

Equitable Internet Initiative Neighborhood Network Service Agreement

Current as of 8/15/20

Resident Agreement for High-Speed Internet Service

The Goal of the Equitable Internet Initiative (EII) is to ensure that more Detroit residents have the ability to leverage digital technologies for social and economic development. It will increase Internet access, Internet adoption, and pathways for youth into the opportunities of Detroit's burgeoning Innovation District.

All EII participants and all others who use the service (the "resident", "user", "users", "you", or "your") must agree to the terms laid out in the Terms of Use, Privacy Policy and Acceptable Use Policy (collectively "Policies"). Your failure to comply with the terms outlined in those policies may result in the suspension or cancellation of this Service Agreement. If you do not agree with the terms of these Policies, do not sign this Service Agreement.

THIS EQUITABLE INTERNET INITIATIVE NEIGHBORHOOD NETWORK SERVICE AGREEMENT ("Agreement" or "Service Agreement") is made **DATE** by and between EII, a not-for-profit organization with offices at **7700 SECOND AVE., DETROIT, MI 48202** (the "ISP" or "EII"), and **NAME**, at **ADDRESS, CITY, MI ZIP** (the "Resident").

A. SERVICES

- a. Internet Connection Service. ISP shall provide Resident with an Internet connection of up to 25Mbit per second upload and download speeds (the "Internet Service"), subject to the terms and conditions of this Agreement, the Policies and any amendments or attachments which may then be in effect.
 - i. The Internet Service is a shared service, and is considered "best effort."
 - ii. ISP cannot guarantee Internet Service speeds of 25Mbit at all times.
- b. Changes. The capabilities and services available through the Internet as a whole regularly change and expand. In order to improve and adapt the Internet Service to these changing conditions, ISP may perform maintenance, modify, or update the Internet Service, at its sole discretion, by providing seven (7) days prior written notice. In the event that ISP makes a material change to the Internet Service which Resident elects not to accept, the Resident or EII may terminate this Agreement pursuant to Section 9.

B. PERMITTED USE

- a. Residential Use. Subject to the terms and conditions set forth herein, authorizes Resident:
 - i. to use the Internet Service for their own purposes;

- ii. to connect personal computers and wireless devices such as laptops, tablets, and smartphones;
 - iii. to use the ISP provided wireless router with the Internet Service. In the case Resident does not want to use the ISP provided router, Resident must provide their own equipment. The Resident's own equipment will not be eligible for ISP troubleshooting or maintenance.
- b. Non-Exclusive Arrangement. Resident acknowledges and understands that this is a non-exclusive arrangement and nothing herein shall preclude ISP from providing Internet Service to other residents, or related services to any third party.

C. TERM

The term of the Agreement shall extend so long as any Attachment to this Agreement remains in effect and ISP is providing Internet Service to Resident. This Agreement may be terminated at any time by EII pursuant to Section 9.

D. PRICE, PAYMENT AND TAXES

- a. Price. The price is **\$TBD** per month for the internet service.
- b. Invoices and Payment. ISP will solicit or provide invoices on or around the 1st and payment is due by the 10th of each month. You may pay us in the following ways:
 - By the Cash App to **\$newcceii**
 - Direct online at our website: <http://www.northendwoodward.org/eii/>
 - Through the link on the invoice
 - By check or money order made payable to:
NEWCC Equitable Internet Initiative and mail to, or drop off at
7700 Second Ave., Suite 500
Detroit, MI 48202

Donations or contributions for the service on a voluntary basis are acceptable.

To report any issues: call or text our NEWCC EII Help Desk at 586-315-8881, or email help@newcceii.on.spiceworks.com.

E. INTERNET SERVICE TERMS OF USE AND ACCEPTABLE USE

- a. Terms of Use. Resident must abide by the Terms of Use defined by ISP, which can be found on the ISP website here:
<http://detroitcommunitytech.org/eii/newcc/network>.

- b. Acceptable Use. Resident must abide by the Acceptable Use Policy defined by ISP, which can be found on the ISP website here:
<http://detroitcommunitytech.org/eii/newcc/network>.

F. INTERNET SERVICE PRIVACY

- a. Privacy Policy. ISP will adhere to the Privacy Policy defined on the ISP website here:**<http://detroitcommunitytech.org/eii/newcc/network>**. Execution of this Service Agreement constitutes Resident's acknowledgement of receipt of the Privacy Policy, that the Resident has read the Privacy Policy and that the Resident accepts the Privacy Policy.

G. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

- a. Except as expressly set forth herein, Resident accepts all risk, including all risk with respect to suitability, use and performance of Internet Service. ISP disclaims all express and implied warranties, including warranties of merchantability and fitness for a particular purpose.
- b. The ISP will not be liable for any damage that the Resident may suffer arising out of use, or inability to use, the Internet Service. Except for intentional acts by ISP personnel, ISP will not be liable for unauthorized access to Resident's personal equipment or for unauthorized access to or alteration, theft, or destruction of the Resident's data files, programs, procedures, or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of ISP's negligence. ISP shall not be liable for indirect, consequential, incidental, or special damages even if advised of the possibility in advance. The ISP shall not be liable for any lost property or data of Residents.
- c. Except as expressly provided herein, the equipment and services are provided "as is" and "as available" and neither party makes any warranties of any kind, whether expressly, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

H. INDEMNIFICATION

- a. Indemnification by ISP. ISP will defend, indemnify, and hold Resident harmless from and against any claim or demand asserted by any third party that any equipment or software provided to Resident hereunder infringes any U.S. copyright, patent, trade secret or other intellectual property right.

- b. Indemnification by Resident. Resident agrees to defend, indemnify, and hold harmless EII and its officers, directors, employees, agents, and representatives (collectively, "EII Indemnitees") from and against any and all claims, demands, causes of action, lawsuits, losses, judgments, costs, expenses, including reasonable attorney's fees and litigation costs or expenses, or liabilities arising out of or related to any allegations (collectively, "Claims") that if true would constitute the Resident's breach of its representations, warranties or other obligations under this Agreement, or would constitute the Resident's negligent act, omission, willful misconduct, legal violation or any breach, error, or omission by the Resident, its subcontractors, employees, or agents.
- c. Conditions. The indemnification obligations set forth above are contingent upon compliance with the following conditions by the party seeking indemnification:
 - i. Providing prompt written notice of a claim;
 - ii. Providing all information and evidence within its control which is necessary for the indemnifying party to conduct a defense; and
 - iii. Providing the indemnifying party with sole control of the defense and all related settlement obligations. The non-indemnifying party may engage separate legal counsel to advise it on its rights in the defense or settlement of any Claim.
 - iv. The indemnifying party shall have the right to settle or compromise any Claim except for any settlement or compromise that imposes any duty or obligation on the non-indemnifying party or reduces the non-indemnifying party's benefits under this Agreement, which shall require the non-indemnifying party's written consent.

I. TERMINATION

- a. Termination By Either Party. If any of the events below occur with respect to one party, then the other party may terminate this Agreement effective immediately upon the delivery of written notice by the terminating party to the non-terminating party:
 - i. A party becomes insolvent; files a voluntary petition in bankruptcy; proposes any dissolution, liquidation, reorganization or recapitalization; has filed against it an involuntary petition in bankruptcy, or a receiver is appointed or takes possession of the party's property, and such petition is not dismissed within thirty (30) days of such filing, appointment or taking possession; makes an assignment for the benefit of creditors, or is adjudicated as bankrupt; or takes any similar action under the laws of any jurisdiction.
 - ii. Material breach of this Agreement which is not remedied within thirty (30) days after written notice (describing the breach with particularity and the steps, if any, to be taken to cure the breach) has been given.
 - iii. Resident moves out of ISP's service area wherein the service area is determined at EII's sole discretion.

- iv. Resident modifies their property in such a way that ISP cannot technically provide Internet Service to the location.
- b. Termination By Resident. Resident may terminate this Agreement upon seven (7) days written notice to EII.
- c. Effect of Termination. Upon termination Resident agrees to cease all use of the Internet Service and to return any ISP provided equipment and software. Resident shall be responsible for the return of any of EII's property, including EII's equipment. In the event that Resident does not return EII's property within thirty (30) days of termination, the Resident shall be responsible for the cost of such property not returned and at the cost of such property to be determined at EII's sole discretion.

J. NOTICE

- a. All notices required to be sent under this Agreement to EII shall be delivered to the address specified in the signature block of this Agreement. Either party shall have the right to change the notice address upon five (5) Business Day's written notification to the other party.
- b. Effective Date of Notice. Any notice pursuant to this Agreement shall be given in writing and will be deemed effectively given to another party on the earliest of the date (a) three Business Days after such notice is sent by certified U.S. Mail, return receipt requested, (b) one Business Day after receipt of confirmation if such notice is sent by facsimile; (c) one Business Day after delivery of such notice into the custody and control of an overnight courier service for next day delivery; (d) one Business Day after delivery of such notice in person; and (e) such notice is received by the party; in each case to the appropriate address below.

K. DISPUTE RESOLUTION

- a. If a dispute arises from or relates to this contract or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. The parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of any arbitration hearing shall be Detroit, Wayne County, Michigan. The arbitration shall be governed by the laws of the State of Michigan without regard to any conflict of laws principles. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The

arbitrator(s) shall not award consequential damages in any arbitration initiated under this section. The prevailing party shall be entitled to an award of reasonable attorney fees.

L. RELATIONSHIP OF THE PARTIES

- a. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

M. WAIVER AND CUMULATIVE REMEDIES

- a. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of any other remedies of a party at law or in equity.

N. SEVERABILITY

- a. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

O. ENTIRE AGREEMENT

- a. This Agreement, including all exhibits hereto and all Policies and Addenda thereof, whether in existence as of the effective date of this Service Agreement or later, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

P. AMENDMENT

- a. This Agreement may only be amended in a signed writing between the Parties. Should the Resident wish to amend this Agreement, the Resident must propose an amendment to EII within twenty-four (24) hours. It is within EII's sole discretion whether to act upon the requested amendment to this Agreement.

Q. FORCE MAJURE

- a. Neither party shall be held responsible nor deemed to be in default under this Agreement for any delay in performance or failure to perform any of their respective obligations to be performed hereunder if such delay or failure is the result of causes beyond the control and without negligence of the party with respect to whose obligations such delay in performance or failure in performance has occurred. Such causes shall include, without limitation, acts of God, strikes, lockouts, riots, insurrections, civil disturbances, sabotage, embargoes, blockades, acts of war, acts or failures to act of any governmental or regulatory body (whether civil or military, domestic or foreign), governmental regulations superimposed after the fact, power

failures, fires, explosions, floods, accidents, epidemics, earthquakes or other natural or man-made disasters, and all occurrences similar to the foregoing (collectively referred to herein as "Force Majeure"). Dates or times by which either party is required to perform its duties under this Agreement shall be postponed automatically to a reasonable time to the extent that either party is prevented from performing as a result of any such Force Majeure.

R. GOVERNING LAW

- a. This Agreement and the Policies, the subject matter hereof and performance hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Michigan without giving effect to conflict of laws principles thereof.

S. ASSIGNMENT

- a. Neither party may assign, encumber, or pledge or sublicense its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, without the prior written consent of the other party hereto, which such consent shall not be unreasonably withheld; provided, however, that EII may assign or transfer this Agreement (i) to an affiliate, or (ii) pursuant to a merger, consolidation, or sale of substantially all of EII's business or assets to which this Agreement relates.

T. COUNTERPARTS

- a. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

EII

THE RESIDENT:

By:

By:

Sign Name:

Sign Name:

Print Name:

Print Name:

Title: EII Representative

Network Name: _____

Password: _____

Date:

Date:

Address: 7700 2nd Ave.
Suite 500
Detroit, MI 48202

Address: _____

