

## **Qwest® Broadband Subscriber Agreement (also known as Qwest High-Speed Internet®)**

This Qwest® Broadband (also known as Qwest High-Speed Internet®) Subscriber Agreement together with the exhibits and materials referenced herein ("Agreement") is between Qwest and the end user of the Qwest service(s) and equipment described below ("you" or "Customer"). For Customer convenience, this Agreement combines obligations of multiple Qwest entities, but does not create joint liability between the Qwest entities. The particular Qwest entity providing you Service, Equipment and/or Software and the provision and receipt of such is subject to all provisions of this Agreement, unless otherwise specified herein. Please review the Agreement carefully; it governs your use and Qwest's provision of the Service, Software, and Equipment.

BY ENROLLING IN, ACTIVATING, USING, OR PAYING FOR THE SERVICE AND/OR EQUIPMENT, FAILING TO RETURN THE EQUIPMENT AND CANCEL SERVICE WITHIN 30 DAYS AFTER ORDERING SERVICE OR 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 [www.qwest.com/legal/highspeedinternetsubscriberagreement/](http://www.qwest.com/legal/highspeedinternetsubscriberagreement/) and [www.qwest.com/legal/](http://www.qwest.com/legal/), 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 1 800-244-1111 (Consumer/Residential accounts), 1 800-603-6000 (Small Business accounts), or 1 800-777-9594 (Global/Business & Government Services accounts) TO CANCEL THE SERVICE IMMEDIATELY, AND RETURN THE EQUIPMENT TO QWEST ACCORDING TO THE RETURN POLICY & PROCEDURE CARD (BLACK & WHITE CARD IN EQUIPMENT BOX).

### **1. Definitions.**

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

"*Equipment*" means Qwest-provided modem(s) and equipment to enable networking which may include without limitation USB adaptors and/or wireless cards.

"*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.

"Qwest" means the affiliate of Qwest Services Corporation that provides you the Service, Software, and/or Equipment.

"*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® Broadband (also known as Qwest High-Speed Internet®; formerly called Qwest DSL® or IDSL); Qwest Connect® Internet Basic, Qwest® Office Basic (formerly called Qwest Choice™ Internet Basic), and Qwest® Office Plus (formerly called Qwest Choice™ Internet Prime), MSN® Premium or Windows Live™, or other Qwest-provided Internet access service; Qwest® Home Network Backer™; Qwest® Office Network Backer™; qHome™; additional services described in the Service Description Section below, and related Qwest installation, repair, support and provisioning. "Service" when used in the Service Description Section below refers to the specific service being described.

"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 Corporation ("QC") and/or Qwest Broadband Services, Inc. ("BSI") will provide, and you will purchase the Service. Further details regarding the Service may be provided in product literature, user manuals, and on [www.qwest.com](http://www.qwest.com) and are incorporated herein by reference. Qwest® Broadband is also part of Office Basic and Office Plus service. Office Basic and Office Plus customers are also subject to Section 2(a) below.

#### **(a) Qwest® Broadband.**

(i) Qwest will provide Qwest® Broadband service that runs over the same line as your Qwest wireline telephone line (except for IDSL). If you do not have a Qwest wireline telephone line, Qwest will provide stand-alone Service that runs over a physical connection to your location. You must specify a Qwest telephone number to use with the Service (unless you order stand-alone Service). Qwest may terminate your Service or charge you for stand-alone Service if you change your Qwest local telephone service to another company, or move your Qwest local telephone service to a wireless service provider.

(ii) *Availability.* Qwest® Broadband 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. Additionally, some ISPs may not be supported for all speeds and in all areas and, if you change speed you may no longer be able to utilize the ISP you originally selected. 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.* 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 broadband 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. 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 appropriate space and power, and rights or licenses, to receive broadband 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).

(b) *Internet Access.* You must select a qualifying Internet access provider at the time you order Qwest® Broadband service. If you select a provider other than Qwest (Qwest Connect® Internet Basic, Qwest Choice™ Internet Prime, Qwest® Office Basic, Qwest® Office Plus, MSN® Premium or Windows Live™, or other Qwest-provided Internet access service), this Agreement does not apply to your Internet access service (but does apply to all other Services, Software, and Equipment you receive from Qwest) and you will be subject to the third-party provider's terms. After commencement of your broadband service, if the provider you selected either: (1) no longer has a relationship with Qwest, (2) you change speeds, and your current ISP is not supported at the new speed; or (3) will no longer offer the service in your area, Qwest may contact you to determine a qualifying replacement provider. In such situation, Qwest will allow you to move to a replacement provider and will waive the associated destination change charge. Qwest may charge you a destination change charge for any other change in Internet service provider.

(i) *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. 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 Internet access 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 Internet access service and any other services accessed through the Internet access services on your account whether or not authorized by you. You acknowledge that you are aware that certain content accessible through the Internet access service may contain material that is unsuitable for minors. Accordingly, you agree to supervise any minor's use of the Internet access service through your account. Qwest will not be liable for any loss or damage arising from your failure to comply with this Section. QWEST RECOMMENDS USE OF COMMERCIALY AVAILABLE CONTENT FILTERING SOFTWARE.

(ii) *E-mail Storage Space and Other Limitations.* Your mailbox storage space, the size of outgoing and incoming e-mail, and the number of mailboxes available to you are limited. Limits are based on your Service type and are listed at <http://sitecontrol.qwestoffice.net>, <http://www.qwest.net>, and [http://my.qwest.net/nav4/help/your\\_acct/quota\\_warning.html](http://my.qwest.net/nav4/help/your_acct/quota_warning.html). When a mailbox reaches its limit, you will not be able to receive or send e-mail. Additionally, e-mail that exceeds the size limit will not be delivered, and you will receive a notice that the e-mail was too large. Qwest e-mail accounts may not be used for purposes of distributing and storing excessive amounts of multimedia files. Multimedia files are defined as any graphics, audio, and video files. 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). If you selected MSN Premium or Windows Live™ this Section does not apply to you; provided that you agree to the terms of either the MSN or Windows Live™ Subscription Agreement.

(iii) *NationWide Roaming Service and Dial-In Numbers.* Qwest Choice™ Internet Prime customers have 10 hours of local dial-in access via the NationWide roaming numbers included in their package price. If you use the Qwest.net NationWide Roaming ("NWR") service, this Section also applies to your use of the Service. All Qwest dial-up numbers are subject to change immediately without notice.

(A) You are responsible for checking the availability of the NWR service for the particular city where you use the NWR service. Local numbers are offered in each of the 48 contiguous states, but may not be available in all cities. The available NWR numbers are posted on the [www.qwest.net](http://www.qwest.net). Use of unpublished NWR numbers is prohibited and you are solely responsible for any and all charges associated with using unpublished numbers.

(B) Simultaneous use of NWR numbers is prohibited and may result in termination of your Internet access service. You are responsible for any charges associated with simultaneous use of NWR service regardless of whether your Internet access service has been terminated.

(C) Qwest is not responsible for any toll, long-distance or other charges in the event access to the Internet access service is not provided via a local telephone number. You will pay for any long-distance, toll, or other charges you incur and you are solely responsible for determining if use of a particular dial-up number will cause you to incur long-distance, toll, or other charges.

(D) The Internet access service is also subject to "idle time-outs" whereby a session for a dial-up account is disconnected because it has been idle for a specified period of time (activity does not include any data generated by an automatic re-dialer, script or other program that runs on the user's computer system for the purpose of avoiding inactivity disconnects).

(iv) *Upgrades.* Upgrading from MSN or Windows Live™ Internet Service Powered by Qwest to Qwest Broadband with MSN Premium or Windows Live™ 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.

(v) *Web Hosting Service.* Some Qwest customers are eligible to receive one of four optional Web hosting packages, described more fully on the Qwest Web site. Additional charges may apply. If you are an eligible Web hosting customer, Qwest will provide the Services described for the package you select, including space on a shared Web server for your Web site, as well as assistance with domain name registrations. If you use the Web hosting feature of the Services, this section also applies to your use of the Services.

(A) Customer Responsibilities. You acknowledge and agree that:

(1) the use of your Web site and any content, information, and all other aspects of your Web site will comply with the AUP and any applicable laws and will not violate any rights of another;

(2) you are solely responsible for the content, quality, performance, and all other aspects of the information or other content contained in or provided through your Web site; and

(3) Qwest has no interest in, nor control over, any of the content or information that is accessible on your Web site. Qwest may, without prior notice, terminate or suspend your Web site if Qwest believes that you have violated this section.

(B) Domain Name.

(1) Use of Domain Name. If Qwest provides you with a domain name that has Qwest's name or marks embedded therein ("Qwest Domain Name"), you may only use the Qwest Domain Name during the term of the Agreement. Qwest owns and has the right to change the Qwest Domain Name. Other than for identifying the location of your Web site, you may not issue any public announcement regarding this Agreement or use the name or any marks of Qwest or any of its affiliates without the prior written approval of Qwest.

(2) Renewal of Domain Name. If you have obtained a Qwest Domain Name, you may request that Qwest automatically renew your Qwest Domain Name registration annually. You will be charged an Annual Domain Name Registration fee for each such renewal. If you do not request Qwest to automatically renew your Qwest Domain Name, you will be responsible for renewal.

(3) Expiration or Termination of Domain Name. If your Qwest Domain Name expires, it will be placed in redemption status starting thirty (30) days after expiration. The redemption status period lasts for up to thirty (30) days. If you ask Qwest to reinstate your Qwest Domain Name during the redemption status period, you will be charged a domain name reinstatement charge. Your e-mail and Web hosting will not function while your Qwest Domain Name is in redemption status. Your Qwest Domain Name may not be reinstated after the redemption status period has expired. Please consult the Qwest Broadband rate card ("Rate Card") applicable to you for details. The Rate Card is posted at: <http://www.qwest.com/legal/highspeedinternetsubscriberagreement/files/>. If you want to terminate your Qwest Domain

Name, please contact Qwest at <http://sitecontrol.qwestoffice.net> to request termination. You will need to specify that you would like to cancel your Qwest Domain Name. The cancellation of your Qwest Domain Name does not automatically terminate your Web site or other Service under this Agreement.

(C) Web Hosting Storage Space and Other Limitations. Your Web hosting storage space is limited. Limits are based on your Service type and are available at <http://sitecontrol.qwestoffice.net> and [http://www.qwest.com/smallbusiness/internet/qwestnet\\_features.html](http://www.qwest.com/smallbusiness/internet/qwestnet_features.html). Qwest Web hosting accounts may not be used for purposes of distributing and storing excessive amounts of multimedia files. Multimedia files are defined as any graphics, audio and video files. Any Web hosting site whose disk space usage for storing multimedia files exceeds 70% of its total usage in terms of total size or number of files will be considered to be using an excessive amount. If you selected MSN Premium or Windows Live™ this Section does not apply to you; provided that you agree to the terms of either the MSN or Windows Live™ Subscription Agreement.

(D) Traffic Allowance. Traffic limits are located at <http://sitecontrol.qwestoffice.net>. If you exceed your traffic allowance, you will be charged a traffic overage charge depending on the resources utilized, and you may be given the option to either (a) reduce the resources used to an acceptable level, or (b) upgrade your Service to a higher priced plan.

(E) Databases. Any database stored on Qwest's servers will be limited in size to 10% of the total disk space allotted for that particular domain's plan/Web site account.

(F) Ownership of Web Site. The legal owner of any Web site or account with Qwest will be the individual or organization whose name is listed in Qwest's database as the owner. Customer will fully cooperate with and abide by any and all of Qwest's security measures and procedures in the event of any dispute over ownership of Customer's Web site or account with Qwest. You own all graphics, text or other information or content supplied by you for incorporation into or delivery through your Web site. Qwest owns any software developed or modified by Qwest and all graphics, text or other information or content materials supplied by Qwest for incorporation into your Web site ("Qwest Materials"). You may only use the Qwest Materials in association with your Web site, and only during the term of this Agreement.

(vi) *Web Design Services.* Qwest customers purchasing Web hosting service under the Agreement are eligible to receive one of three optional Web design packages and/or associated Web design services, described more fully on the Qwest Web site. If you are an eligible Web hosting customer, the Web site design terms and conditions ("Design Terms") in this section will also apply to any Web design Services you order. If these Design Terms conflict with any others provisions of the Agreement, these Design Terms will prevail for purposes of the Web design Services only. Charges for Web design Services are in addition to charges for Web hosting service you purchase, and are set forth in the Rate Card posted at <http://www.qwest.com/legal>. Qwest may subcontract all or a portion of the Web design Services. Actual work may be performed by Qwest or other third parties selected by Qwest. A minimum service term ("MST") of 3 months is required for all Web design Services packages ("Packages"). Qwest will not include any customized Web design Services that you request. Qwest will complete the Web site template based on the information provided by you in a written request form and subsequent telephone interviews.

(A) Detailed Web Design Service Descriptions. If you order Web design Services, Qwest will provide you with services included in the Package you select as further described below. Qwest will deliver your Web site project within approximately ten to eighteen business days. You will be given an estimated completion date at the time of sale. The 10 to 18 day delivery time begins once all Content (defined below) has been submitted to the Qwest design team by you.

(1) Design Services. Web site design Service described in this section ("Design Service") consists of a template-based Web site, and includes an online Quote Request/Contact Us form. Unless you are purchasing the E-Commerce Design Service Package, an e-Commerce shopping cart is not included. You understand and agree that Qwest will provide a template-based Web site in accordance with the information provided by you during the discovery / intake phase of development. After Qwest receives all complete information from you, Qwest will deliver a mock-up site for your review prior to the Web site entering the development phase. The mock-up will give you the opportunity to ensure the Web site meets the template specifications. Once the mock-up is approved, development will begin. When development is completed, the initially-developed Web site ("beta site") will be presented to you for final approval and one-time Content modification. Editing beyond correction of Content will be considered as additional services and will be billed as such. Qwest will attempt to contact you once the Web site is completed and ready to publish. If you do not respond within 5 business days, the Web site will be deemed accepted by you and Qwest will deem the Service engagement completed.

(2) Additional Pages. Additional pages (beyond the number allowed under your Package) ("Additional Pages") may be added to your template Web site design for an additional, per-page set fee set forth in the Rate Card. The charge for an additional page includes no more than one hour of designer time. Any further customizations or time needed to create an additional page will incur an additional fee, to be quoted by Qwest. You understand and agree that Qwest will provide additional pages in accordance with the information provided by you in the submittal form sent via e-mail and subsequent telephone interviews. After Qwest receives all complete information from you, Qwest will deliver a beta site for your review. The Web site modifications will be made available for you to view prior to hosting for purposes of editing for corrections to Content only. Editing beyond correction of Content will be considered as additional services and will be billed as such. Qwest will attempt to contact you once the additional pages are completed and ready to publish. If you do not respond within 5 business days, the pages will be deemed accepted by you and Qwest will deem the Service engagement completed.

(3) Hourly Updates. The hourly updates service ("Hourly Updates") provides you with Web site design services on an hourly basis. You understand and agree that Qwest will make changes and updates to your Web site in accordance with the information provided by you in the submittal form sent via e-mail and subsequent telephone interviews. After Qwest receives all complete information from you, Qwest will deliver a beta site of changes for your review. The Web site modifications will be made available for you to view prior to hosting for purposes of editing for corrections to Content only. Editing beyond correction of Content will be considered as additional services and will be billed as such. Qwest will attempt to contact you once the Hourly Updates are complete and ready to publish. If you do not respond within 5 business days, the Hourly Updates will be deemed accepted by you and Qwest will deem the Service engagement completed. You will receive 1 hour per month as part of your Package that you may use to maintain and update your Web site.

(B) Your Responsibilities. You acknowledge and agree that: (a) The setup and other fees applicable to the Design Service, Additional Pages and Hourly Updates are non-refundable once development work has commenced. It is your sole responsibility to ensure that Qwest receives all necessary Content before design work begins. No design work will be initiated until all required content is provided to Qwest. (b) You must send Content to the Qwest design team in electronic format. Fax copies and handwritten or typed hardcopy letters cannot be accepted. (c) Web page development commences once your written submittal form is submitted via e-mail and your Content has been provided to Qwest. (d) Once you receive a beta site from the Qwest design team, you have 5 business days to respond with approval or revisions. Upon approval, or if there is no response from you within 5 business days, the Web site will be deemed accepted by you and Qwest will deem the service engagement completed. (e) If you have revisions to the beta site, the Qwest design team will complete the revisions and send you a final proof of the Web site. You will be given an additional 5 business days to approve or make final alterations to Content before the Web site is deemed accepted by you and Qwest deems the service engagement completed. (f) YOU ARE RESPONSIBLE FOR THE ACCURACY AND APPROPRIATENESS OF ALL DATA AND CONTENT WITHIN YOUR WEB SITE, INCLUDING ACCURATE SPELLING AND GRAMMAR. QWEST WILL NOT BE HELD RESPONSIBLE FOR INACCURATE INFORMATION AND ANY POTENTIAL DAMAGES CAUSED BY SUCH INACCURACIES. (g) You understand that the Qwest design team will not maintain copies of files or documents that are sent by you, and that you are solely responsible for backing up this data. Furthermore, Qwest retains all ownership and proprietary rights in all source codes developed by Qwest. (h) You understand and agree that Qwest's performance under these Design Terms will be dependent upon your timely and satisfactory performance of your responsibilities. If Qwest is unable to perform or is delayed in performing its responsibilities under these Design Terms as a result of your delay or failure to perform your responsibilities, the parties will discuss, mutually agree to and document, in a change order, any modified roles and/or fees associated with such delay or failure.

(C) Fees. Fees applicable to the Design Service, Additional Pages and Hourly Updates are described in the Rate Card, available at <http://www.qwest.com/legal>. All fees will be automatically charged to the credit card you provide when you sign up for the Services. The terms and conditions in Section 11 of this Agreement will also apply. Qwest may alter its fees as provided in this Agreement. All payments for the Design Service, Additional Pages and Hourly Updates are non-refundable and may not be credited back unless otherwise provided in subpart (F) below.

(D) Rights and Licenses.

(1) Definitions.

Your "Content" means all content or information (including, without limitation, any text, music, sound, photographs, video, graphics, data, or software), in any medium, provided by you to Qwest.

"Qwest Materials" means all content, software, source code or other programming material owned by Qwest or its suppliers and used in the development, display or running of a Web site.

"Third-Party Materials" means any content, software, or other computer programming material that is owned by an entity other than Qwest, and licensed by Qwest or generally available to the public, including you, under published licensing terms, and that Qwest will use in the development of or to display or run a Web site. The graphics utilized from Qwest's graphics library are licensed from third-party suppliers.

"Background Technology" means computer programming/formatting code or operating instructions developed by or for Qwest and used to create any portion of a Web site or used to operate the Web site or a Web server in connection with a Web site. Background Technology includes, but is not limited to, any files necessary to make forms, buttons, checkboxes, and similar functions and underlying technology or components, such as style sheets, Web site templates, animation templates, interface programs that link multimedia and other programs, customized graphics manipulation engines, and menu utilities, whether in database form, dynamically driven, or provided in any other format. Background Technology does not include any of your Content or any derivatives, improvements, or modifications of your Content.

(2) Right to Web Site. Until full payment of fees has been made to Qwest for Services rendered, Qwest will have no obligation to deliver the Web site developed to you, including your Content. Upon full payment of fees, Qwest will grant to you all rights, title and interest in the Web site, with the exception of any Qwest Materials, Third-Party Materials, and Background Technology, as defined in subpart (1) above.

(3) Limited License to Qwest Materials, Third-Party Materials and Background Technology. Subject to these Design Terms, Qwest hereby grants you a perpetual, nonexclusive license to copy, distribute, transmit, display and perform any and all Qwest Materials, Third-Party Materials, and Background Technology that is incorporated into your Web site, in whole or in part, solely as necessary for you to operate, maintain, and make the Web site available in the normal course of your business. You may not duplicate or distribute any Qwest Materials, Third-Party Materials or Background Technology to any third party without the prior written consent of Qwest. All ownership and proprietary rights in the Qwest Materials, Third-Party Materials, and Background Technology remain at all times with the respective owner thereof, and nothing herein transfers or assigns any rights or interest therein except the licenses granted thereto. All rights to the Qwest Materials, Third-Party Materials and Background Technology not expressly granted to you hereunder are retained by Qwest. Qwest reserves the right to re-use Qwest Materials, Third-Party Materials and Background Technology used to develop your Web site in the development of another customer's website. Without limiting the foregoing, you agree not to reverse-engineer, reverse-assemble, decompile, or otherwise attempt to derive any source code of the Qwest Materials, Third-Party Materials or Background Technology, except as allowed by law.

(4) Limited License to Content. Your Content and material derivatives, improvements, or modifications thereof will at all times remain your sole property. You hereby grant to Qwest the limited, nonexclusive right and license to copy, distribute, transmit, display, perform, create derivative works from, modify, and otherwise use and exploit your Web site, any of your Content, or any of your marks provided to Qwest hereunder, solely for the purpose of rendering the Design Service, Additional Pages and Hourly Updates under these Design Terms. Such limited right and license will extend to no other materials or for any other purpose and will terminate automatically upon termination of these Design Terms for any reason.

(E) Content Standards. You are solely responsible for all Content you provide to Qwest hereunder. You covenant that your Content will not: (a) be false, inaccurate or misleading; (b) infringe or misappropriate any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing privacy, publicity, export control, consumer protection, unfair competition, antidiscrimination or false advertising); (d) be defamatory, trade libelous, unlawfully threatening or harassing, or advocating, promoting or providing assistance involving violence, significant risk of death or injury, or other unlawful activities; (e) be obscene or contain child pornography; (f) contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (g) link directly or indirectly to or include descriptions of goods or services that violate any applicable law, statute, ordinance or regulation, or that violate Qwest's AUP that is incorporated herein by reference and may be amended from time to time.

(F) Term and Termination. The term of the Design Service, Additional Pages or Hourly Updates commences when you submit an order for such Services, and continues on a month-to-month basis, subject to the MST described in subpart (vi) above. You may terminate the Design Service, Additional Pages or Hourly Updates at any time by contacting your Account Manager. For the Design Service, you are entitled to a 100% refund should you decide to terminate your project prior to entering the Pre-development phase. The Pre-development phase begins when an Account Manager has been assigned to your project, and has commenced working on your Design Service, including gathering Content and information from you and consulting with you regarding your Web site design. You are entitled to a 50% refund should you decide to terminate your project during the Pre-development phase, and before entering the Development phase. The Development phase begins when your project is assigned to Qwest's Web development team, and any design work has commenced. Once the Development phase has begun, all fees are non-refundable and no refunds will be given. Any refunds will be credited to your credit card to which the Services were originally billed. For Additional Pages and Hourly Updates services, there are no refunds once the work has been initiated. Termination of the Design Service, Additional Pages or Hourly Updates services does not terminate other services, commitments and contracts you may have with Qwest. Except as provided above, if you terminate your Web design service Package prior to expiration of the MST (or if Qwest terminates for Cause), you will be charged an early termination charge equal to the monthly recurring charge for your Package for any months remaining in the MST, plus any charges for Services accrued but not yet paid ("Cancellation Charge"). Qwest may: (a) terminate these Design Terms upon seven (7) days written notice for any reason; or (b) immediately suspend or terminate your use of the Design Service, Additional Pages or Hourly Updates and destroy any of your Content if Qwest, in its sole discretion, concludes that you (c) have engaged in illegal activities, in activities or sales that may damage the rights of Qwest or others, or (d) have violated or threatened to violate Qwest's AUP, the Design Terms, the terms of this Agreement or any other agreement you may have with Qwest. Any suspension or termination under subpart (b) of this paragraph may take effect immediately. Termination under subpart (b) will be considered a termination by Qwest for "Cause". If Qwest terminates your Design Service, Additional Pages or Hourly Updates in connection with subpart (b), you will not be entitled to a refund or credit of any fees you have paid, and you may be subject to a Cancellation Charge. Without limitation, you expressly acknowledge and agree that in addition to this subpart (F), the terms and conditions in Section 12 (Term and Termination) of the Agreement also apply to termination of the Design Service, Additional Pages or Hourly Updates. In the event of a conflict between this subpart (F) and Section 12 of the Agreement, this subpart (F) will prevail. Subpart (B)(g) and Sections (D) and (E) will survive the termination or expiration of these Design Terms.

(vii) *Additional Features and Applications*. Additional features and applications may be provided as part of the Service. Additional charges may apply. Please consult the Rate Card for details.

(viii) *Chat Rooms.* Qwest does not allow customers to install their own chat rooms, since chat rooms require significant system resources. However, for an additional charge, Qwest will provide a chat room for your use. Please see the Rate Card for details.

(ix) *Changes to Your Plan.* You may elect to change to a lower priced Web hosting plan on the same platform. Additionally, you may elect to upgrade to a higher priced plan on the same platform. No charge will apply for upgrades/downgrades. Requests for upgrades or downgrades should be directed to: <http://sitecontrol.qwestoffice.net>.

(c) Networking – Qwest® Home Network Backer™ and Qwest® Office Network Backer™.

(i) Qwest's Home Network Backer™ and Office Network Backer™ (collectively "Network Backer") services are only available to Qwest Broadband customers (excluding IDSL) who also purchased Qwest-provided networking equipment and Qwest-provided Internet access and must be purchased per physical location and per broadband line.

(ii) Network Backer Service is provided on a month-to-month basis. You may cancel Network Backer by contacting Qwest as provided in second paragraph of this Agreement.

(iii) Network Backer 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. If Network Backer service is cancelled, Qwest will turn off the applications in the modem; and

(C) Configuration of broadband application software.

(iv) Network Backer 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 Network Backer service.

(C) Issues reported after the termination of Network Backer 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.** Separately purchased/rented equipment is required to use the Service. Certain Equipment is available from QC and other equipment must be provided by Customer.

(a) Qwest-Provided Equipment.

(i) *Rental Equipment.* If you rent the Equipment from Qwest: (i) 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; (ii) you agree not to 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, and (iii) you agree if the Equipment is damaged by you and/or non-operational or malfunctioning for reasons other than a manufacturing defect at anytime during the term of this Agreement or upon termination of this Agreement, Qwest may charge you for its full retail cost, not to exceed \$150 (the "Equipment Charge"). Qwest does not refund or credit rent, so please call Qwest immediately if your rental Equipment is not working properly for a replacement Equipment. If you are renting Equipment and wish to instead purchase Equipment from Qwest, the terms and conditions specific to purchased equipment will apply. If you purchase Equipment from Qwest other than Equipment you are renting from Qwest you are required to return your rental Equipment according to the Return Policy & Procedure card. Rental payments are due for every month you rent the Equipment and rental payments do not count towards a purchase of the Equipment.

(ii) *Purchased Equipment.* You will be deemed the owner of the purchased Equipment, and 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 (if any) when it is returned by you pursuant to this Agreement and has been received by Qwest.

(iii) *Delivery and Installation of Equipment.* Equipment may be delivered to you only in the United States. You understand that you are responsible for self-installing the Equipment once you receive it, unless you select a technician installation from Qwest for an additional charge. You are encouraged to complete 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 installation procedures is located at [www.qwest.com/residential/internet/installation.html](http://www.qwest.com/residential/internet/installation.html).

(iv) **Damaged/Defective Equipment.** If the Equipment is inoperable, technical support is available at 1 888-777-9569. If Qwest deems the Equipment has a manufacturing defect, the Limited Warranty (set forth in the "Warranty" section below) will apply if it has not expired. If the Equipment fails as a result of a manufacturing defect after the Limited Warranty has expired or 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 [www.qwest.com/legal/highspeedinternetsubscriberagreement/](http://www.qwest.com/legal/highspeedinternetsubscriberagreement/) 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.

(b) **Customer-Provided Equipment.** If you do not purchase or rent a modem from Qwest you must provide a modem from the list at [www.qwest.com/internethelp/modems/index.html](http://www.qwest.com/internethelp/modems/index.html). Additionally, for broadband service you must provide equipment that supports the Service and meets the minimum system requirements found at [www.qwest.com/residential/internet/system\\_requirements.html](http://www.qwest.com/residential/internet/system_requirements.html) ("Customer Equipment"). Qwest may revise the minimum requirements from time to time. 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 you make or other terms you add 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.** Use of the Service may require or enable you to download or otherwise install or use certain software that is owned by Qwest or by third parties (the "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 from time to time. You agree to cooperate with Qwest in performing such activities.



(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.

(h) **Federal Procurements.** This section applies to all acquisitions of the Software by or for the Federal Government or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other transaction with the Federal Government which calls for delivery or use of the Software by the Government. By accepting delivery of the Software under any such contract, grant, cooperative agreement, or as part of any such transaction, the Government agrees that the Software qualifies as commercial computer software and that the associated documentation qualifies as commercial computer software documentation within the meaning of the acquisition regulations and contract clauses applicable to this procurement. The terms and conditions of this Agreement are fully applicable to the Government's use and disclosure of the Software and documentation, and will supersede any conflicting terms or conditions. No license of any kind is granted in the case of acquisitions which contain or are subject to the clauses FAR 52-227.19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUNE 1987) or any other clause which purports to grant to the Government rights greater than, or additional to, those set forth in this Agreement, or which purports to impose additional requirements upon Qwest to make the Agreement effective, unless Qwest specifically so consents by separate written agreement. Please contact Qwest for Software manufacturer information.

**7. Service Conditions.** The following conditions apply to the Service. Qwest may suspend, terminate, or limit use of your Service if you violate any of these conditions.

(a) **Limits on Use.** You agree not to use the Service for high volume or excessive use, in a business or for any commercial purpose if your Service is a residential service, 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 broadband 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 office location or within a single unit within a multiple dwelling unit (e.g., single apartment or office within an apartment complex) to your modem and/or router to access the Service (including the establishment of a wireless fidelity ("WiFi") hotspot), but the Service may only be used at the single home or office location or single unit within a multiple dwelling unit for which Service is provisioned by Qwest. You may not use a WiFi hotspot 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 WiFi hotspot to provide Service outside your single home or office location or outside your single unit within a multiple dwelling unit and you cannot resell Service provided over a WiFi hotspot). 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 be used to host a server, personal or commercial, as long as such server is used pursuant to the terms and conditions of this Agreement applicable to Service and not for any malicious purposes. Malicious purposes include without limitation Spam, viruses, worms, Trojans, etc. 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 WiFi hotspot as provided above, but may not resell Service provided over the WiFi hotspot. This Agreement is intended solely for you 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) are responsible for all use of the Service, including your primary account and any secondary accounts or sub-accounts registered to that account, and 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) **Wi-Fi.** Service may be used in a wireless network environment at your own risk. Wireless networking devices use public radio channels to transmit voice and data communications. Qwest cannot guarantee the security, privacy, or confidentiality of any transmissions made via such devices, and Qwest makes no assurances or warranties relating to their use by you. You are responsible for all use of your Service regardless of the source of a transmission, whether by you, or an authorized or unauthorized third-party, over your Service.

(g) 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.

(h) 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.

**8. Installation, Maintenance and Support.** You may choose on-site installation for a charge or select the self-installation method. Charges apply for certain maintenance, trouble isolation, and support services and if a technician is dispatched. Charges may be per technician, may vary depending on when services are performed (e.g., time of day and weekday, holiday or weekend), and may include a minimum charge regardless of the actual number of hours worked. Qwest will notify you of any applicable charges in advance of you incurring such charges. If you report trouble, you must pay a dispatch charge if the trouble is not found in Qwest facilities (no charge if Qwest later finds the trouble was in Qwest facilities) or Qwest equipment or is found in customer equipment/systems or Equipment. A dispatch charge also applies if: (A) 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) or (B) Qwest technician dispatched for maintenance of service and no trouble is found in Qwest facilities (applies each time this happens). Any requested repairs to your facilities or equipment are not included in the dispatch fee, and will be charged on a time and materials basis. If you purchased networking equipment from Qwest and did not purchase a Network Backer service, Qwest will provide you telephone support for connectivity, and settings, on wireless networks created with the Qwest-provided networking equipment for 30 days from the date of the networking equipment purchase, at no additional charge.

**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 [www.qwest.com/legal/privacy.html](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 [www.qwest.com/legal/highspeedinternetsubscriberagreement/](http://www.qwest.com/legal/highspeedinternetsubscriberagreement/) 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, 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 twelve-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. If you elect to pay by credit card, you are responsible for directly updating, or notifying Qwest, of any changes to your credit card (including, but not limited to card number, expiration date, billing address, or card status). 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.

(iv) **Method of Payment.** Some Internet access services require you to pay by credit card. For those services, Qwest currently accepts VISA, MasterCard or American Express. If you provide Qwest your credit card information, you authorize Qwest to automatically charge your credit card for charges that apply to your account. Qwest will automatically charge your credit card on the billing due date shown on your billing statement. In the event you request a chargeback on your credit card of the amounts Qwest has charged you, you will be subject to a chargeback fee. If Qwest is unable to charge your credit card for any reason, the Late Charge will be the greater of ten dollars (\$10.00) or five percent (5%) of the amount due, plus an interest charge of 1.5% per month on the amount due until paid. Additionally, you may be subject to Service suspension or account termination at Qwest's discretion. Please see the Rate Card for applicable charges.

**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 or Equipment and avoid payment of MRCs if: (i) you are a new Service customer, (ii) you have not activated or used the Service (for Network Backer service only), and either (iii) you notify Qwest you wish to cancel Service because you do not agree with the terms and conditions of this Agreement, or (iv) you notify Qwest you wish to cancel because you are not satisfied with the Service. Except as provided below, you must pay all NRCs related to canceled Service, including without limitation installation, maintenance and shipping charges. You must also pay MRCs related to canceled Service and any termination liability charges (if you ordered Service with a term commitment) if you cancel Service and return Equipment: (v) more than 30 days after ordering or (vi) after you activated or used the Service (for Network Backer service only). Follow the return process on the Return Policy & Procedure card (black and white card in Equipment box) to return Equipment. *For purchased Equipment:* You will receive billing credit for the Equipment purchase price, Equipment shipping costs, 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 purchased your Equipment from Qwest, do not return your Equipment; you will not receive credit for it and it will not be returned to you. Existing customers, including those who make changes to their Service, or customers who cancel more than 30 days after ordering, 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 [www.qwest.com/legal/highspeedinternetsubscriberagreement/](http://www.qwest.com/legal/highspeedinternetsubscriberagreement/) under "Qwest Broadband (High-Speed Internet) Rates Cards." FOR PURPOSES OF THIS SECTION, MOVING, CHANGING YOUR INTERNET SERVICE PROVIDER, 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 move or 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 1 800-244-1111 (Consumer/Residential accounts), 1 800-603-6000 (Small Business accounts), or 1 800-777-9594 (Global/Business & Government Services accounts); **you cannot terminate your Service online or by e-mail.** Qwest does not monitor, and will not automatically cancel, Service for problems relating to domain name transfers. If you have trouble transferring your domain name and you wish to terminate Service, you must contact Qwest as indicated above. Whether or not your domain name transfers, you will be responsible for paying any outstanding amounts owed on your account through the date of termination. 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.

(e) **Return of Rental Equipment.** Upon termination, you must promptly return your rental Equipment to Qwest by following the return process provided on the Return Policy & Procedure card (black and white card in Equipment box). Qwest will, at its option, either: (1) charge you the Equipment Charge if Qwest does not receive the Equipment within 30 days after termination; (2) charge you the Equipment Charge upon termination and credit you back for such charge ONLY if Qwest receives your Equipment within 30 days following termination; or (3) continue to charge you the monthly rental charge for the Equipment until Qwest receives the Equipment.

(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. In certain circumstances you may request that Qwest reactivate your account and restore your deleted Web hosting and e-mail data. Qwest must receive your request no later than 90 days after termination.

(g) **Seasonal Service (Vacation Service).** Residential customers with qualifying Service may temporarily suspend Service ("Seasonal Service" or "Vacation Service") for a minimum of 30 days at the rates and charges set forth in the Rate Card. 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, RESULTS OF USE, AND PERFORMANCE OF THE SERVICE, 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, AGENTS, 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, AGENTS, OR CONTRACTORS.

(c) THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE LIMITED WARRANTY IN SECTION 15 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 13, YOUR EXCLUSIVE REMEDIES FOR SUCH CLAIM WILL BE LIMITED TO THE TOTAL MRCs OR USAGE CHARGES PAID BY YOU TO QWEST FOR THE AFFECTED SERVICE IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. QWEST'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL MRCs AND USAGE CHARGES PAID BY YOU TO QWEST UNDER THIS AGREEMENT IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM ("DAMAGE CAP").

(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 we may access your premises, computer hardware and software, and your networking and broadband-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 liability is limited to damage arising from willful misconduct or grossly negligent acts of Qwest

technicians in accessing your premises, computer, or networking and broadband-related equipment up to \$500. 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.

(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 SECTION 13 ABOVE), OR BODILY INJURY OR DEATH DIRECTLY CAUSED BY QWEST'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. 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 AFFILIATES, AGENTS, AND CONTRACTORS 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 but not the Damage Cap. 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. A copy of the Limited Warranty is also available upon request from Qwest at no charge. 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 originally purchasing or renting the Equipment, and no others, to be free of manufacturing defects: (A) during the term of the modem rental, only (for modems rented from Qwest); (B) for a period of one year from the date of Equipment purchase (for networking equipment purchased from Qwest (other than a modem) if Network Backer service is also purchased and/or modems purchased from Qwest); and (C) for a period of 30 days from the date of Equipment purchase or rental (for networking equipment (other than a modem) purchased or rented from Qwest if Network Backer service is not purchased). Notwithstanding the foregoing, any unexpired limited warranty period for networking equipment will expire immediately upon termination of your Network Backer service 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 (A) you notify Qwest by calling the correct number set forth in Section 15(a)(vi) below, report that the Equipment's basic operations are not functioning properly, and cooperate with the Qwest representative to evaluate the circumstances; (B) the date you so notify Qwest is within the warranty period specified above; and (C) you promptly return the Equipment as provided in the Return Policy & Procedure card. Qwest will: (1) replace or repair the Equipment, at its option, and return the replacement or repaired Equipment to you, within thirty (30) days after you comply with (A) through (C), above; (2) provide you with an expedite option whereby Qwest will send you a replacement Equipment promptly after you comply with (A) and (B); provided that, prior to sending you such replacement Equipment, Qwest may charge you, via a credit card that Qwest accepts or other means Qwest chooses, for the full retail cost of the replacement Equipment ("Advance Charge"). If you return your defective Equipment to Qwest according to the procedure set forth in the Return Policy & Procedure card and Qwest receives your defective Equipment on or before the 30th day after you request a replacement Equipment pursuant to this Limited Warranty, Qwest will credit back the Advance Charge to the same payment method to which the Advance Charge was applied (e.g., credit card) or to your monthly service bill; or (3) such other option that you and Qwest may agree to. 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 replaced or repaired 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. 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 is extended to the person originally purchasing or renting the Equipment, and no others, by:

Qwest, 5 William White Blvd., Pueblo, CO 81001-4894

Consumer/Residential Accounts, please call 1 800-244-1111

Small Business Accounts, please call 1 800-603-6000

Global/Business & Government Services Accounts, please call 1 800-777-9594

If you have questions or comments, call or write us at the above number or address.

(vii) 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, NONINFRINGEMENT, 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, ITS AGENTS, 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 DEFAACEMENT, 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 affiliates, contractors, officers, directors, employees, or agents 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, Equipment, Software, 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 shall be conducted by the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitration of the dispute. Colorado state law, without regard to choice of law principles, shall otherwise govern and apply to any and all claims or disputes. All face-to-face proceedings shall be conducted at a location which is reasonably convenient to both you and Qwest. Arbitration is final and binding. Any arbitration shall 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 shall 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 1 800-244-1111 (Consumer/Residential accounts), 1 800-603-6000 (Small Business accounts), or 1 800-777-9594 (Global/Business & Government Services accounts). 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 in the manner set forth in subsection (b).

**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. In the event of any inconsistency between this Agreement and any other documents exchanged between you and Qwest related to the Service, Software, or Equipment, the provisions of this Agreement will control.

Please call Qwest at 1 800-244-1111 (Consumer/Residential accounts), 1 800-603-6000 (Small Business accounts), or 1 800-777-9594 (Global/Business & Government Services accounts) 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.**