

## NETWORK SERVICE AGREEMENT

THIS NETWORK SERVICE AGREEMENT ("Agreement") is dated as of September 11, 2017, by and between Networkx Solutions, Inc. ("NSI"), a Florida corporation, and Grand Panama Condominium Owners Association, Inc. ("GPO"), a Florida Corporation.

**WHEREAS**, NSI is a wireless services provider; and **WHEREAS**, GPO desires to enter into this network service agreement with NSI for the design, construction, maintenance, and support of a wireless resident and guest network located at 7115 Thomas Drive Panama City Beach, FL 32408.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound, the parties hereto agree as follows:

### Definitions

For purposes of this Agreement, and unless otherwise defined herein, the terms below will have the following meaning ascribed in them:

**"Non-scheduled Downtime"** will mean the time period when all or some of the service may be inaccessible or inoperable for various reasons, service malfunctions, and/or causes beyond the control of NSI or which are not reasonably foreseeable by NSI, including interruption or failure of the network, network congestion, or other failures.

**"Scheduled Downtime"** will mean the time period when software may be inaccessible or inoperable for various reasons, including periodic maintenance procedures, updates, or upgrades.

**"Services"** will be those tasks that the parties agree that NSI will perform as part of this agreement and that are more particularly described in Exhibit A.

**"Upgrade"** means a service not described on Exhibit A that may include, but is not limited to, new software or improved service that NSI may make available to GPO for an additional fee.

### Terms

**Fees and Period of Agreement.** In consideration of the fees to be paid, which fees are set forth on Exhibit A and are hereby incorporated within this Agreement, NSI agrees to provide services to purchaser for the period of sixty (63) months subject to the terms and conditions included herein.

**Exclusive Provider.** GPO agrees that NSI will be the exclusive provider of the services described on Exhibit A.

**Service vs. Client requests Upgrades.** The parties agree that, as part of this Agreement, NSI will perform the services more particularly described in Exhibit A. If GPO requests a deviation from the outlined services or a specific or unique request **not** described on Exhibit A, this will be considered an upgrade. Upgrades will be offered to GPO at an additional charge.

**Sub-license or Assignment of Rights.** GPO agrees that any new owner or successor in interest must assume the terms of this Agreement, if the new owner or successor cannot assume the contract, the contract will remain in effect with GPO. If the new owner cannot assume the terms of this contract, NSI will allow GPO to buy out the remainder of the contract term at a 25% discount. GPO further acknowledges that NSI may assign its rights or obligations with respect to this Agreement at its sole discretion and without the written permission of GPO.

### **Services**

**General.** NSI will use its commercially reasonable efforts to provide the network twenty four (24) hours a day, seven (7) days a week throughout the term of this Agreement. GPO agrees that, from time to time, all or a portion of the network may be inaccessible or inoperable for various reasons, including scheduled downtime and non-scheduled downtime. NSI will use commercially reasonable efforts to minimize any disruption, inaccessibility, and/or inoperability of the system. Credit for downtime is outlined in Exhibit A.

**Critical Fixes.** In the event that NSI discovers or is notified by GPO of the existence of non-scheduled downtime of a critical nature, or if NSI becomes aware of any non-scheduled downtime through any other means, NSI will take all actions commercially reasonably to determine the issue's source. If the source is outside of the control of NSI, NSI will use commercially reasonable efforts to notify the party/parties responsible and cooperate with the party/parties to resolve such issues as soon as commercially possible. NSI will work with all parties to determine a timeframe for repairs and restoration of service. Reimbursement for downtime is outlined in Exhibit A.

**Routine Network Problems** of a nature limiting GPO's use of the network will be repaired within seven (7) business days (excluding weekends and holidays) of receipt of a written report received by NSI or as soon as commercially reasonable. This includes all switches, routers, UPS's, firewalls, access points, as well as ancillary hardware onsite.

**Upgrades.** If NSI is to provide upgrades to GPO, all such upgrades will be described in a separate written agreement by and between the parties.

### **Renewal and/or Termination**

**Renewal.** Unless otherwise stated herein, renewal terms are described on Exhibit B.

**Termination.** A party may terminate this Agreement prior to the end of the initial term or any renewal term if the other party is in material breach of the Agreement and fails to cure the breach within sixty (60) days after written notice. Upon the effective date of termination of this

Agreement, NSI will cease providing services, GPO will cease using services, and all payment obligations of GPO through the effective date of termination will immediately become due. Any early termination will result in the removal of all hardware and software from the premises by NSI. All installed hardware and software are the property of NSI during the term of the contract and as such, GPO agrees to allow NSI reasonable access to any premise where hardware or software subject to this contract is installed for the purpose of removal and recovery. The remedies stated herein and in the remainder of the Agreement are cumulative and are in addition to any remedies available at law or in equity. In the event of early termination, the non-breaching party may pursue any and all remedies available to it under this Agreement, at law or in equity.

**Restoration.** Upon the completion of any installation, maintenance, repair, or removal of the services or any part thereof, NSI will make a good-faith effort to restore the affected wall outlet boxes and equipment racks to their pre-installation condition. All wall outlet boxes will be fitted with their original faceplates or reasonable replacements. Any new outlet box will be covered with a blank outlet faceplate. Any cabling or facility wiring added by NSI will be left in place in the event of any termination.

#### **Warranties**

**General.** NSI warrants that it will use commercially reasonable efforts and qualified personnel to provide the service to GPO.

**No Other Warranties.** NSI MAKES NO WARRANTY, REPRESENTATION, OR PROMISES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE SERVICE. NSI EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NSI AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICES WILL SATISFY GPO OR ITS END USERS' REQUIREMENTS OR THAT THE NETWORK'S OPERATION WILL BE UNINTERRUPTED.

#### **Limitations of Liability**

**Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL NSI BE LIABLE FOR ANY TYPE OF INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM ANY SERVICE INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT COSTS, LOSS OF THE TECHNOLOGY OR EQUIPMENT, LOSS OF INFORMATION, MISINFORMATION, INTERRUPTION OR LOSS OF USE OF SERVICE EVEN IF NSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The parties agree that NSI has set its prices and entered in this Agreement in reliance upon these limitations of liability and the disclaimers of warranties and damages set forth herein, and that they are an essential basis of the bargain between the parties.

**Remedies.** NSI agrees that if there is a nonconformity or defect in the services, or performance of an upgrade, it will attempt through reasonable effort to correct or cure such nonconformity or defect. GPO accepts this as its exclusive remedy. GPO further agrees to promptly notify NSI immediately in writing if GPO discovers any unauthorized changes or has misused the network in any respect. If GPO does not provide this written notification, NSI will not be responsible for

correcting or curing any resulting nonconformity or defect.

**Insurance and Indemnification.** NSI shall indemnify and hold harmless GPO from and against any and all liability, suits, damages and judgments arising from (i) any injury to, or death of, any person or persons or damage to property that is caused by NSI's negligence or willful misconduct in the installation, maintenance, repair, operation or removal of the Services; or (ii) any breach or non-performance by NSI of any of its representations, obligations or covenants contained in this Agreement. NSI will maintain at its expense comprehensive general liability insurance and commercial general liability insurance. Policy limits shall be not less than a combined single limit for bodily injury, property damage, and personal injury liability of \$1,000,000 per occurrence and \$2,000,000 aggregate.

#### **Miscellaneous**

**Independent Contractor.** Unless otherwise agreed in writing between the parties to the Agreement, the parties hereto are independent contractors, and no party will have the right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against, or in the name of or on behalf of the other party.

**Invoices.** GPO will pay all involved charges from NSI within 10 days of the billing date which is the first calendar day of each month. If GPO fails to pay said charges within 10 days, NSI may charge a \$35.00 administrative fee and interest on any outstanding balance at the highest rate allowed by law. Any charge or invoice that is delinquent more than 90 days will be a material breach of this contract. GPO is responsible for all local, state, or Federal taxes.

**Delinquent Account.** If GPO fails to pay invoices according to the terms set forth in this agreement, in addition to all other rights and remedies which NSI may have at law or in equity, NSI may, without terminating this Agreement, in its sole discretion and without further notice to GPO (other than the request for payment), suspend services and/or deny GPO access to them until such time as all invoices, administrative fees, and interest are current.

**Force Majeure.** If by reason of labor disputes, strikes, lockouts, riots, war, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions, appropriation or other causes beyond the control of a Party hereto, either party is unable to perform in whole or in part its obligations as set forth in this Agreement, then such Party will be relieved of those obligations to the extent it is so unable to perform and such inability to perform will not make such Party liable to the other Party. Neither Party will be liable for any delay or damages suffered or incurred by the other Party due to the above causes.

**Severability.** If any provision in the Agreement is invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

**Entire Agreement.** The Agreement and its attached exhibits set forth the entire understanding and agreement between NSI and GPO and supersede all proposals or communications, oral or

written, between the parties relating to the subject matter of the Agreement. No modification to the Agreement will be binding unless it is in writing and is signed by both parties.

**Waiver.** No waiver of any right under the Agreement shall be deemed effective unless contained in writing and signed by an authorized representative of NSI and GPO, and no waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under the Agreement.

**Attorneys' Fees.** In the event that any suit or other legal proceeding is brought for the purpose of enforcing the Agreement or otherwise in connection with the Agreement, in addition to whatever remedies the prevailing party in such suit or legal proceeding might be entitled, such prevailing party will be entitled to reasonable attorneys' fees and expenses, including those incurred in preparation for any hearing, motion, trial, or appeal.

**Governing Law; Jurisdiction; Venue.** Any disputes under the Agreement will be resolved under Florida law without reference to conflict of laws principles. For any disputes arising out of the Agreement, the parties hereby consent and submit to the exclusive jurisdiction of the courts sitting in Bay County, Florida.

NSI will operate the network in accordance with all relevant laws and (or) governmental regulations. NSI and GPO agree that any part of this agreement in conflict with any existing law or governmental regulation (current or future) will be amended to comply with such law(s) or regulation(s).

**Counterparts.** The Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same Agreement.

**Interpretation.** The Parties agree that each of them has participated in negotiation of the Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply to the interpretation of the Agreement.

**Internet.** NSI (nor any of its partners or affiliates) is not responsible for content on the local network or on the Internet. NSI takes no responsibility for any direct or indirect consequences to any person or his/her property as a result of using this network. Residents, guests, or any users on this network take full responsibility to safeguard their person, phones, tablets, laptops, desktops, or any other devices potentially used to connect to this network and, thus, the Internet through it. GPO Owners and guests take full responsibility to assure that any minor under their care will use the network according to all local, state, and federal laws and regulations, and to monitor the minor's use of the network.

GPO understands and agrees that any user's connection could potentially be intercepted by a third party and that residents and/or guests take full responsibility to safeguard their devices and data from hackers, viruses, rouge programs, or any outside or inside attempt to gain access to their system. GPO agrees to indemnify NSI against any damage or consequence to any person or device using this network or the Internet through it.

The network delivered by NSI is a shared local area network (LAN). All devices and users connected to the LAN share common resources such as bandwidth. NSI will employ quality of service, load balancing, as well as other technologies to assure that all users have fair access to the system resources. Individual devices or users consuming excessive bandwidth or using the system to download large amounts of data (such as a torrent) may be metered or blocked.


NSI will not open outside TCP or UDP service ports for programs or services inside the LAN.

IN WITNESS WHEREOF, the parties execute this Agreement intending to be bound effective on the date included herein.

**NETWORX SOLUTIONS, INC. ("NSI")**

 9-11-17

**GRAND PANAMA CONDOMINIUM OWNERS ASSOCIATION, INC. ("GPO")**



## **EXHIBIT A**

NSI will design, construct, and support a Wireless Guest Network for access in all guest rooms, common areas and pool decks.

Specifically, NSI will provide all routing, switching, wireless access points, battery backups, patch panels, line terminations, and ancillary hardware related to the Guest Internet network.

NSI will install one access point in each condominium unit. NSI will provide all network support, repairs, and hardware replacement for device failures due to equipment defect or workmanship during the term of the main contract using the terms of the main contract. This will include any and all devices associated with the network infrastructure.

The network as designed will primarily support personal devices such as laptops, desktops, PC's, Mac's, tablets and smart phones for personal Internet access. Many other non-personal devices can also access the Internet; NSI does not block their connection, but may not support them.

NSI will provide a toll-free support phone number 24 hours a day, 7 days a week. NSI reserves the right to select how this service will be provided and may provide utilizing NSI staff or third party call centers. This service will provide assistance only for Internet connection issues on the network. Guests may not use it for other computer or software issues.

Any failure due to an outside source such as, but not limited to, theft, vandalism, fire, water damage, riots, floods, or any act of God are not covered by this agreement. Any hardware damaged or removed by any party other than NSI, and is not specifically covered by this agreement, will be billed to GPO at standard retail charges for product and installation.

Monthly fees will be \$18.50 per unit plus taxes with due dates set by the main contract.

If there is any type of property-wide service interruption lasting in excess of 24 hours, NSI will credit GPO for the downtime on the next monthly statement in the amount of the average daily rate for each unit affected by the outage for each full 24-hour period of the service interruption. The exact amount of the credit will be delivered to GPO via email and will be applied to the next billing period.

This credit will not apply if the interruption is (for any reason) caused by GPO, any of its agents, contractors, sub-contractors, or any outside source beyond the control of NSI.

NETWORKX SOLUTIONS, INC. ("NSI")

 \_\_\_\_\_ Date 9-11-17

GRAND PANAMA CONDOMINIUM OWNERS ASSOCIATION, INC. ("GPO")

 \_\_\_\_\_ Date \_\_\_\_\_

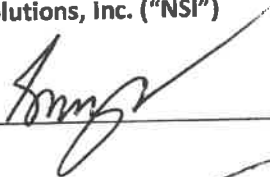


## **EXHIBIT B**

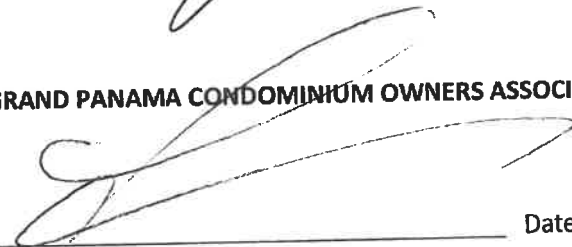
Unless NSI is notified in writing at least ninety (90) days prior to the ending date of the original contract term, the original contract will auto renew for sixty (60) additional months. GPO may elect to renew the contract for twelve (12) months, but NSI may, at its sole discretion, choose not to renew the contract, or to renew at a rate up to 20% higher than the original contract rate.

If NSI or GPO provides notice in writing at least ninety (90) days prior to the last day of the contract term that they intend to let the contract expire, on the last day of the contract term, all hardware and software installed will be removed from the property by NSI in a timely fashion or as soon as is commercially reasonable and the contract will cease.

**Networx Solutions, Inc. ("NSI")**

 \_\_\_\_\_ Date 9-11-17

**GRAND PANAMA CONDOMINIUM OWNERS ASSOCIATION, INC. ("GPO")**

 \_\_\_\_\_ Date \_\_\_\_\_