

## Qwest Choice™ OnLine Terms and Conditions

These Qwest Choice OnLine Terms and Conditions ("Agreement") are between Qwest Broadband Services, Inc. ("Qwest") and you ("you" or "Customer"). Please review the Agreement carefully; it governs your use and Qwest's provision of the Service and Equipment.

BY ENROLLING IN, ACTIVATING, USING, OR PAYING FOR THE SERVICE, FAILING TO RETURN THE EQUIPMENT AND CANCEL SERVICE WITHIN 30 DAYS AFTER ORDERING SERVICE AND EQUIPMENT, OR INSTALLING THE EQUIPMENT YOU AFFIRM THAT YOU UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, EVEN IF YOU CHOOSE NOT TO READ IT. FURTHER, YOU AFFIRM THAT YOU UNDERSTAND AND AGREE TO THE PRICES, CHARGES, AND OTHER TERMS AND CONDITIONS QUOTED TO YOU DURING THE ORDERING PROCESS AND ON <http://www.qwest.com/legal/choicetvandonline> which is subject to change, ALL OF WHICH ARE INCORPORATED BY REFERENCE, AND YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND ARE BOUND BY IT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT (INCLUDING FUTURE REVISIONS), DO NOT USE THE SERVICE OR EQUIPMENT, CALL QWEST AT 1 800-654-2180 TO CANCEL THE SERVICE IMMEDIATELY, AND RETURN THE EQUIPMENT TO QWEST ACCORDING TO THE RETURN POLICY POSTED AT <http://www.qwest.com/legal/choicetvandonline>.

### 1. Definitions.

"AUP" means the Qwest Acceptable Use Policy posted at <http://www.qwest.com/legal/>, including all future revisions.

"Equipment" means all Qwest-provided equipment, devices and material related to the Service, including without limitation: Digital Gateway Box(es) (and any balen and diplexers or splitters), ETHERset, cable modem(s), routers, and network interface card(s) ("NIC").

"Force Majeure Event" means an unforeseeable event beyond the reasonable control of a party, including without limitation: act of God; fire; flood; labor strike or unrest; sabotage; cable cuts; acts of terror; power shortage or power failure, e.g., rolling blackouts; material shortages or unavailability or other delay in delivery not resulting from Qwest's failure to timely place orders therefore; lack of or delay in transportation; government codes, laws, regulations, ordinances, rules, or restrictions; war or civil disorder; or failures of suppliers of goods and services.

"Late Charge" is the portion of the payment not received by or immediately available to Qwest by the due date multiplied by the highest lawful amount for commercial transactions in the state you receive Service, Equipment, and/or Software in.

"MRCs" means monthly recurring charges.

"NRCs" means non-recurring, one-time charges.

"Product Information" means information about the Service that may be included in product literature, user manuals, brochures, welcome material, and on [www.qwest.com](http://www.qwest.com).

"Regulatory Activity" means any regulation and/or ruling, including modifications thereto, by any regulatory agency, legislative body or court of competent jurisdiction.

"Service" means all of the services you receive from Qwest from the following list: Qwest Choice™ OnLine service, wireless router maintenance and support service, and related Qwest installation, provisioning, support, and repair. "Service" when used in the Service Description Section below refers to the specific service being described.

"Software" means any Qwest-provided software you are required or enabled to download or otherwise use in conjunction with your Service and/or Equipment.

"Taxes" means foreign, federal, state and local taxes, surcharges, other similar charges, and any other imposition that may be passed on by Qwest to Customer.

**2. Service Description.** Qwest will provide, and you will purchase the Service. Further details regarding the Service may be provided in Product Information which is incorporated herein by reference.

(a) Qwest Choice™ OnLine Service.

(i) Qwest may provide Service that runs over the same line as your Qwest wireline telephone line. The Service is an Ethernet-like protocol service and includes: (A) a connection between the Equipment and your home computer, (B) connection to the Internet, and (C) Software. The Software will include electronic mail, and, if required, TCP/IP software.

(ii) Availability. Service may not be available in all areas or at the rates or speeds generally marketed. The speed(s) available at your location are identified during the ordering process. Service speeds are "up to" and Qwest will provision your line at the maximum speed it qualifies for within the speed range of the service you selected. Your location may subsequently be eligible for additional speed options; provided that you will be charged a speed change charge for any speed change. The Service should not affect the video programming portions of your digital television service. Availability of Service depends on availability and limits of Qwest wire centers and facilities. Service will not be provided using unsuitable facilities or if provision of Service creates interference with other services. Service is offered only to location(s) qualified by Qwest line qualification procedures. Some lines may not qualify for the Service even if initial tests qualified such lines. Speed and availability of Service are not guaranteed and may be limited by a variety of factors including but not limited to the physical condition of your line and wiring at your location, your Service location, phone line qualifications, computer performance/configuration, and network/Internet congestion. Service is provided on a per-line basis, and the actual throughput and connection speed of your Service depends on a number of factors such as Internet traffic and congestion or bandwidth, distance of your home from a Qwest central office, viruses or spy ware, server

speed of the Web sites you connect to, traffic and congestion on your home network or corporate LAN, and Windows PC settings, in addition to the factors listed above. Uninterrupted or error-free Service is not guaranteed and Qwest may limit speeds.

(iii) Moves. The Service is provided to you at your residence. You may not transfer your subscription or your rights and obligations under this Agreement to any other person or to yourself at a new residence. If you move to another location (including a move within the same building) you are not guaranteed to have Service at the new location. Your line must be re-qualified for Service at any new location and MRCs and NRCs applicable to new Service will apply.

(iv) Qwest Facilities and Equipment to Provide Service: Licenses. Certain Qwest facilities and equipment used to provide you Service may be located on your premises. These facilities and equipment are the property of Qwest and must be installed, relocated, rearranged, tested, inspected, and maintained only by Qwest. You are responsible for damage to such facilities and equipment resulting from your negligence (including failure to reasonably prevent damage by others) or willful conduct. You may not attach or connect anything to the Qwest facilities or equipment unless authorized by Qwest. Any unauthorized attachments or connections may be removed or disconnected by Qwest and your Service may be suspended or terminated as a result. You agree to provide Qwest access to your premises at reasonable hours if necessary to terminate or cancel Service or to maintain or remove the facilities and/or equipment. Customer shall inform Qwest if Customer sells, vacates, rents or sublets the premises where the Equipment is located so Qwest may enter the premises or remove the Equipment. Qwest is not liable for defacement or damage to your premises resulting from the existence of Qwest facilities or equipment and associated wiring, or from the installation or removal thereof, when such defacement or damage is not the result of Qwest negligence. You may be required to provide, install, and maintain, at your expense, certain items such as space and power, and rights or licenses, to receive Service, if such items are not already in place. These items may include without limitation suitable commercial power, power wiring and outlets, housing, heat, light, and ventilation for the operation of telephone facilities, rights to use or install pathways, shafts, risers, conduit, telephone closets, interior wiring, service areas, racks, cages, utility connections, entries and/or trench (for purpose of providing entrance facilities into multi-unit housing complexes, commercial properties or business developments to reach points of termination).

(v) Account Usage and Password. You will receive a user name and password upon completing the registration process. You are responsible for maintaining the confidentiality of the user name and password, and are fully responsible for all activities that occur under your user name or password including payment for all such activities (including charges that occur from accessing certain information, products, and services from persons other than Qwest, such as America Online and CompuServe online activities). You are also advised that you are solely responsible for protecting the security of your credit card information from unwanted or unauthorized charges for Internet-based transactions. Qwest does not endorse or warranty any third party products, services or content that are distributed or advertised over the Service. You agree: (A) that only you and your authorized designees will use your user name and password and that you will not transfer or disclose either your user name or password to any other person, (B) to immediately notify Qwest of any unauthorized use of your user name or password or any other breach of security, and (C) to ensure that you exit from your account at the end of each session. "Authorized designees" means members of your family or business associates that you, at your own risk and responsibility, permit to access the Service using your user name and password. You must ensure that any such authorized designees will comply with this Agreement and you will be responsible for all use of the Service and any other services accessed through the Service on your account whether or not authorized by you. You acknowledge that you are aware that certain content accessible through the Service may contain material that is unsuitable for minors. Accordingly, you agree to supervise any minor's use of the Service through your account. Qwest will not be liable for any loss or damage arising from your failure to comply with this Section. While Qwest provides blocking and filtering software developed by others that empower parents and teachers to restrict their children's and students' access to objectionable or inappropriate material and to protect them from disclosing personal or other information, it is not the publisher of this software. Qwest is not in any manner responsible for the effectiveness of these blocking and filtering technologies.

(vi) E-mail and Web Storage Space Limitations. Your e-mail and Web storage space is limited and such limits are listed on the applicable page of [http://my.qwest.net/nav4/help/your\\_acct/quota\\_warning.html](http://my.qwest.net/nav4/help/your_acct/quota_warning.html) and [http://www.qwest.com/residential/internet/ChoiceOnLine/learn\\_more.html](http://www.qwest.com/residential/internet/ChoiceOnLine/learn_more.html). When a mailbox reaches its limit, you will not be able to receive or send e-mail.

(vii) E-mail. Additional User IDs provided for e-mail boxes are not intended for use as dial-up connections. Any usage associated with additional e-mail box User IDs will be charged the per-hour rate associated with usage above the monthly allotment for dial-in access (where available). The number of mailboxes available to you depends upon the Service to which you have subscribed. The size of incoming e-mail is limited and such limits are also listed on <http://www.qwest.com/residential/internet/ChoiceOnLine/index.html>. E-mail that exceeds the limits will not be delivered, and you will receive a notice that the e-mail was too large.

(viii) Upgrades. Upgrading or downgrading Service could lead to the loss of stored e-mail. Such loss may ordinarily be prevented by saving such e-mail on your personal computer prior to the upgrade. Customer will not hold Qwest liable for the loss of e-mail during the upgrade process, whether caused by Customer or Qwest.

(b) Wireless Router Maintenance & Support Service.

(i) Wireless router maintenance and support service is only available to Qwest Choice™ OnLine customers who also purchase Qwest-provided networking equipment (Wireless Router as described in the Rate Card), and must be purchased per physical location and per Qwest Choice™ OnLine telephone line. You must maintain the wireless router maintenance and support service for the entire term of the Agreement.

(iii) Wireless router maintenance and support services include:

(A) 24/7 telephone and on-site support for connectivity, security settings, and simple file and print sharing on wireless networks created with Qwest-provided networking equipment;

(B) Broadband application software that assists Qwest in providing the support referenced above. Qwest also provides regular updates to such software.

(C) Configuration of broadband application software.

(iv) Wireless router maintenance and support services do not include any items not specifically listed as included above, including without limitation:

(A) Issues related to the establishment or use of a wireless fidelity ("WiFi") hotspot.

(B) Issues that exist prior to successful installation of networking equipment, establishment of an operating network, or prior to ordering wireless router maintenance and support service.

(C) Issues reported after the termination of wireless router maintenance and support service.

(D) On-site support prior to successful installation of networking equipment and establishment of an operating network.

(E) Issues resulting from your intentional abuse, misuse, or negligence.

(F) Repair or replacement of any equipment or connections (whether Qwest certified or not).

(G) Installation of devices that are not part of the network, including without limitation printers, fax machines, scanners, routers, hubs and switches.

(H) Support of a network that contains any devices not certified by Qwest.

(I) Support of a network on an operating system that does not meet Qwest's minimum system requirements.

(J) Security of your network and data.

(K) Issues with software (whether provided by Qwest, you, or a third-party).

(L) Removal of viruses, spy ware, and ad ware.

### 3. **Equipment.** Certain Qwest-provided and customer-provided equipment is required to use the Service.

#### (a) Qwest-Provided Equipment.

(i) *Rental Equipment.* Qwest provides you certain Equipment to use with the Service and you agree to pay the applicable MRC for such Equipment. Customer-owned internal wiring is not part of the Equipment. The Equipment is Qwest's property and you may not assign, rent, or transfer the Equipment or your rights or duties under this Agreement to another without Qwest's prior written consent. You agree not to remove any Equipment from the premises or damage, alter, tamper with, mishandle, abuse, misuse, or improperly store or operate the Equipment, including using the Equipment with equipment electrically or mechanically incompatible with, or of inferior quality to, it. You also agree that if the Equipment is damaged by you and/or non-operational or malfunctioning for reasons other than a defect covered by the Limited Warranty (see Section 14 below) at any time during the term of this Agreement or upon termination of this Agreement, you are liable to Qwest for any and all damages to or loss of the Equipment, as determined by the Qwest, including but not limited to the full agreed upon value of the Equipment (see below), plus any costs, including reasonable attorneys fees, to collect such. Qwest does not refund or credit any amount of the MRC if your Equipment is not working properly. Please call Qwest immediately if your rental Equipment is not working properly for a repair or replacement. If the Service is terminated by either party for any reason, the Customer will be responsible for the return of the Equipment to Qwest in the same condition as received, ordinary wear and tear excepted, at the scheduled disconnect appointment time, or at any other time upon request by Qwest in accordance with the Return Policy. If the Customer fails to return the Equipment to Qwest in such manner, the Customer will be liable to Qwest for any and all damages to or loss of the Equipment, as determined by Qwest, including but not limited to the full agreed upon value of the Equipment, plus any costs, including reasonable attorney's fees, to collect such amounts. The Customer agrees that the value of the Equipment placed in the Customer's premises is **\$250** for each ETHERset device, **\$650** for each Digital Gateway box, and **\$100** for each cable modem device (each an "Equipment Charge") and further agrees that Qwest may change these values from time to time upon notice to you and your continued use of the Service and Equipment constitutes acceptance of any change in such values.

(ii) *Purchased Equipment.* If you wish to purchase a Wireless Router, USB Adaptor or Laptop Card from Qwest, the terms and conditions specific to purchased Equipment set forth below will apply. The other Qwest-provided Equipment is not available for purchase at this time.

(A) *Ownership; Risk of Loss.* You will own the purchased Equipment, and will bear all risk of loss of, theft of, casualty to or damage to the purchased Equipment from the time it is received by you until the time (if any) when it is returned by you pursuant to this Agreement and has been received by Qwest.

(B) *Replacement Equipment.* In the event the purchased Equipment fails after expiration of the Limited Warranty and during the term of this Agreement, replacement Equipment may be available for purchase by contacting Qwest at 1-800-654-2180. Qwest will charge you the then-current charges for the replacement Equipment, plus shipping, handling and applicable Taxes. Replacement Equipment may or may not be the same model.

(iii) *Additional Equipment.* Any NIC supplied and installed by Qwest in your home computer under this Agreement shall become your property. The NIC will remain your property following termination of this Agreement, and Qwest does not undertake to remove it from your home computer or maintain the NIC on an ongoing basis.

(b) Delivery, Installation, and Maintenance of Equipment. Equipment may be delivered to you only in the United States. Customer will bear all risk of loss of, theft of, casualty to or damage to the Equipment from the time it is received by you until the time when it is returned by you, pursuant to this Agreement, and has been received by Qwest. Qwest provides installation of your Service and you agree to pay the installation charges and any reinstallation charges listed at <http://www.qwest.com/legal/choicetvandonline> under "Rate Card". Notwithstanding the foregoing, certain home owner's associations and property developers have an arrangement with Qwest that allows you to self-install Service. You are encouraged to complete any self-installation of the Equipment promptly because you will be responsible for full payment for the charges on your bill even if you have not yet installed the Equipment and used the Service at the

time the bill is rendered. Information on self-installation procedures is located at [www.qwest.com/residential/internet/installation.html](http://www.qwest.com/residential/internet/installation.html). Qwest is hereby expressly granted the right at reasonable times to enter the premises to inspect, service or remove the Equipment.

(c) **User Back-up Recommendation.** In order to install the NIC, it is necessary to open the home computer. In addition, when software is installed on the home computer, the system files may be modified. Qwest does not warrant that the opening of the home computer or the installation of software will not disrupt the normal operations of the home computer or cause the loss of files. For these and other reasons, Qwest recommends that you back-up all files prior to installation.

(d) **Damaged/Defective Equipment.** If the Equipment is inoperable, technical support is available at 1 800-654-2180. If Qwest deems the Equipment is defective under the Limited Warranty (set forth in the "Warranty" section below) the Limited Warranty will apply. If the Equipment fails for any other reason you may request that Qwest deliver replacement Equipment. Any such replacement Equipment will be charged to you at the price specified at <http://www.qwest.com/legal/choicetvandonline> plus shipping and handling and any applicable Taxes. If Qwest provides you replacement rental Equipment outside the Limited Warranty, you will be charged the full retail cost of your non-operational or malfunctioning Equipment plus a monthly rental charge for the replacement Equipment. Replacement Equipment may or may not be the same model.

(e) **Customer-Provided Equipment.** You must provide equipment that supports the Service and meets the minimum system requirements found at [http://www.qwest.com/residential/internet/ChoiceOnLine/system\\_requirements.html](http://www.qwest.com/residential/internet/ChoiceOnLine/system_requirements.html) ("Customer Equipment"). Qwest may revise the minimum requirements from time to time. Windows/PC laptop computers must have a PCMCIA slot available, or must have an existing PCMCIA Ethernet card with drivers installed. Macintosh laptop computers must have a built-in AAUI Ethernet Interface. Additionally, you may be required to provide your own NIC. Any Customer-provided equipment (including a customer-provided NIC) is not covered by this Agreement and Qwest is not liable or responsible for any such equipment. You represent that you own the Customer Equipment or otherwise have the right to use it with the Service and agree that Qwest has no responsibility or liability for it. Installing or using the Service with Customer Equipment that does not meet the minimum requirements: (i) limits support available for Service, (ii) may damage Customer Equipment, software, peripherals or data, and/or Equipment, and (iii) NEITHER QWEST, ITS AFFILIATES, SUPPLIERS, OR AGENTS WILL BE RESPONSIBLE/LIABLE IF YOU CANNOT ACCESS YOUR SERVICE, IF SERVICE DOES NOT FUNCTION CORRECTLY OR AT ALL, OR IF CUSTOMER EQUIPMENT, SOFTWARE, PERIPHERALS, DATA, OR EQUIPMENT IS DAMAGED AND YOU WILL BE LIABLE TO QWEST FOR DAMAGE TO ANY EQUIPMENT RENTED FROM QWEST. The foregoing limitation of liability is in addition to and will not limit any other limitation of liability set forth in this Agreement.

**4. Changes to Service or this Agreement.** Qwest is not obligated to give you notice of changes to this Agreement before it becomes effective. You should review the Agreement at the time it becomes effective for you. Subject to any applicable rules or laws, Qwest may:

(a) at any time, effective upon posting to [www.qwest.com/legal](http://www.qwest.com/legal) or any written notice to you, including e-mail: (i) stop offering the Service and/or rental Equipment, (ii) modify the Service and/or any of the terms and conditions of this Agreement, and/or (iii) reduce MRCs or NRCs. Please check such Web site and your e-mail regularly for changes.

(b) upon 30 days notice to you: (i) increase MRCs and/or NRCs or (ii) change this Agreement or the Service in a way that directly results in a material and adverse economic impact to you. Qwest may reduce the foregoing notice period where commercially reasonable and/or if such increase is based upon Regulatory Activity.

Your continued use of the Service and/or Equipment constitutes acceptance of those changes. You must immediately stop using the Service and Equipment and cancel your Service if you do not agree to the changes. Any changes or other terms you make to this Agreement, or propose in any other documents, written or electronic, are void.

**5. Third-Party Services, Software and Equipment.** Purchase, rental, use, or subscription to any third-party services, software, or equipment offered by or through Qwest is subject to the third-party provider's terms and Qwest is not responsible or liable for any such services, software, or equipment.

## **6. Software.**

(a) **Software.** By installing the Software and using the Services or using Equipment with embedded Software you are agreeing to abide by all of the terms and conditions of this Agreement that relate to the Software, including without limitation the terms and conditions of this Section.

(b) **License.** If the Software is accompanied by an end user license agreement ("EULA"), your use of the Software is governed by the terms of that agreement and by the terms of this Agreement where applicable. You must accept and agree to the terms of the EULA before installing the Software and using the Service. If the Software is not accompanied by a EULA, Qwest grants you a limited, personal, revocable, nonexclusive, nontransferable, non-assignable license to install and use the Software for purposes of using the Service and/or Equipment. The license is effective upon the earlier of delivery or installation, and extends only to Customer's own use of such Software and only on the designated Equipment or with the designated Service.

(c) **No Modification.** You may not modify the Software in any way or change or delete any copyrights, trademarks, service marks or other proprietary rights or notices of Qwest or a third-party that appear or are used in connection with the Software or the Service. You agree that the Software is the confidential and proprietary property of its owner and may not be disclosed or reproduced unless specifically authorized by Qwest or the third-party licensor or supplier. In addition, you agree that you will not de-compile, disassemble, reverse engineer or otherwise reduce the Software to a human readable form.

(d) **Ownership.** You acknowledge that Qwest or the third-party licensor or supplier of the Software, as applicable own all right title and interest, including without limitation all copyright, patent, trademark, and trade secret rights in the Software and related documentation,

updates, and upgrades. You are not granted any ownership rights in the Software and may not sublicense, loan, rent, lease, distribute, share, or otherwise transfer the Software to any one else.

(e) No Export. The Software may be used only in the United States and any export of the Software is strictly prohibited.

(f) Updates, Upgrades, or Changes. Qwest may update, upgrade, or change the Software and related settings on your computer and provide content to the Equipment, through periodic downloads from time to time. You agree to cooperate with Qwest in performing such activities. Qwest will use commercially reasonable efforts to schedule these downloads in a manner that result in the least amount of interference with or interruption to your Service.

(g) Termination. Qwest may discontinue provision of the Software for any reason, including without limitation if Qwest's agreement with a software vendor is terminated. Upon termination of your Service or Qwest notice to you of discontinuance of the Software offering for any reason, you must immediately stop using the Software associated with the terminated Service and destroy any copies you may have and delete it from your computer.

**7. Service Conditions.** The following conditions apply to the Service. Qwest may suspend or terminate your Service or reclassify your Service to a commercial grade service with higher rates if you violate any of these conditions.

(a) Limits on Use. You agree to use the Service for residential, non-commercial purposes only. You agree not to use the Service for high volume or excessive use or in a way that impacts Qwest network resources or Qwest's ability to provide services. You agree not to: (i) offer public information services (unlimited usage or otherwise), (ii) permit more than one dial-up log-on session to be active at one time, or (iii) permit more than one log-on session to be active at one time, except if using a roaming dial-up account when traveling, in which case 2 sessions may be active. A log-on session represents an active connection to your Internet access provider. The active session may be shared to connect multiple computers/devices within a single home or within a single unit within a multiple dwelling unit (e.g., single apartment within an apartment complex) to your modem and/or router to access the Service (including connecting multiple computers with a wireless connection), but the Service may only be used at the single home or single unit within a multiple dwelling unit for which Service is provisioned by Qwest. You may not use a wireless connection in violation of this Agreement or in a way that circumvents Qwest's ability to provide Service to another customer (e.g., you cannot use a wireless connection to provide Service outside your single home or outside your single unit in a multiple dwelling unit). You may not use more than one IP address for each log on session unless an advanced service allocating you more than one IP address has been purchased. Service may only be used in the U.S. Service may not be used to host a server, personal or commercial. Qwest may restrict your use of or interrupt the Service without notice for: (i) maintenance activities; (ii) equipment, network, or facility upgrades or modifications; and (iii) to ensure the provision of acceptable service levels to all Qwest customers. Qwest is not responsible or liable for any Service deficiencies or interruptions caused by such events.

(b) No Resale, Distribution, Transfer, or Assignment. You agree not to resell or distribute, transfer or assign this Agreement and/or the Service via any means including but not limited to wireless technology, except with Qwest's prior consent and according to Qwest's policies and procedures; provided that you may establish a wireless connection as provided above. The prohibition on resale or redistribution of access includes, but is not limited to the provision of e-mail, file transfer protocol (FTP, e.g., ability to upload information to a web page/site) and Telnet access. This Agreement is intended solely for your personal use and it will not benefit or be enforceable by any other person or entity. Qwest may assign this Agreement and your rights and obligations under this Agreement, in whole or in part, at any time without notice to you and you agree to make all subsequent payments as directed. If we do that, we have no further obligations to you.

(c) Authorized Use. You (i) are responsible for maintaining the confidentiality of passwords used with the Service, (ii) will not permit any unauthorized use of the Service, and (iii) will ensure that all use of the Service complies with this Agreement. You are responsible for unauthorized and non-compliant use of the Service.

(d) Compliance. The Service cannot be used for any unlawful, abusive, or fraudulent purpose, including without limitation, using the Service in a way that: (i) interferes with Qwest's ability to provide service to Qwest customers, (ii) avoids your obligation to pay for services, (iii) constitutes a criminal offense, (iv) gives rise to a civil liability, or (v) otherwise violates any law, order, ordinance, governmental requirement or regulation or this Agreement.

(e) Monitoring and Testing the Service. Qwest may, but is not obligated to, monitor the Service. You are responsible for monitoring your accounts for access to newsgroups and Web sites that may contain improper material. You will notify Qwest of the continual receipt of e-mail that you view as illegal or that is unsolicited. You must not design or provide systems used for the collection of information about others without their express knowledge and consent. Qwest may also test Service for maintenance purposes to detect and/or clear trouble.

(f) Data Management and Security. QWEST STRONGLY RECOMMENDS USE OF COMMERCIAL ANTI-VIRUS AND FIREWALL SOFTWARE. You are responsible for the management and security of your data, including without limitation backing up and restoring your data, managing file and print sharing, implementing procedures for accuracy of data and its transmission, and implementing security such as anti-virus and firewalls. Qwest is not responsible or liable for the management or security of your data, including without limitation loss of your data or back-up or restoration of your data, regardless of whether your data is maintained on Qwest servers or your computer or server.

(g) Intellectual Property Rights. Unless otherwise expressly provided in this Agreement, all aspects of the Service are the property of Qwest and are protected by trademark, copyright or other intellectual property laws and international treaty provisions. Qwest grants you a personal, revocable, limited, nonexclusive, nontransferable, non-assignable right and license to use the Service in accordance with the terms and conditions of this Agreement. No other license or rights are granted by Qwest or will be implied or arise by estoppel, with respect to any Service.

(h) Service Guarantee. Qwest will provide you with the Service guarantees listed in your User Guide posted at <http://www.qwest.com/residential/userguides/index.html>. These guarantees include installation and service appointment periods.

**8. Maintenance and Support.** Customer may get support for Service 24 hours a day, 7 days a week by calling Qwest at 1 800-654-2180 or sending an email to [choice@qwest.com](mailto:choice@qwest.com). Charges may apply for certain maintenance, trouble isolation, and support services. Qwest will notify you of any applicable charges in advance of you incurring such charges. If a Qwest technician is dispatched due to a trouble report submitted by you, you may be charged a dispatch charge. A dispatch charge may apply if: (A) a Qwest technician is dispatched at Customer's request (i) to provide support or maintenance, or (ii) to repair trouble and no trouble is found in Qwest facilities or equipment (applies each time this happens), or (B) Customer requests a service date change but fails to notify Qwest before the service date and Qwest technician is dispatched on the service date (will have to pay dispatch charge and Qwest will change the service date). Any requested repairs of Customer's facilities or equipment are not included in the dispatch fee and will be charged on a time-and-materials basis.

**9. Acceptable Use Policy.** All use of the Services will comply with the AUP, posted at [www.qwest.com/legal/](http://www.qwest.com/legal/). Among other things, the AUP prohibits sending unsolicited e-mail messages, including bulk commercial advertising or informational announcements (collectively, "Spam"). Qwest may immediately terminate or suspend any account which Qwest believes is transmitting or is otherwise connected with any Spam. Further, Qwest may hold you liable for Qwest's actual damages in any way arising from, or related to, any Spam transmitted by or in any way connected to you or your account, to the extent such actual damages can be reasonably calculated. If actual damages cannot be reasonably calculated, you agree to pay Qwest liquidated damages of five U.S. dollars (\$5.00) for each piece of Spam transmitted from or otherwise connected with you or your account. You will not, however, be liable for actual or liquidated damages arising from Spam generated from you or your account if you establish that the Spam was sent as a result of a virus or worm or other malicious software infection and if you have taken reasonable actions to prevent and resolve such infections and stop the Spam.

**10. Privacy.** Qwest may provide customer information to third parties or governmental entities when required, or permitted by law; to establish rights or obligations under this Agreement; or to protect Qwest's or others rights or property regarding our services or the services of other providers from fraudulent, abusive or unlawful use of, or subscription to, such services. See also Qwest Privacy Policies posted at <http://www.qwest.com/legal/privacy.html> which may change from time to time. Additionally, Qwest, its affiliates and third-party vendors, may access and use information regarding your bandwidth usage and performance of your Equipment, Software, and Service to: (a) perform related registration (Equipment serial number, activation date, and WTN also provided to manufacturer), maintenance, support, and other service-quality activities and (b) verify AUP compliance and network performance.

Qwest does not require or intend to access or use confidential health related information of Customer or Customer's clients (collectively "End Users") that constitutes Protected Health Information ("PHI"), as defined in 45 C.F.R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The obligation to comply with HIPAA is the sole responsibility of the Customer. Standard commercial telecommunications service providers acting as a conduit for such information are not considered "business associates" as defined in 45 CFR 160.103 under HIPAA. In its role as a conduit telecommunications service provider, HIPAA does not apply to Qwest. Any exposure to End Users' PHI will be incidental to Qwest's provision of Service and is not meant for the purpose of managing the PHI or creating or manipulating the PHI. Such incidental exposure is allowable under 45 CFR 164.502(a)(1)(iii) and, as such, Qwest represents that it is not a "Business Associate" or "covered entity" under HIPAA for the purposes of this Agreement.

#### **11. Rates and Charges; Payment.**

(a) Rates and Charges. All Service and Equipment is provided to you at the MRCs and NRCs quoted to you during the ordering process and as set forth on <http://www.qwest.com/legal/choicetvandonline> under "Rate Card" which is subject to change, at the time(s) you order Service and/or Equipment. You are responsible for any charges associated with the Service and Equipment, including without limitation Equipment purchase and/or rental charges, monthly Service charges, and charges related to installation or activation, reinstallation, maintenance, delivery, shipping and handling, changes to Service, and Taxes. In the event Qwest offers the ability to pay any of the charges in installment payments over time ("Installment Option"), the aggregate payments under the Installment Option may be greater than the charge(s) paid by customers who pay the total charge(s) in one payment.

You will not be eligible for any discounts or promotional offers other than those you qualify for at the time you order qualifying Service and/or Equipment, unless the discount or promotional offer specifically states that existing customers are eligible and in that instance you will receive the discount or promotional offer strictly in accordance with its terms. Customers who move Service or disconnect and reconnect Service may not be eligible for promotional pricing available to new customers. You may only take advantage of one special pricing promotion per Service per account during any 12 month period.

#### (b) Payment.

(i) *Billing.* Charges are billed monthly with MRCs and NRCs billed in advance and usage and governmental charges billed in arrears. You will pay all billed charges by the due date set forth in your billing statement, as well as any Late Charge. You will be charged for each additional copy of your bill.

You will provide all information necessary for Qwest to provide and bill for the Service and Equipment. You affirm that the information you supply to us is correct and complete and will promptly notify Qwest whenever your personal or billing information changes. You understand that false or incorrect information may result in Service provisioning or delivery delays or the suspension or termination of your Service.

(ii) *Disputes.* The billed rate will continue unless you call us promptly and inform us that the billed monthly rate is not the one quoted to you. You must give Qwest notice of any dispute on your bill. If you pay the disputed amount you will receive interest at the lesser of the highest lawful amount for commercial transactions or 1% per month on any amounts Qwest determines were wrongly charged to you. If you give notice of a billing dispute within 90 days of the billed date such interest will be from the due date to the date Qwest credited back or refunded the wrongly charged amount. If you give notice after this 90-day period, such interest will be from the date Qwest received your notice to the date Qwest credited back or refunded the wrongly charged amount.

You will be charged a Late Charge on any amounts withheld that are undisputed or ultimately determined to have been correctly charged. You will pay all Qwest expenses incurred to recover such withheld amounts, including attorneys' fees.

(iii) Deposit. Qwest may reasonably modify the payment terms or require other assurance of payment, including a deposit, based on Customer's payment history, lack of established credit, or a material and adverse change in Customer's financial condition. Refunded deposit amounts will be credited to your account and any credit balance will be refunded. If you make a cash deposit, you will receive interest at the rate required in the state you receive Service, Equipment, or Software from date Qwest received deposit until date Qwest refunded the deposit.

## 12. Term and Termination.

(a) 30-Day Cancellation Policy. You may cancel Service and return the Equipment within 30 days following your order/purchase of such Service and Equipment and avoid payment of MRCs if: (i) you are a new Service customer, and (ii) you notify Qwest you wish to cancel Service because you do not agree with the terms and conditions of this Agreement. You must pay all NRCs related to canceled Service, including without limitation installation, maintenance and shipping charges. You must also pay MRCs related to your canceled Service and Equipment if you cancel Service and return Equipment more than 30 days after ordering and/or fail to follow the Return Policy set forth below in Section 12(e). Additionally, if you order Service with a term commitment and thereafter cancel more than 30 days after ordering, an Early Termination Charge as detailed in subpart (c) below may apply. *For purchased Equipment*: You will receive billing credit for the Equipment purchase price, or for any installation payments made to Qwest, if Qwest receives your Equipment in new condition. No billing credit will be given for Equipment that is incomplete or not in new condition. If more than 30 days have passed since you were installed with your Equipment from Qwest, you should not return your Equipment; you will not receive credit for it. Existing customers, including those who make changes to their Service, or customers who cancel for reasons other than non-acceptance of this Agreement, are not eligible for the 30-day cancellation policy.

(b) Month-to-Month Term. Unless otherwise specified herein, Service is offered on a monthly basis for a term that begins on the date your Service order is completed, ends on the last day of the billing cycle during which you placed the order for Service, and automatically renews monthly.

(c) Term Commitment and Early-Termination Charge. IF YOU ORDER SERVICE WITH A TERM COMMITMENT, YOU AGREE TO MAINTAIN THAT SERVICE FOR THE ENTIRE TERM COMMITMENT PERIOD. IF YOU TERMINATE THAT SERVICE BEFORE THE END OF THE TERM COMMITMENT PERIOD YOU WILL BE REQUIRED TO PAY THE EARLY-TERMINATION CHARGE SET FORTH IN THIS AGREEMENT OR AT <http://www.qwest.com/legal/choicetvandonline/> under "Choice OnLine Rate Card." FOR PURPOSES OF THIS SECTION, MOVING OR MAKING A CHANGE TO ANY PART OF YOUR SERVICE THAT CARRIES A TERM COMMITMENT IS CONSIDERED TERMINATION OF THE ENTIRE SERVICE. THE EARLY-TERMINATION CHARGE IS NOT A PENALTY. RATHER, IT IS AN OFFSET OR RECOVERY OF QWEST COSTS RELATED TO EARLY-TERMINATION AND THE DISCOUNTS ASSOCIATED WITH YOUR TERM COMMITMENT. THE EARLY-TERMINATION CHARGE WILL BE WAIVED IF: (A) YOU NOTIFY QWEST WITHIN 30 DAYS OF THE DATE YOU ORDERED THE SERVICE WITH A TERM COMMITMENT THAT YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT AND (B) QWEST HAS NOT PERFORMED AND YOU HAVE NOT USED ANY OF THAT SERVICE. Qwest may waive the early-termination charge if you upgrade Service; your original term commitment period may start over. After the term commitment period, Service will continue month-to-month until terminated by you or by Qwest.

(d) Termination. You may terminate this Agreement and your use of the Services at any time and for any reason by calling Qwest at 1 800-654-2180; **you cannot terminate your Service online or by e-mail**. Qwest may terminate this Agreement, your password, your account, and/or your use of the Service, without notice and for any reason, including, without limitation, if you fail to pay any charges when due or if Qwest believes you or someone using your account has violated this Agreement. Qwest may, but is not obligated to, send notice of any violations to you before termination. When an account has been terminated or suspended, the reactivation of the old account or the acquisition of a new account will only be allowed by the express approval of Qwest and is subject to applicable charges. If Service is terminated by you or Qwest prior to the end of a monthly term, you will be required to pay a prorated amount of the MRCs for the month and the full amount for any NRCs or other charges for the month and any accrued but unpaid amounts related to Service and Equipment through the effective date of termination. The Equipment must be returned upon termination of the Service to avoid charges to your credit card or Qwest account. Qwest does not visit your home upon termination to restore or reconfigure your home computer.

(e) Return of Rental Equipment. Upon termination, you must promptly return the rental Equipment to Qwest by following the Return Policy posted at <http://www.qwest.com/legal/choicetvandonline>. Qwest will, at its option, either: (1) charge you the Equipment Charge if Qwest does not receive the Equipment within 30 days after termination; or (2) charge you the Equipment Charge upon termination and credit you back for such charge ONLY if Qwest receives your Equipment within 45 days following termination.

(f) Deletion of Data upon Termination. Upon termination of your Service, Qwest may immediately delete all data, files, and other information stored in or for your account or on your Web site without notice.

(g) Seasonal Service. You may temporarily suspend Service ("Seasonal Service") for a minimum of 30 days and a maximum of 6 months at the rates and charges set for in the Rate Card. If you do not reinstate Service after 6 months, Qwest may terminate your Service. If you put your Service on Seasonal Service, your Service and any related Internet access will be unavailable for your use. And, if you use your Service to support Internet-based calling (e.g., voice over Internet protocol (VoIP)), you will **not** be able to make **any** incoming or outgoing calls, including 911 calls, from your service address unless and until you have Qwest re-activate your Service. While you are on Seasonal Service, any term commitment period will continue to run.

## 13. Limitation of Liability. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

(a) YOU ASSUME TOTAL RESPONSIBILITY FOR USE OF THE SERVICE, SOFTWARE (INCLUDING WITHOUT LIMITATION

RESULTS OF USE AND PERFORMANCE OF SOFTWARE), EQUIPMENT, AND THE INTERNET AND ACCESS THE SAME AT YOUR OWN RISK. QWEST EXERCISES NO CONTROL OVER AND DISCLAIMS ANY RESPONSIBILITY FOR THE CONTENT CREATED OR ACCESSIBLE USING THE SERVICE, SOFTWARE, OR EQUIPMENT AND FOR ACTIONS TAKEN ON THE INTERNET. QWEST RECOMMENDS YOU DO NOT USE THE SERVICE IN HIGH RISK ACTIVITIES WHERE AN ERROR COULD CAUSE DAMAGE OR INJURY.

(b) REGARDLESS OF THE LEGAL THEORY UNDER WHICH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER QWEST HAS BEEN ADVISED OF THE POSSIBILITY OF LIABILITY, LOSS, OR DAMAGE, QWEST, ITS AFFILIATES, AND CONTRACTORS WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, LOSS OF BUSINESS, LOST OR IMPUTED PROFITS OR REVENUES, LOSS OF INFORMATION OR DATA, COSTS OF COVER, INTERRUPTED SERVICE, OR RELIANCE UPON THE SOFTWARE AND/OR ASSOCIATED DOCUMENTATION) ARISING OUT OF OR RELATED TO THIS AGREEMENT, SERVICE, SOFTWARE, OR EQUIPMENT EVEN IF ANY SUCH DAMAGES ARE CAUSED BY QWEST, ITS AFFILIATES OR CONTRACTORS.

(c) THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE LIMITED WARRANTY FOR EQUIPMENT SECTION BELOW IS THE ONLY REMEDY AVAILABLE WITH RESPECT TO THE EQUIPMENT. WITH REGARD TO ANY SERVICE RELATED CLAIM FOR DAMAGES THAT IS NOT LIMITED BY THIS SECTION, QWEST'S SOLE LIABILITY AND YOUR SOLE REMEDY FOR QWEST'S FAILURE TO PROVIDE THE SERVICE OR TO MEET PUBLISHED CUSTOMER SERVICE GUARANTEES, SHALL BE LIMITED TO AN OUT-OF-SERVICE CREDIT OR THE AMOUNT OF CREDIT STATED IN THE PUBLISHED CUSTOMER SERVICE GUARANTEES IN THE APPLICABLE USER GUIDE AT <http://www.qwest.com/residential/userguides/index.html>.

(d) QWEST DISCLAIMS ALL LIABILITY OR RESPONSIBILITY FOR ACTS AND OMISSIONS OF OTHER PROVIDERS. ADDITIONALLY, IF PART OF THE SERVICE IS PROVIDED BY A THIRD-PARTY AND THE THIRD-PARTY FAILS TO PROVIDE THAT SERVICE, QWEST WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DEFICIENCIES IN OR LACK OF SERVICE.

(e) QWEST DISCLAIMS ALL LIABILITY OR RESPONSIBILITY IF SERVICE CHANGES REQUIRE EQUIPMENT CHANGES, DEGRADE EQUIPMENT PERFORMANCE OR SERVICE PERFORMANCE WITH THE EQUIPMENT, OR MAKE EQUIPMENT OBSOLETE.

(f) As part of providing Service Qwest will access your premises, and may access your computer hardware and software, and your Service-related equipment. We do not represent or warrant that the technicians doing such work have any special expertise regarding your computer or such equipment. Qwest will not be responsible for damage to property arising from the installation, maintenance or removal of the Equipment, other work associated with the Service, or the provision of the Services. Qwest liability is limited to damage arising from willful misconduct or grossly negligent acts of Qwest technicians in accessing your premises, computer, or Service-related equipment up to \$500, and under no circumstances will Qwest be liable for special or consequential damages. This is your sole remedy for such activity and neither Qwest nor its affiliates, agents, or contractors is liable for any other damages, loss or destruction regardless of the theory, whether direct, indirect, incidental, special or consequential. This is a limitation upon the remedy for such grossly negligent or willful misconduct, and is NOT part of any benefit under this Agreement. Qwest assumes no responsibility whatsoever for any damage to or loss or destruction of any of your software, files, data, or peripherals which may result from your use of the Service, or from the installation, maintenance, or removal of the Service, the Equipment or Software. Qwest does not warrant that any data or files sent by or to you will be transmitted in uncorrupted form or within a reasonable period of time.

(g) Any claim or dispute arising out of or relating to this Agreement must be brought within one year after the cause of action arises.

**14. Personal Injury, Death, and Property Damage.** QWEST'S LIABILITY TO YOU ON ACCOUNT OF ANY ACT OR OMISSION OF QWEST RELATED TO THIS AGREEMENT WILL BE LIMITED TO ACTUAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY (AS LIMITED IN THE LIMITATION OF LIABILITY SECTION ABOVE), OR BODILY INJURY OR DEATH DIRECTLY CAUSED BY QWEST'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE (IF NOT COVERED UNDER APPLICABLE WORKERS' COMPENSATION LAWS). EXCEPT FOR DAMAGES DESCRIBED IN THE PREVIOUS SENTENCE, YOU WILL NOT BE ENTITLED TO ANY OTHER DAMAGES, INCLUDING INDIRECT OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION. QWEST AND OUR EMPLOYEES, AGENTS, CONTRACTORS AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR MODIFICATIONS TO, OR LOSS OR DESTRUCTION OF, ANY OF YOUR SOFTWARE, FILES, DATA OR PERIPHERALS, REGARDLESS OF THE CAUSE. Damages under this Section will be subject to the limitation of liability in this Agreement. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

## 15. Warranty.

(a) Limited Warranty for Equipment. Qwest extends a Limited Warranty to the original purchaser or renter (you) for the Equipment. The terms of the Limited Warranty are set out below (the "Limited Warranty") and are part of this Agreement. Nothing in this Agreement will be deemed to alter the terms of the Limited Warranty. THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE LIMITED WARRANTY IS THE ONLY REMEDY AVAILABLE WITH RESPECT TO THE EQUIPMENT, WHETHER ARISING UNDER THE LIMITED WARRANTY, UNDER A LEGALLY EFFECTIVE IMPLIED WARRANTY OR OTHERWISE.

### LIMITED WARRANTY

(i) This Equipment is warranted by Qwest to the person that ordered the Service, and no others, to be free of manufacturing defects: (A) during the term of the modem rental, only (for modems rented from Qwest); or (B) for a period of one year from the date of Equipment purchase (for networking equipment purchased from Qwest (other than a modem) with wireless router maintenance and support service and/or modems purchased from Qwest). Notwithstanding the foregoing, any unexpired limited warranty period for networking equipment will expire immediately upon termination of the Agreement, and you will have no further warranty for such equipment.

(ii) This Limited Warranty covers only the basic operations of the Equipment, and Qwest does not warrant the compatibility of the Equipment with any computer, operating system or networking equipment, nor does this Limited Warranty cover any defect present in any computer, network, or operating or other system. If the Equipment malfunctions due to a manufacturing defect before the one year term expires, Qwest will replace or repair it, at its option, without charge, so long as you notify Qwest by calling 1-800-654-2180, report that the Equipment's basic operations are not functioning properly, and cooperate with the Qwest Representative to evaluate the circumstances and schedule a service call. No other person or party is authorized to provide repair or replacement service pursuant to this Limited Warranty.

(iii) *Repaired/Replacement Equipment.* Qwest may use new or reconditioned parts to repair the Equipment, or replace the Equipment with new, repaired, or reconditioned Equipment, all at the sole discretion of Qwest. This Limited Warranty will apply to the repaired or replaced Equipment for ninety (90) days, or until the end of the warranty period set forth herein, whichever is longer. All replaced products or parts become the property of Qwest and will not be returned.

(iv) *Exception and Exclusions.* This Limited Warranty does not cover defects due to defacement, misuse, abuse, neglect, improper use, improper electrical voltages or current, repairs by others, alterations, modifications, accidents, fire, flood, vandalism, acts of God or the elements or malicious conduct. No advice or information given by Qwest, its affiliates, its contractors, or their respective employees will vary the terms of the Limited Warranty.

(v) *No Other Express Warranties and Limitation of Implied Warranties.* This Limited Warranty is the only express warranty extended by Qwest in connection with the Equipment. Implied warranties which may not be disclaimed are limited in time to the duration of this Limited Warranty, and all remedies for all such implied warranties are restricted to the remedy and procedure set forth for this Limited Warranty. This Limited Warranty is in lieu of all other warranties, however arising, and all such other warranties are hereby disclaimed. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

(vi) This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

(b) Disclaimer of Warranties. THE SERVICE, SOFTWARE, AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT FOR THE LIMITED WARRANTY IN THE PRECEDING SECTION, QWEST PROVIDES THE SERVICE, SOFTWARE, AND EQUIPMENT WITHOUT WARRANTIES OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INTERFERENCE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING OR COURSE OF TRADE AND DISCLAIMS ANY SUCH WARRANTIES. QWEST DOES NOT WARRANT THAT THE SERVICE OR SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NO ADVICE OR INFORMATION GIVEN BY QWEST, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL VARY THE TERMS OF THE LIMITED WARRANTY OR THIS AGREEMENT OR CREATE ANY WARRANTY. QWEST IS NOT RESPONSIBLE FOR DEFACEMENT, MISUSE, ABUSE, NEGLIGENCE, IMPROPER USE, IMPROPER ELECTRICAL VOLTAGES OR CURRENT, REPAIRS BY OTHERS, ALTERATIONS, MODIFICATIONS, ACCIDENTS, FIRE, FLOOD, VANDALISM, ACTS OF GOD, OR THE ELEMENTS. QWEST TECHNICAL SUPPORT IS NOT WARRANTED AND IS USED AT YOUR OWN RISK. QWEST MAKES NO WARRANTY REGARDING TRANSACTIONS EXECUTED AND CONTENT AND INFORMATION ACCESSED BY USING THE SERVICE. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

**16. Indemnification.** You agree to indemnify, defend, and hold harmless Qwest and its subsidiaries, affiliates, contractors, officers, employees, agents, suppliers, or other partners from any and all third-party claims, liabilities, costs, and expenses, including reasonable attorney fees and punitive damages arising from: (a) violation of any provision of this Agreement by you or others who use your Service, Software, and/or Equipment; (b) installation, modification, or use of the Service, Software, and/or Equipment by you and/or any parties who use your Service, Software, and/or Equipment, with or without your permission; (c) claims for libel, slander, invasion of privacy, or infringement of any intellectual property rights arising from the use of the Service, Software, or the Internet; (d) patent infringement arising from your acts combining or using the Service in connection with facilities or equipment (circuit, apparatus, system or method) furnished by you; (e) negligent acts, errors, or omissions by you; or (f) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the gross negligence or willful misconduct of Qwest.

**17. Dispute Resolution and Arbitration; Governing Law.** PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH MANDATORY ARBITRATION WITH A FAIR HEARING BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION.

(a) Arbitration Terms. You agree that any dispute or claim arising out of or relating to the Services or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration. The sole exceptions to arbitration are that either party may pursue claims: (1) in small claims court that are within the scope of its jurisdiction, provided the matter remains in such court and advances only individual (non-class, non-representative, non-consolidated) claims; and (2) in court if they relate solely to the collection of any debts you owe to Qwest.

(i) *Arbitration Procedures.* Before commencing arbitration you must first present any claim or dispute to Qwest in writing to allow Qwest the opportunity to resolve the dispute. If the claim or dispute is not resolved within 60 days, you may request arbitration. The arbitration will be conducted by the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, will govern the arbitration of the dispute. Colorado state law, without regard to choice of law principles, will otherwise govern and apply to any and all claims or disputes. All face-to-face proceedings will be conducted at a location which is reasonably convenient to both you and Qwest. Arbitration is final and binding. Any arbitration will be confidential, and neither you nor Qwest

may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. The arbitrator may award any relief or damages that a court could award, except an arbitrator may not award relief in excess of or contrary to what this Agreement provides. Judgment on any arbitration award may be entered in any court having jurisdiction.

(ii) *Costs of Arbitration.* The party requesting arbitration must pay the applicable AAA filing fee, except that if you are an individual using the Services for household or personal use and you initiate arbitration against Qwest: (1) you must pay one-half the arbitrator's fees up to a maximum of \$125 if your claim does not exceed \$10,000; (2) you must pay one-half the arbitrator's fees up to a maximum of \$375 if your claim is more than \$10,000 but less than \$75,000; and (3) you must pay an Administrative Fee in accordance with the AAA's Commercial Fee Schedule if your claim exceeds \$75,000 or if your claim is non-monetary. Except as provided in the preceding sentence, each party will pay its own expenses of the arbitration, including the expense of its own counsel, witnesses, and presentation of evidence at the arbitration. If any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorneys' fees.

(b) Waiver of Jury and Class Action. By this Agreement, both you and Qwest are waiving rights to litigate claims or disputes in court (except small claims court as set forth in paragraph (a) above). Both you and Qwest also waive the right to a jury trial on your respective claims, and waive any right to pursue any claims on a class or consolidated basis or in a representative capacity.

**18. Notices.** Except as otherwise provided herein, all required notices to Qwest must be in writing and sent to 1801 California Street, Suite 900, Denver, Colorado 80202; Facsimile #: 1 888-778-0054; Attn.: Legal Department. Except as otherwise provided herein, you agree that all required notices to you will be provided by one or more of the following: posting, bill message, bill insert, postcard, letter, call to your billed telephone number, **or e-mail to an address provided by you when you ordered Service or Equipment.** You agree to provide Qwest with any and every change to your e-mail address by calling 1 800-654-2180. Except as otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by facsimile so long as duplicate notification is also sent by regular U.S. Mail.

**19. General.** If any term of this Agreement is held invalid, illegal or unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder. All terms of this Agreement that should by their nature survive the termination of this Agreement will so survive. Qwest will not be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by a Force Majeure Event. This Agreement, together with the other agreements and policies and posted information referenced herein, constitutes the entire agreement between you and Qwest with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written agreements or understandings relating to the subject matter hereof. No undertaking, representation or warranty made by an agent or representative of Qwest in connection with ordering, authorization, maintenance or provision for the Service and/or the Equipment will be binding upon Qwest, except as expressly set forth herein. In the event of any inconsistency between this Agreement and any other documents exchanged between you and Qwest related to the Service or Equipment, the provisions of this Agreement will control.

Please call Qwest at 1 800-654-2180 if you have any questions regarding your account.

**Where required by law, customers who cancel their Service within the first three days, or seven days, as applicable, following acceptance of this Agreement will be refunded all charges incurred with respect to their account.**