

# FiberCast Agreement for Residential Services

## ABOUT THIS AGREEMENT, OUR SERVICES, AND YOUR RIGHTS

FiberCast® Service(s) will be provided to you (“you,” “your,” or “Customer”) on the terms and conditions set forth in this Agreement for Residential Services (the “Agreement”) and applicable law by the operating company subsidiary of FiberCast Corporation that (i) owns and/or operates the cable television system in your area and/or (ii) the subsidiary that is the FiberCast Digital Voice service provider or Unlimited Select and Local Select service provider (“FiberCast,” “we,” “us,” or “our”). For purposes of this Agreement, “affiliate” means any entity that controls, is controlled by or is under common control with FiberCast Corporation. Service(s) may include, but are not limited to, FiberCast TV cable television service (“FiberCast Video”), FiberCast Internet service including FiberCast WiFi (“FiberCast Internet”), and FiberCast Voice or Unlimited Select and Local Select service (herein collectively “FiberCast Voice” WITH LIMITED EXCEPTIONS FOR UNLIMITED SELECT AND LOCAL SELECT AS OTHERWISE INDICATED BELOW) (each a “Service” and collectively the “Services”). The Service(s) do not include FiberCast owned or controlled websites such as FiberCastCable.com or FiberCast.net. Those websites have their own terms of service and policies that are accessible directly from those sites.

We may change our prices, fees, the Service(s) and/or the terms and conditions of this Agreement in the future. Unless this Agreement or applicable law specifies otherwise, we will give you thirty (30) days prior notice of any significant change to this Agreement. If you find the change unacceptable, you have the right to cancel your Service(s). However, if you continue to receive Service(s) after the end of the notice period (the “Effective Date”) of the change, you will be considered to have accepted the changes. You may not modify this Agreement by making any typed, handwritten, or any other changes to it for any purpose.

Note: This Agreement contains a binding arbitration provision in Section 13 that affects your rights under this Agreement with respect to all Service(s). These terms and conditions are subject to applicable tariffs and service guides.

# GENERAL TERMS AND CONDITIONS

## 1. ACCEPTANCE OF THIS AGREEMENT

You will have accepted this Agreement and be bound by its terms if you use the Service(s) or otherwise indicate your affirmative acceptance of such terms.

## 2. CHARGES AND BILLINGS

**a. Charges, Fees, and Taxes You Must Pay.** You agree to pay all charges associated with the Service(s), including, but not limited to, installation/service call charges, monthly service charges, FiberCast Equipment (as defined below) charges, measured and per-call charges, applicable federal, state, and local taxes and fees (however designated), regulatory recovery fees for municipal, state and federal government fees or assessments imposed on FiberCast, permitted fees and cost recovery charges, or any programs in which FiberCast participates, including, but not limited to, public, educational, and governmental access, universal service, telecom relay services for the visually/hearing impaired, rights-of-way access, and programs supporting the 911/E911 system and any fees or payment obligations imposed by governmental or quasi-governmental bodies for the sale, installation, use, or provision of the Service(s). **YOU WILL BE RESPONSIBLE FOR PAYING ANY GOVERNMENT IMPOSED FEES AND TAXES THAT BECOME APPLICABLE RETROACTIVELY.** We will provide you with notice and an effective date of any change in our prices or fees, unless the change in price is related to a change in governmental or quasi-governmental taxes, fees, or assessments, in which case we may elect not to provide notice except where required by applicable law. Not all fees apply to all Service(s).

- **For FiberCast Video Customers.** FiberCast Video price information is supplied with our Welcome Kit and available at [www.fibercast.net](http://www.fibercast.net) (or an alternative site if we notify you).
- **For FiberCast Internet Customers.** FiberCast Internet price information is available at [www.fibercast.net](http://www.fibercast.net) (or an alternative site if we notify you).
- **For FiberCast Voice Customers.** FiberCast Voice price information is available at [www.fibercast.net](http://www.fibercast.net) (or an alternative site if we notify you).
- **For Minimum Term Customers.** If you have agreed to a minimum term arrangement, your price for Service(s) is as specified in the minimum term arrangement.

**b. How We Will Bill You.** Unless you are subject to a minimum term arrangement, Service(s) are provided to you on a month-to-month basis. **If you are receiving Service(s) at a trial or introductory rate, you may cancel your Service(s) at the end of the trial or introductory period by calling your local FiberCast customer service center 7 days prior to end of month but not more than 30 days in advance.** You will generally be billed monthly, in advance, for recurring service charges, equipment charges, and fees. **YOU MUST PAY, ON OR BEFORE THE DAY WE INSTALL ANY OR ALL OF THE SERVICE(S), THE FIRST MONTH'S SERVICE CHARGES, FIBERCAST EQUIPMENT CHARGES, ANY DEPOSITS, AND ANY INSTALLATION CHARGES.** Your first bill may include pro-rated charges from the date you first begin receiving Service(s), as well as monthly recurring charges for the next month and charges for non-recurring services you have received. You may be billed for some Service(s) individually after they have been provided to you; these include measured and per-call charges (as explained below) and charges for pay-per-view movies or events, interactive television, and e-commerce. If you receive Service(s) under a promotion, after the promotional period ends, regular charges for the Service(s) will apply.

We do not waive our rights to collect the full balance owed to us by accepting partial payment. We will apply the partial payment to the outstanding charges in the amounts and proportions that we determine.

- **For FiberCast Voice Customers.** If you pay a flat monthly fee for your calling plan, that fee may not cover certain types of calls. You will be billed for these excluded call types on a per-call basis (e.g., operator services) or a measured basis (e.g., international calls).

Generally, for billing purposes, a measured call begins when the call is answered by the called party or an automated answering device (such as an answering machine or fax machine); it ends when one of the parties disconnects the call. However, some providers (e.g., those involved in calls to foreign countries) charge for a completed call when the called party's line rings or after a certain number of rings. If such a provider charges FiberCast, its affiliates, or suppliers as if your call were answered by the called party, FiberCast will charge you for a completed call.

Measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. If the charge for a measured call or for taxes or surcharges includes a fraction of a cent, the fraction is rounded up to the nearest whole cent.

See [www.fibercast.net/voice/](http://www.fibercast.net/voice/) for information on per-call charges and the timing of measured-call charges.

If your usage charges for FiberCast Voice exceed typical residential usage charges, we may: (i) require you to make advance payments for FiberCast Voice, which we may offset against any unpaid balance on your account; (ii) establish a credit limit for usage charges for FiberCast Voice and/or features; and/or (iii) restrict FiberCast Voice or features. If you exceed your credit limit, we reserve the right to suspend FiberCast Voice and require payment for usage charges assessed to your account.

Our paper bills for FiberCast Voice contain only a summary of charges. Detailed information may be available for a limited period at a password-protected portion of our website. You may call FiberCast Customer Center for a digital or paper copy of outbound toll call records related to your most recent bill. There may be an additional charge for these digital or paper copies except as otherwise required by applicable law.

**c. Third-Party Charges That Are Your Responsibility.** You acknowledge that you may incur charges with third-party service providers such as accessing on-line services, calling parties who charge for their telephone-based services, purchasing or subscribing to other offerings via the Internet or interactive options on your FiberCast Video Service that are separate and apart from the amounts charged by us. You are solely responsible for all such charges payable to third parties, including all applicable taxes. In addition, you are solely responsible for protecting the security of credit card and other personal information provided to others in connection with such transactions.

**d. Alternative Billing Arrangements.** FiberCast may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between you and the third party. We will not be responsible for any dispute regarding these charges between you and any third party. You must address all such disputes directly with the third party.

**e. Payment by Credit Card or Check.** If you use a credit card to pay for the Service(s), use of the

card is governed by the card issuer agreement, and you must refer to that agreement for your rights and liabilities as a cardholder. If Fibercast does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand. If you make payment by check, you authorize Fibercast to collect your check electronically. You agree that you may not amend or modify this Agreement with any restrictive endorsements (such as "paid in full"), or other statements or releases on or accompanying checks or other payments accepted by Fibercast and any such notations shall have no legal effect.

**f. Our Remedies if You Pay Late or Fail to Pay.**

1. **Late or Non-Payments:** You may be billed fees, charges, and assessments related to late or non-payments if for any reason (a) Fibercast does not receive payment for the Service(s) by the payment due date or (b) you pay less than the full amount due for the Service(s).
2. **Fees Not Considered Interest or Penalties:** Fibercast does not anticipate that you will fail to pay for the Service(s) on a timely basis, and we do not extend credit to customers. Any fees, charges, and assessments due to late payment or nonpayment are liquidated damages intended to be a reasonable advance estimate of our costs resulting from late payments and non-payments. These costs will be difficult to calculate or to predict when we set such fees, charges, and assessments, because we cannot know in advance: (a) whether you will pay for the Service(s) on a timely basis, if ever; (b) if you do pay late, when you will actually pay; and (c) what costs we will incur because of your late payment or non-payment.
3. **Collection Costs:** If we use a collection agency or attorney to collect money owed by you, you agree to pay the reasonable costs of collection. These costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees, and arbitration or court costs.
4. **Suspension/Disconnect:** If you fail to pay the full amount due for any or all of the Service(s) then Fibercast, at its sole discretion in accordance with and subject to applicable law, may suspend or disconnect any or all the Service(s) you receive.

**g. Reconnection Fees and Related Charges.** If you resume Service(s) after any suspension, we may require you to pay a reconnection fee. If you reinstate any or all Service(s) after disconnection, we may require you to pay an installation fee and/or service activation fee. These fees are in addition to all past due charges and other fees. Reconnection of the Service(s) is subject to our credit policies, this Agreement and applicable law.

**h. Our Right to Make Credit Inquiries. YOU AUTHORIZE FIBERCAST 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.** Fibercast will not discriminate in the application of its credit inquiries and deposit policy on the basis of race, color, sex, creed, religion, nationality, sexual orientation, or marital status. Any risk assessments conducted by either Fibercast or its third party credit bureau will be done in conformance with the requirements of all applicable state or federal laws.

**i. Your Responsibilities Concerning Billing Questions.** Subject to applicable law, if you intend to dispute a charge or request a billing credit, you must contact Fibercast within sixty (60) days of the date on the billing statement and/or invoice. You waive any disputes or credits that you do not

report within sixty (60) days.

### **3. REFUNDABLE DEPOSIT**

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

### **4. CHANGES TO SERVICES**

Subject to applicable law, we have the right to change our Service(s), FiberCast Equipment and rates or charges, at any time with or without notice. We also may rearrange, delete, add to, or otherwise change programming or features or offerings contained in the Service(s), including, but not limited to, content, functionality, hours of availability, customer equipment requirements, speed, and upstream and downstream rate limitations. If we do give you notice, it may be provided on your monthly bill, as a bill insert, e-mail, in a newspaper or other communication permitted under applicable law. If you find a change in the Service(s) unacceptable, you have the right to cancel your Service(s). However, if you continue to receive Service(s) after the change, this will constitute your acceptance of the change.

### **5. ACCESS TO YOUR PREMISES AND CUSTOMER EQUIPMENT**

**a. Premises.** You agree to allow us and our agents the right to enter your property at which the Service(s) and/or FiberCast Equipment will be provided (the "Premises") at reasonable times, for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Service(s) and/or FiberCast Equipment used to receive any of the Service(s). You warrant that you are either the owner of the Premises or that you have the authority to give us access to the Premises. If you are not the owner of the Premises, you are responsible for obtaining any necessary approval from the owner to allow us and our agents into the Premises to perform the activities specified above. In addition, you agree to supply us or our agent, if we ask, the owner's name, address, and phone number and/or evidence that the owner has authorized you to grant access to us and our agents to the Premises.

**b. Customer Equipment.** "Customer Equipment" means software, hardware or services that you elect to use in connection with the Service(s) or FiberCast Equipment. You agree to allow us and our agents the rights to insert cable cards and other hardware in the Customer Equipment, send software, firmware, and/or other programs to the Customer Equipment and install, configure, maintain, inspect and upgrade the Customer Equipment and FiberCast Equipment. You warrant you are either the owner of the Customer Equipment or that you have the authority to give us access to the Customer Equipment. If you are not the owner of the Customer Equipment, you are responsible for obtaining any necessary approval from the owner to allow us and our agents access to the Customer Equipment to perform the activities specified above. In addition, you agree to supply us or our agents, if we ask, the owner's name, address and phone number and/or evidence that the owner has authorized you to grant access to us and our agents to the Customer Equipment to perform the activities specified above.

## 6. MAINTENANCE AND OWNERSHIP OF EQUIPMENT AND SOFTWARE

**a. FiberCast Equipment.** "FiberCast Equipment" means any equipment provided by FiberCast such as gateways, routers, cable modems, fiber ONTs, fiber TV nodes, voice-capable modems, wireless gateway/routers, CableCARDS, converters, digital adapters, remote controls, and any other equipment provided or leased to you by us or our agents, excluding equipment purchased by you from FiberCast and Customer Equipment. FiberCast Equipment also includes any software, firmware, or other programs contained within Customer Equipment or FiberCast Equipment. You agree that all FiberCast Equipment belongs to us or other third parties and will not be deemed fixtures or in any way part of the Premises. You agree to use FiberCast Equipment only for the Service(s) pursuant to this Agreement. We may remove or change the FiberCast Equipment at our discretion at any time the Service(s) are active or following the termination of your Service(s). You acknowledge and agree that our addition or removal of or change to the FiberCast Equipment may interrupt your Service(s). You may not sell, lease, abandon, or give away the FiberCast Equipment, or permit any other provider of video, broadband Internet (high speed data) or telephone services to use the FiberCast Equipment. The FiberCast Equipment may only be used in the Premises. At your request, we may relocate the FiberCast Equipment in the Premises for an additional charge, at a time agreeable to you and us. YOU UNDERSTAND AND ACKNOWLEDGE THAT IF YOU ATTEMPT TO INSTALL OR USE THE FiberCast EQUIPMENT OR SERVICE(S) AT A LOCATION OTHER THAN THE PREMISES, THE SERVICE(S) MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. You agree that you will not allow anyone other than FiberCast or its agents to service the FiberCast Equipment. We suggest that the FiberCast Equipment in your possession be covered by your homeowners, renters, or other insurance. You will be directly responsible for loss, repair, replacement and other costs, damages, fees and charges if you do not return the FiberCast Equipment to us in an undamaged condition.

### **b. Customer Equipment.**

1. **Responsibility:** FiberCast has no responsibility for the operation or support, maintenance, or repair of any Customer Equipment including, but not limited to, Customer Equipment to which FiberCast or a third party has sent software, firmware, or other programs.
  - **For FiberCast Video, FiberCast Internet, and FiberCast Voice Customers.** You agree by using the Service(s), you are enabling and authorizing (i) FiberCast, its authorized agents and equipment manufacturers to send code updates to the FiberCast Equipment and Customer Equipment, including, but not limited to, cable modems, digital interactive televisions with CableCARDS, and voice-capable modems at any time it is determined necessary to do so as part of the Service(s); and (ii) FiberCast and its authorized agents to use the FiberCast Equipment, Customer Equipment and Inside Wiring connected to our cable network to provide the Service(s) to you and others, including, but not limited to, the FiberCast Internet WiFi Home Hotspot ("HHS"). Such code updates may change, add or remove features or functionality of any such equipment or the Service(s).
  - **For FiberCast Internet and FiberCast Voice Customers.** You can find FiberCast's current minimum technical and other requirements for FiberCast customers at <http://www.FiberCast.net>. These requirements may be located at an alternative site if we so notify you. To use FiberCast Voice, you will need a voice-capable modem that meets our specifications. In some areas, we may permit you to use FiberCast Voice with a voice-capable modem that you have purchased. Depending on

availability in your area, you may have an option to install the voice-capable modem yourself or to have FiberCast install it for you. You agree to keep the voice-capable modem plugged into a working electrical power outlet at all times. Whether a cable modem, gateway/router, voice-capable modem or other device is owned by you or us, we have the unrestricted right, but not the obligation, to upgrade or change the firmware in these devices remotely or on the Premises at any time that we determine it necessary or desirable in order to provide Service(s) to you in accordance with our specifications and requirements.

- **For FiberCast Voice Customers.** You acknowledge and understand FiberCast Voice may not support or be compatible with non-recommended configurations including, but not limited to, voice-capable modems not currently certified by FiberCast as compatible with FiberCast Voice; Customer Equipment, including, but not limited to, non-voice communications equipment, including certain makes or models of alarm and security systems or devices, certain medical monitoring devices, personal emergency alert, and home detention devices, certain fax machines, and certain “dial-up” modems; rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units. In order to use FiberCast Voice, you are required to provide certain equipment such as a phone handset or equivalent, inside phone wiring and outlets, and an electrical power outlet. CERTAIN MAKES AND MODELS OF CORDLESS PHONES USE THE ELECTRICAL POWER IN YOUR HOME. IF THERE IS AN ELECTRICAL POWER OUTAGE, THE CORDLESS PHONE WILL CEASE TO OPERATE DURING THE OUTAGE, PREVENTING USE OF FiberCast VOICE VIA THE CORDLESS PHONE. DO NOT ATTEMPT TO CONNECT FiberCast VOICE TO INSIDE PHONE WIRING YOURSELF. In order to use online features of FiberCast Voice, where we make those features available, you are required to provide certain hardware, such as a personal computer, software, an Internet browser, and access to the Internet.
- **For Unlimited Select and Local Select Customers.** You acknowledge and understand Unlimited Select and Local Select will not support or be compatible with: non-recommended configurations including, but not limited to, voice-capable modems not currently certified by FiberCast as compatible with Unlimited Select and Local Select; Customer Equipment, including, but not limited to, non-voice communications equipment, including certain alarm and security systems or devices, medical monitoring devices, personal emergency alert, and home detention devices, certain fax machines, and certain “dial-up” modems; rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units. In order to use Unlimited Select and Local Select, you are required to provide certain equipment such as a phone handset or equivalent, inside phone wiring and outlets, and an electrical power outlet. IF THERE IS AN ELECTRICAL POWER OUTAGE TO THE FIBERCAST NETWORK IN YOUR AREA, YOUR UNLIMITED SELECT AND LOCAL SELECT WILL CEASE TO OPERATE DURING THE OUTAGE, PREVENTING INBOUND OR OUTBOUND COMMUNICATIONS TO OR FROM SYSTEMS OR DEVICES CONNECTED TO UNLIMITED SELECT AND LOCAL SELECT, INCLUDING, BUT NOT LIMITED TO, HOME ALARM OR HOME SECURITY SYSTEMS,

MEDICAL MONITORING DEVICES, PERSONAL EMERGENCY ALERT DEVICES OR HOME DETENTION DEVICES. DO NOT ATTEMPT TO CONNECT UNLIMITED SELECT AND LOCAL SELECT TO INSIDE PHONE WIRING YOURSELF. In order to use online features of Unlimited Select and Local Select, where we make those features available, you are required to provide certain hardware, such as a personal computer, software, an Internet browser, and access to the Internet.

2. **Non-Recommended Configurations:** Customer Equipment that does not meet FiberCast's minimum technical or other specifications constitutes a "Non-Recommended Configuration." NEITHER FIBERCAST NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICE(S). YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE CUSTOMER EQUIPMENT TO FAIL TO OPERATE OR CAUSE DAMAGE TO CUSTOMER EQUIPMENT, YOU, YOUR PREMISES OR FiberCast EQUIPMENT. NEITHER FIBERCAST NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. FiberCast reserves the right to deny you customer support for the Service(s) and/or terminate Service(s) if you use a Non-Recommended Configuration.
3. **No Unauthorized Devices or Tampering:** You agree not to attach or assist any person to attach, any unauthorized device to our cable network, FiberCast Equipment or the Service(s). If you make or assist any person to make any unauthorized connection or modification to FiberCast Equipment or the Service(s) or any other part of our cable network, we may terminate your Service(s) and recover such damages as may result from your actions.

You also agree that you will not attach anything to the Inside Wiring, FiberCast Equipment, or Customer Equipment, whether installed by you or us, which singly or together impairs the integrity of our cable network or degrades our cable network's signal quality or strength or creates signal leakage.

You also agree that we may recover damages from you for tampering with any FiberCast Equipment or any other part of our cable network or for receiving unauthorized Service(s). You agree that it would be difficult, if not impossible, to calculate precisely the lost revenue resulting from your receipt of unauthorized Service(s) or the tampering with FiberCast Equipment or our cable network. You therefore agree to pay us as liquidated damages, the sum of \$500.00 per device used to receive the unauthorized Service(s) in addition to our cost to replace any altered, damaged, or unreturned FiberCast Equipment or other equipment owned by FiberCast, including any incidental costs. The unauthorized reception of the Service(s) may also result in criminal fines and/or imprisonment.

- **For FiberCast Voice Customers.** You will be liable for all authorized and unauthorized FiberCast Voice use at the Premises. You agree to notify us immediately in writing or by calling FiberCast Customer Center during normal business hours if your voice-capable modem has been stolen or your Service(s) are being stolen or used without your authorization. When you call or write, you must provide your account number and a detailed description of the circumstances of the theft of your voice-capable modem or unauthorized FiberCast Voice use. If you fail to notify us in a timely manner, your Service(s) may be terminated without notice and you may incur additional charges.



**c. Inside Wiring.** You may install wiring inside your Premises (“Inside Wiring”), such as additional cable wiring and outlets, provided it does not interfere with the normal operations of our cable network. If you have us install Inside Wiring, we will charge you for that service. Regardless of who installed it, we consider the Inside Wiring your property or the property of whomever owns the Premises. Accordingly, you are responsible for the repair and maintenance of the Inside Wiring, unless you and FiberCast have agreed otherwise in writing. (If you do not own the Premises, contact your landlord or building manager about the installation, repair or maintenance of Inside Wiring.) If you have us repair or maintain the Inside Wiring, we will charge you for that service.

- **For FiberCast Voice Customers.** Except as described below, you may use FiberCast Voice with your telephone Inside Wiring, as long as we have reasonable access to it and you have the right to give us access to it. If you wish to have your voice-capable modem connected to your telephone Inside Wiring, you are advised to have a FiberCast technician perform the installation. To make that connection, we must first disconnect your telephone Inside Wiring from the network of your existing telephone provider, which may disable any services you receive from them. If you install FiberCast Voice yourself (where self-installation is an option), you should connect the voice-capable modem to a cordless phone, not directly to your telephone Inside Wiring. If the voice-capable modem is connected to your telephone Inside Wiring without first disconnecting the wiring from any existing telephone provider’s network, the voice-capable modem may be damaged and/or FiberCast Voice may not operate properly.

**d. End User Software Licenses.** Your use of the software, firmware, and other programs contained within the FiberCast Equipment, and of any other software or plug-ins to such software distributed or used in connection with the Services shall comply with the terms of the FiberCast Software License Agreement ([www.fibercast.net](http://www.fibercast.net)), and any other end user license agreements accompanying such software, as such agreements may be amended from time to time. All such agreements are incorporated in this Agreement by reference. When this Agreement terminates, all end user licenses also terminate; you agree to destroy at that time all versions and copies of all software received by you in connection with the Services.

## **7. USE OF SERVICES**

You agree that the Service(s) and the FiberCast Equipment will be used only for personal, residential, non-commercial purposes, unless otherwise specifically authorized by us in writing. You will not use the FiberCast Equipment at any time at an address other than the Premises without our prior written authorization. You agree and represent that you will not resell or permit another to resell the Service(s) in whole or in part. You will not use or permit another to use the FiberCast Equipment or the Service(s), directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any posted FiberCast policy applicable to the Service(s). Use of the FiberCast Equipment or Service(s) for transmission, communications or storage of any information, data or material in violation of any U.S. federal, state or local regulation or law is prohibited. You acknowledge that you are accepting this Agreement on behalf of all persons who use the FiberCast Equipment and/or Service(s) at the Premises and that you shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement and any applicable FiberCast policies

including, but not limited to, acceptable use and privacy policies. You further acknowledge and agree that you shall be solely responsible for any transactions, including, without limitation, purchases made through or in connection with the Service(s). You agree to indemnify, defend and hold harmless FiberCast and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorneys' fees) arising out of the use of the Service(s), the FiberCast Equipment and/or the Customer Equipment or the breach of this Agreement or any of the applicable FiberCast policies by you or any other user of the Service(s) at the Premises. You shall not be required to indemnify FiberCast and its affiliates, suppliers, and agents with respect to third parties use of HHS.

- **For FiberCast Internet Customers.** The FiberCast Acceptable Use Policy ("AUP") and other policies concerning FiberCast Internet are posted at <http://www.FiberCast.net> (or an alternative website if we so notify you). You further agree that FiberCast may modify the AUP or other policies from time to time. Notwithstanding anything to the contrary in this Agreement, YOU ACKNOWLEDGE AND AGREE THAT THE TERMS OF THE AUP AND ANY OTHER APPLICABLE FIBERCAST POLICIES MAY BE PUT INTO EFFECT OR REVISED FROM TIME TO TIME WITH OR WITHOUT NOTICE BY POSTING A NEW VERSION OF THE AUP OR POLICY AS SET FORTH ABOVE. YOU AND OTHER USERS OF THE SERVICE(S) SHOULD CONSULT THE AUP AND ALL POSTED POLICIES REGULARLY TO CONFORM TO THE MOST RECENT VERSION.
- **For FiberCast Voice Customers.** The FiberCast Acceptable Use Policy for Residential Voice services ("Voice AUP") is posted at <http://www.FiberCast.net> (or an alternative website if we so notify you). FIBERCAST RESERVES THE RIGHT TO LIMIT OR BLOCK ANY FiberCast VOICE USAGE AS FIBERCAST DEEMS NECESSARY TO PREVENT HARM TO ITS NETWORK, FRAUD, OR OTHER ABUSE OF FiberCast VOICE SERVICES. You agree the voice-capable modem and FiberCast Voice will only be used at the Premises, except that certain online features may be accessible from locations other than the Premises. You understand and acknowledge that if you improperly install the FiberCast Equipment or FiberCast Voice at another location in the Premises, then FiberCast Voice, including, but not limited to, 911/E911, may fail to function or may function improperly. If you move the voice-capable modem or FiberCast Voice to another location without notifying us, you do so in violation of this Agreement and at your own risk. You agree not to use FiberCast Voice for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in usage inconsistent with normal residential calling patterns. If we determine, in our sole discretion, that your use of FiberCast Voice is in violation of this Agreement, we reserve the right (1) to terminate or modify immediately and without notice or (2) to assess additional charges for each month in which such violation occurred.

## **8. ASSIGNABILITY**

This Agreement and the Service(s) furnished hereunder may not be assigned by you. You agree to notify us immediately of any changes of ownership or occupancy of the Premises. We may freely assign our rights and obligations under this Agreement with or without notice to you.

## **9. TERMINATION OF THIS AGREEMENT**

**a. Term.** This Agreement will be in effect from the time that the Service(s) are activated until (1) it is terminated as provided for by this Agreement or by any addendum to this Agreement or (2) it is replaced by a revised Agreement. If you self-install FiberCast Equipment, Service(s) charges begin the earliest of (1) the day on which you picked up FiberCast Equipment at our service center, (2) the day you install the Service(s), or (3) five (5) days after the date we ship the FiberCast Equipment to you. If you self-install a voice-capable modem, cable modem, or converter you obtained from a source other than FiberCast, charges begin the day your order for the Service(s) is entered into our billing system. The option to self-install a voice-capable modem, cable modem, or converter and/or to use a non-FiberCast-supplied voice-capable modem, cable modem or converter is subject to availability.

**b. Termination by You.** Unless you have signed a minimum term addendum, you may terminate this Agreement for any reason at any time by notifying FiberCast in one of three ways: (1) send a written notice to the postal address of your local FiberCast business office; (2) send an electronic notice to the e-mail address specified on [www.fibercast.net](http://www.fibercast.net); or (3) call our customer service line during normal business hours. Subject to applicable law or the terms of any agreements with governmental authorities, all applicable fees and charges for the Service(s) will accrue until this Agreement has terminated, the Service(s) have been disconnected, and all FiberCast Equipment has been returned. We will refund all prepaid monthly service fees charged for Service(s) after the date of termination (less any outstanding amounts due FiberCast for the Service(s), affiliate services, FiberCast Equipment, or other applicable fees and charges). There is no prorating the monthly service/s for the last month and the full month will be charged for the last month therefore customers are encouraged to give themselves enough time in advance for canceling the services.

**c. Suspension and Termination by FiberCast.** Under the conditions listed below, FiberCast reserves the right, subject to applicable law, to act immediately and without notice to terminate or suspend the Service(s) and/or to remove from the Service(s) any information transmitted by or to any authorized users (e.g., email or voicemail). FiberCast may take these actions if it: (1) determines that your use of the Service(s) does not conform with the requirements set forth in this Agreement, (2) determines that your use of the Service(s) interferes with FiberCast's ability to provide the Service(s) to you or others, (3) reasonably believes that your use of the Service(s) may violate any laws, regulations, or written and electronic instructions for use, or (4) reasonably believes that your use of the Service(s) interferes with or endangers the health and/or safety of our personnel or third parties. FiberCast's action or inaction under this Section shall not constitute review or approval of your or any other users' use of the Service(s) or information transmitted by or to you or users.

**d. Your Obligations Upon Termination.** You agree that upon termination of this Agreement you will do the following:

1. You will immediately cease all use of the Service(s) and all FiberCast Equipment;
2. You will pay in full for your use of the Service(s) up to the date that this Agreement has been terminated and the Service(s) are disconnected; and
3. Within ten (10) days of the date on which Service(s) are disconnected, you will return all FiberCast Equipment to us at our local business office or to our designee in working order, normal wear and tear excepted. Otherwise, you will be charged the amount set forth in the

current pricing lists for such FiberCast Equipment, or the revised amount for which you receive notice; if no amount has been specified for the particular model of FiberCast Equipment, you will be charged the retail price for a new replacement. You may also be charged incidental costs that we incur in replacing the FiberCast Equipment. Upon our request during regular business hours at a time agreed upon by you and us, you will permit us and our employees, agents, contractors, and representatives to access the Premises during regular business hours to remove all FiberCast Equipment and other material provided by FiberCast.

## **10. LIMITED WARRANTY**

THE FIBERCAST EQUIPMENT AND THE SERVICE(S) ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER FIBERCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS WARRANT THAT THE FiberCast EQUIPMENT OR THE SERVICE(S) WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NEITHER FIBERCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS 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 DISCLAIMED AND EXCLUDED UNLESS OTHERWISE PROHIBITED OR RESTRICTED BY APPLICABLE LAW.

## **11. LIMITATION OF FIBERCAST'S LIABILITY**

**a. Application.** The limitations of liability set forth in this Section apply to any acts, omissions, and negligence of FiberCast and its underlying third-party service providers, agents, suppliers, distributors, licensors and business partners (and their respective officers, employees, agents, contractors or representatives) which, but for that provision, would give rise to a cause of action in contract, tort or under any other legal doctrine.

**b. Customer Equipment.** CUSTOMER EQUIPMENT MAY BE DAMAGED OR SUFFER SERVICE OUTAGES AS A RESULT OF THE INSTALLATION, SELF-INSTALLATION, USE, INSPECTION, MAINTENANCE, UPDATING, REPAIR, AND REMOVAL OF FIBERCAST EQUIPMENT, CUSTOMER EQUIPMENT AND/OR THE SERVICE(S). EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER FIBERCAST NOR ANY OF ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS 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 FIBERCAST, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS WE SHALL PAY AT OUR SOLE DISCRETION FOR THE REPAIR OR REPLACEMENT OF THE DAMAGED CUSTOMER EQUIPMENT UP TO A MAXIMUM OF \$500. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY RELATING TO SUCH ACTIVITY.

- **For FiberCast Internet and FiberCast Video Customers.** YOU UNDERSTAND THAT YOUR COMPUTER OR OTHER DEVICES MAY NEED TO BE OPENED, UPDATED, ACCESSED OR USED

EITHER BY YOU OR BY US OR OUR AGENTS, IN CONNECTION WITH THE INSTALLATION, UPDATING OR REPAIR OF FIBERCAST INTERNET OR VIDEO SERVICE(S). THE OPENING, ACCESSING OR USE OF YOUR COMPUTER, OTHER DEVICES USED IN CONNECTION WITH FIBERCAST INTERNET OR VIDEO SERVICE(S) MAY VOID WARRANTIES PROVIDED BY THE COMPUTER OR OTHER DEVICE MANUFACTURER OR OTHER PARTIES RELATING TO THE COMPUTER'S OR DEVICE'S HARDWARE OR SOFTWARE. NEITHER FIBERCAST NOR ANY OF ITS AFFILIATES, SUPPLIERS, OR AGENTS, SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

**c. Other Services or Equipment.** BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST FIBERCAST FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE FIBERCAST EQUIPMENT OR THE SERVICE(S) AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE SERVICE(S) IN ACCORDANCE WITH SECTION 9.

**d. Software.** When you use certain features of the Service(s), such as online features (where available), you may require special software, applications, and/or access to the Internet. FiberCast makes no representation or warranty that any software or application installed on Customer Equipment, downloaded to Customer Equipment, or available through the Internet does not contain a virus or other harmful feature. It is your sole responsibility to take appropriate precautions to protect any Customer Equipment from damage to its software, files, and data as a result of any such virus or other harmful feature. We may, but are not required to, terminate all or any portion of the installation or operation of the Service(s) if a virus or other harmful feature or software is found to be present on your Customer Equipment. 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 Customer Equipment, 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 Customer Equipment. NEITHER FIBERCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS 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.

In addition, as part of the installation process for the software and other components of the Service(s), system files on your Customer Equipment may be modified. FiberCast does not represent, warrant or covenant that these modifications will not disrupt the normal operations of any Customer Equipment including without limitation your computer(s), or cause the loss of files. FiberCast does not represent, warrant, or covenant that the installation of the special software or applications or access to our Web portal(s) will not cause the loss of files or disrupt the normal operations of any Customer Equipment, including, but not limited to, your computer(s). 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 FIBERCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.

**e. Disruption of Service.** The Service(s) are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service(s) could lead to severe injury to business, persons, property, or environment (“High Risk Activities”). These High Risk Activities may include, without limitation, vital business, or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risks of any damages resulting from High Risk Activities. We shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Service(s), directly or indirectly caused by, or proximately resulting from, any circumstances beyond our control, including, but not limited to, causes attributable to you or your property; inability to obtain access to the Premises; failure of any signal at the transmitter; failure of a communications satellite; loss of use of poles, or other utility facilities; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; fire, flood, lightning, earthquake, wind, ice, extreme weather conditions, or other acts of God; failure or reduction of power; or any court order, law, act or order of government restricting or prohibiting the operation or delivery of the Service(s). In all other cases of an interruption of the Service(s), you shall be entitled upon a request made within sixty (60) days of such interruption, to a pro rata credit for any Service(s) interruption exceeding twenty-four consecutive hours after such interruption is reported to us, or such other period of time as may be specifically provided by law. Unless specifically provided by law, such credit shall not exceed the fixed monthly charges for the month of such Service(s) interruption and excludes all nonrecurring charges, one-time charges, per call or measured charges, regulatory fees and surcharges, taxes and other governmental and quasi-governmental fees. **EXCEPT AND UNLESS SPECIFICALLY PROHIBITED BY LAW, SUCH CREDIT SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICE(S).** Any credits provided by FiberCast are at our sole discretion and in no event shall constitute or be construed as a course of conduct by FiberCast.

- **For FiberCast Video Customers.** In the event of a total interruption of FiberCast Video for more than twenty-four (24) consecutive hours and of which FiberCast has received actual notice, FiberCast will issue a credit to your FiberCast Video monthly service charges for the total period of the interruption starting from the time of notification in an amount proportionate to your regular monthly service charge.
- **For FiberCast Voice Customers.** You understand and acknowledge that you will not be able to use FiberCast Voice under certain circumstances, including, but not limited to, the following: (1) if our network or facilities are not operating or (2) if normal electrical power to the voice-capable modem is interrupted and the voice-capable modem does not have a functioning battery backup. You also understand and acknowledge that the performance of a battery backup is not guaranteed. If the battery backup does not provide power, FiberCast Voice will not function until normal power is restored. You also understand and acknowledge that FiberCast does not support priority restoration of FiberCast Voice. You also understand and acknowledge that you will not be able to use online features of FiberCast Voice (where available), under certain circumstances including, but not limited to, the interruption of your Internet connection.

**f. Directory Listings.** IF WE MAKE AVAILABLE AN OPTION TO LIST YOUR NAME, ADDRESS, AND/OR TELEPHONE NUMBER IN A PUBLISHED DIRECTORY (WHETHER IN PRINT OR ONLINE) OR DIRECTORY ASSISTANCE DATABASE, AND ONE OR MORE OF THE FOLLOWING CONDITIONS OCCURS: (1) YOU

REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE OMITTED FROM A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS INCLUDED IN EITHER OR BOTH; (2) YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE INCLUDED IN A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS OMITTED FROM EITHER OR BOTH; OR (3) THE PUBLISHED OR LISTED INFORMATION FOR YOUR ACCOUNT CONTAINS MATERIAL ERRORS OR OMISSIONS, THEN THE AGGREGATE LIABILITY OF FIBERCAST AND ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL NOT EXCEED THE MONTHLY CHARGES, IF ANY, WHICH YOU HAVE ACTUALLY PAID TO FIBERCAST TO LIST, PUBLISH, NOT LIST, OR NOT PUBLISH THE INFORMATION FOR THE AFFECTED PERIOD. YOU SHALL HOLD HARMLESS FIBERCAST AND ITS AFFILIATES, SUPPLIERS OR AGENTS AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS REFERENCED ABOVE.

**g. 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 Service(s), including without limitation, their services, equipment, infrastructure, or content. Fibercast is not responsible for the performance (or non-performance) of third-party services, equipment, infrastructure, or content, whether or not they constitute components of the Service(s). Fibercast shall not be bound by any undertaking, representation or warranty made by an agent, or employee of Fibercast or of our underlying third-party providers and suppliers in connection with the installation, maintenance, or provision of the Service(s), if that undertaking, representation, or warranty is inconsistent with the terms of this Agreement. In addition, you understand that you will have access to the services and content of third parties through the Service(s), including without limitation that of content providers [whether or not accessible directly from the Service(s)]. Fibercast is not responsible for any services, equipment, infrastructure, and content that are not provided by us [even if they are components of the Service(s)], and we shall have no liability with respect to such services, equipment, infrastructure, and content. You should address questions or concerns relating to such services, equipment, infrastructure, and content to the providers of such services, equipment, infrastructure, and content. We do not endorse or warrant any third-party products, services, or content that are distributed or advertised over the Service(s).

**h. Damages.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER FIBERCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TRESPASS, CONVERSION, TORT OR CONTRACT) HAVE ANY LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS:

(1) 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, PERSONAL INJURIES, OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (a) YOUR RELIANCE ON OR USE OF THE FIBERCAST EQUIPMENT OR THE SERVICE(S); (b) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, OR REMOVAL OF THE SERVICE(S) (INCLUDING, BUT NOT LIMITED TO, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE BREACH, FAILURES

OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE SERVICE(S), THE FiberCast EQUIPMENT, OR THE CUSTOMER EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, LOSS OF CALL DETAIL, E-MAIL, VOICEMAIL, OR OTHER INFORMATION OR DATA); (c) THE USE OF FiberCast EQUIPMENT OR CUSTOMER EQUIPMENT TO PROVIDE THE SERVICES, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM OTHERS ACCESSING CUSTOMER EQUIPMENT, FIBERCAST'S NETWORK, OR THE CONTENTS OF YOUR TRANSMISSIONS MADE THROUGH THE SERVICE(S), OR YOUR USE OF FILE SHARING, PRINT SHARING, OR OTHER CAPABILITIES THAT ALLOW OTHERS TO GAIN ACCESS TO YOUR COMPUTER NETWORK.  
OR

(2) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, LEGAL FEES, OR OTHER COSTS THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE FIBERCAST EQUIPMENT OR THE SERVICE(S) BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES UPON THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

**i. Customer's Sole Remedies.** Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Certain of the above limitations may not apply if your state does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of FiberCast and its employees, affiliates, suppliers, agents, contractors, distributors, licensors and business partners is limited to the maximum extent permitted by law.

**j. 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.

## **12. INDEMNIFICATION AND LIABILITY OF CUSTOMER**

YOU AGREE THAT YOU SHALL BE RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS FIBERCAST AND ITS EMPLOYEES, AFFILIATES, SUPPLIERS, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS AND BUSINESS PARTNERS AND SHALL REIMBURSE US FOR ANY DAMAGES, LOSSES OR EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) INCURRED BY US IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS, AND CAUSES OF ACTION ARISING OUT OF (a) YOUR USE OF THE SERVICE(S) OR FIBERCAST EQUIPMENT; (b) VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS ARISING FROM YOUR USE OF THE SERVICE(S) OR ANY UNAUTHORIZED APPARATUS OR SYSTEM; (c) ANY CLAIMS OR DAMAGES ARISING OUT OF THE LACK OF 911/E911 OR DIALING ASSOCIATED WITH A HOME SECURITY, HOME DETENTION, OR MEDICAL MONITORING SYSTEM; AND (d) YOUR BREACH OF ANY PROVISION OF THIS AGREEMENT.



### 13. BINDING ARBITRATION

**a. Purpose.** If you have a Dispute (as defined below) with Fibercast that cannot be resolved through an informal dispute resolution with Fibercast, you or Fibercast may elect to arbitrate that Dispute in accordance with the terms of this Arbitration Provision rather than litigate the Dispute in court. Arbitration means you will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury. Proceeding in arbitration may result in limited discovery and may be subject to limited review by courts.

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

**c. Right to Opt Out.** IF YOU DO NOT WISH TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MUST NOTIFY FIBERCAST IN WRITING WITHIN 30 DAYS OF THE DATE THAT YOU FIRST RECEIVE THIS AGREEMENT BY CERTIFIED MAIL TO FIBERCAST 25 South Maple Street, Manchester, NH 03103, ATTN: LEGAL DEPARTMENT/ARBITRATION. YOUR WRITTEN NOTIFICATION TO FIBERCAST MUST INCLUDE YOUR NAME, ADDRESS AND FIBERCAST ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH FIBERCAST THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH FIBERCAST OR THE DELIVERY OF SERVICE(S) TO YOU BY FIBERCAST. IF YOU HAVE PREVIOUSLY NOTIFIED FIBERCAST OF YOUR DECISION TO OPT OUT OF ARBITRATION, YOU DO NOT NEED TO DO SO AGAIN.

**d. Initiation of Arbitration Proceeding/Selection of Arbitrator.** If you or Fibercast elect to resolve your Dispute through arbitration pursuant to this Arbitration Provision, the party initiating the arbitration proceeding may open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-493-4185, [www.adr.org](http://www.adr.org) under the Commercial Arbitration Rules of the American Arbitration Association "AAA".

**e. Arbitration Procedures.** Because the Service(s) provided to you by Fibercast concerns interstate commerce, the Federal Arbitration Act (“FAA”), not state arbitration law, shall govern the arbitrability of all Disputes. However, applicable federal law or the law of the state where you receive the service from Fibercast may apply to and govern the substance of any Disputes. No state statute pertaining to arbitration shall be applicable under this Arbitration Provision.

If there is a conflict between this Arbitration Provision and the rules of the arbitration organization, this Arbitration Provision shall govern. If the AAA will not enforce this Arbitration Provision as written, it cannot serve as the arbitration organization to resolve your dispute with Fibercast. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will enforce this Arbitration Provision as written. If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall

govern.

A single arbitrator will resolve the Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information.

The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.

If an award granted by the arbitrator exceeds \$75,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within thirty (30) days from the date of entry of the written arbitration award. The members of the three-arbitrator panel will be selected according to the rules of the arbitration organization. The arbitration organization will then notify the other party that the award has been appealed. The three-arbitrator panel will issue its decision within one hundred and twenty (120) days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which exists under the FAA.

**f. Restrictions:**

1. YOU MUST CONTACT US WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE (EXCEPT FOR BILLING DISPUTES, ABOUT WHICH YOU MUST CONTACT FIBERCAST WITHIN SIXTY (60) DAYS AS PROVIDED IN SECTION 2 OF THIS AGREEMENT), OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS, OR DISPUTE.
2. ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS.

**g. Location of Arbitration.** The arbitration will take place at a location in the state where you receive the service from us.

**h. Payment of Arbitration Fees and Costs.** FIBERCAST AND YOU WILL ADVANCE ALL ARBITRATION FILING FEES AND ARBITRATOR'S COSTS AND EXPENSES UPON YOUR WRITTEN REQUEST GIVEN PRIOR TO THE COMMENCEMENT OF THE ARBITRATION. YOU ARE RESPONSIBLE FOR ALL ADDITIONAL COSTS THAT YOU INCUR IN THE ARBITRATION, INCLUDING, BUT NOT LIMITED TO, FEES FOR ATTORNEYS OR EXPERT WITNESSES. IF THE ARBITRATION PROCEEDING IS DECIDED IN FIBERCAST'S FAVOR, YOU SHALL REIMBURSE FIBERCAST FOR THE FEES AND COSTS ADVANCED TO YOU ONLY UP TO THE EXTENT AWARDABLE IN A JUDICIAL PROCEEDING. IF THE ARBITRATION PROCEEDING IS DETERMINED IN YOUR FAVOR, YOU WILL NOT BE REQUIRED TO REIMBURSE FIBERCAST FOR ANY OF THE FEES AND COSTS ADVANCED BY FIBERCAST. IF A PARTY ELECTS TO APPEAL AN AWARD TO A THREE-ARBITRATOR PANEL, THE PREVAILING PARTY IN THE APPEAL SHALL BE ENTITLED TO RECOVER ALL REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN THAT APPEAL. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARBITRATION PROVISION, FIBERCAST WILL PAY ALL FEES AND COSTS THAT IT IS REQUIRED BY LAW TO PAY.

**i. Severability.** If any clause within this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of this Arbitration Provision will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable, and the dispute will be decided by a court.

In the event this entire Arbitration Provision is determined to be illegal or unenforceable for any reason, or if a claim is brought in a Dispute that is found by a court to be excluded from the scope of this Arbitration Provision, you and Fibercast have each agreed to waive, to the fullest extent allowed by law, any trial by jury.

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

**k. Continuation.** This Arbitration Provision shall survive the termination of your Service(s) with Fibercast.

#### **14. CUSTOMER PRIVACY NOTICE AND SECURITY**

a. Fibercast will provide you with a copy of our customer privacy notice at the time we enter into an agreement to provide any Service(s) to you, and annually afterwards, or as otherwise permitted by law. You can view the most current version of our privacy notice by going to [www.fibercast.net](http://www.fibercast.net)

b. To the extent Fibercast is expressly required to do so by applicable law, we will provide notice to you of a breach of the security of certain personally identifiable information about you. It is Fibercast's information security policy to provide such notice to you in the manner set forth in Section 16.

#### **15. GENERAL**

**a. Entire Agreement.** This Agreement and any other documents incorporated by reference constitute the entire agreement and understanding between you and Fibercast with respect to the subject matter of this Agreement, and replace any and all prior written or verbal agreements. If any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. Fibercast does not waive any provision or right if it fails to insist upon or enforce strict performance of any provision of this Agreement. Neither the course of conduct between you and Fibercast nor trade practice shall act to modify any provision of this Agreement.

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

**i. Age:** You are at least 18 years of age.

**ii. Customer Information:** During the term of this Agreement, you have provided and will provide to FiberCast information that is accurate, complete and current, including without limitation your legal name, address, telephone number(s), the number of devices on which or through the Service(s) is being used, and payment data (including without limitation information provided when authorizing recurring payments). You agree to notify us promptly, in accordance with the terms of this Agreement, if there is any change in the information that you have provided to us. Failure to provide and maintain accurate information is a breach of this Agreement.

**c. Information Provided to Third Parties.** FiberCast is not responsible for any information provided by you to third parties, and this information is not subject to the privacy provisions of this Agreement or the privacy notice for the Service(s). In addition you are responsible for controlling access to any FiberCast Equipment and any other device you use to access the Services (“Connected Device”). You assume all privacy, security, and other risks associated with providing any individual with access to a Connected Device or providing any information, including CPNI or personally identifiable information, to third parties via the Service(s). For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

**d. Protection of FiberCast’s Information and Marks.** The Service(s), FiberCast Equipment and related documents 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 FiberCast and its affiliates are and shall remain the exclusive property of FiberCast. Nothing in this Agreement shall grant you the right or license to use any of the marks.

**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 Service(s) in any way that violates any provision of such laws or their implementing regulations.

**f. Retention of Rights.** Nothing contained in this Agreement shall be construed to limit FiberCast’s rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, FiberCast and its suppliers reserve the right to delete all your data, files, electronic messages or other Customer information that is stored on FiberCast’s or its suppliers’ servers or systems. In addition, you may forfeit your account user name and all e-mail, IP and Web space addresses, and voice mail. In the event you cancel FiberCast Voice without porting your voice service and the telephone number to another service provider, you will forfeit the telephone number. We shall have no liability whatsoever as the result of the loss of any such data, names, addresses, or numbers.

## 16. NOTICE METHOD FOR CHANGES TO THIS AGREEMENT

We will provide you notice of changes to this Agreement consistent with applicable law. The notice may be provided on your monthly bill, as a bill insert, in a newspaper, by e-mail, or by other permitted communication. If you find the change unacceptable, you have the right to cancel your Service(s). However, if you continue to receive the Service(s) after the change, we will consider this your acceptance of the change.

- **For FiberCast Internet and FiberCast Voice Customers.** Fibercast may deliver any required or desired notice to you in any of the following ways, as determined in our sole discretion: (1) by posting it on [www.fibercast.net](http://www.fibercast.net) or another website about which you have been notified, (2) by sending notice via first class U.S. postal mail or overnight mail to your Premises; (3) by sending notice to the e-mail address on Fibercast's account records, or (4) by hand delivery. You agree that any one of the foregoing will constitute sufficient notice and you waive any claims that these forms of notice are insufficient or ineffective. Because we may from time to time notify you about important information regarding the Service(s) and this Agreement by these methods, you agree to regularly check your postal mail, e-mail and all postings at [www.fibercast.net](http://www.fibercast.net) or on another website about which you have been notified or you bear the risk of failing to do so.

## 17. IMPORTANT INFORMATION

If you are unable to get a problem resolved to your satisfaction at your local Fibercast office, you may write to the Fibercast Corporate Offices at 25 South Maple Street, Manchester, NH 03103 with concerns and complaints.

- **New Hampshire Customers:** The Office of the Attorney General Consumer Protection and Antitrust Bureau has the authority to enforce Consumer Protection Laws and provide assistance in the mediation of consumer complaints. Customers should file written complaints concerning any alleged misrepresentations and unfair or deceptive practices of the cable company to:  
New Hampshire – Office of the Attorney General, Department of Consumer Fraud and Antitrust, 25 Capital Street, Concord, NH 03301
- **Vermont Customers:** The Vermont Department of Public Service can provide assistance in the resolution of consumer complaints. Customers should file complaints with the Customer Hotline at 1-800-622-4496.

### ADDITIONAL PROVISIONS APPLICABLE TO FIBERCAST INTERNET SERVICE

In addition to the provisions above that are applicable to FiberCast Video, FiberCast Internet and FiberCast Voice, the following are specifically applicable to FiberCast Internet Customers.

#### 1. INTELLECTUAL PROPERTY RIGHTS

**a. Ownership of Addresses.** You acknowledge that use of FiberCast Internet does not give you any ownership or other rights in any Internet/on-line addresses provided to you, including, but not limited to, Internet Protocol ("IP") addresses, e-mail addresses, and Web addresses. We may modify or change these addresses at any time without notice and shall in no way be required to compensate you for these changes. Upon termination of an

FiberCast Internet account, we reserve the right permanently to delete or remove any or all addresses associated with the account.

**b. Authorization.** Fibercast does not claim any ownership of any material that you publish, transmit or distribute using FiberCast Internet. By using FiberCast Internet to publish, transmit, or distribute material or content, you (1) warrant that the material or content complies with the provisions of this Agreement, (2) consent to and authorize Fibercast, its agents, suppliers, and affiliates to reproduce, publish, distribute, and display the content worldwide and (3) warrant that you have the right to provide this authorization. You acknowledge that material posted or transmitted using FiberCast Internet may be copied, republished or distributed by third parties, and you agree to indemnify, defend, and hold harmless Fibercast, its agents, suppliers, and affiliates for any harm resulting from these actions.

**c. Copyright.** Title and intellectual property rights to FiberCast Internet are owned by Fibercast, its agents, suppliers, or affiliates or their licensors or otherwise by the owners of such material and are protected by copyright laws and treaties. You may not copy, redistribute, resell, or publish any part of FiberCast Internet without any required express prior written consent from Fibercast or other owner of such material.

**d. Material Downloaded Through FiberCast Internet.** In addition to any content that may be provided by us, you may access material through FiberCast Internet that is not owned by Fibercast. Specific terms and conditions may apply to your use of any content or material made available through FiberCast Internet that is not owned by Fibercast. You should read those terms and conditions to learn how they apply to you and your use of any non-Fibercast content.

## **2. ADDITIONAL LIMITATIONS ON FIBERCAST'S LIABILITY FOR FIBERCAST INTERNET**

**a. Responsibility for Content.** You acknowledge that there is some content and material on the Internet or otherwise available through FiberCast Internet that may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules or regulations, or may violate your protected rights or those of others. We assume no responsibility for this content or material. Anyone who accesses such content and material does so at his or her own risk. NEITHER FIBERCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO ACCESS TO SUCH CONTENT OR MATERIAL BY YOU OR OTHERS. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs are commercially available that claim to be able to restrict access to sexually explicit or other objectionable material on the Internet. We make no representation or warranty regarding the effectiveness of such programs.

**b. Eavesdropping.** The public Internet is used by numerous persons or entities including, without

limitation, other subscribers to FiberCast Internet. As is the case with all shared networks like the public Internet, there is a risk that you could be subject to “eavesdropping.” This means that other persons or entities may be able to access and/or monitor your use of FiberCast Internet. If you post, store, transmit, or disseminate any sensitive or confidential information, you do so at your sole risk. NEITHER FIBERCAST NOR ITS AFFILIATES, SUPPLIERS, OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO SUCH ACTIONS BY YOU. You acknowledge that software programs are commercially available that claim to be capable of encryption or anonymization. We make no representation or warranty regarding the effectiveness of these programs.

**c. FTP/HTTP Service Setup.** You acknowledge that when using FiberCast Internet there are certain applications such as FTP (File Transfer Protocol) or HTTP (Hyper Text Transfer Protocol) that may be used by other persons or entities to gain access to your Customer Equipment. You are solely responsible for the security of your Customer Equipment or any other equipment you choose to use in connection with the Service(s), including without limitation any data stored on such equipment. NEITHER FIBERCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM, ARISING OUT OF, OR OTHERWISE RELATING TO THE USE OF SUCH APPLICATIONS BY YOU, OR THE ACCESS BY OTHERS TO YOUR CUSTOMER EQUIPMENT OR OTHER EQUIPMENT OF YOURS.

**d. Facilities Allocation.** FiberCast reserves the right to determine, in its discretion, and on an ongoing basis, the nature and extent of its facilities allocated to support FiberCast Internet, including, but not limited to, the amount of bandwidth to be utilized and delivered in conjunction with FiberCast Internet.

i. The Terms and Conditions of Sale for Products for FIBERCAST INTERNET Customers is available at [www.fibercast.net](http://www.fibercast.net).

### **3. WIRELESS INTERNET ACCESS THROUGH FIBERCAST WIFI**

If you subscribe to the certain FiberCast Internet services you may also access the Internet and use FiberCast Internet wirelessly (“FiberCast WiFi”) through our access points, HHS and access points of affiliated companies providing wireless Internet access at no additional charge by using your FiberCast user ID and password to log in. If you use an FiberCast WiFi access point owned or operated by FiberCast to access FiberCast Internet, including an HHS your use will be subject to the terms of this Agreement, the FiberCast WiFi terms of service and our acceptable use policies. If you use an access point owned or operated by one of our affiliated companies to access the Internet, you may be subject to the terms and conditions and acceptable use policies of our affiliate as well. If you subscribe to FiberCast Internet at a level below Broadband Level Internet service (as defined by FCC currently at 25Mbps), FiberCast WiFi may be made available to you on a trial, sponsored or pay per use basis subject to different terms. Your use of FiberCast WiFi indicates your acceptance of the applicable terms. If you do not accept the applicable terms, you should not use FiberCast WiFi Service. FiberCast WiFi is not

available in all locations and availability is subject to change without notice.

## **ADDITIONAL PROVISIONS APPLICABLE TO FIBERCAST VOICE SERVICE**

In addition to the General Terms and Conditions above, the following terms and conditions are specifically applicable to FiberCast Voice Customers.

### **1. SPECIAL NOTICE FOR FIBERCAST DIGITAL VOICE SUBSCRIBERS: LIMITATIONS OF FiberCast VOICE SERVICE**

**a. Limitations.** FiberCast Voice includes 911/Enhanced 911 and certain plans include text-to-911 (where emergency authorities make such service available) functionality (collectively "911/E911") that may differ from the 911/E911 functionality furnished by other providers. As such, it may have certain limitations. CAREFULLY READ THE INFORMATION BELOW. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS OF 911/E911. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY PLACE CALLS OR TEXTS OVER THE SERVICES. IF YOU HAVE ANY QUESTIONS ABOUT 911/E911, CALL FiberCast Customer Center

**i. Correct Address:** In order for your 911/E911 calls to be properly directed to emergency services, FiberCast must have your correct Premises address. If you move FiberCast Voice to a different address without FiberCast's approval, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address, and/or FiberCast Voice (including 911/E911) may fail altogether. Therefore, you must call FiberCast Customer Center before you move FiberCast Voice to a new address. FiberCast will need several business days to update your Premises address in the E911 system so that your 911/E911 calls can be properly directed. All changes in service address require FiberCast's prior approval. In order to utilize text-to-911 service, you must be eligible to use the FiberCast Connect Mobile Application ("FCMA") and activate Voice onthego, properly authenticated and logged into the FCMA using a supported mobile device and operating system, and connected to the Internet over a Wi-Fi or commercial mobile radio service network. In order for text-to-911 (where emergency authorities make such service available) to be properly directed to emergency services, you must provide permission for the FCMA to request and receive your location from your mobile device's operating system.

**ii. Service Interruptions:** FiberCast Voice uses the electrical power in your home. If there is an electrical power outage, 911 calling may be interrupted if a battery backup in the associated voice-capable modem is not installed, fails, or is exhausted after several hours. Furthermore, calls, including calls and texts to 911/E911, may not be completed if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

**iii. Suspension and Termination by FiberCast:** You understand and acknowledge that all FiberCast Voice, including 911/E911, as well as all online features of FiberCast Voice, where we make these features available, will be disabled if your account is suspended or terminated.

**iv. Telephone Number Assignments:** The telephone numbers utilized for FiberCast Voice are assigned in accordance with applicable federal and state numbering rules.



Therefore, FiberCast Voice may not accommodate the assignment of a telephone number outside of the telephone rate center to which that number is appropriately assigned.

**b. Limitation of Liability and Indemnification.** YOU ACKNOWLEDGE AND AGREE THAT FIBERCAST WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL OR TEXT 911 USING THE SERVICE(S), AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS FIBERCAST AND ITS AFFILIATES, SUPPLIERS OR AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF THE SERVICE(S) RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE(S), INCLUDING THOSE RELATED TO 911/E911.

## **2. ADDITIONAL FIBERCAST VOICE-SPECIFIC PROVISIONS REGARDING CUSTOMER EQUIPMENT**

**a. Incompatible Equipment and Services.** You acknowledge and understand that FiberCast Voice may not support or be compatible with:

- i. Non-Recommended Configurations as defined in Section 6(b) [including, but not limited to, voice-capable modems not currently certified by FiberCast as compatible with the Service(s)];
- ii. Certain non-voice communications equipment, including certain makes or models of alarm and home security systems, certain medical monitoring devices, personal emergency alert, and home detention devices, certain fax machines, and certain "dial-up" modems;
- iii. Rotary-dial phone handsets, and certain makes and models of other voice-related communications equipment including key systems, private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units;
- iv. Casual/dial around (10-10) calling; 976, 900, 700, or 500 number calling;
- v. 311, 511, or other N11 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
- vii. Certain service codes such as automatic callback and automatic recall (e.g., \*66, \*69) due to compatibility limitations with other carrier signal functions.

## **3. VOICE-CAPABLE MODEM BACKUP BATTERY**

If the voice-capable modem is equipped with a backup battery, such battery is used to provide service during a power outage to your home where power to FiberCast's network remains available. The length of time that FiberCast Voice will be available during a power outage will depend on the following: (i) the backup battery remains properly installed in the voice-capable modem; (ii) the condition and age of the backup battery; and (iii) the amount of FiberCast Voice usage when the voice-capable modem is utilizing power from the backup battery. You understand and acknowledge that: (i) the performance of the backup battery is not guaranteed;

and (ii) you will not be able to use FiberCast Voice if electrical power to the voice-capable modem is interrupted and the voice-capable modem does not have a functioning backup battery. A voice-capable modem backup battery does not power cordless phones or other equipment connected to the telephone line that require electricity from your Premises, such as telecommunications devices used to assist customers with disabilities.

#### **4. TRANSFER OF YOUR PHONE NUMBER(S)**

For information about switching to another provider from FiberCast Voice and the assignment of telephone numbers related to FiberCast Voice Service please call FiberCast Customer Center.

#### **5. CUSTOMER INFORMATION**

FiberCast and its suppliers reserve the right both during the term of this Agreement and upon its termination to delete your voicemail, call detail, data, files, or other information that is stored on FiberCast's or its suppliers' 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, call detail, data, files, or other information.

#### **6. INTEGRATED SERVICES**

Use of FiberCast Voice's integrated services provided through online portals such as applicable communications center or voice center are governed by the GENERAL TERMS AND CONDITIONS of this Agreement.