

## **BENDBROADBAND COMMERCIAL SUBSCRIBER AGREEMENT**

This is your Subscriber Agreement ("Agreement") with Bend Cable Communications, LLC ("BendBroadband," "we," "us," "our"). It sets forth the terms and conditions under which commercial customers ("Customer," "you," "your") will be provided BendBroadband video, Internet and Phone services ("Service(s)").

WHEN YOU EXECUTE A TERM AGREEMENT WITH BENDBROADBAND, OR USE OR PAY FOR THE SERVICES (WHICHEVER OCCURS FIRST) ("Effective Date"), YOU AGREE TO THE PRICES, TERMS, AND CONDITIONS SET FORTH IN THE TERM AGREEMENT AND THIS AGREEMENT (together, "Agreement").

### **GENERAL TERMS AND CONDITIONS**

#### **1. Installation fees and deposits; installation.**

(a) **Installation fees and deposits.** Installation fees and deposits on BendBroadband Equipment (as defined below) will be invoiced in your first bill. Payments for installation fees, deposits, and for all Services are due 30 days from the issue date of the applicable bill.

(b) **Installation.** BendBroadband will use reasonable efforts to make the Services available by the Requested Service Date in the Term Agreement. Installation delays outside BendBroadband's control may occur from time to time, and in this event, BendBroadband will notify Customer.

#### **2. Billing and payment.**

(a) **Charges.** You agree to pay all charges associated with the Services. These charges may include installation charges, monthly service charges, charges for the use of BendBroadband Equipment, charges for service calls, early termination charges, and other charges. The applicable schedules of charges and fees are included in your Term Agreement with BendBroadband, or can be found at [www.bendbroadband.com](http://www.bendbroadband.com) or by calling BendBroadband customer service at 541-382-5551. In the event of any inconsistency between the charges and fees in your Term Agreement and those available at [www.bendbroadband.com](http://www.bendbroadband.com) or by calling BendBroadband customer service, the charges and fees in your Term Agreement shall govern.

(b) **Taxes and other fees.** You agree to pay any and all applicable federal, state, and local taxes (however designated) levied upon us and our affiliates in connection with the sale, installation, use, or provision of the Services, including amounts that we and our affiliates are required by governmental or quasi-governmental authorities to collect from or to pay to others in support of statutory or regulatory programs, including universal service fees, 911/E911 surcharges, telecommunications relay service surcharges, franchise fees, right-of-way fees, number portability fees, etc. If you are tax-exempt under federal or state law, you may submit to BendBroadband a valid tax-exempt certificate, and

BendBroadband will not assess the applicable tax to you. You agree to notify BendBroadband if your tax-exempt status changes during the term of this Agreement.

(c) **Notification of changes.** Unless this Agreement specifies otherwise, we will give you 30 days' notice of any modification to this Agreement. BendBroadband may, in its sole discretion, change or downgrade portions of the Services (including but not limited to features and equipment requirements) at any time without notice. If you continue to use the Services after any modification of this Agreement that materially and adversely affects your rights, or any material downgrade to the Services, you shall be deemed to have accepted such modification or downgrade. If you do not agree to any such modification or downgrade, you must immediately stop using the Services and notify BendBroadband that you are terminating this Agreement. You will then be entitled to a refund of any unused portion of any recurring monthly service fee for the Services that has been paid by you in advance (less any outstanding amounts due for equipment or other applicable fees and charges). You will be responsible to pay any fees, payment obligations, and taxes that become applicable retroactively.

(d) **Accrual of fees and charges.** The fees and charges for the Services begin to accrue on the date of installation.

(e) **Payment by credit card.** If we make available payment by credit card and you provide a credit card number to us, you thereby authorize us to charge that credit card for all amounts payable by you to BendBroadband as specified in this Agreement. You also authorize us to continue such charges until you notify BendBroadband in writing that you are withdrawing this authorization or until you have paid all charges under this Agreement. If BendBroadband does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand by us.

(f) **Billing errors.** Subject to applicable law, you must notify us of any billing errors or other requests for refund within 60 days of the date on the bill.

(g) **Late Fees.** You agree to pay a \$5.00 late fee in addition to all other applicable charges if you do not pay the full balance due on your account within 60 days of the due date.

(h) **Credit inquiries.** You authorize BendBroadband 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, and in accordance with applicable law.

(i) **Returned checks, nonpayment, collection.** You agree that BendBroadband may electronically debit your account for both the face amount of your check, and a returned check fee of \$25, if your check is returned unpaid. In the event of nonpayment, BendBroadband reserves the right to disconnect your Services at any time, with or without notice. You agree that if BendBroadband incurs collection or other legal costs as a result of nonpayment, you will be liable for the total past due amount and any returned check fees, and also for collection and attorneys' fees as well as court costs upon judgment. Further, in order to resume Services, you must pay the past due charges in full in addition to a connect fee and one month's service charges in advance.

**3. No resale.** You agree and represent that you are buying the Services for your internal business purposes only and that you will not resell, distribute or resell the Services to others through any means whether or not for a fee, or permit others to distribute or resell the Services. You agree to ensure that all uses of the BendBroadband Equipment and Services installed at your premises are legal and appropriate.

#### **4. BendBroadband Equipment, software and marks**

(a) **Equipment.** You acknowledge that BendBroadband-installed equipment and facilities, along with any equipment leased to you (including converters, remote control units, external cabling and power cords provided or installed with any cable television services, and any cable modem or multimedia terminal adaptor ("MTA") installed along with your Internet or BendBroadband Phone services (collectively, "BendBroadband Equipment"), is for your exclusive use during your subscription and remains the property of BendBroadband. You agree that you will not allow the BendBroadband Equipment to be serviced by anyone other than BendBroadband employees or agents. You may not relocate BendBroadband Equipment. At your request, we may relocate the BendBroadband Equipment within your service address for an additional charge, at a time agreeable to you and to us. If you change your service address, you must contact BendBroadband for information on whether the BendBroadband Equipment and Services can be transferred to your the new service address and what the relocation will cost. If you wish to disconnect the Services, you must contact BendBroadband for information on the necessary procedures and cost. You shall not permit any attachments to, alteration of, or tampering with the BendBroadband Equipment, nor any alteration or additional use of the Services at any time, under penalty of law. You agree that if either party terminates your Services for any reason, you shall return the BendBroadband Equipment to BendBroadband within 10 business days of termination in proper, undamaged working order other than reasonable wear and tear.

(b) **Damage to or failure to return BendBroadband Equipment.** In the event the BendBroadband Equipment is lost, stolen, damaged, destroyed, or otherwise not returned to BendBroadband as required under this Agreement, you

agree to pay the current replacement cost of the BendBroadband Equipment. You understand that failure to pay the replacement charge will result in the matter being turned over to a collection agency and attorneys to pursue legal action.

(c) **Unauthorized use of BendBroadband Equipment or Services.**

Unauthorized use of BendBroadband Equipment or Services constitutes a violation of federal and state law. BendBroadband will press charges against all violators. You will be liable for all unauthorized use of the Services and for any and all stolen Services. You agree to notify us immediately in writing or by calling our customer service line during normal business hours if you become aware at any time that the BendBroadband Equipment has been stolen or that your Services are being stolen or used without your authorization. If you fail to notify us in a timely manner, your Services may be terminated without notice, with additional charges to you.

(d) **BendBroadband firmware and software.** The Services and BendBroadband Equipment, including any firmware or software that may be embedded in the BendBroadband Equipment or used to provide the Services, are protected by trademark, copyright, and other intellectual property laws and international treaty provisions. You are granted a 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 the Effective Date and will terminate immediately upon the termination of the Services for any reason. BendBroadband and its licensors retain all rights and interests in and to any such software or firmware. You acknowledge and understand that you are not granted any other license to use the firmware or software embedded in the BendBroadband Equipment or used to provide the Services. You expressly agree that you will use the BendBroadband Equipment exclusively in connection with the Services. 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 binary code of the firmware or software.

If you decide to use the Services through an interface device not provided by BendBroadband, which BendBroadband reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights to use that interface device with the Services, including all software and firmware licenses. You will indemnify and hold harmless BendBroadband against any and all liability arising out of your use of such interface device with the Services.

(e) **Export laws.** You expressly agree to comply with all applicable export and re-export laws, including but not limited to the Export Administration Act, the

Arms Export Control Act, and their implementing regulations. You further expressly agree not to use the Services in any way that violates any provision of these export and re-export laws or their implementing regulations.

(f) **Protection of BendBroadband's information and marks.** All BendBroadband Services information, documents, and materials on our websites are protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "marks") of BendBroadband are and shall remain the exclusive property of BendBroadband. Nothing in this Agreement shall grant you the right or license to use any of the marks.

## 5. Customer equipment

(a) **Specifications.** Any customer-owned or provided equipment ("Customer Equipment") that you use in connection with the Services must meet BendBroadband's current minimum technical and other requirements. Those requirements are posted on at [www.bendbroadband.com](http://www.bendbroadband.com) (or on an alternative site if we so notify you). The requirements may be revised by us from time to time.

(b) **Non-Recommended Configurations:** If you install or use in connection with the Services Customer Equipment that does not meet the minimum technical or other requirements described above (a "Non-Recommended Configuration"), you agree that (i) you will not be entitled to customer support relating to any issues other than the quality of the signal delivered to the Customer Equipment, and (ii) the following limitation of liability shall apply: NEITHER BENDBROADBAND NOR ANY OF ITS OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, OR ASSOCIATED PARTIES ("BENDBROADBAND PARTIES") WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICES. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT. NONE OF THE BENDBROADBAND PARTIES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE, INCLUDING LACK OF 911/E911 OR DIALING ASSOCIATED WITH A SECURITY SYSTEM. For purposes of this Agreement, "affiliate" means any entity that controls, is controlled by, or is under common control with BendBroadband. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

(c) **Maintenance of Customer Equipment.** BendBroadband shall have no obligation to provide, maintain, or service Customer Equipment unless purchased

from BendBroadband, and only to the extent provided for in the warranty for the Customer Equipment.

**6. Service and maintenance procedures.** The Services include the right to request reasonable service and maintenance calls to check and correct any problems with the Services at no additional cost to you, except as provided below. In such an event, you agree to allow a BendBroadband representative to inspect its facilities either inside or outside the place of attachment. However, you understand that the BendBroadband representative may not service any Customer Equipment, including your TV set, VCR, stereo, fax equipment, PCs; local area networks, telephone switching equipment, PBXs or premises wiring not installed by BendBroadband. In the event that you request a service call based on problems which, in BendBroadband's sole judgment relate Customer Equipment, Customer negligence, lack of knowledge, Customer software, Customer-installed wiring or hardware, or any problem not caused by BendBroadband, you agree to pay the cost of repair. Please use the following procedures to best help us resolve any service or maintenance issues:

- Contact BendBroadband customer service at 541-382-5551.
- 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 service address, usually by the same business day. We do not charge for service calls if our equipment caused the problem.
- If you do not call during normal business hours, leave a complete message including your account number, billing name, contact telephone numbers, and the nature of the problem. When possible, a Service Technician will be dispatched by the next business day to fix the problem. In other cases, the answering service will forward the message to our office, and we will contact you during normal business hours.
- Emergencies such as fallen trees or utility poles, violent storms or very cold 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 our call us with concerns or complaints. For cable television-related issues, you may also contact your local franchise authority at the address listed at the end of this Agreement.

## **7. LIMITATION OF LIABILITY; INDEMNIFICATION; NO WARRANTIES**

(a) **No warranties.** THE BENDBROADBAND EQUIPMENT AND SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER

EXPRESS OR IMPLIED. NEITHER THE BENDBROADBAND PARTIES NOR THEIR SERVICE PROVIDERS (as defined in Section 7(e) below) WARRANT THAT THE BENDBROADBAND EQUIPMENT OR THE SERVICES WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NEITHER THE BENDBROADBAND PARTIES NOR THEIR SERVICE PROVIDERS WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED. NEITHER THE BENDBROADBAND PARTIES NOR THEIR SERVICE PROVIDERS WARRANT, OR SHALL BE RESPONSIBLE IN ANY REGARD, FOR ANY MERCHANDISE OR SERVICES ORDERED THROUGH THE SERVICES FROM THIRD PARTIES OR OTHER COMMERCIAL TRANSACTIONS WITH THIRD PARTIES. CUSTOMER SHALL BE RESPONSIBLE FOR ALL SUCH CHARGES AND SHALL INDEMNIFY BENDBROADBAND FOR ALL LIABILITY IN CONNECTION THEREWITH.

(b) **Limitations on liability for delays, malfunctions and intellectual property claims.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, IN NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (INCLUDING BUT NOT LIMITED TO TORT, CONTRACT, OR OTHERWISE), SHALL THE BENDBROADBAND PARTIES OR THEIR SERVICE PROVIDERS HAVE ANY LIABILITY TO YOU OR TO ANY PERSON OR ENTITY FOR (i) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, OR PERSONAL INJURIES (INCLUDING DEATH), RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, REMOVAL, OR USE OF THE SERVICES, INCLUDING LACK OF 911/E911 OR DIALING ASSOCIATED WITH A SECURITY SYSTEM, OR THE BENDBROADBAND EQUIPMENT OR CUSTOMER'S RELIANCE ON OR USE OF THE BENDBROADBAND EQUIPMENT OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY MISTAKES, OMISSIONS, INTERRUPTIONS, FAILURES OR MALFUNCTION, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, DELAYS IN INSTALLATION OR MEETING ANY REQUESTED SERVICE DATES, LOSS OF INFORMATION OR DATA, OR FAILURE OF PERFORMANCE OF THE BENDBROADBAND EQUIPMENT OR SERVICES; OR (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 THE BENDBROADBAND EQUIPMENT OR

THE SERVICES BY CUSTOMER OR ANY OTHER PERSON OR ENTITY INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS, OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.

**(c) Limitations on liability for directories and directory assistance.**

THE LIMITATIONS IN THIS SECTION 7(c) SHALL APPLY WHERE WE MAKE AVAILABLE A DIRECTORY LISTING OR PUBLICATION OPTION. IF (i) ANY PHONE NUMBER FOR WHICH YOU HAVE REQUESTED UNLISTED STATUS IS PUBLISHED IN ANY DIRECTORY; (ii) ANY PHONE NUMBER FOR WHICH YOU HAVE REQUESTED NONPUBLISHED STATUS IS INCLUDED IN ANY DIRECTORY, ANY DIRECTORY ASSISTANCE DATABASE, OR IS OTHERWISE DISCLOSED TO ANY UNAUTHORIZED PERSON; (iii) ANY PHONE NUMBER WHICH YOU REQUESTED BE PUBLISHED OR LISTED IN ANY DIRECTORY OR DIRECTORY ASSISTANCE DATABASE IS NOT SO PUBLISHED OR LISTED, OR (iv) ANY PUBLISHED OR LISTED PHONE NUMBER CONTAINS MATERIAL ERRORS OR OMISSIONS, THEN THE TOTAL LIABILITY OF THE BENDBROADBAND PARTIES AND THEIR SERVICE PROVIDERS IN CONNECTION WITH THE DESCRIBED ERROR OR OMISSION SHALL NOT IN THE AGGREGATE EXCEED THE MONTHLY CHARGES, IF ANY, WHICH YOU HAVE ACTUALLY PAID TO BENDBROADBAND TO LIST OR NOT TO LIST OR TO PUBLISH OR NOT PUBLISH THE NUMBER FOR THE AFFECTED PERIOD. YOU SHALL HOLD THE BENDBROADBAND PARTIES AND THEIR SERVICE PROVIDERS HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS DESCRIBED ABOVE.

**(d) Limitations on liability for Customer Equipment and software.**

Customer Equipment may be damaged or suffer service outages as a result of the installation, use, inspection, maintenance, repair, and removal of the BendBroadband Equipment and the Services. Except for gross negligence or willful misconduct by us, none of the BendBroadband Parties shall have any liability whatsoever for any damage, loss, or destruction to the Customer Equipment. In the event of gross negligence or willful misconduct by BendBroadband, we shall pay at our sole discretion for the repair or replacement of the damaged parts up to a maximum of \$250. This shall be your sole remedy relating to such activity. Use of certain features of the Services, such as integrated messaging (where available), may require special software, applications, or access to a web portals. BendBroadband makes no representation or warranty that any software or application installed on your computers or web portal does not contain a virus or other harmful feature. It is your sole responsibility to take appropriate precautions to protect any computer and other hardware of yours from damage to its software, files, and data as a result of any such virus or other harmful feature. We are not required to provide you with any assistance in removal of viruses. If we decide, in our sole discretion,

to install or run virus check software on your computer, we make no representation or warranty that the virus check software will detect or correct any or all viruses. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus or other harmful feature detected on your system. NEITHER THE BENDBROADBAND PARTIES NOR ITS SERVICE PROVIDERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM A VIRUS, ANY OTHER HARMFUL FEATURE, OR FROM ANY ATTEMPT TO REMOVE IT.

BendBroadband does not represent, warrant, or covenant that the installation of the special software or applications described in the preceding paragraph or access to our web portals will not cause the loss of files or disrupt the normal operations of any Customer Equipment, including but not limited to your computer. FOR THESE AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP FILES. NEITHER THE BENDBROADBAND PARTIES NOR ITS SERVICE PROVIDERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.

CERTAIN CONTENT MAY BE OBJECTIONABLE OR UNSUITABLE FOR MINORS. YOU ARE RESPONSIBLE FOR AND MUST EXERCISE YOUR OWN DISCRETION WHEN ALLOWING MINORS TO USE THE SERVICES.

**(e) Limitations on BendBroadband's liability for third parties.**

Notwithstanding anything to the contrary in this Agreement, you acknowledge and understand that we may use third parties to provide components of the Services, including without limitation their services, equipment, and infrastructure ("Service Providers"). BENDBROADBAND IS NOT RESPONSIBLE FOR THE PERFORMANCE OR NON-PERFORMANCE OF THIRD-PARTY SERVICES, EQUIPMENT, OR INFRASTRUCTURE, WHETHER OR NOT THEY CONSTITUTE COMPONENTS OF THE SERVICES. BENDBROADBAND SHALL NOT BE BOUND BY ANY UNDERTAKING, REPRESENTATION, OR WARRANTY MADE BY AN AGENT OR EMPLOYEE OF BENDBROADBAND OR OF OUR SERVICE PROVIDERS IN CONNECTION WITH THE INSTALLATION, MAINTENANCE, OR PROVISION OF THE SERVICES, IF THAT UNDERTAKING, REPRESENTATION, OR WARRANTY IS INCONSISTENT WITH THE TERMS OF THIS AGREEMENT. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7 APPLY TO ANY ACTS, OMISSIONS, AND NEGLIGENCE OF THE BENDBROADBAND PARTIES AND THEIR SERVICE PROVIDERS WHICH, BUT FOR THAT PROVISION, WOULD GIVE RISE TO A CAUSE OF ACTION IN CONTRACT, TORT, OR ANY OTHER LEGAL DOCTRINE.

(f) **Customer's Indemnification of BendBroadband.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD THE BENDBROADBAND PARTIES AND THEIR SERVICE PROVIDERS, 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 BENDBROADBAND 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. YOU AGREE THAT BENDBROADBAND SHALL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE OF THE SERVICES OR THE BENDBROADBAND EQUIPMENT. FURTHER, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS.

(g) **Service level agreement.** 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. THE FOREGOING IS YOUR SOLE REMEDY FOR A SERVICE INTERRUPTION. YOU UNDERSTAND AND ACKNOWLEDGE THAT THERE MAY BE INTERRUPTIONS OF THE SERVICES DUE TO ACTS OF GOD, WAR, WEATHER, POWER FAILURES, EQUIPMENT FAILURES, OR OTHER SIMILAR EVENTS BEYOND THE CONTROL OF BENDBROADBAND. NONE OF THE BENDBROADBAND PARTIES OR THEIR SERVICE PROVIDERS SHALL HAVE ANY LIABILITY, INCLUDING AS SET FORTH IN THIS SECTION 7(g), FOR INTERRUPTIONS OF SERVICE DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL, OR FOR CLAIMS OR DAMAGES ARISING FROM SUCH INTERRUPTIONS.

(h) **Customer's Sole Remedies.** Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. If any of the above exclusions is found invalid, the liability of the BendBroadband Parties and their Service Providers is limited to the maximum extent permitted by law.

**8. BendBroadband's access to customer's premises.** From time to time, BendBroadband may need to enter the premises at which you will use the Services ("Premises") in order to install, maintain, inspect, repair, and remove the BendBroadband Equipment or Services. Accordingly, you are responsible for arranging all necessary rights of access to the Premises, including space for cables, conduits, and equipment necessary for BendBroadband to install, repair, inspect, maintain, replace or remove any and all BendBroadband Equipment. You shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for the BendBroadband

Equipment. You authorize BendBroadband and its employees, agents, contractors, and representatives to enter the Premises as necessary, at a time agreeable to you and us. You warrant either that you are the owner of the Premises, or if you are a tenant, that you have the authority to allow us access to the Premises. If you are not the owner of the Premises, you agree to supply us, if we ask, the owner's name and address, evidence that the owner has authorized you to grant access to the Premises, and written consent from the owner.

**9. Security deposits.** If you have made arrangements to have a security deposit on file with Bend Broadband, you agree to relinquish those funds if you fail to return any piece of BendBroadband Equipment. You also agree that your deposit may be applied to any outstanding charges at the time of termination of the Services. No interest will be paid on deposits.

**10. Pricing and charges.** Non-recurring charges and monthly recurring charges for your Services are included in your Term Agreement with BendBroadband. Other applicable prices and charges can be found at [www.bendbroadband.com](http://www.bendbroadband.com) , or by calling BendBroadband customer service at 541-382-5551.

**11. Privacy.** Your privacy interests, including your ability to limit disclosure of certain information to third parties, may be safeguarded by provisions of the Cable Communication Policy Act of 1984, as amended, or, for BendBroadband Phone subscribers, by 47 U.S.C. § 222 and the FCC's regulations governing customer proprietary network information. Your rights under the foregoing law, and BendBroadband's privacy practices, are described in the Subscriber Privacy Notice delivered to you and incorporated herein by reference. BendBroadband reserves the rights to change its privacy practices from time to time.

## **12. ARBITRATION**

(a) EXCEPT FOR (i) CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW; (ii) CLAIMS BROUGHT BY BENDBROADBAND RELATED TO UNPAID CHARGES FOR THE SERVICES OR BENDBROADBAND EQUIPMENT; OR (iii) CLAIMS BROUGHT BY BENDBROADBAND FOR UNAUTHORIZED USE OF THE SERVICES OR BENDBROADBAND EQUIPMENT, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THIS AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS

SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

(b) If any clause within this Section 12 (other than the class action waiver clause) is found to be illegal or unenforceable, that clause will be severed from the Arbitration Provision, and the remainder of this Section 14 will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Section 12 will be unenforceable. In the event that this entire Section 12 is determined to be illegal or unenforceable for any reason, or if a claim is brought that is found by a court to be excluded from the scope of this Section 12, you and BendBroadband have each agreed to waive, to the fullest extent allowed by law, any trial by jury.

**13. Representations and warranties of Customer.** You represent and warrant that the individual executing this Agreement has the authority to do so. You are solely responsible for monitoring all material that is accessed by minors using your Services. You also represent and warrant that you have provided and will continue to provide to BendBroadband 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. If you fail to provide and maintain accurate information, you thereby breach this Agreement.

**14. No Relationship between BendBroadband and other providers.** Nothing in this Agreement will create any joint venture, joint employer, franchisor-franchisee, employer-employee, or principal-agent relationship between BendBroadband and any providers of content or of backbone, network, circuit, and other technology or communications; between BendBroadband and any software and other licensors; between BendBroadband and any hardware and equipment suppliers; or between BendBroadband and any other third-party providers of elements of the Services. Nor will anything in this Agreement impose upon any such companies any obligations for any losses, debts, or other obligations incurred by the other.

## **15. Termination**

(a) **Term.** This Agreement shall become effective on the Effective Date and shall continue thereafter until terminated as provided for in this Agreement. If you have executed a Term Agreement with BendBroadband, your Term Commitment for a particular Service commences on the date that Service is activated ("Term Commencement Date"). Following the expiration of your Term Commitment, BendBroadband will continue to provide the Services on a month-to-month basis at BendBroadband's then-current rates until termination of the Agreement pursuant to this Section 15.

(b) **Termination by you.** You may terminate the Services at any time by notifying BendBroadband during normal business hours via the contact information listed in Section 16(a) below. Your liability for service charges will continue until such notice is received and verified by BendBroadband. You will receive a refund for any prepaid days not yet used after the termination date. If you executed a Term Agreement with BendBroadband, the first three sentences of this Section 15(b) shall not apply until the Term Commitment under the Term Agreement has expired, further, an Early Termination Charge may apply.

(c) **Suspension and termination by BendBroadband.** We may suspend your Services or terminate this Agreement for any reason. If we suspend your Services or terminate this Agreement because you failed to comply in full with any term of this Agreement, we may do so at any time upon 7 days' notice, or upon less than 7 days' notice or without notice where permitted by this Agreement, and, in addition to your other obligations under Section 15(d), you will be subject to the Early Termination Charge provided for in Section 15(d). 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 BendBroadband for the Services, affiliate services, equipment, or other applicable fees and charges). You understand and acknowledge that all BendBroadband Phone Services, including 911/E911, will be disabled because of termination of your account.

(d) **Your obligations upon termination; Early Termination Charge.** You agree that upon termination of this Agreement you will (i) immediately cease use of the Services and all BendBroadband Equipment; (ii) pay in full for your use of the Services and the BendBroadband 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 BendBroadband Equipment has been returned; and (iii) return the BendBroadband Equipment to BendBroadband, by any method reasonably requested by us, within 10 days after termination of the Agreement. In addition, if you terminate this Agreement before the expiration of the Term Commitment set forth in your Term Agreement for any reason other than a material default by BendBroadband under this agreement, BendBroadband may charge an Early Termination Charge as follows:

- (i) If you terminate less than six months from the Term Commencement Date, you agree to pay BendBroadband an Early Termination Charge of \$300.00.
- (ii) If you terminate between six and twelve months from the Term Commencement Date, you will be billed by BendBroadband for an Early Termination Charge equal to 90% of the Monthly Recurring

charges that would have been due under your Term Agreement for the remainder of your Term Commitment.

- (iii) If you terminate between twelve and twenty-four months from the Term Commencement Date, you agree to pay BendBroadband an Early Termination Charge equal to 70% of the Monthly Recurring charges that would have been due under your Term Agreement for the remainder of your Term Commitment.
- (iv) If you terminate between twenty-four and thirty-six months from the Term Commencement Date, you agree to pay BendBroadband an Early Termination Charge equal to 50% of the Monthly Recurring charges that would have been due under your Term Agreement for the remainder of your Term Commitment.

In addition, you agree to pay any unpaid activation fees, installation and/or construction charges pertaining to your account. If you received promotional service credits through the duration of the Term Commitment, you agree to repay BendBroadband for such credits. All such amounts (including any Early Termination Charge) will become due upon termination.

(e) Upon our request, you will permit us and our employees, agents, contractors, and representatives to access your Premises during regular business hours to remove the BendBroadband Equipment and other material provided by BendBroadband. We will conduct this removal at a time agreed on by you and us, and you will ensure that all BendBroadband Equipment is returned to BendBroadband. You may be responsible for paying an equipment return charge and any previously agreed to charges if BendBroadband must come to the Premises to recover the BendBroadband Equipment. If BendBroadband incurs collection or legal costs as a result of your failure to comply with this Agreement or this Section 15(e), you will be liable for not only the value of the BendBroadband Equipment, but also for collection and attorneys' fees as well as court costs upon judgment.

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

(g) **Deletion of Customer information.** BendBroadband and its service providers reserve the right both during the term of this Agreement and upon its termination to delete your voicemail, data, files, or other Customer information that is stored on BendBroadband's or its Service Providers' servers or systems, in accordance with our storage policies. You understand and acknowledge that we shall have no liability whatsoever as a result of the loss or removal of any such voicemail, data, files, or other Customer information.

## 16. Miscellaneous

(a) **How to Contact Us.** For any inquiries or notices required in connection with this Agreement, you may contact us (i) via the support request form or live chat at [www.bendbroadband.com](http://www.bendbroadband.com) (ii) in writing at Customer Service BendBroadband, 63090 Sherman Road, Bend, OR 97701, or (iii) on our customer service line at 541-382-5551 during normal business hours.

(b) **How you will receive notices.** BendBroadband may deliver this Agreement, updates to this Agreement, its pricing lists, or any other communications to you by sending it to you via U.S. Mail or overnight mail at your address of record, or delivering it by hand. If we give you notice, it will be considered given when deposited in the U.S. Mail or with an overnight carrier, addressed to you at your billing address or hand-delivered to you. Our notice to you will also be effective if provided on your billing statement or by telephone, or on your BendBroadband email account or at any email address that you provide to us. If you are a BendBroadband Phone or Internet customer, we may also provide you notice by posting it at [www.bendbroadband.com](http://www.bendbroadband.com) (or an alternative site if we so notify you). Because we may from time to time notify you about important information regarding the Services, this Agreement, and related matters, you agree to 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, along with any Term Agreement for Services, pricing lists and additional terms found at [www.bendbroadband.com](http://www.bendbroadband.com) , and BendBroadband's Subscriber Privacy Notice (all of which are incorporated herein by reference), constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter; provided that any other special pricing agreement, or Term Agreement relating to Customer's Services with BendBroadband shall remain in full force and effect.

(d) **Governing law.** This Agreement shall be construed in accordance with the laws of the State of Oregon, without regard to its conflict of laws rules. In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable laws as nearly as possible to reflect the original intentions of the Parties as set forth herein, and the remainder of the Agreement shall remain in full force and effect. No waiver by either Party of any breach or default shall be deemed to be a waiver of any preceding or subsequent breach or default.

(e) **Assignment.** BendBroadband may assign its rights and obligations under this Agreement, without notice, to (i) any affiliate of BendBroadband; (ii) to any

party (or its affiliate) acquiring all or substantially all of the assets or stock, by merger, or otherwise, of BendBroadband or any affiliate of BendBroadband; or (iii) to any person or entity purchasing or otherwise acquiring the affiliated BendBroadband video system serving the Premises. Customer may not assign or transfer this Agreement without BendBroadband's prior consent, except that Customer may assign this Agreement to any entity merging with Customer or acquiring all or substantially all of the equity or assets of Customer upon 30 days' written notice to BendBroadband, provided that such entity shall be bound by the terms of this Agreement.

(f) **Survival of limitations.** All representations, warranties, indemnifications, and limitations of liability contained in this Agreement shall survive the termination of this Agreement; any other obligations of the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.

(g) **BendBroadband rights and remedies.** Nothing contained in this Agreement shall be construed to limit BendBroadband's rights and remedies available at law or in equity.

#### **ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO BENDBROADBAND PHONE SERVICES**

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

(a) **Limitations.** The BendBroadband Phone Services include 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 BENDBROADBAND PHONE SERVICES.** If you have any questions about 911/E911, call BendBroadband customer service at 541-382-5551.

(b) **Correct Address.** In order for your 911/E911 calls to be properly directed to emergency services, BendBroadband must have your correct service address. If you move the BendBroadband Phone Services to a different address without BendBroadband's approval, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address, or the BendBroadband Phone Services (including 911/E911) may fail altogether.

Therefore, you must call BendBroadband customer service at 541-382-5551 before you move the BendBroadband Phone Services to a new address. All changes in service address require BendBroadband's prior approval. **YOU UNDERSTAND AND ACKNOWLEDGE THAT BENDBROADBAND WILL**

**NEED SEVERAL BUSINESS DAYS TO UPDATE YOUR SERVICE ADDRESS IN THE E911 SYSTEM SO THAT YOUR 911/E911 CALLS CAN BE PROPERLY DIRECTED.**

(c) **Network congestion or failures. 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, or another technical problem.**

(d) **Service interruptions caused by power failures. BendBroadband Phone uses the electrical power in your home. YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU MAY LOSE ACCESS TO AND USE OF THE BENDBROADBAND PHONE SERVICES, 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 MTA IS INTERRUPTED AND THE MTA DOES NOT HAVE A BATTERY BACKUP; OR (iii) IF THE ELECTRICAL POWER TO THE MTA IS INTERRUPTED AND ANY BATTERY BACKUP IS EXHAUSTED OR FAILS. 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 BendBroadband Phone Services will not function until normal power is restored. You understand and acknowledge that your MTA may not have battery backup or another power source of its own.**

(e) **LIMITATION ON LIABILITY: YOU ACKNOWLEDGE AND AGREE THAT THE BENDBROADBAND PARTIES AND THEIR SERVICE PROVIDERS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE BENDBROADBAND PHONE SERVICES, OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BENDBROADBAND PARTIES AND THEIR SERVICE PROVIDERS, 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 BENDBROADBAND PHONE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE BENDBROADBAND PHONE SERVICES, INCLUDING THOSE RELATED TO 911/E911 SERVICES PROVIDED TO YOU IN CONNECTION WITH THE BENDBROADBAND PHONE SERVICES.**

**18. Acceptable use.** You expressly agree not to use the BendBroadband Phone Services for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in excessive usage inconsistent with normal calling patterns for business of your size and type. If we determine, in our sole discretion, that your BendBroadband

Phone Services are being used for any of the aforementioned activities, we reserve the right (i) immediately and without notice to terminate or modify the BendBroadband Phone Services and (ii) to assess additional charges for each month in which excessive usage occurred.

**19. 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 call is answered by the called party or an automated answering device (such as an answering machine or fax machine); it ends when one of the parties disconnects the call. Measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. However, some providers (e.g., those involved in calls to foreign countries) charge BendBroadband for a completed call when the called party's line rings or after a certain number of rings. In these situations, BendBroadband will charge for the call as if it were answered by the called party. Consult the pricing lists at [www.bendbroadband.com](http://www.bendbroadband.com) for information on per-call charges and the timing of measured-call charges.

**20. Rounding of fractional charges.** If the computed charge for a measured call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. If the computed charge for taxes or surcharges includes a fraction of a cent, the fraction is rounded up to the nearest whole cent.

**21. Third-party charges.** The BendBroadband Phone Services may allow you to access "dial-up" Internet service providers, other enhanced service providers (e.g., information 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. In addition, you are solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

**22. Call detail records.** Call detail records for per-call, measured-call and third-party charges will not be sent to Customer in Customer's hardcopy bill, but may be accessed online at [www.bendbroadband.com](http://www.bendbroadband.com).

**23. BendBroadband Phone and customer equipment**

(a) **Handset and wiring:** In order to use the BendBroadband Phone Services, you are required to provide certain Customer Equipment such as a phone handset or equivalent, phone inside wire and outlets, and a powered electrical outlet.

(b) **MTA.** BendBroadband will provide you with any MTA needed for your use of the BendBroadband Phone Services under this Agreement.

(c) **Incompatible equipment and services.** You acknowledge and understand that the BendBroadband Phone Services may not support, have battery backup to power in the event of a power outage, or be compatible with: (i) Non-Recommended Configurations as defined in Section 5(b); (ii) 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; (iii) 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; (iv) Casual/dial around (10-10) calling; 976, 900, 700, or 500 number calling; (iv) 311, 511 or other x11 calling (other than 411, 611, 711, and 911); and (vi) Other call types not expressly set forth in our product literature (e.g., outbound shore-to-ship calling and outbound satellite calling).

BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST THE BENDBROADBAND PARTIES AND THEIR SERVICE PROVIDERS, FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE BENDBROADBAND EQUIPMENT OR THE BENDBROADBAND PHONE 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 SECTION 15.

(d) **You assume the risk of high-risk activities.** The BendBroadband Phone 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 BendBroadband Phone Services could lead to material injury to business, persons, property, or the environment.

(e) **No tampering with or relocation of BendBroadband Equipment.** You will not service, alter, modify, or tamper with BendBroadband Equipment or with the BendBroadband Phone Services, or permit any other person not expressly authorized by BendBroadband to do so. You agree that the MTA and the BendBroadband Phone Services will only be used at your service address appearing in our records. You understand and acknowledge that if you attempt to install or use the BendBroadband Equipment or BendBroadband Phone Services at another location, the BendBroadband Phone Services, including but not limited to 911/E911, may fail to function or may function improperly. As described in Section 4(a) above, you must notify BendBroadband if you wish to relocate the MTA or BendBroadband Phone Services. If you move the MTA or Services to

another location without complying with Sections 4(a) and 17(b), you do so in violation of this Agreement and at your own risk.

## **24. Transferring your phone number**

(a) **Switching to BendBroadband from another provider.** If you are switching to the BendBroadband Phone Services from another service provider, you may transfer your existing phone number (if any) to the BendBroadband Phone Services, provided that: (i) you request the phone number transfer when you place your order for the BendBroadband Phone Services; (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 the BendBroadband Phone Services would not, in our view, violate applicable law or our processes and procedures; (iv) you acknowledge and agree that if your MTA 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 MTA. 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 the BendBroadband Phone Services; and (v) you acknowledge and agree that to avoid an interruption in your phone service, it is extremely important that you have the MTA 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 MTA is not yet activated, you will not have access to the BendBroadband Phone Services. Therefore, you will not have service for that phone number. BendBroadband will provide you with an estimate of the Port Effective Date at the time of service ordering or via email following your completion of the ordering process.

(b) **Switching from BendBroadband to another provider.** To transfer your phone number from BendBroadband to another service provider, you must terminate the BendBroadband Phone Services and place the transfer order through your new service provider (and not through BendBroadband). BendBroadband will release your phone number to your new service provider, provided that: (i) your new service provider requests the transfer upon termination of your account; (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.

**25. Regulatory limitations.** You understand and acknowledge that the BendBroadband Phone Service may be subject to regulatory or tax treatment that differs from the regulatory or tax treatment applicable to traditional telephone service. This different treatment may limit or otherwise affect your rights of redress before federal or state regulatory or tax agencies.

## **ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO BENDBROADBAND HIGH-SPEED INTERNET SERVICES**

**26. General.** You are responsible for all Internet activity and bandwidth usage originating from your or others' use of your Services, including under any screen name or password. You agree to ensure that all use of your Services 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 BendBroadband shall have no liability for your failure to do so.

### **27. Equipment and software**

(a) **Monthly charges.** The monthly charge for the Services may include (i) rental of a cable modem and other BendBroadband Equipment, if necessary, to be installed at your Premises to permit connection of a PC to the Services, and (ii) rental of a license for the computer software licensed for the limited use described in this Agreement by BendBroadband to you to enable you to access the Services, as described in Section 4(b) and 27(c). You must specify the number of PCs on which any software is to be installed on the Work Order for your Internet Services, and you shall not install the software on a greater number of PCs than specified in your Work Order. If software is installed on more than one PC, additional charges may apply. Additional charges may also apply for transactions, purchases, or access to other services.

(b) **Installation.** BendBroadband will install the BendBroadband Equipment and software, unless you request otherwise, at the prevailing rates quoted prior to installation.

(c) **Software.** The license granted under Section 4(b) will permit such use by you of your Internet Services for your internal business purposes only, under any passwords or screen name available to you, provided that you shall be responsible for all use of your Services.

### **28. Acceptable use**

(a) **Lawful purposes only.** You shall use the Internet Services for lawful purposes only. You shall not post or transmit through the Internet Services any material (including any message or series of messages) that violates or infringes in any way upon the rights of others (including copyright), 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.

(b) **No resale.** YOU SHALL NOT ADVERTISE, RESELL, REUSE, OR MAKE ANY SOLICITATION WITH RESPECT TO THE SERVICES, OR USE THE SERVICES FOR OPERATION AS AN ISP OR FOR THE HOSTING OF WEBSITES, OTHER THAN AS EXPRESSLY PERMITTED UNDER THIS AGREEMENT OR ANY ADDITIONAL TERMS OF USE FOUND AT WWW.BENDBROADBAND.COM. THE SERVICES MAY BE USED ONLY BY YOU AND YOUR EMPLOYEES OR CONTRACTORS, AND ONLY FOR YOUR INTERNAL BUSINESS PURPOSES. IF YOU USE A WIRELESS NETWORK WITHIN YOUR SERVICE ADDRESS, YOU MUST ESTABLISH AND USE A SECURE PASSWORD OR SIMILAR MEANS TO LIMIT TO YOUR SERVICE ADDRESS WIRELESS ACCESS TO THE SERVICES. ANY OTHER USE OF THE SERVICES, WHETHER OR NOT A FEE IS SOUGHT, OR ANY 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 BENDBROADBAND AND A CONTRACT FOR PAYMENT OF RELATED FEES.

(c) **Copyrighted material.** The Services contain copyrighted material, trademarks and other proprietary information. You may download copyrighted material solely for your personal use. 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 BendBroadband 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.

(d) **Postings.** 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 BendBroadband the right to edit, copy, remove, publish and distribute any material made available on the Services by anyone using your Services (including postings to chat services, forums and bulletin boards on the Services) at any time for any reason. This provision is subject to the disclaimer contained in Section 28(h) below.

(e) **Subscriber lists.** You give BendBroadband consent to use, distribute, transfer, loan, or otherwise share with other persons or entities user lists as well as aggregate information, but not contrary to any applicable laws or BendBroadband's Subscriber Privacy Policy. Aggregate information includes demographic data, usage patterns, preferences, survey data, or other descriptive information which does not disclose the identity of any particular user. A copy of

BendBroadband's Subscriber Privacy Policy may be found at [www.bendbroadband.com](http://www.bendbroadband.com).

(f) **Enforcement of acceptable use restrictions.** The provisions of this Section 28 are for the benefit of the BendBroadband Parties and their third-party content or information service providers and licensors, and each shall have the right to assert and enforce these provisions directly on its own behalf.

(g) **Additional operating policies and conditions of use**

- (i) You shall not impersonate any person on the system or communicate under a false name or a name that you aren't entitled or authorized to use.
- (ii) You shall not participate or use your Services in any way to make fraudulent offers of products, items or services.
- (iii) You shall not mass post of the same message to any inappropriate on-line sites (junk e-mail, bombing or spamming).
- (iv) You shall not post or e-mail scams such as "make-money-fast" schemes or pyramid or chain letters. Nor shall you engage in these activities using the service of another ISP while channeling such activities through the Services or using the Services as a mail drop for responses.
- (v) You shall not use the Services to send unsolicited advertising, promotional material or other forms of unwanted solicitation, except in areas on-line specifically designated for such communications.
- (vi) You shall not interfere with BendBroadband's ability to provide Services to others, including the use of excessive bandwidth, or interfering with other users' use of the Services.
- (vii) You shall not transfer post or transmit files that contain viruses, worms, "Trojan horses" or any other contaminating or destructive features.
- (viii) You shall not export software or technical information in violation of United States export control laws.
- (ix) You shall not perform any activity on the Services that constitutes a criminal offense.
- (x) You shall not use the Services in any manner that disrupts Services for other BendBroadband customers, or which threatens to or

actually causes damage to the BendBroadband network, or is considered to be abuse of the network (examples include "spawning" dozens of processes, consuming excessive memory or CPU for long periods).

- (xi) Use of any form of transmitter, router or wide area network that enables persons or entities outside your service address to use the Services, whether or not a fee is sought, is prohibited.

(g) **Remedial measures.** Depending upon the extent of any violation of these acceptable use restrictions, Customers may receive warnings, or in some cases, have their accounts suspended. BendBroadband reserves the right to monitor Customers' actions when deemed necessary to troubleshoot connectivity problems or determine if there is an abuse of the BendBroadband Internet system.

(h) **Violations of acceptable use restrictions.** Violations of this Section 28 are a breach of this Agreement and in some cases may be unlawful. However, BendBroadband has no practical ability to restrict conduct which violates these policies and conditions and cannot ensure prompt removal of content or immediate cessation of violative conduct. Accordingly, BendBroadband expressly denies any liability to Customers or third parties for failure to enforce these policies and conditions.

(i) **Investigations.** In its sole discretion, BendBroadband may initiate an investigation and, in order to prevent further possible unauthorized activity, may suspend access to Service to the individual Account in question. Confirmation of violations may result in cancellation of the individual Account and criminal prosecution.

**29. Tiering.** The Services are offered on a tiered basis and each tier has limits on the maximum throughput rate at which Customers should expect to be able to send and receive data at any time and other limits as set forth in this Agreement or at [www.bendbroadband.com](http://www.bendbroadband.com). You understand and agree that the actual throughput rate you may experience at any time will vary based on numerous factors, such as the condition of wiring at your location, computer configurations, Internet and BendBroadband network congestion and management, the time of day at which the Service is used, and the website servers you access, among other factors. Each tier includes an allotment of bandwidth consumption that you may use during each billing cycle at no additional charge. You agree that you will pay for additional bandwidth consumed beyond that allotment at the rates posted at [www.bendbroadband.com](http://www.bendbroadband.com). Unused bandwidth from your allotment expires at the end of your billing cycle and does not carry over to subsequent billing cycles. You agree that BendBroadband may change these and other applicable limits or terms of any tiers by amending the

prices, aspects and features of the Service set forth at [www.bendbroadband.com](http://www.bendbroadband.com). Your continued use of the Service will constitute acceptance of any new and revised limits and terms. It is your responsibility to monitor and manage your bandwidth usage, which you may check using the online usage monitor available after logging into your account at [www.bendbroadband.com/usage](http://www.bendbroadband.com/usage). You must report any anomalous traffic to BendBroadband within 5 days. If such traffic is reported promptly and resulted from circumstances outside your control, such as a computer virus, spam attack, or a denial of service attack, BendBroadband may, at its discretion, confirm the source of the problem and deduct the bandwidth from your usage statistic. You also agree that BendBroadband may use technical means, including but not limited to suspending or reducing the speed of your Services, to ensure quality of service to other customers or for other good cause, and that BendBroadband may at its option move you to a higher tier of Services (which may result in higher monthly charges). You further agree that BendBroadband has the right to monitor your usage patterns to facilitate the provision of the Services and to ensure your compliance with this Agreement and any additional terms of use found at [www.bendbroadband.com](http://www.bendbroadband.com). BendBroadband may take such steps as it determines appropriate in the event that your usage of the Services does not comply with this Agreement or any additional terms of use found at [www.bendbroadband.com](http://www.bendbroadband.com).

**30. Monitoring.** BendBroadband shall have the right, but not the obligation, to monitor the content of the Services, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and any operating rules established by BendBroadband. BendBroadband shall have the right in its sole discretion to edit, refuse to post or remove any material submitted to or posted on the Service. Without limiting the foregoing, BendBroadband shall have the right to remove any material that BendBroadband, in its sole discretion, finds to be in violation of the provisions hereof or any operating rules established by BendBroadband hereafter, or otherwise to be objectionable (including indecent or obscene words or material; obstructive or disruptive communications; epithets and the like). Under no circumstances, however, does BendBroadband undertake any obligation to review or determine the acceptability or accuracy of any Customer postings.

#### **ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO BENDBROADBAND VIDEO SERVICES**

**31. Programming availability.** Certain Services transmitted by us, including but not limited to some subscription Services, sporting events and broadcast network Services, may be blacked out in your area of reception. If you circumvent or attempt to circumvent any of these blackouts, you may be subject to legal action. You must be at least 18 years of age, or the applicable age of

majority where you reside, in order to receive adult-oriented programming services.

### **32. Equipment used with video services**

- (a) **Equipment necessary.** To receive BendBroadband's video services on your TV, you will need a set-top box or conditional access card ("CableCARD"). You may lease a set-top box or CableCARD from BendBroadband.
- (b) **Set-top boxes.** If your service is received through a set-top box, you may not be able to use special features and functions on some TVs and VCRs. For example, some set-top boxes may not be compatible with TV or VCR 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."
- (c) **Additional set-top boxes and CableCARDS.** To independently tune additional televisions or broadcast devices within your home, a separate set-top box or CableCARD will be required for each television. Each additional set-top box or CableCARD will be authorized to receive the same Services as your initial receiver. BendBroadband will charge you a reduced monthly fee for each additional set-top box or CableCARD added to your account. This option is only available if your initial set-top box or CableCARD and all additional set-top boxes or CableCARDS are located at the same service address and are continuously connected to the same RF return path. If you desire to receive Services at two different locations, you must open a separate account for each location.
- (d) **Remote control devices.** Remote control devices available from retail outlets may be compatible with set-top boxes available from BendBroadband. A list of models of remote control devices that are compatible with our set-top boxes are listed on our website at [www.bendbroadband.com](http://www.bendbroadband.com).
- (e) **Downloads.** BendBroadband reserves the right to alter software in the equipment, and provide content to PVR products, through periodic downloads. BendBroadband 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.
- (f) **Available services, equipment, pricing.** For more information on the BendBroadband video Services, channel lineups, Equipment and pricing, please visit [www.bendbroadband.com](http://www.bendbroadband.com) or call Bend Broadband customer service at 541-382-5551.

**33. Ordering pay-per-view or on-demand Services.** If you use a set-top box, 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 Services, your set-top box must be connected to our RF return path. You may also order special events and pay-per-view Services over the telephone by calling 541-382-5551.

**34. Franchise authority contact information**

City of Bend  
710 NW Wall St.  
PO Box 431  
Bend, OR 97709

City of Redmond  
716 SW Evergreen Ave.  
PO Box 726  
Redmond, OR 97756

City of Sisters  
520 E. Cascade  
PO Box 39  
Sisters, OR 97759