

# **ST JOE WIRELESS SERVICES WIRELESS INTERNET SERVICE**

## **TERMS OF SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into by and between the person or entity who makes use of Providers Internet services and/or products ("Customer") and St Joe Wireless Services (Midwest Mobile Radio Service) ("Provider") and is subject to acceptance by Provider. Customer's acceptance is limited to the terms and conditions of this offer. No additions or modifications by Customer are acceptable unless and until expressly accepted by Provider in writing.

1. Provision of Service. Provider agrees to provide and Customer agrees to accept Internet Service (all Internet related services provided by Provider offered herein and hereinafter described as "Service" or "Internet Service") at the applicable rates and charges, subject to the terms and conditions specified in this Agreement.

1.1 Provider shall provide Customer with a unique user name(s) and identify internet protocol numbers (IP) which Customer may use to connect with Provider's Internet Service. Customer shall have no proprietary rights to the IP number(s) provided to it by Provider. Provider reserves the right to assign, designate or change access IP numbers, in its sole discretion, such assignment, designation or change is reasonable or necessary in the conduct of its business.

1.2 Provider reserves the right, in its sole discretion, to revise the rates, terms and conditions of its agreement with Customer, at any time. Customer acknowledges that its use of the Internet Service is expressly subject to this Terms of Service Agreement, as the same may be amended, and recognizes that it is Customer's duty to check the Provider's website from time to time to keep well informed of any changes in this Agreement. Customer agrees to pay for Internet Service pursuant to any revised rates, provided Customer has received at least thirty (30) days' written notice of any adjustment in rates (such notice may be provided by e-Mail) unless Customer terminates this Agreement in accordance with the terms and conditions hereof.

1.3 Internet Service is subject to transmission limitations caused by atmospheric, topographical and other like conditions. Additionally, Service may be temporarily refused, limited, interrupted or curtailed due to governmental regulations, actions or orders, system capacity limitations, limitations imposed by an underlying communications carrier, or because of equipment modifications, upgrades, repairs or reallocations or similar activities necessary or proper for the operation or improvement of Provider's Internet System.

2. Use of Service and Equipment. Provider's Internet Service and equipment are furnished for use by Customer for any lawful purpose.

2.1 Customer agrees it will not post on or transmit through the Service any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, profane, or hateful material of any kind, including but not limited to any material which encourages conduct or would constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law. Further, Customer agrees not to use the service in contravention of any applicable state or federal copyright, trademark or other intellectual property laws in a manner which may infringe the rights of individuals, corporations or other entities and result in civil or criminal liability for the infringer. If Provider receives notification from any third party regarding the suitability of Customer's use or the content of any material transmitted by Customer, Provider may at its sole discretion, delete Customer's content from the Service. Repeated complaints may result in the termination of this Agreement by Provider.

2.2 Customer agrees not to use the Internet Service for the transmission of any chain letters or pyramid schemes of any kind, dissemination of any e-Mail messages in broad based mailing (that is, a single message sent through the service directly to more than fifty (50) e-Mail addresses simultaneously), forge e-Mail headers, or take any action that would disguise the origin of e-Mail the Customer transmits or any other way interfere with any other person's use and enjoyment of the service or any online service. Violation of this policy may result in immediate termination of Customer's account, and subject the Customer to other damage claims or other legal remedies.

2.3 Customer is responsible for obtaining, providing and maintaining all hardware and software necessary to connect to the System.

2.4 Customer warrants that Customer is at least eighteen (18) years of age.

3. Customer Service Requests in Writing. Applications or notices, including those pertaining to any changes or discontinuance of Service, will be accepted from Customer only if in writing and received by Provider via facsimile transmission or by U.S. mail.

4 .Limitation of Provider's Liability.

4.1 CUSTOMER UNDERSTANDS AND AGREES THAT:

4.1.1 ALTERNATIVE AND COMPETING INTERNET COMMUNICATIONS SERVICES ARE AVAILABLE TO CUSTOMER;

4.1.2 OCCASIONAL INTERRUPTION OR IRREGULARITIES IN THE SERVICE MAY OCCUR;

4.1.3 ANY POTENTIAL HARM FROM INTERRUPTIONS OR IRREGULARITIES IN THE SERVICE IS SPECULATIVE IN NATURE;

4.1.4 PROVIDER CANNOT OFFER THE SERVICE AT RATES WHICH REFLECT ITS VALUE TO EACH CUSTOMER; and

4.1.5 PROVIDER ASSUMES NO RESPONSIBILITY OTHER THAN THAT CONTAINED IN THIS AGREEMENT.

4.2 ACCORDINGLY, CUSTOMER AGREES THAT, EXCEPT AS REQUIRED BY LAW, PROVIDER'S SOLE LIABILITY FOR LOSS OR DAMAGE REGARDLESS OF WHETHER ARISING FROM A MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR ANY DEFECT IN THE SERVICE OR TRANSMISSION OF SERVICE PROVIDED BY PROVIDER OR ANY UNDERLYING COMMUNICATIONS CARRIER, OR FOR LOSSES OR DAMAGES ARISING OUT OF THE FAILURE OF PROVIDER OR ANY UNDERLYING COMMUNICATIONS CARRIER TO MAINTAIN PROPER STANDARDS OF MAINTENANCE AND OPERATION SHALL BE AS FOLLOWS:

4.2.1 A credit allowance as described in this section 4.2 will be made at Customer's request in the form of a pro-rata adjustment of the fixed monthly charge billed to Customer. Fixed monthly charges are the monthly charges for access and optional features, all as described in the Schedule of Rates and Charges in effect at the time of the event which produced such damage.

4.2.2 Such credit allowance will be based upon the period of time during which the Service or its transmission was subjected to interruption or irregularity. Any such period of time during which an interruption or irregularity occurs will be measured from the time it is reported to the Provider. In the event Customer is affected by such interruption or irregularity for a period of less than twenty-four (24) hours, no such adjustment shall be made. When such period exceeds twenty-four (24) hours, the length of the interruption or irregularity will be measured in twenty-four (24) hour days. A fraction of a day consisting of less than twelve (12) hours will not be credited, but a period of twelve (12) hours or more will be considered an additional day.

4.2.3 The credit allowance will be computed by dividing the length of the Service interruption or irregularity by a standard thirty (30) day month and then multiplying the result by the Provider's fixed monthly charges for each interrupted account number. In no case will the credit exceed the fixed monthly charges.

4.2.4 A credit allowance will not be given for mistakes, omissions, interruptions, delays, errors or defects, or curtailments in the Service caused by the negligence or willful acts of Customer or any third party, or mistakes, omissions, interruptions, delays, errors or defects caused by the failure of equipment or services not provided by the Provider.

4.2.5 In addition to the limitations set forth above, liability for claims against the Provider is also subject to the following limitation:

THE LIABILITY OF THE PROVIDER FOR LOSS OR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICE, ITS TRANSMISSION OR FAILURES OR DEFECTS IN FACILITIES OF THE UNDERLYING COMMUNICATION CARRIERS SHALL IN NO EVENT EXCEED AN AMOUNT EQUIVALENT TO THE PROPORTIONATE FIXED MONTHLY CHARGE TO THE CUSTOMER FOR SERVICE DURING THE PERIOD OF TIME IN WHICH SUCH MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICE, ITS TRANSMISSION, OR FAILURES OR DEFECTS IN FACILITIES FURNISHED BY THE PROVIDER OR THE UNDERLYING COMMUNICATION CARRIERS OCCURRED.

4.3 Provider in no event shall be liable for service or equipment interruptions or delays in transmissions, errors or defects in service or equipment when caused by acts of God, fire, war, riots, government authorities, default of supplier, or other causes beyond Provider's or any underlying communication carriers' control.

4.4 Customer acknowledges that Internet systems use public access facilities to transmit voice and data communications and that the Service may not be completely private. Provider shall not be liable to any customer for any claim, loss, damage or costs which may result from invasion upon the Customer's privacy in using the System.

4.5 Customer acknowledges that Provider is merely a distributor of information content provided by others and that Provider's services, like most other Internet systems, can carry material which may be considered abusive, profane or sexually offensive. Provider is not in a position to monitor the activity or content of all material in which Customer may come into contact through use of Provider's service. Provider shall not be liable to Customer for any claims, loss, damages or costs which may result from exposure to such material.

4.6 In accordance with the Communications Decency Act and the Digital Millenium Copyright Act, Customer understands that in the event Provider receives a demand, notice or other communication (collectively a "claim") by a third person related to a claim of infringement or distribution of obscene or defamatory material, Provider may take the following actions: (1) give written, e-Mail or fax notice to the Customer of the claim; (2) temporarily remove or deny access to such material; (3) at Provider's discretion, await action by the Customer and/or third party to resolve any dispute arising from or related to the claim and pending such action, to continue to remove or deny access to such material; or (4) at Provider's discretion, seek declaratory interpleader or other judicial relief with respect to the claim. Provider shall exercise the above-described rights in their sole and unfettered discretion.

4.7 Customer agrees provider reserves the right to restrict bandwidth to any user whose traffic or usage results in slowdowns of the entire network. The Wireless Internet system was not intended for server use such as hosting large web pages, hosting download pages, providing streaming media or hosting game servers. St Joe Wireless at its sole discretion may limit a customer's ability to house a server on the Wireless Network

4.8 Customer shall be responsible for all costs associated with the replacement or repair of any equipment or damages caused as a result of misuse, abuse, neglect, or negligence by the customer. Surge/lightning protection is recommended on all installations. Insurance of equipment owned by Provider is the responsibility of the user.

## 5. Disclaimer of Warranties and Limitation of Remedies.

5.1 CUSTOMER ACKNOWLEDGES AND AGREES THAT PROVIDER IS NOT THE MANUFACTURER OF EQUIPMENT OR INTERNET PACKAGE SOFTWARE AND PROVIDER HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN CONNECTION WITH THE EQUIPMENT OR SERVICE OR INTERNET PACKAGE SOFTWARE

(WHETHER PURCHASED OR LEASED BY CUSTOMER FROM PROVIDER OR ANOTHER), INCLUDING, BUT NOT LIMITED TO, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF SUITABILITY, DURABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. PROVIDER, TO THE EXTENT PERMITTED BY LAW, ASSIGNS TO CUSTOMER ANY AND ALL MANUFACTURER'S WARRANTIES RELATING TO EQUIPMENT OR INTERNET PACKAGE SOFTWARE PURCHASED BY CUSTOMER AND CUSTOMER ACKNOWLEDGES RECEIPT OF ANY AND ALL SUCH MANUFACTURER'S WARRANTIES.

5.2 CUSTOMER ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY IN CONNECTION WITH ANY DEFECTS IN THE EQUIPMENT OR SOFTWARE USED IN CONNECTION WITH THE SERVICE, INCLUDING MANUFACTURE OR DESIGN, SHALL BE AGAINST THE MANUFACTURER OF THE EQUIPMENT OR SOFTWARE UNDER THE MANUFACTURER'S WARRANTIES AND THAT PROVIDER SHALL HAVE NO LIABILITY TO CUSTOMER IN ANY EVENT FOR ANY LOSS, DAMAGE, INJURY OR EXPENSE OF ANY KIND OR NATURE RELATED TO, DIRECTLY OR INDIRECTLY, ANY EQUIPMENT OR SOFTWARE OR SERVICE PROVIDED HEREUNDER. WITHOUT LIMITING ANY OF THE ABOVE, PROVIDER SHALL HAVE NO LIABILITY OR OBLIGATION TO CUSTOMER, EITHER IN CONTRACT OR TORT, FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND INCURRED BY CUSTOMER SUCH AS, BUT NOT LIMITED TO, CLAIMS OR DAMAGES FOR PERSONAL INJURY, WRONGFUL DEATH, LOSS OF USE, LOSS OF ANTICIPATED PROFITS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSSES OF ANY KIND INCURRED BY CUSTOMER DIRECTLY OR INDIRECTLY RESULTING FROM OR RELATED TO ANY EQUIPMENT, SERVICE OR SOFTWARE DESCRIBED HEREIN, WHETHER OR NOT CAUSED BY PROVIDER'S NEGLIGENCE TO THE FULL EXTENT THE SAME MAY BE DISCLAIMED BY LAW. ANY REFERENCES TO EQUIPMENT OR SOFTWARE IN THIS PARAGRAPH SHALL BE DEEMED TO APPLY TO ALL EQUIPMENT OR SOFTWARE PURCHASED BY CUSTOMER OR LEASED BY CUSTOMER FROM PROVIDER OR ANY THIRD PARTY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND THEREFORE, THE ABOVE EXCLUSION MAY NOT BE ALLOWED IN SOME STATES. CUSTOMER MAY ALSO HAVE OTHER LEGAL RIGHTS WHICH MAY VARY FROM STATE TO STATE.

## 6. Indemnification.

6.1 Customer agrees to indemnify, defend and save Provider harmless from and against any and all claims, damages, liabilities costs and expenses, including reasonable attorneys fees from and against claims of any nature arising directly or indirectly out of this Agreement or the use of the services and products described herein, including, without limitation, any and all claims for copyright infringement, defamation or other torts, personal injury or wrongful death to Customer or any user of the equipment or services provided by Provider or used in connection with such equipment or services provided by or through Provider and arising out of the manufacture, purchase, operation, condition, maintenance, installation, return or use of the equipment or service, or arising by operation of law, whether the claim is based in whole or in part on negligent acts or omissions of Provider, its agents or employees.

6.2 Without limiting the generality of the previous section 6.1, Customer hereby specifically agrees to indemnify, defend and save Provider harmless from and against any and all claims, damages, liabilities costs and expenses, including reasonable attorneys fees, related to any claim of libel, slander or infringement of copyright or patent attached to or arising from the publication or use of any material in any form by or through the Provider's products or services by Customer or those using Customer's equipment.

## 7. Rates and Charges. Customer will be billed in advance for monthly access base rate charges.

7.1 Payment is due to provider each month and payable by the 22nd.

7.2 Customer shall be responsible for payment of charges for all services furnished by Provider, including without limitation, Service establishment fees, Service connection charges, and charges for enhanced features, sales, use or other taxes required to be collected by law, and all fees or other extraction imposed by or for any municipality or other political authority against Provider. Rates and charges shall be based on prices in effect at the time Service is furnished.

7.3 Payments received after the due date may incur a late payment charge of up to the highest rate permitted by law on the unpaid balance for each month or fraction thereof that such balance shall remain unpaid.

7.4 In the event that Customer's equipment or IP Number(s) is lost, stolen or otherwise absent or misappropriated from Customer's possession and control, Customer shall nonetheless be liable for all use and other charges attributable to the Customer's account number until such time as Provider is notified of the loss, theft or other occurrence.

7.5 Customer shall be responsible for all outstanding charges for services rendered and shall be responsible for all charges through the end of the billing cycle within which termination occurs, without proration of any such charge.

## 8. Default and Waiver.

8.1 In the event that Customer shall default in the payment when due of any sum hereunder, or in the event of any default or breach of the terms and/or conditions of this Agreement, or if any proceeding in bankruptcy, receivership or insolvency or petition for receivership shall be instituted by or against Customer, Provider may at its option:

8.1.1 Prosecute its rights through appropriate judicial action to enforce performance by Customer of the applicable covenants and terms of this Agreement and/or to recover damages for the breach hereof; and/or

8.1.2 Terminate this Agreement, whereupon all rights and interests of Customer under this Agreement shall terminate and Customer shall remain liable for all Services provided.

8.2 Customer shall pay to Provider on demand any and all past due amounts which Provider may sustain by reason of such default or breach by Customer, together with all other charges as provided by this Agreement, reasonable attorney's fees incurred by Provider in connection with collection upon breach or default by Customer, and all other costs and expenses incurred by Provider in collecting such amounts. All amounts shall be payable by Customer without set-off or deduction of any kind.

8.3 The remedies provided in favor of Provider in the event of default shall not be deemed to be exclusive but shall be in addition to all other remedies to which it may be entitled under law.

8.4 No failure on the part of Provider to exercise any right or remedy arising directly or indirectly under this Agreement shall operate as a waiver of any right or remedy it may have nor shall the exercise of any of Provider's rights or remedies preclude any other rights or remedies allowed to it by law or in equity.

9. Assignment. Neither this Agreement nor Customer's rights hereunder shall be assignable by Customer except with Provider's prior written consent. The conditions hereof shall bind any permitted successors and assigns of Customer.

10. Entire Agreement and Governing Law. Customer acknowledges receipt of this Agreement, and this Agreement contains the entire agreement between the parties relating to the matters contained herein and supersedes all other agreements and negotiations, whether made orally or in writing, including any representations, warranties, or agreements not specifically stated herein. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. If any part of this Agreement is contrary to or prohibited by or deemed invalid under applicable law, the remaining provisions and parts hereof shall remain and be construed in full force and effect to the extent permitted.

11. Renewal and Termination. Unless Customer or Provider terminates this Agreement as provided herein, this Agreement shall renew on a month-to-month basis. Notice of Customer's intent to terminate this Agreement shall be made in writing to the St Joe Wireless Service, 812 S. 10th Street, St. Joseph, Missouri 64501 or via facsimile transmission to (816) 233-8862. Provider reserves the right not to renew this Agreement at any time by giving Customer notice of same as provided for above.