

# VYVE BROADBAND RESIDENTIAL SERVICES SUBSCRIBER AGREEMENT

Updated June 2019

This Residential Services Subscriber Agreement (this “Agreement”) sets forth the terms and conditions under which residential customers (“Customer,” “you,” “your”) will be provided cable television service (“Video Service”), high-speed Internet service (“Internet Service”) and/or digital phone service (“Voice Service” and, together with Video Service and Internet Service, collectively the “Services” and, individually, each a “Service”) by the Company, which terms and conditions incorporate and include the Company’s Residential Services Acceptable Use Policy (“AUP”), Network Management Disclosure, DMCA Policy, Customer Privacy Notice and Auto Pay Policy (collectively, and together with this Agreement, the “Customer Agreements”), as they may be changed from time to time. Our website always contains the most current versions of our Customer Agreements. See <http://www.vyvebroadband.com/company/policies>. For purposes of this Agreement, “Company,” “we,” “us” or “our” mean, for any Service of any specific Customer, Vyve Broadband, LLC or any of its subsidiaries that provide such Service, under the names “Vyve Broadband A, LLC” or “Vyve Broadband J, LLC.”

It is our policy to present you with a Work Order (either in electronic or print form) when you initiate Service or when we visit your home to install Service(s) or address Service problems. By signing the Customer Acknowledgement (either electronically or by hand) presented to you at such time of installation or service, or using our Service(s), you represent, warrant and acknowledge that you have full authority to authorize the Services specified in the Work Order and accept and agree to be legally bound by the terms and conditions set forth in the Customer Agreements. Any Customer who does not agree to be bound by these terms should immediately stop use of the Service(s) and notify Customer Service at 1-855-FOR-VYVE to terminate the account. You may not modify this Agreement by making any typed, handwritten or any other changes to it for any purpose. If any Service is terminated, or any aspect of it changed, any remaining Service or replacement Service will continue to be governed by the Customer Agreements. The Customer Agreements supersede all previous written or oral agreements between you and the Company. You are not entitled to rely on any oral or written statements made by any representatives of the Company relating to the subjects covered by the Customer Agreements, whether made prior to the date of your Work Order or thereafter, and we will have no liability to you except in respect of our obligations as described in the Customer Agreements.

By using our Service(s), you consent to being contacted by or on behalf of the Company at the contact number and/or email address you have provided us for any purpose (including sales, marketing and promotional offers) and by any means (including autodialed or prerecorded voice calls, and text messages), regardless of whether the number(s) is listed on the federal Do-Not-Call Registry or any state equivalent.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION IN SECTION 12, WHICH PROVIDES THAT YOU AND THE COMPANY AGREE TO RESOLVE CERTAIN DISPUTES THROUGH ARBITRATION AND AFFECTS YOUR RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ALL SERVICES. YOU HAVE THE RIGHT TO OPT OUT OF THE ARBITRATION PROVISION.**

Following the “General Terms and Conditions” immediately below, this Agreement contains additional terms and conditions applicable to the Company’s Video Service, Internet Service and Voice Service. Please be sure to read the additional terms and conditions for each Service you receive. In the event of any conflict between the “General Terms and Conditions” and the Service-specific terms that follow, the Service-specific terms shall control.

In consideration of the Company's provision of the Services that you requested, you agree on your own behalf and behalf of your household members as follows:

## GENERAL TERMS AND CONDITIONS

**1. Installation fees and deposits.** Installation fees for each level of Service and deposits on Company Equipment (as defined in Section 3(a) below) are payable in advance, at the time of, or prior to, activation or installation of the Service(s) in your home.

**2. Billing and payment.**

**(a) Charges.** You agree to pay all charges associated with the Service(s), including, but not limited to, installation/service call charges, monthly service charges, usage-based charges, measured and per-call charges, charges for the use of Company Equipment, and other charges as set forth in your invoice. If you elect to enroll in our Auto Pay service, in addition to the terms set forth herein, you also agree to be bound by the terms and conditions of our Auto Pay Policy, the most current version of which can be found on our website at <http://www.vyvebroadband.com/company/policies>. Certain of our fees are described below. For more information about current rates, please call us at 1-855-FOR-VYVE or refer to our website. Not all fees apply to all Services and fees vary by geographic region.

**(b) Broadcast Retransmission Fees and Copyright Fees.** You agree to pay all broadcast retransmission fees and copyright fees as set forth in your invoice. Such fees recover our costs of retransmitting TV broadcast signals to you.

**(c) Taxes, Fees and Other Charges.** You agree to pay any and all applicable federal, state, and local taxes and fees (however designated) levied in connection with the sale, installation, use or provision of the Service(s), along with other charges as set forth in your invoice, including, but not limited to: regulatory recovery fees for municipal, state and federal government fees or assessments imposed on the Company; permitted fees and cost recovery charges; or any fees for programs in which the Company participates, including, but not limited to, universal service fees, 911/E911 surcharges, telecommunications relay service surcharges, public, educational, and governmental access fees, FCC fee, 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(s). If the computed charge for taxes or surcharges includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. You will be responsible for paying any government imposed fees, taxes or other charges that become applicable retroactively.

**(d) Rate Changes.** We reserve the right to change monthly recurring fees, connection fees, and equipment fees or to add new fees at our discretion and at any time, including cost recovery surcharges as permitted by law.

**(e) Billing.** Service(s) are purchased and provided to you on a monthly basis. Recurring service charges, equipment charges, and fees will be billed monthly, in advance. Your first monthly bill may include prorated charges from the date you first begin receiving Service(s), as well as monthly recurring charges for the next month and charges for non-recurring Service(s) you have received. Some charges for Services, such as usage-based charges, measured and per-call charges or charges for pay-per-view movies or events, interactive television, and e-commerce, may be billed individually after they have been provided to you. If you receive

Service(s) under a promotion, after the promotional period ends, regular charges for the Service(s) will apply.

**(f) Billing Commencement Date.** The fees and charges for the Service(s) begin to accrue on the Billing Commencement Date. If we install a Service, the Billing Commencement Date is the day of installation. If you are an Internet Customer and self-install a cable modem that we have shipped to you, the Billing Commencement Date is the earlier of (i) the day you install the cable modem or (ii) five (5) days after the shipment date. If you self-install a cable modem that you obtained from a third party, the Billing Commencement Date is the day your order for Service(s) is entered into our systems.

**(g) Billing Errors.** Subject to applicable law, you must notify us of any billing errors or other requests for refund within sixty (60) days of the date on the bill. After such date you agree to waive all disputes and claims.

**(h) Payment by Credit Card, Debit Card or Check.** If you provide a credit card or debit card number to us to pay for the Service(s), you thereby authorize us to charge that credit card or debit card for all amounts payable by you for ongoing charges until you notify us in writing that you are withdrawing this authorization or until you have paid all charges under this Agreement. If the Company does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand. If you make payment by check, you thereby authorize us to collect your check electronically. You agree that you may not amend or modify this Agreement with any restrictive endorsements (such as "paid in full") or other statements or releases on or accompanying checks or other payments accepted by the Company and any such notations shall have no legal effect.

**(i) Credit Inquiries.** You authorize us to make inquiries and to receive information about your credit experience from others, to enter this information in your file, and to disclose this information concerning you to appropriate third parties for reasonable business purposes, which shall be done in accordance with the Company's Customer Privacy Notice.

**(j) Credit Charges and Termination.** We may charge fees for all returned checks and account debit, bank card or charge card charge-backs. The current return/charge-back fees can be provided on request. We reserve the right to change return/charge-back fees. Customer may not attempt to place an order or make a payment to us with an expired, false, or unauthorized credit card. We reserve the right to terminate access to Customer accounts immediately without notice upon the rejection of any credit card charges, or non-payment by the financial institution, and may report Customer to the appropriate law enforcement agency.

**(k) Returned Checks, Partial Payment, Late or Nonpayment.** All charges are due on the date specified on your monthly bill. You agree that we may electronically debit your account for both the face amount of your check, and a returned check fee, if your check is returned unpaid. We do not waive our rights to collect the full balance owed to us by accepting partial payment. We will apply any partial payment to the outstanding charges in the amounts and proportions that we determine. You will be assessed a late fee for any payment amount that is not paid in full 30 days after the date the bill was sent. We do not anticipate that you will fail to pay for Service on a timely basis, and we do not extend credit to customers. A late fee is intended to be a reasonable advance estimate of costs to manage past due accounts. Except where late fees are set pursuant to applicable law, these fees are based on the aggregate costs of our collection activities and may change over time and may vary by location to comply with applicable federal, state or local laws, rules or regulations. The current late fees applicable to your service area are set forth on your

billing statement. You confirm that these fees are difficult to determine on an individual basis and are reasonable in light of our costs in collecting past due amounts. We are entitled to charge interest on past due amounts. In the event of nonpayment, we reserve the right, in our sole discretion, to suspend or disconnect your Service(s) at any time, with or without notice, subject to applicable law. Should you wish to reinstate any or all Services after disconnection, we may require you to pay an activation or reconnect fee. These fees are in addition to all past due charges and other fees. Reconnection of Service is subject to the terms of this Agreement and applicable law.

**(l) Collection.** You agree that if we incur collection or other legal costs as a result of nonpayment, you will be liable for the total past due amount, any returned check fees and the costs of collection. These costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees and arbitration or court costs upon judgment. Further, in order to resume Service, you must pay the past due charges in full in addition to a reconnect fee and one month's service charges in advance.

**(m) Deposit.** We may require you to pay a refundable deposit if you add Company Equipment and/or Service(s) or if you fail to pay any amounts when they are due. If we disconnect your Service(s) or are otherwise required under applicable law to refund the deposit, we shall within forty-five (45) days or as otherwise specified by applicable law return a sum equal to the deposit(s) you paid (without interest unless otherwise required by law) minus any amounts due on your account (including, without limitation, any amounts owed for Service(s) or for any Company Equipment that is damaged, altered, or not returned). You authorize us to use the deposit as payment of any amount owed.

**(n) Order Cancellation.** Charges for any Service will begin as of the Billing Commencement Date (defined in Section 2(f) above). If you cancel before such date, you may be obligated to pay termination fees and expenses. If you cancel an order for Voice Service prior to scheduled initiation, we are 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. Except as expressly provided under Section 2(o) below, 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 the Company does not control or any other event.

**(o) 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 change, Service interruption, blackout or 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. Unless otherwise required by law or any applicable tariff, if there is a complete failure of a Service for twenty-four consecutive hours or more, excluding any interruption that is scheduled or due to a power outage, inclement weather or any other "Force Majeure" event, you are entitled, upon request, as your sole and exclusive remedy, to a prorated credit of monthly recurring charges for effected Service(s) for the period that such failure continues beyond twenty-four hours. If there is an outage during a live or special pay-per-view event ordered by you, you are entitled, upon request, as your sole and exclusive remedy, to a prorated adjustment of the event fee based upon the number of minutes of the outage. Unless otherwise specifically provided by law, you must request credit for Service interruptions within thirty days. We will not refund any nonrecurring charges, one-time charges, per-call or measured charges, regulatory fees and surcharges, taxes and other governmental and quasi-governmental fees. For the avoidance of doubt, in no event

shall Customer be entitled to a refund with respect to any rearrangement, addition, deletion, change of format or other change in television programming.

### 3. Equipment, Software and Marks.

**(a) Company Equipment.** You acknowledge that, except for wiring inside the Premises (as defined in Section 7 of this Agreement) or equipment purchased by you from the Company, any equipment and facilities we install, along with any equipment we lease to you (collectively, “Company Equipment”), is for your exclusive use only for purposes of using the Services during your subscription and remains our property. You agree that you will not allow Company Equipment to be serviced by anyone other than our employees or agents. You may not permit any attachments to, alteration of, or tampering with Company Equipment. We may remove or change Company Equipment at our discretion at any time the Service is active or following the termination of your Service(s). You agree that our addition or removal of or change to Company Equipment may interrupt your Service(s). You agree that upon termination of Service(s), Company Equipment must be returned to us within ten (10) business days of termination of Service(s) and that it will be in working order other than reasonable wear and tear. In the event Company Equipment is lost, stolen, damaged, destroyed, or otherwise not returned promptly, you agree to pay the current replacement cost of Company Equipment. The most current replacement costs are available on the Company’s website at <http://www.vyvebroadband.com/company/unreturned-equipment-charges/>.

**(b) Company Firmware and Software.** The Services and Company Equipment, including any firmware or software that may be embedded in Company Equipment or used to provide the Services, are protected by trademark, copyright, and/or other intellectual property laws and international treaty provisions. You are granted a limited, non-transferable, non-sublicensed and revocable license to use such firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. This license will commence upon your acceptance of the relevant Services and will terminate immediately upon the termination of the Services for any reason. We and our licensors retain all rights and interests in and to any such software or firmware. You are permitted to archive the software or re-load the software disk in its original format. All such copies must contain the same copyright notices and proprietary markings as the original software. You shall not reverse compile, disassemble, or reverse engineer or otherwise attempt to derive the source code from the firmware or software.

**(c) Unauthorized Use of Company Equipment or Services.** Unauthorized use of Company Equipment or Service(s) may constitute a violation of federal and state law and may result in criminal fines and imprisonment. You agree not to attach, install, or download any unauthorized device or application to Company Equipment or Services. If you make any unauthorized connection, installation, or download to, tamper with or modify Company Equipment, Services or our cable system or receive Services without authorization, we may terminate your Service, recover damages and/or pursue all remedies available under applicable law. You agree not to install anything to intercept or receive Services or to assist any person in intercepting or receiving our Services. You will not take action by attachment or otherwise to impair the integrity of our cable system, degrade signal quality or strength or create signal leakage. You will be liable for all unauthorized use of the Service(s) and for any and all stolen Services. You agree to notify us immediately in writing or by calling Customer Service at 1-855-FOR-VYVE during normal business hours if you become aware at any time that Company Equipment has been stolen or that Services are being stolen or used without authorization. If you

fail to notify us in a timely manner, your Service(s) may be terminated without notice, with additional charges to you.

**4. Customer Equipment.** “Customer Equipment” means any Customer-owned or provided software, hardware or services that you elect to use in connection with the Service(s). You agree to allow us and our agents the rights to insert CableCARDS and other hardware in the Customer Equipment, send software and/or downloads to the Customer Equipment and install, configure, maintain, inspect and upgrade the Customer Equipment. You warrant you are either the owner of the Customer Equipment or that you have the authority to give us access to the Customer Equipment. You should call Customer Service at 1-855-FOR-VYVE to find out if it meets our technical, security and other requirements. We reserve the right to disallow the use of Customer Equipment that we determine is not compatible with our network. We shall have no obligation to provide, maintain, or service Customer Equipment, including, but not limited to, Customer Equipment to which the Company or a third party has sent software or downloads. If you use Customer Equipment, you agree that the following limitation of liability shall apply: THE COMPANY DOES NOT WARRANT THAT CUSTOMER EQUIPMENT WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICE(S). YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE CUSTOMER EQUIPMENT TO FAIL TO OPERATE OR COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT, YOU, YOUR PREMISES OR COMPANY EQUIPMENT. NEITHER THE COMPANY NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE, INCLUDING LACK OF 911/E911 CAPABILITY OR DIALING ASSOCIATED WITH A SECURITY SYSTEM. YOUR USE OF CUSTOMER EQUIPMENT MAY PREVENT PROVISION OF SERVICE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

**5. Service and Maintenance Procedures.**

- (a) **General.** You agree to allow our representative to inspect Company facilities either inside or outside the place of attachment. You understand that unless otherwise covered by our Wire Maintenance Plan (described below), we may not service any Customer Equipment, including your TV, Digital Video Recorder (DVR), computer, telephone, stereo, or fax equipment. In the event that you request a service call based on problems which, in our sole judgment relate to Customer Equipment, Customer negligence, lack of knowledge, Customer software, Customer-installed wiring or hardware, or any problem not caused by us, you agree to pay the cost of repair, unless otherwise covered by our Wire Maintenance Plan (described below). Please contact Customer Service at 1-855-FOR-VYVE for help resolving any service or maintenance issues. During normal business hours, you may speak with a Customer Service Representative (“CSR”). Our CSR will attempt to determine the nature of the problem. If the problem cannot be resolved over the phone, the CSR will schedule a Service Technician to visit your home. You understand that emergencies, such as fallen trees or utility poles, violent storms or weather, may interfere with the Services. Our crews are promptly dispatched to correct any emergency. As these situations may affect a large service area, it may take several days to resume full service to the entire area. If a problem is not resolved to your satisfaction, you may write or call us with concerns or complaints. You may also contact your local franchise authority at the address listed on your billing statement.
- (b) **Wire Maintenance Plan.** As a homeowner, you are responsible for the wire maintenance within your home. We offer a Wire Maintenance Plan that, for a monthly fee, will cover (i) standard maintenance of installed “inside” wiring for our Internet, Video and Voice Services and (ii) service calls for your Company Equipment relating to our Internet,

Video and Voice Services. This optional program covers the repairs of most but not all inside-wiring, subject to certain limitations problems. It does not cover, for example, initial installations, new wall fishes or outlets, reconfiguration or moves of outlets or jacks, alarm or landlord provided wiring, concealed wiring or wiring inside the walls of your home, damage to inside wiring caused by you or any third party should you attempt to undertake your own removal, replacement, rearrangement, repair, extension or maintenance of that wiring. You acknowledge and agree that if you elect to enroll in the Vyve Broadband Wire Maintenance Plan, you will be subject to the terms, conditions, limitations and exclusions set forth therein, the most recent version of which can be found at <http://www.vyvebroadband.com/policies>. You acknowledge and agree that if you do not sign up for the Vyve Broadband Wire Maintenance Plan, you are solely responsible for the maintenance and repair of the wires inside your home and all related expenses, including, but not limited to, a service charge (currently at \$29.99 per-visit and which is subject to change), replacement parts as needed, and labor charges. To order our Wire Maintenance Plan, or to learn more, please contact Customer Service at 1-855-FOR-VYVE.

## 6. LIMITATION OF LIABILITY; INDEMNIFICATION; NO WARRANTIES

**(a) Service Disruptions.** We provide all Service(s) on an "AS IS" and "AS AVAILABLE" basis. In no event shall we be liable for any failure or interruption of Service, including without limitation those failures and interruptions resulting in part or entirely from circumstances beyond our reasonable control. Subject to applicable law, credit with respect to Customer's fees shall be given for qualifying outages of Service(s) as specified in Section 2(o) above.

**(b) Limitation of Liability.** Customer expressly agrees that the use of the Services and Equipment, as well as the purchase or use of any third-party service or product provided by or accessed through the Service, is at Customer's sole risk and Customer acknowledges that this Service and the Equipment are provided "as is" and "as available" for Customer's use, without warranties of any kind, whether express or implied. Neither the Company nor any third-party provider of services or products, makes any representations or warranties with respect to any product or service offered through the Service, and the Company shall not be party to nor responsible for monitoring any transaction between Customer and third-party providers of products or services. Unless otherwise specifically provided in this Agreement, the Company will not be liable to the Customer or to any third party for:

- (i)** any direct, indirect, incidental, special, punitive or consequential losses or damages, including loss of profits, loss of earnings, loss of business opportunities and personal injuries (including death), resulting directly or indirectly out of, or otherwise arising in connection with Company Equipment, the Company's Services, or any other Services hereunder, including without limitation, Customer's reliance on or use of Company Equipment, the Company's Services, or the mistakes, omissions, interruptions, errors, defects, delays in operation, transmission, or any failure in performance of the Services; and
- (ii)** any losses, claims, damages, expenses, liabilities or costs (including legal fees) resulting directly or indirectly out of, or otherwise arising in connection with, any allegation, claim, suit or other proceeding based upon a contention that the use of Company Equipment, the Services, or any other services hereunder by the Customer or a third party infringes the copyright, patent, trademark, trade secret,

confidentiality, privacy, or other industrial or intellectual property rights or contractual rights of any third party.

This limitation applies to the acts, omissions, negligence and gross negligence of the Company, its officers, employees, agents, contractors or representatives which, but for this provision, would give rise to a cause of action against the Company in contract, tort or any other legal doctrine.

**(c) Customer's Indemnification of the Company.** Except as otherwise expressly set forth in this Agreement, you agree to defend, indemnify, and hold the Company harmless from claims or damages relating to or arising out of your breach of this Agreement or your and your users' use of the services or any Company Equipment, including but not limited to any claims or damages arising out of (i) postings made using your internet services, including for defamation, copyright, trademark or other proprietary right infringement or otherwise; (ii) the lack of 911/E911 or dialing associated with a security system; or (iii) third-party claims caused by Customer's violation of this Agreement or other Company policies. You agree that the Company shall not be responsible for any third-party claims against us that arise from your use of the services or Company Equipment. Further, you agree to reimburse us for all costs and expenses related to the defense of any such claims.

**(d) Service Interruptions Due to Technical Malfunctions.** In the event of complete failure of a Service due to technical malfunction for 24 consecutive hours or more, you are entitled to a prorated credit upon request. To qualify for a credit, you must request it within 30 days of the failure. Unless specifically provided by law, such credit shall not exceed the fixed monthly charges for the month of such Service interruption and excludes all nonrecurring charges, one-time charges, per-call or measured charges, regulatory fees and surcharges, taxes and other governmental and quasi-governmental fees. Any credits provided by the Company are at our sole discretion and in no event shall constitute or be construed as a course of conduct by the Company.

**7. Access to Customer's Premises.** You agree to allow us and our employees, agents, contractors, and representatives to enter your property at which the Service(s) and/or Company Equipment will be provided (the "Premises") as necessary, at a time agreeable to you and us, to install, configure, maintain, inspect, repair and replace the Service(s) and/or Company Equipment used to receive any of the Service(s) and, upon the termination of Service(s), to remove the same. You warrant that you are either the owner of the Premises or that you have the authority to grant us access to the Premises. You further grant the Company all necessary easements to provide Service(s) to you and others in the same cable system. If you are not the owner of the Premises, you are responsible for obtaining any necessary approval from the owner to allow us and our agents into the Premises to perform the activities specified above and, upon request, give us 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 we performed our work negligently.

**8. Use of Services.** Unless you subscribe to a plan that expressly permits otherwise, or unless otherwise specifically authorized by us in writing, you agree to use the Services solely for personal, residential and non-commercial purposes. You will not use Company Equipment at any time at an address other than the Premises without our prior written authorization. You agree and represent that you will not resell or permit another to resell the Service(s) in whole or in part. You will not use or permit another to use Company Equipment or the Service(s), directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any posted Company policy applicable to the Service(s). Use of Company Equipment or Service(s) for transmission, communications or storage of any information, data or material in violation of any U.S. federal, state or local regulation or law is prohibited. You acknowledge that you are accepting this Agreement on behalf of all persons who use Company



Equipment and/or Service(s) at the Premises and that you shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement and any applicable Company policies including, but not limited to, acceptable use and privacy policies. You further acknowledge and agree that you shall be solely responsible for any transactions, including, without limitation, purchases made through or in connection with the Service(s).

## **9. Changes to Services.**

- (a)** Subject to applicable law and any express exceptions that we agree to in writing when you subscribe to a Service, the Company may, at any time and periodically:
  - (i)** Institute new or increase or otherwise change fees and charges for the Service;
  - (ii)** Modify, supplement or replace the terms, policies, practices and procedures relevant to the Service;
  - (iii)** Make changes affecting equipment or software;
  - (iv)** 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;
  - (v)** Make any other change relating to any Service contemplated or not expressly prohibited by your Agreement or applicable law.
- (b)** The Company will give Customer at least thirty (30) days' advance notice of any such changes that materially adversely affect Customer's rights or obligations under your Agreement, except that shorter advance notice or no notice may be given if the Company believes that the Company or the Service might be adversely affected if longer notice were given.
- (c)** SUBJECT TO ANY EXPRESS EXCEPTION REFERRED TO ABOVE, CONTINUED USE OF THE SERVICE 30 DAYS FOLLOWING NOTICE OF ANY SUCH CHANGE WILL BE DEEMED YOUR ACCEPTANCE OF THAT CHANGE. IF YOU DO NOT FIND THE CHANGE ACCEPTABLE, YOU MUST IMMEDIATELY STOP USING THE SERVICE AND NOTIFY THE COMPANY THAT YOU ARE TERMINATING YOUR APPLICABLE AGREEMENT IN ACCORDANCE WITH ITS TERMS.
- (d)** Without limiting the generality of the foregoing, the Company makes no guarantee or promise that all television programming that may be part of any Service at any time will continue to be included. The Company may rearrange, add, delete, change the format of

or otherwise change the networks, programs or other components of any Video Service. We may do so without notice or consent, except as mandated by law. In addition, certain programming, including sports events, may be "blacked out" in your area as required by law or for other reasons. 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, or some other reason.

- (e) 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.
- (f) Any required or voluntary notice of any changes may be given by a posting at our website listed at the end of this document (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.

**10. Security Deposits.** You agree to relinquish any deposit paid to us if you fail to return any piece of Company Equipment. You also agree that your deposit may be applied to any outstanding charges at the time of termination of the Services. If your Services are terminated by either party, you agree to settle any other outstanding charges within 10 business days of termination.

**11. Privacy Rights.** You acknowledge receipt of our Customer Privacy Notice upon activation of Service(s), governing the collection, use and disclosure of Customer personally identifiable information. You can review the most current version of our Customer Privacy Notice by going to our website at <http://vyvebroadband.com/company/policies>.

## **12. BINDING ARBITRATION AND WAIVER OF JURY TRIAL**

PLEASE READ THIS SECTION CAREFULLY. IT REQUIRES RESOLUTION OF DISPUTES THROUGH ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTIONS. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.

- (a) **Purpose.** If you have a Dispute (as defined below) with the Company that cannot be resolved, you or the Company may elect to arbitrate that Dispute in accordance with the terms of this Arbitration Provision rather than litigate the Dispute in court. Arbitration means you will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury. Proceeding in arbitration may also result in limited discovery. An arbitration award is subject to limited review by a court.
- (b) **Definitions.** The term "Dispute" means any dispute, claim or controversy between you and the Company regarding any aspect of your relationship with the Company, 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, the "Company" means the Company and its parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents.

- (c) **Right to Opt Out.** IF YOU DO NOT WISH TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MUST NOTIFY THE COMPANY IN WRITING WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST RECEIVE THIS AGREEMENT AT YOUR LOCAL OFFICE LISTED ON YOUR BILLING STATEMENT. FOR LOCATIONS THAT DO NOT HAVE A LOCAL VYVE BROADBAND OFFICE LISTED, PLEASE CALL 855-FOR-VYVE FOR INSTRUCTIONS AND INFORMATION. YOUR WRITTEN NOTIFICATION TO THE COMPANY MUST INCLUDE YOUR NAME, ADDRESS AND THE COMPANY ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH THE COMPANY THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH THE COMPANY OR THE DELIVERY OF SERVICES TO YOU BY US. IF YOU HAVE PREVIOUSLY NOTIFIED THE COMPANY OF YOUR DECISION TO OPT OUT OF ARBITRATION, YOU DO NOT NEED TO DO SO AGAIN.
- (d) **Restrictions:**
- (i) TO THE EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF ANY STATUTE OR OTHER LAW TO THE CONTRARY, 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 WHICH ARE SUBJECT TO SECTION 3 OF THE AGREEMENT), OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS OR DISPUTE.
  - (ii) ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER CUSTOMERS, OR OTHER PERSONS SIMILARLY SITUATED UNLESS THE STATUTE UNDER WHICH YOU ARE SUING PROVIDES OTHERWISE.
  - (iii) ALL PARTIES WAIVE ANY CLAIM TO INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES ARISING FROM OR OUT OF ANY DISPUTE WITH THE COMPANY UNLESS THE STATUTE UNDER WHICH THEY ARE SUING PROVIDES OTHERWISE.
- (e) **Initiation of Arbitration Proceeding/Selection of Arbitrator.** 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. An explanation of the procedures for initiating an arbitration proceeding are available at [www.adr.org](http://www.adr.org) or by calling 877-493-4185. The arbitration proceeding shall be administered by the American Arbitration Association ("AAA") under the AAA's Commercial Arbitration Rules and the Supplementary Procedures for Consumer-Related Disputes that are in effect when the arbitration is initiated (collectively, "AAA Rules"). The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 800-778-7879.

**(f) Arbitration Procedures.**

- (i)** Because the Service(s) provided to you by the Company concerns interstate commerce, the Federal Arbitration Act ("FAA"), not state arbitration law, shall govern the arbitrability of all Disputes. However, applicable federal law or the law of the state where you receive the Service(s) from the Company may apply to and govern the substance of any Disputes. No state arbitration statute shall apply to the arbitration proceeding. If there is a conflict between this Arbitration Provision and the rules of the arbitration organization, this Arbitration Provision shall govern. If the AAA will not enforce this Arbitration Provision as written, it cannot serve as the arbitration organization to resolve your Dispute with the Company. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will enforce this Arbitration Provision as written.
- (ii)** If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern.
- (iii)** A single arbitrator will resolve the Dispute. The arbitrator will honor claims of privilege recognized by applicable law and will take reasonable steps to protect Customer account information and other confidential or proprietary information. The arbitrator may award on an individual basis any relief that would be available in a court, including injunctive or declaratory relief and attorneys' fees.
- (iv)** The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party or required by applicable law. An award granted by the arbitrator may be enforced in any court with appropriate jurisdiction over the parties.
- (v)** If an award granted by the arbitrator exceeds \$75,000, either party may appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within thirty (30) days from the date of entry of the written arbitration award. The members of the three-arbitrator panel will be selected according to the rules of the arbitration organization. The arbitration organization will then notify the other party that the award has been appealed. The three-arbitrator panel will issue its decision within one hundred and twenty (120) days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which exists under the FAA.

- (g) Arbitration Hearing and Location.** If the Dispute is for \$10,000 or less, you may choose whether to conduct the arbitration solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If the Dispute exceeds \$10,000, the AAA Rules will determine the right to a hearing. Any in-person hearing will take place at a location convenient to you in the area where you receive the Services from the Company, unless you and the Company agree or the arbitrator orders otherwise under the AAA Rules.

- (h) Payment of Arbitration Fees and Expenses.** Payment of all arbitration fees and expenses will be governed by the AAA Rules. After the Company receives notice that you have initiated an arbitration proceeding, the Company will promptly reimburse you for payment of your filing fee. The Company will pay all filing, administration, and arbitrator fees and arbitrator expenses for the Dispute, unless the arbitrator determines that the Dispute is frivolous. You are responsible for paying fees and expenses for your attorneys, witnesses, and experts in arbitration, unless applicable law requires otherwise. The Company will not seek attorneys' fees and expenses in arbitration, unless the arbitrator determines the Dispute is frivolous. If the arbitrator determines that the Dispute is frivolous, you agree to reimburse the Company for previous payments it made that are otherwise your obligation to pay under the AAA Rules and applicable law.
- (i) Severability.** If any clause within this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of this Arbitration Provision will be given full force and effect. If the class action and class arbitration waiver in Section 12(d) is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable, and the Dispute will be decided by a court. In the event this entire Arbitration Provision is determined to be illegal or unenforceable for any reason, or if a claim is brought in a Dispute that is found to be excluded from the scope of this Arbitration Provision, YOU AND THE COMPANY EACH HEREBY AGREE TO WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY TRIAL BY JURY.
- (j) Survival.** This Arbitration Provision will survive the termination of your Services with the Company.
- (k) Exclusions from Arbitration.** YOU AND THE COMPANY AGREE THAT ANY CLAIM FILED BY YOU OR BY THE COMPANY THAT IS NOT AGGREGATED WITH THE CLAIM OF ANY OTHER CUSTOMER AND WHOSE AMOUNT IN CONTROVERSY IS PROPERLY WITHIN THE JURISDICTION OF A COURT WHICH IS LIMITED TO ADJUDICATING SMALL CLAIMS WILL NOT BE SUBJECT TO ARBITRATION. IN ADDITION, CLAIMS WHERE THE AMOUNT IN DISPUTE IS VALUED AT LESS THAN THE COST OF AAA FEES, DISPUTES ABOUT COMPANY INTELLECTUAL PROPERTY AND CLAIMS RELATED TO THEFT OF SERVICE WILL NOT BE SUBJECT TO ARBITRATION.

**13. Additional Representations and Warranties of Customer.** In addition to representations and warranties you make elsewhere in this Agreement, you also represent and warrant that:

- (a) Age.** You are at least 18 years of age. You may, at your discretion, permit minors to use the Services under adult supervision. You are solely responsible for monitoring all material that is accessed by minors using your Services, and you acknowledge that the Services provide access to content that is unsuitable for minors.
- (b) Customer Information.** During the term of this Agreement, you have provided and will continue to provide to us accurate, complete, and current customer information, including but not limited to your legal name, address, phone numbers, and payment data (including but not limited to credit card numbers and expiration dates). You agree that during the term of this Agreement you will promptly notify us if there is any change in the information that you have provided to us in accordance with the terms of this Agreement.

## 14. Term and Termination.

**(a) Term.** The term of this Agreement shall commence on the applicable Billing Commencement Date and shall continue thereafter until terminated as provided for in this Agreement. You may terminate the Services at any time by notifying us during normal business hours. Your liability for service charges will continue until such notice is received and verified by the Company. If you agreed to subscribe to the Services for a specified minimum period under a separate term agreement, early termination charges may apply.

**(b) Termination by You.** You may terminate this Agreement for any reason at any time by notifying the Company in one of three ways: (1) send a written notice to the postal address on your billing statement; (2) send an electronic notice to the email address specified on your billing statement; or (3) call Customer Service at 1-855-FOR-VYVE during normal business hours. Subject to applicable law or the terms of any agreements with governmental authorities, all applicable fees and charges for the Service(s) will accrue until this Agreement has terminated, the Service(s) have been disconnected, and all Company Equipment has been returned. We will refund all prepaid monthly service fees charged for Service(s) after the date of termination (less any outstanding amounts due to us for the Service(s), Company Equipment, or other applicable fees and charges).

**(c) Suspension and Termination by the Company.** We may suspend your Service(s) or terminate this Agreement for any reason. If we suspend your Service(s) or terminate this Agreement because you failed to comply in full with any term of this Agreement, we may do so at any time. If we suspend Service or terminate this Agreement for any other reason, we must first give you 30 days' notice. If we suspend Service or terminate this Agreement for a reason other than your violation of this Agreement, all applicable fees and charges will accrue until the date of suspension or termination, but we will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due for the Services, equipment, or other applicable fees and charges). Our action or inaction under this Section shall not constitute review or approval of your or any other users' use of the Services or information transmitted by or to you or users. If Customer's account is suspended, disconnected, and/or terminated, no refund, including any fees Customer paid to the Company, will be granted; no online time or credits (for example, points in an online game) will be credited to Customer, nor can it be converted to cash or another form of reimbursement. Moreover, the Company will not be responsible for the return of data stored on the Company's servers. Customer agrees that the Company has no obligation to visit Customer's home upon termination to reconfigure Customer's computer; such request will be a chargeable service.

**(d) Customer Obligations Upon Termination.** You agree that upon termination of this Agreement you will: (i) immediately cease all use of the Service(s) and all Company Equipment; (ii) pay in full for your use of the Service(s) and the Company Equipment up to the later of the effective date of termination of this Agreement or the date on which the Services are disconnected and all Company Equipment has been returned; and (iii) return the Company Equipment to us within 10 days of the date on which Service(s) are terminated. Upon our request, you will permit us and our employees, agents, contractors, and representatives to access the Premises during regular business hours to remove all Company Equipment. If we incur collection or legal costs as a result of your failure to return Company Equipment, you will be liable for not only the value of the Company Equipment, but also for incidental costs relating to replacement of Company Equipment, collection and attorneys' fees as well as court costs upon judgment.

(e) **Reconnection.** If either party terminates a Service, you will be required, in addition to payment of all overdue balances, to pay a reconnect fee and trip charge (where applicable) before reconnection.

(f) **Deletion of Customer Information.** We reserve the right both during the term of this Agreement and upon its termination to delete your voicemail, data, files, or other information that is stored on our or our service providers' servers or systems, without liability.

**15. Residents of Apartment Buildings and Similar Properties.** In some cases, the Company 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 with or has a direct account with the Company.

**16. General.**

(a) **How to Contact Us.** For any inquiries or notices required in connection with this Agreement, you may contact us at the phone number(s) and local addresses listed in Section 29 of this document.

(b) **Notices.** We will provide you with notices consistent with applicable law. The Company may send any required or desired notice hereunder to your address of record (which may include an email address that you provide to us), by telephone, or delivering it by hand. Our notice to you may alternatively be provided on your billing statement, as a bill insert, in a newspaper or posted on our website listed at the end of this document. Customer agrees that any one of the foregoing will constitute sufficient notice. You agree to regularly check your mail, email and all postings on our website regularly and bear the risk of failing to do so. If you give notice to us, it will be deemed given when received by us at the address listed on the first page of this Agreement.

(c) **Entire Agreement.** This Agreement and the other Customer Agreements incorporated by reference herein constitute the entire agreement and understanding between Customer and the Company with respect to the subject matter of this Agreement, and supersede and nullify all prior written or verbal understandings, promises, agreements or undertakings with respect to the Service(s) and/or the Company Equipment. If any term or condition of this Agreement shall be adjudicated or determined as invalid or unenforceable by a court, tribunal or arbitrator with appropriate jurisdiction over the subject matter, the remainder of the Agreement with respect to such claim shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law. The Company does not waive any provision or right if it fails to insist upon or enforce strict performance of any provision of this Agreement. Neither the course of conduct between you and us, nor trade practice, shall act to modify any provision of this Agreement.

(d) **Governing Law.** This Agreement is and shall be governed by and construed in accordance with applicable federal law or the laws of the state where you receive the Service(s) from the Company.

- (e) **Force Majeure.** The Company shall not be liable for any delay or failure of performance or Company Equipment due to causes beyond its control, including, but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action or request of the United States government or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more of these federal, state or local governments or of any military authority; preemption of existing service in compliance with national emergencies, acts of terrorism, insurrections, riots, wars, unavailability of rights-of-way, material shortages, strikes, lockouts or work stoppages.
- (f) **Assignment.** This Agreement and the Service(s) and Company Equipment furnished hereunder may not be assigned by you. You agree to notify us immediately of any changes of ownership or occupancy of the Premises. We may freely assign our rights and obligations under this Agreement with or without notice to you.

#### **ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO VOICE SERVICE.**

In addition to the General Terms and Conditions above, the following terms and conditions are specifically applicable to a Customer who subscribes to the Company's Voice Service.

#### **17. LIMITATIONS OF 911/E911 DIALING**

(a) **Limitations.** The Company's Voice Service includes 911/Enhanced 911 functions ("911/E911") that may differ from 911/E911 functions furnished by traditional telephone service providers. As such, the 911/E911 Services may have certain limitations. **CAREFULLY READ THE INFORMATION BELOW. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS ON 911/E911. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY HAVE OCCASION TO PLACE CALLS OVER THE SERVICES, INCLUDING, WITHOUT LIMITATION, CHILDREN, BABYSITTERS AND VISITORS.** If you have any questions about 911/E911, call Customer Service at 1-855-FOR-VYVE.

- (i) **Correct Address.** In order for your 911/E911 calls to be properly directed to emergency services, we must have your correct Premises address. If you move the Voice Service to a different Premises without our approval or call from a non-registered telephone number, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address and/or the Voice Service (including 911/E911) may fail altogether. Therefore, you must call Customer Service at 1-855-FOR-VYVE before you move the Voice Service to a new address to properly change your registered location. All changes in service address require our prior approval. **YOU UNDERSTAND AND ACKNOWLEDGE THAT THE COMPANY WILL NEED SEVERAL BUSINESS DAYS TO UPDATE YOUR SERVICE ADDRESS IN THE E911 SYSTEM SO THAT YOUR 911/E911 CALLS CAN BE PROPERLY DIRECTED AND THERE MAY BE A DELAY IN MAKING THE NEW REGISTERED LOCATION AVAILABLE TO ROUTE 911 CALLS**



AND TO ADVISE THE APPROPRIATE EMERGENCY CALL TAKER OF YOUR NEW REGISTERED LOCATION. YOU ALSO UNDERSTAND AND ACKNOWLEDGE THAT YOUR 911/E911 CALLS WILL NOT FUNCTION UNTIL CORRECT AND VALID ADDRESS INFORMATION HAS BEEN INPUTTED INTO THE APPROPRIATE DATABASE OR IF YOU USE YOUR VOICE SERVICE FROM A LOCATION THAT IS DIFFERENT FROM THE PREMISES ADDRESS PROVIDED TO THE COMPANY, AND THAT THE PREMISES ADDRESS PROVIDED TO THE COMPANY WILL BE THE ONLY LOCATION TRANSMITTED TO THE EMERGENCY CALL TAKER AND FAILURE TO MAINTAIN ACCURATE LOCATION INFORMATION MAY CAUSE E911 COMMUNICATIONS TO FAIL.

- (ii) **Service Interruptions.** Access to 911/E911 requires that your Voice Service is active and that you have electrical power connected to your phone modem, or embedded multimedia terminal adapter (“EMTA”). YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU MAY LOSE ACCESS TO AND USE OF VOICE SERVICE, INCLUDING 911/E911, UNDER CERTAIN CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: (I) IF OUR NETWORK OR FACILITIES ARE NOT OPERATING; (II) IF ELECTRICAL POWER TO THE EMTA IS LOST OR INTERRUPTED AND THE EMTA DOES NOT HAVE A BATTERY BACKUP OR THE BATTERY BACKUP IS EXHAUSTED OR FAILS OR IF THERE ARE PROBLEMS WITH OUR NETWORK AS FURTHER DESCRIBED BELOW; (III) IF THERE IS A LOSS OR INTERRUPTION OF ELECTRICAL POWER TO YOUR TELEPHONE, MODEM, ROUTER, SWITCH OR ANY OTHER DEVICE IN THE CRITICAL PATH BETWEEN YOUR DEVICE AND OUR SYSTEMS OR THE SYSTEMS OF OUR SERVICE PROVIDERS; (IV) IF THE INTERNET CONNECTIVITY TO YOUR ADDRESS IS LOST OR DISRUPTED FOR ANY REASON; (V) IF THE EQUIPMENT OR SOFTWARE USED IN CONNECTION WITH THE 911/E911 SERVICE FAILS TO FUNCTION OR IS IMPROPERLY (OR IS NOT) INSTALLED OR CONFIGURED); (VI) IF YOUR SERVICE HAS BEEN SUSPENDED, DISCONNECTED, TERMINATED OR FAILS FOR ANY REASON (INCLUDING CANCELATIONS FOR FAILURE TO PAY) OR IS NOT PROPERLY FUNCTIONING; (VII) IF YOU ATTEMPT A 911/E911 CALL FROM A LOCATION THAT IS DIFFERENT FROM THE ADDRESS YOU PROVIDED TO THE COMPANY; OR (VIII) IF INCORRECT OR INVALID ADDRESS INFORMATION IS PROVIDED, OR IF SUCH INFORMATION IS NOT UPDATED IN THE EVENT OF A CHANGE IN PRIMARY LOCATION. You understand and acknowledge that due to technical factors in network design or due to network congestion there may be a possibility of a busy signal or abnormal wait times. You also understand and acknowledge that battery backup may provide power for only a limited time, that the performance of the battery backup is not guaranteed,

and that if the battery is exhausted, the Voice Service will not function until normal power is restored. You understand and acknowledge that your EMTA may not have battery backup or another power source of its own. Furthermore, calls, including calls to 911/E911, may not be completed if there is a problem with network facilities, including network congestion, network or network equipment failure, fiber cuts or another technical problem. You should consider installing a backup power supply, maintaining a traditional phone line or having a wireless phone as a backup. See Section 19 below for further disclosure regarding power outages and backup power.

- (iii) **Suspension and Termination by the Company.** You understand and acknowledge that all Voice Service, including 911/E911, as well as all online features of Voice Service, where we make these features available, will be disabled if your account is suspended or terminated.
- (iv) **Disclaimer.** You understand and acknowledge that E911 calls may not connect to a public safety answering point or may improperly ring to the administrative line of the public safety answering point, which may not be staffed after hours or by trained 911 operators. You further understand and acknowledge that E911 calls may correctly connect to the public safety answering point, but may not automatically transmit your phone number and/or location information.

**(b) Limitation on Liability and Indemnification.** YOU ACKNOWLEDGE AND AGREE THAT THE COMPANY AND ITS SERVICE PROVIDERS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911/E911 USING THE SERVICES, OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COMPANY AND ITS SERVICE PROVIDERS AND UNDERLYING SUPPLIERS (INCLUDING WITHOUT LIMITATION ALIANZA AND ITS AFFILIATES) 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, YOU OR ANY THIRD PARTY OR USER OF THE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E911 SERVICES PROVIDED TO YOU IN CONNECTION WITH THE SERVICES.

**(c) Acceptable Use.** Unless you subscribe to a plan that expressly permits otherwise, you agree to use the Voice Services only for personal and non-commercial purposes; however, you are permitted to use the Voice Services to make business calls that are incidental to your personal and non-commercial use of the Voice Services. You expressly agree not to use the Voice Services for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in harm to the Company's network; fraud, or excessive usage inconsistent with normal residential calling patterns. If we determine, in our sole discretion, that your Voice Services are being used for any of the aforementioned activities, we reserve the right (i) immediately and without notice to terminate or modify the Services and (ii) to assess additional charges for each month in which excessive usage occurred.

**(d) Per-Call and Measured-Call Charges.** Calling plans billed on a flat monthly fee basis may not include certain call types. These call types will instead be charged on a per-call (e.g., operator services) or a measured basis (e.g., international calls). For billing purposes, a measured

call begins when the carrier of the receiving party returns signaling to our network that the call has been answered, and it ends when one of the parties disconnects the call. 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 includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. Please contact us for information on per-call charges.

**(e) Third-Party Charges.** Voice Services may allow you to access information and other service providers (e.g., services accessible through 800, 888, and 877 numbers) and other third-party providers. You acknowledge that you may incur charges with such providers that are separate and apart from the amounts charged by us. You agree that all charges payable to third parties, including all applicable taxes, are your sole responsibility.

## **18. Equipment.**

**(a) Handset and Wiring.** In order to use the Voice Service, you are required to provide certain Customer Equipment, such as a phone handset or equivalent, inside phone wiring and outlets, and a powered electrical outlet. If we cannot get access to your inside phone wiring, you will need a cordless phone to use our Services throughout your dwelling.

**(b) EMTA.** As noted in Section 17 above, to use the Voice Service, you will need an EMTA. The EMTA is a phone modem that enables our network to communicate with the phone lines inside your home. The EMTA provided by us at the time of installation is Company Equipment. The EMTA must be plugged into an external power source, such as an electrical wall outlet, to operate. You agree to keep the EMTA plugged into a working electrical power outlet at all times.

**(c) Incompatible Equipment and Services.** You acknowledge and understand that the Voice Services may not support or be compatible with: (i) certain non-voice communications equipment, including but not limited to alarm or home security systems that make automatic phone calls; medical monitoring devices; certain fax machines; and certain "dial-up" modems; (ii) rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as answering machines and traditional Caller ID units; (iii) dial around (10-10) calling; 976, 900, 700, or 500 number calling; (v) 211, 311, 511, or 811 calling; and (vi) other call types not expressly set forth in our product literature (e.g., shore-to-ship calling and outbound satellite calling).

**(d) BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST THE COMPANY AND ITS SERVICE PROVIDERS, FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE COMPANY EQUIPMENT OR THE SERVICES AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE SERVICES IN ACCORDANCE WITH THE AGREEMENT.**

**(e) You assume the risk of high-risk activities.** The Voice Services are not represented as fail-safe. They are not designed for use in situations where error-free or uninterrupted service is essential. You expressly assume the risk of any damages from high-risk activities involving vital communications in which an error or interruption in the Services could lead to material injury to business, persons, property, or the environment.

## 19. Voice Service During a Power Outage.

**(a) EMTA Battery Backup.** In the event of an electrical power outage, your Voice Service (including your access to 911/E911 and any medical and security monitoring services that depend on it) may be unavailable if a battery backup is not installed, fails or is exhausted after several hours or if there are problems with our network as further described below. The Arris Touchstone EMTA provided by us at the time of installation comes equipped with an eight-hour battery backup, which should provide you the ability to make or receive calls, including 911/E911 calls, when the power goes out as long as the battery lasts, subject to the limitations described below. In the event of a power outage, a fully charged backup battery should provide up to eight hours of standby service and approximately four hours of talk time, subject to the limitations described below. In this event, only your primary phone number will work.

We also offer a different EMTA for a one-time charge of \$60 that comes with a 24-hour backup battery. If you are also a broadband Internet customer, this EMTA will be in addition to the data modem you need to access broadband Internet services.

**LIMITATIONS: The inclusion of a battery backup does not ensure that our Voice Service will work in all circumstances. If Voice Services are interrupted as a result of problems with our 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 our equipment is repaired and our network is restored.**

**(b) Take Precautions.** Whether it's lightning striking a transformer, or a heavy gust of wind taking out power lines, power outages can happen. In these circumstances, a functioning backup battery could provide you with additional hours of Voice Service. There are several steps you can take to prepare for a power outage in your home, which may help maintain Voice Service. Failure to adhere to these proper usage conditions will reduce both the idle and talk time available to you in an outage and the lifespan of your backup battery.

- The EMTA must be plugged into an external power source, like an electrical wall outlet, to operate.
- Do not move the EMTA installed in your home to another location.
- Keep your EMTA plugged directly into a wall outlet and not connected to a power strip or an electrical outlet controlled by a wall switch to ensure the EMTA's battery remains fully charged.
- Removal of the battery from its proper place will cause it to lose its charge and you will be unable to place or receive calls during a power outage, including 911/E911 calls. If you do remove the battery, please make sure you replace it carefully and avoid bending the pins in the battery bay. If you bend the pins, the EMTA may not work on battery power. If this occurs, you must contact Customer Service to request a new EMTA. If we find that your EMTA or battery have been damaged through improper use, we may assess a charge to replace the equipment. **In addition, do not remove the battery during a power outage. If you do, the EMTA will shut off and will not power back up during the power outage even when a fully charged battery is properly placed in the EMTA.**
- A fully charged battery normally provides eight hours (24 hours if you have purchased the 24 hour back-up option described above) of standby power when used in a clean, dry and temperate environment. Standby time will be shorter for batteries that are more than two years old or if the EMTA is kept in a hot, cold or dusty environment. These estimates are subject to the limitations described above.

- The actual length of time that your phone will be available during a power outage depends on many variables, including, but not limited to, the following: (i) the amount of phone usage when the EMTA is utilizing power from a backup battery; (ii) whether the backup battery is properly installed and charged, such as whether it has had an opportunity to fully recharge after a prior outage; (iii) the condition and age of a backup battery; (iv) the amount of prior usage of the battery; (v) the type of phone connected to the EMTA, as power consumption varies; and (vi) the status of our network.
- The batteries for the EMTA cannot provide power to any external communications devices that require electricity. This means that during a power outage, cordless phones and adaptive telecommunications devices used by disabled customers (which require electricity) may not be available for use. For adaptive devices, please consult the manufacturer for options. We recommend keeping a corded (landline) phone in your home for use in the event of an outage. Corded phones do not need a separate power source to operate and can function with a battery back up by plugging the cord directly into the telephone jack on your EMTA.
- During a power outage, keep non-emergency calls to a minimum to prolong the life of the batteries. If the power outage lasts beyond the capability of the batteries or our network, you will not be able to place or receive calls (including 911/E911) until power is restored.
- If you have a mobile phone, ensure that it is fully charged. Keep a car charger handy for situations where electrical power is not available.
- Program emergency contact numbers in your mobile phone, including the police department, fire department and hospital, as well as family members.
- Forward your calls to your mobile phone before a severe storm knocks out power.
- Avoid using Internet services to preserve battery life during an outage.

**(c) Testing and Monitoring Your EMTA's Battery.** YOU ARE SOLELY RESPONSIBLE FOR TESTING, MONITORING AND REPLACING THE EMTA BATTERY ON A REGULAR BASIS.

- If the battery light on your EMTA is solid, your battery is in good health and is fully charged.
- If the battery light on your EMTA is blinking, your battery needs to be charged or replaced. If you have recently removed your battery and/or utilized your battery during an outage, the battery light will continue to blink until it is fully charged. Please allow eight hours for the charge to be fully restored.
- If the battery light on your EMTA is out, your battery may be missing, depleted entirely, or not connected properly.
- If you need technical assistance with your battery, please contact us from your mobile phone and our customer service representatives will assist you.
- If your battery is no longer keeping charge, you can purchase a replacement battery from the EMTA's manufacturer – Arris Touchstone. Arris Touchstone batteries may be available from retailers such as Amazon and Best Buy.
- We cannot guarantee that batteries purchased from sources other than us or the EMTA's manufacturer will be compatible with your Arris Touchstone EMTA. You are solely responsible for any damage that results from the attempted installation or use of a third-party battery.
- Under normal operating conditions, most batteries will not need to be replaced for several years. However, factors such as age and temperature could impact battery performance. Battery performance will be diminished if not kept in dry conditions. Therefore, we recommend that you check your battery on a regular basis by unplugging the EMTA and checking for dial tone on your phone. Similar to your fire alarm, you might consider checking your EMTA battery every six months.

**(d) Warranty.** If the battery in your Arris Touchstone EMTA provided to you by us upon installation is defective, Vyve will replace it for up to one year from the date of installation.

**(e) Recycle Your Used Battery.**

- To protect our environment, we support battery recycling and encourages you to recycle your used backup battery properly.
- For your convenience, batteries are accepted at no charge for recycling at various locations. Please check [www.call2recycle.org](http://www.call2recycle.org) or call **1-800-Battery (1-800-228-8379)** for a battery recycling location near you.
- There is no unreturned equipment charge for your old battery.

**(f) Additional Battery Information.**

- All of the EMTAs provided by the Company at this time are equipped with only one battery slot and therefore do not support an additional spare battery. You may purchase additional backup batteries from the EMTA's manufacturer.
- If you are interested in obtaining backup power alternatives, such as solar chargers, car chargers or mobile charging stations, please contact your local hardware store or electronics retailer for possible options. To use these alternatives to power your Voice Service, you must provide AC power to the EMTA.
- Do not place batteries into fire, intense heat or liquids.
- Do not attempt to open or modify battery packs.
- Avoid skin contact with cracked or leaking batteries.

**(g) Important Liability Information.** The EMTA requires power to operate properly. You have an obligation to ensure that the equipment is connected to electrical power at all times and that you monitor the battery's health. We are not liable to you if you experience an interruption of service due to power outages, including failure due to the absence or insufficiency of battery backup power or an outage affecting our network, with the exception of any applicable service or billing credits. We do not guarantee uninterrupted Voice Service even to customers that have working backup batteries or other power supplies. In some instances, such as during a weather event, our network may experience other problems that would prevent normal operation of your Services even if you supply backup power to your devices.

**20. Directories.** Your name, address and phone number may be distributed in telephone directories or through directory assistance, and this information may be repackaged and made available in different formats by anyone. You expressly consent to such use and distribution. We take reasonable precautions to ensure that non-published and non-listed numbers are not included in our telephone directories or directory assistance services, although we cannot guarantee that errors will never occur. We may also disclose limited customer information to telephone companies so that your calls can be properly routed.

**21. Transfer of Your Phone Number.**

**(a) Switching to the Company from another provider.** If you are switching to our Services from another service provider, you may transfer your existing phone number (if any) to our Services, provided that (i) you request the phone number transfer when you place your order for our Services, authorize the Company to request on your behalf the transfer of your existing phone number and, at the Company's option, before or during the installation service visit, confirm such authorization in writing; (ii) your current service provider releases your existing

phone number, at our request, without delay or charge; (iii) transfer of your existing phone number to our Services would not, in our view, violate applicable law or our processes and procedures; (iv) you acknowledge and agree that if your EMTA is set up before the date that the number transfer becomes effective ("Port Effective Date"), you may only be able to make limited outgoing calls over the phone that you have connected to the EMTA. In that event, you should keep another phone connected to an existing phone extension at your service location to receive incoming calls until the Port Effective Date, after which you will be able both to make and to receive calls using our Services; and (v) you acknowledge and agree that to avoid an interruption in your Voice Service, it is extremely important that you have the EMTA installed on or before the Port Effective Date. Your existing phone service for the number you are transferring will be disconnected on the Port Effective Date; if your EMTA is not yet activated, you will not have access to our Services. Therefore, you will not have service for that phone number.

**(b) Switching from the Company to another provider.** If you are switching service providers, but remaining in the same geographic area, you can usually keep your existing phone number. The process of moving a phone number from one operator to another is called porting. In order to port your phone number from the Company to another service provider, you must first authorize and request the new provider to start the process of porting your number. You need to provide the new service provider with your 10-digit phone number and any additional information required. Do not terminate your existing Voice Service with the Company prior to initiating new service with another company. Your Company account must be active at the start of the port. We will release your phone number to your new service provider, provided that (i) your new service provider requests the transfer; (ii) your new service provider is willing to accept transfer of the phone number without delay or charge; and (iii) transfer of your existing phone number to the new service provider would not, in our view, violate applicable law or our processes and procedures. For the avoidance of doubt, if you terminate your Voice Service prior to making a transfer request and prior to initiating your new service with another provider, your account will no longer be active and the Company cannot port your existing number to your new provider.

## **ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO INTERNET SERVICE.**

In addition to the General Terms and Conditions above, the following terms and conditions are specifically applicable to a Customer who subscribes to the Company's Internet Service.

**22. General.** You are responsible for all Internet activity originating from your or others' use of your Internet Service. You agree to ensure that all use of your Internet Service complies fully with this Agreement. You are solely responsible for protecting the confidentiality of your screen names, passwords, PINs, parental controls, and other security measures, and we shall have no liability for your failure to do so.

**23. Data Plans & Usage.** We offer multiple packages or "tiers" of Internet Service, each at a flat monthly rate and without long-term contracts or early termination fees. The prices and features for our Internet Service plans vary by region, are subject to change over time, may be based on current promotions and are dependent upon a customer's particular needs. We serve a number of different areas, and the capabilities of our networks are not the same in all areas. As a result, not all packages or tiers are available in all geographic areas. Except for our "Unlimited" Plan, all of our Internet Service plans are subject to a monthly data usage allowance. Monthly data allowances (other than for pre-paid plans) are measured on a calendar month basis and not according to your billing cycle. Our "Unlimited" Plan is

intended for residential customers and typical personal use. If you exceed four (4) terabytes of data monthly, a Company customer service agent may contact you to discuss a commercial data plan option or, if you fail to take such a plan, we may reduce your data speed to 10 Mbps until the next billing cycle. For Internet Service plans other than our “Unlimited” Plan and pre-paid plans (which are described below), if you have provided us with your email address, we will send an email to that address if and when you reach 75%, 90% and 100% of your plan’s monthly data usage allowance. We will also send a session interrupt message to the MAC ID on your account when you reach 75%, 90% and 100% of your plan’s monthly data usage allowance in a particular calendar month. You are solely responsible for providing a correct email address to us and for assuring that messages from us are not filtered into a spam folder. See <http://www.vyvebroadband.com/home/mydatameter> for more information on the data usage allowance applicable to your service plan and how you can monitor, manage and make the most of your own online data usage. Should you exceed the monthly data allowance for your plan in a particular calendar month, typically 1TB (1,000GB), you will still enjoy the same Internet speed and full access, but will be charged an additional \$10 per month for every additional increment of 50GB or portion thereof of data used. You also have the option to purchase an additional 250GB of data for \$25 in order to avoid or minimize overage charges. If you find that you are regularly exceeding the data usage allowance applicable to your service plan, please contact a customer service representative at 1.855.FOR.VYVE to discuss alternatives. Our customer service representatives are trained to help customers explore options to reduce data consumption.

In certain regions, in addition to our standard plans, we offer thirty-day pre-paid plans for Internet Service which vary depending on the speed and data allowance offered. If you subscribe to one of these plans, your Internet Service will remain active for thirty days or until you reach the applicable data allowance purchased, whichever comes first. For pre-paid plans, if you have provided us with your email address, we will send an email to that address if and when you reach 50%, 75%, 90% and 100% of your plan’s thirty-day data usage allowance. We will also send a session interrupt message to the MAC ID on your account when you reach 50%, 75%, 90% and 100% of your plan’s thirty-day data usage allowance. You are solely responsible for providing a correct email address to us and for assuring that messages from us are not filtered into a spam folder.

**Unused data from your monthly data allowance expires at the end of each month and does not carry over to subsequent months.**

Usage includes all of the data you have received (downloaded) or sent (uploaded), and the standard network protocols (such as Ethernet and IP activity) that are used to transmit content, as measured by us. If you have not secured your Wi-Fi router/gateway, unauthorized persons could access your home network and use your Internet Service, which could increase your usage. You are solely responsible for all usage originating from your or others’ use of the Services provided to your premises, for securing your equipment to prevent unauthorized access, such as through Wireless Encryption Protocol (WEP) or Wi-Fi Protected Access (WPA) for security, and for protecting the confidentiality of your screen names, passwords, PINs, and other security measures.

**24. Equipment, Attachments and Software Installation.** You have three options regarding attaching devices to our network to make use of our Internet access services: lease or purchase a modem from us or purchase your own modem at retail. Please note that our XStream TV DTAs and whole home DVR products can only work with MoCa modems, which cannot be purchased at retail, but can be leased or purchased from us. If you choose to provide your own equipment, you are free to attach any device to your service as long as it does not harm our network. Our network uses the DOCSIS technology standard to exchange Internet data with our customers. We currently approve the use of DOCSIS 3.0 certified modems. Use of a non-compliant modem may lead to service interruption in the case of network updates. We will install a wired or wireless cable modem, as applicable, and other Company Equipment and



software, unless you request otherwise. The license granted under Section 3 of this Agreement will permit such use by you and up to five (5) persons authorized by you to use your Internet Service, under any password or screen name available to you, provided that you shall be responsible for all use of your Internet Service.

**25. Acceptable Use Policy.** You shall comply with all of the Company's standards for acceptable use with respect to Internet Service and shall refrain from any and all illegal and/or inappropriate activities, including, without limitation, as outlined in the AUP, which will be updated from time to time and the latest version will supersede all prior versions.

**26. Intellectual Property Rights.**

**(a) Lawful purposes only.** You shall use the Internet Service for lawful purposes only. You shall not send, post, receive, list, transmit or otherwise make available through the Internet Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others (including copyrights, patents, trademarks, trade secrets or proprietary rights), that is unlawful, threatening, abusive, obstructive, harassing, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane, that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any law. You acknowledge and agree that the Company may terminate your Internet Service if you are using the Internet Service for unlawful purposes. You acknowledge and agree that by using the Internet Service you are bound by the terms and conditions of all Company Agreements, including the Company's DMCA Policy available at <http://www.vyvebroadband.com/policies/DMCA>. Pursuant to the terms of the DMCA Termination Policy and the Company's procedures adopted in connection therewith, the Company may terminate your Internet Service if you are a repeat infringer of copyrights of any person or entity.

**(b) No Resale.** Advertising, reselling, reuse, any solicitation with respect to products or services, using the Internet Service for operation as an ISP or for the hosting of websites other than as expressly permitted under this Agreement, or use of any form of transmitter or wan that enables persons outside your service address to use the services, is strictly prohibited without express written approval from the Company and a contract for payment of related fees.

**(c) Copyright.** Our Internet Service contains copyrighted material, trademarks and other proprietary information. You may download copyrighted material solely as permitted by law. Except as otherwise expressly permitted under copyright law, no copying, redistribution, publication or commercial exploitation of downloaded material will be permitted without the express prior written consent of the Company and, where applicable, the third party copyright owner. In the event of any permitted copying, redistribution or publication of copyrighted material, no changes in or deletion of author attribution or copyright notice shall be made. You may download public domain materials for your own use or non-commercial distribution. The Company assumes no responsibility, and you assume all risks regarding the determination of whether material is in the public domain, or may otherwise be used for such purposes.

**(d) Ownership of Addresses.** You acknowledge that use of the Internet Service does not give you any ownership or other rights in any Internet/on-line addresses provided to you, including, but not limited to, Internet Protocol ("IP") addresses and Web addresses. We may modify or change these addresses at any time without notice and shall in no way be required to compensate you for these changes. Upon termination of an Internet Service account, we reserve the right permanently to delete or remove any or all addresses associated with the account.

(e) **Monitoring and Remedies.** The Company shall have the right, but not the obligation, to monitor your usage and the content of the Services, including content you may publish online, in order to determine compliance with this Agreement. You shall not upload, post or otherwise make available on the Services any material protected by copyright, trademark or other proprietary right without the express permission of the owner. You may upload public domain materials and are responsible for and assume all risks with respect to the determination of whether materials are in the public domain. You hereby grant the Company the right to edit, copy, remove, publish and distribute any material made available on the Internet Service, whether offensive, in violation of this Agreement, or otherwise, by anyone using your Internet Service at any time for any reason.

**27. Risks of Internet Access.** Use of the Company's Internet Service presents certain risks for which the Company cannot be responsible, including without limitation:

(a) **Computer File Backup.** You understand and accept the risks if you decide not to back up files. Neither the Company nor its service providers shall have any liability whatsoever for any damage to or loss of any software, files, or data.

(b) **Viruses.** Websites visited or data received through the Internet 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. We may, but are not obligated to, run third party virus check software on your computer prior to installing software related to the Internet Service. We do not represent or warrant that doing so will detect or correct any or all viruses. We may, but are not required to, suspend or terminate availability of the Internet Service if a virus is found to be present on any user's system or in any communications sent or received through the Internet Service.

(c) **Unauthorized Access to Your Computer and Files.** Inherent in Internet access is the risk that unauthorized persons will use your Internet 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 Internet Service is at your sole risk, and you are responsible for the security of your computer, equipment, information and data traffic. The Company 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.

(d) **Eavesdropping and Customer Equipment Security.** The public Internet is used by numerous persons or entities including, without limitation, other Customers to our Internet Service. As is the case with all shared networks like the public Internet, there is a risk that you could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor your use of the Internet Service. If you post, store, transmit, or disseminate any sensitive or confidential information, you do so at your sole risk. You acknowledge that when using the Internet Service there are certain applications and techniques that may be used by other persons or entities to gain access to Customer's Equipment. You are solely responsible for the security of the Customer Equipment or any other equipment you choose to use in connection with the Internet Service, including without limitation any data stored on such equipment. NEITHER THE COMPANY NOR ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO SUCH

ACTIONS BY YOU OR OTHERS, THE USE OF SUCH APPLICATIONS BY YOU, OR THE ACCESS BY OTHERS TO THE CUSTOMER EQUIPMENT OR OTHER EQUIPMENT OF YOURS. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs are commercially available that claim to be capable of encryption or anonymization. We make no representation or warrant regarding the effectiveness of these programs.

- (e) **Company Actions to Protect the Company's Network.** We reserve the right to take actions to protect the security and integrity of our network and resources that are consistent with applicable law. These actions may affect your Internet Service, your computer, software, files, personal information and other data stored or transmitted by you.
- (f) **Exposure to Inappropriate Content.** There may be content available through the Internet which is illegal, violates third party property or other rights or is offensive. We are not responsible for the content contained on the Internet or otherwise available through the Internet Service. We shall not be liable for any claims, losses, actions, damages, suits or proceedings arising out of, or otherwise relating to, such content.

#### **ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO VIDEO SERVICE.**

In addition to the General Terms and Conditions above, the following terms and conditions are specifically applicable to a Customer who subscribes to the Company's Video Service.

#### **28. Equipment.**

- (a) **Set-Top Boxes.** Some models of TV receivers or Digital Video Recorders (DVR) may not be able to receive all of the channels offered on our system. Channel compatibility problems may occur if equipment such as TVs and DVRs are connected directly to the cable system. Use of a set-top box typically resolves these problems. Channel compatibility problems associated with the reception of programming that is not scrambled or encrypted programming can be resolved by using a simple converter device without descrambling or decryption capabilities. We rent set-top boxes, and CableCARD set-top boxes may be available for purchase from retail outlets in some areas. If your Service is received through a set-top box, you may not be able to use special features and functions on TVs and DVRs. For example, some set-top boxes may not be compatible with TV or DVR features that allow you to view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; or use advanced picture generation and display features such as "Picture-in-Picture."
- (b) **Additional Set-Top Boxes.** To independently tune additional televisions or broadcast devices within your home, a separate set-top box may be required for each television. Each additional set-top box will be authorized to receive the same Service(s) as your initial receiver. We will charge you a monthly fee for each additional set-top box added to your account.
- (c) **CableCARDS.** You may lease a conditional access card ("CableCARD") from us.
- (d) **Downloads.** We reserve the right to alter software in the equipment, and provide content to DVR products, through periodic downloads. We will use commercially reasonable efforts to

schedule these downloads in a manner that result in the least amount of interference with or interruption to your Service.

**(e) Ordering Pay-Per-View or On-Demand Services.** You may order pay-per-view or on-demand Services by using your on-screen program guide and remote control unit to select the movies and other events we offer. To order pay-per-view or on-demand Video Service, your digital receiver must be connected to our RF return path or a telephone outlet. You may also order special events and pay-per-view Services over the telephone by calling Customer Service at 1-855-FOR-VYVE. You will be responsible for the full retail price of any pay-per-view or on-demand content that is purchased by anyone you permit to use the Service(s). We will not issue refunds for pay-per-view or on-demand content that is purchased but not viewed before the applicable viewing period expires.

**(f) Our Services and TiVo Products and Services.** You may be receiving TiVo products and services from us. You are granted a personal, non-commercial and non-exclusive license to (i) use software that is embedded in (or downloaded to) TiVo products and (ii) access and use the hosted services provided to you in conjunction with the TiVo service using authorized TiVo products. TiVo products are intended for your private, non-public, home use (where no admission fee is charged). Features and functionality are subject to change. TiVo reserves the right to determine the timing and content of software updates, which may be automatically downloaded and installed by TiVo products without prior notice to you.

When using our Services, including TiVo products and services, you may not do any of the following (except to the extent permitted by applicable law): (1) modify, reverse engineer, decompile or otherwise attempt to derive the source code, structure, design or method of operation of software provided to you; (2) modify, disassemble or otherwise tamper with any product, including any TiVo product; (3) disguise the place of your residence or the location of your use; or (4) attempt to circumvent technological measures or gain unauthorized access through hacking, password mining or any other means.

If the functionality is available and permitted, use of streaming/downloading functionality is for your personal and private use. Unauthorized transfers or distribution of copyrighted works is a violation of these terms and may be a violation of copyright laws. There are penalties for copyright infringement if you violate applicable copyright laws. If the functionality is available and permitted, in order to stream and/or transfer content (such as from one TiVo device to another, or from a TiVo device to your mobile device), your devices may all need to be on the same local network.

To the extent required by the license for the open source components of our products, including a TiVo product (“Open Source Software”): (i) the terms of such license will apply to such Open Source Software instead of the terms of this Agreement and (ii) any restrictions prohibited by such license that are contained in this Agreement will not apply to such Open Source Software. Acknowledgements, licensing terms and disclaimers for TiVo products are contained in the “Legal Notices” or similar screen.

The Company and our suppliers retain title to and ownership of the TiVo products and services and certain intellectual property rights in and to the TiVo products and services. The Company and our suppliers also retain ownership of all copyrights and trademarks in and on the TiVo products and services. Without limiting the foregoing, all TiVo copyrights and trademarks are the exclusive property of TiVo Inc., which is the intended third-party beneficiary of these terms

and conditions, and all Company copyrights and trademarks are the exclusive property of the Company.

If you fail to comply with the terms set forth in this Section, we reserve the right to terminate your license to use the TiVo products and services.

You understand and agree that the Company and our suppliers have no warranty obligations or other liabilities to you. Except for those liabilities that may not be disclaimed under applicable law, we disclaim all liability for any liabilities, losses, damages, costs or expenses (whether arising in contract, tort, including negligence, or under any other causes of action) suffered or incurred by any person in connection with any of our products and services, including any TiVo product or service on behalf of and for the benefit of our suppliers and the Company.

**(g) Remote Control Units.** We currently provide customers with set-top converters with compatible remote control units. Most universal remotes manufactured since 2001 for sale in the United States should be compatible with our current equipment, especially after programming them with the manufacturer instructions using infrared functionality, but if you have questions regarding the compatibility of a certain remote with our Service, please call us.

## COMPANY CONTACT INFORMATION

### 29. Customer Service Information:

For any inquiries or notices required in connection with this Agreement, Customer may contact the Company by writing to:

Corporate Headquarters:

Four International Drive  
Suite 330  
Rye Brook, NY 10573

OR

Customer's Local Office:

Arkansas

417 Highway 41, DeQueen, AR 71832  
501 E. Ash St., McGehee, AR 71654

Georgia

220 Gaskin Ave., Douglas, GA 31533  
126 Havanna Ave., Waycross, GA 31501

Kansas

116 N. 8<sup>th</sup> Street, Atchison, KS 66002  
6422 Normandy Dr., Ft. Riley, KS 66442  
118 W. 15th St., Ottawa, KS 66067

Louisiana

2504 Westwood Rd., Westlake, LA 70669

Oklahoma

1501 West Mississippi Street, Durant, OK 74701

215 NW 5th St., Guymon, OK 73942

205 E. Cherokee, McAlester, OK 74501

27 SE 8<sup>th</sup> Street, Pryor Creek, OK 74361

1821 Airport Drive, Shawnee, OK 74804

707 W. Saratoga Street, Shawnee, OK 74804

Tennessee

3213 Highway 25E, Suite 1, Tazewell, TN 37879

Texas

1100 W. Rose Ave., Decatur, TX 76234

217 S. Ash Street, Perryton, TX 79070

118 N. West St., New Boston, TX 75570

Wyoming

234 N. Windriver Dr., Douglas, WY 82633

1942 E. A St., Torrington, WY 82240

507 9<sup>th</sup> Street, Wheatland, WY 82201

OR

Call Customer Service at 855-FOR-VYVE.