



Subscription Service Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

- **SUBSCRIBE: BY USING THE SERVICE CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. CUSTOMER REPRESENTS AND WARRANTS THAT IT HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ITS BEHALF OR ON BEHALF OF THE APPLICABLE ENTITY.**
- **UNSUBSCRIBE: IF CUSTOMER DOES NOT AGREE TO THIS AGREEMENT, CUSTOMER CANNOT USE THE SERVICE. IF CUSTOMER DOES NOT AGREE TO THESE TERMS WITHIN 30 DAYS OF THE ORDER DATE, CUSTOMER CAN UNSUBSCRIBE THE SERVICE AND RECEIVE A REFUND OF THE AMOUNT PAID FOR THE SERVICE.**

This agreement is between GoBig WiFi, Inc., a California corporation (**GoBig WiFi**), and the entity or individual agreeing to these terms (**Customer**).

1. **SUBSCRIPTION SERVICE AND GOBIG WIFI APPLIANCE (DEVICE)** This agreement provides **Customer** access and usage of the GoBig WiFi cloud marketing guest WiFi service through the usage of the GoBig WiFi appliance and cloud based management systems (**Merchant Cloud**) for providing a guest WiFi service to Customer's end users (**User**), **GoBig WiFi** may change the Service over time, and GoBig WiFi will notify Customer via email of significant changes or updates. The subscription service enables GoBig WiFi **Customer** to use GoBig WiFi **Merchant Cloud** with a monthly fee. Gobig WiFi appliance (**Device**) is sold separately.
2. **USE OF SERVICE.**
 - a. **Hardware Policy.** GoBig WiFi appliance (**Device**) is covered by GoBig WiFi limited hardware warranty (<http://www.gobigwifi.com/legal.html>). If the **Device** is defective or faulty, Gobig WiFi will repair or exchange the **Device** within 12 months from the date the **Device** is sold. The **Device** can also be returned within 30 days from the date the **Device** is sold. Gobig WiFi will fully or partially refund back to the **Customer** based on the condition of the returned **Device**. However, the **Customer** is still responsible for all incurred shipping and tax or tariff charge. If the GoBig WiFi appliance is lost, damaged or stolen, Customer must replace the appliance on its own expense. During the time when the appliance is replaced, Customer will still be charged unless the service is cancelled promptly.
 - b. **Merchant Cloud Packages.** Merchant Cloud subscription service provides multiple packages with different features and functions to fit different needs of the Customers. The Customer can choose the right package to subscribe based on their needs. Merchant Cloud subscription service can be subscribed monthly with automatic or manual renewal option. The features and functions of Merchant cloud and each of its packages might be changed anytime with or without promptly notification. The Customer can choose to change the package anytime.
 - c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify GoBig WiFi promptly of any such unauthorized access; (iv) may use the Service and GoBig WiFi appliance only in accordance with the GoBig WiFi technical documentation and applicable law; (v) is responsible for installation and precise location of the GoBig WiFi appliance, obtaining and maintaining all third party hardware and other communications equipment needed to access the Service and for paying all third-party access charges; and (vi) for placement of the GoBig WiFi appliance to avoid overheating, physical damage or loss. (Vii) It is customer sole responsibility to purchase Internet connection service and equipment which is needed to use GoBig WiFi service. (Viii) Customer needs to configure Gobig WiFi appliance and Merchant Cloud properly to provide the WiFi Service to the Users in its own environment.
 - d. **Customer Owned Data.** All User identifiable data collected by the GoBig WiFi appliance purchased by Customer is the property of **Customer**, as between GoBig WiFi and Customer (**Customer Data**).
 - All other data and information collected or processed by GoBig WiFi or the Service is the property of GoBig WiFi (for example, aggregate, anonymous data).
 - Customer grants GoBig WiFi the right to use the **Customer Data** for purposes of performing under this agreement, and a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to copy, distribute, create derivative works and otherwise use and

commercialize certain identifiable User information, such as MAC addresses, necessary for identifying Users who connect again and move between GoBig WiFi appliances.

- e. **Privacy Policy.** GoBig WiFi's Privacy Policy (<http://www.gobigwifi.com/legal.html>) is incorporated into this agreement for all purposes. Please read the Privacy Policy carefully for information relating to GoBig WiFi's collection, use, and disclosure of personal information. This policy may change over time.
- f. **GoBig WiFi Support.** GoBig WiFi must provide customer support for the Service directly or through the resellers.

3. SERVICE LEVEL AGREEMENT/WARRANTY and REMEDY.

- a. **Service Warranties.** GoBig WiFi will make reasonable efforts to make the Service available in accordance with the service level (SLA). The credit and remedy in the SLA is Customer's exclusive remedy and GoBig WiFi's sole liability for any breach of the Service Level Warranty. Customer agrees that all data will be transmitted from the appliance directly to GoBig WiFi's systems hosting provider. The data will be stored and maintained in accordance with the applicable terms and policies of the hosting provider.
- b. **Exclusions.** GoBig WiFi has no obligation for any defect or damage from: (i) installation or use of third party software on the GoBig WiFi appliance; (ii) modifications or repairs to the GoBig WiFi appliance or Firmware (defined below) made by Customer or any third party; (iii) misuse, accident, incorrect configuration or setup, neglect, abuse, failure of electrical power, adverse environmental conditions, unusual electrical or physical stress, catastrophe, negligence, improper storage, testing, or connection, or other improper treatment; (iv) use of the GoBig WiFi appliance or Firmware other than as detailed in GoBig WiFi technical documentation; or (v) any other causes beyond GoBig WiFi's reasonable control.

DISCLAIMER. THE SERVICE WILL NOT OPERATE WITHOUT ACCESS TO THE GOBIG WIFI SERVER ON THE INTERNET. EXCEPT FOR THE ABOVE WARRANTIES, THE SERVICE AND THE GOBIG WIFI APPLIANCE ARE PROVIDED AS IS. GOBIG WIFI DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE GOBIG WIFI TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURE TO SECURE THE SERVICE, GOBIG WIFI DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED. GOBIG WIFI HAS NO RESPONSIBILITY FOR ANY WORK PERFORMED BY OR DAMAGE CAUSED BY AN INSTALLER OF THE APPLIANCE. CUSTOMER SHOULD CONTACT THE INSTALLER DIRECTLY REGARDING FAULTY INSTALLATIONS.

- 4. **PAYMENT.** Customer must make the payment in advance to either GoBig WiFi directly or through GoBig WiFi authorized reseller to activate and maintain the Service. Customer has the option to either automatically or manually renew the **Merchant cloud** subscription service. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement. If the Customer unsubscribes the Service, GoBig WiFi will credit back any remaining prepaid service fee to the Customer.

5. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). GoBig WiFi's Confidential Information includes without limitation the Service and Firmware (including without limitation the Service's user interface design and layout).
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law, court order or legal process, but (unless prohibited by law) will attempt to provide Discloser with advance notice to seek a protective order.

6. GOBIG WIFI PROPERTY.

- a. **Reservation of Rights.** The software, user interface, designs, know-how, appliance Firmware, and other technologies provided by **GoBig WiFi** as part of the Service are the proprietary property of **GoBig WiFi** and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with **GoBig WiFi**. Customer may not remove or modify any proprietary marking or restrictive legends in the Service, GoBig WiFi appliance Firmware. **GoBig WiFi** reserves all rights unless expressly granted in this agreement.

- b. **Restrictions.** Customer *may not*: (i) sell, resell, rent or lease the Service or use it in a service provider capacity (other than with the Users); (ii) use the Service to store or transmit infringing, unsolicited marketing emails and SMS, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service, GoBig WiFi appliance or Firmware; (iv) attempt to gain unauthorized access to the Service, GoBig WiFi appliance, Firmware or its related systems or networks; (v) reverse engineer the Service or the Firmware; (vi) remove or erase the Firmware from the GoBig WiFi appliance, or otherwise try to disable or alter the Firmware or GoBig WiFi appliance; (vii) access the Service or use the Firmware or GoBig WiFi appliance to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c. **Firmware Software.** All software provided by GoBig WiFi on the GoBig WiFi appliance (**Firmware**) are licensed to Customer as follows: GoBig WiFi grants Customer a non-exclusive, non-sublicensable, non-transferable personal license during the Term, to use the Firmware for Customer's internal business operational purposes, as embedded on the GoBig WiFi appliance.
- d. **Third Party Licenses.** If any of the GoBig WiFi appliance includes software provided by a third party, the terms governing that software are located at <http://www.gobigwifi.com/legal.html>.

7. TERM AND TERMINATION.

- a. **Term.** This agreement continues for the duration of all orders (**Term**).
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c. **Suspension of Service for Violations of Law.** GoBig WiFi may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law.

8. LIABILITY LIMIT.

- A. **EXCLUSION OF INDIRECT DAMAGES.** GoBig WiFi is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of data, records or information; lost profits and any failure of delivery of the Service, GoBig WiFi appliance or Firmware).
- B. **TOTAL LIMIT ON LIABILITY.** GoBig WiFi's liability for all damages arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 6 month period prior to the event that gave rise to the liability.

- 9. **CUSTOMER INDEMNITY.** If any third-party brings a claim against GoBig WiFi related to Customer's acts, omissions, data or information stored or transmitted within the Service or GoBig WiFi appliance, Customer must defend, indemnify and hold GoBig WiFi harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.

- 10. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of California (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement (**Claim**) excluding claims for injunctive or other equitable relief. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Newport Beach, California, and Customer submits to this personal jurisdiction and venue. The prevailing party in any litigation or arbitration is entitled to recover its attorneys' fees and costs from the other party.

Optional Arbitration for Claims Less than \$10,000. Notwithstanding the foregoing, for any Claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may choose to resolve the dispute in a more cost effective manner through binding non-appearance-based arbitration. If a party elects arbitration, they must initiate such arbitration through an established alternative dispute resolution (**ADR**) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (a) the arbitration will be conducted by telephone, online and be solely based on written submissions, the specific manner will be chosen by the party initiating the arbitration; (b) the arbitration will not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator is final and may be entered in any court of competent jurisdiction.

11. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement, the order, support terms, and the SLA constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

- b. **Electronic Notice.** For purposes of service messages and other notices about the Service, GoBig WiFi may send email notices to the email address associated with Customer's account. GoBig WiFi has no liability associated with Customer's failure to maintain accurate contact information.
- c. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
- d. **Independent Contractors and Export Compliance.** The parties are independent contractors with respect to each other. Customer must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.
- e. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for force majeure events.
- f. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- g. **No Additional Terms.** GoBig WiFi rejects additional or conflicting terms of any Customer form-purchasing document.
- h. **Survival of Terms and no CISG.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.

Changes: Our business changes constantly and our Terms of Service may also change. You should check our website <http://www.gobigwifi.com/legal.html> frequently to see recent changes.

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