

## **Foothills Communications Service Agreement**

THIS IS A CONTRACT. PLEASE READ THESE TERMS CAREFULLY. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE SERVICE AND CONTACT US IMMEDIATELY TO TERMINATE IT.

### **About This Agreement, Our Services, and Your Rights**

Foothills Communications Services will be provided to you (“you,” “your,” or “Customer”) on the terms and conditions set forth in this Service Agreement (the “Agreement”) by Foothills Communications and its subsidiaries and / or affiliates that own and/or operate the cable television, system, broadband, or phone services in your area (“Foothills Communications,” “we,” “us,” or “our”) and in any applicable Tariff(s) on file with the FCC, state public utility commission(s) or other comparable state agency. Services may include, but are not limited to, Foothills Communications cable television service (“Video”), Foothills Communications High-Speed Internet service (“Broadband”) and Foothills Communications voice services including those that may that operate over a broadband connection (“VOIP”) or other local facility (each a “Service” and collectively, “Services”).

### **Contact**

Any questions you may have about your Foothills Communications Services may be referred to us at the contact information provided below:

Address:  
1621 Kentucky Route 40 West  
Staffordsville, KY 41256

Phone: 606-297-3501  
Toll Free: 888-262-3782  
Fax: 606- 297-2012

24-Hr Help Desk: 606-297-3501

Via the email: [frtcc@foothills.net](mailto:frtcc@foothills.net)

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## **This Agreement**

Acceptance. Your use of Services provided by Foothills Communications requires you to accept the terms of service outlined in this Agreement. You will have accepted this Agreement and agreed to be bound by its terms if you use the Services or otherwise indicate your affirmative acceptance of such Services.

Updates. This Agreement may be updated or changed from time to time. You can review the most current version of this Agreement at <https://www.foothills.net/legal/>. If Foothills Communications makes a change to this Agreement and the change has a material impact on the Services, you will be provided notice of that change. Unless this Agreement or applicable law specifies otherwise, we will give you no less than thirty (30) days' prior notice of any significant change to this Agreement. If we do give you notice it may be provided on your monthly bill, as a bill insert, in a newspaper, via email, or other communication permitted under applicable law. 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, we will consider that you have accepted the changes.

Change in Features and Equipment. Foothills Communications reserves the right to change Foothills Communications-provided equipment and to rearrange, delete, add to or otherwise change programming or features or offerings contained in the Services, including but not limited to, content, functionality, hours of availability, and customer equipment requirements at any time with or without notice.

## **Charges and Billings**

Charges, Fees, and Taxes That You Must Pay. You agree to pay all charges associated with the Services, including, but not limited to, installation charges, monthly service charges, Foothills Communications Equipment (as defined below) charges, service call charges, measured and per call charges, applicable federal, state, and local taxes (however designated) and any fees or payment obligations imposed by governmental or quasi-governmental bodies for the sale, installation, use, or provision of the Services. You agree to pay any regulatory recovery fees which Foothills Communications invoices you for municipal, state and federal government fees or assessments imposed on Foothills Communications, or any programs in which Foothills Communications participates, including, but not limited to, public, educational and governmental access, universal service, and rights-of-way access. 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 Services.

How We Will Bill You. Unless you have signed a minimum term agreement, Services are provided to you on a month-to-month basis. You will generally be billed monthly, in advance, for recurring service charges, equipment charges, and fees. In addition, you may be required to pay, on or before the day we install any or all of the services, the first month's service charges, Foothills Communications equipment charges, any deposits, and any installation charges. You may be billed for some Services individually after they have been provided to you; these include measured and per-call charges (as explained below) and e-commerce.

Your first bill may include pro-rated charges from the date you first begin receiving Services, as well as monthly recurring charges for the next month and charges for non-recurring charges for any nonrecurring services you have received. If you make partial payment of any bill, we will apply that payment to the outstanding charges in the amounts and proportions that we determine. However, we do not waive our rights to collect the full balance owed to us by accepting partial payment.

Third-Party Charges That Are Your Responsibility. You acknowledge that you may incur charges with third-party service providers that are separate and apart from the amounts charged by us. These may include charges resulting from accessing on-line services, purchasing or subscribing to other offerings via the Internet or Interactive options on your Video Service, if applicable, or otherwise. You are solely responsible for all 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.

Alternative Billing Arrangements. In certain cases, Foothills Communications 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 shall 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.

Payment by Credit Card or Check. If you use a credit card to pay for Services that use is governed by the card issuer agreement for that card you must refer to that agreement for your rights and liabilities as a cardholder. If Foothills Communications 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 Foothills Communications 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"), releases, or other statements on or accompanying checks or other payments accepted by Foothills Communications and that any such notations shall have no legal effect. Foothills Communications will charge you a fee equal to the lesser of \$30 or the highest amount allowed by law, for any check or other instrument (including credit card charge backs) tendered by you and returned unpaid by a financial institution for any reason.

### **Our Remedies if You Pay Late or Fail to Pay**

Late or Non-Payments. An invoice is considered delinquent if you fail to pay within ten (10) days of the bill date ("Payment Due Date"). You may be billed fees, charges and assessments related to late payments or non-payments if for any reason (i) Foothills Communications does not receive from you any required payment for the Services by the Payment Due Date or (ii) you pay less than the full amount due for the Services. All balances not paid by the Payment Due Date will be subject to monthly service charge of 1%.

Fees Not Considered Interest or Penalties. Foothills Communications does not anticipate that you will fail to pay for the Services on a timely basis, and we do not extend credit to customers. Any fees, charges, and assessments due to late payment or nonpayment are not interest, credit service charges, or finance charges or penalties. Rather, they 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 Services 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.

Collection Costs. If we are required to use a collection agency or attorney to collect money owed by you, you agree to pay the reasonable costs of collection that we may choose to assess to you. These costs include but are not limited to any collection agency's fees, reasonable attorneys' fees, and arbitration or court costs.

Suspension/Disconnect. If you fail to pay the full amount due for any or all of the Services then Foothills Communications, at its sole discretion in accordance with applicable law, may suspend or disconnect any or all the Services you receive.

Reconnection Fees and Related Charges. Should you wish to resume a Service after any suspension, we may require you to pay a reconnection fee. Should you wish to reinstate any or all Services 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 Services is subject to our credit policies, this Agreement and applicable law.

Our Right to Make Credit Inquiries. YOU AUTHORIZE FOOTHILLS COMMUNICATIONS 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.

Credit Policy. Foothills Communications is not obligated to furnish any services to any individual subscriber or company that owes Foothills Communications for previous service until arrangements have been made for that indebtedness to Foothills Communications.

Any subscriber that has no previous credit history with Foothills Communications will be given option of paying a deposit or submitting to a credit check. If the credit report shows no history of a bankruptcy, no items sent for collection, and no history of late payments, a deposit may not be required.

Your Responsibilities Concerning Billing Questions. Subject to applicable law, if you intend to dispute a charge or request a billing credit, you must contact Foothills Communications within sixty (60) days of the date on the bill. You waive any disputes or credits that you do not report within sixty (60) days.

### **Refundable Deposit**

We may require you to pay a refundable deposit when you activate the Service(s). We may also require you to pay a refundable deposit after activation of the Service(s) if you add Foothills Communications Equipment and/or Service(s) or if you fail to pay any amounts when they are due hereunder. If we disconnect your Service(s) or are otherwise required under applicable law to refund the deposit, we shall within ninety (90) days or as otherwise specified by applicable law, return a sum equal to the deposit(s) you paid minus any amounts due on your account (including without limitation, any amounts

owed for Services or for any Foothills Communications Equipment that is damaged, altered, or not returned).

### **Access to Your Premises**

You will be responsible for payment of service charges for visits by Foothills Communications or its subcontractors to your premises when a service request results from causes not attributable to Foothills Communications or its subcontractors. You will provide Foothills Communications and its subcontractors with reasonable access to your premises in order to install, maintain, and repair the Service and you authorize any other adult resident or guest at your residence to grant access to your premises for these purposes. You understand and agree that Foothills Communications may drill, cut, and otherwise alter the premises (including walls, flooring, and/or other surfaces). If you do not own your premises or your unit is part of a multi-tenant environment (e.g., apartment building, condominium, private subdivision), you warrant that you have obtained permission from any necessary party, including but not limited to the owner, landlord, or building manager, to make alterations Foothills Communications deems appropriate for the work to be performed.

You acknowledge that Foothills Communications may use existing wiring, including altering the wiring and removing accessories, located within your unit (“Inside Wiring”). You warrant that you own or control the Inside Wiring, and give Foothills Communications permission to use, alter, and remove equipment from, such wiring. Without limiting any other provisions of this Agreement, you agree to indemnify Foothills Communications from and against all claims by an owner, landlord, building manager, or other party in connection with installation, maintenance, repair, or provision of the Services.

### **Maintenance and Ownership of Equipment**

Foothills Communications Equipment. You agree that except for the wiring installed inside the Premises (“Inside Wiring”), all Foothills Communications equipment belongs to us and will not be deemed fixtures or in any way part of the Premises. Foothills Communications Equipment includes all new or reconditioned equipment installed, provided or leased to you by us or our agents, including but not limited to, cabling or wiring and related electronic devices such as set-top boxes, any other hardware, and all software or “downloads” to Foothills Communications Equipment. You agree to use Foothills Communications Equipment only for the Services pursuant to this Agreement. We may remove or change the Foothills Communications Equipment at our discretion at any time the Services are active or following the termination of your Service(s). You agree to allow us access to the Premises for these purposes. You may not sell, lease, abandon or give away the Foothills Communications Equipment, or permit any other provider of video or high speed data to use the Foothills Communications Equipment. The Foothills Communications Equipment may only be used in your premises. At your request, we may relocate the Foothills Communications Equipment within your 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 Foothills Communications equipment or services at a location other than your premises, the services may fail to function or may function improperly. You agree that you will not allow anyone other than Foothills Communications employees or agents to service the Foothills Communications Equipment. You will be directly responsible for loss, repair, replacement and other costs, damages, fees and charges if you do not return the Foothills Communications Equipment to us in an undamaged condition.

Customer Equipment. Foothills Communications has no responsibility for the operation or support, maintenance or repair of any equipment, software or services that you elect to use in connection with the Services or Foothills Communications Equipment (“Customer Equipment”).)

Non-Recommended Configurations. Customer Equipment that does not meet Foothills Communications’ minimum technical or other specifications constitutes a “Non-Recommended Configuration.” Neither Foothills Communications, 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 services. 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 Foothills Communications equipment. Neither Foothills Communications nor any of its affiliates, suppliers or agents shall have any liability whatsoever for any such failure or damage. Foothills Communications reserves the right to deny you customer support for the Services and/or terminate Service(s) if you use a Non-Recommended Configuration.

No Unauthorized Devices or Tampering. You agree not to attach any unauthorized device to Foothills Communications Equipment or the Services. If you make any unauthorized connection or modification to Foothills Communications Equipment or the Services or any other part of our network, we may terminate your Service and recover such damages as may result from your actions. Unless expressly authorized by us, you agree not to install anything to intercept or receive any of the Services offered over our network or to assist any person in intercepting or receiving any of the Services offered over our network. You also agree that you will not attach anything to the Inside Wiring, Foothills Communications Equipment or Customer Equipment, whether installed by you or us, which singly or together impairs the integrity of our network or degrades our network’s signal quality or strength or creates signal leakage.

You hereby agree that we may recover damages from you for tampering with any Foothills Communications Equipment or any other part of our 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 alteration or improper use of Foothills Communications Equipment. You therefore agree to pay us as liquidated damages, the sum of \$500.00 per device used to receive the unauthorized Services in addition to our cost to replace any altered, damaged or unreturned Foothills Communications Equipment or other equipment owned by Foothills Communications, including any incidental costs. The unauthorized reception of the Services may also result in criminal fines and/or imprisonment.

Inside Wiring. You may install Inside Wiring, such as additional cable wiring and outlets, provided it does not interfere with the normal operations of our 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 Foothills Communications have agreed otherwise in writing. (If you do not own the Premises, contact your landlord or building manager about the repair or maintenance of Inside Wiring.) If you have us repair or maintain the Inside Wiring, we will charge you for that service.

## **Use of Services**

You will not use the Foothills Communications Equipment at any time at an address other than your premises without our prior written authorization. You will not use or permit another to use the Foothills Communications Equipment or the Service(s), directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any posted Foothills Communications policy applicable to the Services. Use of the Foothills Communications Equipment or Services 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.

The Service is a consumer grade service and is not designed for or intended to be used for any commercial purpose. You may not resell the Service, use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial). We reserve the right to suspend or terminate your Service if your use exceeds normal volumes.

You acknowledge that you are accepting this Agreement on behalf of all persons who use the Foothills Communications Equipment and/or Services 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 Foothills Communications 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 Services. You agree to indemnify, defend and hold harmless Foothills Communications and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) arising out of the use of the Services, the Foothills Communications Equipment and/or the Customer Equipment or the breach of this Agreement or any of the applicable Foothills Communications policies by you or any other user.

## **Additional Terms for Broadband and Dial-up Internet Customers**

Acceptable Use Policy. The Foothills Communications Acceptable Use Policy (“AUP”) and other policies concerning Broadband are posted on the Service’s Web site at <https://www.foothills.net/legal/> (or an alternative Web site if we so notify you). You further agree that Foothills Communications 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 FOOTHILLS COMMUNICATIONS POLICIES MAY BE PUT INTO EFFECT OR REVISED FROM TIME TO TIME WITHOUT NOTICE BY POSTING A NEW VERSION OF THE AUP OR POLICY AS SET FORTH ABOVE. YOU AND OTHER USERS OF THE SERVICE SHOULD CONSULT THE AUP AND ALL POSTED POLICIES REGULARLY TO CONFORM TO THE MOST RECENT VERSION.

Foothills Communications is not responsible for any charges, including but not limited to, long distance and metered local or toll charges incurred when you access the service. It is your responsibility to determine whether a dial-up number you have selected is a local call from your location and whether any charges apply. Additional charges, which may be substantial, apply to remote dial up access, which is available from certain locations only.

Availability. Broadband Service you select may not be available in all areas or at the rates, speeds, or bandwidth generally marketed, and some locations may not qualify for a particular Broadband Service even if initial testing showed that your line was qualified.

Bandwidth is provided on a per-line (not a per-device) basis. The bandwidth available to each device connected to the network will vary depending upon the number, type and configuration of devices using the Service and the type of use (e.g., streaming media), among other factors. The speed of the Service will vary based on network or Internet congestion, your computer configuration, the condition of your telephone line and the wiring inside your location, among other factors. We and our suppliers reserve the right, at any time, with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control.

Foothills Communications does not warrant or guarantee that service can be provisioned to your location or that provisioning will occur according to a specified schedule, even if we have accepted your order for service. The provisioning of service is subject to network availability, circuit availability, loop length, the condition of your telephone line and wiring inside your location, and your computer/device configuration and capabilities, among other factors. In the event your line is not provisioned for any reason, neither you nor Foothills Communications shall have any duties or obligations under this agreement (other than your obligation to return any Foothills Communications-provided equipment).

Foothills Communications does not warrant that the service or equipment provided by Foothills Communications will perform at a particular speed, bandwidth or data throughput rate, or will be uninterrupted, error-free, secure, or free of viruses, worms, disabling code or conditions, or the like. We shall not be liable for loss of your data, or if changes in operation, procedures, or services require modification or alteration of your equipment, render the same obsolete or otherwise affect its performance.

### **Emergency 911 Services on VOIP**

We provide both circuit-switched local telephone services (traditionally referred to as “plain old telephone”) and local services that utilize the internet to provide telephone line or Hosted PBX services, commonly referred to as VOIP. The 911/E911 services provided to you as VOIP differ from those provided as traditional phone service. 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 OVER THE SERVICES. IF YOU HAVE ANY QUESTIONS ABOUT 911/E911, YOU MUST CALL US AT 606-297-3501.**

Correct Address. In order for your 911/E911 calls to be properly directed to emergency services, we must have your correct premises address. If you move your VOIP to a different address 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address, and/or VOIP (including 911/E911) may fail altogether. Before moving your VOIP service to a new address, you must call us at 606-297-3501 so that we may determine if we can continue to provide 911/E911 service to you at your new location. Even if we are able to support 911/E911 calling from your new address, there may be a

delay of several days before your address change will be processed allowing your 911/E911 calls to be correctly identified.

Service Interruptions. VOIP uses the electrical power in your home. If there is an electrical power outage, 911/E911 calling will be interrupted if your service is not equipped with a functioning battery backup or if your battery backup fails or is exhausted after several hours. Furthermore, calls, including calls to 911/E911, may not be completed if there is a problem with network facilities, including network congestion, network equipment and/or power failure, or other technical problem.

Suspension and Termination of Service. You understand and acknowledge that your VOIP product requires a broadband connection to operate. Should any of your services be suspended or terminated for any reason, including for failure to make timely payment or due to usage in violation of the applicable AUP, your ability to use your VOIP line, including your ability to call 911/E911, will be disabled.

Acknowledgement and Warning Labels. By using our VOIP services, you acknowledge that you are responsible for notifying all potential users who may place calls using your VOIP of the 911 limitations described herein. You are responsible for any notices of the potential lack of 911/E911 operation to any users of your VOIP service regardless of whether or not you have properly labelled your equipment.

Non-voice systems. You acknowledge that the services are not set up to function with non-voice services such as home security systems, medical monitoring equipment, TTY equipment, or entertainment or satellite television systems. We are not liable for interruption or disruption of such systems by the services.

### **Backup Power Information for Fiber Optic Voice Services**

If your home phone service is provided with our state-of-the-art fiber optic network, it requires electric power to operate. To avoid a disruption of home voice service during a power outage – and to maintain the ability to connect to 911 emergency services – we at Foothills Communications provide you with backup battery power.

#### Where to Obtain Your Backup Battery

Foothills Communications' Fiber Optic Voice Services is equipped with an 8-hour rechargeable backup battery to power the equipment we install at your premises. We make available for purchase additional rechargeable batteries that provide 24-hour standby backup capability.

#### What Your Backup Battery Can – and Can't – Do for You

The backup battery provided by Foothills Communications is expected to last at least 8 hours on standby power. That means the backup battery should give you approximately 6 hours of talk time. The backup battery does not provide power to any services other than voice. Home security systems, medical monitoring devices, routers and other equipment will not run on a home phone backup battery. The backup battery does not power your phone handsets that may separately require power. You must have a phone capable of being plugged into a jack and running off the back up battery should your home power fail.

### Proper Care and Use of Your Battery

The ability of the backup battery to power your phone service can be affected by many factors including the age of your battery, improper home wire groundings and unprotected power surges, manufacturer defect, improper storage conditions, or failure to keep the power pack plugged in. Environmental factors such as temperature can shorten your battery's useful life. We recommend that you store your battery above 41°F and below 104°F. These batteries are rechargeable. This backup battery performs a self-test and produces an audible alarm on fault detection. If this happens, after checking that the unit is plugged into a functioning power plug, contact our business office and we will correct any fault condition. Foothills Communications monitors the battery voltage and will alert us when it is low. You will not need to access the battery, however if you experience any problems with your Foothills Communications fiber optic voice service during a power outage of less than 8 hours, please promptly notify us. Foothills Communications will provide and install at no cost to you, a replacement standard 8-hour backup battery.

### **911/E911 Limitation of Liability and Indemnity**

In addition to limits of liability and indemnification that may be contained elsewhere in this Agreement, you agree that we are not liable for any service outage or inability to dial 911 or any other emergency telephone number due to the conditions described in this section. You agree to defend, indemnify and hold harmless us, our owners, managers, officers, directors, employees, affiliates and agents, and any other service provider who furnishes services to you or a user in connection with the services, from any and all claims, actions, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys' fees) by, or on behalf of, us or any third party or user of the service relating to 911 dialing or the inability to access or reach emergency 911 services.

### **Fraudulent Call and Network Security**

You shall manage without limitation the integrity of the traffic in and out of your network and are wholly responsible for the security of your phone system, including VOIP, Hosted PBX and/or local area network (LAN). You shall manage and correct as necessary any fraudulent calling patterns or calling patterns perceived as fraudulent that may harm or adversely affect us or our network and you shall use best efforts to prevent and detect network looping. With services inclusive of long-distance calling, all unauthorized domestic and International usage and subsequent charges incurred by you as a result of hacking or intrusion into your phone system are your sole responsibility and liability.

In the event that you fail to comply with the requirements described above, we shall have the right (but not the obligation) to take protective action against customer in order to protect our network. Such protective action may include, without limitation the temporary blocking of your traffic until such time that we believe that the applicable problem has been resolved. We shall use commercially appropriate efforts to notify you if such an action will be taken.

### **Prohibition against the Use of Service for Illegal Robocalling**

#### Definition

Illegal Robocalls are calls generated by autodialers for commercial purposes without the permission of the called party. These calls may be from a recorded voice or be auto transferred to a live agent; they will often appear from a disguised number; and they will either claim a pre-existing business relationship ("car warranty" or "Microsoft refund") or disguise their commercial intent with false claims of fraudulent activity ("IRS

notice” or “Amazon account hack”).

Robocalls for non-commercial reasons (school closings, political notices, for example) or for commercial reasons with the telephone owner’s prior consent (utility bill payment or appointment reminders, for example) are legal and permitted.

#### Screening of Use of Service – New Orders

To mitigate illegal robocalling, we will screen new service requests:

- We will not deploy large volume calling capability as a residential service or at an address shown in the company records as being residential
- Business requesting large volume calling capability must provide a tax ID and verification as to the nature of the business
- We verify addresses to look for overlapping / multiple deployed voice path subscriptions
- A company representative may visit the premise of the business to verify the number of users at the location is appropriate for the volume of calling paths requested

#### Screening of Use of Service – Existing Customers

We will monitor usage of our network to look for flags that suggest illegal robocalling is occurring and investigate as warranted. If notified by a third party that suspected illegal robocalling is occurring within our network, will investigate such complaints. Any such investigations will be at our sole discretion.

During the course of investigating any such complaints we may be required to review your calling patterns and release information about your calls or your service to third parties as required and permitted by law.

#### Investigation and Resolution of Illegal Robocalling

We are permitted but not required to investigate any claims of illegal robocalling in whatever manner we believe is appropriate based on the nature of the claim. Such investigation may include contacting the alleged robocaller to review and resolve, if possible, the complaint. If we are unable to resolve the complaint or you fail to respond to us, we may suspend or terminate your service with or without advanced notice. AT OUR SOLE DISCRETION, WE MAY CHOOSE TO REFUSE SERVICES THAT WE BELIEVE MAY BE USED FOR ILLEGAL ROBOCALLING.

#### **Assignability**

This Agreement and the Services 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.

#### **Termination of This Agreement**

Term. This Agreement will be in effect from the time that charges commence until (i) it is terminated as provided for by this Agreement or by any addendum to this Agreement or (ii) it is replaced by a revised Agreement. If you self-install Foothills Communications Equipment, Service charges begin the earliest of (i) the day on which you picked up Foothills Communications Equipment at our service center, (ii) the day you install the Service, or (iii) five (5) days after the date we ship the Foothills Communications Equipment to you. If you self-install a Broadband modem or converter that you obtained from a source other than Foothills Communications, charges begin the day that your

order for the Services is entered into our system. The option to self-install a Broadband modem or converter and/or to use a non-Foothills Communications-supplied Broadband modem or converter is subject to availability. Any non-Foothills Communications supplied Broadband modem or converter must comply with Foothills Communications' minimum requirements.

Termination by You. Unless you have committed to a minimum term and have yet to complete your commitment to us, you may terminate this Agreement for any reason at any time by notifying Foothills Communications in one of three ways: (i) send a written notice to the postal address of your local Foothills Communications business office; (ii) send an electronic notice to the e-mail address [frtcc@foothills.net](mailto:frtcc@foothills.net); or (iii) 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 will accrue until this Agreement has terminated, the Services have been disconnected, and all Foothills Communications Equipment has been returned. We will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due Foothills Communications for the Services, affiliate services, Foothills Communications Equipment, or other applicable fees and charges).

Denial of Service by Foothills Communications. Foothills Communications may refuse to furnish or may deny telephone service to any persons, firm or corporation who, either, over the facilities furnished by the Foothills Communications or, in the course of business communications with Foothills Communications regarding facilities and services, uses or permits to be used foul, abusive, obscene, or profane language; or impersonates or permits others to impersonate any other individual with fraudulent or malicious intent. Such Denial will be treated as a Termination of Service under this Agreement.

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

Your Obligations upon Termination. You agree that upon termination of this Agreement you agree to the following:

i) you will immediately cease all use of the Services and all Foothills Communications Equipment; ii) you will pay in full for your use of the Services up to the date that this Agreement has been terminated and the Services are disconnected; and iii) you will be billed and pay for any Foothills Communications equipment not returned to Foothills Communications on the date of service termination at current value of such Foothills Communications equipment. Equipment returned must be in working order, normal wear and tear excepted. You may also be charged incidental costs that we incur in replacing the Foothills Communications Equipment. Upon our request, you will permit

us and our employees, agents, contractors, and representatives to access the Premises during regular business hours to remove the Foothills Communications Equipment and other material provided by Foothills Communications. We will conduct this removal at a time agreed on by you and us, and you will ensure that all Foothills Communications Equipment is returned to Foothills Communications. If the Equipment is returned within ninety (90) days of termination, any fees charged for the Equipment will be refunded (other than fees for damages). No refunds will be made for any Equipment returned more than ninety (90) days after termination.

Early Termination. Should you purchase a service under a term commitment and the service is terminated (either by you or by Foothills Communications for non-compliance with this Agreement) prior to completion of the current term, you agree that you will pay Foothills Communications an amount equal to the total monthly charges for services under term commitment times the number of months remaining on the commitment or the contract termination fee (if applicable), whichever is less.

### **Limited Warranty**

YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER FOOTHILLS COMMUNICATIONS OR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, OFFICERS, AGENTS OR CONTRACTORS WARRANT THAT THE FOOTHILLS COMMUNICATIONS' EQUIPMENT OR THE SERVICES WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NEITHER FOOTHILLS COMMUNICATIONS OR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, OFFICERS, AGENTS OR CONTRACTORS 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.

### **Limitation of Foothills Communications' Liability**

Application. The limitations of liability set forth in this Section apply to any acts, omissions, and negligence of Foothills Communications and its underlying third-party service providers, agents and suppliers (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.

Customer Equipment. CUSTOMER EQUIPMENT MAY BE DAMAGED OR SUFFER SERVICE OUTAGES AS A RESULT OF THE INSTALLATION, SELF-INSTALLATION, USE, INSPECTION, MAINTENANCE, REPAIR, AND REMOVAL OF FOOTHILLS COMMUNICATIONS EQUIPMENT AND THE SERVICES. EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER FOOTHILLS COMMUNICATIONS NOR ANY OF ITS AFFILIATES, SUPPLIERS, EMPLOYEES, OFFICERS, AGENTS OR CONTRACTORS 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 FOOTHILLS COMMUNICATIONS, SUPPLIERS, EMPLOYEES, OFFICERS, AGENTS

OR CONTRACTORS, 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 Broadband Customers. YOU UNDERSTAND THAT YOUR COMPUTER OR OTHER DEVICES MAY NEED TO BE OPENED, ACCESSED OR USED EITHER BY YOU OR BY US OR OUR AGENTS, IN CONNECTION WITH THE INSTALLATION OR REPAIR OF BROADBAND. THE OPENING, ACCESSING OR USE OF YOUR COMPUTER OR OTHER DEVICES USED IN CONNECTION WITH YOUR COMPUTER MAY VOID WARRANTIES PROVIDED BY THE COMPUTER OR DEVICE MANUFACTURER OR OTHER PARTIES RELATING TO THE COMPUTER'S OR DEVICE'S HARDWARE OR SOFTWARE. NEITHER FOOTHILLS COMMUNICATIONS NOR ANY OF ITS AFFILIATES, SUPPLIERS, OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

Other Services or Equipment. BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST FOOTHILLS COMMUNICATIONS FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE FOOTHILLS COMMUNICATIONS EQUIPMENT OR THE SERVICES AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE SERVICES IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

Software. When you use certain features of the Services, such as online features (where available), you may require special software, applications, and/or access to the Internet, Foothills Communications makes no representation or warranty that any software or application installed on Customer Equipment, downloaded from the Service, 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 Services 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 FOOTHILLS COMMUNICATIONS NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS OR CONTRACTORS 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, system files on your Customer Equipment may be modified. Foothills Communications 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. Foothills Communications 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 FOOTHILLS COMMUNICATIONS OR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, OFFICERS, AGENTS OR CONTRACTORS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.

Disruption of Service. The Services 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 Services 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 Services, 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 cable 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 Services.

It is your responsibility to report any outages or interruption of service to Foothills Communications. Outages isolated to a single Customer that are not reported to Foothills Communications will not be eligible for service credit. It will be Foothills Communications’ responsibility to act in a timely manner to restore service. If Foothills Communications is unable to restore service within forty-eight (48) hours, a prorated outage credit may be issued to you. If there is a reoccurrence of the same service outage for the same reason in a six month time span Foothills Communications will give a prorated outage credit from the issue date of the trouble ticket to the day cleared. No credits apply for outages less than 48 hours in duration. All requests for credit must be requested by you and are subject to approval by Foothills Communications.

In the event of a service outage that impacts an entire group of customers, Foothills Communications will automatically give a prorated credit to all affected customers that are out of service for 48 hours or more.

No service credits will be provided for outages caused by 3rd Parties or by Customer owned equipment. Any credits provided by Foothills Communications are at our sole discretion and in no event shall constitute or be construed as a course of conduct by Foothills Communications.

EXCEPT AND UNLESS SPECIFICALLY PROHIBITED BY LAW, SUCH CREDIT SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICE. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES

FROM WHATEVER CAUSE, INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS OR WAGES.

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, infrastructure or content. Foothills Communications 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 Services. Foothills Communications shall not be bound by any undertaking, representation or warranty made by an agent or employee of Foothills Communications or of our underlying third-party providers and suppliers 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. 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). Foothills Communications is not responsible for any services, equipment, infrastructure and content that are not provided by us (even if they are components of the Service), 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 creators 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 Services.

Damages. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER FOOTHILLS COMMUNICATIONS NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS OR CONTRACTORS SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO TORT OR CONTRACT) HAVE ANY LIABILITY TO THE CUSTOMER OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS: (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, PERSONAL INJURIES OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (a) YOUR RELIANCE ON OR USE OF THE FOOTHILLS COMMUNICATIONS EQUIPMENT OR THE SERVICES OR (b) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, OR REMOVAL OF THE SERVICES (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, THE FOOTHILLS COMMUNICATIONS EQUIPMENT OR THE CUSTOMER EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, LOSS OF CALL DETAIL, E-MAIL, VOICEMAIL OR OTHER INFORMATION OR DATA); OR (ii) 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 FOOTHILLS COMMUNICATIONS EQUIPMENT OR THE SERVICES 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.

Dispute Resolution. Most customer concerns can be resolved quickly and to the customer's satisfaction by calling Foothills Communications at **606-297-3501**. In the unlikely event that Foothills Communications' customer service department is unable to resolve a complaint you may have to your satisfaction (or if Foothills Communications has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through small claims court instead of in courts of general jurisdiction.

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.

### **Indemnification and Liability of Customer**

YOU AGREE THAT YOU SHALL BE RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS Foothills Communications AND ITS EMPLOYEES, OFFICERS, AFFILIATES, SUPPLIERS, AGENTS, AND CONTRACTORS AND SHALL REIMBURSE US FOR ANY DAMAGES, LOSSES OR EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND COSTS) INCURRED BY US IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS AND CAUSES OF ACTION ARISING OUT OF (I) YOUR USE OF THE SERVICE OR Foothills Communications EQUIPMENT; (II) 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 OR ANY UNAUTHORIZED APPARATUS OR SYSTEM; AND (IV) YOUR BREACH OF ANY PROVISION OF THIS AGREEMENT.

### **General**

Entire Agreement. This Agreement and any other documents incorporated by reference constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement, and they 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. If Foothills Communications fails to insist upon or enforce strict performance of any provision of this Agreement, it shall not thereby waive any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.

Additional Representations and Warranties. In addition to representations and warranties you make elsewhere in this Agreement, you also represent and warrant that you are at least 18 years of age and have legal authority to enter into this Agreement. You are responsible for all use of your Service and your account, whether by you or someone using your account with or without your permission. You are responsible for the payment of all charges associated with your account.

Customer Information. During the term of this Agreement, you have provided and will provide to Foothills Communications information that is accurate, complete and current, including without limitation your legal name, address, telephone number(s), the number of computers and/or devices on which the Service is being accessed 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. If you fail to provide and maintain accurate information, you will breach this Agreement.

Information Provided to Third Parties. Foothills Communications 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 Services. You assume all privacy, security and other risks associated with providing CPNI or personally identifiable information to third parties via the Services. 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.

Revocable License. The Services and Foothills Communications Equipment, including but not limited to any firmware or software embedded in the Foothills Communications Equipment or used to provide the Services, are protected by trademark, copyright, patent 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. You acknowledge and understand that you are not granted any other license to use the firmware or software embedded in the Foothills Communications Equipment or used to provide the Services. You expressly agree that you will use the Foothills Communications Equipment exclusively in connection with the Services. You shall not take any action nor allow anyone else to take any action that will reverse compile, disassemble, or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

Protection of Foothills Communications' Information and Marks. All Service information, documents, and materials on our Web sites are protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All Web sites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "marks") of Foothills Communications and its affiliates are and shall remain the exclusive property of Foothills Communications. Nothing in this Agreement shall grant you the right or license to use any of the marks.

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.

Retention of Rights. Nothing contained in this Agreement shall be construed to limit Foothills Communications' rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, Foothills Communications and its suppliers reserve the right to delete all your data, files, electronic messages or other Customer information that is stored on Foothills Communications' or its suppliers' servers or systems. In addition, you may forfeit your account user name and all e-mail, IP, web space addresses and voice mail. We shall have no liability whatsoever as the result of

the loss of any such data, names, or addresses.

### **Software, IP Addresses, and Transmitted / Downloaded Material**

The Services use and include certain software and/or firmware (the “Software”). Some Software resides on the equipment provided to you by Foothills Communications.

End User License Agreement. If you downloaded or installed Software, your use of that Software is subject to the End User License Agreement that accompanied that Software. With regard to any Software (including Software upgrades, changes, or supplements) which is not accompanied by an End User License Agreement, Foothills Communications, or its applicable third party licensors, grants you a limited, personal, non-transferable, and non-exclusive right and license to use the object code of its Software on the Equipment; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, or otherwise attempt to discover any source code or structure, sequence and organization of, sell, assign, sublicense, distribute, rent, lease, grant a security interest in, or otherwise transfer any right in the Software. You acknowledge that this license is not a sale of intellectual property and that Foothills Communications or its third party licensors, providers or suppliers continue to own all right, title and interest to the Software and related documentation. The Software is protected by the copyright laws of the United States and international copyright treaties.

Export Limits. You shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control (“OFAC”), or other United States or foreign agency or authority, and shall not export, or allow the export or re-export of the Software in violation of any such restrictions, laws or regulations. By downloading or using the Software, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any restricted country or on any such list.

Restricted Rights. The Software is provided with restricted rights. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraphs (a) through (d) of the Commercial Computer Restricted Rights clause at 48 CFR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause of DFARS 252.227-7013 and in similar clauses in the NASA FAR Supplement.

Notice about Automatic Software Upgrades. Foothills Communications, or its applicable third party licensors may provide Software upgrades, updates, or supplements (such as, but not limited to, adding or removing features or updating security components). You understand and agree that Foothills Communications or the applicable third party licensor have the unrestricted right, but not the obligation, to upgrade, update, or supplement the Software on the Equipment at any time. Although unlikely, Software upgrades, updates, or supplements could reset your Equipment and erase saved preferences and stored content.

Ownership of Addresses. You acknowledge that use of Broadband 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.

Authorization. Foothills Communications does not claim any ownership of any material that you publish, transmit, or distribute using Broadband. By using Broadband to publish, transmit, or distribute material or content, you warrant that the material or content complies with the provisions of this Agreement and that you have the right to provide this authorization. You acknowledge that material posted or transmitted using Broadband may be copied, republished or distributed by third parties, and you agree to indemnify, defend and hold harmless Foothills Communications, its agents, suppliers, and affiliates for any harm resulting from these actions.

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

IP Addresses. Foothills Communications will provide you with dynamic Internet protocol (“IP”) address(es) as a component of Broadband, and these IP address(es) can and do change over time. You will not alter, modify, or tamper with dynamic IP address(es) assigned to you or any other customer. You agree not to use a dynamic domain name server or DNS to associate a host name with the dynamic IP address(es) for any commercial purpose. You also agree not to use any software that provides for static IP address(es) on or in conjunction with any computer(s) or network device connected to Broadband. If applicable, Foothills Communications will release and/or recover the dynamic IP address(es) when the Service or this Agreement is disconnected, discontinued, or terminated.

Intellectual Property. All portions of the Services and Equipment and any firmware or software used to provide the Services or provided to you in conjunction with providing the Services, or embedded in the Equipment, and all Services, information, documents, and materials on related web site(s) are the property of Foothills Communications or third-party providers and 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 Foothills Communications or third-party providers are and shall remain the exclusive property of Foothills Communications or third-party providers, and nothing in this Agreement shall grant you the right or license to use such Marks.

## **Content**

Responsibility for Content. You acknowledge that there is some content and material on the Internet or otherwise available through Broadband which 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 FOOTHILLS COMMUNICATIONS NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS OR CONTRACTORS 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.

Monitoring of Postings and Transmissions. Foothills Communications shall have no obligation to monitor postings or transmissions made in connection with Broadband except as may be required by law. However, you acknowledge and agree that Foothills Communications and its agents have the right to monitor, from time to time, any such postings and transmissions, including without limitation e-mail, newsgroups, chat, IP audio and video, and Web space content. Foothills Communications may also use and disclose them in accordance with the Foothills Communications High-Speed Internet Acceptable Use Policy and other applicable policies, and as otherwise required by law or government request. We reserve the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in our sole discretion, is unacceptable, undesirable or in violation of this Agreement.

### **Security**

In all cases, you are solely responsible for the security of any device(s) you connect to the Service, including any data stored or shared on such device(s). It is also your responsibility to secure the Customer Equipment and any other Premises equipment or programs that connect to the Service from external threats such as viruses, spam, bot nets, and other methods of intrusion.

NEITHER FOOTHILLS COMMUNICATIONS NOR ITS AFFILIATES, SUPPLIERS, OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATING TO ACCESS BY OTHERS OF THE CUSTOMER EQUIPMENT OR ANY OTHER EQUIPMENT CONNECTED IN SOME WAY TO THE CUSTOMER EQUIPMENT, OR TO THE SOFTWARE, FILES AND DATA STORED ON SUCH EQUIPMENT.