



October 18, 2018

Daniel P. Wolf Executive  
Secretary  
Minnesota Public Utilities Commission 121  
Seventh Place E, Suite 350  
St. Paul, MN 55101-2147

Re: In the Matter of the Petition of Broadband Corp for Designation as an Eligible  
Telecommunications Carrier (ETC)

Dear Mr. Wolf:

Enclosed via eFiling please find the attached Filing, Petition for Designation as an Eligible  
Telecommunications Carrier (“Petition.”)

Sincerely,

Anthony Will  
Broadband Corp  
Vice President  
(612) 239-3154  
Anthonyw@broadband-mn.com



**STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Nancy Lange  
Dan Lipschultz  
Matt Schuerger  
John Tuma  
Katie Siebin

**PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS  
CARRIER**

Broadband Corp hereby petitions the Minnesota Public Utilities Commission for designation as an ETC for the purpose of receiving Federal support for services provided pursuant to the federal CAFII program.

In support of its Petition, Broadband Corp states as follows:

- A. The legal name, address and telephone number of the Petitioner and its designated contact person are as follows:

Broadband Corp  
1772 Stieger Lake Lane  
Victoria, MN 55386

- B. The name and title of the officer or representative of Broadband Corp authorizing this petition is Anthony Will, whose signature appears at the end of this petition.
- C. The proposed effective date of designation of eligibility to receive CAFII Support is immediately upon the Commission's issuance of an Order approving this Petition.
- D. The service area for which designation is sought, is reflected in the "Proposed ETC Service Areas map later in this document.
- E. Broadband's Petition for designation as an ETC for the Service Area is consistent with the public interest, convenience and necessity, and satisfies the requirements for receiving universal service support under state and federal law, for the following reasons:

**BROADBAND POSSESSES THE INTENT AND CAPABILITY OF PROVIDING  
SERVICE UPON REASONABLE CUSTOMER REQUEST THROUGHOUT THE  
SERVICE AREA**

1. Broadband Corp's Network and Commitment to Serve - Broadband will provide FCC defined Internet and voice services over its CAFII approved Network. Broadband Corp

is committed to provide service to all customers making a request for service that falls into the CAF II definitions. Broadband Corp certifies it will provide service on a timely basis to requesting customers within the Service Area where Broadband Corp's network is designed to provide service under the CAFII guidelines. Broadband Also certifies it will provide service of same and similar to areas of service around CAF II awarded Census Blocks as allowed by the build out to serve CAF II awarded Census Blocks.

2. Broadband's CAF II Offering – Broadband Corp will provide voice telephony in the Service Area. The services offered meet the Basic Local Service requirements in Document FCC 11-161A1. Refer to Paragraph 80, footnote 117. As a condition of receiving support, we require ETCs to offer voice service as a standalone service throughout their designated service area.
  - Voice grade access to the public switched network or its functional equivalent;
  - Access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911
3. Broadband's Advertising Plan - Broadband currently advertises its services through several different channels of general distribution, including newspaper, Radio and direct mail. Broadband Corp will advertise the availability of its High Speed Internet service offering throughout the Service Area through these same advertising channels it currently employs. In addition, the availability of the offering throughout the Service Area will be listed continuously on Broadband's web site: [www.broadband-mn.com](http://www.broadband-mn.com). The service offering will also be posted at the Broadband office in Hutchinson, MN.
4. Broadband Corps' 2 -Year Plan for Use of CAF II Support – Broadband Corp will use the funds provided by the CAF II award to build the required network facilities in accordance with the CAFII service requirements.
  - Technology and System Design Overview for MN: We will be extending the deployment of our existing Hybrid ethernet switched network utilizing Fixed Terrestrial Wireless and Fiber optic solutions. The network will be able to obtain greater than 100mb with the low latency tier to the end user. To accomplish this goal, we will utilize a combination of both standards-based technology and proprietary solutions. A typical deployment will have an existing fiber optic middle mile transport provided by a third party or will be connected to the current fiber optic assets owned by Broadband Corp. The Fiber optic assets will transport the services from an identified communications tower capable of reaching the end user locations. The middle mile will terminate at a local exchange or another location on the Broadband Corp's existing network creating a ring topology, that is then forwarded to the local exchange location. On the tower we will deploy our last mile utilizing fixed terrestrial wireless systems in both the Licensed and

unlicensed frequency bands. The end user will have a compatible radio system CPE (Customer Premise Equipment) installed at their location. The CPE will be capable of providing both the data and voice services that meets or exceeds the public obligations of 100mb and low latency tiers

5. Broadband's Ability to Remain Functional in Emergency Situations. Broadband's network will remain functional in emergency situations:

Commercial power outage: The central office serving Broadband Corp's customers is equipped with electrical generators and battery power supply to provide service in the event of a commercial power outage.

Network failure: The facilities serving the Service Area are on a diverse routed fiber optic and wireless backhaul ring, which if interrupted is rerouted in a timely manner.

Traffic Spike: The CAF II build out requirements address this with capacity requirements and testing.

6. Broadband's Satisfaction of Consumer Protection and Service Quality Standards—Broadband, is subject to, and complies with, the FCC's Rules pertaining to service quality and consumer protection.

The FCC's service quality rules by which Broadband is bound, will apply throughout the awarded Service Area and assure a high level of service quality and consumer protection.

7. Broadband's Acknowledgement Regarding Equal Access Broadband Corp's voice service does not distinguish between local calling and long distance and both are included in the base fee at no additional cost or toll to the subscriber. As such Equal Access would not apply.

### **DESIGNATING BROADBAND CORP AS AN ETC IN THE SERVICE AREA WILL SERVE THE PUBLIC INTEREST**

8. Public Interest - Designation of Broadband Corp as an ETC in the Service Area is in the public interest, as determined under the standards of 47 CFR § 54.202(c) and the Commission's Order issued October 31, 2005, in Docket No. P999/M-05-1169. Consumers will benefit from an increased choice in service providers, and there are unique advantages to Broadband's service offering.
9. Superior Service Offering – Broadband Corp believes its service offerings are superior to that of the awarded Service Area by the simple fact that we can provided services provisioned for in the CAF II program in areas that the local providers have not provided for.

We at Broadband Corp believe customers will additionally benefit from choosing a locally owned and based provider which has demonstrated its commitment to, and success in, responding to the service needs of its residents.

10. Affordability – Broadband Corp provides affordable services that meet or exceed requirements as posted in the CAF II Auction. Broadband takes great pride in regularly assessing the market place and adjusting if needed to continually be one of the most affordable options for service.
11. Commitment to Service Quality – Broadband has been providing service to Rural Minnesota for over a decade and hold Service Quality in the highest regard. Broadband is committed to providing the highest up time possible. Broadband continually invests in new infrastructure and new technologies to meet and exceed industry standards and regulations.

### **ETC CERTIFICATION**

12. Request for Certification – Broadband Corp requests that the Commission grant ETC status to Broadband Corp in order to allow the provisioning of services to the census blocks awarded to Broadband Corp in rural Minnesota with the assistance of the CAF II program.
13. Broadband Corp Certification - In support of its certification request, Broadband Corp hereby states that it will provide services in the census blocks awarded by the CAF II program identified above to meet or exceed the requirements in the CAF II program.

### **CONCLUSION**

Broadband Corp meets the requirements of both state and federal laws and regulations for designation as an Eligible Telecommunications Carrier in the requested Service Area. Pursuant to 47 USC § 214(e), the Commission should designate Broadband Corp as an Eligible Telecommunications Carrier for the Service Area awarded to Broadband Corp in the CAFII Auction. In so doing, the Commission ensures consumers in the Service Area have an opportunity to secure better and more reliable service at a rate equal to or less than that which they are currently paying. The consumers in the Service Area will benefit and the public interest will be served if Broadband's Petition is approved and it is designated as an ETC.

Wherefore, Broadband Corp respectfully requests that the Commission:

- A. Designate Broadband Corp as an ETC for receipt of CAFII support with respect to the Census Blocks specified in this Petition;

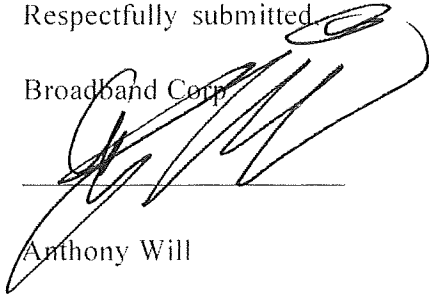
B. For such other and further relief as the Commission may deem just and reasonable.

**VERIFICATION**

The undersigned, Anthony Will, Vice President of Broadband Corp, certifies that he has reviewed this Petition and the facts stated therein, of which he has personal knowledge, and that the same are true and correct to the best of his present knowledge and belief.

Respectfully submitted,

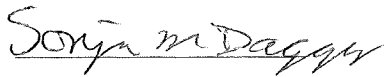
Broadband Corp



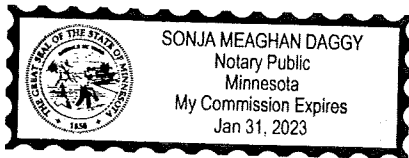
Anthony Will

Vice President

Subscribed and sworn to before me this 29<sup>th</sup> day of October in the year 2018



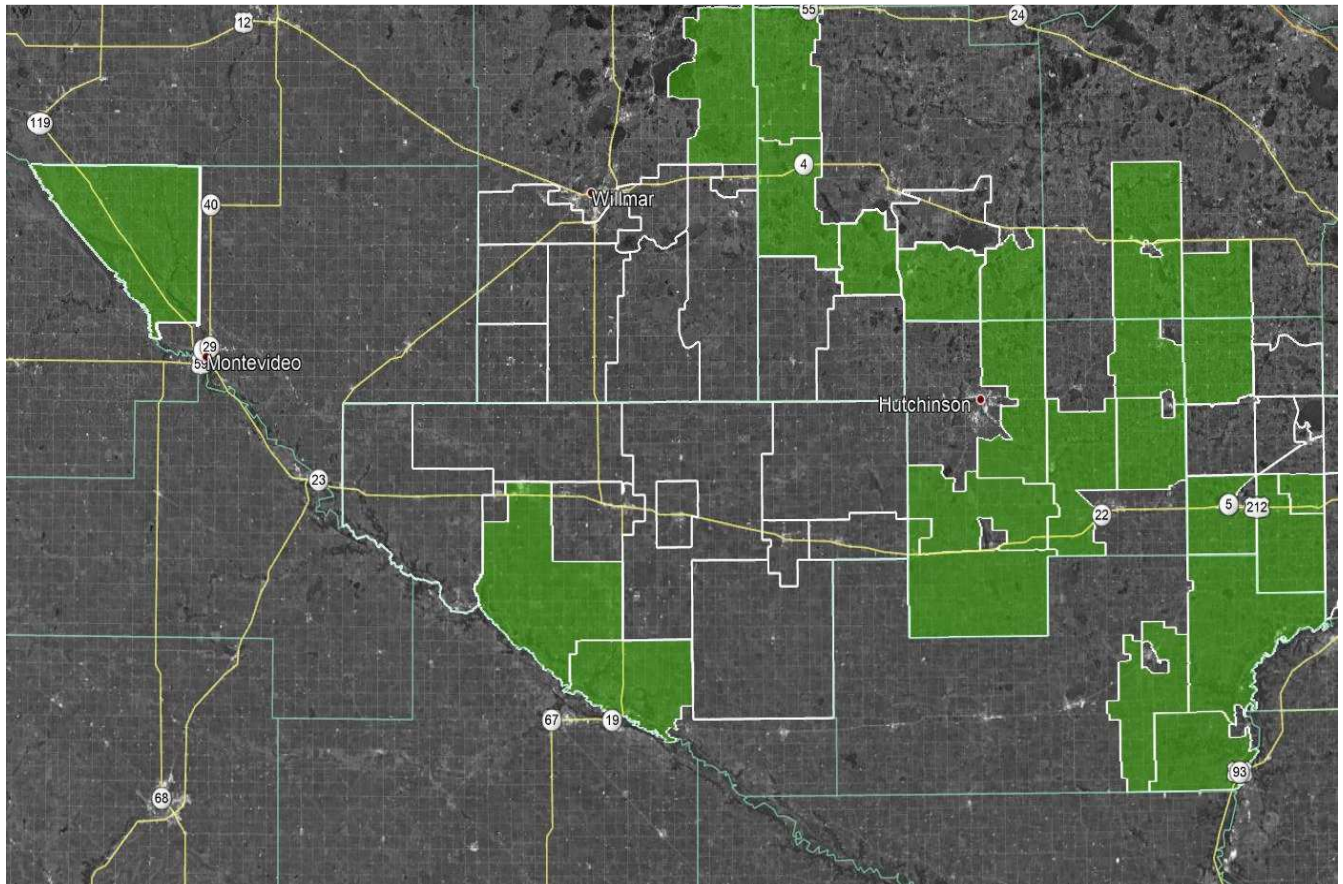
Notary Public



## Appendix A

**Proposed ETC Service Areas shown in green:**

<u>CAF II AUCTION</u>	Census Block Groups	Broadband Corp
MN-019-0902001	MN-085-9505001	MN-129-7904002
MN-019-0912011	MN-085-9505003	MN-143-1701981
MN-019-0912021	MN-085-9506002	MN-143-1704001
MN-019-0912022	MN-085-9506003	MN-143-1704003
MN-023-9505002	MN-093-5601004	MN-171-1011003
MN-067-7801002	MN-093-5606001	MN-171-1012001
MN-085-9501002	MN-093-5606003	MN-171-1012003
MN-085-9502001	MN-129-7904001	MN-093-5602003
		MN-093-5605001





# Appendix B

## Customer Agreement

### BROADBAND CORP USER AGREEMENT

#### Agreement summary

This is an agreement between Broadband Corp and you the Customer. The following agreement defines the details of that agreement. In summary, Broadband Corp is not responsible unless required by law to provide, perform, install, repair or meet any need unless specifically stated. You the Customer are responsible for the use of, cost and payment of any services provided to you under this agreement.

#### Definitions:

- **Broadband Corp (“BC”)** is a provider of Internet access, telephone and streaming as well as other services.
- **“Customer,” “you” or “your”** refers to any person who subscribes to any of those services;
- **“Service”** means, for any Customer, any of those services subscribed to by that Customer;
- **“Broadband Corp,” “we,” “us” or “our,”** means, for any Service of any specific Customer, the subsidiary or subsidiaries of BC that provide such Service.
- **User Agreement.** The document you are now reading. It contains the general terms and conditions governing your use of any of the Services. It applies to all Services.
- **Addenda to the Residential Customer and User Agreement.** For certain Services offered by BC, a separate Addendum may apply. The Addendum contains important terms and conditions to which you agree and are bound.
- **Work Order.** Identifies the Services ordered, when they are installed or activated. This can be a service order, receipt, confirmation or other document you received upon installation, or in an email, or a recording or written confirmation of a telephone conversation during which you order a Service or in some other form. Work Orders contain important terms and conditions to which you agree and are bound.
- **Privacy Notice.** Is a description of how Broadband Corp collects, uses and discloses personal information about you and is available online at <http://broadband-mn.com/>. This applies to all Services.
- **(AUP) Acceptable Use Policy.** Explains Broadband Corp policies on use of Broadband Corp’s Service. You receive it at or about the time of installation or activation. The AUP applies to all users of Broadband Corp’s Service, even if the user is not a party to your Agreement for that Service. It is available online <http://broadband-mn.com/>.
- **Tariffs:** Terms that apply to Broadband Corp’s telephone service. Tariffs are contained in documents filed with Federal or State agencies regulating telephone service providers. Tariffs are usually made publicly available by the agency either at an office or, in some cases, online.
- **Broadband Corp Policies and Practices:** Apply to one or more Services that we make available to our customers.
- **Other Terms.** Additional terms that apply to Purchased Equipment (as defined below) or your Service, such as the price and characteristics of your Service. If you subscribe to a Service for a fixed minimum term, your commitment would be included in this category. This category may also include requirements imposed by third parties we rely upon to supply equipment, software or other items related to a Service.

**By subscribing to or using a Broadband Corp Service, you, and each person who uses that Service through your account or connection, agree that your subscription and usage will be governed by Broadband Corp's relevant "User Agreements," as in effect and modified from time to time. That will be true even if one or more aspects of the Service subsequently change.**

#### **Basic Service Terms:**

Upon ordering a Service, Broadband Corp informs you of the initial price and characteristics of that Service (such as the provided speed or bandwidth allowances that apply to the desired Service). The initial price and features of a Service may change as provided in later Sections of this agreement.

#### **Contract Term Length**

The Customer agrees to a contract term of two (2) years. *Term length could be modified by your specific user agreement. Service Level requirements may or may not be a required, depending on individual service availability. All agreements require a minimum of Internet service purchase but Customer may opt to change service level to a higher or lower rate during their term and after. Refer to this section of the individual agreement.* Service level will be indicated on the first and or the second Invoice. Early contract termination clause applies. At the end of the contract the Customer will be bound by a Month to Month term. Installation costs are due upon install. Customer may have the option to pay an additional \$100 setup fee during the initial 30 day "Trial Period" to reduce the term length by 23 months.

#### **Authorized Use and Users of Services:**

Broadband Corp Services are provided only for ordinary and reasonable residential and non-commercial use as determined by Broadband Corp in its sole discretion. Unless your Agreement expressly says something different, a Service may be used only at the physical location where Broadband Corp installs or activates the Service (your "Premises"). Authorized users of the Service are you, members of your household and your guests. You are responsible for all usage of Services whether you have authorized or know of such usage, including unauthorized use of a Service because you fail to apply adequate security measures.

You authorize Broadband Corp to accept (and charge you for) any orders or requests made through your Services or using your account or connection. For example, if someone in your home uses Broadband Corp in excess of the included usage with your Internet service plan, telephone service for an international telephone call or orders a pay TV channel like HBO, you are responsible for the resulting charges. If you knowingly use any service or feature that you have not paid for, or allow any unauthorized person to use a Service (whether or not paid for), you will have violated your Agreement and possibly subjected yourself to payment of damages, fines or imprisonment.

#### **Premises Access:**

By using Broadband services, you agree to allow Broadband Employees to enter your Premises to install, maintain or replace wiring or equipment and to make sure our services are properly operating and being delivered to you and your neighbors and for any other reasons associated with normal system operation of the network or the provision of Services. If you stop receiving all Services, and Broadband Corp does not have an independent right to enter your property, you may terminate this access right by giving us one year's advance notice. You further grant Broadband Corp all necessary easements to provide Services to you

and others in the same system. If you do not own the Premises, you must promptly obtain the consent of the owner and, upon request, give Broadband Corp evidence of that consent. After we install or remove equipment or wiring, you are responsible for any repairs or cosmetic corrections you desire. We have an obligation for repairs only if we cause damage because of negligent work.

#### **Service Interruptions:**

Scheduled or unscheduled Service interruptions for maintenance, testing or other purposes may occur at any time, with or without notice.

The Services do not have their own power source. You are responsible for obtaining a power source for each service.

**A POWER OUTAGE AFFECTING YOUR PREMISES OR BROADBAND CORP'S NETWORK MAY INTERRUPT AVAILABILITY OF OUR SERVICES. THAT WILL ALSO RESULT IN AN INTERRUPTION IN THE AVAILABILITY OR FUNCTIONING OF DEVICES AND SERVICES THAT DEPEND ON OUR SERVICES, SUCH AS ACCESS TO 911 EMERGENCY SERVICES AND HOME ALARM OR HEALTH MONITORING DEVICES OR SERVICES.**

#### **No interruption refund, credit or other compensation (BE – Best Effort Service):**

Unless your Agreement expressly says something else, Broadband Corp will not be liable for any loss or unavailability of a Service for any reason. Some example include; power failure, any scheduled or unscheduled interruption of Service, any act or omission by you or any third party not controlled by Broadband Corp, or any other reason, including failure of your equipment or software to be compatible with the Services, your failure to acquire new or additional equipment or software necessary for continued enjoyment of Services, or any loss or theft of or damage to any equipment. Except as expressly provided in Sections below, you will not be entitled to any refund or credit because of any such loss or unavailability.

#### **The following are strictly prohibited:**

- Receive or use, or assist others in receiving or using, any Service or Service feature without authorization;
- Resell, distribute or duplicate the Service; or
- Use the Service in any way that may violate law, your Agreement, third party property or other rights or Broadband Corp policies.

If you do any of the foregoing or you or any user of any Service violates your Agreement in any other way, Broadband Corp may:

- Restrict, suspend or terminate your access to one or more Services;
- Report the matter to law enforcement; and
- Pursue any other lawful right or remedy.

We may do any of this without prior notice to you (unless mandated by law) and shall not be liable to you or any other Service user for any consequences.

#### **Monitoring Service Usage.**

You and each user of a Service (by his or her use) agree that Broadband Corp or our contractors have, to the maximum extent permitted by law, the right, but not the obligation, to:

- monitor usage of any Service, including monitoring the content viewed, uploaded, downloaded, posted or stored, or email or other communications made or received using your account or connection; and
- disclose any information as necessary or we believe to be prudent to satisfy any law or governmental request, to operate the Service or to protect of further the best interests of Broadband Corp and its affiliates and/or customers generally.

Subject to law, Broadband Corp may refuse to permit you or any user to post, transmit, receive or store, and also may remove, any content, message or material that Broadband Corp deems unacceptable, undesirable, offensive or in violation of your Agreement, law or third-party rights.

The foregoing is intended solely to confirm your agreement that we may take these actions. Our possession of the rights granted under this section, our exercise or failure to exercise any such right or our action or failure to act on the basis of anything we observe does not mean that we have control over or responsibility for the content, communications, actions or omissions of Customer, other customers or other users or create any obligation or liability to you or any other person.

#### **Changes to Services or Terms:**

Subject to law and any express exceptions that we agree to in writing when you subscribe to a Service, Broadband Corp may, at any time and periodically:

- Institute new or increase or decrease or otherwise change fees and charges for the Service.
- Modify, supplement or replace the terms of this Agreement or any of its components or any other terms, policies, practices and procedures relevant to the Service.
- Make changes affecting equipment or software.
- Institute new or change the features, functionalities, characteristics and specifications of the Service, including by
  - instituting or changing limits and restrictions that affect Service features and functionality, such as changing upstream or downstream speed or calling features, limiting the number and storage capacity of e-mail accounts, limiting usage of bandwidth or other resources or imposing additional charges if limits are exceeded; and
  - changing the number, kinds or parameters of included features or services, such as the number of minutes or other measures of long-distance or international calls, if any, included in a calling plan or other level of telephony service or the amount of bandwidth that may be used in a given level of Internet access service.
- Make any other change relating to any Service contemplated or not expressly prohibited by your Agreement or applicable law.

Broadband Corp will give Customer advance notice of any such changes that materially adversely affect Customer's rights or obligations under your Agreement, or no notice may be given if Broadband Corp believes that Broadband Corp or the Service might be adversely affected if longer notice were given.

Subject to any express exception referred to above, continued use of the Service following the effectiveness of any such change will be your acceptance of that change.

Without limiting the generality of the foregoing, Broadband Corp makes no guarantee or promise that all television programming or other content that may be part of any Service at any time will continue to be included. Broadband Corp may rearrange, add, delete, change the format of or otherwise change the networks, programs or other components of any video service. In addition, certain programming, including sports events, may be “blacked out” in your area as required by law or for other reasons and the owners of television networks or services may from time to time discontinue or change the network’s theme or available content. The availability of one or more programs, networks, channels, websites or other content or resource may be permanently or temporarily interrupted because of weather, a dispute with a third party, inability to obtain rights at all or on terms that Broadband Corp deems acceptable, a determination by Broadband Corp to refrain from acquiring or renewing a distribution license or other legal right, or some other reason. Any of these changes or events may happen without notice or consent or any reduction of your fees or charges, except as mandated by law. Unless otherwise specifically required by an express term of your Agreement or applicable law, Broadband Corp will not be obligated to replace or provide a substitute for any such program, network, channel, website or other content or resources or, unless expressly required by the agreement, to provide a refund or credit.

If you receive a Service under a promotion or fixed-term commitment with a set price for some specified period of time, we may modify the price only if and to the extent allowed by the terms of the promotion or commitment, but you will be subject to changes of the other kinds described above.

Any required or voluntary notice of any changes may be given by a posting at <http://www.broadband-mn.com/> (or another web location of which you are informed) or via e-mail, postal mail or another appropriate means. You are responsible for periodically checking our website for any changes.

#### **Conflicting Terms:**

If there seems to be a conflict between the terms in different Customer Agreements, the terms that are most specific to the Service or issue in question will govern. Statements regarding your Services or the terms and conditions that apply to you by or on behalf of Broadband Corp or any of its affiliates on a Website, in promotional or marketing materials, in a telephone conversation or otherwise than in an express provision of this Agreement are not part of this Agreement, do not change the express terms of this Agreement or any of the other applicable terms, conditions or policies, are not representations, warranties or commitments and do not create obligations or liability on the part of Broadband Corp. In the event of a conflict between an Addendum and the Broadband Corp Residential Customer and User Agreement, the terms of the Addendum shall control. In the event of a conflict between a Work Order and the Broadband Corp User Agreement, the terms of the Work Order will control.

#### **Broadband Corp Equipment:**

The Services may require use of special equipment or software at your Premises. In some cases, Broadband Corp may provide the equipment, including power cords and any associated accessories, or software (“Broadband Corp Equipment”), with or without a separate charge. Except for any equipment purchased by you from Broadband Corp (“Purchased Equipment”), all Broadband Corp Equipment issued to you remains property of Broadband Corp. If Broadband Corp does not supply necessary equipment, you are responsible for obtaining it at your own cost. If you decide obtain Purchased Equipment, you agree to pay Broadband Corp for the amount as disclosed to you by Broadband Corp at the time and in the manner established by Broadband Corp. Title in the Purchased Equipment shall pass to you at the time of installation by Broadband Corp or upon shipment to you in the case of a self-installation. In the event of a defect in workmanship or materials in the Purchased Equipment, your sole remedy is to return the defective Purchased Equipment to Broadband Corp within 90 days of purchase and Broadband Corp’s sole liability

and obligation shall be to provide you with a replacement of the same or the functional equivalent, as determined in Broadband Corp's sole discretion, of the returned item at no charge to you

#### **Customer Equipment:**

If you choose to provide your own equipment, whether purchased from Broadband Corp or a third party, in connection with a Service ("Customer Equipment"), you should call Broadband Corp Customer Service to find out if it meets our technical, security and other requirements. You are responsible for all costs of installation, maintenance or repair of Customer Equipment and Broadband Corp will not be obligated to provide Service or support for any Customer Equipment. Additionally, Broadband Corp may manage the firmware on all devices connected to Broadband Corp's network.

#### **Ultimate Support:**

If Customer chooses to purchase this service as shown on the Customer Work Order, Invoice / Statement. Company will provide any general maintenance on Wireless equipment, installation materials, registered software and hardware devices including but not limited to pickup and delivery, Wireless router replacement, or other devices installed by Company. Parts included at the companies' discretion as defined on the Company website, service may change, and notice will be provided on the Company website but may also be provided by other communication solutions. Customer is responsible for backing up all data on devices and releases company from all liability for not doing so.

#### **Changing out Equipment:**

Broadband Corp has the right, but not the obligation, to upgrade, replace or otherwise change out the Broadband Corp Equipment. You agree that such changes may be made without advance notice or your specific consent and agree that they may be performed at your Premises or, if technically possible, remotely through downloads, at our option. In some instances, you may need to exchange or pick up new or additional Broadband Corp Equipment. If you do not cooperate in making changes, the availability or quality of the Services may be adversely affected, up to and including loss of Service. The functionality of any Purchased Equipment is not guaranteed or warranted by Broadband Corp. Additionally, any such changes may impair or eliminate the functionality of Purchased Equipment. Broadband Corp has no obligation to upgrade, repair, modify or accommodate any Purchased Equipment. Any changes to or replacement of Purchased Equipment will be your obligation and at your sole cost.

#### **Tampering with or relocate Broadband Corp equipment:**

You willingly accept the responsibility for securing and protecting all Broadband Corp Equipment. You agree not to tamper or otherwise interfere with any Broadband Corp Equipment and you must prevent others at your Premises from doing so. Broadband Corp Equipment may not be removed from your Premises or used in another location without Broadband Corp's express permission, even if you have moved to that other location and continue to pay us for Services. You agree to reimburse us, by paying "liquidated damages," for any unreturned, lost, stolen or damaged Broadband Corp Equipment (excluding Purchased Equipment), even if you are not at fault. The liquidated damages amount is available on request from your local Broadband Corp office. You agree that this approach is reasonable because it would be difficult to accurately set the value of the equipment or our losses if someone else used it to gain unauthorized access to our Services.

#### **Changes in requirements for Service:**

Broadband Corp may periodically change the requirements for equipment, software or other items needed for a Service. Broadband Corp does not have to continue to support previously acceptable items including any Purchased Equipment. If the requirements change, you may need to acquire, at your own expense, new or additional items in order to continue to use the Service.

#### **Telephone Numbers and E-Mail Address ownership:**

You do not have any property rights in the Services, including any telephone number, other call number designation, IP address (whether static or dynamic) or email address assigned by Broadband Corp. Broadband Corp may change and reassign any of the foregoing assigned to you, whenever Broadband Corp deems it necessary or desirable. Broadband Corp may also reclaim and reassign any and all such items if Service has been cancelled or terminated, regardless of the reason for such cancellation or termination. Unless Broadband Corp otherwise agrees in writing, IP addresses will be dynamically assigned, and will not be static or “sticky” IP addresses.

Broadband Corp will not be responsible for directory listing errors or omissions or disclosure of non-published numbers.

#### **Software:**

Broadband Corp grants you a limited, nonexclusive and nontransferable license to use software (including software from third party licensors) (collectively “Licensed Software”) solely in connection with the Service. Software for mobile applications may only be used by an authorized user on a wireless device that is owned or controlled by such user. We may modify the Licensed Software at any time and for any reason, without notice, including through uploads. Your use of the Licensed Software is governed by this Agreement and Other Terms that may be provided to you by Broadband Corp or the third party Licensor. Your right to use the Licensed Software terminates upon termination of this Agreement or upon written termination by Broadband Corp. Any software license granted to you herein is for the object code version of the Licensed Software only, is without the right to sublicense and shall terminate immediately upon any termination of this Agreement or the applicable Service. Without limiting your obligations under law, you agree not to copy, modify, adapt, alter, translate, create derivative works, reverse engineer (except to the extent allowed under applicable law), disassemble, decompile, or otherwise attempt to reconstruct, obtain or perceive the source code from which any component of the Licensed Software is compiled or interpreted, and you hereby acknowledge that nothing in this Agreement shall be construed to grant you any right to use or otherwise obtain access to, any such source code. You may not take any steps to defeat any security measures in the Licensed Software. You may not make any unauthorized use of any content available through any Licensed Software. Any reproduction, distribution, sale, sublicense, transfer or use of the Licensed Software not expressly permitted by this Agreement or any other applicable terms is expressly prohibited. The Licensed Software is licensed and not sold to you. Broadband Corp and its suppliers retain title to and ownership of the Licensed Software and other intellectual property rights in and to the Licensed Software

#### **Billing initiation; Order cancellation:**

Charges for any Service will begin as of the date Broadband Corp makes Service available for use. If you cancel before the Services are made available, you may be obligated to pay termination fees and expenses. If you cancel an order for phone Service prior to scheduled initiation, Broadband Corp is not responsible for any consequences, which may include inability to make telephone calls using your home phone and loss of the use of the assigned telephone number

### **Fees and charges required for Service:**

You authorize Broadband Corp to charge your credit or debit card on file for all amounts you owe. You agree to inform Broadband Corp promptly of any change in credit or debit card information including cancellation of any card use for payment or inadequate balance to make a committed payment. Any communication from You on or accompanying a check or any other form of payment will not be effective as notice to Broadband Corp, and such statements as “payment in full” or similar language will not bind Broadband Corp.

By using Broadband Corp Services, you agree to pay our recurring charges for the Services you receive when and as required by our pricing terms from time to time in effect, along with any non-recurring charges, taxes and other applicable charges and additional fees.

- **Recurring charges:** Periodic, continuing charges for the Services provided to you. Ordinarily, recurring charges for a Service will be payable monthly in advance.
- **Non-recurring Charges:** Charges such as installation, equipment delivery and return, service calls not caused by Broadband Corp’s network failure, services provided on a per-programming or per-call basis and other non-recurring charges ordinarily will be billed in arrears.
- **Other Charges:** Applicable surcharges, governmental fees and taxes will be added to each bill. You waive your right to a refund of any sums that we collect from you and pay to any government or agency, even if erroneously calculated or paid.
- **Additional Fees:** Additional fees or charges may apply, including fees for returned checks, charge card chargeback, early termination, reconnection, service calls and fees and costs associated with collecting past due balances.

### **Payment for unavailable Services due to Customer acts or omissions or otherwise:**

Except as expressly provided under this agreement, your obligation to pay for a Service continues without reduction even if the Service is unavailable or its quality is degraded because of any act or omission by you or any third party whom Broadband Corp does not control or any other event.

### **Timing for payments:**

Late charges may be assessed and the Services may be suspended or terminated if any payment is not received on time. You will be liable for costs associated with collection of amounts owed (which might include the costs of a collection agency, reasonable attorneys’ fees or arbitration costs, as well as interest). Failure to receive a bill does not release you from your obligation to pay.

### **Returned Payment Fees:**

You may be charged the maximum amount permitted by applicable law if a banking institution: (i) dishonors a check or draft presented for payment; (ii) returns an electronic funds transfer for insufficient funds; (iii) reverses any credit or debit card charge; or (iv) prevents payment in any other manner.



### **Bill Disputes:**

Broadband Corp must receive notification of any billing dispute within thirty days of the date of the disputed bill. Failure of notification receipt will mean you waive (give up) your right to a refund or credit. Broadband Corp will not terminate Service until an investigation of the dispute is completed and you are informed of the findings. Unresolved disputes will be handled in accordance with the binding arbitration terms set forth in this Agreement, unless you opt out of arbitration.

### **Termination for Payment Default:**

Subject to law, Broadband Corp may terminate Services if you fail to pay any charges when due. Upon termination by you or by Broadband Corp, you must pay all charges incurred through the date of termination or any later date specified in your Agreement. If we permit reconnection, you may be required to pay a reconnect fee in addition to all past due charges and satisfy any other requirements we may establish.

### **Refunds:**

Any prepayment for Service not received will first be applied to offset termination charges, fees or other amounts you may owe.

No refund or credit will be required because of any interruption or change referred to in Sections above, or for any other reason, except as expressly required by legal requirements that cannot be changed by agreement of the parties or except as expressly provided in this Section or some other provision of your Agreement.

For the sake of clarity, no change, event or circumstance within the intended scope above shall be an “interruption” or “failure of a Service” for purposes of the foregoing or any other purpose.

### **Indemnification:**

You agree to indemnify Broadband Corp and its affiliated companies, together with their respective officers, directors, employees, agents, contractors and third party vendors (the “Broadband Corp Parties”), for any and all actions, claims, judgments, damages, demands, liabilities, losses and expenses, including reasonable attorney’s fees, arising out of or resulting from:

- any injury or damage to person or property or loss of life or property resulting from our installation of wires or equipment at your Premises in connection with provision of any of your Services or our acts or omissions in connection with providing you with any Service, unless caused by our gross negligence or willful misconduct;
- unauthorized use of any Broadband Corp service through any equipment or connection at your premises or otherwise through your account; or
- your or any Service user’s:
  - breach or violation of your Agreement relating to any Service;
  - uploading or downloading of content, communication or transmission;
  - violation of law; or
  - other act or omission.

**No service guarantee / No warranties:**

THE SERVICES, BROADBAND CORP EQUIPMENT (INCLUDING PURCHASED EQUIPMENT) AND SOFTWARE ARE PROVIDED "AS IS" AND "IF AND AS AVAILABLE." NO ORAL OR WRITTEN STATEMENT, SERVICE DESCRIPTION, ADVICE, RECOMMENDATION OR INFORMATION GIVEN OUTSIDE OF YOUR AGREEMENT, WHETHER BEFORE OR AFTER THE AGREEMENT BECOMES EFFECTIVE, WILL CREATE A WARRANTY OR OTHER OBLIGATION ON THE PART OF BROADBAND CORP OR ANY OF ITS AFFILIATES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BROADBAND CORP DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF PERFORMANCE, AVAILABILITY, QUALITY OF SERVICE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR AS TO THE PROPER OR TIMELY DELIVER OR SECURITY OF YOUR COMMUNICATIONS OVER OUR FACILITIES. IF THE LAW WHERE YOUR PREMISES ARE LOCATED DOES NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, THEN THE AFFECTED EXCLUSIONS DO NOT APPLY TO YOU.

Without limiting the scope or extent of the foregoing paragraph, Broadband Corp does not guarantee or warrant:

- continuous, uninterrupted or secure access to any Service;
- that a Service will be available on a specified date or time or that our network will have the capacity to meet demand during specific hours;
- any particular download or upload speed for any Internet access service or any other characteristic of that or any other kind of Service,
- compatibility of any Service with your computers, telephone or video equipment, operating systems or software; or
- that any Service will work as intended

**Limitations and Exclusions of Liability by Broadband Corp and Other Persons:**

THE FOLLOWING LIABILITY LIMITATIONS, DISCLAIMERS and exclusions ARE IN ADDITION TO, and do not negate, modify or otherwise limit or impair, ANY OTHER warranty or liability disclaimer, exclusion or limitation ELSEWHERE IN YOUR AGREEMENT. Each limitation OR DISCLAIMER, WHETHER IN THIS SECTION OR ELSEWHERE, is an essential element of YOUR Agreement and, but for each provision, Broadband Corp would not provide the Services at all or at the prices charged.

**LIMITATION OF LIABILITY OF BROADBAND CORP PARTIES FOR DAMAGES:**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT, EXCEPT FOR CREDITS EXPRESSLY REQUIRED BY A SPECIFIC PROVISION OF YOUR AGREEMENT OR BY PROVISIONS OF LAW THAT CANNOT BE CHANGED BY AGREEMENT OF THE PARTIES, THE BROADBAND CORP PARTIES WILL NOT BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY LOSSES, DAMAGES OF ANY KIND BASED ON BREACHES OF THIS AGREEMENT OR YOUR RELATIONSHIP WITH US OR ARISING FROM THE BROADBAND CORP EQUIPMENT (INCLUDING PURCHASED EQUIPMENT), REGARDLESS OF THE BASIS OF ANY CLAIM. IN NO EVENT WILL THE BROADBAND CORP PARTIES BE REQUIRED TO CREDIT YOU AN AMOUNT IN EXCESS OF YOUR SERVICE FEES FOR THE MONTH DURING WHICH YOU SUFFER ANY LOSSES OR DAMAGES.

IF, DESPITE THE INTENT OF THE PARTIES THAT THE FOREGOING PROVISIONS BE ENFORCED AS WRITTEN, IF SUCH PROVISIONS ARE FINALLY DETERMINED BY A COURT OR ARBITRATOR WITH JURISDICTION TO BE UNENFORCEABLE AS WRITTEN, THEN THE PARTIES INTEND FOR THE CUMULATIVE LIABILITY OF THE BROADBAND CORP PARTIES TO BE THE SMALLEST AMOUNT PERMITTED BY APPLICABLE LAW.

THE FOREGOING SHALL SURVIVE THE UNENFORCEABILITY OR OTHER FAILURE OF ANY OTHER PROVISION OF THIS AGREEMENT THAT PURPORTS TO EXCLUDE OR LIMIT REMEDIES OR LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT THE BROADBAND CORP PARTIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL OR PUNITIVE DAMAGES (OR SIMILAR DAMAGES, HOWEVER DENOMINATED) DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, PERFORMANCE, NONPERFORMANCE OR BREACH, ANY EQUIPMENT (INCLUDING PURCHASED EQUIPMENT) OR SOFTWARE ASSOCIATED WITH A SERVICE OR ANY SERVICE, EVEN IF AWARE THAT THEY COULD RESULT. THE FOREGOING SHALL SURVIVE THE UNENFORCEABILITY OR OTHER FAILURE OF ANY OTHER PROVISION OF THIS AGREEMENT THAT PURPORTS TO EXCLUDE OR LIMIT REMEDIES OR LIABILITY.

SOME STATES DO NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU. THE PARTIES INTEND THAT THE FOREGOING SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

Limitations apply regardless of the specifics of the claim, the proceeding based on that claim or the legal theory relied upon. Each of the limitations, disclaimers and exclusions of liability contained in this Agreement will independently apply regardless of (i) the form of action (including any action in contract or based on warranty, negligence, tort, strict liability or statute); (ii) any claim or finding that any breach of or default under this Agreement was total or fundamental; (iii) the type of damages; (iv) any claim or finding with respect to the adequacy, failure, purpose or sufficiency of any remedy provided for under this Agreement; and (v) whether Broadband Corp was informed or aware of, or otherwise could have anticipated the possibility of, such damages or liability.

**Legal action, 12 month look back limit:**

By using Broadband Services, you agree to waive your right to commence any proceeding against any of the Broadband Corp Parties if the relevant events occurred more than twelve (12) months earlier. This waiver is not enforceable, and the normal statute of limitations in your area will apply, if you notified Broadband Corp in writing of the events giving rise to the proceeding within one year of their occurrence.

**Arbitration:**

You and Broadband Corp are agreeing to resolve certain disputes through arbitration.

THIS BINDING ARBITRATION PROVISION SAYS THAT YOU AND BROADBAND CORP AGREE TO RESOLVE CERTAIN DISPUTES THROUGH ARBITRATION. PLEASE READ THIS SECTION CAREFULLY TO UNDERSTAND OUR BINDING ARBITRATION AGREEMENT.

The term “Dispute” means any dispute, claim, or controversy between you and Broadband Corp regarding any aspect of your relationship with Broadband Corp, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, or any other intentional tort), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Arbitration Provision. “Dispute” is to be given the broadest possible meaning that will be enforced. As used in this Arbitration Provision, “Broadband Corp” means Broadband Corp and its parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents.

Broadband Corp will strive to resolve all disputes informally by responding quickly and conscientiously to customers’ concerns. However, if we cannot resolve a Dispute with you, then, except as described elsewhere below, each of us agrees to submit the Dispute to the American Arbitration Association for resolution under its Commercial Arbitration Rules. Alternatively, you may bring your claim in your local “small claims” court, if its rules permit it. If you bring an action in small claims court, you waive (unless local law prohibits such a waiver) discovery in that proceeding. In other words, unless local law prohibits you from doing so, you agree that you will not be able to depose Broadband Corp witnesses or seek non-public documents. Broadband Corp may choose to pursue, in court, claims related solely to your payment obligations for services, equipment or facilities.

Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. [Arbitrators can award the same damages and relief that a court can award.] You agree that, by agreeing to these Terms of Use, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision.

YOU AND BROADBAND CORP ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY. YOU AND BROADBAND CORP FURTHER AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Broadband Corp agree otherwise, the arbitrator may not consolidate more than one person’s claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision (waiver of jury trial and waiver of class action) is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

YOU MUST CONTACT US WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE (EXCEPT FOR BILLING DISPUTES, ABOUT WHICH YOU MUST CONTACT BROADBAND CORP WITHIN SIXTY (60) DAYS AS PROVIDED IN THIS AGREEMENT), OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS, OR DISPUTE.

YOU AND BROADBAND CORP AGREE THAT THE FOLLOWING WILL NOT BE SUBJECT TO ARBITRATION: (1) ANY CLAIM FILED BY YOU OR BY BROADBAND CORP THAT IS NOT AGGREGATED WITH THE CLAIM OF ANY OTHER CUSTOMER AND WHOSE AMOUNT IN CONTROVERSY IS PROPERLY WITHIN THE JURISDICTION OF A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS ; (2) ANY DISPUTE OVER THE VALIDITY OF ANY PARTY’S INTELLECTUAL PROPERTY RIGHTS; (3) ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR RECEIPT OF SERVICE; (4) ANY DISPUTE THAT ARISES BETWEEN BROADBAND CORP AND ANY STATE OR LOCAL REGULATORY AUTHORITY OR AGENCY THAT IS EMPOWERED BY FEDERAL, STATE, OR LOCAL LAW TO GRANT A FRANCHISE UNDER 47 U.S.C. § 522(9); AND (5) ANY DISPUTE THAT CAN ONLY BE BROUGHT BEFORE THE LOCAL FRANCHISE AUTHORITY UNDER THE TERMS OF THE FRANCHISE.

If you or Broadband Corp elect to resolve your dispute through arbitration pursuant to this Arbitration provision, the party initiating the arbitration proceeding may open a case with the American Arbitration Association – Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-493-4185, www.adr.org under the Commercial Arbitration Rules of the American Arbitration Association “AAA”.

Before you initiate an arbitration proceeding, you may request that we advance on your behalf (1) the arbitration filing fees (but only to the extent they exceed your local small claims court filing fees) and (2) the portion of the arbitrator’s costs for which you would normally be responsible. If we win the arbitration, you will reimburse us for these advances. We will, of course, pay any fees or costs required under the law where you live.

This arbitration provision shall survive termination of this Agreement.

#### **Privacy:**

Subject to law and Broadband Corp’s Privacy Notice & Subscriber Policies:

Broadband Corp may from time to time collect, monitor, use and disclose your information and transmissions over Broadband Corp’s facilities; and

Broadband Corp may (but has no duty to) disclose any information that it believes appropriate to protect its rights, comply with law or safeguard its personnel, property and operations, or where it believes that individual or public safety is in peril.

You are responsible for protecting the information needed to securely access your account and verify. If someone else acquires this information, we may assume that you have authorized that person’s use of the information and we may provide your personal information to that person as if he or she were you.

In some cases, mere usage of a Service may allow third parties to obtain information about you and access to your transmissions. Broadband Corp is not liable for or because of any lack of privacy or access to your information or transmissions by any third party that may result from your use of the Services, or act or omission by any third party.

#### **Termination of service by you:**

You may terminate any Service at any time by giving Broadband Corp at least thirty (30) days’ prior notice, but if you have subscribed to a Service for a fixed period of time, to a bundle of Services at discounted pricing dependent upon your continued subscription to all of the bundled services or on some other special terms, your right to terminate will be governed by the terms of that subscription. Your Agreement will remain in effect for any Service not terminated. You may notify Broadband Corp by writing (e-mail, fax or U.S. Mail) to schedule a disconnection of Service and to arrange for the return of Broadband Corp Equipment (exclusive of Purchased Equipment). If you agreed to purchase a bundle of Services for reduced prices, and you cancel less than all of them, the price(s) for the continuing Service(s) may increase. In some cases, you may have to pay a termination charge.

#### **Customer Obligations upon termination:**

Upon termination of any Service for any reason, you must:

- immediately cease using that Service and associated Broadband Corp Equipment (exclusive of Purchased Equipment) and software;
- pay, in full, the fees and charges for your use of the Service and the Broadband Corp Equipment through the later of: (1) the effective date of termination of the Service or (2) the date when the associated Broadband Corp Equipment or software has been returned to Broadband Corp;
- pay any applicable termination fees or charges; and
- promptly return all Broadband Corp Equipment (exclusive of Purchased Equipment) in the same operating condition as when received (reasonable wear and tear excepted) directly to our local office, to a Broadband Corp representative, or by any other means reasonably requested by Broadband Corp. If you terminate an equipment based Service, Broadband Corp may continue to charge you for the Service until the Broadband Corp Equipment associated with that Service is returned.

If Broadband Corp Equipment (excluding Purchased Equipment), including power cords and any associated accessories, is not timely returned, or is damaged or is not in good condition (reasonable wear and tear excepted), you agree to promptly pay us the full manufacturer's retail price or the amount stated in Broadband Corp's rate card and the incidental costs related to recovery or replacement. We may charge your credit card or bank account for unreturned Broadband Corp Equipment.

**Disposal of stored e-mails and other items upon termination:**

After a Service ends, e-mail, calls, voicemail or any other communication or content sent to or associated with your terminated account will not be bounced or forwarded to another account, or stored by Broadband Corp. We reserve the right, but will not be obligated, to delete any of your content or materials. Your right to use usernames, IP and e-mail addresses and URLs associated with your Service will end.

**Residents of Apartment Buildings and Similar Properties:**

In some cases, Broadband Corp provides a Service to the owners or managers of apartment buildings, cooperative apartment buildings, condominium complexes, hotels, motels or other buildings, properties or complexes with multiple residential, dwelling or other units on a bulk-billed basis, and the owners or managers, in turn, provide the Service to units within the property. The provisions of this Agreement apply fully to each unit resident and each user through a unit resident, regardless of whether he or she has directly subscribed for or has a direct account with Broadband Corp.

**Right to transfer agreement or account:**

Broadband Corp may assign (transfer) to one or more other persons all or part of your Agreement without your consent or notice to you. You may not assign or transfer your account or Agreement or any of your rights, obligations or liabilities without Broadband Corp's prior written consent.

**Broadband Corp is not be liable for events beyond its Control:**

Broadband Corp will not be liable by reason of any failure in the performance of its obligations to the extent caused, directly or indirectly, by events beyond its reasonable control, including any and all acts of God, fire, floods, other catastrophes, insurrections, national emergencies, terrorism, wars, strikes, labor disputes, unavailability of rights-of-way, loss of utility service or power supply disconnection or unavailability of any other provider's facilities, capacity or services, acts of third parties unrelated to Broadband Corp or related to Broadband Corp but acting beyond their scope of employment or agency, computer virus, hacking or

other outside disruption, and any changes in law, regulations or other directives, actions or requests of any governmental authority claiming jurisdiction over Broadband Corp.

**Governing law; waiver of jury trial; No class actions:**

Your Agreement, and any claim, controversy or dispute arising under or related to a Service (whether based on contract, tort or other legal theory or cause of action), will be governed by the internal laws of the state where Services are provided. The Federal Arbitration Act, not state law, will govern the arbitration of all disputes between Broadband Corp and you regarding your Agreement or a Service. Each party waives (that is, gives up), to the fullest extent permitted by applicable law, any right to a trial by jury in respect of any action, suit or proceeding arising out of or relating to this Agreement. To the maximum extent permitted by law, the parties agree that there will be no right to have any claim litigated or arbitrated on a class action basis or as a claim brought in a purported representative capacity on behalf of persons similarly situated or the general public.

**Termination of service by Broadband Corp:**

Broadband Corp may terminate any one or more of your Services and each related Agreement at any time with or without cause. Broadband Corp is not responsible for restoring or reconfiguring or reconnecting your computers, networks or systems after termination. Broadband Corp will provide notice of a pending disconnection if and as required by law.

**Third Parties:**

Except in any case where a provision of this Agreement states that it covers or otherwise is intended to benefit one or more third parties, there are no third party beneficiaries of this Agreement and this Agreement does not give any person, other than You, any rights or remedies or create any obligations or liabilities on the part of Broadband Corp. Each Broadband Corp Affiliate, supplier and contractor is expressly made a third party beneficiary of the disclaimers, warranties, limitation of liability, your indemnifications contained in this Agreement, the arbitration provision and waiver of jury trial and class-action rights, and, to the extent that any intellectual property of such Affiliate, supplier or contractor is made available to you, the provisions on this Agreement applicable to intellectual property and is entitled to directly assert and enforce those provisions in its own right.

The Service allows access, through the Internet, to third parties who offer goods, services, content and information. All charges incurred as a result are your responsibility. You also are responsible for protecting the security of identity, credit card or other information provided in connection with such transactions. Broadband Corp is not responsible for the websites, products, services, content, acts or omissions of third parties.

In providing Service(s), Broadband Corp may use products, services, equipment, networks, content and other items supplied by third parties whom Broadband Corp does not control. While it selects third parties thought to be reliable, Broadband Corp is not responsible for the acts or omissions of third parties, any Service defects or interruptions resulting from the performance or non-performance of the services, equipment or software they supply or the consequences of any of those defects or interruptions.

A SERVICE MAY ALLOW YOU TO INTERACT WITH THIRD PARTIES, INCLUDING BUYING GOODS AND SERVICES. YOU RELEASE THE BROADBAND CORP PARTIES FROM CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND

NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH BROADBAND CORP'S REFERRAL OR TRANSFER OR YOU TO A THIRD PARTY OR ANY SUCH INTERACTION WITH A THIRD PARTY.

**Broadband Corp notices:**

Broadband Corp may provide any notice required or permitted by this Agreement using any method we determine appropriate, including by electronic means.

**If a court finds part of this agreement invalid:**

If a court or similar body determines that a portion of your Agreement is invalid or unenforceable, the rest of your Agreement will stand. The invalid or unenforceable portion shall be interpreted as closely as possible (consistent with law) so as to reflect the intention of the original. The only exception to this is in the section regarding Arbitration.

**Some Terms of your agreement continue in effect even after termination:**

The following provisions will survive any termination of your Agreement: disclaimers, exclusions and limitations of warranties and liability and provisions regarding arbitration of disputes, indemnification and termination. Your payment obligations and any claims, rights and remedies arising from any violation of this Agreement by you, will also survive. Other terms of your Agreement that a prudent business owner would logically and reasonably be expected to want to continue in effect after termination will also survive.

**Surrender of rights:**

Broadband Corp's failure to insist upon strict performance of any provision of your Agreement or failure to enforce a right or remedy does not mean that we waive (give up) any of Broadband Corp's rights or remedies. To be effective, any waiver Broadband Corp grants must be in writing. If we do waive our rights in a specific situation, it does not mean we also waive any right or remedy in any other situation or in the future.

**Consent to Phone and Email Contact:**

Subject to law, we may call any number or email or text you at any address you provide to us (or that we issue to you) for any purpose, including marketing of our Services, even if your numbers are included on state or federal "do not call" lists. You are responsible for any related charges. However, if you ask to have your number placed on our "do not call" list, we will not call you at that number for marketing purposes. Similarly, if you ask to have your address placed on our "do not email" list, we will not email or text marketing messages to you at that address. To have a number or address placed on our "do not call" or "do not email" list, contact your local Broadband Corp office. Subject to law, we may use automated dialing systems or artificial or recorded voices to call you.

**ADDITIONAL TERMS OF SERVICE FOR BROADBAND CORP INTERNET ACCESS SERVICE:**

**Loss of Data:**



Broadband Corp shall have no liability whatsoever for any damage to or loss or destruction of any of your software, files or data resulting from any cause.

#### **Viruses:**

Websites visited or data received through the Service may contain viruses. It is your sole responsibility to take appropriate precautions to protect against damage to or destruction of hardware, software, files and data. Broadband Corp may, but is not required to, suspend or terminate availability of the Service if a virus is found to be present on any user's system or in any communications sent or received through the Service.

#### **Unauthorized access to your computer and files:**

Inherent in Internet access is the risk that unauthorized persons will use your Service or gain access to your computer and to the software, files, personal information and other data stored or transmitted by you, install a "bot" on or otherwise "hijack" your computer or harm or misappropriate your computer, systems and files in some other way. Usage of the Service is at your sole risk, and you are responsible for the security of your computer, equipment, information and data traffic. Broadband Corp shall have no liability whatsoever if third parties intercept data transmissions by or to you or otherwise gain access to or misuse your computer, other equipment, files or account.

#### **Inappropriate Content:**

There may be content available through the Internet which is illegal, violates third party property or other rights or is offensive. Broadband Corp is not responsible for the content contained on the Internet or otherwise available through the Service. Broadband Corp shall not be liable for any claims, losses, actions, damages, suits or proceedings arising out of, or otherwise relating to, such content. If we determine that the transmission or posting violates your Agreement, we may (but have no duty to) delete the materials, block access to them, cancel your account and pursue all other legally available rights and remedies.

#### **The security of Broadband Corp's network:**

Broadband Corp reserves the right to take actions to protect the security and integrity of its network and resources that are consistent with applicable law.

#### **Service use may be subject to bandwidth, data storage and other limitations:**

Broadband Corp may manage its network consistent with applicable law. Without limiting the generality of the foregoing or our rights under other provisions of your Agreement, we may at any time and from time to time, put in place and change:

- Maximum throughput rates (sometimes referred to as upload or download "speed"), bandwidth usage limits or other defining characteristics of the Service, which may be different for each Service level, and
- Additional terms to address usage that is not consistent with the limits or other characteristics of each Service level. For example, if we set or change a bandwidth-usage limitation that applies to your Service level and you exceed the limit, we may suspend your Service, charge you for your excess usage or take other specified measures. If you consistently exceed limits that apply to your Service level, you may need to subscribe to a higher-cost level to avoid these consequences.

We may monitor your bandwidth usage patterns and your compliance with your Agreement and our usage terms and policies.

**Speed or other service features:**

The Service and the Internet utilize shared network facilities and not all facilities are owned or operated by Broadband Corp. The Service will attain the applicable maximum throughput rate (speed) only in bursts and *not* on a guaranteed or consistent basis. Broadband Corp does not guarantee or warrant speed, latency, bandwidth, access to particular content or Internet sites or compatibility of the Service with your or any user's devices, operating systems or software. The foregoing does not limit the generality of any other disclaimer, exclusion or limitation of warranties or liability in your Agreement.

**ADDITIONAL TERMS FOR BROADBAND CORP PHONE SERVICE:**

**Circumstances impairing the ability to make 911/E911 emergency calls:**

*Use of phone Service outside of your Premises is a violation of your Agreement.* It may also result in inaccurate location information being provided to emergency authorities if you make a 911 call while away from your Premises. Broadband Corp is not responsible for any such inaccurate information or any resulting damage or harm. Calls, including calls to 911/E911, may not be completed if there is a problem with System or network facilities, including network congestion, network/equipment/power failure, or another technical problem. The Service, including 911/E911, will be disabled if your account is suspended or terminated. Listing your address with 911 databases normally takes between 24 and 120 hours from the time that you subscribe to our phone Service. Enhanced 911 service (which includes your address information) will not be available until such databases are updated. As noted above, power failures at your Premises or Broadband Corp's facilities may prevent you from being able to complete 911 or E911 calls.

**Compatibility of home security and monitoring systems:**

Certain models of alarm and home security systems, not provided by the Broadband Corp Parties, medical monitoring devices and TDD or TTY devices for the hearing impaired *may not be compatible with the Service.* If you intend to use a Broadband Corp Service with an alarm or home security system not provided by the Broadband Corp Parties, medical monitoring TDD or TTY system or device, you are responsible for making sure it works properly and for the cost of doing so. Broadband Corp does not guarantee or offer emergency services compatible with any TDD/TTY or other hearing impaired devices. As noted above, power failures at your Premises or Broadband Corp's facilities may prevent the operation of alarm and home security system not provided by the Broadband Corp Parties, medical monitoring and TDD or TTY devices.

**Switching from Broadband Corp to another provider:**

You have a right to port your telephone number to a different carrier in accordance with federal guidelines. To transfer your phone number from Broadband Corp to another service provider, you must place the order to transfer the service through your new service provider and not through Broadband Corp. If you cancel phone service with Broadband Corp, the phone number cannot be ported, and your number might no longer be available to be assigned to you.