

## 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 residential customers ("Customer," "you," "your") will be provided BendBroadband Video, Internet and Phone services (individually, "Service," collectively "Services"). Phone and Internet Services may be referenced as "Wired Phone Service" or "Wired Internet Service," respectively, if provided over BendBroadband's wired cable plant, and "Wireless Phone Service" or "Wireless Internet Service," respectively, if provided over BendBroadband's wireless network. All other reference to Phone or Internet Services apply to both wired and wireless platforms. Businesses located in areas where BendBroadband's Video service is not available may purchase Wireless Services under this agreement.

WHEN YOU ENROLL IN, USE, OR PAY FOR THE SERVICES, YOU AGREE TO THE PRICES, TERMS, AND CONDITIONS SET FORTH IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THE PRICING OR TO ANY TERMS OR CONDITIONS, CANCEL THE SERVICES IMMEDIATELY BY CALLING US ON OUR CUSTOMER SERVICE LINE DURING NORMAL BUSINESS HOURS.

### GENERAL TERMS AND CONDITIONS

**1. Installation fees and deposits.** Installation fees for each level of service and deposits on BendBroadband Equipment (as defined below) are payable in advance, at the time of, or prior to, activation or installation of the Services at your service location. Thereafter, all payments for Services are due and payable 30 days from the issue date of the bill.

#### 2. Billing and payment.

(a) **Charges.** You agree to pay all charges associated with the Services, and that these charges are subject to change at any time. These charges may include but not be limited to installation charges, monthly service charges, charges for the use of BendBroadband Equipment, charges for service calls, and other charges. The current applicable schedules of charges and fees that are included in BendBroadband's pricing lists are available at [www.bendbroadband.com](http://www.bendbroadband.com) or by calling BendBroadband customer service at 541-382-5551.

(b) **Taxes and 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, and also fees that we charge in connection with governmental or quasi-governmental fees or programs, such as universal service fees, 911/E911 surcharges, telecommunications relay service surcharges, franchise fees, right-of-way fees, etc.

(c) **Notification of changes.** We may change the fees and charges for the Services from time to time at our discretion. 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, add to, or remove 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 or the Services, you shall be deemed to have accepted the modification. If you do not agree to any modifications, 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 portion of any recurring monthly service fee for the Services that has been paid by you in advance for a period subsequent to the effective date of your requested termination (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) **Billing Commencement Date.** The fees and charges for the Services begin to accrue on the Billing Commencement Date. If BendBroadband installs your Services, the Billing Commencement Date is the day of installation. If you self-install BendBroadband Equipment or Purchased Equipment that we have provided to you, the Billing Commencement Date is the earlier of (i) the day you install, or pick up from a BendBroadband office or employee, such equipment, or (ii) 5 days after the shipment date. If you self-install a multimedia terminal adapter ("MTA") or cable modem that you obtained from a source other than BendBroadband, the Billing Commencement Date is the day your order for Services is entered into our systems. The option to self-install an MTA or cable modem or to use a non-BendBroadband-supplied MTA or cable modem is subject to availability.

(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) **Customer Care Pay-by-Phone Fee.** Each time that you choose to pay by phone through a BendBroadband Customer Care Representative, you agree to pay a \$3.00 fee. There is no additional fee for payments that are made through our automated pay-by-phone option, the BendBroadband.com website, or at the BendBroadband office.

(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 30 days of the due date.

(h) **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.

(i) **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.

(j) **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 \$30, 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, but 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 reconnect fee and one month's service charges in advance.

**3. Residential use only.** Unless you subscribe to a plan that expressly permits otherwise, you agree to use the Services solely in a private residence; in living quarters in a hotel, hospital, dormitory, sorority or fraternity house, or boarding house; or in the residential portion of a premises which is used for both business and residential purposes. The

foregoing restriction does not apply to mobile uses of your Wireless Internet Service if you have purchased a USB modem from BendBroadband, or to wireless services purchased in the name of a business for a service location where BendBroadband Video Service is not available.

**4. No resale.** You agree and represent that you are buying the Services for your own personal use only and that you will not resell or permit another to resell the Services. You agree to ensure that all uses of the BendBroadband Equipment and Services installed at your premises are legal and appropriate.

**5. 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 MTA installed along with your Internet or BendBroadband Phone services) (collectively, including all associated software, the "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 residences, you must contact BendBroadband for information on whether the BendBroadband Equipment and Services can be transferred to your new residence 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 may 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. You agree that if you or BendBroadband terminate the Services for any reason, the BendBroadband Equipment must be returned to BendBroadband within 10 business days of termination in proper, undamaged working order other than reasonable wear and tear.

**(b) 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/or 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 your acceptance of the relevant Services 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.

(c) **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.

(d) **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.

**6. Damage to or failure to return BendBroadband Equipment.** In the event the BendBroadband Equipment is lost, stolen, damaged, destroyed, or otherwise not returned promptly to BendBroadband, you agree to pay the current replacement cost of the BendBroadband Equipment. We suggest that the BendBroadband Equipment in your possession be covered by your homeowners, renters, or other insurance. 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.

**7. Unauthorized use of BendBroadband Equipment or Services.** Unauthorized use of BendBroadband Equipment or Services constitutes a violation of federal and state law and a breach of this Agreement. 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.

## **8. Customer equipment**

(a) **Specifications.** Any customer-owned or provided equipment that you use in connection with the Services (except equipment purchased from BendBroadband pursuant to Section 8(d) below) ("Customer Equipment") 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) **No Warranty.** If you install or use Customer Equipment in connection with the Services that does not meet the minimum technical or other requirements described above (a "Non-Recommended Configuration"), you agree that you will not be entitled to customer support relating to any issues other than the quality of the signal delivered to the Customer Equipment. NEITHER BENDBROADBAND NOR ANY OF ITS OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, THEIR AGENTS, OR ASSOCIATED PARTIES ("BENDBROADBAND PARTIES") WARRANT THAT CUSTOMER EQUIPMENT 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. You agree to allow us the rights to send software and/or downloads to Customer Equipment and install, configure, maintain, inspect and upgrade the Customer Equipment.

(d) **Equipment Purchased from BendBroadband.** BendBroadband may offer to sell equipment that you may purchase in connection with your use of the Services, such as a cable modem, MTA, fixed wireless modem or USB modem ("Purchased Equipment"). By purchasing the Purchased Equipment, you agree to the following terms and conditions. You agree and represent that you are purchasing Purchased Equipment solely for your own personal use of the Services and not for resale, lease or use for or on behalf of any other person or entity. BendBroadband shall have the unrestricted right, but not the obligation, to download and/or upgrade the software or firmware in Purchased Equipment, or to replace the Purchased Equipment with a comparable device (which does not have to be of the same model or type as the equipment that you originally purchased), at any time that BendBroadband, in its sole discretion, determines it is necessary or desirable. You agree to be subject to the early termination charges as described in Section 18(g) below if your service is terminated prior to the end of a minimum term of service that you agreed to in connection with BendBroadband's subsidization of Purchased Equipment.

(e) **Limited Warranty for Purchased Equipment.** BendBroadband provides a one-year limited warranty for any defects in materials or workmanship in Purchased Equipment if such defects adversely affect the performance of, or your ability to use, the equipment to receive the Services. This limited warranty will expire at the earlier of one year beginning on the date you received the equipment from BendBroadband, the termination of your Service, or your violation of any of the terms of this Agreement. If your Purchased Equipment is repaired or replaced while this Limited Warranty is in effect, the repaired or replaced equipment will be warranted for the remaining warranty period covering the original Purchased Equipment. ALL IMPLIED WARRANTIES PROVIDED TO YOU UNDER APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN DURATION TO THE PERIOD OF COVERAGE UNDER THIS LIMITED WARRANTY. THE WARRANTIES DESCRIBED ABOVE ARE THE ONLY EXPRESS WARRANTIES APPLICABLE TO PURCHASED EQUIPMENT. NO MANUFACTURER'S WARRANTIES APPLY TO YOUR CABLE MODEM, EVEN IF A COPY OF SUCH IS INCLUDED IN THE DOCUMENTATION PROVIDED TO YOU UPON DELIVERY OF THE PURCHASED EQUIPMENT. This warranty does not cover any cords, cabling or software embedded in, or provided in connection with the equipment; any cosmetic damage including, but not limited to, plastic surfaces or any other exposed parts that are scratched or damaged; or equipment that has had the barcode, serial number, or other identifying mark modified, removed or obliterated or which have had the case opened or the equipment seal broken. The warranty also does not cover any defects, damage or malfunctioning of the equipment resulting from neglect, abuse, misuse, accident, fire, flood, lightening or other acts of God, war, or other events beyond our reasonable control; improper use, application or testing; changing the calibration of or improper tampering with customer controls; power fluctuations or surges or improper connection with any other equipment; improper handling, operation, maintenance, transport, storage, or environmental or site conditions; unauthorized

alterations or repairs, or use of unapproved parts in or with the equipment or incompatibility with other equipment; or improper or faulty installation. If your Purchased Equipment fails to meet the warranty described above, BendBroadband will, at no charge to you, repair, replace or refund your cost for the Purchased Equipment within a reasonable time. This is your sole and exclusive remedy for such failure and the manner of remedy is at sole option of BendBroadband. All replaced parts and products will be deemed to be on an exchange basis and will become our property. Any repair or replacement of Purchased Equipment following the expiration of the limited warranty will be your responsibility.

**9. Service and maintenance procedures.** In the event of a problem with your Service or BendBroadband Equipment, you should contact BendBroadband customer service at 541-382-5551. If you call outside of normal business hours, leave a complete message including your name, address, contact work and home telephone number(s) and a description of the problem. Depending on the nature of the problem, we may at our option schedule an appointment for our Service Technician to visit your service location home, usually by the next business day. We do not charge for service calls if BendBroadband Equipment caused the problem. You agree to cooperate by all reasonable means to allow a BendBroadband representative to inspect its facilities either inside or outside the place of attachment and with its attempts to resolve a service or equipment problem. You agree that BendBroadband is not obliged to service any Customer Equipment, including your TV set, VCR, DVD player, stereo, PC or fax equipment. In the event that BendBroadband determines in its sole judgment that the problem was caused by Customer Equipment, Customer negligence, lack of knowledge, Customer software, Customer-installed wiring or hardware, Purchased Equipment not covered by its limited warranty, or any problem not caused by BendBroadband, you agree to pay for the service appointment and our reasonable charges for repair. In some cases, BendBroadband may decline to undertake the repair.

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 at the end of this Agreement. 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 when practicable. As these situations may affect a large service area, it may take several days to resume full service to the entire area.

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

**(a) No warranties.** THE BENDBROADBAND EQUIPMENT, PURCHASED EQUIPMENT, AND SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, EXCEPT FOR THE LIMITED WARRANTY FOR PURCHASED EQUIPMENT SET FORTH IN SECTION 8. NEITHER THE BEND BROADBAND PARTIES NOR THEIR SERVICE PROVIDERS (as defined below) WARRANT THAT THE BENDBROADBAND EQUIPMENT, PURCHASED EQUIPMENT, OR THE SERVICES WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR, OR THAT THEY WILL NOT INTERFERE WITH OTHER THIRD-PARTY EQUIPMENT OR SERVICES. NEITHER THE BENDBROADBAND PARTIES NOR THEIR SERVICE PROVIDERS WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED COMPLETELY OR 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 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 USE OR ATTEMPTED USE OF OR CUSTOMER'S RELIANCE ON OR USE OF THE BENDBROADBAND EQUIPMENT, PURCHASED EQUIPMENT, OR THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY MISTAKES, OMISSIONS, INTERRUPTIONS, FAILURES OR MALFUNCTION, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, LOSS OF INFORMATION OR DATA, OR FAILURE OF PERFORMANCE OF THE BENDBROADBAND EQUIPMENT, PURCHASED 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, PURCHASED 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 10(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 BEND BROADBAND 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 BendBroadband's 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 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 10 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 interruptions due to technical malfunctions and force majeure events.** 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 10(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.

**11. 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 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.

**12. Security Deposits.** You agree that we may require a Security Deposit as a condition of service at any time, at our sole discretion based upon your payment and credit history. If you have made arrangements to have a security deposit on file with BendBroadband, 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. If your Services with BendBroadband are terminated by either party, you agree to settle any other outstanding charges within 10 business days of termination.

**13. Pricing.** You can find more information about pricing for the Services by calling BendBroadband or visiting [www.bendbroadband.com](http://www.bendbroadband.com) (or at an alternate site if we so notify you). Pricing of Services may change from time to time. THIS AGREEMENT INCORPORATES BY REFERENCE THE PRICING INCLUDED IN THE BENDBROADBAND'S THEN-CURRENT PRICING LISTS.

14. **Privacy.** Your privacy interests, including your ability to limit disclosure of certain information to third parties, are safeguarded by provisions of the Cable Communication Policy Act of 1984, as amended, the Communications Act of 1934, as amended, and other state and federal laws. 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.

## 15. 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, ALL THREE OF WHICH MAY BE BROUGHT IN ANY FORUM, 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, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH 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 15 (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 15 will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Section 15 will be unenforceable. In the event that this entire Section 15 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 15, you and BendBroadband have each agreed to waive, to the fullest extent allowed by law, any trial by jury.

16. **Representations and warranties of Customer.** You represent and warrant that 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. 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.

17. **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.

## 18. Termination

(a) **Term.** The term of this Agreement shall commence on the applicable Billing Commencement Date specified in Section 2(d) and shall continue thereafter until terminated as provided for in this Agreement. Service is provided on a month to month basis unless you agreed to a specified minimum term (such as at the time you placed your order or purchased Purchased Equipment), in which case you agree to maintain and pay for your Service for the duration of the specified minimum term.

(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 19(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 agreed to subscribe to the Services for a specified minimum period under a separate term agreement with BendBroadband, the first three sentences of this Section 18(b) shall not apply until the specified period under the term agreement has expired, further, early termination charges 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. 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 suspension or termination.** You agree that upon suspension of Services or 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. 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 Section 18(d), 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.

(e) **Reconnection.** If BendBroadband suspends or terminates a Service for nonpayment or other violation of this Agreement, you will be required, in addition to payment of all overdue balances and other applicable charges, to pay a \$50 reconnect charge or trip charge (where applicable) before reconnection. This charge will be reduced to \$20 if the prior suspension or termination did not involve a visit by a BendBroadband employee or agent to a location at or adjacent to your premises to attempt to physically disconnect Service or facilities. Reactivation of Services is subject to the terms of this Agreement, applicable law and our credit policies.

(f) **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.

(g) **Reimbursement of Equipment Subsidy for Early Termination.** BendBroadband may provide discounted equipment to you in exchange for your agreement to subscribe to a Service for a specified minimum term. In such event, YOU UNDERSTAND AND AGREE THAT YOUR SERVICE PLAN PRICING, EQUIPMENT PRICING AND/OR PROMOTIONAL OFFER WAS BASED ON YOUR AGREEMENT TO CONTINUE SERVICE FOR A SPECIFIED MINIMUM TERM. If you terminate that Service for any reason, including moving outside of BendBroadband's service area, or if your Service is terminated by BendBroadband for any violation of this Agreement, prior to the expiration of such term you agree to pay to BendBroadband an early termination charge that reimburses BendBroadband for this subsidy, as determined reasonably by BendBroadband, prorated for the number of complete months of the term for which you paid in full for the Service. You may contact BendBroadband at any time to inquire as to the amount of any equipment subsidy or early termination charge that would apply upon termination at a particular time. BendBroadband will waive such early termination charges and refund payments made to BendBroadband for equipment and Service if the equipment is returned to BendBroadband in good working condition within 30 days of service initiation if you are not satisfied with the quality of the service and have complied with the terms of this Agreement.

## 19. 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 supersedes 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) Acceptance of, use of, or payment for Services are acceptance of Agreement.** When you enroll in, use or pay for the Acceptance of Services, you agree to the prices, terms and conditions in this Agreement.

**(e) 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.

**(f) 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. You may not assign or transfer this Agreement without BendBroadband's prior consent.

**(g) 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.

**(h) 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

#### 20. LIMITATIONS OF 911/E911 DIALING AND OTHER SERVICE

**(a) Limitations.** The Services includes the ability to place calls to emergency dispatch operators by dialing "911" ("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. If you have any questions about 911/E911, call BendBroadband customer service at 541-382-5551. BendBroadband provides stickers summarizing these limitations. You agree to place these stickers on or near the telephones that will be used with BendBroadband Phone Service and to contact us to request additional stickers as needed.

**(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 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 Services (including 911/E911) may fail altogether.

Therefore, you must call BendBroadband customer service at 541-382-5551 at least 10 days before you move the 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. Wireless Phone Service is also subject to the limitations on availability set forth in Section 32.

**(d) Service interruptions caused by power failures.** BendBroadband Phone uses the electrical power from your service location. **YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU MAY LOSE ACCESS TO AND USE OF THE 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, FIXED WIRELESS MODEM OR ATA IS INTERRUPTED AND SUCH DEVICES ARE NOT SUPPORTED BY A WORKING BATTERY BACKUP.** You also understand and acknowledge that the battery backup included in the BendBroadband MTA 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 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. **WIRELESS PHONE CUSTOMERS understand and acknowledge that the Fixed Wireless Modem and ATA Purchased Equipment DO NOT INCLUDE A BATTERY BACKUP AND CUSTOMERS ARE URGED TO ARRANGE FOR THEIR OWN BACKUP POWER SUPPLY TO THESE DEVICES.**

**(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 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 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.**

**21. Acceptable use.** Unless you subscribe to a plan that expressly permits otherwise (such as, for example, a wireless service purchased under the name of a business), you agree to use the BendBroadband Phone Services only for personal and non-commercial purposes; however, you are permitted to use the BendBroadband Phone Services to make business calls that are incidental to your personal and non-commercial use of the BendBroadband Phone Services. You expressly agree not to use the 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 residential calling patterns. 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 Services and (ii) to assess additional charges for each month in which excessive usage occurred.

**22. Per-call and measured-call charges.** Calling plans billed on a flat monthly fee basis do 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.

**23. 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.

**24. Third-party charges.** 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.

## **25. 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. You may attach analog telephones to the MTA or ATA equipment described below to use the Service. BendBroadband does not guarantee that you will also be able to attach telephones to the jacks within your premises to use the Service, but you may request our assistance in attempting to enable such use. Additional charges may apply.

**(b) Equipment for Wired Phone Service.** To use BendBroadband Wired Phone Service, you will also need a MTA certified by us as compatible with the Services as set forth in Section 8(a). You can lease an MTA from BendBroadband, in which case it is BendBroadband Equipment. In some areas, we may permit you to use the Services with an

MTA which you have purchased, in which case the MTA will be Customer Equipment. Depending on availability in your area, you may have an option to install the MTA yourself, or to have BendBroadband install it for you.

(c) **Equipment for Wireless Phone Service.** To use BendBroadband Wireless Phone Service, you must also purchase BendBroadband's Wireless Internet Service to the same location because BendBroadband is technically unable to deliver the Wireless Phone Service separately. To use these two Services, you must purchase a Fixed Wireless Modem and an analog telephone adapter ("ATA") from BendBroadband in accordance with Section 8(d). BendBroadband ships these devices to you with instructions for self-installation.

(d) **Incompatible equipment and services.** You acknowledge and understand that the BendBroadband Phone Services may not support or be compatible with (i) Non-Recommended Configurations as defined in Section 8(b); (ii) certain non-voice communications equipment, including but not limited to alarm or 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; (v) 211, 311, or other x11 calling (other than 411, 511, 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, PURCHASED 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 SECTION 18.

(e) **You assume the risk of high-risk activities.** The 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.

(f) **No tampering with or relocation of equipment.** You will not service, alter, modify, or tamper with BendBroadband Equipment or with the Services, or permit any other person not expressly authorized by BendBroadband to do so. You agree that the MTA and ATA and the 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 such equipment or the Phone Services at another location, the Services, including but not limited to 911/E911, may fail to function or may function improperly. If you remove the Fixed Wireless Modem from your service location, Wireless Phone Service will not operate even if the ATA remains at the location. As described in Section 5 above, you must notify BendBroadband if you wish to relocate the MTA, ATA, or BendBroadband Phone Services. If you move the MTA, ATA, or Services to another location without complying with Section 5, you do so in violation of this Agreement and at your own risk.

## 26. Transferring your phone number

(a) **Switching to BendBroadband 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; (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 MTA or Fixed Wireless Modem/ATA 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 such equipment. 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 phone service, it is extremely important that you have the MTA or Fixed Wireless Modem/ATA 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 equipment is not yet activated, you will not have access to our Services. Therefore, you will not have service for that phone number. If you have questions about the timing of your Port Effective Date, please contact us.

**(b) Switching from BendBroadband to another provider.** To transfer your phone number from BendBroadband to another service provider, you must terminate the 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.

**27. 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

**28. 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.

**29. 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 applicable, 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 5(b) and 29(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 5(b) will permit such use by you and up to 5 persons authorized by you to use your Internet Services, under any password or screen name available to you, provided that you shall be responsible for all use of your Services.

### 30. 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.** ADVERTISING, RESELLING, REUSE, ANY SOLICITATION WITH RESPECT TO PRODUCTS OR SERVICES, USING 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](http://WWW.BENDBROADBAND.COM), 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 BENDBROADBAND AND A CONTRACT FOR PAYMENT OF RELATED FEES.

(c) **Copyrighted material.** The Services provide access to 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 30(i) 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 30 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 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 of CPU for long periods).
- (xi) Use of any form of transmitter, router or wide area network, other than a USB modem purchased from BendBroadband for Wireless Broadband Service, that enables persons or entities outside your service address to use the Services, whether or not a fee is sought, is prohibited. If you use a wireless network within your service address, you must establish and use a secure password or similar means to limit wireless access to the Services to your service address.

- (h) Remedial measures. Depending upon the extent of any violation of these acceptable use restrictions, Customers may receive warnings, have their service suspended or terminated. 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 or violation of the Acceptable Use Policy or these acceptable use restrictions.
- (i) Violations of acceptable use restrictions. Violations of this Section 30 may result in suspension or termination of Services, and, in some cases, may be unlawful, subjecting the violator to civil or criminal penalties.
- (j) 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, in cases of unlawful activity, referral to law enforcement.
- (k) Enforcement disclaimer. By publishing these acceptable use restrictions, Bend is not assuming any obligation to any Customer or third party to take any action related to these restrictions. BendBroadband expressly disclaims any liability to any Customer or third party for any failure to: (i) monitor or investigate activity on our network, or (ii) enforce these restrictions.

BendBroadband complies with the Online Copyright Infringement Liability Limitation Act of 1998, 17 USC 512 ("Act"). As required by the Act, we have a policy that reserves our right to terminate services to subscribers who repeatedly infringe copyrights. In the event that we receive a determination that any subscriber or account holder has infringed another's copyright through the use of our system or network, we reserve the right to terminate service to that subscriber after receiving notice of any further copyright infringement by that subscriber. BendBroadband accommodates and does not interfere with standard technical measures to identify and protect copyrighted works, subject to the limitations of the Act.

Notices and counter-notices related to claimed copyright infringements should be directed to the following designated agent:

Name: NOC Support  
Company: BendBroadband  
Address: 63090 Sherman Road Bend, OR 97701  
Email: nocsupport@bendbroadband.net

**31. Tiering.** The Services are offered on a tiered basis. For Wired Internet Service, each tier has limits on the maximum throughput rate at which Customers should expect to be able to be able to send and receive data at any time. For Wireless Internet Services and for Wired Internet Service, each tier includes an allotment of bandwidth consumption ("Plan Allotment") that you may use during each billing cycle at no additional charge. You agree that you will pay for additional bandwidth consumed beyond the Plan Allotment at the rates posted at [www.bendbroadband.com](http://www.bendbroadband.com). Unused bandwidth from your Plan 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).

**32. Service Speeds and Availability.** You understand and agree that the actual throughput rate you may experience at any time will vary based on numerous factors, including but not limited to 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. In addition, Wireless Internet and Phone Service are provided over radio frequencies and are available only within the operating range and limitations of radio equipment. Radio signals are subject to inherent limitations, including but not limited to blockage from the horizon or intervening terrain, structures or heavy foliage, and the effects of excess distance, multipath distortion, radio or electronic interference, and other natural or man-made conditions, as well as the availability of electrical power and interconnection with telephone and data networks. You acknowledge that Wireless Internet and Phone Service are not available in all areas and that even within the BendBroadband network coverage area the availability, quality, signal strength and network speeds may vary, may be lower than advertised and may be insufficient for use of the Service. You agree that any unavailability or impairment of these services is not a basis for a demand for a refund or credit or any claim against BendBroadband. You agree to provide BendBroadband with the address of where you primarily intend to use a wireless service, which will be used to determine the availability of coverage, and the address to which invoices should be sent (if different), and to promptly notify BendBroadband of any changes to either such address. You agree to cooperate with BendBroadband in connection with any remote or on-site service level verification or troubleshooting.

**33. 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.

**34. Wireless Network Management.** BendBroadband uses network management technology in our Wireless network to improve available network capacity to benefit the greatest number of customers. The network management technology will optimize

streaming video, flash video and peer to peer file sharing applications bandwidth to reduce possible network congestion during peak traffic times. In addition the technology will prioritize Voice over IP traffic for improved telephone call quality.

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

**35. 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.

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

**(a) Set-top boxes.** Some models of TV receivers or videocassette recorders may not be able to receive all of the channels offered on our system. Channel compatibility problems may occur if equipment like TVs and VCRs 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. Converters are available from BendBroadband and may be available 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 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."

**(b) Additional set-top boxes.** To independently tune additional televisions or broadcast devices, a separate set-top box may be required for each television. Each additional set-top box will be authorized to receive the same Services as your initial receiver. If you desire to receive Services at two different locations, you must open a separate account for each location.

**(c) 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).

**(d) CableCARDS.** You may rent a conditional access card ("CableCARDS") from BendBroadband. We rent CableCARDS for use in customer-owned retail CableCARD-ready devices. Some of our rented set-top boxes also include CableCARDS inside, and the same portion of our rent rates for those devices is attributable to the CableCARD.

**(e) Downloads.** BendBroadband reserves the right to alter software in the equipment, and provide content to DVR 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, BendBroadband Equipment and pricing, please visit [www.bendbroadband.com](http://www.bendbroadband.com) or call BendBroadband customer service at 541.382.5551.

**36. 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 Services, 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 541.382.5551.

**37. 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  
150 N Fir St.  
PO Box 39  
Sisters, OR 97759