

# MECnet Documentation

## Internet Access Wrap-Around Services



### Service Delivery Agreement

These Terms and Conditions govern the provision of Internet Access Wrap-Around Services only to the Customer by the Merrimack Education Center ("MEC"). Customer acknowledges that additional Terms and Conditions and/or Tariffs may apply to the provision of other services by MEC. To the extent that Customer is acquiring these Internet Access Wrap-Around Services, or any component thereof, through a state master contract, MEC will abide by any applicable terms of the state master contract governing MEC's provision of this Service.

#### ARTICLE I MEC Responsibilities & Services

MEC will provide the Internet Access Wrap-Around Services ("Service") as described on the front page of this Agreement (the "Cover Page"). MEC's responsibilities with respect to the provision of the Services are as follows:

1.1 Installation. This Section 1.1 applies only to new customers, as indicated on the Cover Page. MEC will lease a circuit (the "Circuit") in order to provide Service to the Customer. MEC will arrange for a vendor (the "Circuit Provider") of MEC's choice to install the Circuit at the Customer's demarc. At Customer's request and for an additional fee, MEC will arrange for the Circuit Provider to extend the Circuit beyond Customer's demarc. Customer will be responsible for a cancellation fee for Circuit installations cancelled within ten business (10) days of the circuit completion date, as determined by the Circuit Provider.

1.2 Internet Access. MEC will assign an IP address for the Customer's use during the term of this Agreement, establish IP routing, and perform initial installation and testing of the Internet connection at Customer's premises. MEC will provide routing services based on the Transmission Control Protocol/Internet Protocol ("TCP/IP") and dedicated Internet access through the Circuit enabling Customer to connect to the Internet without the need to dial into an Internet access point.

1.3 License to Software. As part of the Service, MEC shall provide to Customer e-mail service and accounts, Web hosting, and upstream Internet content filtering. In connection with such Services, MEC shall provide to Customer certain software owned or licensed by MEC, including the upstream filtering MECguard™ software (the "Filtering Software"), e-mail accounts, and Web hosting software (collectively, the "Software").

MEC hereby grants to Customer a non-exclusive license to use the object code for the Software in the United States during the term of this Agreement, solely for Customer's internal operations and for use by Customer's directors, officers, administrators, employees, agents, students and other third party users of the Services (collectively, the "Users") for their internal, educational, and nonprofit purposes in regulating content and Web sites accessible to Customer and Users. Customer agrees and acknowledges that the Software contains copyrights, trade secrets, and confidential information of MEC or its licensors and any use of the Software not in accordance with this Agreement would be harmful to the interests of MEC and/or its licensors. Customer further agrees and acknowledges that MEC or its licensors shall retain all title, copyright, and other proprietary rights in the Software, and that Customer does not acquire any rights, express or implied, in the Software, other than those specified in this Agreement.

1.4 Technical Support. MEC will provide Technical Support (defined herein) for the Service on a 24/7 basis. "Technical Support" means reasonable efforts by MEC to diagnose and resolve Service problems of which MEC is notified and given a reasonably detailed description and which MEC is able to reproduce. Technical Support will be provided from a Massachusetts-based help desk accessible by telephone during MEC's normal business hours and by pager outside of MEC's normal business hours.

#### ARTICLE 2 Client Duties and Restrictions

2.1 Environment: Access. Customer will provide a suitable location, environmental conditions (room temperature and humidity should be consistent with published criteria established by equipment vendor or Circuit Provider, and

power supply for the operation of the Circuit and equipment to provide Service. Customer will permit MEC's personnel, the personnel of MEC's contractors and subcontractors and the Circuit Provider's personnel to access the Circuit and equipment during normal business hours to service and maintain the Circuit or equipment.

2.2 Network Equipment. The term "Network Equipment" shall include all hardware, software, upgrades, and services necessary for the Customer's connection to the Internet during the term of this Agreement, but shall not include the Circuit as provided in Section 1.1. MEC will provide the Customer with the Network Equipment listed on the Cover Page. MEC will make the necessary connections to the Customer's Network Equipment in order for the Customer to receive Internet Service. Customer shall provide MEC with the authority to manage Customer's Network Equipment whether supplied by MEC or by another vendor, as determined by MEC. Customer shall be solely responsible for obtaining any additional Network Equipment necessary for successful communication with the Internet, including without limitation, entering into any contracts for lease, license, support, or purchase of any such Network Equipment. Customer shall be solely responsible for the maintenance of all Customer-supplied Network Equipment, unless the parties enter into a separate service agreement for such Customer-supplied Network Equipment and in which case, MEC will provide support services in accordance with the terms of the service agreement. If Customer-supplied Network Equipment fails or does not have adequate functionality, Customer shall procure any additional or replacement Network Equipment at its sole expense. At Customer's request and for an additional fee, MEC will provide, install and set up such additional and/or replacement Network Equipment upon such terms, conditions and price as mutually agreed by the parties. Any Network Equipment purchased or leased from MEC for the provision of these Wrap-Around Services will be supported by MEC for the duration of the contract. Should any supported Network Equipment provided by MEC fail, MEC will provide replacement Network Equipment in accordance with the manufacturer's warranty. MEC will not be responsible for any outages, downtime, or damage to the Network Equipment resulting from Customer accessing the Equipment, or giving third party access to the Equipment necessary to connect to the Internet. MEC may charge a fee for time and materials as necessary if repairs are required as a result of access from a third party or Customer.

2.3 Liaison. Customer shall assign an administrative liaison to act as the sole contact person for Customer for all matters relating to the administrative operation of the Services. Customer shall also assign a technical liaison to act as the sole contact person for Customer for all matters relating to the technical operation of the Services. The Customer shall provide MEC with the name, mailing address, email address, and telephone number for both its administrative liaison and technical liaison. The Customer shall notify MEC of any changes in the assignment of its liaisons or any changes in the contact information.

2.4 Permitted Usage. It is agreed that MEC is acting only as an Internet Service Provider under this Agreement, and as such Customer shall be solely responsible for establishing its usage policies (subject to the restrictions contained herein) and ensuring compliance therewith by the Users. Customer shall, and shall cause its Users to:

2.4.1 Obtain proper authorization for the use of the Services by Users. If a User is a minor this includes obtaining the consent of the User's parent or legal guardian to use the Service.

2.4.2 Use the Services solely for educational and non-profit purposes associated with approved Customer activities.

2.4.3 Use the Services in compliance with all applicable laws and regulations and the Circuit Provider's Acceptable Use Policy ("Use Policy") as posted on its website (the "Site"). Customer acknowledges that it has read the current Use Policy. The Use Policy may be modified by the Circuit Provider from time to time by posting an updated Use Policy on the Site. Customer agrees to periodically review the Site to keep abreast of any changes to the Use Policy, which changes shall be effective immediately when posted. Use of the Service following the posting of any such changes to the Use Policy shall constitute acceptance of those changes.

2.4.4 Comply at all times with any and all usage policies, terms and conditions, proprietary notices, and restrictive notices of parties responsible for the administration of the Internet and/or any other network to which it is connected and/or to which Customer's communications travel.

2.5 Restrictions. Customer shall not, and shall not permit the Users to do any of the following:

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2.5.1 Resell the Services or any other MEC services to third parties without the express prior written permission of MEC;

2.5.2 Sublicense, rent, or the Software to third parties without the express prior written permission of MEC or use the Filtering Software for service bureaus;

2.5.3 Cause or permit the disabling, reverse engineering or disassembly or decompilation or translation into human readable form of the Software (or any portion thereof);

2.5.4 Copy the Software or any part of the Software;

2.5.5 Permit unauthorized third parties to access or use the Service or the Software;

2.5.6 Send any unsolicited communications (including email) of a commercial nature through the Service; make inappropriate postings to newsgroups; send open-relays; or otherwise act in violation of commonly accepted Internet etiquette;

2.5.7 Engage in any illegal, unlawful, or destructive activities, including without limitation, copyright infringement, wire fraud, theft of services, "hacking", gambling, improperly accessing classified or other government-restricted data, transmission of child pornography or other obscene materials, conspiracy, harassing or threatening behavior, or intentional distribution of computer viruses, worms, Trojan horses, timebombs, or any other rogue programming; or Transmit, retransmit, publish, or reproduce, any material in infringement or violation of any copyright, patent, trademark, trade secret, or other right of any third party.

### ARTICLE 3 Fees

3.1 Fees. Customer agrees to pay all invoices upon receipt. The initial start-up fee for the lease and installation of the Circuit will be invoiced upon installation. The monthly fee, as specified on the Cover Page, for the Service including MEC provided Technical Support and other features of the Service listed on the Cover Page, will be invoiced monthly in advance. A finance charge in an amount equal to one and one-half percent (1.5%) per month or, if lower, the maximum rate allowed by applicable law will be assessed on payments not received on or prior to the due date.

3.2 E-Rate Program. A portion of the initial start-up fee and monthly fee may be reimbursable through the FCC E-Rate program for eligible institutions. Customer represents and warrants that it has complied with, and shall comply with, all applicable state and federal procurement and E-Rate reimbursement requirements and procedures concerning the Service provided hereunder during the term of this Agreement. Customer shall be responsible for applying for E-Rate funding for eligible Services in accordance with all applicable rules and procedures. MEC will reasonably cooperate with Customer in the application process for the E-Rate program, and if Customer is eligible for a discount (as determined by the FCC), the initial start-up fee and monthly fee will be adjusted to reflect the applicable E-Rate discount.

### ARTICLE 4 Term and Termination

4.1 Term. The term of this Agreement shall be for an initial period of one year, from July 1, 2009 through June 30, 2010. THIS AGREEMENT WILL AUTOMATICALLY RENEW AT THE END OF THE INITIAL TERM (AND AT THE END OF EACH RENEWAL TERM THEREAFTER) FOR ADDITIONAL ONE YEAR PERIODS, UNLESS WRITTEN NOTICE IS GIVEN BY EITHER PARTY ON OR BEFORE ONE HUNDRED TWENTY (120) DAYS PRIOR TO THE EXPIRATION OF THE THEN-CURRENT TERM OF THE PARTY'S INTENTION NOT TO RENEW. The fees payable by Customer during any renewal period will be subject to MEC's then current fee structure. These terms and conditions do not apply to multi-year contracts.

4.2 Termination. Except as otherwise provided by law, this Agreement only may be terminated by either party upon one hundred twenty (120) days' written

notice if the other party breaches this Agreement in any material respect and the breaching party fails to cure such breach within such 30-day period. The foregoing notwithstanding, the notice and cure period for payment related breaches by Customer shall be fifteen (15) days. For the avoidance of doubt, any breach of Section 2.4 or 2.5, as determined in MEC's reasonable discretion, shall be deemed a material breach of this Agreement for which MEC shall have the right to immediately suspend the Service, and if Customer fails to remedy such breach within thirty (30) days after receiving written notice thereof, this Agreement shall automatically terminate.

4.3 Effect of Termination. Upon any termination of this Agreement, MEC shall immediately terminate the Service and Customer shall pay any outstanding amounts payable (including accrued monthly fees, prorated as applicable, that have not yet been invoiced). In the event of termination by MEC for cause, Customer shall also pay in full the monthly fee for each month remaining in the initial term of this Agreement (as defined in Section 4.1), in addition to any fees and/or penalties imposed by third party suppliers of communication lines ordered by MEC as a result of this Agreement. All amounts owed by Customer to MEC shall be immediately due and payable. Sections 3.1 (to the extent of any unpaid obligations), 5.3, 6, 7.1, and 8 shall survive any termination of this Agreement.

### ARTICLE 5 Limited Warranty; Disclaimer

5.1 Authority. The individuals executing this Agreement on behalf of any entity, incorporated or not, do hereby represent and warrant that they are duly authorized to execute this Agreement.

5.2 Limited Warranty. All professional services provided by MEC will be rendered by qualified personnel in a workmanlike manner consistent with commercial practices standard in the industry. MEC will use reasonable efforts to continuously provide the Service without interruption, except for scheduled downtime. Customer's exclusive remedy and MEC's only obligation for unscheduled downtime will be (a) for MEC to use reasonable efforts to restore the Service and (b) the issuance of a prorated credit for unscheduled downtime that exceeds a period of twenty-four (24) continuous hours, where such outage credit is provided to MEC by the Circuit Provider.

5.3 Disclaimer - General. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED ABOVE, THE SERVICES AND ALL SOFTWARE ARE PROVIDED "AS IS," AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY EXCLUDED AND DISCLAIMED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USE OF TRADE. CUSTOMER'S USE OF THE SERVICE IS ENTIRELY AT ITS OWN RISK. CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S SOLE RESPONSIBILITY TO MAINTAIN SUCH INTERNET, E-MAIL, AND COMPUTER USE POLICIES AND PROCEDURES AND APPROPRIATELY MONITOR USE OF THE SERVICE TO ENSURE APPROPRIATE USE OF THE SERVICE AND CUSTOMER'S COMPUTER SYSTEMS.

5.4 Disclaimer - Web Hosting and E-Mail. CUSTOMER AGREES AND ACKNOWLEDGES THAT MEC SHALL NOT KEEP A RECORD OF E-MAIL TRANSMITTED, OR LOG WEB ACCESS THROUGH THE SERVICE. MEC MAY MAINTAIN BACKUP OF SUCH TRANSMISSIONS OR ACCESS BUT DOES NOT GUARANTEE THAT THE DATA WILL BE AVAILABLE, AND CUSTOMER AGREES AND ACKNOWLEDGES THAT THERE MAY BE CIRCUMSTANCES WHERE THE DATA MAY BE IRRETRIEVABLE. CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S SOLE RESPONSIBILITY TO MAINTAIN SUCH BACKUP POLICIES AND PROCEDURES TO ENSURE APPROPRIATE STORAGE OF DATA AND E-MAIL.

5.5 Disclaimer-Content and Filtering Software. CUSTOMER ACKNOWLEDGES THAT THROUGH THE USE OF THE SERVICE, CUSTOMER AND ITS USERS MAY HAVE ACCESS TO CONTENT WHICH MAY BE SEXUALLY EXPLICIT, OBSCENE, OR OFFENSIVE, OR OTHERWISE HARMFUL TO OR UNSUITABLE FOR MINORS UNDER THE AGE OF EIGHTEEN (18) YEARS OLD, AS WELL AS TO SPAM OR VIRUSES. CUSTOMER ACKNOWLEDGES THAT THE ROLE OF MEC IS AS INTERNET SERVICE PROVIDER ONLY AND THAT MEC HAS NO CONTROL OVER ANY CONTENT TRANSMITTED OVER THE SERVICE, NOR DOES ANY LINK TO A WEBSITE CONSTITUTE OR IMPLY THAT MEC ENDORSES THE CONTENT, PRODUCTS, OR SERVICES AVAILABLE AT SUCH

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WEBSITE. CUSTOMER AGREES AND ACKNOWLEDGES THAT NO SOFTWARE CAN FILTER OR BLOCK ALL CONTENT ON THE INTERNET THAT MAY BE CONTAIN OBSCENITY, CHILD PORNOGRAPHY, OR OTHER MATERIALS HARMFUL TO OR UNSUITABLE FOR MINORS. THEREFORE, MEC SPECIFICALLY DOES NOT WARRANT THAT THE FILTERING SOFTWARE WILL PREVENT ACCESS TO ALL MATERIALS THAT ARE OBSCENE, PORNOGRAPHIC, OR HARMFUL TO OR UNSUITABLE FOR MINORS.

### ARTICLE 6 Limitation of Liability

6.1 Direct Damages. CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY CLAIMS ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES SUCH REMEDY SHALL BE LIMITED TO MONEY DAMAGES NOT EXCEEDING THE TOTAL FEES PAID FOR WRAP-AROUND SERVICES BY CUSTOMER TO MEC DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES.

6.2 Consequential Damages. IN NO EVENT SHALL MEC BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR DATA, LOSSES CAUSED BY DELAY OR DOWNTIME OF THE SERVICE, OR LOSSES FROM THE INTERRUPTION, TERMINATION, OR FAILED OPERATION OF THE SERVICE, THE INTERNET, OR THIRD-PARTY TELECOMMUNICATION SERVICES, EVEN IF MEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL MEC BE LIABLE TO CUSTOMER FOR ANY DAMAGE ARISING FROM ANY INACCURACY OF DATA OBTAINED FROM THE INTERNET OR ANY OTHER NETWORK RELATING TO THIS AGREEMENT, OR RELATING TO THE SECURITY THEREOF.

### ARTICLE 7 Indemnification

Customer shall indemnify, defend (at its expense) and hold MEC and its affiliates, directors, officers, employees, and agents harmless from any claim or demand made by a third party for any loss, liability, cost, or expense of whatever form or nature (including attorneys' fees) in connection therewith arising out of (a) Customer's or any User's use of the Service, including without limitation in connection with any content that Customer or any User may view, post or otherwise transmit via the Service, (b) Customer's violation of this Agreement, or (c) Customer's or any User's violation of any applicable law (including, without limitation, Customer's violation of export laws and regulations), or the rights of any third party, including without limitation any third party intellectual property rights.

### ARTICLE 8 General

8.1 Arbitration, Governing Law. In the event that the parties are unable to resolve

any dispute, they agree to submit the dispute to binding arbitration conducted by a single arbitrator in the greater Boston, Massachusetts area according to the rules of the American Arbitration Association then in effect, or other rules as agreed upon by the parties. The arbitrator shall apply Massachusetts law to the merits of any dispute, without reference to its choice of law rules. The party who loses the arbitration proceeding shall pay the arbitrator's fees and costs. Notwithstanding the foregoing, Customer understands and acknowledges that in the event of a breach or threatened breach of the provisions of Sections 1.3, 2.4 and 2.5, MEC will be entitled, in addition to any other rights or remedies at law and equity, to seek injunctive relief against Customer without the necessity of posting a bond, to prevent the irreparable harm that such breach or prospective breach may cause.

8.2 Assignment. Customer shall not assign this Agreement, in whole or in part, without the prior written consent of MEC, and any attempted assignment shall be void. MEC may assign this Agreement.

8.3 Entire Agreement. This Agreement, together with the Cover Page, constitutes the entire agreement between the parties with respect to the Wrap-Around Services provided hereunder and supersedes all prior discussions, representations, and understandings related to the subject matter hereof. No modifications of this Agreement will be binding on either party unless set forth in a writing signed by both parties. No purchase order will supersede this Agreement.

8.4 Waivers. No waiver of any portion of this Agreement will be effective unless in a writing signed by the waiving party. The failure of either party at any time to require performance by the other party of any provision of this Agreement will in no way affect the right of such party to enforce that or any other provision of this Agreement. No waiver of any breach of this Agreement will constitute a waiver of any subsequent breach of the same or any other provision of this Agreement.

8.5 Notices. All notices given pursuant to this Agreement shall be in writing sent prepaid by certified or registered mail or commercial express courier, and will be deemed effective upon receipt. All such notices will be sent to the address shown on the Cover Page (which may be changed by notice given in accordance with this Section).

8.6 Force Majeure. MEC shall not be responsible for delays resulting from acts of God, acts of the public enemy, fires, floods, strikes, labor disputes, or other acts beyond its reasonable control.

8.7 Severability. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined to be invalid or unenforceable, the remaining provisions of this Agreement will remain binding and enforceable, and shall be interpreted so as best to reasonably effect the intent of the parties. The parties further agree that any such invalid or unenforceable provisions will be deemed replaced with valid and enforceable provisions that achieve, to the extent possible, the business purposes and intent of such invalid and unenforceable provisions.

8.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall not be a condition to the effectiveness of this Agreement that each party shall have executed the same counterpart.

8.9 Binding Effect. Customer represents and warrants that it is duly authorized to execute this Agreement and Customer acknowledges, by its signature on the Cover Page, that it has read this entire Agreement, understands it, and agrees to be bound by its terms and conditions.