

# **Customer Service Agreement**

This Agreement describes the terms and conditions between you and Mercury Broadband, LLC. and its subsidiaries and/or affiliates and/or distribution partners referred to herein collectively and individually as (“Mercury Wireless”, “Mercury Broadband”, “Mercury”, “Us” or “We”) applicable to the Mercury Broadband services. This agreement contains important contract rights, limitations of those rights, and obligations between you and Mercury Broadband. You may call us at **(800) 354-4915** or email us at **[support@mercurybroadband.com](mailto:support@mercurybroadband.com)**.

## **The Service**

The Service consists of Internet access service as further described in this Agreement (the “Service”). The Service is available in various locations in the contiguous U.S. and its usage is subject to Mercury’s Acceptable Use Policies. To receive service, a Mercury-authorized installer must install the Mercury customer premises equipment at your location.

## **Minimum System Requirements**

Each device receiving the Service must meet certain minimum requirements. As a general rule, any device capable of supporting standard IP protocols should be able to receive the service. Ensuring devices will be capable of receiving the service will be the sole responsibility of the customer.

## **Service Commitment**

If you terminate service prior to the expiration of the Service Term Commitment, you will owe (and your credit card, debit card, or bank account may be charged) the Early Termination Fee of \$200.00.

## **Term and Renewal**

The term of this Agreement commences on the date your Service is activated and continues for the duration of the Service Term Commitment unless terminated earlier by you or Mercury Broadband in accordance with this Agreement. After the Service Term Commitment expires, the term of this Agreement will automatically renew on a month-to-month basis until terminated by you or Mercury Broadband in accordance with this Agreement.

## **Responsibilities and Supervision**

## **Account Setup**

Installation services for the Equipment will be provided by a Mercury Authorized Installer and for verifying and maintaining the account, options, settings and other parameters under which the Service is used, including (without limitation) all related passwords and user identification information.

## **Multiple uses of Account**

The service plan you ordered does not limit the number of computers at your location that may receive services under a single billing account. However, your "location" does not include adjacent apartments, residences, offices or any type of space not associated with your home or place of business. Any use of the Service other than as specified above constitutes an unlawful and unauthorized use of the Service and a material breach of this Agreement, regardless of whether you receive any compensation for such use, and may result in the immediate termination of the Services and the imposition of the Early Termination Fee, without prejudice to any rights and remedies available to Mercury under this Agreement, at law and at equity.

## **Installation of Equipment**

You represent that there are no legal, contractual or similar restrictions on the installation of the Mercury Equipment in the location you have authorized. It is your responsibility to ensure compliance with all applicable building codes, zoning ordinances, homeowners' association rules, covenants, conditions, and restrictions related to services provided under this Agreement, to pay any fees or other charges, and obtain any permits or authorizations necessary for services provided under this agreement (collectively "Legal Requirements"). You are solely responsible for any fines or similar charges for service in violation of any applicable Legal Requirements. You acknowledge and agree that Mercury or our designated service installer will be required to access your premises or system and to install and maintain the Equipment, including the antenna and its components, necessary for you to receive the Service inside and outside your location. By signing this Agreement, scheduling a service or installation visit, and permitting us or our service provider to enter your premises, you are authorizing Mercury, the authorized Mercury vendor, or our service provider to perform all of the above actions.

NEITHER MERCURY NOR OUR VENDORS OR SERVICE PROVIDERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSSES RESULTING FROM INSTALLATION, REPAIR OR OTHER SERVICES, INCLUDING WITHOUT LIMITATION, DAMAGE TO YOUR PREMISES, LOSS OF SOFTWARE, DATA OR OTHER INFORMATION FROM YOUR COMPUTER(S).

You are responsible for backing up the data on your computers and we highly recommend that you do so prior to permitting access to us or one of our designated service providers. This limitation does not apply to any damages arising from the gross negligence or willful misconduct of any installation or maintenance service provider. Timeframes for installation, if any, are not guaranteed and may vary depending on the types of services requested and other

factors.

## **Subscriber Responsibility**

You agree that you are responsible for all access to and use of the Service through your account or password(s) and for any fees incurred for Service, or for software or other merchandise purchased through the Service, or any other expenses incurred in accordance with the terms of this Agreement. You ratify and confirm any obligations a household member, employee, or any other individual with access to your account incurs or assumes. You acknowledge that (subject to any exceptions granted by us) a monthly fee payable in advance will apply for each and every month (or portion of a month) that you are a subscriber, beginning with the date your Service is activated. Your account will continue until you cancel the account in accordance with the method specified by us (unless otherwise terminated in accordance with this Agreement). The monthly subscription fee shall cease to apply for any months after the billing month in which you cancel or terminate your account in accordance with these terms and conditions.

## **Billing and Charges**

You agree to pay, in accordance with the provisions of the billing option you selected, any registration, activation or monthly fees, ISP service charges, minimum charges and other amounts charged to or incurred by you, or by users of your account, at the rates in effect at the start of the billing period in which those amounts are charged or incurred. You agree to pay all applicable taxes related to your use of the Service, provision of services, software or hardware or the use of the Service by users of your account. Information on charges and surcharges (if any) that are to be paid to us and are incurred by you or by users of your account will be made available to you on the Mercury website, and you agree that this is sufficient notice for all purposes as to charges incurred and paid or to be paid to us. You understand and agree that you will not receive a paper invoice in the mail for your Service. An electronic statement will be provided to you upon request. Additional terms relating to pricing, billing and payment which are an integral part of this Agreement are set forth on the Mercury Broadband Firm Order Commitment and are incorporated into this Agreement. Mercury reserves the right to correct and charge underbilled amounts for a period of 90 days after the incorrect statement was issued. Payment of the outstanding balance is due in full each month

## **Late Payment**

If we do not receive your payment before the next invoice is issued, you may be charged a late fee on the delinquent balance at the greater of 1.5%/month or \$5.00/month as permitted by applicable law. If we do not receive payment from you before your next statement is issued, we have the right to suspend your Service or terminate this Agreement without notice. Termination of the Agreement by us due to your default or nonpayment will result in a Termination Fee owed by you.

## **Payment Authorization**

Except where additional methods of payment are specifically required or permitted under applicable law or regulation or as otherwise agreed to by Mercury from time to time, you agree that Mercury can charge your credit card or debit card (“Card Payment”), or initiate an electronic funds transfer out of your bank account (“EFT Payment”) for payment of all Service fees, the Termination Fee or any other amounts payable under this Agreement. Additionally, you agree that Mercury will bill your monthly Service fee in advance, and automatically be collected through either a Card Payment or EFT Payment. With respect to such charges the following authorization applies: You agree that the charges described above will be billed to the credit or debit card provided by you when you applied for the Service until such time as you may authorize recurring EFT Payments. You must provide current, complete, and accurate information for your billing account, and promptly update any changes (such as a change in billing address, credit card number, credit card expiration date, bank account number). Changes to such information can be made by calling Mercury Broadband or updating them on the Mercury website. If you fail to provide us with any of the foregoing information, you agree that Mercury may continue charging you for any service provided under your account. You agree that Mercury will not be responsible for any expenses that you may incur resulting from overdrawing your bank account.

## **Disputes and Partial Payments**

If you think a charge is incorrect or you need more information on any charges applied to your account, you should contact our billing department. You must contact us within 45 days of receiving the invoice on which the error or problem appeared. Mercury will not pay you interest on any overcharged amounts later refunded or credited to you. We may, but are not required to, accept partial payments from you. If partial payments are made, they will be applied to amounts owed by you starting with the oldest outstanding statement. If you send us checks or money orders marked “payment in full” or otherwise labeled with a similar restrictive endorsement, we can, but are not required to, accept them, without losing any of our rights to collect all amounts owed by you under this Agreement. If we choose to use any collection agency or attorney to collect money that you owe us or to assert any other right that we may have against you, you agree to pay the reasonable costs of collection or other action including, but not limited to, the costs of a collection agency, reasonable attorney’s fees, and court costs.

## **Reactivation**

If your Service is suspended or terminated, including for failure to submit payment on time or for any other reason, in addition to payment of past due amounts, we may require a deposit before reactivating your Service. The amount of the deposit will not exceed one year of monthly fees. Amounts deposited by you will appear on your statement as a credit, and service charges and other fees will be invoiced as described above. If you fail to pay any amount on a subsequent bill, the unpaid amount will be deducted each billing cycle from the credit amount. Credit amounts shall not earn or accrue interest. If your Service is suspended or terminated for any reason, including at your request or because of your failure to pay past due amounts, and you want to reactivate the Service, you agree to pay a reactivation fee in accordance with our then

current rates. In addition you must bring your account up to date through the month of reactivation by making payment in full of any outstanding balance, fees and other applicable charges.

## **Modifications, Rights of Cancellation or Suspension**

### **Modification of this Agreement**

Upon notice published over the Service, we may at any time (and from time to time) modify this Agreement, including, without limitation, our pricing and billing terms. We may, but are not required to, notify you by email, online via one or more of the websites within the Service or other electronic notice. If you do not agree to such changes or additions, then you must terminate this Agreement in accordance with Section 5.3 and stop using the Service prior to the effective date of such modifications. Your continued use of the Service after the effective date of such modifications constitutes your acceptance of such modifications.

### **Modification of the Service**

We may discontinue, add to or revise any or all aspects of the Service in our sole discretion and without notice, including access to support services, publications and any other products or services ancillary to the Service. In particular, we reserve the right at our sole discretion to modify, supplement, delete, discontinue or remove any software, file, publications, information, communication or other content provided to you by Mercury or its vendors in connection with the Service. If we undertake any of these changes, we may, but are not required to, notify you by email, online via one or more of the websites within the Service or other electronic notice. If you do not agree to such changes, then you must cancel your subscription and stop using the Service prior to the effective date of such changes. Your use of the Service after the effective date of such changes or additions constitutes your acceptance of such changes. In addition, we may take any action consistent with our Acceptable Use Policy, including actions to (a) prevent bulk emailing from entering or leaving any email account or the network email system, (b) delete email messages if your email account has not been accessed by you within a time established by us from time to time, in our sole discretion, (c) instruct our system not to process e-mail or instant messages due to space limitations, (d) make available to third parties information relating to Mercury Broadband or its subscribers, subject to our Online Privacy Policy, (e) withdraw, change, suspend or discontinue any functionality or feature of the Service, (f) delete attachments to email due to potentially harmful materials included within such attachment, and (g) limit access to the Service to prevent abusive consumption and ensure fair access for all subscribers.

### **Termination by Subscriber**

Subject to your payment of the Termination Fee and the fee for Services for the full billing cycle in which termination occurred, you may immediately terminate this Agreement and discontinue

the Service at any time upon written or telephone notice to us. You must terminate this Agreement in accordance with its terms; failure to do so may delay or prevent us from knowing that termination was intended. You will continue to be liable under this Agreement for all fees and charges until such time as the Agreement has been properly terminated or we have acknowledged such termination in writing or by e-mail.

### **Termination or Suspension by Mercury Broadband**

We may immediately terminate your Service and this Agreement if you or a user of your account breaches this Agreement. We reserve the right in our sole discretion to terminate your account and this Agreement at any time or to suspend (with or without notice) or terminate access to or use of the Service, in whole or in part.

### **Post-Termination or Suspension Obligations**

Notwithstanding any cancellation or termination of this Agreement or any of your accounts, nor any suspension or termination of access to or use of the Service, you will remain responsible for all payment and other obligations under this Agreement, including the obligation to pay all charges that may be due as a result of or in connection with such cancellation, termination or suspension. Your payment and other obligations under this Agreement are not suspended or affected by a suspension of access to or use of the Service, in whole or in part, due to a violation (actual, threatened, or alleged) of this Agreement or of any law or legal obligation by you or any user of your account.

## **Acceptable Use and Restrictions on Use**

### **Restrictions on Use of the Service**

Mercury Broadband reserves the right to terminate immediately the Service and this Agreement if you or any user under your account knowingly or otherwise engages in any prohibited activity or if you use the Equipment or Service in a way which is contrary to any Mercury Broadband policy. You must strictly adhere to any policy set forth by another service provider accessed through the Service. You agree to comply with Mercury Broadband's Acceptable Use Policy which is incorporated into and made a part of this Agreement. You do not own, nor have any rights other than those expressly granted to you, to a particular IP address, even if you have ordered a static IP address. Mercury reserves the right to change, modify, or remove an address, or block of addresses granted to you without notice.

### **Prohibition on Resale**

The Service is for your residential or commercial use only and you agree not to use the Service for operation as an Internet service provider or for any business enterprise or purpose, or as an end-point on a wide area network.

## **No Unauthorized Use of Equipment or Software**

You are strictly prohibited from servicing, altering, modifying, or tampering with the Equipment, Software or Service or permitting any other person to do the same who is not authorized by Mercury Broadband.

## **Security**

You agree to take reasonable measures to protect the security of your computer(s), including maintaining at your cost an up-to-date version of anti-virus and firewall software to protect your computer(s) from malicious code, programs, or other internal components (such as a computer virus, computer worm, computer time bomb, or similar component). You expressly agree that if your computer(s) becomes infected and causes any of the prohibited activities listed in the Acceptable Use Policy, Mercury Broadband may immediately suspend your Service until such time as your computer(s) is sufficiently protected to prevent further prohibited activities. You will be fully liable for all monthly fees and other charges under this Agreement during any period of suspension. In all cases, you are solely responsible for the security of any device you choose to connect to the Service, including any data stored or shared on that device.

## **Responsibility of Subscriber**

You are responsible for any misuse of the Service committed through your account or utilizing your Equipment. You must take steps to ensure that unauthorized access to the Service does not occur. You may not assign or transfer your Service without our written consent. If you do, we may inactivate your Service. If the Equipment belonging to Mercury Broadband is stolen or otherwise removed from your premises without your authorization you must notify Mercury Broadband Customer Support immediately, or else you will be liable for payment for unauthorized use of the Service and Equipment.

## **Compliance with Laws**

You agree to comply with all applicable laws, rules and regulations in connection with the Service, your use of the Service and this Agreement.

## **Use and Control of Information; Member Communication; Ads**

We may, without obligation, liability or notice, except to the extent prohibited by applicable law, distribute, loan, sell or otherwise share with other persons or entities user lists (subscriber account information that does not identify you by name, address or similar personally-identifiable information) as well as aggregate information. Aggregate information includes information constituting of descriptive or demographic information, habits, usage patterns, preferences, survey data or other descriptive or related data which do not rely on providing to recipients the identity of any particular user of the Service. This shall not be construed to limit our use of other information not addressed in this Section. We will be free, in our reasonable good faith discretion and without notice, to provide subscriber and user

information and records to (i) the courts, (ii) law enforcement agencies, (iii) government agencies, or (iv) authorized persons or entities involved in enforcing compliance with the law or prosecuting claims or investigations for conduct or conditions alleged or believed to be illegal or to violate or threaten the rights of any person or entity. In addition, we may maintain and use internally such information and records. Information generated by or in connection with our administration of the Service shall be and remain our exclusive property. We may also from time to time provide online, fax, telephone, email, mail and other communications to our Subscribers and users on matters pertaining to the Service, its features, its sponsors or its use without compensation to them or reimbursement of costs for doing so, but shall do so reasonably and in good faith. You acknowledge that communications with us, our representatives and our contractors may be monitored or reviewed for quality control and other reasonable business purposes. You also acknowledge that advertising and promotion may occur on the Service and also that neither you nor any user shall have any claim with respect to any proceeds from such activities.

## **Equipment**

The equipment, installed by Mercury shall remain the property of Mercury Broadband. Should the equipment be stolen from your premises, you agree to reimburse Mercury Broadband an amount equivalent to the current replacement cost of such equipment. If you discontinue the service or your service is canceled, you agree to schedule a service call for collection of the Mercury Broadband Equipment. If you fail to schedule a service call or return the Equipment, you agree to reimburse Mercury Broadband an amount equivalent to the current replacement cost of the Equipment.

## **Warranties and Limitations of Liability**

### **DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. NEITHER MERCURY BROADBAND NOR ANY OF OUR WHOLESALERS, DEALERS, DISTRIBUTORS, AGENTS, EMPLOYEES, SUPPLIERS, LICENSORS, SERVICE PROVIDERS OR THIRD-PARTY CONTENT PROVIDERS (COLLECTIVELY, "MERCURY BROADBAND' PARTNERS") WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; NOR DO MERCURY BROADBAND NOR ANY OF MERCURY BROADBAND' PARTNERS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE, INCLUDING ANY MINIMUM UPLOAD OR DOWNLOAD SPEEDS. THE SERVICE IS DISTRIBUTED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS OF INFORMATIONAL CONTENT, NON-INFRINGEMENT OR OTHERWISE, EXCEPT THE FOREGOING SHALL NOT APPLY IN STATES WHERE IT IS PROHIBITED. MERCURY BROADBAND EXPRESSLY DISCLAIMS ANY



REPRESENTATION OR WARRANTY THAT THE SERVICE WILL BE ERROR-FREE, SECURE, OR UNINTERRUPTED OR OPERATE AT ANY MINIMUM SPEED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY MERCURY BROADBAND OR ANY OF MERCURY BROADBAND'S PARTNERS SHALL CREATE A WARRANTY; NOR SHALL YOU RELY ON ANY SUCH INFORMATION OR ADVICE. BECAUSE MERCURY BROADBAND PROVIDES SUBSCRIBERS WITH ELECTRONIC ACCESS TO THE CONTENT AVAILABLE ON THE INTERNET, WE CANNOT AND DO NOT WARRANT THE ACCURACY OF ANY OF THE INFORMATION YOU OBTAIN THROUGH THE SERVICE. WE SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM, OR FROM ANY ATTEMPT TO REMOVE, ANY COMPUTER VIRUS OR OTHER HARMFUL FEATURE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU TO THE EXTENT SUCH EXCLUSION IS NOT ALLOWED BY APPLICABLE LAW. THE LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU ALSO MAY HAVE OTHER RIGHTS THAT VARY BY JURISDICTION.

## **LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER MERCURY BROADBAND NOR ANY OF MERCURY BROADBAND'S PARTNERS, SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR OUT OF ANY BREACH OF ANY REPRESENTATION OR WARRANTY. WITHOUT IN ANY WAY LIMITING THE FOREGOING, IF FOR ANY REASON, BY OPERATION OF LAW OR OTHERWISE, ANY PORTION OF THE FOREGOING LIMITATION OF LIABILITY SHALL BE VOIDED, THEN IN SUCH EVENT MERCURY BROADBAND' MAXIMUM, SOLE, AND EXCLUSIVE LIABILITY AND THE LIABILITY OF MERCURY BROADBAND' PARTNERS SHALL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO MERCURY BROADBAND BY YOU FOR SERVICE DURING AND FOR A PERIOD OF TIME COMMENCING UPON THE OCCURRENCE OF SUCH ERROR, DEFECT OR FAILURE AND CEASING UPON THE DISCOVERY OF SUCH, IN WHOLE OR IN PART; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL SUCH PERIOD OF TIME EXCEED THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE WHICH SUCH ERROR, DEFECT OR FAILURE IS FIRST DISCOVERED IN WHOLE OR IN PART.

## **Applicability and Exceptions**

The foregoing exclusions or limitations of liability apply regardless of any allegation or finding that a remedy failed of its essential purpose, regardless of the form of action or theory of liability (including, without limitation, negligence) and even if Mercury Broadband or others were advised or aware of the possibility or likelihood of such damages or liability. The foregoing shall not apply in states where such exclusions are prohibited.

## **Service Interruptions**

Service may be interrupted from time to time for a variety of reasons. We are not responsible for

any interruptions of Service that occur due to acts of God (including weather), power failure or any other cause beyond our reasonable control. However, because we value our subscribers, for an interruption of a significant length of time that is within our reasonable control, upon your request we may provide what we reasonably determine to be a fair and equitable adjustment to your account to make up for the Service interruption. THIS WILL BE YOUR SOLE REMEDY AND OUR SOLE DUTY IN SUCH CASES. You acknowledge and agree that the Service is not intended to be, and should not be used as, your “life-line” telecommunications service.

## **Indemnity**

You agree to indemnify, defend and hold us harmless against all claims, liability, damages, costs and expenses, including but not limited to reasonable attorney fees, arising out of or related to any and all use of your account. This includes, without limitation, responsibility for all consequences of your (or that of any user of your account) violation of this Agreement or placement on or over, or retrieval from or through, the Service of any software, file, information, communication or other content and all costs incurred by us in enforcing this Agreement against you.

## **Third Party Beneficiaries**

The provisions of this Section 10 are for the benefit of us, and our respective contractors, information or content providers, service providers, licensors, employees and agents; and each shall have the right to assert and enforce such provisions directly on its own behalf. Other than as expressly stated in this Agreement, this Agreement shall not be deemed to create any rights in third parties.

## **General**

### **Limits on Transfers**

Unless otherwise agreed in writing, your right to use the Service, or to designate other users of your account, is not transferable and is subject to any limits established by us.

### **Applicable Law**

This Agreement and all of the parties respective rights and duties, including, without limitation, claims for violation of state consumer protection laws, unfair competition laws, and any claims in tort shall be governed by the laws of the state in which you receive the Services and applicable federal law. Any such controversy or claim shall be settled exclusively by arbitration, and administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitrator will be an expert in the field of Internet services or other appropriate subject matter of the dispute. The arbitrator’s award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. There shall be no class action arbitration pursuant to this Agreement. Any cause of action brought by you,

or by users of your account, with respect to the Service or this Agreement must be instituted within one year after the claim or cause of action has arisen or be barred. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and it is acknowledged that this is a services contract and not a contract for the sale of goods.

## **Notices, Disclosures and Other Communications**

Where notification by Mercury Broadband is contemplated by or related to this Agreement, notice may be made by any reasonable means, including, but not limited to, e-mail or publication over the Service. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial and administrative proceedings relating to or based upon this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You must promptly notify us of any change in your e-mail or postal address in writing or electronically at support@mercurybroadband.com.

## **“Force Majeure”**

Neither party will be liable to the other party for any failure of, or delay in, its performance hereunder due to causes beyond its reasonable control, including without limitation, acts of God; catastrophic phenomena such as fire, flood, drought, earthquake, or other natural calamity; acts of government, war, civil commotion, insurrection, riot or revolution, strike, work stoppage or slowdown, lockout or other labor dispute; lack or shortage of, or inability to obtain, any labor, machinery, materials, fuel, supplies or equipment from normal sources of supply; weather, sun spots, or other electronic, electro-magnetic, atmospheric or other condition affecting transmission; damage or destruction to plant and/or equipment; transmission failures; or any other accident, condition, cause, contingency or circumstances within or without the United States beyond a party's reasonable control (collectively and individually, “Force Majeure”).

## **Construction and Delegation**

Neither the course of conduct between parties nor trade practice shall act to modify the provisions of this Agreement. We may authorize or allow our contractors and other third parties to provide services necessary or related to making the Service available and to perform obligations and exercise our rights under this Agreement, and we may collect payment on their behalf, if applicable. The provisions of any Sections of this Agreement, which by their nature should continue, shall survive any termination of this Agreement.

## **Miscellaneous**

If any term of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, it shall be construed in such a way as to eliminate the offending aspects while still giving as much effect as possible to the intentions of such term. If this cannot be done and the entire term is invalid, illegal or unenforceable and cannot be so repaired, then the term shall be considered to be stricken from this Agreement as if it had not been included from the

beginning. In any such case, the balance of this Agreement shall remain in effect in accordance with its remaining terms notwithstanding such invalid, illegal or unenforceable term. We may enforce or decline to enforce any or all of the terms of this Agreement in our sole discretion. In no event shall we be required to explain, comment on, suffer liability for or forfeit any right or discretion based on its enforcement, non-enforcement or consistency of enforcement of these terms. Captions used in this document are for convenience only and shall not be considered a part of this Agreement or be used to construe its terms or meaning.

### **Assignment of Account**

We may sell, assign, pledge or transfer your account or an interest in your account to a third party without notice to you. In the absence of a notice of such sale or transfer, you must continue to make all required payments to us in accordance with your statement.

### **Entire Agreement**

This Agreement, as well as the additional online documents specifically incorporated as a part of this Agreement, constitutes the entire and only agreement with respect to its subject matter between you and us, applicable also to all users of your account. This Agreement supersedes all representations, proposals, inducements, assurances, promises, agreements and other communications with respect to its subject matter except as expressly set forth in this document.