing your wireless network and for any use of the Service via your wireless network. You may not resell, re- provision or rent the Service to third parties (either for a fee or without charge) or allow third parties to use the Service via wired, wireless or other means. For example, you may not provide Internet access to third parties through a wired or wireless connection or use the Service to facilitate public Internet access (such as through a Wi-Fi hotspot), use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial). You may connect multiple computers/devices within a single office location to your Service router to access the Service, but only through a single account and the IP address(es) obtained from Us, and, if available through the Service, you may permit your patrons or guests to access the Internet through your Service's Wi-Fi capabilities. You are solely responsible for ensuring the security of the WiFi network and for any use of WiFi by your guest and patrons. You may not exceed the bandwidth usage limitations that we may establish from time to time for the Service, or use the Service to host any type of server. Violation of this section may result in bandwidth restrictions on your Service, suspension of your Service, and/or termination of your Service.
- D.** You agree not to use, or permit others to use, the Service in ways that (i) violate any law or applicable regulation, this Agreement (ii) infringe the rights of others, or (iii) interfere with the users, services, or equipment and software of our network or other networks. By way of example and not limitation, you agree not to distribute unsolicited advertising, chain letters or other unsolicited bulk electronic mail (i.e., spam); propagate computer worms, destructive programs or denial of service attacks or viruses; use a false identity; attempt to gain unauthorized entry to other computers, data or any site or network; distribute or store child pornography; distribute obscene or defamatory material over the Internet; or infringe copyrights, trademarks or other intellectual property rights. You further agree to comply with U.S. export laws concerning the transmission of technical data and other regulated materials via the Service. We reserve the right in our sole



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discretion to restrict, suspend or terminate your Service (or any portion thereof), with or without notice, if use of the Service by you or anyone using it, in our sole judgment, violates this Agreement, is unlawful or adversely affects or threatens our network or service, suppliers, contractors, other users or employees, including but not limited to, use that is prohibited or that generates excessive Internet traffic or emails.

You agree to comply with the terms of service that apply to any websites or other services you access on the Internet and agree that the third party provider of such services (and not us) is solely responsible for the delivery of its services(s) to you and your use of them. Third party services include, but are not limited to, portal, music, video, auction, security, financial, gaming, storage and photography services. You further agree to indemnify, defend and hold us harmless from and against any claims or liabilities that may result from your use of such third party services.

You acknowledge and agree that the reliability, availability and performance of data or services accessed through the Internet or other services connected or linked to the Service are beyond our control and are not in any way warranted or supported by us, our subcontractors or suppliers. You also agree to provide us with the access and support required to allow us to implement, maintain and provide the Services. We may take any action we deem appropriate, in our sole discretion, to maintain the high quality of our Service and to protect others and ourselves. In addition, you agree that your use of the Service and the Internet is solely at your own risk.

E. Entry to Your Service Location. You agree to allow us, including our suppliers and subcontractors, to enter your business during normal business hours by appointment to perform necessary activities related to the installation, inspection, repair, replacement or disconnection of our Service and equipment. You will allow us to make attachments and connections that are necessary to provide Service to you. If you are not the owner of the premises to be entered, you must supply proof that you are authorized to allow work to be done on such premises.

F. Indemnification. You agree to indemnify us and hold us harmless for any damages, costs, liabilities and attorneys' fees we incur from any claim arising from your use of the Services, or the use of your Service by others, including without limitation, violation of the copyrights, trademarks or other intellectual property rights of others, your combination of the Services with other products or services not provided by us, any modification of the Services, or any breach of this Agreement by you. In such event, you agree to conduct the defense and have control of the litigation and settlement, if any.



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However, you agree not to acquiesce to any judgment or enter into any settlement that adversely affects our rights or interests without our prior written consent. As the indemnifying party, you may not settle any claim under this section which includes an admission of criminal liability or the payment of a settlement amount without the prior written permission of the indemnified party.

F. Providing Information about You in Response to Legal Process. We reserve the right to provide information about your account and your use of the Service to our suppliers as well as to any other third parties as required or permitted by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter. Such cooperation may include, but is not limited to, providing information about your account, usage of Service and monitoring of the network consistent with applicable law. We may also report any facts or circumstances reported to us or that we discover from which it appears there may be a violation of the child pornography laws. We reserve the right to report any appropriate information including the identity of users, account information, images and other facts to law enforcement and the National Center for Missing and Exploited Children.

G. Equipment; Service Changes, Performance; Backup and Maintenance.

(i) **Equipment.** You are solely responsible for obtaining, installing, configuring, and maintaining suitable equipment and software, including without limitation any necessary system or software updates, patches or other fixes, which are or may become necessary to access the Service, and to operate your computer. The preceding obligations apply regardless of whether we or a third party provided the software or hardware to you. Only the manufacturer's warranties included with any hardware or software provided by us shall apply. Hardware (routers or other equipment) provided is new or fully inspected and tested return unit under full warranty.

(ii) **Service Performance.** You understand that fiber bandwidth is provided on a per line basis, and that the speed and bandwidth available to each computer or device connected to the network will vary depending upon the number and types of computers or devices using the Service and the type of use (e.g., streaming media or downloading larger files), as well as based on network congestion and the speed of servers you access on the Internet,



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among other factors. The speed of the Service will vary based on network or Internet congestion, your computer configuration the condition of the wiring inside your location, among other factors. We and our suppliers reserve the right, at any time, with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control.

(iii) **Monitoring System Performance.** We may measure and monitor the performance of your Internet connection and usage levels in order to maintain and improve the level of Service. You agree to permit us to access your computer's settings in the event you request and we agree to provide customized technical support. You agree to permit us to access your computer and equipment and to monitor, adjust and record such data, profiles and settings for the purpose of providing the Service. You also consent to our monitoring of your Internet connection and network performance, and to our accessing and adjusting your computer and settings, as they relate to the Service or other services, which we may offer from time to time.

(iv) **Changes to Service.** We reserve the right to change the Service (or any part thereof) at any time with or without notice to you, including but not limited to available speeds and speed combinations, features, configurations, usage structure or levels, pricing methodology and other terms. If such a change materially and adversely affects your current access, usage or cost of Service, and we cannot reasonably mitigate its impact, then as your sole and exclusive remedy, you may terminate the Service without further obligation.

H. **IP Addresses.** If we deem it necessary, you may be required to renumber the IP addresses assigned to you by us. Upon expiration, cancellation or termination of Service at your Service location for any reason, you agree to return to us any IP addresses or address blocks that we assigned to you.

I. **Limitation of Liability.** IN NO EVENT SHALL WE, OUR THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE TO YOU FOR (A) ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES



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INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OR DAMAGE TO DATA ARISING OUT OF THE USE OR INABILITY TO USE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY THIRD PARTY.

- J. **Limitation of Damages.** OUR AGGREGATE LIABILITY TO YOU FOR ANY CAUSE OF ACTION OR CLAIM WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY NON-INSTALLATION, SECURITY BREACH, DELAY, FAILURE OR DISRUPTION OF SERVICES PROVIDED, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL NOT EXCEED A PRO RATA CREDIT FOR THE MONTHLY FEES (EXCLUDING ALL TAXES) YOU HAVE PAID TO US FOR THE SERVICE DURING THE SIX (6) MONTH PERIOD PRIOR TO WHEN SUCH CLAIM AROSE. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES. IN THESE JURISDICTIONS OUR LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

K. **Acceptable Use Policy**

(i) **General Policy:** We reserve the sole discretion to deny or restrict your Service, or immediately to suspend or terminate your Service, if the use of your Service by you or anyone using it, in our sole discretion, violates our policies or those of our subcontractors or vendors, is objectionable or unlawful, interferes with the functioning or any other person's use of the Internet, our network, or the networks of our subcontractors or vendors, or violates the terms of this Agreement or applicable law.

(ii) **Specific Examples of AUP Violations.** The following are examples of conduct which may lead to termination of your Service. Without limiting the general policy in Section K(i), it is a violation of the Agreement to: (a) access without permission or right the accounts or computer systems of others, to spoof the URL, DNS or IP addresses of us, or subcontractors or suppliers, or any other entity, or to penetrate the security measures of us or our subcontractors or suppliers or any other person's computer system, or to attempt



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any of the foregoing; (b) transmit uninvited communications, data or information, or engage in other similar activities, including without limitation, “spamming”, “flaming” or denial of service attacks; (c) intercept, interfere with or redirect email or other transmissions sent by or to others; (d) introduce viruses, worms, harmful code or Trojan horses on the Internet; (e) engage in conduct that is defamatory, fraudulent, obscene or deceptive; (f) generate excessive amounts of email or other Internet traffic; (g) use the Service in any fashion for the transmission or dissemination of images containing child pornography or in a manner that is obscene, sexually explicit, cruel or racist in nature or which espouses, promotes or incites bigotry, hatred or racism; or (h) download or use the Service in countries prohibited by applicable law.

(iii) **Copyright Infringement/Repeat Infringer Policy.** Neither you or anyone using the Service may store any material or use our systems or servers (or systems or servers of our subcontractors or suppliers) in any manner that constitutes an infringement of any intellectual property rights of us, our subcontractors or suppliers, or any other third party, including under U.S. copyright law. You understand and agree that any and all use of the Service is subject to such measures (including without limitation suspension and/or termination of Service) as we may implement in our discretion from time to time to ensure compliance with intellectual property rights, U.S. copyright law, and other applicable laws. These policies are in addition to and do not affect or modify any other rights we or our subcontractors or suppliers may have under law or contract. If you believe that copyrighted material has been used in violation of this policy or otherwise been made available on the Service in a manner that is not authorized by the copyright owner, its agent or the law, please contact us.

(iv) We and our subcontractors and suppliers may, but are not required to, monitor your compliance, and the compliance of other subscribers and users, with the terms, conditions or policies of this Agreement. You acknowledge that we and our subcontractors and suppliers shall have the right, but not the obligation, to pre-screen, refuse, move or remove any content available on the Service, including but not limited to content that violates the law or this Agreement.



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- L. We in our sole discretion from time to time may update and/or modify the Terms of this Agreement by providing notice to you and/or by posting changes on our website at <http://www.broadviewnet.com/About-Broadview-Networks/customer-terms-conditions/> or any successor location on our website