



## Atlantic Broadband Phone Subscriber Agreement

This Subscriber Agreement (“Agreement”) sets forth the terms and conditions under which Atlantic Broadband (Finance) LLC, and its applicable operating subsidiary (“Atlantic Broadband” or the “Company”) will provide subscribers (“Customer”, “you,” “your” or “Subscriber) Atlantic Broadband Phone Service (“Services” or “Service”) and equipment used in connection with the Services (“Atlantic Broadband Equipment”) at your business premises (“Premises”).

### **1. Agreement**

BY SIGNING UP FOR, ACTIVATING, USING OR PAYING FOR THE SERVICES, YOU AGREE TO THE PRICES, TERMS, AND CONDITIONS SET FORTH IN THIS AGREEMENT AND THE PRICES CHARGES, TERMS AND CONDITIONS WHICH ATLANTIC BROADBAND HAS POSTED OR MAY IN THE FUTURE POST ON ITS WEBSITE, [www.atlanticbb.com/business](http://www.atlanticbb.com/business) ALL OF WHICH ARE INCORPORATED HEREIN BY REFERENCE. IF YOU DO NOT AGREE TO THE PRICING OR TO ANY TERMS OR CONDITIONS, CANCEL THE SERVICES IMMEDIATELY BY CALLING US ON OUR CUSTOMER SERVICE LINE DURING NORMAL BUSINESS HOURS.

Atlantic Broadband reserves the right to change the rates, terms, and conditions of this Agreement and its online pricing lists, and it may discontinue or modify any or all other aspects of the Service, in its sole discretion, at any time by posting changes online at [www.atlanticbb.com/business](http://www.atlanticbb.com/business). Your continued use of Atlantic Broadband Phone Service after changes are posted online constitutes your acceptance of this Agreement as modified by the posted changes. The updated, online version of this Agreement shall supersede any prior version of this Agreement. Because Atlantic Broadband may, from time to time, notify you about important information regarding the Service, this Agreement, and related matters electronically and/or by mail, you agree to check your postal mail, email, and all postings on Atlantic Broadband’s website at [www.atlanticbb.com/business](http://www.atlanticbb.com/business) (or at an alternative website if we so notify you) regularly and to bear the risk of failing to do so.

### **2. Service Provided**

The Service provides a voice connection to the public switched telephone system using Voice over Internet Protocol (“VoIP”) technology, together with various other related features and functionalities. The Service includes up to eight lines

depending on Customer's service and equipment configuration, Customer may subscribe to: the Unlimited Plan, which includes unlimited local calls, unlimited in-state calls, and unlimited long distance calls throughout the U.S, Canada and Puerto Rico along with a number of calling features for a flat monthly fee, or the Unlimited Local Plan, which includes unlimited calling in your local calling area only and per minute charges for calls to the US, Canada and Puerto Rico. For both plans, all other international calls are available only on per minute metered rates. For details of the calling plans, features and optional services and current rates, refer to [www.atlanticbb.com/business](http://www.atlanticbb.com/business). A standard White Pages business listing is included in the Service.

### **3. Subscription**

You warrant that you are at least 18 years of age, that you are authorized to enter into this agreement on behalf of yourself or your business, and that the Subscriber information that you have provided, and will provide, to Atlantic Broadband during the term of this Agreement, including without limitation, your legal name, the legal name of your business, address, telephone number(s), and payment data, if applicable (e.g. credit card numbers and expiration dates and bank account information) is accurate, complete, and current. You agree to promptly notify Atlantic Broadband, in accordance with the terms and conditions of this Agreement if there is any change in the information that you have provided to us. Failure to provide and maintain accurate information constitutes a breach of this Agreement.

**3.1 Lawful Use:** You agree that the Service and the Atlantic Broadband Equipment will only be used by you or by any other person, whether authorized by you or not, for lawful purposes and agree that it will not be used for transmitting or receiving any communication or material that may constitute a crime, give rise to civil liability, or otherwise violate any applicable local, state, or federal law or regulation. You understand that Atlantic Broadband reserves the right to act immediately and without notice to you to terminate or suspend the Service and/or to remove from the Service any information transmitted by you or to you if Atlantic Broadband (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 Atlantic Broadband's ability to provide the Services to you or others; (iii) determines that such information or use interferes with the rights of other subscribers; or (iv) reasonably believes that such use or information may violate any law or regulation. You understand that Atlantic Broadband's action or inaction does not constitute review or approval of your or any other user's use or information.

**3.2 No Resale or Excessive Use:** You understand and agree you are prohibited from reselling the Service or the Atlantic Broadband Equipment or using them for dial-up Internet service to a long distance number, auto-dialing, international dial back, continuous or extensive calling forwarding, telemarketing, fax broadcasting, fax blasting, or any use inconsistent with normal call patterns. If we determine, in our sole discretion, that the Service or Atlantic Broadband Equipment is being used for any of the

aforementioned activities or in the event of an excessive number of calls or minutes of use, we reserve the right to terminate the service immediately and without notice or to assess additional charges for each month in which excessive usage occurred. You understand that Atlantic Broadband will set limits, in its sole discretion, on the amount and length of time voicemail messages may be saved and that neither Atlantic Broadband nor any of its third party providers will be liable for any lost, erased or non-delivered voicemail messages. Either you or Atlantic Broadband may cancel or terminate your Service at any time, subject to the terms and conditions of any term commitment you may have made or promotional conditions you accepted when you subscribed to the Service, in which case an Early Termination Charge may apply (see Section 11 (g.) below).

#### **4. Atlantic Broadband Equipment And Other Customer Premises Equipment**

**4.1 Atlantic Broadband Equipment:** The Company will provide a Terminal Adapter (the “Atlantic Broadband Equipment”) to access the Service. The monthly rental fee is listed on the price list posted at [www.atlanticbb.com/business](http://www.atlanticbb.com/business). The Atlantic Broadband Equipment shall, at all times, remain the property of Atlantic Broadband or its designee. You agree to return the Atlantic Broadband Equipment to Atlantic Broadband if your Service is terminated or cancelled by either you or Atlantic Broadband. You agree not to sell, transfer, lease, encumber, or assign all or any part of the Atlantic Broadband Equipment to any third party. You agree to pay Atlantic Broadband the then-current value of the Equipment, up to \$300, if it is lost, stolen, unreturned, damaged (excluding normal wear and tear), sold, transferred, leased, encumbered, assigned or if for any other reason you fail to return the Atlantic Broadband Equipment at the end of your Service. You further agree not to tamper with the Atlantic Broadband Equipment or change its identifier or electronic serial number or address. You acknowledge that the Atlantic Broadband Equipment is merely a means for Atlantic Broadband to provide you the Service and that Atlantic Broadband may remove or change it at Atlantic Broadband’s discretion. You agree not to use the Atlantic Broadband Equipment for any purpose other than to use the Service in accordance with this Agreement. The Service will only work with the Atlantic Broadband Equipment: Customer may not supply its own Terminal Adapter.

**4.2 Relocation:** You will not relocate the Atlantic Broadband Equipment. At your request, we may relocate the Atlantic Broadband Equipment within the Premises for an additional charge, at a time agreeable to you and to us. If you change service location, you must contact Atlantic Broadband for information on whether the Atlantic Broadband Equipment and Services can be transferred to your new location and what the relocation will cost. If you wish to disconnect the Services, you must contact Atlantic Broadband for information on the necessary procedures. If you violate this Agreement by moving the Atlantic Broadband Equipment from the physical location where it was originally installed, emergency 911/E911 communications may be misdirected to an incorrect emergency services responder or the emergency responder may be directed to the wrong address. See Section 10.1 on page 12.

**4.3 Power Source and Battery Back-Up:** The Service does not have its own power source and will not work unless the Atlantic Broadband Equipment is connected to an independent power supply (e.g. active wall socket) provided by the Customer. Some models of the Atlantic Broadband Equipment have installed backup battery, which may supply power for some limited period of time for phone service in the event of a power outage at the Customer's Premises. Under certain circumstances, including if the electrical power and/or cable network or facilities of the Company are not operating, the Service, including the ability to access emergency 911, alarm and security services, and medical monitoring services, will not be available. The Company will not be responsible for any losses or damages arising as a result of the unavailability of the Service — refer to Section 16 relative to failure of service. In the event of a power failure you may be required to reset your Atlantic Broadband Equipment or other Atlantic Broadband equipment prior to utilizing the Service.

**4.4 Access to Customer's Premises:** Customer authorizes the Company and its employees, agents, contractors, and representatives to enter Customer's business Premises at which the Service will be accessed (the "Premises") in order to install, maintain, inspect, repair and remove the Atlantic Broadband Equipment and the Service, and any Company provided equipment used in connection with the Service. The Company will arrange access at times agreeable to the Customer. Customer warrants and represents that: Customer is the owner of the Premises or Customer has permission of the owner and the authority to enter into this Agreement and to grant access to the Premises. If a cross connect or other additional premises work is required, Company will provide an additional form.

**4.5 Customer Premises Equipment ("CPE"):** In order to use the Service, you must also provide certain customer premise equipment, such as telephone handsets or equivalent, telephone inside wire and outlets, and a powered electrical outlet. Atlantic Broadband does not provide CPE as part of the Service. You represent that Customer either owns the CPE or has the right to use it in connection with the Service. Atlantic Broadband shall have no obligation to provide, maintain, or service the CPE that you provide. Atlantic Broadband makes no representation that any particular type or brand of CPE, such as PBX systems, key systems, facsimile, credit card readers, data terminals, alarm or other security systems will operate with the Service or Equipment: please refer to Section 8 for limitations.

**5. Local Number Portability:** In order to transfer, or "port" your existing telephone number to Atlantic Broadband Phone Service, you must authorize Atlantic Broadband as your local, long distance, and international call carrier. Until your number is successfully ported, you should not cancel your telephone service with your current provider or you may lose the ability to port your number. You will be notified by Atlantic Broadband when your number has been successfully ported. You understand that, on the date your telephone number is ported from your existing telephone provider, you will no longer be able to receive telephone service on that line. You must have Atlantic Broadband Equipment and Atlantic Broadband Phone Service installed as of that date to avoid

interruption to your service. Your ported number will be your “Primary Number”. Local number portability may not be available in all areas and the Company makes no guaranty or warranty that you will be able to transfer, port, or retain your existing telephone number.

**6. Phone Number Assignment and Virtual Telephone Numbers:** If you do not port your existing telephone number, a new phone number will be assigned to you based on your Service Address. The new phone number assigned will be your “Primary Number”. Once the number is assigned to you, you will generally not be able to change numbers except in extraordinary circumstances (e.g., harassment, etc.) as determined by Atlantic Broadband in its sole discretion.

**7. Third Party, Collect Calls, 900 or 976 Calling:** The Service cannot be used to make or accept third party calls, accept collect calls or place pay-per-calls — 900/976, or other pay-per-call services.

**8. Alarm and Security Systems, Data Terminals, Credit Card Readers and Other PBX Systems, Key Systems Communications Equipment:** By using the Service and thereby agreeing to this Agreement you hereby waive any claim against Atlantic Broadband and Atlantic Broadband’s third party providers in connection with your Atlantic Broadband Phone Service and Atlantic Broadband Equipment, for interference with or disruption of such PBX alarm or other security systems and any and all other communications or electronic equipment due to your Atlantic Broadband Phone Service and Atlantic Broadband Equipment.

**9. Use of TDD or TTY Equipment:** The Service and Atlantic Broadband Equipment is compatible with TDD or TTY in common use and 711 access to Telecommunications Relay Service (“TRS”) providers. TRS providers are required to route correctly 911 and E911 emergency calls to the correct Public Safety Answering Point (PSAP). Atlantic Broadband makes no representation about and takes no responsibility for the ability of the TRS provider to route and call including emergency 911/E911 services correctly.

## **10. Emergency 911 and E911 Services**

Atlantic Broadband has provided to you a separate Acknowledgement Form that confirms your receipt of information about 911 services, and Atlantic Broadband has provided you with stickers which you can affix to phone handsets relative to 911 dialing.

**10.1 Correct Address:** If you do not provide the correct address when you register for the Services or if you relocate your Atlantic Broadband Equipment to a new address and

do not register the new address with Atlantic Broadband, 911/E911 may fail in two ways: (i) 911/E911 calls may be misdirected to the wrong emergency authorities, and (ii) emergency authorities will be given the wrong address for the origin of your E911 calls. **DO NOT RELOCATE THE ATLANTIC BROADBAND EQUIPMENT FOR ANY REASON WITHOUT CONTACTING ATLANTIC BROADBAND** and following the procedures outlined in Section 4.2 on page 11.

**10.2 Service Outage, Service Suspension, Power Failure or Disruption:** 911/E911 will not function in the event of a power failure that extends beyond exhaustion of the Atlantic Broadband Equipment battery (if any) or other disruption in Service, such as termination or suspension of your account or service by Atlantic Broadband for non-payment or your breach of this Agreement.

**10.3 Automated Number Identification:** If Customer has Call Forwarding, Do Not Disturb, or other features programmed and in use at the time Customer dials a 911 call, and Customer's 911 call is interrupted, the emergency dispatcher may not be able to call Customer back at the phone from which Customer dialed the call. Existing emergency response systems are not always technically capable of receiving and/or passing routing information properly. Accordingly, emergency personnel may not be able to identify your phone number in order to call you back if your call is not completed, dropped or disconnected, or if you are unable to speak to tell the emergency dispatcher or operator your phone number and/or if the Service is not operational for any reason.

## **11. Charges and Payment**

**11.1 Fees and Charges:** Customer will pay all charges and fees for the Service, including applicable monthly service fees, usage charges, directory and operator service charges, charges for the use of the Atlantic Broadband Equipment, installation charges, charges for service calls and other charges, and all applicable federal, state and local fees and taxes. Customer acknowledges receipt of the schedule of applicable fees and charges delivered on the date of installation of the Service and this information is available online at [www.atlanticbb.com/business](http://www.atlanticbb.com/business). The Company will have the right from time to time to change the amount of fees and charges and/or its method of billing for services at its discretion. Such changes may include imposing fees and charges for new services or features. Monthly service, equipment and other fees will be payable monthly in advance while usage based charges (e.g. International calls) will be billed in arrears. Installation and other charges will be billed according to the Company's then current billing policies.

**11.2 Bills:** Atlantic Broadband will mail a summary billing statement to you monthly. Call detail and other itemization is available only online at [www.businessphonenumbermanager.atlanticbb.net](http://www.businessphonenumbermanager.atlanticbb.net). Call detail is available only on a rolling two month basis: Customer should download call detail records monthly for a more permanent record.

**11.3 Credit Cards; Direct Debit/Electronic Funds Transfer (EFT):** Subject to acceptance by the Company, Customer may opt to authorize the Company to charge all amounts payable by Customer to the Company via customer's credit card, direct debit, or

electronic funds transfer. By choosing either of these options, Customer authorizes the Company to continue charging, debiting or transferring amounts due for all monthly fees (including, without limitation, monthly service fees and equipment charges, as well as applicable taxes and fees) payable to the Company, and any other charges incurred by Customer and Payable to the Company pursuant to this Agreement. Monthly service fees and equipment fees may be charged up to thirty (30) days in advance of the first day of the month to which the charges relate. You agree to inform Atlantic Broadband immediately of any change in your credit card (including without limitation, a change in expiration date) or bank account information.

**11.4 Late Payments or Failure to Pay:** If payment is not received by the due date stated on your invoice, late fees and/or collection charges may be assessed against you and your Service may be suspended, restricted, cancelled, or terminated. Service suspension, restriction, or termination could result in loss of your telephone number associated with the Service. All such charges, including all applicable taxes, are your sole responsibility. You may be required to pay a reconnect fee, activation fee, and/or a security deposit, in addition to all past due charges, before the Service is reconnected.

**11.5 Minutes of Use Rounded Up:** For domestic long distance calling, per minute charges are billed in 10 second increments. Any fractional minute of use of domestic long distance will be rounded up to the next ten second increment at the end of each call for usage and billing purposes. Toll free 800 and international calling fractional minutes are rounded up to the next full minute.

**11.6 Government Charges and Regulatory Cost Recovery Fee:** Certain government fees, for instance a Universal Service Fee, are specifically itemized on your bill. In addition, Atlantic Broadband may assess a Regulatory Cost Recovery Fee to help defray the costs incurred by Atlantic Broadband and its third party providers in complying with additional obligations and charges imposed by state and federal statutes, rules and regulations: it does not represent a government required pass-thru charge.

**11.7 Early Termination Charges:** From time to time the Company may elect to offer promotional plans or discounts which require customer to commit to a specific term. If the Customer's applicable service is disconnected prior to the end of the committed term and the disconnect is due to any reason other than from a breach of the Agreement by Atlantic Broadband, the Customer shall pay an early termination charge as specified in the promotional materials and/or the Business Service Agreement Form specifying your term service.

**11.8 Collection Costs:** If Atlantic Broadband is required to use a collection agency or attorney to collect moneys owed by you or to assert any other right Atlantic Broadband may have against you, you agree to pay the reasonable costs of collection or other action. These costs include, but are not limited to, any collection agency's fees, reasonable attorney's fees, and arbitration or court costs.

**11.9 Fees Not Considered Interest or Penalties:** Any late fees and related fees, charges, and assessments due to late payment or nonpayment are not interest, credit service charges, finance charges or penalties. Rather, they are liquidated damages intended to be a reasonable advance estimate of Atlantic Broadband's costs resulting from late payments

and nonpayment. These costs will be difficult to calculate or to predict at the time such late fees and related fees, charges, and assessments are set, because Atlantic Broadband cannot know in advance (i) whether you will pay for the Service on a timely basis; (ii) if you do pay late, when you will actually pay; and (iii) what costs Atlantic Broadband will incur because of your late payment or nonpayment.

**11.10 Billing Errors/Credit Reports:** Subject to applicable law, you must notify Atlantic Broadband of any billing errors or other requests for refund within sixty (60) days of the date on the invoice. You understand that, from time to time, Atlantic Broadband may inadvertently fail to bill you for charges or fees incurred by you in connection with your use of the Service. In such an event, you agree to pay any such charges or fees when billed by Atlantic Broadband, without regard to when those charges or fees were incurred by you.

**11.11 Credit Information:** You authorize Atlantic Broadband to make inquiries and to receive information about your credit history with others, enter this information in your file, and disclose this information to credit reporting agencies and similar third parties.

## **12. CUSTOMER INFORMATION AND PRIVACY**

Atlantic Broadband will respect your privacy interests, including your right to limit disclosure of certain information to third parties in the manner described in the Atlantic Broadband Phone Service Privacy Notice and CPNI Policy. Atlantic Broadband will deliver a copy of the CPNI policy to you annually as long as you receive Atlantic Broadband Service. It is also available at [www.atlanticbb.com/business](http://www.atlanticbb.com/business). You acknowledge that you have received Atlantic Broadband's Phone Service Privacy Notice and CPNI Policy and that you expressly consent to the terms of those policies. Atlantic Broadband reserves the right to amend its policies from time to time.

## **13. Theft of Service, Limitations of Use, and Intellectual Property Rights**

**13.1 Obligation to Report Theft of Service:** You are liable for all use of the Service using your Atlantic Broadband Equipment and for any and all stolen Service or unauthorized use of the Service. You agree to notify Atlantic Broadband immediately in writing or by calling Atlantic Broadband's Customer Service line during normal business hours if you become aware at any time that the Atlantic Broadband Equipment is stolen or that your Service is being stolen or used without your authorization. If you fail to notify Atlantic Broadband in a timely manner, your Service may be terminated without notice, with additional charges to you.

**13.2 License and Limitations on Use:** The Service and Atlantic Broadband Equipment, including any firmware or software embedded in the Atlantic Broadband Equipment or used to provide the Service, are protected by trademark, copyright, and/or other intellectual property laws and international treaty provisions. You are granted a revocable license to use such firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. You acknowledge and

understand that you are not granted any other license to use the firmware or software embedded in the Atlantic Broadband Equipment or used to provide the Service. You expressly agree that you will use the Atlantic Broadband Equipment exclusively in connection with the Service. You shall not reverse, compile, disassemble, or reverse-engineer or otherwise attempt to derive the source code from the binary code of the firmware or software. If you decide to use the Service through an interface device not provided by Atlantic Broadband, which Atlantic Broadband reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights to use that interface device with the Service, including all software and firmware licenses. You will indemnify and hold harmless Atlantic Broadband against any and all liability arising out of your use of such interface device with the Service.

**13.3 Protection of Intellectual Properties:** All Atlantic Broadband Service information, documents, and materials on Atlantic Broadband's websites are protected by trademark, copyright, or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names of Atlantic Broadband ("intellectual properties") are, and shall remain, the exclusive property of Atlantic Broadband, and nothing in this Agreement shall grant you the right or license to use any of Atlantic Broadband's intellectual properties.

## **14. Termination, Suspension, and Transfer of Service**

**14.1 Termination of Service by Subscriber:** You may terminate this Agreement for any reason at any time by providing notice of termination to Atlantic Broadband by calling Atlantic Broadband's Customer Service. All applicable fees and charges will accrue until the date of termination, including any applicable Early Termination Charges.

**14.2 Suspension or Termination of Service:** Atlantic Broadband may suspend Service or terminate this Agreement for any reason. If Atlantic Broadband suspends Service or terminates this Agreement because you failed to comply in full with any term of this Agreement, Atlantic Broadband may do so at any time with or without notice to you.

**14.3 Obligation Upon Termination of Agreement:** You agree that upon termination of this Agreement you will (i) immediately cease use of the Service and the Atlantic Broadband Equipment; (ii) pay in full all applicable charges; and (iii) return the Atlantic Broadband Equipment to Atlantic Broadband.

**14.4 Switching to Another Provider:** You may transfer your telephone number from Atlantic Broadband to another service provider. In order to do so, you must terminate Service and place the transfer order through your new service provider (and not through Atlantic Broadband). Atlantic Broadband will release your number to your new service provider, provided that (i) your new service provider requests the transfer upon termination of your account; (ii) your new service provider is willing to accept transfer of the telephone number without delay or charge; (iii) you have paid all outstanding charges to Atlantic Broadband; and (iv) transfer of our existing telephone number to the new service provider will not, in Atlantic Broadband's view, violate applicable law, regulations, processes, and procedures.

## **15. Limited Warranty**

**15.1 Survival:** All representations, warranties, indemnifications and limitations of liability contained in this Agreement will survive the termination of this Agreement, as well as any other obligations of the parties hereunder which, by their terms, would be expected to survive such termination or which relate to the period prior to termination.

**15.2 Limited Warranty:** THE REQUIRED EQUIPMENT AND THE SERVICE, INCLUDING E911 DIALING, ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. NEITHER THE COMPANY NOR ITS AFFILIATES AND UNDERLYING SERVICE PROVIDERS WARRANT THAT ANY CONNECTION TO, TRANSMISSION OVER, OR RESULTS OF THE USE OF THE ATLANTIC BROADBAND EQUIPMENT OR THE SERVICE WILL MEET CUSTOMER’S REQUIREMENTS OR WILL PROVIDE UNINTERRUPTED USE OR WILL OPERATE AS REQUIRED, UNINTERRUPTED OR ERROR-FREE. CUSTOMER’S SOLE REMEDY FOR SERVICE INTERRUPTION WILL BE LIMITED TO A PRORATED CREDIT UPON REQUEST, ONLY IN THE EVENT OF COMPLETE FAILURE OF THE SERVICE DUE TO A TECHNICAL MALFUNCTION CAUSED BY THE COMPANY FOR TWENTY-FOUR (24) CONSECUTIVE HOURS OR MORE. TO QUALIFY FOR SUCH CREDIT, CUSTOMER MUST REQUEST THE CREDIT FROM THE COMPANY WITHIN THIRTY (30) DAYS AFTER THE FAILURE. CREDITS WILL BE APPLIED ONLY AGAINST FUTURE FEES PAYABLE BY CUSTOMER FOR THE SERVICE. WITHOUT LIMITING THE FOREGOING, NO CREDITS WILL BE ISSUED FOR ANY OTHER FAILURES DUE TO ANY OTHER CAUSES; FOR EXAMPLE, EVENTS SUCH AS FORCE MAJEURE OR THE INABILITY TO ACCESS THE SERVICE FOR REASONS OTHER THAN A TECHNICAL FAILURE CAUSED BY THE COMPANY WILL NOT ENTITLE SUBSCRIBER TO ANY CREDIT. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF PERFORMANCE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED.

## **16. Limitations of Liability**

IN NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (INCLUDING WITHOUT LIMITATION TORT, CONTRACT, AND OTHERWISE), WILL ATLANTIC BROADBAND OR ITS AFFILIATES AND UNDERLYING SERVICE PROVIDERS HAVE ANY LIABILITY TO CUSTOMER OR TO ANY PERSON OR ENTITY FOR (I): ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES AND PERSONAL INJURIES (INCLUDING DEATH), RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE

ARISING IN CONNECTION WITH, THE ORDERING, PROVISIONING, INSTALLATION, MAINTENANCE, FAILURE, REMOVAL OR USE OF THE SERVICE OR REQUIRED EQUIPMENT OR CUSTOMER'S RELIANCE ON OR USE OF THE REQUIRED EQUIPMENT OR THE SERVICE, INCLUDING E911 DIALING, INCLUDING WITHOUT LIMITATION ANY MISTAKES, OMISSIONS, INTERRUPTIONS, TELEPHONE OR OTHER HARDWARE OR SOFTWARE FAILURE OR MALFUNCTION, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE REQUIRED EQUIPMENT OR THE SERVICE, REGARDLESS OF WHETHER OR NOT ATLANTIC BROADBAND HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (II): ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, ANY ALLEGATION, CLAIM, SUIT OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE REQUIRED EQUIPMENT OR THE SERVICE BY CUSTOMER OR ANY OTHER PERSON OR ENTITY INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY. IN ADDITION TO, AND WITHOUT LIMITING ANY OTHER LIMITATION OF LIABILITY CONTAINED HEREIN, THE COMPANY WILL HAVE NO LIABILITY WHATSOEVER AS THE RESULT OF THE LOSS OF ANY CUSTOMER FILES, MESSAGES, NAMES OR ADDRESSES OR OTHER DATA OF ANY NATURE RESULTING FROM THE DELETION OF SUCH DATA UPON TERMINATION OF THIS AGREEMENT.

**16.1 Customer's Hardware and CPE:** Customer understands that the installation, use, inspection, maintenance, repair and removal of the Atlantic Broadband Equipment and certain Customer Premises Equipment used in connection with the Service may result in service outage or potential damage to Customer's telephone and other Customer Equipment. Except for gross negligence or willful misconduct by the Company, neither the Company nor any of its affiliates and underlying service providers will have any liability whatsoever for any damage, loss or destruction to the CPE, including, without limitation, Customer's telephones and peripheral equipment. In the event of such gross negligence or willful misconduct by the Company, the Company will pay for the repair or replacement of the damaged parts UP TO A MAXIMUM OF \$500 and Customer will accept such payment as Customer's sole remedy relating to such activity.

**16.2 Not Liable For Third Parties:** Customer acknowledges that the Service may connect to or utilize services, equipment and infrastructure, content and other components licensed from or otherwise provided by independent third parties. The Company is not responsible for and has no liability whatsoever for the performance (or non-performance) of any services, equipment, infrastructure or content of third parties. Additionally, services, equipment, infrastructure and content that are not provided by the

Company are not the responsibility of the Company, and the Company will have no liability with respect to such services, equipment, infrastructure and content. All questions concerning third-party services, equipment, infrastructure and content must be addressed to the creators or providers of such services, equipment, infrastructure and content. The Company does not endorse or warranty any third-party products, services or content that are distributed or advertised via the Service.

**16.3 Limit of Liability for Directory Assistance, White Pages, Yellow Pages or Other Directory Errors:** Company's liability arising from errors in or omissions of directory listings as a result of the company's negligence, shall be limited to and satisfied by a refund not exceeding the amount of any charges associated with the directory listing in which the error or omission occurs. Company, in accepting listings as prescribed by applicants or customers, will not assume responsibility for the result of the publication of such listings in directories, nor will the company be a party to controversies arising between customers or others as a result of such publication.

**16.4 Sole Remedy:** YOU FURTHER ACKNOWLEDGE AND AGREE THAT IN ANY EVENT, ATLANTIC BROADBAND'S CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS RELATING TO THE SERVICE AND/OR THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF THE FLAT RATED PORTION OF YOUR BILL FOR SERVICE PAID DURING THE IMMEDIATELY PRECEDING TWELVEMONTH PERIOD. YOU HEREBY RELEASE ATLANTIC BROADBAND FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THIS LIMITATION. ATLANTIC BROADBAND IS ALSO NOT LIABLE FOR ANY COSTS OR DAMAGES ARISING FROM OR RELATED TO YOUR BREACH OF THIS AGREEMENT. YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT IS AS EXPRESSLY SET FORTH HEREIN.

## **17. Management and Maintenance of the Service**

Subject to applicable law and to the limitations of liability set forth in this Agreement, the Company reserves the right, in its sole discretion and without any obligation to Customer, to undertake any activities it deems necessary to test, modify, update, manage, inspect, maintain, repair, or monitor the Service and its infrastructure and all of its related components. This may include, but is not limited to, activities relating to administration, system security and intrusion detection, technical performance, and monitoring Customer compliance. These rights are in addition to and do not limit any other rights of the Company and/or its parent or affiliated entities.

## **18. Entire Agreement**

This Agreement combined with the rates of your particular service plan and any term commitments and early termination charges associated with any promotion for your particular service plan, constitutes the entire agreement and understanding between you

and Atlantic Broadband with respect to its subject matter, and supersedes and replaces any and all prior written or oral agreements. Any change to this Agreement is only valid if signed by the President and CEO of Atlantic Broadband or if posted online at [www.atlanticbb.com/business](http://www.atlanticbb.com/business) by Atlantic Broadband. In the event that 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 its provisions shall remain in full force and effect. Nothing contained in this Agreement shall be construed to limit Atlantic Broadband's rights and remedies available at law or in equity. Atlantic Broadband's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement. This Agreement may not be assigned or transferred by you. This Agreement is freely assignable by Atlantic Broadband to third parties.

## **19. Survivability**

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 survive if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.