

# **VYVE BROADBAND BUSINESS SERVICES SUBSCRIBER AGREEMENT**

**Updated April 2019**

The terms and conditions of this Business Services Subscriber Agreement (“Agreement”) set forth in the “General Terms and Conditions” section below are applicable to all Services (defined below) provided by Vyve Broadband, LLC or any of its subsidiaries (collectively, “Vyve”). The attachments (“Attachments”) thereto further describe and set forth additional terms and conditions for Vyve’s Video and Voice Services and are hereby incorporated into, and made a part of, this Agreement by this reference. This Agreement should be read in conjunction with Vyve’s Business Services Acceptable Use Policy (“Business AUP”), Network Management Practices Policy and Customer Privacy Notice, as they may be changed from time to time. Vyve’s website always contains the most current versions of such policies. See <http://vyvebroadband.com/company/policies>.

## **GENERAL TERMS AND CONDITIONS**

### **1. AGREEMENT**

These General Terms and Conditions, the Attachments and any Service Order(s) (defined below) collectively constitute the “Master Agreement” by and between Customer and Vyve Broadband, LLC, Vyve Broadband A, LLC or Vyve Broadband J, LLC, as specified on the corresponding Service Order (such Vyve entity providing the Services and including any Vyve-affiliated entity providing Services, “Vyve,” and together with Customer, collectively, the “Parties” and each, individually, a “Party”) for the services and at the locations specified on such Service Orders (“Services”).

### **2. SERVICES AND SERVICE ORDERS**

Subject to the terms and conditions of this Master Agreement (including, without limitation, Customer’s compliance with its obligations set forth in Section 6 herein), Vyve shall provide Customer with the Services at the address specified on the Service Order (the “Service Location”) pursuant to and in conformance with any Service Order accepted in accordance with this Section 2. Customer understands and agrees that certain Services may not be available in all Vyve service areas and that Vyve, upon entering into a Service Order with Customer may, at Vyve’s discretion, utilize one or more of its affiliates or another party to deliver the Services (“Third Party Services”). The Third Party Services may be subject to additional terms and conditions. Unless otherwise set forth on an applicable Service Order, Vyve shall use commercially reasonable efforts to provide the Services

identified in a Service Order seven (7) days a week, twenty-four (24) hours a day, excluding scheduled maintenance, required repair and events beyond Vyve's reasonable control.

Vyve shall present Customer with a service order (either in electronic or print form) reflecting the Services requested by Customer pursuant to this Master Agreement (in the form provided or approved by Vyve or via a mutually agreed electronic order entry system). Upon Customer's execution thereof, such service order(s), shall be deemed a "Service Order" hereunder and incorporated into, and made a part of, this Master Agreement by this reference upon the earlier of (i) Vyve's acceptance of such service order in writing; or (ii) Vyve's commencement of delivery of the Service(s) set forth in such Service Order. In the event Customer cancels a Service Order prior to Vyve actually delivering Service and Vyve incurs construction or installation charges in connection therewith, Customer shall reimburse Vyve for such charges actually incurred. Customer agrees that upon execution of a Service Order, Customer accepts and agrees to be legally bound by the terms and conditions set forth in such Service Order, this Master Agreement and Attachment hereto, the Business AUP and the other policies on Vyve's website incorporated by reference herein and governing the Services to which Customer subscribes.

### **3. SERVICE AND EQUIPMENT INSTALLATION**

Customer shall obtain and maintain, or ensure that each Customer employee or branch office to whom Service will be provided, or who shall use the Service, as applicable (each, the "End User"), shall obtain and maintain throughout the Term such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, Vyve personnel to install, deliver, operate and maintain the Service and Vyve Equipment (as defined in Section 5 below) as contemplated herein at Customer's and any End User's facilities. Customer shall permit Vyve reasonable access to Customer's and any End User's facilities at any time as needed to install, configure, upgrade, maintain or remove the Vyve Equipment and other Service components collocated at such facilities. Customer shall make and maintain throughout the Term all reasonable site preparations necessary to permit the installation, maintenance and operation of the Service and any Vyve Equipment as specified by Vyve and that is required to provide the Services hereunder. In addition, Customer will provide Vyve with floor space, rack space, other space and clean power as is reasonably necessary for the installation and operation of Vyve Equipment at the Customer locations identified in a Service Order for the applicable term of such Service Order. Customer shall not charge Vyve, and shall ensure that Vyve does not incur, any fees or expenses whatsoever in connection with Customer's provision of space, power or access as described herein, or otherwise in connection with Customer's performance of its obligations pursuant to this Section 3; and any such fees or expenses charged by any End

User shall be borne solely by Customer.

Provided that Customer properly performs all necessary site preparation and provides Vyve with all required consents, Vyve shall use commercially reasonable efforts to install the Service within a reasonable timeframe. Vyve shall provide Customer with a completion notice (“Completion Notice”) upon completion of the installation of a Service. For the avoidance of doubt, receipt by Customer of the invoice pertaining to such installation costs shall be deemed acceptable documentation of a “Completion Notice” for purposes of this Master Agreement. The date of receipt by Customer of the Completion Notice shall be the date on which the Service shall commence. In the event that Vyve is unable to install the Service in accordance with the agreed upon schedule as a result of (a) Customer’s (or any End User’s) failure to deliver any required materials, support or information to Vyve; or (b) Vyve not being able to obtain access to equipment or software at the installation location as necessary for installation of the Service, then Customer will pay Vyve an installation fee at Vyve’s then prevailing rates for any installation trip made by Vyve and an additional installation fee for each subsequent trip necessary to perform the Service installation. Interconnection of the Service and Vyve Equipment with Customer’s or any End User’s, as applicable, equipment will be performed by Customer, unless otherwise agreed to in writing between the Parties. Customer shall be solely responsible for securing and maintaining any and all Customer equipment where applicable.

- 4. RIGHT OF ENTRY.** If Customer is the owner of the premises where the Services will be provided (the “Premises”), the following additional terms shall apply:
- a. System; Services. Customer hereby grants to Vyve the non-exclusive right to install, operate, inspect, maintain, modify, repair, replace, relocate and remove a coaxial cable, fiber and/or wireless communication services distribution system (the “System”) and to market, sell and provide multichannel video, data, phone and other services (“Service Offerings”) to and from the Premises. Vyve will install and maintain the System at the Premises at its sole cost and expense, in a good and workmanlike manner and in accordance with good engineering practices and all applicable laws, rules and regulations.
  - b. Ownership and Use. The System will be and remain the sole personal property of Vyve and will not be deemed to be affixed to the Premises. Customer will not, and will not authorize any other party to, tamper with, attach to or use any portion of the System without the prior written approval of Vyve. If any of the System is not removed from the Premises prior to the expiration of this Section 4 (as set forth in subsection (d)

below), then Vyve will be deemed to have abandoned such personal property in place, and title to such property automatically will vest in Customer.

- c. Alteration to Premises. Vyve will be responsible for any or all damages directly caused by its faulty workmanship or installation of the System, provided that the boring of holes or insertion of fasteners through the surface of walls for attachment of peripheral equipment is part of normal workmanship and will not be deemed damages.
- d. Right of Entry Term. This Section 4 will remain in full force and effect for so long as Vyve provides any Service Offering to any occupant of the Premises, plus an additional 90 days thereafter to effect any removal of the System.
- e. Representations and Warranties. Customer represents and warrants that (i) Customer has the full authority to fully perform its obligations hereunder and to grant the rights granted to Vyve herein, (ii) no party has any contractual right or any interest in the Premises that conflicts with any rights granted hereunder, and (iii) the Premises is not part of a bankruptcy proceeding, foreclosure action, or deed-in-lieu-of-foreclosure transaction.

## **5. SUPPORT & MAINTENANCE**

- a. Vyve Equipment. Vyve shall use commercially reasonable efforts to maintain the Vyve-provided and installed equipment, including as applicable, any cabling, cable modems, related splitters, routers, handsets or other items, whether provided at no additional cost or leased by Customer from Vyve (collectively, "Vyve Equipment"), on Vyve's side of the demarcation points, as specified in the Service Order, used by Vyve to provide the Service. For the avoidance of doubt, inside telephone wiring, whether or not installed by Vyve, shall not be considered Vyve Equipment. Vyve Equipment is and shall remain the property of Vyve regardless of where installed within the Service Location(s) and shall not be considered a fixture or addition to the land or Service Location(s). At any time Vyve may remove, rearrange, disconnect, remove, attempt to repair or otherwise tamper with any Vyve Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair or otherwise tamper with any Vyve Equipment or permit others to do so, and shall not use the Vyve Equipment for any purpose other than as authorized by this Master Agreement.
- b. Purchased & Customer-Provided Equipment. Customer may elect to purchase certain equipment from Vyve for use of the Services at the applicable rates set forth in the Service Order(s) (collectively, "Purchased Equipment"). In addition to a cable modem, the use of the Service requires that Customer supply its own computer, Ethernet devices

(if required) and operating systems that meet Vyve's technical requirements. If the Service cannot be used because of the incompatibility of any such Customer-provided items, Customer will remain liable for all fees and charges under this Master Agreement. The fact that Vyve leases, sells, requires or approves a cable modem, computer, operating system or other item for use in the Service does not make Vyve responsible if it has defects or problems. Notwithstanding any contrary provision set forth in this Master Agreement, equipment and services on Customer's side of the demarcation points, as well as any Purchased Equipment and Customer-provided equipment, are the sole responsibility of Customer. Customer alone shall be responsible for providing maintenance, repair, operation and placement of all inside telephone wiring and equipment and facilities on Customer's side of the cable modem, route and/or coaxial input connection, all Purchased Equipment and all other Customer-provided equipment. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by Vyve's employees or authorized contractors when the difficulty or trouble report results from Purchased Equipment or Customer-provided Equipment. Vyve shall not be responsible to Customer if changes in any of the facilities, operations or procedures of Vyve utilized in the provision of Service render any Purchased Equipment or Customer-provided Equipment obsolete or require modification or alteration of such equipment or otherwise affects its use or performance.

- c. Maintenance & Support. Vyve shall provide a telephone number on the applicable Service Order for inquiries and remote problem support for the Service. All such Customer support shall be provided only to Customer's designated personnel, as mutually agreed upon by Vyve and Customer. Customer is responsible for all communications and interfaces with its End Users. In no event shall Vyve be responsible for providing support for any network, equipment or software not provided and installed by Vyve under this Master Agreement or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, Vyve shall use commercially reasonable efforts to restore any cable cuts on the Vyve network and shall keep Customer reasonably advised of such restoration progress. Customer agrees to provide routine operational Service support for Vyve Equipment and Service components collocated at Customer's or any End User's facility, including without limitation by performing reboots, as requested by Vyve. If Vyve responds to a service call initiated by Customer, and Vyve reasonably determines that the cause of the problem is not due to Vyve's Network, but is due to Customer's equipment or facilities, or a third party, Customer must compensate Vyve for the service call at Vyve's then prevailing rates.

## **6. CUSTOMER OBLIGATIONS**

Customer's use of the Service (including all content transmitted via the Service) and Vyve Equipment shall comply with all applicable laws, rules and regulations and the terms of this Master Agreement, Business AUP, Customer Privacy Notice and any other applicable Service policies available on Vyve's website. Customer agrees not to resell or redistribute (whether for a fee or otherwise) the Service, or any portion thereof, including but not limited to any Vyve Equipment, or make any use of the Service other than for Customer's internal business purposes, unless otherwise agreed in writing by Vyve. Customer shall ensure that its End Users' use of the Vyve Equipment and Service, if any, shall comply with all applicable laws, rules and regulations and terms of this Master Agreement, Business AUP, Customer Privacy Notice and any other applicable Service policies available on Vyve's website. Vyve may audit Customer's use of the Vyve Equipment and Service remotely or otherwise, to ensure Customer's compliance with this Master Agreement, Business AUP, Customer Privacy Notice and any other applicable Service policies available on Vyve's website.

Customer shall ensure that all Vyve Equipment at Customer's and Customer's End Users' facilities remains free and clear of all liens and encumbrances, and Customer shall be responsible for loss or damage to the Vyve Equipment while at Customer's or an End User's facilities. Customer is solely responsible for (a) all use (whether or not authorized) of the Service by Customer or any End User for purposes of this Master Agreement; (b) all content that is viewed, stored or transmitted via the Service, as applicable; and (c) all third party charges incurred for merchandise and services accessed via the Service, if any. Customer agrees to conform its equipment and software, and ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by Vyve from time to time.

Customer shall not use, or allow the Services to be used, in a manner that would cause, or be likely to cause, Vyve to qualify as a "Covered 911 Service Provider" as defined in C.F.R. §12.4 or any successor provision of the rules of the Federal Communication Commission. For avoidance of doubt, Customer and Vyve agree that any failure to satisfy the covenants set forth in the preceding sentence shall constitute a material breach of the Master Agreement.

## **7. TERM**

This Master Agreement shall commence upon full execution by both of the Parties of the Service Order and receipt by Customer of the Completion Notice from Vyve (the "Effective

Date”) and shall remain in effect for the initial term set forth on the Service Order accompanying this Master Agreement (such term, the “Initial Term” and such Service Order the “Initial Service Order”). Unless terminated earlier in accordance with the terms hereof, upon the expiration of the Initial Term, this Master Agreement shall automatically continue on a month-to-month basis with respect to such Service Order, unless either Party provides written notice of nonrenewal to the other Party at least thirty (30) days prior to the end of the then-current month. In no event shall Customer provide less than thirty (30) days’ prior written notice of termination of any Service Order or downgrade or cancellation of any Service. The Initial Term and each monthly renewal term thereafter collectively shall constitute the “Term.”

## **8. PAYMENT**

For each Service, Customer agrees to pay Vyve all recurring and non-recurring charges set forth on the Service Order, as well as broadcast retransmission and copyright fees, and all other applicable fees, taxes and other charges (which may include, without limitation, Service installation and activation charges, measured and usage-based charges, regulatory recovery fees for municipal, state and federal government fees or assessments imposed on Vyve; permitted fees and cost recovery charges; or any fees for programs in which Vyve participates, including, but not limited to, universal service fees, 911/E911 surcharges, telecommunications relay service surcharges, public, educational, and governmental access fees, local, long distance, conferencing, directory assistance and operator services calling charges, equipment and facilities charges, broadcast access fees, FCC fees, franchise fees right of way fees, and any fees or payment obligations imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use or provision of the Service) (collectively the “Service Charges”) in accordance with the following payment terms:

Service Charges will be billed to Customer on a monthly basis and are payable within thirty (30) days after the date appearing on the invoice. Customer must bring any billing error to Vyve’s attention within thirty (30) days after the date appearing on the applicable invoice or Customer waives its right to a refund or credit associated with such billing error. Vyve shall not defer any charges while Customer awaits reimbursement, subsidy, discount or credit from any third party or government entity, and Customer shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit. Vyve shall have the right to increase Service Charges for each Service after the Initial Order Term for such Service upon thirty (30) days written notice to Customer. Vyve may charge a late fee for any amounts which are not paid when due in accordance with applicable law. Customer shall also be responsible for all costs of collection (including reasonable

attorneys' fees) to collect overdue amounts. If Vyve fails to present a charge in a timely manner, such failure shall not constitute a waiver of the charges for the fees to which it relates, and Customer shall pay such invoice in accordance with these payment terms. If Customer elects to enroll in Vyve's Auto Pay service, in addition to the terms and conditions set forth herein, Customer also agrees to be bound by the terms and conditions of Vyve's Auto Pay Policy, the most current version of which can be found on our website at <http://vyvebroadband.com/company/policies>.

## 9. TAXES

Customer shall pay all federal, state, and local taxes, fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of this Master Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. Further, Vyve shall have the right to recover from Customer the amount of any state or local fees or taxes arising as a result of this Master Agreement that are imposed on Vyve or Vyve's Services, or measured on Vyve's receipts, and any other costs or expenses that Vyve is entitled under applicable law to pass through to or otherwise charge Customer for Customer's use or receipt of the Services. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer's invoice. Vyve shall be responsible for and shall pay all taxes measured by Vyve's net income. To the extent that a dispute arises as to which Party is liable for fees or taxes under this Master Agreement, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon Vyve's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on Vyve's net income. Customer shall be responsible for providing Vyve any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under this Master Agreement. To the extent such documentation is held invalid for any reason, Customer shall reimburse Vyve for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.

Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification some of the Services Vyve provides and, consequently, uncertainty about what fees, taxes and surcharges are due from Vyve and/or its customers. Customer agrees that Vyve has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Customer. Customer hereby waives any claims it may have regarding Vyve's collection or remittance of such fees, taxes and surcharges.



Customer understands that it may obtain a list of the fees, taxes and surcharges that Vyve currently collects or passes through by writing to Vyve.

## **10. PROPRIETARY RIGHTS AND CONFIDENTIALITY**

- a. Vyve's Proprietary Rights. All materials including, but not limited to, any Vyve Equipment (including related firmware), software, data and information provided by Vyve, any identifiers or passwords used to access the Service or otherwise provided by Vyve, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by Vyve to provide the Service (collectively "Vyve Materials") shall remain the sole and exclusive property of Vyve or its suppliers. Nothing herein is intended to convey any right or ownership interest to Customer or any other person or entity in or to such Vyve Materials. Customer shall acquire no interest in the Vyve Materials by virtue of the payments provided for herein. Customer may use the Vyve Materials solely for Customer's use of the Service. Customer may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the Vyve Materials, in whole or in part, or use them for the benefit of any third party. All rights in the Vyve Materials not expressly granted to Customer herein are reserved to Vyve. Customer shall not open, alter, misuse, tamper with or remove the Vyve Equipment as and where installed by Vyve, and shall not remove any markings or labels from the Vyve Equipment indicating Vyve (or its suppliers) ownership or serial numbers.
- b. Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the Vyve Materials and any other information and materials provided by Vyve in connection with this Master Agreement, including but not limited to the content of this Master Agreement, that are identified or marked as confidential or are otherwise reasonably understood to be confidential, including but not limited to the contents of this Master Agreement and any Service Orders.
- c. Software. If software is provided to Customer hereunder ("Software"), Vyve grants Customer a limited, non-exclusive and non-transferable license to use such Software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term. Customer agrees not to reverse engineer, decompile, translate or attempt to learn the source of any code of any Software related to the Services.

- d. Ownership of Telephone Numbers and IP Addresses. Customer acknowledges that use of the Services does not give it any ownership or other rights in any telephone number or Internet/on-line addresses provided.

## **11. MONITORING, EQUIPMENT UPGRADES AND MODIFICATIONS**

Vyve has the right, but not the obligation, to upgrade, modify and enhance the Vyve network (including Vyve Equipment and related firmware) and the Service and take any action that Vyve deems appropriate to protect the Service and its facilities. Vyve shall have the right, but not the obligation, to monitor and record oral communications with Customer regarding Customer's account or Services for purposes of service quality assurance. Vyve will notify Customer of any material adverse change to this Agreement by posting such modified Agreement on the Vyve web site or by email. Upon the effectiveness of any addition, modification or deletion, Customer's continued use of the Services shall constitute Customer's consent to such addition, modification or deletion, and agreement to continue to be bound by this Master Agreement. In any event, if Vyve modifies the Services or these Terms and Conditions and such modification has a material adverse impact on Customer's ability to use the Service, Customer may, within the thirty (30) day period following the date of such modification, terminate, without penalty, the Service Order relating to the affected Service.

## **12. TERMINATION**

- a. Termination. Either Party may terminate an applicable Service Order: (1) upon thirty (30) days written notice to the other Party of the other Party's material breach provided that such material breach is not cured within such thirty (30) day period, or (ii) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, is removed or delisted from a trading exchange or its long term debt is downgraded more than two levels from its rating as of the Effective Date. In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of the Business AUP or the terms of this Master Agreement or related Service agreements, Vyve may, upon thirty (30) days written notice, suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, Vyve may immediately suspend Customer's or any End User's use of the Service if such use is determined by Vyve, in its sole discretion, to be resulting in a material degradation of the Vyve network, until such time as such degradation has been remedied. In the event of a

suspension, Vyve may require the payment of reconnect or other charges before restarting the suspended Service.

- b. Obligations upon Termination. Upon the termination or expiration of this Master Agreement (including all Service Orders): (i) Vyve's obligations hereunder shall cease; (ii) Customer promptly shall pay all amounts due and owing to Vyve for Service delivered prior to the date of termination or expiration, and any applicable deinstallation fees, if any, identified in the Service Order(s); (iii) Customer promptly shall cease all use of any software provided by Vyve hereunder, and shall return such software to Vyve; and (iv) Customer shall return to Vyve or permit Vyve to remove, in Vyve's discretion, the Vyve Equipment (other than Purchased Equipment) in the same condition as when received, ordinary wear and tear from proper use excepted. Customer shall reimburse Vyve for the reasonable and documented costs of the repair or replacement, at Vyve's discretion, of any Vyve Equipment not returned in accordance with this Section 12.
- c. Early Termination. Notwithstanding anything to the contrary contained herein, in the event this Master Agreement or any Service Order hereunder terminates for any reason other than as set forth in this Section 12(a)(i) or (ii) above or by Vyve for any reason set forth in this Section 12(a)(i) or (ii) above, Customer shall, at Vyve's discretion, promptly pay Vyve an early termination fee equal to fifty percent (50%) of the full amount of the Service Charges that Customer would have been charged for the remainder of the Initial Term or the then-current Renewal Term. Additionally, in the event Customer terminates a portion, but not all, of the Services ordered hereunder, Vyve may increase the rates for any remaining Services effective upon notice to Customer.
- d. Portability. Customer may, upon written notice to Vyve, discontinue or terminate Service, prior to the end of an Order Term, without payment of the applicable early termination charge set forth in Section 12, if: (i) Customer replaces the affected Service at a new location, so long as the value of the replacement Service is equal to or greater than the Service being replaced, and (ii) Customer pays all non-recurring charges applicable to the replacement Service (including, without limitation, all construction expenses); and (iii) Customer pays any applicable third party termination liability applicable to the Service being terminated.
- e. The foregoing termination rights shall be in addition to any other rights and remedies that Vyve may have under the Master Agreement or at law or equity.

### **13. INDEMNIFICATION**

Customer agrees to defend, indemnify and hold harmless Vyve, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against all claims, losses, liabilities, damages, costs and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to: (a) the use of the Service, including but not limited to a breach of Section 6 herein; or (b) personal injury, death or property damage from any cause, including but not limited to claims by Customer's employees, agents, tenants or invitees, arising out of this Master Agreement to the extent of the negligence or willful misconduct of Customer or its employees, agents, tenants or invitees.

### **14. DISCLAIMER OF WARRANTY**

CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK. VYVE EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE, AND VYVE EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. EXCEPT AS SPECIFICALLY SET FORTH IN THIS MASTER AGREEMENT, THE SERVICE, VYVE EQUIPMENT AND VYVE MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY VYVE, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. VYVE DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATE OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. EXCEPT AS SET FORTH IN THIS MASTER AGREEMENT, VYVE DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY VYVE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE

SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR ANY END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, CUSTOMER'S OR ANY END USERS' USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S OR ANY END USERS' SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT VYVE'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THE MASTER AGREEMENT AND VYVE DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS MASTER AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

#### **15. LIMITATION OF LIABILITY**

IN NO EVENT SHALL VYVE BE LIABLE TO CUSTOMER, AN END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT, REGARDLESS OF WHETHER VYVE HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. VYVE'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CUSTOMER UNDER THE SERVICE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL VYVE'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER. VYVE SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH 911 OR OTHER EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO CUSTOMER-PROVIDED EQUIPMENT, FACILITIES OR SERVICES.

## **16. DISCLOSURE OF CUSTOMER INFORMATION**

Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act (the "Telecommunications Act"), the Federal Cable Communications Act (the "Cable Act"), the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Customer proprietary network information ("CPNI") and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Customer Privacy Notice which is incorporated into, and made a part of, this Master Agreement by this reference. The Customer Privacy Notice is available on our website at <http://www.vyvebroadband.com/policies>. Customer acknowledges receipt of the Customer Privacy Notice. In addition to the foregoing, Customer hereby acknowledges and agrees that: (i) Vyve may disclose Customer's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers ("ARIN") or any similar agency, or in accordance with Vyve's Customer Privacy Notice; (ii) Vyve's personnel and dedicated account representatives assigned by Vyve who are responsible for commercial accounts may disclose Customer's CPNI or make changes to Customer's account at the request of persons that they reasonably believe to be Customer's authorized representatives; (iii) Vyve may provide Customer with online access to its CPNI in any commercially reasonable manner; and (iv) the requirements of Section 64.2010 of the FCC's rules shall not apply to Customer's account. In addition, Vyve shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril.

## **17. FORCE MAJEURE**

Notwithstanding anything to the contrary contained herein, a Party shall have no liability to the other hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, power surges or outages, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a "Force Majeure Event"). Notwithstanding anything to the contrary herein, Customer may terminate the affected Service Order(s) in its entirety and without penalty if a Force Majeure Event continues for more than ten (10) consecutive days and prevents Vyve from delivering the Service subject to such Service Order(s).

## **18. REGULATORY AND LEGAL CHANGES, POLE ATTACHMENT AND CONDUIT CHARGES, TARIFFS**

In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in universal service fees or other government- or quasi-government-imposed charges that increases the costs or other terms of Vyve's delivery of Service to Customer, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used by Vyve in providing the Service, Customer acknowledges and agrees that Vyve may pass through to Customer any such increased fees or costs, but only to the extent of the actual increase, provided Vyve notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees or charges due by Customer hereunder for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies Vyve at least fifteen (15) days in advance of Customer's requested termination date. Further, in the event that Vyve is required to file tariffs or rate schedules with a regulatory agency or otherwise publish its rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and Vyve is required under applicable law to apply those rates to Customer's purchase of Service hereunder, then the terms set forth in the applicable tariff or rate schedule shall govern Vyve's delivery of, and Customer's use or consumption of the Service. In addition, if Vyve determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then Vyve may terminate this Master Agreement as to all any or all of the Service and any affected Service Orders without liability, by giving Customer thirty (30) days prior written notice or any such notice as is required by law or regulation applicable to such determination.

This Agreement, Attachment hereto, the Business AUP and the Service Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which Vyve provides the Services. If any provision of this Master Agreement, the Business AUP or the Service Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of this Master Agreement, Business AUP and/or the Service Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided hereunder, then such law or regulation will take priority over the relevant provision of this Master Agreement and the Service Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this Master Agreement, nothing contained in this Master Agreement shall constitute a waiver by Vyve of any rights under

applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

## **19. ENTIRE AGREEMENT**

This Agreement, including without limitation the Attachment hereto and the Service Orders, the Business AUP, Privacy Policy and all other policies incorporated herein by reference, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.

## **20. ORDER OF PRECEDENCE**

Each Service shall be provisioned pursuant to the terms and conditions of this Master Agreement. In the event that Vyve permits a Customer to use its own standard purchase order form to order the Service, the Parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Service Order is inconsistent with the terms of this Master Agreement, the terms of this Master Agreement shall control.

## **21. COMPLIANCE WITH LAWS**

As between the Parties, Vyve will obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Vyve's operation and provision of the Services as contemplated in this Master Agreement, and Customer shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Customer's use of the Services as contemplated herein. Unless specified otherwise in this Master Agreement, each Party shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified in this Master Agreement.

## **22. ARBITRATION**

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF



APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THE MASTER AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THE MASTER AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

### **23. MISCELLANEOUS**

- a. This Master Agreement shall be governed and construed in accordance with applicable federal law or the laws of the state where Customer receives Service(s) from Vyve.
- b. In the event that any portion of this Master Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein and the remainder of this Master Agreement shall remain in full force and effect.
- c. No waiver of any breach or default here under shall be deemed to be a waiver of any preceding or subsequent breach or default.
- d. Customer may not assign this Master Agreement without the prior written consent of Vyve, and any assignment in violation of this Section shall be null and void. Vyve may assign its rights and obligations under this Master Agreement including, without limitation, in whole or in part, to any affiliate without the prior written approval of or notice to Customer. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of Vyve herein may accrue to, or be fulfilled by, any affiliate, as well as by Vyve and/or its subcontractors.
- e. Customer may not issue a press release, public announcement or other public statements regarding this Master Agreement without Vyve's prior written consent.

- f. Excluding any third party claims, claims under this Master Agreement must be initiated not later than two (2) years after the claim arose.
- g. There are no third party beneficiaries to this Master Agreement. The Parties to this Master Agreement are independent contractors.
- h. Any notice under this Master Agreement shall be given in writing and shall be deemed to have been given when actually received by the other Party. Notices shall be delivered to Customer and Vyve at the respective addresses set forth on the Service Order, or to such other address as is provided by one Party to the other in writing.
- i. The provisions of Sections 4, 8, 9, 10, 12, 13, 14, 15, 16, 22 and 23 shall survive the termination or expiration of this Master Agreement.
- j. No modification of any provision of this Master Agreement shall be valid unless set forth in a written instrument signed by both Parties; provided that if the Parties execute a successor master agreement, then any Service Orders then currently in effect shall be governed by such successor master agreement and this Master Agreement shall terminate.
- k. Customer agrees that its use of the Vyve website shall comply with the Vyve Website Privacy Policy available on our website at **<http://vyvebroadband.com/company/policies>**.

## ATTACHMENT A

### ADDITIONAL TERMS APPLICABLE TO BUSINESS CLASS VIDEO SERVICES ("VIDEO SERVICE")

If Customer elects to receive the Vyve Business Class Video Service, Vyve will provide basic and standard Video Service. In addition to Sections 1 THROUGH 23 above, Customer's use of the Video Service is subject to the following additional terms and conditions. Customer's use of the Video Service shall be deemed an acknowledgement that Customer has read and agreed to these additional terms of service. Any Customer who does not agree to be bound by these terms should immediately cease use of the Video Service.

Customer understands and agrees that premium program services, such as HBO, Cinemax and Showtime, may not be received or shown on any television receivers located in any public areas, such as lounges, dayrooms, visiting areas or other common areas used by groups or the general public, nor shall Customer authorize or approve of any copying, taping or duplicating thereof.

Vyve shall have the right to add, modify, or delete channel line-ups.

#### **Customer's use of the Video Service is subject to the following additional terms and conditions:**

- In the event that changes in technology require the use of specialized equipment to continue to receive Video Service, Vyve shall provide such Vyve Equipment and Customer shall pay for such Vyve Equipment at the same rate charged by Vyve to commercial customers in the municipality in which Customer's property receiving the Video Service is located.
- Customer shall take all necessary precautions to ensure that the Video Service is received only by authorized parties, and that no part of the Video Service is received at any other location, including but not limited to locations where an admission fee, cover charge, minimum or like sum is charged. Without limiting the generality of the foregoing, Customer understands and agrees that the Video Service is provided solely for use by Customer at the Customer's premises. Customer may not resell the Video Service, or any portion thereof, redistribute the Video Service, or any portion thereof, whether or not Customer receives compensation for such redistribution, or otherwise connect or provide access to the Video Service, or any portion thereof, to any other person or entity.
- Customer shall permit Vyve to conduct audits at periodic intervals as needed to ascertain, among other things, the number of television sets receiving the Video Service.
- In the event that any Vyve audit reveals that Customer's usage of the Video Service exceeds Customer's rights under the Master Agreement, Customer shall pay Vyve an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any

excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

- Customer shall not interfere with, alter or substitute any of the programs, information or content offered as part of the Video Service, which are transmitted over any of the channels provided hereunder without the prior written consent of Vyve.
- The monthly Service Charges set forth in a Service Order for Video Service do not include applicable taxes, regulatory fees, franchise fees, public access fees, broadcast access fees, broadcast retransmission fees or copyright fees. Notwithstanding anything to the contrary in the Master Agreement, the monthly Service Charges for the Video Service are subject to change in accordance with commercial cable TV rate increases applied to commercial customers and may increase up to 8% annually. Bulk Video Service rates guaranteed for one year from the Effective Date.

## **ATTACHMENT B**

### **ADDITIONAL TERMS APPLICABLE TO BUSINESS CLASS VOICE SERVICES**

#### **("VOICE SERVICE")**

If Customer elects to receive the Vyve Business Class Voice Service, Customer will receive telephone service consisting of one or more telephone lines and a variety of features, as described more fully in the applicable Service Order. In addition to Sections 1 THROUGH 23 above, Customer's use of the Voice Service is subject to the following additional terms and conditions. Customer's use of the Voice Service shall be deemed an acknowledgement that Customer has read and agreed to these additional terms of service. Any Customer who does not agree to be bound by these terms should immediately cease use of the Voice Service.

#### **USAGE BILLING**

Voice Service calling plans billed as a flat monthly fee may not include certain call types. These excluded call types will instead be charged on a per-call basis (e.g., operator services) or a measured basis (e.g. outbound, international calls). Generally, for billing purposes, a measured call begins when the call is answered by the called party or an automated answering device (such as an answering machine or fax machine); it ends when one of the parties disconnects the call.

Except as otherwise provided in this Agreement, Voice Service measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. If the computed charge for a measured call or for taxes or surcharges includes a fraction of a cent, the fraction is rounded up to the nearest whole cent.

Except as otherwise prohibited by law, calls invoiced on a per-minute basis will have an initial minimum call duration of one (1) minute, subsequent intervals of one (1) minute each, and will be billed by rounding to the next whole minute. Vyve reserves the right to round up any and all Voice Service invoice amounts to the nearest one (1) cent.

#### **USE POLICY**

Additional Use Restrictions. Except as otherwise provided in this Agreement, Voice Service may only be used at Service Location(s) where such service is installed by Vyve. Customer understands and acknowledges that if Customer attempts to install or use the Vyve Equipment or Voice Service at another location, Voice Service, including but not limited to 911/E911, may fail to function or may function improperly. It will be considered a material violation of the Agreement if Customer moves Voice Service to another location without first notifying Vyve. Customer expressly agrees not to use Voice Service for auto-dialing, continuous or extensive call forwarding, telemarketing (including without limitation charitable or political solicitations or polling), fax or voicemail broadcasting or blasting, or for any other use that results in excessive usage inconsistent with standard commercial calling patterns. If Vyve determines, in its sole discretion, that Customer's use of Voice Service is excessive or in violation of this Agreement, Vyve reserves the right, among other things, to terminate or modify Voice Service immediately and without notice.

Use of Hospitality Voice Service. Each Hospitality Voice Service Customer is prohibited from reselling Hospitality Voice Service, except that Customer may use such Service to provide voice service to its short-term lodging accommodation end users. Vyve shall provide Hospitality Voice Service to a demarcation point at the Service Location. Customer shall be responsible for any and all facilities, equipment and/or devices required to use Hospitality Voice Service on the customer-side of the demarcation point. Customer is responsible for all Hospitality Voice Service charges incurred by such end users.

## **SERVICE LIMITATION**

Disruption of Service. Customer acknowledges and understands that Voice Service will not be available for use under certain circumstances, including without limitation when the network or facilities are not operating or if normal electrical power is interrupted and Customer-provided Equipment and/or Vyve Equipment does not have a functioning backup power. Customer also understands and acknowledges that the performance of the battery backup is not guaranteed. If the battery backup does not provide power, Voice Service, including calls to 911, will not function until normal power is restored. Customer also understands that certain online features of Voice Service, where such features are available, will not be available under certain circumstances, including but not limited to the interruption of the Internet connection.

Provision of Service. Subject to the terms and conditions herein, Voice Service is intended for commercial use only.

Nomadic Functionality of Certain Voice Service and Vyve Equipment. Vyve may sell or provide certain Voice Service and Vyve Equipment with nomadic functionality. In such event, Customer agrees to comply with all user guides, requirements and instructions provided by Vyve, including without limitation, updating the Service Location associated with the nomadic Voice Service or Vyve Equipment. Customer updates to the Service Location must be made a minimum of 72 hours prior to moving nomadic Services and/or Vyve Equipment to ensure the records update is in place by the time of the relocation.

## **LIMITATIONS OF 911/E911**

Limitations. Voice Service includes a 911/Enhanced 911 function (“911/E911”) that may differ from the 911 or Enhanced 911 function furnished by other providers. As such, it may have certain limitations. CUSTOMER ACKNOWLEDGES AND ACCEPTS ANY LIMITATIONS OF 911/E911.

Correct Address. MANY STATES REQUIRE BUSINESSES USING MULTI-LINE TELEPHONE SYSTEMS TO PROGRAM THEIR SYSTEMS TO TRANSMIT SPECIFIC LOCATION INFORMATION FOR 911 CALLS (E.G., OFFICE NUMBER, ROOM NUMBER, FLOOR LEVEL, OR DIRECTIONAL QUADRANTS WITHIN INDIVIDUAL BUILDINGS, OR STREET ADDRESS FOR MULTI-LINE SYSTEMS THAT SERVE MULTIPLE DISCRETE

BUILDINGS). CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT IT, AND NOT VYVE, BEARS SOLE RESPONSIBILITY TO ENSURE THAT IT IDENTIFIES AND COMPLIES WITH ALL SUCH APPLICABLE LAWS, AND ANY FAILURE TO DO SO IS A BREACH OF THE AGREEMENT. In order for 911/E911 calls to be properly directed to emergency services, Vyve must have Customer's correct Service Location address. If Customer moves Voice Service to a different Service Location without obtaining Vyve's approval and providing the correct information to Vyve, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong Service Location address, and/or Voice Service (including 911/E911) may fail altogether. Therefore, Customer must contact Vyve before moving Voice Service to a new Service Location, or a new location within a Service Location and provide, whether or not required by applicable law, all information that could assist emergency responders to quickly reach the caller's specific location, including, without limitation: (i) a floor number for multi-floor buildings; (ii) a building name or number for campus environments; and (iii) a suite number for multi-suite environments. Customer taking Enhanced Voice Service and/or Trunk Service is solely responsible for programming its telephone system to map each telephone number and extension to the correct location, and for updating the system as necessary to reflect moves or additions of stations within the Service Location. Enhanced Voice Service updates can be made by calling Customer Service at 855.FOR.VYVE. Updates to Enhanced Voice Service take up to seventy-two (72) hours to complete.

Service Interruptions. Customer acknowledges and understands that Voice Service uses the electrical power in Customer's Service Location. If there is an electrical power outage, 911 calling may be interrupted if the battery backup in the associated Customer-provided Equipment and/or Vyve Equipment is not installed, fails, or is exhausted after several hours, or if there are problems with our network as further described below. Customer is urged to arrange for their own backup power supply. The duration of Voice Service during a power outage will depend, among other things, on Customer's backup power choice and proper configuration of the Customer's disaster recovery features. Vyve bears no responsibility for such loss of Voice Service.

**LIMITATIONS: The inclusion of a battery backup does not ensure that Voice Service will work in all circumstances. If Voice Services are interrupted as a result of problems with Vyve's network, such as downed cables, fiber/cable cuts, congestion or depletion of our four-hour backup power supplies, the Voice Service will not function until Vyve's equipment is repaired and Vyve's network is restored.**

Network Facilities. Calls, including calls to 911/E911, may not be completed if Customer exceeds its Voice Service and equipment configuration calling capacity or if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

911/E911 Limitations for Nomadic Users. Vyve only supports 911/E911 calls in those areas of the U.S. where Vyve can direct Customer's 911 calls to the appropriate PSAP in a manner consistent with applicable laws, rules and regulations, including, without limitation, FCC rules and requirements. Customer acknowledges that 911 calls from nomadic Vyve Equipment will reach the emergency authority associated with the original registered Service Location unless Customer updates the Service Location address as described in Section 27(b) above. Vyve will be unable to register any Service Location provided in conjunction with the use of nomadic Voice Service and/or Vyve Equipment that is outside its 911/E911 Voice Service support area. In such circumstances, Customer will be required to use an alternative means of accessing 911/E911.

Customer-initiated 911 Testing. If Customer chooses to make test calls to 911, it agrees to obtain prior approval from the relevant state and or local emergency communications authority and assumes all responsibility for the placement of such calls.

Suspension and Termination by Vyve. Customer understands and acknowledges that Voice Service, including 911/E911, as well as all online features of Voice Service, where Vyve make these features available, will be disabled if Customer's account is suspended or terminated.

LIMITATION OF LIABILITY AND INDEMNIFICATION. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER VYVE NOR ITS ASSOCIATED PARTIES WILL BE LIABLE FOR ANY VOICE SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS VYVE AND ITS ASSOCIATED PARTIES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE VOICE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E911.

## **VOICE EQUIPMENT REQUIREMENTS**

MTA. To use Voice Service, Customer may need a handset, multimedia terminal adapter ("MTA"), application layer gateway ("ALG"), analog telephone adapter ("ATA") or other adapter device. Customer can lease a handset and MTA from Vyve, for the monthly rates set forth in the applicable Service Order(s), in which case such leased MTA and/or handset will be Vyve Equipment (as defined in Section 5 above). Customer may also opt to purchase an MTA and/or handset for Vyve, in which case it will be Purchased Equipment (as defined in Section 5 above). Customer agrees to keep the MTA plugged into a working electrical power outlet at all times. In the event Vyve upgrades or otherwise changes the Vyve Equipment leased by Customer, then Vyve may increase any applicable monthly lease charges by the amount of the increased charge



for the newly required item.

Incompatible Equipment and Services. Customer acknowledges and understands that certain Voice Service may not support or be compatible with:

- Non-recommended configurations including but not limited to MTAs, ATAs or ALGs not currently certified by Vyve as compatible with Voice Service;
- Certain non-voice communications equipment, including certain makes or models of alarm and security systems, certain medical monitoring devices, certain fax machines, and certain “dial-up” modems;
- Rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as certain private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units;
- Casual/dial around (10-10) calling; 976, 900, 700, or 500 number calling;
- 311, 511, or other x11 calling (other than 411, 611, 711 and 911); and
- Other call types not expressly set forth in Vyve’s product literature (e.g., outbound shore-to-ship calling).

Customer’s attempt to use any such systems in connection with Voice Service is solely at its own risk and Vyve shall not be liable for any damages whatsoever for any non-operation or damage to such services or devices.

#### **ADDITIONAL LIMITATIONS ON VYVE’ S LIABILITY FOR VOICE SERVICE**

Limitations on Vyve’s Liability for Directories and Directory Assistance for Voice Service Customers. THESE LIMITATIONS SHALL APPLY WHERE VYVE MAKES AVAILABLE AN OPTION TO LIST CUSTOMER’S NAME, ADDRESS, AND/OR TELEPHONE NUMBER IN A PUBLISHED DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, AND ONE OR MORE OF THE FOLLOWING CONDITIONS OCCURS: (i) CUSTOMER REQUESTS THAT CUSTOMER’S NAME, ADDRESS AND/OR PHONE NUMBER BE OMITTED FROM A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS INCLUDED IN EITHER OR BOTH; (ii) CUSTOMER REQUESTS THAT CUSTOMER’S NAME, ADDRESS AND/OR PHONE NUMBER BE INCLUDED IN A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS OMITTED FROM EITHER OR BOTH; OR (iii) THE PUBLISHED OR LISTED INFORMATION FOR CUSTOMER’S ACCOUNT CONTAINS MATERIAL ERRORS OR OMISSIONS. IF ANY OF THESE CONDITIONS PERTAIN, THEN THE AGGREGATE LIABILITY OF VYVE AND ITS ASSOCIATED PARTIES SHALL NOT EXCEED THE MONTHLY CHARGES, IF ANY, WHICH CUSTOMER HAS ACTUALLY PAID TO VYVE TO LIST, PUBLISH, NOT LIST, OR NOT PUBLISH THE INFORMATION FOR THE AFFECTED

PERIOD. CUSTOMER SHALL HOLD HARMLESS VYVE AND ITS ASSOCIATED PARTIES AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS REFERENCED ABOVE. FURTHERMORE, IF VYVE MAKES AVAILABLE DIRECTORY ADVERTISING SERVICES, NEITHER VYVE NOR ANY OF ITS ASSOCIATED PARTIES WILL BE LIABLE FOR ANY ACTS, ERRORS, OR OMISSIONS RELATED TO SUCH DIRECTORY ADVERTISING.

Customer Information. Vyve and its suppliers reserve the right both during the term of this Agreement and upon its termination to delete Customer's voicemail, call detail, data, files, or other information that is stored on Vyve's or its suppliers' servers or systems, in accordance with our storage policies. Customer understands and acknowledges that Vyve shall have no liability whatsoever as a result of the loss or removal of any such voicemail, call detail, data, files, or other information.

### **ADDITIONAL TERMS APPLICABLE TO TOLL FREE SERVICE**

Limitation. Customer may order Toll Free Service. In order to purchase and retain Toll Free Service with Vyve, Customer must have Voice Service, and must map each Toll Free Telephone number ("TFN") to a Voice Service telephone number ("Associated TN"). If Customer terminates an Associated TN at any time during the Toll Free Services term, Customer must immediately: (1) map the applicable TFN to another Digital Voice telephone number on Customer's Vyve account, (2) purchase a new Digital Voice telephone number to map to the TFN, (3) port out the TFN to another toll free carrier; or (4) disconnect the TFN. If Customer fails to take immediate action as indicated above, Vyve will disconnect the TFN. Vyve shall have no liability for loss of Toll Free Service which results from Customer failing to take immediate action as indicated above.

Term and Termination. Toll Free Service is offered on a month to month basis. Customer shall have the right to terminate Toll Free Service, at any time, for any reason, upon thirty (30) days prior notice to Vyve, subject to payment of all outstanding amounts due for the Toll Free Service and the return of any and all Vyve Equipment. Termination of Toll Free Service is not subject to Termination Charges. Toll Free Service will terminate simultaneously with Customer's Voice Service.

Authorization. When ordering Toll Free Service, as set forth or referenced in each applicable Service Order Customer authorizes Vyve to act as its agent in initiating and provisioning such Toll Free Service.

### **ADDITIONAL TERMS APPLICABLE TO TRUNK SERVICE**

#### Additional E911 Limitations - Trunk Services.

Vyve offers the opportunity for Customers to designate up to 250 different zones within their premises that would be separately identified to the E911 call taker, such as a specific floor, side of a building, or other identifying information that could assist emergency responders to more quickly reach the appropriate location. To utilize this

option, Customer must in the initial or a subsequent Service Order request the assignment of Emergency Location Information numbers and provide location information for each zone exactly as it should appear to the 911 call taker. For each zone requested, up to ten, Customer will receive a phone number that Vyve will register in the 911 database or databases with the specific location information provided by Customer. Customer is solely responsible for programming its telephone system to map each station to one of these numbers, and for updating the system as necessary, including notifying Vyve of such changes, to reflect moves or additions of stations within the premises. Customer agrees to cooperate with requests from Vyve to verify or update 911 Emergency Location Information within ten (10) business days of such a request.

Customer acknowledges and understands that it, and not Vyve, bears sole responsibility to ensure that it identifies and complies with all such applicable laws, and any failure to do so is a breach of the Agreement. Customer represents, warrants and covenants that it will utilize the Vyve Emergency Location Information numbers described above at least to the extent required by law, and that Customer does not require the use of more than ten different location identifiers or other features not currently offered under this Agreement in order to comply with applicable laws. Customer also warrants that it does not currently have "Private Switch/Automatic Location Identification" service in connection with its existing telephone service from another provider at the location(s) for which it has ordered Trunk Services from Vyve.

Vyve will post only the main billing telephone number in the 911 database or databases using Customer's billing address as the registered Service Location, unless Customer requests the assignment of Emergency Location Information as set forth above.

Customer Responsibility for Telephone Equipment. Customer is solely responsible for providing and maintaining working PBX equipment and handsets (Customer-Provided Equipment), notifying and training its users regarding proper use of the system in accordance with applicable, including regulatory, requirements, and for any programming to its telephone system that may be necessary to enable direct dialing of N11 numbers such as 911 or 711 and to enable calls to be connected to new area codes. Customer also acknowledges and accepts that Vyve does not support seven-digit local calling even in areas of the country that still permit that option, and Customer will program its system as necessary to support ten-digit dialing for local calls. Customer must arrange its Customer-Provided Equipment to provide for the interception of assigned but unused station numbers. A call intercepted by the attendant will be considered to be completed and subject to a charge for the call.

Trunk Service Billing Increments. Unless otherwise stated in a Service Order, domestic long distance calls, and in-bound domestic calls to toll-free numbers associated with Trunk Service will be billed on basis of six (6) second increments with a minimum call duration of six (6) seconds. For purposes of this section, "domestic" means calls within the continental United States.