

# Broadband Service Guide

This Broadband Service Guide sets forth the specific terms and conditions applicable to Services offered by Birch Communications, Inc., and its Affiliates (“Birch”) as described herein. Birch reserves the right to change any of this Service Guide by posting it to the Birch website, which upon posting shall supersede all prior versions.

## Definitions and Abbreviations

In addition to terms defined elsewhere in the Master Services Agreement or other part of the Agreement and unless otherwise provided to the contrary in the Master Services Agreement, as applicable, capitalized terms shall have the following meanings:

Acceptable Use Policy (AUP) – Terms and conditions that govern Customer’s acceptable and unacceptable use of the Services posted at [birch.com/legal/acceptable-use-policy](http://birch.com/legal/acceptable-use-policy). The AUP is incorporated herein by reference. Company reserves the right to modify the AUP at any time, which changes shall become effective upon posting on the Birch website and shall supersede all prior versions.

Affiliate – An entity that Controls, is Controlled by, or is under common Control of Company.

Agreement – The collection of documents that govern Customer’s use and Company’s provision of the Services, and includes the Master Service Agreement, all Service Orders accepted by Company and all Service Guides governing the Services, including Service Guides governing Services other than those described in this Service Guide.

Applicant – A Person requesting that Company provide the Service described in this Service Guide.

Business – When used in relation to Service, means Service provided in offices, stores, factories and all other places for business use.

Commission – The Public Service Commission or equivalent regulatory body of the state jurisdiction in which Company provides the Services.

Company – Birch Communications, Inc. or the Affiliate providing the Service, as applicable.

Control – Means possessing at least 50% of the voting equity of an entity, either directly or through one or more subsidiaries or other Affiliates.

Customer – The Person which orders or uses the Service and is responsible for the payment of rates and charges under this Service Guide.

Customer Premises – One Customer Premises is all space in the same building occupied by a Customer and all space occupied by the same Customer in different buildings on the same property.

Disconnection – The temporary cessation of Service.

DSLAM – The first item of DSL networking equipment owned or controlled by the provider of the Services and located in the central office closest to the Customer Location.

Equipment – The modem, router and/or other equipment provided by Company for use with the Service. Unless Customer and Company specifically agree otherwise, Company owns the Equipment.

Master Service Agreement (MSA) – The framework agreement between Customer and Company that further governs the Services. If Company and Customer have not executed a MSA, then the MSA posted at the following URL shall govern: [birch.com/MSA](http://birch.com/MSA). Company reserves the right to modify the MSA posted on its website at any time, which changes shall become effective upon posting on the Birch website and shall supersede all prior versions.

Minimum Service Period – The minimum length of time that Customer is obligated to purchase the Services, which time is subject to automatic renewal periods of one (1) year or the longest period of time for which Services can be renewed under applicable law, whichever is shortest.

Person – An individual, corporation, limited liability company, partnership, or any other entity.

Services – digital subscriber line or similar technology that transmits data messages over communications facilities for residential or Business customers including the features, all as described herein. Birch reserves the right to utilize any technical standards and protocols utilized in the telecommunications and information services industry. Services are provided on Birch's facilities or Third Party Facilities. Availability of Services, speeds, static or dynamic IP addresses, and all other features and functions are dependant on a number of factors, including but not limited to the Customer Location, and configuration of facilities and other services at the Customer Location, and availability of speeds, features and functions at the Customer location. Not all speeds, features, or functions are available at all Customer Locations.

Service Order – A document, either electronic or in writing, on a form promulgated by Company by which Customer requests Company to provide Service.

Termination – The permanent cessation of Service.

## **RULES AND REGULATIONS**

### **1. Undertaking of the Company**

1. The Company undertakes to furnish Service described in this Service Guide pursuant to the terms and conditions of this Service Guide at the rates and charges specified herein as ordered by Customer.
2. The furnishing of Service under this Service Guide is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish Service from time to time as required at the sole discretion of the
3. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities, offered by the Company, when necessary because of lack of facilities, congestion, network management, or any other cause.
4. The Company may undertake Service-affecting activities that may occur in normal operation of the Company's Business. Such activities may include, but are not limited to, Equipment or facilities additions, removals or rearrangements, and routine preventive maintenance. Such activities are not necessarily specific to an individual Customer but affect many Customers' Services. No specific advance notification period is applicable to all Service activities. With some emergency or unplanned Service-affecting conditions, such as an outage resulting from wiring or Equipment damage, notification to the Customer may not be
5. Service Orders for initial or additional Services made orally or in writing become a contract upon the establishment of the Service.
6. The Company may decline to serve an Applicant for the following reasons:
  1. Applicant's facilities inadequate: If the Applicant's installation or Equipment is known to be hazardous or of such character that satisfactory Service cannot be given;
  2. For indebtedness: If the Applicant is indebted to the Company for any reason;

3. Refusal to make deposit: If the Applicant refuses to make or increase a deposit if Applicant is required to do so by Company;
4. For failure to provide the Company with necessary access to Company-owned Equipment after the Company has made a written request to do so;
5. For failure to make any payment when due to Company, whether for Services under this Service Guide or otherwise;
6. If the Company has reason to believe that Applicant has used a device or scheme to obtain Service without payment and where the Company has so notified Applicant prior to Disconnection;
7. For violation of or noncompliance with a Commission order, municipal ordinances or other applicable laws; or any rules of the Company on file with the Commission for which the Company is authorized by Service Guide to discontinue Service for violation or non-compliance; or
8. If Customer's use of Equipment adversely affects the Company's Service to others, and said Disconnection may be so accomplished without notice to the
9. Any violation of Company's AUP in effect at the time of violation.

## 2. Limitations of Service

1. Persons interested in the Company's Services shall submit information to the Company on a Service Order which fully satisfies the Company and identifies the Services
2. Services provided on Birch's facilities as standalone broadband Service without POTS are provided on dedicated circuits only. Self-installation is not available in all areas.
3. Service is offered subject to the availability of the necessary facilities and Equipment, necessary arrangements with other carriers and billing capabilities, and is subject to the provisions of this Service Guide. The Company reserves the right not to provide Service to or from a location where legally
4. The Company reserves the right to discontinue furnishing Service when necessitated by conditions beyond its control, or when the Customer is using the

Service in violation of any provision in this Service Guide, the AUP, the rules and regulations of the Commission, or the

5. Title to all facilities provided by the Company under this Service Guide remains with the Company. Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this Service Guide shall apply to all such permitted assignees or transferees, as well as all conditions for Service.

### 3. Use of Service

#### 1. Permitted Uses

Services provided under this Service Guide may be used for any lawful purpose for which the Service is technically suited and is subject to Company's privacy policy, accessible at [myaccount.birch.com/Login/PrivacyPolicy](http://myaccount.birch.com/Login/PrivacyPolicy).

#### 2. Limitations on Use of Services

1. Customer acknowledges and agrees that Company is not responsible for invalid destinations, transmission errors, or the corruption of data; and (2) does not guarantee Customer's ability to access all website, servers, or other facilities or that the Service is secure or will meet all needs.
2. Customer will not restrict, inhibit, or engage in any conduct that prevents others from using the Internet or interferes with Company's ability to provide the Services, including but not limited to hacking, circumvention of user authentication or security of any host network or account, use of any Company products and Services, or any "denial of service" attacks.
3. Customer will not run programs or servers that interfere with Company's provision of the Services, impair other's use of the Services, including engaging in excessive use as judged in Company's sole discretion, or otherwise violate the AUP. Violation of this section may result in bandwidth restrictions on the Services or suspension or termination of the Services.

#### 3. Third Party Use

If Customer subscribes to or otherwise uses any third party Services offered by Company, Customer's use of such Services is subject to the End User License

Agreement (EULA) of that third party provider. Violation of those terms may, in Company's sole discretion, result in termination of Services.

#### 4. Termination

Any termination shall not relieve Customer of its obligation to pay any charges incurred under this Service Guide or the Master Services Agreement or in any Service ordered prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the Service Order shall survive such termination. All Equipment owned by Company shall be returned to Company within seven (7) days of termination or the Customer will be charged for the Equipment.

#### 4. Limitation of Liability

1. IN NO EVENT WILL THE COMPANY BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, OR FOR ANY LOST INCOME OR PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF THE SAME.
2. The Company shall not be liable for any claim or loss, expense, or damage, due to any interruption, delay, error, omission, or other defect in Service, facility, or transmission provided under this Service Guide, if caused by or resulting from: any person or entity other than the Company; any malfunction of any Service or facility provided by any Person other than the Company; labor difficulties; fire, flood, earthquake, or any other act of God; explosion; war; act of terrorism; riot or civil disturbance; fiber cut or damage to facilities; any law, order, regulation, direction, action or request of any federal, state or local government or any department, agency, commission, bureau, or other instrumentality of federal, state or local government; or by any other cause beyond the Company's control.
3. The Company shall not be liable for and shall be defended, fully indemnified, and held harmless by Customer against any claim of loss, expense, or damage, including indirect, special, or consequential damage for:
  1. Defamation, libel, slander, invasion of privacy, infringement of copyright or patent, unauthorized use of any trademark, trade name, or service mark, unfair competition, interference with or misappropriation, or violation of any contract, proprietary or creative right, or any other injury to

any person, property, or entity arising from the material, data, information, or content revealed to, transmitted, processed, handled, or used by the Company under this Service Guide;

2. Connecting, combining, or adapting the Company's facilities with Customer's or any third-party's apparatus or systems;
3. Any loss, destruction or damage to property of the Company, the Customer, or any third party, or the death or injury to persons, including, but not limited to, employees or invitees of either party caused by or resulting from any acts or omissions of Customer, its employees, agents, representatives, family members or invitees, whether negligent or otherwise;
4. Any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of the Company or any third party arising from any act or omission by the Customer, including, without limitation, use of the Company's Services and facilities regardless of whether or not used in a manner expressly authorized by this Service Guide or any agreement between the Customer and the Company; or
5. Any personal injury or death of any person or for any loss of or damage to Customer Premises or any other property, whether owned by Customer or others, caused directly or indirectly by the installation, maintenance, location, condition, operation, failure, presence, use, or removal of Equipment or wiring provided by the Company, if not caused by the intentional acts of the

4. No agent or employee of any other carrier shall be deemed to be an agent or employee of the Company.

5. THE COMPANY MAKES NO WARRANTY REGARDING THE PROVISION OF SERVICE PURSUANT TO THIS SERVICE GUIDE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

5. Availability of Service

Services may not be available in all areas or at the rates, speeds, or bandwidth generally

marketed, and some locations may not qualify for the Service even if initial testing showed that Customer's line was qualified. Company will provision qualified Service lines at the line rate generally available to Customer locations based on standard line qualification procedures, unless Customer has selected a level of Service with a lower maximum line rate. Bandwidth is provided on a per-line, rather than per-device basis. The bandwidth available to each device connected to the network will vary depending upon the number, type and configuration of devices using the Services and the types of use, among other factors. The download speeds of the Services will vary significantly from the listed download speeds due to conditions outside of Company's control, including Customer's location, congestion, computer configuration, Customer's website use, Customer's Equipment, among other factors. Company makes no guarantees or representations related to download or upload speeds. Company reserves the right, at any time, with or without prior notice, to restrict or suspend Services to perform maintenance activities and to maintain session control. Company assumes no responsibility or liability for interruption or quality of the Services or Service performance differences.

#### 6. Responsibility of the Customer

1. Each Customer assumes responsibility in connection with the provisions and use of the Service. When facilities, Equipment, and/or communications systems provided by others are connected to the Company's facilities, Customer assumes additional responsibilities. Customers are responsible for:
  1. Placing orders for Service; paying all charges for Service rendered by the Company, including early termination charges as set forth in the MSA; complying with the Company's regulations governing the Service, including but not limited to the AUP; and assuring that Customer's users comply with
  2. Providing:
    1. the name(s) and address(es) of the person(s) responsible for the payment of Service charges; and
    2. the name(s), telephone number(s), and address(es) of the Customer contact person(s).



3. Paying the Company for the replacement or repair of the Company's Equipment when the damage results from:
    1. the negligence or willful act of Customer or user;
    2. improper use of Service; or
    3. any use of Equipment or Service provided by
  4. Customer agrees that Company, in its sole discretion, may place restrictions on use of Services, and immediately disrupt, suspend, or terminate Services without notice for violations, suspected violations, or to prevent violations of the Agreement.
  5. Customer agrees to not exceed any bandwidth usage limitations that Company may establish from time to time for the Services.
  6. Customer is solely responsible for compatibility of any equipment, software, programs, or other apparatus connected to or utilizing the Services.
2. Cancellation by Customer
    1. Customer may cancel Service any time after meeting the Minimum Service Period. Termination charges, including early terminations charges as set forth in the MSA, will apply if Customer cancels prior to the expiration of the Minimum Service Period, except as stated in the MSA. Customer is not entitled to any money back after installation of the Services.
    2. If Customer orders Service requiring special construction or special facilities dedicated to the Customer's use and then cancels the applicable Service Order before the Service begins, or before completion of the Minimum Service Period, or before completion of some other period mutually agreed upon by Customer and the Company, a charge set forth in the cancelled Service Order will be made to Customer or, if a charge is not set forth in the cancelled Service Order, for the non-recoverable portions of expenditures or liabilities incurred on behalf of Customer by the Company and not fully reimbursed by installation and monthly charges received as of the date of cancelation.
  3. Payment and Charges for Service

1. Charges for Service are governed by the MSA, and are applied on recurring and nonrecurring bases. Service is billed on a monthly basis on or about the same day each month. Service continues to be provided until canceled by Customer or by the Company in accordance with provisions of this Service Guide. The due date printed on the monthly invoice shall not be less than twenty-one (21) days after the date of the invoice.
  2. Charges for Services are based on a rate structure determined by the Minimum Service Period, the number of Birch Business POTS lines subscribed to by Customer at the Customer Location, and the Customer Location. Initial charges are set forth in the applicable Service Order or established orally on a telephone conference between Customer and Birch, and verified by a Third Party Verification. Company reserves the right to modify the charges, including increases, if the number of Birch Business POTS lines at the Customer Location changes.
  3. Payment will be due pursuant to applicable Commission rules and the MSA. The Company includes its name and its toll-free telephone number on all
  4. The Customer is responsible for payment of all charges for Service furnished to the Customer for the Minimum Service Period, including any renewals or extensions thereof.
  5. Service may be denied pursuant to the MSA. Restoration of Service will be subject to all applicable installation
  6. Customer is liable for all costs associated with collecting past due charges, including all attorney's fees and court costs.
  7. Disputes regarding amount or accuracy of charges for Service are governed by the MSA.
4. Advance Payments and Deposits
1. Advance Payments and Deposit Requirements  
The Company may require an Applicant for Service to make an advance payment (1) if the Applicant is unable to establish that he had a previous account with a telecommunications or data provider for a period of at least 12 months for which all undisputed charges were satisfactorily paid,

(2) if the Applicant had not paid for previous Service, or previous Service had been disconnected for nonpayment within the past twelve months, or (3) if the Applicant has had no previous broadband Service or has had previous Service of less than 12 months, the Applicant's credit record will be assessed and evaluated by means of a mechanized retrieval system between the Company and national recognized credit bureaus. The Company may request proof of home ownership, employment of two years or more with the current employer, major oil company credit card, major credit card, checking account, savings account, or age of 50 years or more, and if two or more of these are not provided, the Company may require an advance or deposit. No security payment will be required of those Applicants who meet the Company's criteria, as evaluated by the scoring model. The criteria used in assessing a score is as follows: collection judgments, written-off accounts, outstanding collection accounts, various degrees of delinquency history from 30-180 days and not paid in full or current at the time of scoring, bankruptcies, liens, other public records. The advance payment will not exceed an amount equal to all nonrecurring charges and two month's estimated recurring charges, as a condition of continued or new Service. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated nonrecurring charges for the special construction and two month's estimated recurring charges. The advance payment will be credited to the Customer's initial bill and, to the extent that a credit balance remains after the amount of the initial bill has been satisfied, then the credit balance will be applied to subsequent bills in the same manner until there is no balance remaining on the advance payment

## 2. Bad Check Charge

The Company will bill Customer a one-time charge of \$25.00 (except in Louisiana where charge is \$20.00) per incident if Customer's check for payment of service is returned for insufficient or uncollected funds, closed accounts, or any other insufficiency or discrepancy necessitating return of

the check at the discretion of the drawee bank or other financial institution. If Customer remits one or more checks, drafts or other instrument which is dishonored the Company may refuse acceptance of further checks and place Customer on a cash basis.

3. Late Payment Charge

The Company may apply a late payment charge if any portion of the Customer's payment is received by the Company after the payment due date, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment. The late payment charge shall be applied to the portion of the payment not received by the date due. On all unpaid Business and residential bills, a 1.5% charge will be applied, unless otherwise provided for in the MSA. A Finance Charge of 1.5% shall apply to the outstanding balance of charges, as at the end of the "Due Before Date," with effect from the second month after the charges are first applied, and every month thereafter, unless otherwise provided for in the MSA. Collection procedures are unaffected by the application of the late payment or finance charge.

5. Responsibility of the Company

1. Provision of Equipment and Facilities

1. The Company shall use reasonable efforts to make Services available to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with the regulations contained in this Service Guide and applicable rules of the
2. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or Equipment installed by the Company, except upon the written consent of the
3. The Company may substitute, change, or rearrange any Equipment or facility at any time and from time to time, but shall not thereby materially reduce the technical parameters of the Service provided to the

6. Restoration of Service

If Service is disconnected for nonpayment, Service will be reestablished only upon receipt of payment of all charges due, which include charges for Service and facilities during the period of Disconnection and which may include a Service restoration fee. If the Customer has a history of payments returned for insufficient funds, the Company may require payment by cash, money order, personal check or certified check. If payment is made by personal check, restoration will be effected upon clearance of the check. When a Customer's Service has been disconnected in accordance with this Service Guide and the Service has been terminated through the completion of the Company's Service Order, Service will be reestablished only upon a basis of an application for new Service.

7. Taxes and Surcharges

1. Customer will be billed and is responsible for payment of applicable gross receipts charge, city utility charge, city excise charges, Commission charges, and any and all other federal, state and local taxes, fees, assessments and surcharges assessed in conjunction with Service
2. All taxes, fees, assessments and surcharges (i.e., sales tax, municipal utilities tax, franchise fee, E911, TRS) will be listed as separate line items and are not included in the quoted

8. Start of Billing/Preferred Payment Dates

For billing purposes, the start of Service is the first day of the availability of the Service at the DSLAM.

9. Service Connection and Facilities on Customer's Premises

Customer will be responsible for loss of or damage to any facilities furnished by the Company. At the termination of Service the Company may remove any and all of its property located at the Customer Premises as provided for in this Service Guide.

## Standard Inclusive Features

Features and Services can vary as follows:

Supplier	Router	IP Addresses	Email [1]
Birch Facilities	Included (Wi-Fi upgrade)	1 Static IP address	10 email Boxes - 50MB Storage
Third Party Facilities	Included (Wi-Fi Enabled)	1 Dynamic IP (Static IP address available at additional cost)	10 email Boxes - 50MB Storage

[1] 50MB of shared storage per 10 email boxes.

Email storage size is dependent on the Services purchased. Email content in excess of storage limits is subject to deletion by Birch in no particular order or priority. It is the Customer's sole responsibility to manage Customer's email storage. Additional email terms are included in the AUP.

## A la Carte (Optional per charge) Features

### Optional Features

Additional Static IP 8/5 usable

Add'l block of 5 Email Boxes

Additional Email Storage 10MB

Additional Email Storage 25MB

Additional Email Storage 50Mb

Additional Email Storage 100MB

1 Static IP

Additional Email Boxes can be purchased in block of 5 and share the storage of 50MB provided unless additional storage is purchased.

## One Time Charge Products

Name	Description
Basic Change Charge	Applies per location per request for: <ul style="list-style-type: none"><li>- Feature add/remove/change</li><li>- DSL upgrade/ downgrade without new circuit</li></ul>
Birch Broadband Professional Install Fee Install/move per instance (Simple)	Dynamic AT&T IR terminated DSL only Applies per line or circuit: <ul style="list-style-type: none"><li>- Install or move of DSL Service</li></ul>
On – Site Technician, 1st hour	BDN terminated DSL: <ul style="list-style-type: none"><li>- First hour of work for Professional Installation of DSL</li><li>- Includes labor and materials</li></ul>
Product/account change or on-site technician additional ½ hour	Applies per location per request for: <ul style="list-style-type: none"><li>- Transfer &amp; Assumption changes</li><li>- Split/Combine accounts</li><li>- Establishing dual Service during move (30 day limit)</li><li>- Overnight shipping per box (Customer request)</li><li>- Priority Processing fee - Expedite internal processing of order</li></ul>
Trip Charge	Missed Appointment Fee
Premise Equipment Group 1	Returned DSL modem

