

## Colocation Term of Service Agreement

This Terms of Service Agreement (“TOS Agreement”) constitutes a valid, binding and enforceable legal contract by and between you, the “Subscriber”, and Brevard Wireless, Inc. dba FLORIDA HIGH SPEED INTERNET (“FLHSI”).

**IMPORTANT NOTICE: \*All Payments to FLHSI Are Non-Refundable**

### 1. Provision of Service: Acceptance of this TOS Agreement and Acceptance of FLHSI’s Acceptable Use Policy:

FLHSI’s provision of service to Subscriber, and Subscriber’s acceptance and use of said service, constitute Subscriber’s acceptance of, and agreement to, this TOS Agreement as well as Subscriber’s acceptance of, and agreement to, FLHSI’s Acceptable Use Policy (“FLHSI’S AUP”) -- which is herewith made a part of this TOS Agreement. This TOS Agreement, including FLHSI’S AUP, constitutes the entire agreement between the parties, and supersedes any prior agreements between the parties.

### 2. Cancellation of Service:

FLHSI reserves the right to cancel this TOS Agreement and to permanently disconnect the service that FLHSI provides to Subscriber hereunder at anytime without further obligation. Subscriber may cancel this TOS Agreement and the service that FLHSI provides to Subscriber hereunder by providing sixty (60) days advance notice. Subscriber must be current on all payments at the time of such request for said requested cancellation to become effective. It is Subscriber’s responsibility to separately confirm that FLHSI has timely received notice of requested cancellation.

### 3. Disconnection of Service:

Not by way of limitation of FLHSI’s right to, at any time for any reason, cancel this TOS Agreement and permanently disconnect the service that FLHSI provides to Subscriber, FLHSI also reserves the right to temporarily disconnect (suspend) the service that FLHSI provides to Subscriber (or any one of them, if Subscriber has more than one account or server):

For Subscriber’s failure to timely pay any fee or amount due to FLHSI, in which case FLHSI will first send Subscriber an email indicating that Subscriber’s account is overdue and advising Subscriber that the service that FLHSI provides to Subscriber may be terminated if payment is not made within 24 hours; and/or

If FLHSI determines, in its sole judgment, that Subscriber is in violation of this TOS Agreement (which includes FLHSI’s AUP), and FLHSI believes that Subscriber can timely and appropriately cure said violation. If, in FLHSI’s sole discretion, a potential violation is detected, the service (including all services on all server computers of Subscriber, if Subscriber uses more than one) that FLHSI provides to Subscriber may be terminated, without notice to Subscriber, until FLHSI’s investigation is complete, which investigation FLHSI shall attempt to complete within a reasonable time period.

Subscriber will not be credited, under any circumstances, for any time that the service that FLHSI provides to Subscriber is suspended, interrupted or terminated.

### 4. FLHSI Not Obligated To Review Activities or Notify of Violations:

FLHSI is under no obligation to review Subscriber’s and/or any of Subscriber’s Sub-User’s (the term “Subscriber’s Sub-User” is defined below) activities to determine if a violation of this TOS Agreement (which includes FLHSI’s AUP) has occurred. Further, FLHSI does not assume any responsibility by virtue of this TOS Agreement (which includes FLHSI’s AUP) to monitor, enforce or police Internet-related activities or to notify Subscriber of any actual or suspected violations.

### 5. Amendment:

FLHSI reserves the right to amend, and may amend, from time to time, within its sole discretion, the terms and conditions of this TOS Agreement (including FLHSI’s AUP). FLHSI will provide notice of such amendment(s) by posting such amendment(s) on FLHSI’s website at <http://www.FLHSI.com/Colocation>, and Subscriber’s use of FLHSI’s services after FLHSI posts such amendment(s) on its website shall constitute Subscriber’s acceptance of any/all such amendments. Amendment(s) shall not constitute grounds for Subscriber’s early cancellation of this TOS Agreement or the service, nor grounds for Subscriber’s non-payment for the service that FLHSI provides to Subscriber after the effective date of such amendment(s), and Subscriber shall continue to be bound by the terms and conditions of this TOS Agreement, as amended, for any service provided by FLHSI to Subscriber thereafter. It is Subscriber’s responsibility to review, from time to time, this TOS Agreement (including FLHSI’s AUP), as published

on FLHSI's website, for any amendment(s).

#### **6. Assignment:**

Subscriber may not transfer or assign this TOS Agreement without the prior written consent of FLHSI. FLHSI may transfer and assign this TOS Agreement, the Service and all of FLHSI's rights, titles and interests thereunder at any time without consent from or notice to Subscriber.

#### **7. Waiver:**

Waiver by FLHSI of Subscriber's breach of any term or condition of this TOS Agreement (including FLHSI's AUP) shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other term or condition of this TOS Agreement (including FLHSI's AUP).

#### **8. Compliance with law:**

Inasmuch as the service that FLHSI provides to Subscriber is controlled and operated by FLHSI from its facilities in Florida, United States, Subscriber shall comply with all U.S. local, state, federal and national laws, statutes, ordinances and regulations that apply to Subscriber's use of the service that FLHSI provides to Subscriber, as well as with all laws in all other jurisdictions that apply to Subscriber's use of the service that FLHSI provides to Subscriber.

#### **9. Choice of Law / Jurisdiction / Venue / Statute of Limitations:**

This TOS Agreement shall be construed in all respects in accordance with the laws of the state of Florida applicable to contracts enforceable in that state. By entering into this TOS Agreement and accepting and using FLHSI's services hereunder, Subscriber submits to jurisdiction and venue in the courts of Brevard County, Florida, for any dispute(s) related to or rising out of this TOS Agreement. Notwithstanding any contrary provision of law, any claim or cause of action arising out of this TOS Agreement and/or related to the service that FLHSI provides, or is to provide, to Subscriber must be filed within one (1) year after such claim or cause of action arose or be forever barred. This limitation shall be considered a claims bar limitation and shall not be tolled or extended for any reason including, but not limited to failure to discover or estoppel.

#### **10. Responsibilities:**

Subscriber Shall Defend and Indemnify FLHSI: Subscriber shall fully defend, indemnify, pay and hold harmless FLHSI and its managers, members, employees, affiliates, attorneys, agents, contractors and licensors (such FLHSI related parties collectively referred to under this Section 10. as "FLHSI-related party") for any Subscriber violation(s) of this TOS Agreement (which includes FLHSI's AUP) and for any violation(s) by a sub-subscriber of, client of, customer of, reseller of, user of, sub-user of, or similar party related to, Subscriber (collectively referred to as a "Subscriber's Sub-User"), that results in any loss, damage, cost or expense to FLHSI or an FLHSI-related party, or in any claim made or threatened against FLHSI or an FLHSI-related party by any third-party. If FLHSI or an FLHSI-related party is sued (or if a suit is threatened against FLHSI or an FLHSI-related party) because of Subscriber's or a Subscriber's Sub-User's act or omission, Subscriber shall pay any and all damages awarded against FLHSI and any FLHSI-related party immediately upon such award (whether or not any appeal is available/taken), plus any and all of FLHSI's and any FLHSI-related party's expenses and costs (including FLHSI's and any FLHSI-related party's reasonable attorneys' fees) related thereto;

FLHSI Not Liable: The service that FLHSI provides to, or is to provide to, Subscriber is provided on an "as is" and "as available" basis, and Subscriber's use of said service is at Subscriber's sole risk. In no case shall FLHSI or any of its managers, members, employees, affiliates, attorneys, agents, contractors or licensors be liable for any direct, indirect, incidental, punitive, exemplary, special or consequential damages, losses, costs or expenses, including, but not limited to, loss of profits, loss of data, loss or damage to goodwill, or loss of use of data or other intangible losses, or for any claim(s) related thereto, even if said party has been advised of the possibility of such damages, losses, costs, expenses or claims, arising from or related to:

Subscriber's or Subscriber's Sub-Users' use or inability to use the service (whether from Service Faults or otherwise) that FLHSI provides to, or is to provide to, Subscriber; Any destruction, damage, taking, unavailability or other loss of Subscriber's or any Subscriber's Sub-User's system, server or data; The cost to procure any substitute service; Any unauthorized access or use of Subscriber's account; or Any third party conduct or other matter relating to the service;

Content Responsibility: FLHSI takes no responsibility or accountability for, and Subscriber is entirely responsible and accountable for, any and all Subscriber and third-party data, information and content transmitted by (via email, uploading, posting or otherwise), stored on, inputted to/through, linked to/through and/or served by, Subscriber's server computer (or any server computer internally assigned to Subscriber) at FLHSI's premises and/or using the service that FLHSI provides to Subscriber;

Subscriber's Network / Security: Subscriber is solely responsible for ensuring that its network and the network(s) of Subscriber's Sub-User(s) are configured in a secure manner. Subscriber is solely responsible for any intrusions into, or security breaches of, any of its server computers, networks or systems. Subscriber is solely responsible and accountable for, and FLHSI shall not be responsible or accountable for, any/all activities that occur on or through Subscriber's service computers, networks and systems, including any and all acts or omissions by, or attributable to, any third party, using the service that FLHSI provides to Subscriber;

Subscriber's Responsibility to Backup System/Data – Deletion of System/Data: FLHSI is not responsible for, and Subscriber is solely responsible for, backing up Subscriber's system/data, including any/all system/data of any Subscriber's Sub-User, related to Subscriber's server computer (or any server computer internally assigned to Subscriber) at FLHSI's premises and/or to the service that FLHSI provides to Subscriber. Any server computer owned by Subscriber on FLHSI's premises or otherwise under FLHSI's possession or control will be considered abandoned and forfeited thirty (30) days after cancellation of this TOS Agreement for non-payment, at which time, FLHSI will delete any and all Subscriber and Subscriber's Sub-User system/data. For any server computer not owned by Subscriber but that is or may be internally assigned to Subscriber, FLHSI will delete any and all Subscriber and Subscriber's Sub-User system/data immediately upon cancellation of this TOS Agreement for non-payment.;

Subscriber's Responsibility To Insure: FLHSI is not responsible for, and Subscriber is solely responsible for, fully insuring Subscriber's and Subscriber's Sub-Users' system/data against destruction, damage, taking, unavailability or other loss, and FLHSI is not responsible for, and Subscriber is solely responsible for, fully insuring any/all server computers, components and equipment owned or controlled by Subscriber against loss and damage during shipment, handling, placement and use, whether said server computer/equipment is in FLHSI's possession or control or otherwise;

#### **11. Subscriber Contact Information, Updates & ID:**

Subscriber shall provide FLHSI with, and shall update FLHSI immediately upon any change(s) with, accurate, current and complete contact information (including email, fax, telephone and street address contacts) so that FLHSI may register Subscriber, charge payments to Subscriber and otherwise contact Subscriber as may be required from time to time in the course of this TOS Agreement.

#### **12. Age/ Legal Authority:**

If Subscriber is an individual, Subscriber must be eighteen (18) years of age or older in order to enter into this TOS Agreement to subscribe to the service that FLHSI provides to Subscriber, and Subscriber herewith assures FLHSI that Subscriber meets said age requirement. If Subscriber is an entity, Subscriber herewith assures FLHSI that it has all the legal authority necessary to enter into this TOS Agreement to subscribe to the service FLHSI provides to Subscriber.

#### **13. Payment Information:**

Service Rates: The nature of the service that FLHSI provides to Subscriber, and the rates and fees thereof, have been communicated to Subscriber by FLHSI. FLHSI may amend its rates and fees from time to time, by notifying FLHSI of said change(s) and such rate change shall become effective within twenty (20) days of notice and use by Subscriber of FLHSI's service;

Payment: FLHSI may charge Subscriber a one-time, pre-agreed set-up fee before FLHSI establishes any service for Subscriber. Subscriber shall thereafter pay, on each monthly anniversary date thereafter, an ongoing service charge in advance for FLHSI's continued provision of the service that FLHSI provides to Subscriber. Subscriber agrees that FLHSI may automatically charge Subscriber's credit card each month, and may process Subscriber's payment as early as five (5) days before the due date, to ensure that FLHSI receives payment on or before the due date;

Invoicing: FLHSI sends out invoices automatically and Subscriber is deemed to have received the invoice if sent by FLHSI or its agent to the email address provided by Subscriber to FLHSI pursuant to this Agreement.

Refunds and Disputes: All payments made to FLHSI by Subscriber or on Subscriber's behalf are nonrefundable – including the one-time set-up fee, if any, as well as any/all subsequent monthly charges (regardless of usage). Overcharges or billing disputes must be reported to FLHSI within thirty (30) days of occurrence, otherwise Subscriber shall have waived all claims related thereto. If Subscriber disputes a charge to its credit card issuer, which charge FLHSI deems, in its sole discretion, to be valid under the terms and conditions of this TOS Agreement, Subscriber shall pay FLHSI, in addition to said disputed charge, an Administrative Fee of not less than \$20.00 and not more than \$50.00;

Payment Declination/Rejection Charge: Should Subscriber's credit card or any payment be declined or rejected for any reason, FLHSI may charge Subscriber a \$15.00 administrative fee per occurrence;

Additional Charges for Failure to Timely Pay: Without limiting FLHSI's right to, at any time for any reason, cancel this TOS Agreement and permanently disconnect the service that FLHSI provides to Subscriber, should FLHSI suspend the service that FLHSI provides to Subscriber because of Subscriber's failure to timely pay any fee or amount due to FLHSI, Subscriber may be required to pay FLHSI, in addition to any fees and amounts due a \$20.00 late fee. Suspension of service does not relieve Subscriber of any responsibilities.

#### **14. Service:**

Service Faults / No FLHSI Liability / No Warranty: FLHSI does not guarantee that the service that FLHSI provides, or is to provide, to Subscriber is or will be free from errors, omissions, corruption, attack, viruses, interference, loss, hacking, security intrusion, delays, non-delivery, wrong delivery or any other causes of interruption or damage (collectively "Service Faults"). As a reminder of, and not as a limitation of, FLHSI's limitation of liability under Section 10 above, in no case shall FLHSI or any of its managers, members, employees, affiliates, attorneys, agents, contractors or licensors be liable for any direct, indirect, incidental, punitive, exemplary, special or consequential damages, losses, costs or expenses, including, but not limited to, loss of profits, loss of data, loss or damage to goodwill, or loss of use of data or other intangible losses, or for any claim(s) related thereto, even if said party has been advised of the possibility of such damages, losses, costs, expenses or claims, arising from or related to the following:

Subscriber's or Subscriber's Sub-Users' use or inability to use the service (whether from Service Faults or otherwise) that FLHSI provides to, or is to provide to, Subscriber; Any destruction, damage, taking, unavailability or other loss of Subscriber's or any Subscriber's Sub-User's system, server or data; The cost to procure any substitute service, Any unauthorized access or use of Subscriber's account or; Any third-party conduct or other matter relating to the service.

**FLHSI AND ITS MANAGERS, MEMBERS, EMPLOYEES, AFFILIATES, ATTORNEYS, AGENTS, CONTRACTORS AND LICENSORS HEREWITH EXPRESSLY DISCLAIM ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO REQUEST OR ADVICE FROM SUBSCRIBER TO FLHSI, IN ANY FORM OF MEDIA, SHALL CREATE ANY WARRANTY. SUBSCRIBER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER'S NETWORK AND SYSTEM AND FOR ANY LOSSES THAT RESULT FROM SUBSCRIBER'S USE OF, OR INABILITY TO USE, THE SERVICE THAT FLHSI PROVIDES, OR IS TO PROVIDE, TO SUBSCRIBER;**

IP Address Allocation / Ownership: If FLHSI assigns Subscriber an Internet Protocol ("IP") address and/or number(s) for Subscriber's use, the right to use that IP address/number shall belong solely to FLHSI, and Subscriber shall have no right to use that IP address/number except as permitted by FLHSI in its sole discretion in connection with the services provided by FLHSI to Subscriber during the term of this TOS Agreement. FLHSI shall maintain and control ownership of all IP addresses and numbers that may be assigned to Subscriber by FLHSI, and FLHSI reserves the right to change or remove any and all such IP addresses/numbers, in its sole and absolute discretion. FLHSI's allocation of IP addresses/numbers is limited by the policies, as they exist from time to time, of the American Registry for Internet Numbers ("ARIN"), including policies providing that the use of IP addresses or numbers for IP-based virtual hosts are not acceptable as justification for new IP addresses or numbers. Pursuant to ARIN's policies, as they exist from time to time, Subscriber must use name-based hosting whenever possible. FLHSI will periodically review IP address usage, and if FLHSI finds that Subscriber and/or Subscriber's Sub-Users are using IP addresses or numbers where name-based hosting could be used, FLHSI will revoke authorization for the use of those IP addresses/numbers. All IP addresses/numbers that are allocated to Subscriber must be utilized within forty-eight (48) hours of allocation, otherwise FLHSI may retract said unused IP address or number without prior notification to Subscriber.

#### **15. Unauthorized Use of Account:**

Subscriber shall not reveal Subscriber's account information to anyone, Subscriber shall protect and maintain the confidentiality and security of Subscriber's account, Subscriber shall not use anyone else's account, and Subscriber shall immediately notify FLHSI of any unauthorized use of Subscriber's account or any other breach of security. Subscriber is solely responsible and accountable for, and FLHSI shall not be responsible or accountable for, any/all activities that occur on or through Subscriber's account, including any and all acts or omissions by, or attributable to, any third party, using the service that FLHSI provides to Subscriber.

#### **16. Disclosure of Subscriber's Information to Law Enforcement and to Third Parties:**

Subscriber herewith acknowledges and agrees that the FLHSI may disclose any and all Subscriber information, including, but not limited to, Subscriber contact information, assigned IP addresses/numbers, account history,

account use, etc., to any law enforcement agent who requests it, without further consent or notification to Subscriber. In addition, as may be allowed by ARIN policies from time to time, FLHSI will provide any third party with Subscriber contact information (including the name, telephone number, email address and other contact information of Subscriber). FLHSI shall apply the terms of this section to any/all of Subscriber's Sub-Users, and Subscriber shall notify all of Subscriber's Sub-Users of these terms,

#### **17. SPAM / Unsolicited Commercial Email (UCE) / Unsolicited Bulk Email (UBE):**

DO NOT SPAM FROM YOUR ACCOUNT. Subscriber may not use or permit others to use the service that FLHSI provides to Subscriber to transmit (including by email, uploading, posting or other transmission), originate, pass through or otherwise transact any SPAM, UCE and/or UBE. Violations of this policy carry, as well as possible suspension or cancellation of service, additional penalties and/or remedies, including, but not limited to: FLHSI reserves the right to drop the section of any IP space involved in any SPAM/ UCE/ UBE or Denial of Service (DOS) complaints if FLHSI determines, in its sole discretion, that the offending activity is causing, or may cause, harm to other parties on the Internet (particularly if open relays are on Subscriber's network or on a Subscriber's Sub-User's network, or if DOS attacks are originating from Subscriber's network); Subscriber will pay "Research Fees" of \$100.00 per hour to compensate FLHSI for employee time spent investigating Subscriber's violation. FLHSI reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated violation; First violations of FLHSI's SPAM/ UCE/ UBE policy will result in an "Administrative Fee" of \$500.00; a second violation will result in an "Administrative Fee" of \$500.00, and immediate cancellation of Subscriber's service; and FLHSI may notify law enforcement officials if the violation is believed to be a criminal offense; FLHSI's remedies are cumulative and they may be exercised concurrently or separately at any time. Lack of action by FLHSI with respect to any remedy shall not serve as a waiver of that or any other remedy at any time;

#### **IMPORTANT NOTICE:**

**A Subscriber hosting websites or services on Subscriber's server computer supporting spammers or resulting in any of FLHSI's IP space to be listed in any of the various Spam Databases or black hole lists will have its service immediately disconnected. Such suspended service will not be reconnected until such time that Subscriber agrees to remove ANY and ALL traces of the offending material immediately upon reconnection, and agrees to allow FLHSI access to its server computer(s) to confirm that all material has been COMPLETELY removed.**

#### **18. Compliance with FLHSI'S AUP:**

FLHSI's AUP is an integral part of this TOS Agreement, and Subscriber agrees to comply with FLHSI's AUP at all times. FLHSI's AUP applies to Subscriber and to each/all server computer, network, device and/or system under Subscriber's control or assigned to Subscriber related to the service FLHSI provides to Subscriber. Subscriber is, and will be held, responsible and accountable for any and all activity and/or omission by, or attributable to, any third party directly or indirectly using or benefiting from FLHSI's services that violates any of the terms of FLHSI's AUP;

FLHSI reserves the right to investigate actual, suspected or alleged violations of FLHSI's AUP, which includes the right to access data, information, contents and records on, or associated with, any server computer(s) of, or assigned to, Subscriber. FLHSI shall not be in default of this TOS Agreement if FLHSI's investigation causes Subscriber to incur downtime or requires the sequestering of all or a portion of the Subscriber's server computers;

FLHSI may involve, and cooperate with, law enforcement authorities in investigating and/or prosecuting Subscriber and/or Subscriber's Sub-Users who are involved in any violation of FLHSI's AUP. Subscriber shall assist FLHSI to comply with all laws, ordinances, regulations and rules related to the service FLHSI provides to Subscriber. Subscriber shall cooperate and comply with any/all civil or criminal investigations regarding activity through, and data, information, contents and records on, or associated with, any server computer(s) of, or assigned to, Subscriber, including, without limitation, discovery orders, subpoenas, freeze orders, search warrants, information requests, wire taps, electronic intercepts and surveillance, preservation requests, and any other order from a court or government entity (each an "Investigation"). Without limiting any other right of FLHSI, FLHSI reserves the right to comply with any Investigation without notice to Subscriber;

Without limiting FLHSI's right to, at any time for any reason, cancel this TOS Agreement and permanently disconnect the service that FLHSI provides to Subscriber, FLHSI may also, in its sole discretion, take any one or more of the following remedies for a violation of FLHSI's AUP:

Disable access to Subscriber's content that violates FLHSI's AUP;  
Remove DNS records from Subscriber's server computer(s);  
Block email or any other network services;

Effect IP address null routing;

Take direct action against Subscriber's Sub-Users;

Charge Subscriber for remedial actions, and recover any and all expenses from Subscriber in connection with any violation of FLHSI's AUP attributable to Subscriber.

FLHSI's remedies are cumulative and they may be exercised concurrently or separately at any time.

Lack of action by FLHSI with respect to any remedy shall not serve as a waiver of that or any other remedy at any time;

**19. IRC:**

If Subscriber runs IRC on our standard network, FLHSI will disconnect the service that FLHSI provides to Subscriber until Subscriber agrees to be moved to FLHSI's IRC network

**. 20. FLHSI's Remedies Cumulative / No Waiver:**

FLHSI's remedies under this TOS Agreement are cumulative, and they may be exercised concurrently or separately at any time. Lack of action by FLHSI with respect to any remedy shall not serve as a waiver of that or any other remedy at any time

**. 21. FLHSI's Trademarks:**

All trademarks, service marks, logos, product names and service names of FLHSI comprise the trademarks of FLHSI, and Subscriber shall not, and shall not allow any third party to, display or use in any manner said trademarks without FLHSI's prior written permission.

**22. Colocation Servers/Equipment and Insurance:**

Not by way of limitation of the other provisions of this TOS Agreement, particularly the provisions of Section10, FLHSI is not responsible for, and Subscriber is solely responsible for, fully insuring Subscriber's and Subscriber's Sub-Users' colocation system/data against destruction, damage, taking, unavailability or other loss, and FLHSI is not responsible for, and Subscriber is solely responsible for, fully insuring any/all colocation server computers, components and equipment owned or controlled by Subscriber against loss and damage during shipment, handling, placement and use, whether said server computer/equipment is in FLHSI's possession or control or otherwise. Any colocation server or equipment not removed within thirty (30) days after cancellation of this TOS Agreement for any reason will be considered abandoned and forfeited.