

End User Agreement for Hi-Plains Products and Software

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This End User Agreement for Hi-Plains Products and Software (this “**Agreement**”) is a legally binding agreement between you or the entity you represent (“**you**”) and Hi-Plains Broadband Ltd. (“**Hi-Plains**”), and governs your use of any Hi-Plains hardware devices that have been provided to you by Hi-Plains or any of its authorized retailers or suppliers (collectively, “**Product**”) and any related software (whether external to or embedded in a Product) and documentation that Hi-Plains or its authorized retailers or suppliers may make available to you (collectively, “**Software**”). **By using the Product or Software, you agree to be bound by all of the terms of this Agreement.** If you are entering into this Agreement for an entity, such as the company you work for, you represent to Hi-Plains that you have the legal authority to bind that entity. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY NOT USE THE PRODUCT OR SOFTWARE.

CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE USING THE HI-PLAINS PRODUCT OR SOFTWARE. PLEASE BE AWARE THAT THIS AGREEMENT INCLUDES A BINDING ARBITRATION PROVISION, WHICH INCLUDES A WAIVER OF CLASS ACTIONS AND PROVISIONS FOR OPTING OUT OF ARBITRATION.

1. Permitted Use; Transfer. The Product has been provided to you in connection with your subscription for Internet access service provided by Hi-Plains (“**Service**”). You may use the Product and Software solely in connection with your use of the Service in accordance with the Terms of Service found here: www.hiplains.co/legal (“**Service Agreement**”). Products (i) may not be transferred by you to any third party, except in connection with any permitted transfer of the Service for which you have obtained the prior written consent of Hi-Plains pursuant to the terms of the Service Agreement, and (ii) are otherwise subject to all applicable restrictions, limitations, terms and conditions set forth in the Service Agreement.

2. Software License. Subject to the terms and conditions of this Agreement, Hi-Plains hereby grants you a limited, non-exclusive and non-transferable license to use the Software solely in connection with your use of the Product and Service in accordance with the Service Agreement and their applicable documentation as made available by Hi-Plains from time to time.

3. Restrictions on Use. You may not (a) copy, modify or otherwise alter any Product or Software or any technology or intellectual property embedded in or otherwise related to any Product or Software (collectively, “**Hi-Plains Technology**”); (b) prepare derivative works of any Software or Hi-Plains Technology; (c) distribute, lease, sublicense, lend, give, transfer, assign or otherwise make all or any portion of the Software or Hi-Plains Technology available to any third-party, except as expressly authorized in this Agreement; (d) use any Product, Software or Hi-Plains Technology for commercial purposes; (e) if any Software is firmware, copy such firmware or operate it separately from the Product in which it is embedded; (f) use any Product, Software or Hi-Plains Technology in connection with any high risk or strict liability activity including air travel, vehicle operations, emergency response or rescue operations, power plant operation, military operations, hospital and medical operations or the like; (g) copy any feature, design or graphic of any Product, Service or Hi-Plains Technology; (h) reverse engineer, re-engineer, decompile or disassemble any Product or Software or cause or allow discovery of the source code or underlying ideas or algorithms of any Product or Software; (i) use or access any Product, Software or Hi-Plains Technology in order to build a competitive product or service or to assist someone

else to build a competitive product or service; (j) use any Product, Software or Hi-Plains Technology for performance, benchmarking or comparison testing or analysis, or disclose to any third party or otherwise disseminate any results thereof (all of which shall be considered confidential information of Hi-Plains); (k) disable, deactivate or render ineffective the password protection in any Product or Software; (l) remove, obscure or modify any copyright, trademark or other proprietary or intellectual property rights notices printed or stamped on, affixed to, or encoded or recorded in the Product or Software; (m) use any Product or Software in a manner that violates any applicable law, ordinance, regulation or administrative order; or (n) in any way attempt to do, or assist anyone else with, any of the foregoing. To the extent permissible by law, you waive any rights that you may have to do any of the foregoing.

4. Ownership and Feedback. The Software and the Product are licensed to you, not sold. All right, title and interest in and to the Product, Software and Hi-Plains Technology, including all copyrights, trade secrets, trademarks, patents and other forms of proprietary and intellectual property rights therein and thereto, belong to Hi-Plains or its licensors. This Agreement does not convey to you any interest in or to any Product, Software or Hi-Plains Technology, but only a limited right of use revocable in accordance with the terms of this Agreement and the Service Agreement. All rights not expressly granted in this Agreement are reserved by Hi-Plains and its licensors. Any feedback, suggestions, ideas or other materials and information you provide to Hi-Plains with respect to any Product or Software (“**Feedback**”) is owned by Hi-Plains. You hereby assign all of your worldwide right, title, and interest in and to any Feedback to Hi-Plains and acknowledge that Hi-Plains has the unrestricted right to use and exploit such Feedback in any manner, with or without attribution, and without compensation or any duty to account to you for such use.

5. Confidentiality. You acknowledge and agree that the Product, Software and Hi-Plains Technology contain confidential and proprietary information of Hi-Plains and its licensors, including the Product’s design and the Software’s code, structure, sequence and organization, and you agree to treat all such information as strictly confidential.

6. Third Party Components. The Product and Software may contain or otherwise make use of software, code or related materials from third parties, including “open source” or “freeware” software (“**Third Party Components**”). Third Party Components may be subject to separate license terms that accompany such Third Party Components. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. If required by any license for a particular Third Party Component, Hi-Plains makes the source code of such Third Party Component, and any of Hi-Plains’ modifications to such Third Party Component, as required, available by written request to Hi-Plains.

7. No Maintenance or other Services. Hi-Plains has no obligation under this Agreement to provide maintenance, support, training or other services for or related to any Product or Software. Any such obligations (if at all) must be agreed to under a separate written agreement. Hi-Plains may from time to time, in its sole discretion, issue Software updates, including firmware updates for any Product; you hereby authorize Hi-Plains to “push” any such updates to the Product in Hi-Plains’ sole discretion, with or without further notice to you. Except to the extent Hi-Plains makes such updates available pursuant to separate license terms, in which case your access to and use of such updates will require your acceptance of such separate terms, all such updates will constitute “Software” under this Agreement. Hi-Plains may discontinue distribution or support of any Product or Software at any time.

8. Disclaimer of Warranties. THE PRODUCT AND SOFTWARE ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY LAW, HI-PLAINS AND ITS LICENSORS EXPRESSLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ACCURACY OF ANY INFORMATIONAL CONTENT OR THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM COURSE OF DEALING OR USAGE OF TRADE. Without limiting the foregoing, Hi-Plains and its licensors do not warrant that the Products or Software or their operation will meet your requirements or will be uninterrupted or error-free. CERTAIN JURISDICTIONS DO NOT ALLOW DISCLAIMERS OF CERTAIN WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO ONE OR ALL OF THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

9. Limitation of Liability. IN NO EVENT SHALL HI-PLAINS OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR ANY LOST PROFITS, BUSINESS INTERRUPTION, COSTS OF DELAY, ANY FAILURE OF DELIVERY, LOSS OF DATA, REVENUE, PROFITS OR GOODWILL, COSTS OF LOST OR DAMAGED DATA, DOCUMENTATION OR EQUIPMENT, OR LIABILITIES TO THIRD PARTIES) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PRODUCT OR SOFTWARE (INCLUDING THE USE OR INABILITY TO USE THE PRODUCT OR SOFTWARE), EVEN IF HI-PLAINS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION (INCLUDING CONTRACT, NEGLIGENCE, TORT OR WARRANTY). WITHOUT LIMITING THE FOREGOING, IN NO EVENT WILL HI-PLAINS LIABILITY TO YOU FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT OR THE SERVICE AGREEMENT EXCEED THE AMOUNT PAID BY YOU TO HI-PLAINS DURING THE PRECEDING 6 MONTH PERIOD. CERTAIN JURISDICTIONS DO NOT ALLOW THE LIMITATION OF CERTAIN DAMAGES, SO SOME OR ALL OF THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU AND YOU MAY HAVE ADDITIONAL RIGHTS.

10. Termination. This Agreement will automatically terminate and be of no further force or effect upon the termination or expiration of the Service Agreement. Hi-Plains may terminate this Agreement upon your breach of this Agreement. Upon the termination of this Agreement, you must cease all use of the Product and Software. If any Software has been installed on a personal computer or mobile device, you must immediately uninstall such Software. The provisions of this Agreement which by their express or implied terms extend beyond the termination of this Agreement shall continue in full force and effect notwithstanding the termination or expiration of this Agreement.

11. Arbitration. YOU AGREE TO BINDING ARBITRATION AND WAIVER OF JURY TRIAL. PLEASE READ THIS SECTION CAREFULLY. IT REQUIRES RESOLUTION OF DISPUTES THROUGH ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTIONS. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.

- a. **Purpose.** If either party has a Dispute (as defined below) with the other party that cannot be resolved, you or Hi-Plains may elect to arbitrate that Dispute in accordance with the terms of this provision rather than litigate the Dispute in court. Arbitration means you will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury. Proceeding in arbitration may also result in limited discovery. An arbitration award is subject to limited review by a court.
- b. **Definitions.** The term “Dispute” means any dispute, claim, or controversy between you and Hi-Plains regarding any aspect of your relationship with us, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent

inducement, negligence, or any other intentional tort), or any other legal or equitable theory, and includes the validity, enforceability, or scope of this arbitration provision. For purposes of this Agreement, "Dispute" is to be given the broadest possible meaning that will be enforced.

- c. **Right to Opt Out.** IF YOU DO NOT WISH TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MUST NOTIFY HI-PLAINS IN WRITING WITHIN 30 DAYS FROM THE DATE THAT YOU AGREE TO THIS AGREEMENT. YOUR WRITTEN NOTIFICATION TO HI-PLAINS MUST INCLUDE YOUR NAME, ADDRESS, AND HI-PLAINS ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH HI-PLAINS THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH HI-PLAINS OR THE DELIVERY OF SERVICES TO YOU BY HI-PLAINS. IF YOU HAVE PREVIOUSLY NOTIFIED HI-PLAINS OF YOUR DECISION TO OPT OUT OF ARBITRATION, YOU DO NOT NEED TO DO SO AGAIN.
- d. **Restrictions:**
 - i. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF ANY STATUTE OR OTHER LAW TO THE CONTRARY, YOU MUST CONTACT HI-PLAINS WITHIN 1 YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE (EXCEPT FOR BILLING DISPUTES WHICH ARE SUBJECT TO ANOTHER SECTION OF THIS AGREEMENT), OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS, OR DISPUTE.
 - ii. ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS SIMILARLY SITUATED UNLESS THE STATUTE UNDER WHICH YOU ARE SUING PROVIDES OTHERWISE.
 - iii. ALL PARTIES WAIVE ANY CLAIM TO INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR MULTIPLIED DAMAGES ARISING FROM OR OUT OF ANY DISPUTE WITH HI-PLAINS UNLESS THE STATUTE UNDER WHICH THEY ARE SUING PROVIDES OTHERWISE.
- e. **Procedures.** The arbitration will be administered by the American Arbitration Association in accordance with the Consumer Arbitration Rules then in effect, except as modified by this Section. The Federal Arbitration Act will govern the interpretation and enforcement of this section. The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision, this Agreement, or the Service Agreement are void, voidable or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction.
- f. **Severability.** If any clause within this arbitration provision is found to be illegal or unenforceable, that clause will be severed from this arbitration provision, and the remainder of this provision will be given full force and effect. If the class action and class arbitration waiver is

found to be illegal or unenforceable, the entire arbitration provision will be unenforceable, and the Dispute will be decided by a court. In the event this entire provision is determined to be illegal or unenforceable for any reason, or if a claim is brought in a Dispute that is found to be excluded from the scope of this arbitration provision, YOU AND HI-PLAINS EACH HEREBY AGREE TO WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY TRIAL BY JURY.

g. Survival. This arbitration provision will survive the termination of this Agreement.

12. Entire Agreement. This Agreement and the other Customer Agreements (as defined in the Service Agreement) constitute the entire agreement and understanding between you and Hi-Plains with respect to the subject matter of this Agreement and the other Customer Agreements, and supersede and nullify all prior written or verbal understandings, promises, agreements, or undertakings with respect to the Product and Software. If any term or condition of a Customer Agreement shall be adjudicated or determined as invalid or unenforceable by a court, tribunal, or arbitrator with appropriate jurisdiction over the subject matter, the remainder of such Customer Agreement with respect to such claim shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law. Hi-Plains does not waive any provision or right if it fails to insist upon or enforce strict performance of any provision of a Customer Agreement. Neither the course of conduct between you and Hi-Plains, nor trade practice, shall act to modify any provision of a Customer Agreement.

13. Governing Law. The Customer Agreements will be governed by the laws of the state of Colorado without giving effect to any conflict of laws provisions.

14. Assignment. The Customer Agreements and the Product and Software furnished under this Agreement may not be assigned by you. We may freely assign our rights and obligations under the Customer Agreements with or without notice to you.

15. You may contact Hi-Plains by phone, e-mail, or mail. For any inquiries or notices required in connection with the Customer Agreements, you may contact Hi-Plains as follows:

By phone:

+1-970-743-0200

By e-mail:

customercare@hiplains.co

By mail:

Hi-Plains Broadband Ltd.
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