

# VALLEY FIBER TERMS AND CONDITIONS BETWEEN CUSTOMERS AND VALLEY FIBER

**Last Updated: April 12<sup>th</sup>, 2021**

## **1. Introduction**

READ THIS AGREEMENT CAREFULLY BEFORE USING VALLEY FIBER SERVICES

These Terms and Conditions constitute an agreement (this "Agreement") between Valley Fiber ("Valley Fiber", "we", "us" or "our") and each of our customers ("customer", "you" or "your"). This Agreement governs your purchase or rental and use of equipment and licensing of software and firmware from us and governs our provision of services to you and your use of those services.

YOU REPRESENT TO US THAT YOU HAVE THE AUTHORITY TO ENTER THIS AGREEMENT AND THAT YOU HAVE READ AND FULLY UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AND VALLEY FIBER AGREE THAT CHECKING THE 'I ACCEPT' BUTTON REPRESENTS YOUR ELECTRONIC SIGNATURE TO THIS AGREEMENT, AND YOU INTEND SUCH ACTION BY YOU TO AUTHENTICATE THIS DOCUMENT AND TO HAVE THE SAME FORCE AND EFFECT AS A MANUAL SIGNATURE.

You make this representation and agreement when you order equipment or services from us at our website or over the phone or through a retailer and each time you activate or use a service from Valley Fiber.

To the extent permissible by law, Valley Fiber may revise, amend, or modify this Agreement at any time and in any manner. Notice of any revision, amendment or modification will be posted on the Valley Fiber website, your account web page, in a newsletter, by email, by voicemail, by telephone or other communication permitted under applicable law. This Agreement may not be amended or modified by you.

THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION OF DISPUTES PROVISIONS THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS TO THE EXTENT PERMISSIBLE BY LAW (SEE SECTION 16 FOR MORE INFORMATION).

IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT PURCHASE, RENT, OR USE OUR EQUIPMENT OR SERVICES. BY PURCHASING, RENTING, OR USING OUR EQUIPMENT OR SERVICES, YOU CONSENT TO OUR COLLECTION, USE AND DISCLOSURE OF OUR PERSONAL INFORMATION IN ACCORDANCE WITH OUR PRIVACY POLICY.

## 2. Definitions

- a. "911 Dialing" means 911 emergency calls that you place from your home or office via certain Equipment, including a \*.
- b. "Basic Residential Service(s)" includes calling within Canada subject to (i) the acceptable residential usage limitations (see the *Residential Service Acceptable Use Policy*), (ii) the payment of applicable taxes and fees as set forth herein or otherwise provided to you by Valley Fiber, and (iii) the terms and limitations of this Agreement.
- c. "Bundled Residential Services" includes calling within Canada subject to (i) the acceptable residential usage limitations (see the *Residential Service Acceptable Use Policy*), (ii) any minimum initial term requirements of Other Service(s) as set forth herein or otherwise provide to you by Valley Fiber, (iii) payment of applicable taxes and fees as set forth herein or otherwise provide to you by Valley Fiber, and (iv) the terms and limitations of this agreement.
- d. "Commercial Service(s)" is for customers that exceed the acceptable small business use limits set forth in this Agreement (see the *Small Business Service Acceptable Use Policy*). Descriptions and providing of our Commercial Service are published on our website. Commercial Services are subject to payment of applicable taxes and fees as set forth herein or otherwise provided to you by Valley Fiber, and to the terms and limitations of this Agreement.
- e. "Content" includes email, text, photos, videos, games, music, graphics, sound, applications, and other materials that may be accessed or sent using certain Valley Fiber Equipment.
- f. "Equipment" refers to a base unit such as \* or other equipment offered through our website, or through our retailers or other approved third parties, whether or not branded as Valley Fiber products or third-party products. Descriptions of our Equipment and the prices for the Equipment are published on our website. The Equipment and prices may be modified without notice and are incorporated by reference into this Agreement.
- g. "High-Speed Internet" refers to an Internet connection capable of data speeds of at least 1 megabit per second in both the upstream and downstream direction.
- h. "Host" means an individual who is an identified employee, contractor, or agent of a Small Business Service customer to who the Customer assigns the right to host meetings via Valley Fiber Meetings. A Host may hold only one meeting at a time. A Host subscription may not be shared or used by anyone other than the individual assigned to be a Host.
- i. "Managed Wi-Fi" provides customers who have rented or purchased Managed Wi-Fi Access Point(s) with a hosted, Managed Wi-Fi service. Managed Wi-Fi is subject

to acceptable usage limitations (see the *Managed Wi-Fi Acceptable Use Policy*), payment of applicable taxes and fees as set forth herein or otherwise provide to you by Valley Fiber to the terms and limitations of this Agreement.

- j. "Non-Residential Service(s)" is for customers that exceed the acceptable residential use limits set forth in this Agreement (see the *Residential Service Acceptable Use Policy*). Descriptions and pricing of our Non-Residential Service are published on our website. Non-Residential Service is subject to payment of applicable taxes and fees as set forth herein or otherwise provided to you by Valley Fiber, and the terms and limitations of this Agreement.
- k. "Other Service(s)" are the additional enhanced features, services, and subscription packages for a one-time or annual or monthly fee and from time-to-time Valley Fiber may offer additional features, services, and packages. At any time, we may alter or eliminate such features, services, and packages. Our Other Services and Prices we charge for them (including any promotional pricing or trial or promotional periods), are subject to change from time to time without notice to the extent permitted by applicable law. Descriptions and providing of Other Services that appear on our website are incorporated into this Agreement.
- l. "Residential Services" are any combination of Basic Residential Service and Bundled Residential Service.
- m. "Reseller" means a third party authorized by Valley Fiber to provide and/or sell Services, Equipment, or both, such as a retailer, partner, distributor, wholesaler, reseller, value-added provider, dealer, agent, or other third-party provider.
- n. "Service(s)" are any of, or any condition of Basic Residential Service, Bundled Residential Service, Managed Wi-Fi, Non-Residential Service, Small Business Service, Commercial Service and Other Service. Descriptions of our Services and prices may be modified without notice and are incorporated by reference into this Agreement.
- o. "Small Business Service(s)" include calling to Canada and the United States subject to the applicable small business usage limitations (see the *Small Business Service Acceptable Use Policy*).

### 3. Customer Representations

You hereby represent and warrant:

- a. **Power and Authority:** You are of legal age and mental sufficiency to enter into this Agreement and are authorized to change or modify your telephone service with your local telephone company.
- b. **Alternative Access to 911:** If you do not maintain a wireline or wireless telephone service, you will not be able to call 911 if Valley Fiber is unavailable.

- c. **Accurate Information:** Your name, contact information, service address and all other information related to your Valley Fiber account is correct and up to date at all times.
- d. **Unacceptable Use:** You will not use the Valley Fiber Equipment and Services where a power, Internet, Service, or other outage may lead to damage, injury, or death, or to use the Valley Fiber Equipment and Services in an unacceptable, illegal, or prohibited manner that is in violation of our Acceptable Use Policies (see Section 8) and all other Valley Fiber policies and procedures defined herein.
- e. **Financial Responsibility:** You will pay for all charges for use of your Valley Fiber Equipment and Services, including the authorized and unauthorized use of your account.
- f. **Purchase or Rental of Equipment:** You have purchased or rented Equipment direct from Valley Fiber or through an authorized Reseller.
- g. **Risk of Loss:** You bear all risk of loss of, theft of, casualty to or damage to the Equipment from the time that it is shipped to you, whether purchased or rented, until the time (if any) that it is returned in accordance with this Agreement. If the Equipment is damaged, lost, or stolen you will no longer be able to use Valley Fiber Services and will be required to purchase or rent new Equipment.
- h. **Theft of Equipment or Service:** You shall notify us immediately, in writing or by calling our customer support line, if the Equipment is stolen or if you become aware at any time that your phone service is being stolen, fraudulently used, or otherwise used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the Equipment, the fraudulent use, or unauthorized use of Services. Failure to do so in a timely manner may result in the disconnection of your Equipment and additional charges to you. Until such time as we receive notice of the theft, fraudulent use, or unauthorized use, you will be liable for all costs and damages (including reasonable attorneys' fees) related to the fraudulent or unauthorized use of Equipment and Services, whether or not it involves stolen equipment. Valley Fiber reserves all of its rights at law and equity to proceed against anyone who uses the Equipment illegally or improperly.
- i. **Restrictions and Limits Apply:** You agree to the limits and restrictions on use of the Equipment and Services, as set forth herein.
- j. **High-Speed Internet Requirement:** You will, at your sole expense, maintain a High-Speed Internet connection of sufficient speed for use with our calling services.
- k. **Landline Requirements:** If you wish to use your Equipment with your existing landline telephone service and your Equipment is capable of doing so, you will, at your sole expense, maintain the landline service. You agree to properly provision the line with your service provider yourself. You will be responsible for paying for

any reconfiguration fees and/or monthly payments charged by your landline service provider.

#### 4. End User License and Restrictions

- a. **Equipment License:** With your purchase or rental of the Equipment, Valley Fiber grants you a limited, revocable, non-transferrable, non-sublicensable, non-resellable license and right to use firmware or software embedded in the equipment in object code form strictly in accordance with this Agreement. Valley Fiber does not grant any license to use the firmware in any other manner, and you expressly agree that the Equipment is exclusively for use in connection with Services offered by Valley Fiber, described in this Agreement.
- b. **Software License:** Upon activation of a Valley Fiber Service, Valley Fiber grants to you a limited, revocable, non-transferable, non-sublicensable, non-resellable license and right to use our software and applications strictly in accordance with this Agreement. Valley Fiber does not grant any license to use its software, applications, or firmware in any other manner.
- c. **No Modifications:** You shall not copy, reproduce, modify, re-use, reverse compile, disassemble, reverse engineer, or otherwise attempt to derive the source code or create derivative works from the binary code of Valley Fiber or third-party firmware, software, or applications. You agree not to modify, intercept, capture, decode, simulate, or redirect communication protocols used by Valley Fiber for any purpose or make use of the Equipment or Services in a manner inconsistent with its intended purpose.
- d. **No Tampering:** You hereby represent and warrant that you will not open the house of the Equipment or tamper with the components of the Equipment in any manner, including changing physical or electronic identification information or any other reverse engineering.
- e. **No Hacking:** You hereby represent and warrant that you will not make any effort to compromise the integrity or privacy of the communications of others.
- f. **No Theft:** You hereby represent and warrant that you will not use the Equipment or any Services in any manner to avoid Valley Fiber's charges or its policies.
- g. **No Intellectual Property Rights:** All intellectual property rights, including patents, copyrights, trademarks, service marks or other intellectual property rights, remain the sole and exclusive property of Valley Fiber. Nothing in this Agreement shall be construed as granting any of these rights to you.
- h. **No Resale Rights:** You shall not sell, rent, lease, distribute, or provide service to a third party using our Equipment or Services without Valley Fiber's prior written approval.

- i. **New Versions of Software:** Valley Fiber has no obligation to, but may at its sole discretion, provide fixes, updates or upgrades to its firmware, software, or applications.

## 5. Marketing, Pricing and Promotions

- a. **Usage Analysis:** You agree that Valley Fiber may store, analyze, and use, on an aggregate basis, its customers' (including your) calling destinations and patterns, product and feature usage, online activity, and other information (i) to customize products or services that Valley Fiber may market to you and other; and (ii) to comply with applicable laws, rules, and regulations. You also agree that Valley Fiber may publicly disclose such aggregate calling information about its customers.
- b. **Email Marketing:** You agree that Valley Fiber may, from time to time, send you new product and feature announcements, marketing materials and promotional offers via email. You may opt-out of such communication by contacting customer service.
- c. **Promotional Offers:** Valley Fiber may offer promotional pricing and free trials of Services to its customer from time to time. Such offers may only be offer to new customers and you may not be eligible for some or all of the offers. These offers are not guaranteed and can be modified, extended, altered, or cancelled by Valley Fiber at any time without notice. Pricing of promotional offers for Services is considered Valley Fiber confidential information and you shall not share or disclose the terms of the promotion with a third party without the express written consent of Valley Fiber.
- d. **Trial or Promotional Expiration:** If you are enrolled in a free trial of a Valley Fiber or a trial of a Valley Fiber Service with promotional pricing, you will be notified via email when the trial or promotional period is due to expire, which will contain information about how to cancel the Valley Fiber Service before the end of the trial or promotional period and the fees for continued usage of such Services beyond the trial or promotional period. Should you fail to notify Valley Fiber of your intention to cancel the use of these Services beyond the trial or promotional period, you will be deemed to have subscribed to such Services and may be charged the associated fees for continued usage of such Services.
- e. **Information Accuracy:** Valley Fiber attempts to describe its products, services, pricing, and availability as accurately as possible, but does not warrant that all such information on its website, packaging, brochures, flyers, advertising, email communications or other marketing materials is correct up-to-date, and error free.

## 6. Services and Term

- a. **Basic Residential Service:** Subject to the terms and limitations in this Agreement and payment of applicable taxes and fees, purchase of certain Valley Fiber Equipment includes Basic Residential Service which includes the capability to make calls within Canada using the Equipment subject to acceptable residential usage limitations (see the *Residential Service Acceptable Use Policy*). Any and all references on Valley Fiber packaging, in sponsored advertising, on the Valley Fiber website, in third party marketing materials and/or in any other context or location that refer to the provision of “free” calling and/or “service for life” and/or “unlimited” service and/or “free home phone service” shall be narrowly construed as providing the customer with the ability to make calls within Canada within reasonable limits up to the life of the equipment, and are subject to acceptable residential usage limitations and subject further to the terms and limitations of this Agreement including those pertaining to Service Charges, Billing and Payment set forth in Section 11 of this Agreement. These calls will be routed using the Internet Protocol over your High-Speed Internet connection.
- b. **Bundled Residential Service:** Subject to the terms and limitations in this Agreement and payment of applicable taxes and fees, purchase of certain Valley Fiber Equipment includes the capability to make calls within Canada using the Equipment subject to acceptable residential usage limitations (see the *Residential Service Acceptable Use Policy*). Bundled Residential Service may require you to agree to receive and pay for, in advance on a monthly basis, a minimum initial term of one or more Other Service(s). Once the minimum initial term has expired, you have the option to cancel the Other Service(s) and continue with Basic Residential Service. Any and all references on Valley Fiber packaging, in sponsored advertising, on the Valley Fiber website, in third party marketing materials and/or in any other context or location that refer to the provision of “free” calling and/or “service for life” and/or “unlimited” service and/or “free home phone service” shall be narrowly construed as providing the customer with the ability to make calls within Canada within reasonable limits up to the life of the equipment, and are subject to the requirements of the minimum initial term, acceptable residential usage limitations and the terms and limitations of this Agreement including those pertaining to the Service Charges, Billing and Payment set forth in Section 11 of this Agreement. These calls will be routed using the Internet Protocol over your High-Speed Internet connection.
- c. **Managed Wifi:** Your purchase or rental of certain Valley Fiber Equipment provides you with and/or enables you to subscribe to Managed Wifi. Managed Wifi is subject to the requirements of the minimum initial term (if applicable), usage and/or user limitations, and the terms and limitations of this Agreement including those pertaining to Service Charges, Billing, and Payment set forth in Section 11 of this Agreement. Our Managed Wifi enables your employees, guests, and other users to access the Internet (“Wifi End Users”). You are solely responsible for all Wifi End Users’ use of Managed Wifi, including without limitation, complying with the terms of this Agreement and any Terms of Use or third-party End User License Agreement including with the Managed Wifi Access Point(s). Our Managed Wifi and Managed Wifi Access Points may allow you and your Wifi End Users to access

Content or sent Content elsewhere. We have no control over the Content that you or other access through your Equipment. You are solely responsible for evaluating the Content accessed by you or anyone through your Managed Wifi or Managed Wifi Access Point Equipment. Content may be (i) unreliable or inaccurate; (ii) offensive, indecent, or objectionable; and/or (iii) unsuitable for children or minors. Content from third parties may harm your Equipment or its software. We are not responsible for any Content, any damage caused by any Content that you or Wifi End Users access through your Managed Wifi, or that you or Wifi End Users load onto to your Valley Fiber Equipment. Content stored on any Valley Fiber Equipment, transmitted over third-party networks, or stored by Valley Fiber may be deleted, modified, or damaged.

- d. **Small Business Service:** Subject to the terms and limitations in this Agreement and payment of applicable service charges, taxes and fees, purchase of certain Valley Fiber Equipment including Small Business Service which includes the capability to make calls with Canada and the United States using the Equipment subject to acceptable small business usage limitations (see the *Small Business Service Acceptable Use Policy*). Any and all reference on Valley Fiber packaging, in sponsored advertising, on Valley Fiber's website, in third party marketing materials and/or in any other context or location that refer to the provision "unlimited" service shall be narrowly construed as providing the customer with the ability to make calls with Canada and the United States, and are subject to acceptable small business usage limitations and subject to the terms and limitations of this Agreement including those pertaining to Service Charges, Billing and Payment set forth in Section 11 of this Agreement. These calls will be routed using the internet Protocol over your High-Speed Internet connection.

Small Business Service customers may also access Valley Fiber Meetings, which enables Hosts to schedule and start meeting and allow Participants to join such meetings.

You agree that you are solely responsible for the Content you transmit, display or upload using Valley Fiber Meetings and for compliance with all laws pertaining to the Content, including but not limited to, laws require you to obtain the consent of a third party to use the Content and to provide appropriate notices of third-party rights. You represent and warrant that you have the right to upload the Content to Valley Fiber Meetings and that such use does not violate or infringe on any rights of any third party. Under no circumstances will Valley Fiber be liable in any way for any (a) Content that is transmitted or viewed which using the Valley Fiber Meetings, (b) errors or omissions in the Content, or (c) any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to Content or Valley Fiber Meetings. Although we are not responsible for any Content, we may delete any Content at our sole discretion, at any time without notice. You retain copyright and any other rights you already hold in Content which you submit, post, or display on or through, Valley Fiber Meetings.

You are responsible for the activities of all Hosts and Participants who access or use Valley Fiber Meetings, including maintaining the security of Valley Fiber Meeting



IDs and setting associated Valley Fiber Meeting passwords to prevent unauthorized Participants from joining a conference through your account and you agree to ensure that any such user will comply with the terms of this Agreement and any applicable Valley Fiber policies (including, but not limited to, Valley Fiber's Privacy Policy). We may (but are not required to) investigate any complaints and alleged violations that come to our attention and may take any (or no) action that we believe is appropriate at our sole discretion, including but not limited to issuing warnings, removing the Content or Valley Fiber Meetings, or terminating accounts and/or user profiles.

- e. **Calling Area:** Calls within Canada do not include international calls, or calls to the United States and its territories, and certain other locations with the North American Numbering Plan area, nor do they include calls to content providers (e.g., 900,976), premium services (such as 411) or operator assisted calls (such as 0+, 00+). Valley Fiber may choose to block toll calls or charge the customer for reimbursement of charges associated with calls if such calls result in atypical termination costs and/or surcharges, including, but not limited to, "free" phone conferencing services, "free" call management services, phone chat services, 900 numbers, or recorded messages (such as those promoted in connection with reality TV shows, radio contests, or celebrity-sponsored recordings) or other high-cost destinations Canada. Your ability to continue to make calls is contingent upon your continuing to subscribe to a High-Speed Internet service.
- f. **Assignment of Phone Number:** If you are using your Equipment without a landline and you have requested a phone number for your Equipment, you will have the option to choose a phone number or we will assign you a new phone number. This phone number may or may not be in your local calling area. If the phone number is not in your local calling area, please be aware that others in your local calling area may incur charges when calling you and that the toll charges to call you from another calling area may be different than at your old landline number. The number assigned will be unique to the Equipment and will transfer with any sale of the Equipment. If, at any time, you cease to use the Equipment, please notify us immediately so that we can re-use your phone number. If, for whatever reason, you cease to use the Equipment for three months, we reserve the right to reassign your phone number to someone else's equipment. In the event you wish to re-activate your Equipment, we will re-issue you a new phone number, and you may incur re-activation charges. If you select a second phone number during an introductory trial period and, at the conclusion of such trial period you do not subscribe to our Premier Service, this second phone number will be cancelled and re-assigned.
- g. **Term:** The term for each Service will begin on the date it is activated and will continue until the Service is terminated by you or by us, as is more fully set forth herein. Notwithstanding the preceding sentence, in some cases, the description of the Services or the providing for the Services may provide for or require a minimum initial term. Likewise, the sale of an item of Equipment at a particular price may require, as a condition, a minimum initial term for one or more Other Service(s) which requires an additional monthly service fee. The minimum initial

term, the required Other Service(s), and the cost of Other Service(s) may be described on our website, or where you purchase or rent the Equipment or when you activate the Service(s). The provision for any such minimum initial term is incorporated into this Agreement.

- h. **Service Distinction:** Important distinctions exist between a telecommunications service and our Equipment and Services, and our Equipment and Services, and our Equipment and Services are subject to different regulatory treatment than a telecommunications service. This treatment may limit or otherwise affect your rights or redress before regulatory agencies.
- i. **Right to Change:** Our Services are subject to our business policies, practices, and procedures, which can change at any time without notice. Unless otherwise prohibited by applicable law, we can change this Agreement or any other terms and conditions of your Services at any time, with or without notice. Changes may include features, prices, and usage limits of the Services. Valley Fiber may, without prior notice, stop providing certain features of the Services or the Services themselves, to you or to users generally. If we do give you notice about the Terms and Conditions of your services or about changes in the Terms and Conditions of your services, it may be provided on the Valley Fiber website, your account web page, in a newsletter, by email, by telephone, or other communication permitted under applicable law. This Agreement may not be amended or modified by you.
- j. **Notice:** Except as stated otherwise in this Agreement, when a notice is required from us to you, we may provide that notice by email to the email address provided by you when you established your account with us. You are responsible for keeping that email address up to date. When you are required to give us notice, you must do so, except as stated otherwise in this Agreement, by using the notice facility on your account page provided on our website or by speaking with a member of our customer support team.
- k. **Language of Service:** Phone service, customer support, and the Valley Fiber website, including the customer web portal are provided solely in the English language.

## 7. Service Availability

- a. **Service Availability:** The Services and any telephone calls places using the Equipment use in the public Internet and third-party networks are provided on a commercially reasonable efforts basis. The Services are intended to be accessed and used for non-time-critical information and control of Valley Fiber Equipment. Things beyond our control may affect the reliability and availability of Equipment, Services, and telephone connections. Such events could include a loss of power at your location, the loss of your High-Speed Internet service and fluctuations in the quality of service of the public Internet. Other thing may also affect availability of Equipment and Services, such as maintenance. Valley Fiber will act in good faith to minimize disruptions to your use of and access of the Equipment but will

not provide any credits or compensation for potential business loss due to interruption of Service or hardware failures.

- b. **Outages Due to Power Failure or Disruption:** All Services, including 911 Dialing and 911 Alerts and Home Security, will not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Equipment, and all Services, including 911 Dialing and 911 Alerts and Home Security, will not function until power is restored. Following a power failure or disruption, or if you move the Equipment, you may need to reset or reconfigure the Equipment prior to utilizing 911 Dialing and 911 Alerts and Home Security.
- c. **Service Outages Due to Internet Disruption:** Service outages, service disruptions, poor quality of service, suspensions, or disconnections of service by your High-Speed Internet will prevent all Services, including 911 Dialing and 911 Alerts and Home Security, from functioning.
- d. **Outages Due to Status of Your Valley Fiber Account:** Outages due to suspension, disconnection or termination of your Valley Fiber account will prevent the Equipment and all Services, including 911 Dialing and 911 Alerts and Home Security, from functioning.
- e. **Outages Due to Blocking of Ports, or Other Acts:** Your High-Speed Internet Provider, or other third party, may block the communication ports over which the phone connection is made, or otherwise impede the usage of the Equipment. If you suspect this has happened, you should alert us to this situation, and we will work with you to attempt to resolve the issue. During the period that the ports are being blocked or your Equipment is impeded, your Equipment and all Services, including 911 Dialing and 911 Alerts and Home Security, may not function. You acknowledge that Valley Fiber is not responsible for the blocking of ports by any third party or any other impediment to your usage of the Equipment, and any loss of capabilities of our Equipment and Services, including 911 Dialing and 911 Alerts and Home Security, which may result.
- f. **Other Outages:** If there is an outage for any reason, such outage may prevent all Equipment and Services, including 911 Dialing and 911 Alerts and Home Security, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.
- g. **Landline Backup:** If there is a disruption of the Equipment's calling capability, and your Equipment is connected to a landline, you may be able to complete calls using the landline. This may result in charges by your landline long distance carrier for calls completed using your landline which the Equipment's calling capability is unavailable. If you do not hear the special dial tone associated with your Valley Fiber Services, you will not have access to the calling capability we provide. The Valley Fiber tag or logo on the Valley Fiber Hub or Valley Fiber Telo or Valley Fiber Office Base Station will display a red light under such circumstances, indicating an Internet connection failure.

- h. **Managed Wifi Availability:** The Managed Wifi coverage and capacity may vary based on factors such as types of applications, type and number of clients, usage, the physical environment, and interference. Valley Fiber will make commercially reasonable efforts to configure and manage the Managed Wifi service but does not guarantee a particular level of coverage or capacity.
- i. **Number Porting:** Valley Fiber will use reasonable efforts to facilitate the transfer of phone numbers from your current phone service to Valley Fiber. Number porting is subject to availability and coverage will vary from time to time. To complete the number porting process, Valley Fiber depends and relies on the third parties outside of Valley Fiber's control. You agree that Valley Fiber will not be liable for any change in availability, delay, or failure in the processing of your number transfer, or for the unauthorized transfer of a number you use with the Valley Fiber service.
- j. **Number Changes:** Valley Fiber may, from time to time, need to change a telephone number that is assigned to you. Valley Fiber will not be liable for any damages should you need to be assigned a new phone number.
- k. **Storage of Information:** Valley Fiber stores your call logs, voicemails, security device data, call recordings and other information related to your account as a convenience to you. You agree that Valley Fiber has no obligation, responsibility or liability for the storage, deletion, or failure to store any of the aforementioned information. You agree that Valley Fiber may establish limits, at its sole discretion, as to the amount of message, information, and recordings it retains and the duration for which it is retained.
- l. **Third-Party Service Providers:** Subject to the terms and limitations of this Agreement, the Equipment, if capable, may be used with third party calling service providers where available and pursuant to any terms or limitations that such providers may require as a condition of providing such service.

## 8. Acceptable Use Policy

- a. **General Acceptable Use Policy:** You shall not use the Equipment and Services in a manner that is illegal, fraudulent, improper, abusive or in any way that prevents or interferes with Valley Fiber's ability to provide Services to its customers. You acknowledge that Valley Fiber may, at its sole discretion, suspend or terminate service to your Equipment and charge you applicable usage and service fees for the time periods in which your use of the Equipment was inconsistent with our acceptable use policy.
- b. **Residential Service Acceptable Use Policy:** We provide the Equipment and Services to you solely for single family, normal residential use. The Equipment and Services may only be registered to a single phone number and are not transferable. Single family refers to you and those of your immediate family members who reside in your personal residence – such as spouse, domestic partner, and/or children. If you use the Equipment in a manner that is inconsistent with

normal residential, non-commercial use, including in a manner that is inconsistent with the terms and limitations in this Agreement, Valley Fiber may terminate all Service to the Equipment and you will be required, at Valley Fiber's sole discretion, to pay the rate of the Non-Residential Service plan and/or other fees and charges as published on our website at *Rates* for any time period in which your use of the Equipment was inconsistent with the normal residential, non-commercial usage. The use of the term "unlimited" in conjunction with Valley Fiber's Residential Service offering as it appears on Valley Fiber's packaging, in sponsored advertising, on the Valley Fiber website, and in third party marketing materials or in any location refers to normal residential phone usage as defined herein. You agree to use the Equipment only in a manner consistent with normal residential usage patterns. Unlimited voice calling is intended for continuous lives, live conversation between two individuals. Lack of continuance conversation, usual calling patterns, excessive caller and calling destinations and/or excessive usage (e.g., 5,000 minutes per Equipment per month or more) will be considered as indicators that your use of the Equipment may be inconsistent with normal residential usage. It may also indicate that the Equipment is being used in a manner not allowed by your Service plan and may result in review of your account and usage history. The purchase or rental and use of multiple Valley Fiber base units to circumvent these usage rules shall also be considered indicators that use of the Equipment may be inconsistent with normal residential, non-commercial usage and may result in review of your account and usage history. Failure to contact Valley Fiber in response to our notification and/or failure to bring usage levels to normal levels in a timely fashion will result, in Valley Fiber's sole discretion, in immediate mandatory transfer to the Non-Residential Service plan and/or suspension or termination of Service to the Equipment. You acknowledge that if Service to your Equipment is terminated for abnormal usage patterns, you are subject to all Non-Residential Service plan charges for the time periods in which your use of the Equipment was inconsistent with normal residential, non-commercial usage. Below are some examples (but not exhaustive) of use that is considered inconsistent with normal residential, non-business, non-commercial use:

- i. Commercial, not-for-profit, government use or other similar use;
  - ii. The use of the base unit at a multi-residential address for more than one single residence;
  - iii. The use of the Service by or for others, who do not reside in your personal residence;
  - iv. Calls without constant live dialogue, including as a monitor, intercom or for transcription;
  - v. Unusual calling patterns such as excessive number of calls, excessive number of unique numbers called or excessive short duration calls.
- c. **Small Business Service Acceptable Use Policy:** We provide the Equipment and Service for normal small business usage within your place of business. The use of the term "unlimited" in conjunction with Valley Fiber's Small Business Service offering as it appears on Valley Fiber packaging, in sponsored advertising, on the Valley Fiber website, and in third party marketing materials or in any other location refers to normal small business phone usage as defined here. You agree

to use the Equipment only in a manner consistent with normal small business usage patterns. Unlimited voice calling is intended for continuous, live conversation between two individuals. Lack of continuous conversation, unusual calling patterns, excessive caller and calling destinations and/or excessive usage (e.g., 5,000 minutes per line of service per month or more) will be considered as indicators that your use of the Equipment may be inconsistent with normal small business usage. It may also indicate that the Equipment is being used in a manner not allowed by your Service plan any may result in a review of your account and usage history. Failure to contact Valley Fiber in response to our notification and/or failure to bring usage levels to normal levels in a timely fashion will result, in Valley Fiber's sole discretion, in immediate mandatory transfer to a Commercial Service calling plan that charges significantly higher per minute usage rather. You acknowledge that if Service to your Equipment is terminated was inconsistent with the normal small business usage. If you use the Valley Fiber Office Multi-Site feature, usage and service fees will be based on the location of your main office as indicated on the Administrator's (as defined below) Valley Fiber Office Manager and calculate in accordance with the rates published at \*.

- d. **Managed Wifi Acceptable Use Policy:** This Managed Wifi Acceptable Use Policy incorporates by reference all terms and conditions of the Small Business Acceptable Use Policy, as acceptable. Furthermore, you agree that you will not (1) use the Managed Wifi Access Point as a general SQL server, (2) remove any proprietary labels or notices on the Managed Wifi Access Point, (3) place a disproportionate load on the Managed Wifi Access Point so as to interfere with its operation or to prevent others from using it, (4) gain unauthorized access to the managed Wifi Access Point, (5) introduce any virus or other harmful code onto the Managed Wifi Access Point or systems, or (6) use any automated means including without limitation, agents, robots, scripts, or spiders to access, monitor, or copy any part of the Managed Wifi Access Point and/or software. You acknowledge that Valley Fiber may monitor your Managed Wifi, and at our sole discretion, suspend or terminate your Managed Wifi and charge your applicable usage and service fees if we conclude that your use of the Managed Wifi was inconsistent with the acceptable usage policy.
- e. **General Prohibited Use:** You are prohibited from using the Equipment for autodialing, predictive-dialing, continuous or extensive call conferencing, trunking or continuous or extensive call forwarding, telemarketing (including, without limitations, charitable or political solicitation or polling), operation a call center, resale of service, fax, or voicemail spamming, broadcasting, or blasting. Unusually high usage may interfere with Valley Fiber's ability to provide Services to its customers and may indicate unauthorized use of Services. You agree we have the right to terminate your Service and charge you all applicable usage and service fees if we conclude you are using the Service for a prohibited use.
- f. **Unlawful and Inappropriate Use or Conduct:** You shall use the Equipment and Services only for lawful purposes. You shall not use the Equipment or a Service in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, obscene, indecent or would

violate the intellectual property rights of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation, or in any similar manner. If we believe that you have used the Equipment or any of our Services for unlawful or inappropriate purposes or have attempted theft or fraud, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forward of such communications and information to those authorities. In addition, we will provide information in response to law enforcement requests, lawful government requests, subpoenas, court orders in order to protect our rights and property, or where we believe that failure to disclose the information may lead to imminent harm to you or others.

- g. **Privacy and Data Protection Laws:** Valley Fiber Equipment and Services are primarily intended for purely personal, household and business use. Nonetheless, data protection and privacy laws where you live may impose certain responsibilities on you and your use of the Equipment and Services. For certain video, audio, and facial recognition data that you collect using Equipment and Services (e.g., video and audio signals and data from the Valley Fiber Cam, Valley Fiber Call Recording, etc.), you are the controller of certain data these Equipment and Services collect, and Valley Fiber is the processor of the data, under applicable laws. For more information, see *Valley Fiber's Privacy Policy*. You agree that you (and not Valley Fiber) are responsible for ensuring that you comply with any applicable laws when you use the Equipment and Services, including, but not limited to, (i) any laws relating to the recording or share of video or audio content that includes third parties or public spaces, or (ii) any laws requiring notice to third parties, consent or explicitly consent of third parties with respect to your use of the Equipment.

## 9. Emergency Services

- a. **Disclaimer of Liability and Indemnification:** WE DO NOT HAVE ANY CONTROL OVER WHETHER, OR THE MANNER IN WHICH, CALLS USING OUT INTERNET 911 DIALING SERVICES ARE ANSWERED OR ADDRESSED BY ANY EMERGENCY RESPONSE CENTER. WE DISCLAIM ALL RESPONSIBILITY FOR THE ABILITY OF ANY OF THE EQUIPMENT TO CONNECT TO AN EMERGENCY RESPONSE CENTER, THE CONDUCT OF THE EMERGENCY RESPONSE CENTER AND THE NATIONAL EMERGENCY CALLING CENTER. WE RELY ON THIRD PARTIES TO ASSIST US IN ROUTING INTERNET 911 CALLS TO EMERGENCY RESPONSE CENTERS AND TO A NATIONAL EMERGENCY CALLING CENTER. WE DISCLAIM ANY AND ALL LIABILITY OR RESPONSIBILITY IN THE EVENT SUCH THIRD PARTY DATA USED TO ROUTE CALLS IS INCORRECT OR YIELDS AN ERRONEOUS RESULT. WE DO NOT HAVE ANY CONTROL OVER THE ACTIONS OR OMISSIONS OF YOUR ALERT CONTACTS (AS DEFINED BELOW), OR THE INTERNET CONNECTION OR MOBILE TELEPHONE CARRIER SERVICES UTILIZED BY YOUR OR YOUR ALERT CONTACTS, NOR WHETHER YOU REGISTER ANY OF THE EQUIPMENT, ENTER IN THE CORRECT INFORMATION WHILE PROGRAMMING ANY OF THE EQUIPMENT ONLINE, TEST THE FUNCTION AND RANGE OF ANY OF THE EQUIPMENT AND THE VALLEY FIBER SERVICES, OR

CHANGE THE EQUIPMENT, IF APPLICABLE. NETHER VALLEY FIBER NOR ITS OFFICERS OR EMPLOYEES MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, AND YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OR ACTION, ARISING FROM OR RELATING TO OUR INTERNET 911 DIALING SERVICE OR OUR 911 ALERT SERVICE. YOU AGREE THAT YOU WILL NOT RELY ON THE SERVICES FOR ANY LIFE SAFETY OR CRITICAL PURPOSES. MOBILE NOTIFICATIONS REGARDING THE STATUS AND ALARMS ON YOUR VALLEY FIBER EQUIPMENT ARE PROVIDED FOR INFORMATION PURPOSES ONLY – THEY ARE NOT SUBSTITUTE FOR A THIRD-PARTY MONITORED EMERGENCY-NOTIFICATION SYSTEM OR TRADITIONAL 911 SERVICE. YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS VALLEY FIBER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS AND ASSIGNS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE EQUIPMENT OR SERVICES, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINE, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATIONS, ATTORNEYS’ FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE EQUIPMENT (INCLUDING INTERNET 911 DIALING AND 911 ALERTS AND HOME SECURITY INCORRECTLY ROUTED INTERNET 911 DIALING CALLS AND INCORRECTLY ROUTED 911 ALERT EMAILS OR TEXT MESSAGES, INCORRECTLY ENTERED EMAIL ADDRESSES OR MOBILE TELEPHONE NUMBERS FOR THE ALERT CONTACTS), FAILURE OF ANY EMERGENCY SERVICE PERSONNEL TO CALL BACK DIRECTLY TO THE NUMBER FROM WHICH A 911 CALL WAS MADE , AND/OR THE INABILITY OF ANY USER OF THE EQUIPMENT TO BE ABLE TO USE INTERNET 911 DIALING, 911 ALERTS, OR ACCESS OR RECEIVE CALLBACKS FROM EMERGENCY SERVICE PERSONNEL. YOU SHOULD HAVE AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES. IF YOU ARE NOT COMFORTABLE WITH THE LIMITATIONS OF THE 911 ALERTS SERVICE, YOU SHOULD NOT ENABLE AND/OR USE THE FEATURE.

- b. **Limitations on Emergency Calling:** Internet 911 Dialing is different than traditional 911 service and Enhanced 911 (E911). With other traditional 911 and E911 service, your call is sent directly to the nearest emergency response center. In addition, with E911, service, your callback number and address are visible to operators at the emergency response center. With internet 911 service, your call is sent to a national emergency call center. The emergency response operator will request or confirm your location and then transfer your 911 call to the emergency responsible center closed to your location. You should be prepared to provide or confirm your address and callback number with the operator. Do not hang up unless told directly to do so and if disconnected you should dial 911 again. You authorize us to disclose your name and address to third parties involved with providing 911 emergency services to you, including but not limited to, call routers, call centers, and local emergency centers. See *Dialing 911* for more information about how Internet 911 Dialing works and Section 8 for how Valley Fiber service ability will impact your ability to use the Internet 911 Dialing service.
- c. **Reduced Speed for routing or Answering 911 Dialing Calls:** There can be a greater possibility of network congestion and/or reduced speed in the routing of



an Internet 911 Dialing call made utilizing Equipment as compared to traditional 911 dialing over traditional public telephone networks.

- d. **Registration of Physical Location Required:** For each phone line or user account that you utilize with the Internet-only service, you must register with Valley Fiber the physical location where you will be using the Equipment with that phone line or user account. Your initial location will be registered as a part of new Equipment registration when you receive a new phone number from us. It is incumbent on you to confirm the accuracy of your physical address via your online account if you make any changes, additions, or transfer phone number to your account. If we cannot validate the address you provide during the registration process, your Internet 911 call will be sent to the national emergency call center as described in Section 9b. above. If we continue to fail to validate the address you provide during the registration process, we will terminate your account. If you move the Equipment to another location, you **MUST** update your physical address in order to ensure proper Internet 911 Dialing function. In case you are not able to speak during the Internet 911 call, the call taker would dispatch emergency response vehicles to your last registered address. If you do not update your location, any Internet 911 calls you make may be routed to an emergency center near your old address and may result in help being sent to the wrong location. Should you choose to use the Valley Fiber system outside of Canada, you will not have access to emergency calling.
- i. **Valley Fiber Residential Service:** If you are a Valley Fiber Residential Service Customer, you may update a location by logging into your online account or contacting a member of our customer support team at \* during working hours. For purposes of Internet 911 Dialing, you may only register one location at a time for each Equipment. Valley Fiber reserves the right to charge you for penalties that we incur when 911 response personnel are sent to the wrong address because you have not updated your physical location.
- ii. **Valley Fiber Small Business Service:** If you are a Valley Fiber Small Business Service customer, the customer who registers the Equipment location and who will have administrative access to the Valley Fiber Office Manager site is the administrator of the Business Service account (the "Administrator"). The Administrator may update your main office location by logging into the online Valley Fiber Office Manager. If you utilize the Valley Fiber Multi-Site feature, you must register with Valley Fiber each physical location for each respective user account. As the Administrator, you agree and understand it is your responsibility to confirm the accuracy of the physical address for each user account and to make any changes or additions needed for each user account. If you are assigned a user account, it is your responsibility to notify the Administrator of any changes or inaccuracies to the physical address associated with your use account. In addition, if you are assigned a user account, you acknowledge that emergency service personnel may call back to the main office number or another number at the same location which the Administrator has

designated as the contact number in case of emergency, instead of call back directly to the number from which an emergency call was made.

- e. **Notify All Users:** You should inform all household residents, guests, users and other third person who may be present at the physical location where you utilize Services of the important distinctions and limitations of Internet 911 Dialing as compared with landline 911. You should inform all Alert Contacts (defined below) of the key aspects of the 911 Alters feature and that their email and/or mobile phone number is listed as a contact for the service.
- f. **Landline 911 Emergency Calling:** If you have a landline connected to your Valley Fiber Equipment, 911 will be directed through your local telephone service line provided by your local telephone service company. In such case, your 911 calls will be handled by your local telephone service company, not by Valley Fiber.

## 10. **Additional Terms of Equipment and Service**

- a. **No Life Safety or Critical Uses of the Products and Services:** You acknowledge and agree that the Equipment and Services, whether standing alone or when interfaced with third-party products or services, are not certified for emergency response. Valley Fiber makes no warranty or representation that use of the Equipment or Services with any third-party product or service will affect or increase any level of safety. YOU UNDERSTAND THAT THE EQUIPMENT AND SERVICES, WHETHER STANDING ALONE OR INTERFACE WITH THIRD-PARTY PRODUCTS OR SERVICES, ARE NOT A THIRD-PARTY MONITORED EMERGENCY NOTIFICATION SYSTEM. FURTHER, YOU UNDERSTAND THAT UNDER NO CIRCUMSTANCES WILL VALLEY FIBER DISPATCH EMERGENCY SERVICE TO YOUR HOME IN THE EVENT OF AN EMERGENCY.
- b. **Reliability of Services:** You acknowledge that the Services, including remote access and mobile notifications, are not error free or 100% reliable and 100% available. Proper functioning of the Services relies and is dependent on, among other things, the transmission of data through your Wifi network, enabled wireless device (such as a phone or tablet) and High Speed Internet access, or optional cellular backup service for which neither Valley Fiber nor any wireless or data carrier is responsible, and may be interrupted, delayed, refused, or otherwise limited for a variety of reasons, including insufficient coverage, power outages, termination of service and access, environmental conditions, interference, non-payment of applicable fees and charges, unavailability of radio frequency channels, system capacity, upgrades, repairs or relocations, and priority access by emergency responders in the event of a disaster or emergency (collectively, "Service Interruptions"). You understand that Service Interruptions may result in the Services being unreliable or unavailable for the duration of the Service Interruption. We cannot and do not guarantee that you will receive notifications within any given time, or at all. YOU AGREE THAT YOU WILL NOT RELY ON THE SERVICES FOR ANY LIFE SAFETY OR CRITICAL PURPOSES. EQUIPMENT ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY –NOT A SUBSTITUTE FOR A

THIRD-PARTY MONITORED EMERGENCY-NOTIFICATIONS SYSTEM. There is no way for Valley Fiber to provide specific information relating to a situation in your home or elsewhere. You acknowledge that it is your responsibility to educate yourself on how to respond to an emergency and to respond to according to the specifics of your situation.

- c. **Service Interruptions; no refund or rebate:** The Services may be suspended temporarily, without notice, for security reasons, systems failure, maintenance and repair, or other circumstances. You agree that you will not be entitled to any refund or rebate for such suspensions. Valley Fiber does not offer any specific uptime guarantee for the Services.
- d. **Privacy and Security:** The calling capability and our Services use the public Internet, third party networks, and inside wiring in customers' premises to transmit communications. We have engineered our Equipment and Services to minimize the risk of any loss in privacy when using such systems. You acknowledge, however, that we cannot guarantee that your communications are completely secure. We respect your privacy and treat the content of all communications as private, except as may be required by law. Personal information collected in connection with this Agreement and the provision of the Service(s) may be stored and processed in or outside Canada and may be subject to the laws of other jurisdictions. Our Privacy Policy is available on our website at \* for additional information.
- e. **Cyber Security:** We maintain administrative, technical, and physical security measures and safeguards designed to protect the confidentiality and security of your personal information. Unfortunately, no information transmission or storage system on the Internet is 100% secure. As a result, we cannot guarantee, ensure, or warrant the security of any information you transmit to us. There is no guarantee that information will not be accessed, disclosed, altered, or destroyed by breach of our physical, technical, or managerial safeguards.

The safety and security of your personal information, Content and Valley Fiber Meeting IDs also depends on you. It is your responsibility to protect the security of your login information, Content and Valley Fiber IDs (including associated passwords). Please note that emails and other communications sent to us through our website may not be encrypted, and we strongly advise you not to communicate any confidential information through these means.

Please refer to the Privacy Policy on our website for additional information.

- f. **Managed Wifi and Data Collection:** By using your Managed Wifi Access Point, you understand and agree that you are collection date regarding the devices that connect to your network and how your network is being used. By means of the Equipment, you are then transferring that data to Valley Fiber including data that may contain personally identifiable information of the Wifi End Users. It is your responsibility to provide notice to and obtain any necessary consents from the Wifi End Users regarding the collection, processing, transfer and storage of their

personal data. Such information may include, but is not limited to client host name, client MAC address, client IP address, client IPV6 address, client OS name, username, user profile name, and interactions with Internet website, applications, or advertisements.

- g. **Compatibility with Third-Party Home Security and Medical Alert Systems:** PLEASE NOTE: Our services, the Equipment and calling capability may not be compatible with certain home security and medical alert systems that communicate with the home security provider or medical alert provider by dialing a number using your local telephone service line. You may be required to maintain and pay for a separate landline or cellular telephone service from your local telephone company in order to use such systems. You are responsible for contacting the home security or medical alert company to determine the compatibility of its system with our Equipment and Services. YOU HEREBY WAIVE ANY CLAIM AGAINST VALLEY FIBER FOR THE INTERFERENCE OF DISRUPTION OF THESE THIRD-PARTY SERVICES AND EQUIPMENT. WE DISCLAIM ANY AND ALL LIABILITY OR RESPONSIBILITY IN THE EVENT THAT YOUR HOME SECURITY AND/OR MEDICAL ALERT SYSTEM IS DISRUPTED. YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTIONS ARISING FROM OR RELATING TO THE COMPATIBILITY OF OUR SERVICES, EQUIPMENT, AND/OR ALARM SYSTEM MODE, WITH CERTAIN THIRD-PARTY NON-VOICE COMMUNICATION EQUIPMENT. YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS VALLEY FIBER, IT OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS AND ASSIGNS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE EQUIPMENT OR SERVICES, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATIONS, ATTORNEYS' FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD-PARTY RELATING TO THE FAILURE, INTERFERENCE OR DISRUPTION OF THIRD PARTY SERVICES AND EQUIPMENT (INCLUDING, WITHOUT LIMITATION, HOME SECURITY AND MEDICATION ALERT SYSTEMS) DUE TO COMPATIBILITY OR INCOMPATIBILITY WITH VALLEY FIBER'S SERVICES, EQUIPMENT AND/OR ALARM SYSTEM MODE.
- h. **International Usage:** The Valley Fiber system has been designed to support installation and use in Canada. We currently only provide Canadian phone numbers and cannot guarantee installation, performance, or use of Valley fiber Equipment and Service outside Canada. If you choose to install and use the Valley Fiber system outside of Canada, you will be solely responsible for any violation of any export laws, tax laws, tariff agreements, Canadian or foreign regulatory rules, Canadian or local laws, or violation of your High-Speed Internet provider's terms of service. You will also be accountable for payment of any taxes, fees, penalties, and/or surcharges associated with use of the Valley Fiber system outside of Canada. Valley Fiber reserves the right to suspend Service to any non-Canadian based system at any time.
- i. **Voice-to-Text Limitations:** Some Valley Fiber Services provide a function that allows voicemails to be converted to text. You understand and agree that this voice-to-text conversion may not be accurate, and you are responsible for listening

to the original voicemail to verify the accuracy of the conversion. Certain Services utilize human-aided conversions and, as a result, the privacy of your message and its content cannot be guaranteed. You hereby release all claims against Valley Fiber and its third-party providers with respect to the voice-to-service.

- j. **May Not Support x11 Calling:** The Equipment, if not connected to a landline, may not support 311, 511 and/or other x11 services in one or more (or all) service areas (other than certain specified dialing such as 911 and 411), which are provided elsewhere in this Agreement, and 711, which is used to access telecommunications relay services). To keep all of these services, please have your Equipment, if your Equipment is capable of doing so, connected to a landline.
- k. **No 0+ or Operator Assisted Calling:** The Equipment, if not connected to a landline, does not support 0+ or operator assigned calling (including, without limitation, collect calls, third party billing calls, 900 or calling card calls).
- l. **No Directory Listing for Residential Services:** The phone numbers you get from us will not be listed in any telephone directories. As a result, someone with your phone number cannot use a reverse directory to lookup your address.
- m. **Third-Party Products and Services:** We assume no obligation to provide support services for any third-party products or services, or for problems with our services caused by third party products or services.
- n. **Voice Recording and Call Monitoring:** If you utilize Valley Fiber Call Recording, you acknowledge that there are federal and provincial laws governing the electronic recording of telephone conversations and that Valley Fiber is not liable for any illegal use of the Services. Many jurisdictions require advance notice or consent for electronic voice recording and/or third-party call monitoring. It is your responsibility to determine and comply in full with your own compliance obligations. No Services or Equipment offered by Valley Fiber are represented or warranted to comply with electronic recording laws.

## **11. Service Charges, Billing and Payment**

- a. **Service Charges, Taxes and Fees:** All amounts payable by you to Valley Fiber pursuant to this Agreement do not include any value-added, sale, use, consumption, multi-staged, ad valorem, personal property, Customs, excise, stamp, transfer, or similar taxes, duties, or charges, (collectively "Sales Taxes") and all Sales Taxes are your responsibility and for your account. If Valley Fiber is required by law or by administration thereof to collect any applicable Sales Taxes from you, you shall pay such Sales Taxes to us concurrent with the payment of any consideration payable pursuant to this Agreement. We may charge you certain Service fees and other taxes and fees, which may include, but are not limited to, fee for Services; activation fees; usage charges; international usage charges; advanced feature charges; premium services/add-ons; Equipment purchases or rentals; 911 fees; intellectual property fees; licensing and royalty fees; reconnection fees; and shipping and handling charges. The amount of such fees

and charges shall be published on our website at *Rates* (and in the case of rental fees, published on our website at \*), and are incorporated by reference herein and may change from time to time and may vary as the Canada/U.S. exchange rates fluctuates. Failure to pay any Service fees, other taxes or fees may result in suspension or termination of your account without notice. If Valley Fiber does not charge or collect any particular Sale Tax that is applicable to the Equipment or Services provided under this Agreement, it remains your responsibility to report, self-assess, and remit such Sales Tax to the appropriate tax authority. All amounts payable by you pursuant to this Agreement shall be made without set-off or counterclaim and free and clear of, and without deduction or withholding for, or on account of, any present or future taxes. IF any such deduction or withholding on account of any tax is so required, you shall: (a) pay such additional amounts as may be necessary in order that the net amount that we receive, after such deduction or withholding (including deduction or withhold with respect to additional amounts) will equal the amount that we would have received if no such deduction or withholding on account of taxes had been required; (b) make such deduction or withholding; and (c) pay the full amount deducted or withheld to the relevant tax authority in accordance with applicable law and forthwith after payment, furnish Valley Fiber with a receipt or other prescribed documentation evidencing such payment. If you fail to pay to the relevant tax authority when due any taxes or amounts on account of taxes that you were required to deduct or withhold with respect to any payment to use or fail to furnish us with the receipt or prescribed documentation, you shall indemnify us, on an after-tax basis, for any taxes or amounts on account of taxes (including, without limitation, any interest and/or penalties) that may become payable by us as a result of such failure.

- b. **Valid Credit or Debit Card Required:** In order to purchase or rent Equipment or activate Services from us, you are required to provide us with a valid email address and a credit or debit card number from a card issuer that we accept ("Issuer"), together with the billing address for the card. We reserve the right to stop accepting credit or debit cards from one or more Issuers. If your credit or debit card expires, you close your account, your billing address changes, or your credit or debit card is cancelled or replaced on account of loss or theft, you must advise us at once and provide new credit or debit card information or we may terminate Service to you. You acknowledge and agree that you authorize us and that we do not need to obtain any additional authorization from you for any recurring payments, automatic billing options or updated credit card or debit card information provided by your credit card or debit card company to us. Your account will be automatically terminated if you put a stop payment on your account with a financial institution in connection with payment of any of your monthly or annual charges.
- c. **Payments:** We accept payment by credit or debit card. Your purchase or rental of Equipment or activation of Services from us authorizes us to charge your credit or debit card. This authorization will remain valid until 30 days after we receive written notice of your intent to terminate our authority to charge your credit or debit card. If you provide such notice, we will charge your credit or debit card for

any applicable termination fee and any other outstanding charges and terminated your Services.

- i. **Collection:** If your Services are terminated, you will remain fully liable to us for all charges pursuant to this Agreement and any and all costs we incur to collect such amount, including, without limitation, collection costs and attorneys' fees.
  - ii. **Late and Partial Payments:** We may add late-payment charges to any past-due amounts at the lower of 2% per month of the past-due amount or the maximum rate allowed by law. Our acceptance of late or partial payments (even if marked "paid in full" or without restrictions) shall not waive any of our rights to collect the full amount of the charges. If charges cannot be processed through your credit or debit card, we may add a processing fee of \$15 or any lesser amount if limited by provincial law.
- d. **Automatic Billing:** Certain of our Services, including but not limited to our Premier Service, International Bundle, and prepaid billing deposits, feature automatic rebilling. In such circumstances, for your convenience, your credit card will be automatically billed at the end of each term which will renew your membership for another like term. You may terminate automatic rebilling at any time by contacting our Customer Care Department using the contact information posted on the website at least thirty (30) days before rebilling is to take place that you are terminating the Service. Failure on your part to notify us of your desire not to be re-billed, will result in your account being re-billed and you agree to hold harmless and indemnify us from any and all claims of wrongful billing.
- e. **Prepaid Services:** For international or directory assistance calls, you must first prepay a certain amount and the calls along with associated taxes and/or fees, are then charged against the prepaid balance. Once the prepaid amount is exhausted, you will no longer be permitted to continue such calls until a new prepaid balance is established. Usage charges, if any, will be billed as set forth on our website at *Rates*.
- f. **No Service Credit:** You acknowledge that Services are provided on a commercially reasonable efforts basis using the public network and third-party networks. Therefore, Valley Fiber will not provide any credits, refunds, or other compensation for interruptions of Service or failure of Equipment.
- g. **Billing Disputes:** If you dispute any charges from us, you must notify us in writing within 30 days after notification to you of the charges (or within any greater period required by law); otherwise, you will be deemed to have waived any right to contest such charges. During the period of a billing dispute, our receipt and acceptance of a partial payment shall not be construed as a payment in full of the contested amount, as set forth below. All notices of disputed charges should be sent to: Valley Fiber c/o Billing Department, \*, or via email at .

- h. **Reactivation and Number Change Fee:** You agree that we may charge you a fee for reactivation after a period of non-use or to change the phone number associated with the Equipment.
- i. **Number Porting Fee:** You agree that we may charge you a fee for porting your phone number from another provider. This fee is set forth on our website at *Rates*. Number porting is subject to availability and other restrictions in certain geographic areas, and to policies of the provider from who the phone number port is requested. You should allow up to 10 days, or longer, depending upon your provider, for the number porting to be completed, and should not cancel your existing phone service until the number port is completed.
- j. **Collect Calls and Third-Party Billing:** Should you incur charges for collect calls or other third-party service billed to your Valley Fiber phone number, Valley Fiber will charge you the cost of the call or service, as determined by the billing party, plus an additional service charge calculated as a percentage of the billing party amount. Failure to pay for these charges may result in suspension or termination of your account.
- k. **Resellers:** For those Services you receive through a Reseller, and to the extent the Reseller's terms differ from those set forth in Section 11 a. to j., your Reseller's terms control.

## **12. Return of Equipment and Refunds**

- a. **Purchases Directly from Valley Fiber:** If you bought your Equipment directly from Valley Fiber, you may return the Equipment to us within 30 days of the date you received the Equipment (or as otherwise required by law) and we will refund the purchase price to you, provided that you:
  - i. Return all of the equipment that you purchased from us within 14 days of termination of your account, in original condition, original packaging preferred;
  - ii. Terminate your account with us within the same 30-day period;
  - iii. Return original proof of purchase with the Equipment, together with all parts, and accessories;
  - iv. Obtain a valid authorization number from our customer care department prior to returning the Equipment to us by calling \*; and
  - v. Pay all costs of shipping the Equipment back to us. You may return Equipment for a refund only once. We reserve the right to charge a return charge as may be posted on our web site from time to time.



- b. **Retail Customers:** If you bought your Equipment from a Reseller rather than directly from Valley Fiber, you may not return the Equipment to us. If permitted by the Reseller, you may return the Equipment to the Reseller, in which case the return will be subject to the Reseller's return policy. If you return your Equipment to the Reseller, your Services will terminate, and you will lose any phone numbers assigned to your account.
- c. **Rental Customers:** If you rent your Valley Fiber Equipment and you terminate your Service for any reason within 12 months from the date you commenced the rental, you will be charged a return charge per item of rented Equipment at the rates published on our website at \*. Within 14 days of termination, you agree to return at your own expense all Equipment to Valley Fiber or you will be charged \$50 per item of Equipment rented, in addition to the return charge.
- d. **No Refunds on Unused Services:** Subject to applicable law, there are no refunds for unused service terms and all Service charges, taxes, fees, and prepaid balance are non-refundable.

### **13. Termination of Services**

- a. **By You:** You may terminate any or all Service by contacting our Customer Care Department using the contact information posted on the website. You may make the termination effective at any time after five (5) working days from your termination request, except for Services where a minimum initial terms is specified, in which case the termination may be effective on any date after the minimum initial term expires, plus five (5) working days. Subject to applicable law, there are no refunds for unused service terms. Notwithstanding the foregoing, if you receive your Services through a Reseller, you may terminate your Services only in accordance with the terms of your agreement with the Reseller to the extent such terms differ from those set forth in this Section 13 a.
- b. **By Us:** We may terminate any or all of your Services or use of your Equipment at any time if any charges by us to your pre authorized debit, credit or debit card is declined or reversed, if your credit or debit card expires or is cancelled and you have not provided us with a valid replacement credit or debit card, or if you otherwise fail to pay any charges, taxes, or fees. Any attempt to use or use of a stolen credit or debit card will result in termination of all of your Services and use of your Equipment. We may terminate your use of the Equipment or of any or all Services if you fail to pay undisputed charges after they are due or within five (5) business days after we have notified you that, in our sole but reasonable discretion, such disputed charges are valid and should be paid. We may terminate or modify your use of the Equipment or of any or all Services immediately if we determine, in our sole and absolute discretion, that you violated any of your obligations in this Agreement or that you violated the license granted in Section 4. We may terminate any element of the Services provided to you (but not your use of the Equipment for unlimited calling) for any other reason or no reason by providing notice to you of at least ten (10) working days or if longer, the minimum notice period required by applicable law.

- c. **Phone Number:** The phone number assigned to your account may be re-assigned if your Services are terminated by you, by Valley Fiber, or by your Reseller, including when your services are terminated because you returned your Equipment to a Reseller, as set forth in Section 12 b. If you wish to transfer your phone number to another service, you must do so prior to your Services being terminated, otherwise your phone number may not be available for transfer.
- d. **Responsibility for Charges and Reconfiguration of Telephone Line:** You will be required to pay for all Service charges, taxes, fees through the date of termination. You will also be required to pay any termination charges for a terminated Service unless we terminate the Services pursuant to the last sentence of Section 13b. You will be responsible for arranging with your local telephone service company for any reconfiguration of your local telephone service line for paying and charges from your local telephone service company for such reconfiguration. If you terminate our Instant Second Life Service, you must remove the "call forward on busy" feature on your telephone service line or redirect the call forwarding to a different telephone number.
- e. **Reactivation:** If you wish to reactivate a terminated account, and we agree at our sole discretion to reactivate the account, you will be required to pay the reactivation fee as set forth on our site at *Rates*.

#### **14. Warranties**

- a. **Limited Equipment Warranty:** We provide a limited warranty on the Equipment as to manufacturing defects for a period of one (1) year from the date of purchase or rental (the "Limited Warranty"). This Limited Warranty applies only to Equipment purchased or rented through our website or through Resellers. This Limited Warranty does not apply to any defect or failure other than a manufacturing defect, and without limiting the generality of the foregoing, does not apply to any defect caused by damage in transit, damage by a Reseller, damage from dropping, abuse, water damage, electrical or lighting, or from other types of customer handling. Your sole remedy for any breach of the Limited Warranty is to obtain a repaired or replacement item of Equipment. You must include with the require Equipment a letter stating that you are returning the nature of the defect. IF you received your Equipment from a Reseller, you may be instructed to return the Equipment to the Reseller. The capability to use the Equipment to make calls as described and qualified herein, will continue with any Equipment obtained from us to replace to original Equipment under this warranty. This Limited Warranty does NOT cover cost of shipment. You must be registered with Valley Fiber as the primary account holder of record to exercise rights under this paragraph.
- b. **Requests for Replacement Equipment:** To requires replacement Equipment under the terms of this paragraph, the customer is required to call and speak with a member of Valley Fiber Customer Support at \*. The customer must provide a valid credit card (Vis or MasterCard). Valley Fiber will ship replacement Equipment

along with a shipping label to return the damaged or broken Equipment. The customer is required to return the damaged or broken Equipment within fourteen (14) days of receipt of the replacement Equipment or the credit card on file will be charged. Should Valley Fiber determine that the damaged or broken Equipment is not covered under the terms of this paragraph, the customer will have fourteen (14) days to return the replacement Equipment or the credit card on file will be charged for the full retail price of the replacement Equipment plus any associated taxes, shipping, and handling fees. If you received your equipment from a Reseller, you may be instructed to follow the Reseller's procedures for replacement Equipment.

- c. **No Other Warranties:** OTHER THAN THE LIMITED EQUIPMENT WARRANTY EXPRESSLY SET FORTH ABOVE, SUBJECT TO APPLICABLE LAW WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, ON THE EQUIPMENT USE OF THE EQUIPMENT, OR ON ANY SERVICE. THIS DISCLAIMER OF WARRANTIES INCLUDED, BUT IS NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, OR ANY WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS WITHOUT LIMITED THE FOREGOING, WE DO NOT WARRANT THAT THE EQUIPMENT OR ANY SERVICES WILL BE FREE FROM FAILURE, DELAY INTERRUPTION, ERROR, BREACH OF DATE OR NETWORK SECURITY, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION, OR THAT THE FIRMWARE OR SOFTWARE IS ERROR FREE. ANY STATEMENT AND DESCRIPTIONS CONCERNING THE EQUIPMENT OR SERVICES BY VALLEY FIBER OR ITS AGENTS OR REPRESENTATIVES ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.
- d. **No Warranties Against Occurrences:** YOU UNDERSTAND AND AGREE THAT SOME OF THE EQUIPMENT AND SERVICES ARE NOTIFICATION, SIGNALING AND DETECTION EQUIPMENT AND SERVICES. THE EQUIPMENT AND SERVICES DO NOT ELIMINATE OCCURRENCES OF EVENTS, SUCH AS FIRES, FLOODS, BURGLARIES, ROBBERIES, AND MEDICAL ISSUES. FURTHER, YOU UNDERSTAND AND AGREE THAT THE EQUIPMENT AND SERVICES MAY NOT AVERT OR MINIMIZE SUCH OCCURRENCES OR EVENTS, OR THEIR CONSEQUENCES, AND THEREFORE, VALLEY FIBER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE) THAT THE EQUIPMENT AND SERVICES WILL SO AVERT OF MINIMIZE SUCH OCCURRENCES OF EVENTS, OR THEIR CONSEQUENCES.

## **15. Limitations of Liability and Indemnification**

- a. **Direct Damages:** YOU UNDERSTAND AND AGREE THAT VALLEY FIBER IS NOT RESPONSIBLE, AND DISCLAIMS ALL LIABILITY FOR, RELATED TO, OR ARISING OUT OF, YOUR FAILURE TO (I) REGISTER THE EQUIPMENT, (II) ENTER IN THE CORRECT INFORMATION WHILE PROGRAMMING THE EQUIPMENT ONLINE, (III)

TEST THE FUNCTION AND RANGE OF THE EQUIPMENT AND THE VALLEY FIBER SERVICES, OR (IV) CHARGE THE EQUIPMENT, IF APPLICABLE. VALLEY FIBER'S LIABILITY TO YOU ON ACCOUNT OF ANY ACT OR OMISSION OF VALLEY FIBER RELATED TO THIS AGREEMENT, INCLUDING ACTS OR OMISSIONS RELATED TO THE SERVICES OR 911 DIALING, SHALL BE LIMITED IN AMOUNT TO THE TOTAL OF VALLEY FIBER'S CHARGES COLLECTED FROM YOU DURING THE ONE (1) MONTH PERIOD PRECEDING THE ACT OR OMISSION AND SHALL BE FURTHER LIMITED TO RECOVERY OF ACTUAL DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY OR BODILY INJURY OR DEATH, PROXIMATELY CAUSED BY VALLEY FIBER'S INTENTION MISCONDUCT OR RECKLESSNESS. VALLEY FIBER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES RESULTING FROM FORCE MAJEURE EVENTS SUCH AS (BUT NOT LIMITED TO), ACTS OF NATURE, STRIKES, WAR, INVASION, INSURRECTION, HOSTILITIES (WHETHER OR NOT WAR IS DECLARED), RIOTS OR OTHER CIVIL UNREST, ACTS OR THREAT OF TERRORISM, NATURAL DISASTER, PANDEMIC, EPIDEMIC, QUARANTINE RESTRICTION OR STATE(S) OF EMERGENCY, ANY ACTION(S), ORDER, LAW, REGULATION OR RESTRICTION OF ANY GOVERNMENTAL OR REGULATORY BODY (INCLUDING BUT NOT LIMITED TO, THE DENIAL OR CANCELLATION OF ANY NECESSARY LICENSE OF PERMIT, ACTIONS EMBARGOES OR BLOCKADES), LOSS OF POWER TO YOU; INSTALLATION WORK PERFORMED BY YOU OR BY THIRD PARTIES OR ANY ACT OF OMISSION BY YOU OR ANY PERSON USING THE EQUIPMENT OR SERVICES PROVIDED TO YOU; EQUIPMENT, NETWORK OR FACILITY FAILURE SHORTAGE, UPGRADE, RELOCATION OR MODIFICATION; ANY ACT OR OMISSION OF ANY UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR, OR OTHER THIRD PARTY, INCLUDING BLOCKING OF PORTS BY YOUR HIGH SPEED INTERNET SERVICE PROVIDER OR OTHER IMPEDIMENT TO USAGE OF THE EQUIPMENT OR SERVICES CAUSED BY ANY THIRD PARTY; OR ANY OTHER CAUSE THAT IS BEYOND OUR REASONABLE CONTROL.

- b. **Indirect, Consequential Damages:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VALLEY FIBER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS ASSIGNS, OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU OR US IN CONNECTION WITH THE SERVICE SHALL NOT BE LIABILITY UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING ANY DAMAGES ARISING FROM OR IN CONNECTION WITH PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, BREACH OF NETWORK OR DATA SECURITY, LOSS OF REVENUE OR PROFITS, UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, DATA FILES, PROGRAMS, CONTENT PROCEDURES OR INFORMATION, OR THE USE OR INABILITY TO USE THE SERVICE OR ANY OF THE EQUIPMENT INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE, OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN WILL SURVIVE AND APPLY IN ANY AND ALL CIRCUMSTANCES INCLUDING CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT WE WERE INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

- c. **Indemnifications:** In addition to the indemnification provisions above, you shall defend, indemnify, and hold harmless Valley Fiber, its officers, directors, employees, affiliates, agents, assigns, and any other service provider who furnishes services to you or use in connection with the use of the Equipment and Services, from any and all claims, suits, actions, judgment, losses, damages (direct, indirect and consequential), fines, penalties, costs and expenses (including, without limitation, attorney's fees) by or on behalf of you or any third party (other than your local telephone service company\_ relating to or arising out of:
- i. The use of your Equipment and Services;
  - ii. Any violations of your obligations under this Agreement;
  - iii. The violation of applicable laws, regulations, or the terms of this Agreement;
  - iv. The transmission of any messages, Content, images, or other information;
  - v. Any claims for infringement of any intellectual property rights arising from or in connection with the use of the Services; or
  - vi. Any harm to any persona resulting in the personal injury or death of any person or in damage to or loss of any tangible or intangible property (including data).

## **16. Arbitration**

READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIS TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM VALLEY FIBER. In the unlikely event that Valley Fiber is not above to resolve a dispute it has with you, any member of your household, or any of your guests or any user of your Equipment of Services after 60 days, to the extent permitted by applicable law, we each agree to resolve any claim, dispute, or controversy (excluding any Valley Fiber claims for injunctive or other equitable relief) arising out of or in connection with or relating to these Terms and Conditions, the Privacy Policy and the Valley Fiber HB End User License Agreement (if applicable), including any further modifications of those agreement by Valley Fiber, the charges for Equipment and Services, or the breach or alleged breach thereof (collectively, "Claims"), by binding arbitration by the Judicial Mediation and Arbitration Services ("JAMS") under the Optional Expedited Arbitration Procedures then in effect of JAMS, except as provided herein. The arbitration will be conduct in in Winkler, Manitoba, Canada unless you and Valley Fiber agree otherwise. Each party will be responsible for pay any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as prevent Valley Fiber from seeking injunctive or other equitable relief from the courts as necessary to protect any of

Valley Fiber's proprietary interests. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT, BY ENTERING THE TERMS OF SERVICE, YOU AND VALLEY FIBER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND.

## **17. Canadian Export Controls**

You agree to comply fully with all relevant export laws and regulations of Canada, including, but not limited to Canadian Export Administration Regulations, administered by the Department of Commerce, Bureau of Industry and Security ("Canadian Export Controls"). Without limiting the generality of the foregoing, you expressly agree that you shall not export, directly or indirectly, re-export, divert, or transfer any portion of the Equipment or Services or any direct product or technical data thereof to any destination, company or person restricted or prohibit by Canadian Export Controls. You further represent and warrant that you (or if acting on behalf of a business, the business and its officers, directors, and shareholders) are not listed on any Specially Designate National or other denied parties list issued by any agency of the Canadian Government.

## **18. Copyright Infringement; Digital Millennium Copyright Act (DMCA) Notice**

Materials may be made available via the use of the Equipment and Services by third parties not within our control. We are under no obligation to, and do not, review content posted, published, or broadcast through our Services for illegal or impermissible content. However, we respect the copyright interests of others. It is our policy not to permit materials known by us to infringe another party's copyright to be to be posted, published, or otherwise broadcast through our Services. If you believe any of the materials we knowingly post, publish or broadcast regarding our Services and Equipment infringe a copyright, you should provide us with written notice that, at a minimum, contains: (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) identification of the copyrights work claimed to have been infringed, or, if multiple copyrighted works, at a single online site are covered by a single notification, a representative list of such works at that site; (iii) identification of the material that is claimed to be infringing, or to be the subject of infringing activity, that is to be removed or disable, and information reasonably sufficient to permit us to locate the material; information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number and, if available, an electronic mail address at which the complain party may be contacted; (v) a statement that eh complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (vi) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right

that is allegedly infringed. All DMCA notice should be sent to our designated agent as follows: Valley Fiber Legal Department \*.

## **19. Miscellaneous**

- a. **Survival:** The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.
- b. **No Third-Party Beneficiaries:** No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action, or creates any other third-party beneficiary rights. For the purposes of clarity, Valley Fiber's officers, directors, employees, affiliates, agents, assigns, service provides and any of their respective directors, officers, shareholders, members, employees, affiliates, agents or assigns, are intended to be, and are considered third party beneficiaries of this Agreement.
- c. **Governing Law:** Subject to applicable law, this Agreement and the relationship between you and us are governed by the laws of Manitoba in Canada without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award for any other reason consistent with Section 16 or if Section 16 or some part thereof is unenforceable pursuant to applicable law, such action shall only be brought in a court of competent jurisdiction in Winnipeg, Manitoba and you shall submit to the personal exclusive jurisdiction of the courts located within the Province of Manitoba and you shall submit to the personal and exclusive jurisdiction of the courts located within the Province of Manitoba, Canada and waive any objection as to venue or inconvenient forum. You further acknowledge and agree that this Agreement any related Agreement shall be concluded in the Province of Manitoba at the time and place Valley Fiber receives communication in Manitoba from you of your acceptance of these terms and conditions, regardless of the means by which you communicate your acceptance to Valley Fiber.
- d. **Copyrights, Service Marks, and Trademarks:** The Equipment and each of our Services and any firmware or software used to proceed the Services or provided to you in conjunction with our Services, or embedded in the Equipment, and all Services, information, documents, and materials on our website are protected by trademark, copyright, or other intellectual property laws and international treaty provisions. All of our websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "Marks") are and will at all time remain our exclusive property. Nothing in this Agreement grants you the right or license to use any of our Marks.
- e. **Entire Agreement:** Materials on our websites which are not specifically referred to in these Terms and Conditions are not incorporation into this Agreement This Agreement, the Privacy Agreement and the Valley Fiber Mobile HD End User License Agreement (if applicable), including any future modifications which may occur, and the charges for Equipment and Services, and other related materials found on our website constitute the entire Agreement between you and us and

govern the use of the Equipment and Services by you, members of your household, and guest. This Agreement supersedes any proper agreement between you and use and any and all prior or contemporaneous statement, understanding, writing, commitments, or representations concerning its subject matter. The sections titles in this Agreement are for convenience only and have no legal or contractual; effect.

- f. **Severability:** If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or rendered unenforceable any other portion of this Agreement.
- g. **No Waiver Rights:** Our failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.
- h. **Assignment:** Valley Fiber may assign this Agreement and any of its right or obligations hereunder at any time. You may not assign your rights or delegate any of your duties under this Agreement, and any attempted assignment or delegation without such consent will be void. This Agreement will be binding upon and inure to the benefit of the parties, their successors, and permitted assigns.
- i. **Performance of Work:** Valley Fiber may subcontract any work, obligations or other performance require of Valley Fiber under this Agreement without your consent.
- j. **No Agency:** Nothing in this Agreement shall be construed to create a partnership, joint venture, agency, or employment relationship.
- k. **Notice:** Except as stated otherwise in this Agreement, when a notice is required from us to you, we may provide that notice by email to the email address provided by you when you established your account with us or as otherwise updated. You are responsible for keeping that email address up to date. When you are required to give us notice you must do so, except as otherwise herein, by sending your notice to Valley Fiber, c/o Billing Department \* or via email at \*.
- l. **English Language Only:** The parties confirm that it is their express wish that this Agreement, as well as any other documents relating to this Agreement including notices, schedules, and authorizations, have been and shall be drawn up in the English language only.