

# DUKE BROADBAND RESIDENTIAL SERVICES AGREEMENT

The terms of this agreement (the “**Agreement**”) apply to your use of any of the Duke Broadband services described in Section 1 below and the Duke Broadband Equipment described in Section 7 below (collectively, the “**Services**”). An operating subsidiary or other affiliate of Duke Broadband LLC (collectively, “**we,**” “**us,**” or “**our**”) provides the Services.

You accept this Agreement and agree to its terms by activating the Services, using the Services, continuing to use the Services after we provide notice of a change to this Agreement, or otherwise indicating your acceptance of the Services. You may not modify this Agreement by making any typed, handwritten, or other changes.

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## 1. COVERED DUKE BROADBAND SERVICES

The following services are covered by this Agreement: Duke Broadband Internet services (“**Internet**”); managed Wi-Fi service (“**Duke WiFi**”) and other ancillary services Duke Broadband may designate.

The terms of this Agreement do not apply to any other services provided by Duke Broadband (such as outside plant construction activities). This Agreement also does not apply to any Duke Broadband-owned or -controlled websites and mobile apps, which are subject to their own terms of service and policies.

## 2. ADDITIONAL TERMS

Tariffs, service guides, and posted policies and procedures may apply to the Services. Additional Service-specific terms may apply to your use of Third-Party TV, Internet, Voice, or any ancillary service or device. Any additional Service terms are available <https://www.DukeBroadband.com/policies>. We reserve the right to provide notice of new websites or locations for additional terms. These additional terms are also part of this Agreement. If any additional terms conflict with these terms, the additional terms specific to the particular Service will govern.

## 3. CHARGES AND BILLINGS

### a. You must pay certain charges, fees, and taxes

**You agree to pay all amounts due upon demand. You agree to pay any monthly Service charges.** We will give you notice of applicable pricing at the time of your order or activation of the Services. If you receive the Services at a promotional rate, our then-current standard pricing will apply to you at the end of the promotional period. You should consult our rate card for then-current standard charges. If you receive the Services under a minimum term agreement, we will charge you the specified price for the Services subject to the minimum term pricing for the duration of the minimum term agreement. All other pricing is subject to change at any time and from time to time.

**You agree to pay all other charges associated with the Services.** These may include charges for installation and service calls. These may also include fees identified at the time of your order or imposed after you begin receiving Services. You may incur charges for Duke Broadband Equipment (as defined in Section 7 below), purchases or rentals, or ancillary services. You may also incur measured charges.

**You agree to pay any applicable taxes and fees.** These include applicable federal, state, and local taxes and fees (however designated), fees to recoup governmental or quasi-governmental assessments on us, and cost recovery charges. These include fees for any governmental or public programs in which we participate, such as public, educational, and governmental access, telecom relay services, and programs supporting the 911/ E911 system. **YOU ARE RESPONSIBLE FOR PAYING ANY SUCH FEES AND TAXES (WHETHER IMPOSED ON YOU OR ON US), INCLUDING THOSE THAT BECOME APPLICABLE RETROACTIVELY.**

### b. Third-party charges are your responsibility

In addition to the amounts we charge, you may incur charges from third-party services providers. These third parties may charge you for access to online services, telephone-based services, or other offerings. You are solely responsible for these third-party charges, including any applicable taxes. If we have agreed to provide billing services on behalf of a third party, you agree to make these payments to us. We will not be responsible for any disputes between you and any third party regarding any third-party charges.

### c. Changes to pricing, charges, and fees

Certain pricing, charges, and fees may change at any time and from time to time. In general, we will provide you with notice of any change in our standard prices or fees or new prices or fees. However, if there is a change in governmental or quasi-governmental taxes, fees, or assessments, or in any third-party charges billed through us, we may not provide notice unless required by applicable law.

#### **d. How we bill you**

We generally bill you monthly, in advance, for recurring monthly Service charges, equipment charges, and fees. **UPON REQUEST, YOU MUST PAY THE FIRST MONTH'S SERVICE CHARGES, DUKE BROADBAND EQUIPMENT CHARGES, DEPOSITS, ACTIVATION FEES AND INSTALLATION CHARGES ON OR BEFORE THE DATE THAT WE INSTALL ANY OR ALL OF THE SERVICES.** We may bill you for some Services individually after we provide the Services to you.

The Service charges will begin on one of the following dates, whichever occurs first: (i) the day you pick up Duke Broadband Equipment at our service center; (ii) the day you or we install the Services; (iii) the day your order for the Services is entered into our billing system, if Duke Broadband Equipment is not required; or (iv) five (5) days after the date we ship Duke Broadband Equipment to you.

#### **e. Payment methods**

You may pay by credit card, debit card, check, or certain third-party services, and we may change the payment methods we accept from time to time. Certain additional terms may apply depending on your selected payment method. If we do not receive your payment by the due date, you agree to pay any amounts due upon demand, regardless of your selected payment method. If you pay by check, you authorize us to collect your check electronically. You may not make restrictive endorsements (such as "paid in full") or other statements or releases on or with checks or other payments accepted by us. If you do so, we may disregard the restrictive endorsement or reject the payment.

#### **f. Our remedies if you pay late or fail to pay**

If, for any reason, we do not receive payment for the full amounts billed to you by the due date, you may be billed additional fees, charges, and assessments. We may suspend or limit access to the Service. We may accept a partial payment, but we still have the right to collect the full balance. We will apply any partial payment to outstanding charges in amounts and in the order we determine, in our sole discretion.

#### **g. Our fees are not interest or penalties**

We expect you to pay amounts due on a timely basis, and we do not extend credit to customers. Any fees, charges, and assessments due to late payment or non-payment will be difficult to calculate or predict, and are liquidated damages intended to be a reasonable estimate of our costs resulting from late payments and non-payments.

#### **h. We may charge fees for suspension or disconnection**

If you fail to pay the full amount due for any or all charges, we may suspend or disconnect any or all of the Services without reducing fees or charges for the Services, in our sole discretion and subject to applicable law.

#### **i. We may charge fees to reconnect services**

If you ask us to resume any Services after a suspension or disconnection, we may charge you additional installation or activation fees. These fees are in addition to all past-due charges and other fees. Reconnection of the Services is subject to this Agreement, and applicable law.

#### **j. We may charge you collection costs**

We may use a collection agency or attorney to collect money you owe. If we do so, you agree to pay our reasonable costs of collection, including any collection agency fees, reasonable attorneys' fees, and arbitration or court costs.

**k. We have the right to make credit inquiries**

**YOU AUTHORIZE US TO MAKE INQUIRIES AND TO RECEIVE INFORMATION ABOUT YOUR CREDIT EXPERIENCE FROM OTHERS, TO ENTER THIS INFORMATION IN YOUR FILE, AND TO DISCLOSE THIS INFORMATION TO APPROPRIATE THIRD PARTIES FOR REASONABLE BUSINESS PURPOSES.** We will not discriminate in the application of our credit inquiries and deposit policy on the basis of race, color, sex, creed, religion, nationality, sexual orientation, or marital status. We (or third-party credit bureaus) will conduct risk assessments in accordance with all applicable laws.

**l. Contact us with billing questions or disputes**

You may dispute charges on a bill or request billing credits. You must contact us within 120 days of the date on your bill, or you waive any disputes or credits, subject to applicable law and our binding legal obligations.

**m. We may require a refundable deposit**

We may require you to pay a refundable deposit when you activate the Services, add Services, or fail to pay any amounts when they are due. Subject to applicable law, your deposit will be credited to your account (without interest) if your account remains in good standing for twelve (12) months. We may refund your deposit sooner if all of the Services are disconnected. We will provide this refund within thirty (30) days of Service disconnection and the return of all Duke Broadband Equipment, or within the timeline set by applicable law. Refund amounts are equal to the credit balance on your account, if any, minus any amounts due on your account. Amounts due on your account may include amounts owed for the Services, including for any Duke Broadband Equipment that is damaged, altered, or subject to an Unreturned Equipment Fee (as defined in Section 7(b) below).

**4. CHANGES TO SERVICES, RATES, CHARGES, AND THIS AGREEMENT**

**a. Changes to Services, Rates, and Charges**

We reserve the right to change the Services, rates, and charges at any time, with or without notice to you, to the extent permitted by applicable law. For example, we may delete or change content, programming, functionality, features, rate limitations, available speeds, or Duke Broadband Equipment. If we provide notice of such a change, it will be in accordance with Section 4(b), below. If any such change is material and negatively affects your Services, you have the right to cancel your Services; but you accept any such change if you continue to use or receive the Services for more than thirty (30) days after the change. We may apply a monthly data consumption threshold to Duke Broadband Internet accounts. We retain the right to trial or adopt different data consumption thresholds or other usage plans for the Service at any time. If we do this, we will notify you.

**b. Changes to this Agreement**

We reserve the right to make changes to this Agreement. We may deliver any notice concerning our relationship with you and any change to our relationship, including notice of any change to this Agreement, in any one or more of the following ways (at our discretion): (a) post notice on [www.DukeBroadband.com](http://www.DukeBroadband.com), your "My Account" page, or another website we identify; (b) send notice by mail or hand delivery to your home or other property where the Services will be provided (the "Premises"); (c) send notice by email to the email address we have on file for your account; (d) include information about the change on or with your bill for the Services; or (e) use any other method of notice reasonably determined by us to result in your receipt of such notice. You agree that any one of these methods is sufficient and effective notice. It is your responsibility to check your postal mail, email, service texts, and

postings at [www.DukeBroadband.com](http://www.DukeBroadband.com), your "My Account" page, or another website we identify.

If any material change to our relationship with you, including any material change to this Agreement, negatively affects your Services, you have the right to cancel your Services; but you accept any such change if you continue to use or receive the Services for more than thirty (30) days after such change.

## 5. ACCESS TO YOUR PREMISES

To provide you with the Services, we may need to enter your Premises. We may have our agents enter your Premises on our behalf. You agree that we (or our agents) may enter your Premises at reasonable times to install, configure, maintain, inspect, upgrade, replace, and remove the Services.

You represent and warrant that you own the Premises or have obtained the authority to give us access to the Premises. If you do not own the Premises, you agree to supply the owner's name, address, and phone number, and evidence that the owner has approved our access, upon request.

## 6. CUSTOMER EQUIPMENT AND INSIDE WIRING

### a. You may use your own Customer Equipment

**"Customer Equipment"** means software, hardware, or services used in connection with the Services that we (or our agents) do not provide or lease. Customer Equipment also includes certain equipment that you purchase from us (or our agents) under an express sale agreement. Customer Equipment does not include Duke Broadband Equipment for which you have paid an Unreturned Equipment Fee (as defined in Section 7(b) below). After written consent by You, You agree that we (or our agents) may access your Customer Equipment in order to configure, maintain, inspect, or upgrade it, set up Services, or install or download software. For example, we may send software, downloads, or updates remotely to modems, gateways, routers. These updates may change, add, or remove features or functionality of your Customer Equipment or the Services.

You represent and warrant that you own your Customer Equipment or have obtained the authority to give us access to your Customer Equipment. If you do not own your Customer Equipment, you agree to supply the owner's name, address, and phone number, and evidence that the owner has approved our access, upon request.

### b. You are solely responsible for your Customer Equipment

We have no responsibility for the operation, support, maintenance, or repair of any Customer Equipment, including Customer Equipment to which we (or third parties) send software or downloads.

We may certify certain Customer Equipment or recommend particular configurations. Any other Customer Equipment or configuration may not meet our minimum technical or other specifications (a **"Non-Recommended Configuration"**). We reserve the right to deny support for the Services, or terminate the Services, if you use a Non-Recommended Configuration. WE AND THE RELEASED ENTITIES (AS DEFINED IN SECTION 10 BELOW) MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT NON-RECOMMENDED CONFIGURATIONS, WHICH COULD CAUSE CUSTOMER EQUIPMENT TO FAIL OR

OTHERWISE CAUSE DAMAGE. WE AND THE RELEASED ENTITIES ARE NOT LIABLE FOR SUCH FAILURE OR DAMAGE.

**c. You are solely responsible for Inside Wiring**

Wiring inside the Premises, including additional cable wiring, telephone wiring, and outlets, is **“Inside Wiring.”** Inside Wiring must not interfere with the Services or the normal operations of our network. Upon your request, we can install, repair, or maintain Inside Wiring. If we performed the inside wiring work as a part of provisioning the Service, and it was subsequently damaged after installation, we will charge you for that service. Regardless of who installed it, the Inside Wiring is your property, or the property of whomever owns the Premises. If you do not own the Premises, contact your landlord or building manager about the installation, repair, or maintenance of Inside Wiring. We have no responsibility for the operation, support, maintenance, or repair of Inside Wiring, except as set forth below.

**7. DUKE BROADBAND EQUIPMENT**

**“Duke Broadband Equipment”** means all new or reconditioned equipment that we or our agent provides or leases to you, including, but not limited to, cabling or wiring (except for Inside Wiring, as defined above) and related electronic devices, modems, routers, WiFi router, and any other hardware and includes all software and programs contained within Duke Broadband Equipment or downloaded to Customer Equipment by us.

**a. We own all Duke Broadband Equipment**

You expressly agree that you will use the Duke Broadband Equipment exclusively in connection with the Services. You agree that all Duke Broadband Equipment belongs to us or other third parties and will not be deemed fixtures or in any way part of the Premises. We may remove or change the Duke Broadband Equipment at our discretion at any time the Services are active or following the termination of your Services. You acknowledge that any addition to, removal of, or change to the Duke Broadband Equipment may interrupt your Services. You may not sell, lease, abandon, or give away the Duke Broadband Equipment, or permit any other service provider to use the Duke Broadband Equipment, including Duke Broadband Equipment for which an Unreturned Equipment Fee has been paid. The Duke Broadband Equipment may only be used in the Premises unless expressly permitted by us. At your request, we may relocate the Duke Broadband Equipment for an additional charge. YOU UNDERSTAND AND ACKNOWLEDGE THAT IF YOU ATTEMPT TO INSTALL OR USE THE DUKE BROADBAND EQUIPMENT OR SERVICES AT A LOCATION OTHER THAN THE PREMISES OR OTHERWISE EXPRESSLY AUTHORIZED BY US, THE SERVICES MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. You agree that you will not allow anyone other than us or our agents to service the Duke Broadband Equipment. You are responsible for loss, repair, replacement, and other costs, damages, fees, and charges if you do not return the Duke Broadband Equipment to us in an undamaged condition.

**b. You do not own Duke Broadband Equipment, even if you pay an Unreturned Equipment Fee**

For avoidance of doubt, Duke Broadband Equipment remains Duke Broadband-owned equipment, and Duke Broadband retains title to all Duke Broadband Equipment, at all times, including but not limited to after payment of an Unreturned Equipment Fee. **“Unreturned Equipment Fee”** refers to a fee charged by Duke Broadband to a subscriber for any unreturned Duke Broadband Equipment upon termination of the Services provided under this Agreement. The payment of an Unreturned Equipment Fee shall not result in a sale of, or the transfer of title to, any Duke Broadband Equipment, and such Duke Broadband

Equipment shall remain the property of Duke Broadband, and Duke Broadband retains title to Duke Broadband Equipment at all times. Duke Broadband in no way relinquishes ownership of (including title to) Duke Broadband Equipment by the payment of an Unreturned Equipment Fee. Even if an Unreturned Equipment Fee has been paid, Duke Broadband Equipment shall not be resold, used, or operated in any manner. If you pay an Unreturned Equipment Fee and subsequently return the Duke Broadband Equipment undamaged (with the exception of normal wear and tear), you will be refunded your Unreturned Equipment Fee in full.

## 8. USE OF THE SERVICES

The Services are for personal, residential, non-commercial use only, unless otherwise specifically authorized by us in writing.

We prohibit the following activities:

- Reselling the Services in whole or in part;
- Using the Services, directly or indirectly, for any unlawful purpose or in violation of any applicable policy that we make available to you;
- Using the Services to transmit, communicate, or store any information, data, or material in violation of any law, rule, or regulation;
- Tampering with, making any unauthorized connection to, or modifying any part of our cable network or the Services for any purpose;
- Attaching any unauthorized device to our cable network or the Services; or
- Attaching anything to the Inside Wiring, the Duke Broadband Equipment, or Customer Equipment that impairs the integrity of our cable network, that degrades our cable network's signal quality or strength, or that creates signal leakage. You agree not to engage in these or other similar prohibited activities, or help anyone else do so. You acknowledge that you are accepting this Agreement on behalf of all persons who use the Services at your Premises (or any other locations authorized by us). You are solely responsible for ensuring that all other users of the Services understand and comply with this Agreement and any applicable policies. You are liable for all authorized and unauthorized use of the Services. If the Duke Broadband Equipment has been stolen or the Services have been used without your authorization or in violation of this Agreement, you agree to notify us immediately in writing, or by calling 1-800-DUKE BROADBAND during normal business hours.

If you violate this Agreement, or if you fail to notify us of unauthorized use in a timely manner, we may terminate the Services and recover damages. Since it would be difficult, if not impossible, to precisely calculate our lost revenue from unauthorized Services or tampering, you agree to pay \$500.00 per device used to receive unauthorized Services as liquidated damages. These liquidated damages are in addition to our cost to replace any altered, damaged, or unreturned Duke Broadband Equipment, or other equipment owned by us, including any incidental costs. The unauthorized reception of the Services may also result in criminal fines and/or imprisonment, and we reserve the right to report any illegal activities to law enforcement.

In connection with your use of the Services, if you need to access third-party software or hardware, you will be subject to third-party terms and conditions.

Your use of certain Services may also be subject to acceptable use policies, and to understand how available at <https://www.DukeBroadband.com/policies>. To understand how we collect and use information through the Services, please read our privacy policy, also available at <https://www.DukeBroadband.com/policies>.

We may amend these policies and agreements from time to time, with or without notice to you. You should consult these policies and agreements regularly to comply with the most

recent versions. We incorporate these additional policies and agreements (including any amendments) into this Agreement by reference. WE RESERVE THE RIGHT TO LIMIT OR BLOCK ANY SERVICE USAGE AS WE DEEM NECESSARY TO PREVENT HARM TO OUR NETWORK, FRAUD, OR OTHER ABUSE OF THE SERVICES, OR AS OTHERWISE PROVIDED BY LAW.

## **9. TERMINATION**

This Agreement will remain in effect from Service activation until this Agreement is terminated (by us or by you), as described below. This Agreement may also be terminated if it is replaced by a revised agreement.

### **a. How you may terminate**

If your Services are subject to a minimum term agreement, and you terminate all or any portion of the Services under the minimum term agreement before the end of the minimum term, you may be charged an early termination fee. Review your minimum term agreement for additional details.

If your Services are not subject to a minimum term agreement, you may terminate the Services and this Agreement for any reason at any time. You must notify us that you want to terminate in one of the following ways: (a) mail a written notice to our local business office; (b) send an electronic notice to the email address specified on [www.DukeBroadband.com](http://www.DukeBroadband.com); (c) provide notice in person at a service center; or (d) call our customer service number during normal business hours. Applicable fees and charges for the Services may accrue until the Services have been disconnected, all Duke Broadband Equipment has been returned, and this Agreement has been terminated, subject to applicable law or the terms of any agreements we have with governmental authorities. At our election, and subject to applicable law, we may change our policy to continue all Services (or any part of them) through the end of the billing cycle in which we received your notice, which means those Services will terminate at the end of the applicable billing cycle. We may refund all prepaid monthly service fees charged for the Services after the effective date of termination, and we reserve the right to subtract from your refund any outstanding amounts due to us for the Services, for any affiliate or third-party services, or for other applicable fees and charges. Certain fees and charges are non-refundable and are also excluded.

### **b. How we may terminate or suspend Services**

Subject to applicable law, we reserve the right to immediately terminate or suspend the Services without notice for any reason or no reason. We also reserve the right to remove from the Services any information stored or transmitted by or to any users (e.g., email or voicemail). We may take these actions if we reasonably determine that your use of the Services: (a) violates this Agreement, any applicable policies, or any laws, rules, or regulations; (b) interferes with our ability to provide the Services to you or to others; or (c) interferes with or endangers the health or safety of our personnel or third parties, including if you threaten, harass, or use vulgar or inappropriate language toward our personnel. We have discretion in deciding whether and why to terminate or suspend Services. If we continue providing Services, this does not mean we have reviewed or approved any use of the Services, or any information transmitted through the Services.

### **c. You have certain obligations upon termination**

You must cease all use of the Services as of the effective date of termination. You must pay in full for your use of the Services up to the date that this Agreement is terminated and the Services are disconnected (subject to applicable law).



You must return all Duke Broadband Equipment to us at our local service center or to our designated agent within ten (10) days of the date on which the Services are disconnected. You must return the Duke Broadband Equipment in working order, with the exception of normal wear and tear. If you fail to return the Duke Broadband Equipment, we will charge you an Unreturned Equipment Fee. As the owner of the Duke Broadband Equipment at all times, we have the right to retrieve any equipment you fail to return. We (or our agents) may request access to your Premises to remove all Duke Broadband Equipment and other material provided by us during regular business hours at a mutually agreed upon time.

## **10. LIMITED WARRANTY**

TO THE EXTENT PERMITTED BY LAW, THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER WE NOR ANY OF OUR SERVICE PROVIDERS, AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS, OR BUSINESS PARTNERS (OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, OR REPRESENTATIVES) (COLLECTIVELY, THE "**RELEASED ENTITIES**") WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF PERFORMANCE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY, ARE HEREBY DISCLAIMED AND EXCLUDED, UNLESS OTHERWISE PROHIBITED OR RESTRICTED BY APPLICABLE LAW.

## **11. LIMITATION OF LIABILITY**

### **a. Application**

The limitations of liability in this Section 11 apply to our acts, omissions, and negligence, and any acts, omissions, or negligence by a Released Entity which, but for the provisions of this Section 11, could give rise to a cause of action in contract, tort, or under any other legal doctrine.

### **b. Our liability for Customer Equipment is limited**

YOU UNDERSTAND THAT OPENING, UPDATING, ACCESSING, OR USING CUSTOMER EQUIPMENT IN CONNECTION WITH THE SERVICES MAY VOID WARRANTIES PROVIDED BY THE MANUFACTURER OR OTHER THIRD PARTIES. NEITHER WE NOR ANY OF THE RELEASED ENTITIES WILL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF (A) THE VOIDING OF ANY SUCH WARRANTIES, OR (B) FOR ANY DAMAGE, LOSS, OR DESTRUCTION TO THE CUSTOMER EQUIPMENT, EXCEPT DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY US OR A RELEASED ENTITY WE WILL PAY, AT OUR SOLE DISCRETION, FOR THE REPAIR OR REPLACEMENT OF THE DAMAGED CUSTOMER EQUIPMENT UP TO A MAXIMUM OF \$500. THIS WILL BE YOUR SOLE AND EXCLUSIVE REMEDY RELATING TO SUCH ACTIVITY.

**c. Our liability for viruses and bugs is limited**

Software or applications installed on your Customer Equipment, downloaded to your Customer Equipment, or available through the Internet may contain viruses or other harmful features. It is your sole responsibility to take appropriate precautions to protect your Customer Equipment. We may, but are not required to, terminate all or any portion of the Services if a virus or other harmful feature, bug, or software is present on your Customer Equipment and/or causes harm to the Services. We may, in our sole discretion, install or run software to check for viruses and other harmful features, including on your Customer Equipment. We make no representation or warranty that any virus check software will detect, correct, or resolve any or all viruses. You may incur additional charges for any service call related to a virus or other harmful feature detected on your Customer Equipment. WE AND THE RELEASED ENTITIES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM A VIRUS, ANY OTHER HARMFUL FEATURE, OR FROM ANY ATTEMPT TO REMOVE IT.

**d. Our liability for certain installations and modifications is limited**

As part of the installation process for software and other components of the Services, we may need to modify system files on Duke Broadband Equipment or your Customer Equipment. We may make these modifications in connection with installing software or applications, or allowing access to our online portals. We make no representations, warranties, or covenants as to whether these modifications or this software will disrupt the normal operations of the Services or your Customer Equipment, including causing the loss of files. FOR THESE AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL FILES TO ANOTHER STORAGE MECHANISM. YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP FILES. WE AND THE RELEASED ENTITIES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA RESULTING FROM OUR MODIFICATIONS TO SYSTEM FILES AND/OR INSTALLATION OF SOFTWARE OR OTHER COMPONENTS OF THE SERVICES.

**e. Our liability for other services or equipment is limited**

BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST US AND THE RELEASED ENTITIES FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE SERVICES AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY WILL BE TO TERMINATE THE SERVICES IN ACCORDANCE WITH THIS AGREEMENT.

**f. Our liability for disruption of Services is limited**

The Services are not fail-safe and are not designed or intended for use in situations that qualify as “**High Risk Activities.**” High Risk Activities include activities requiring fail-safe performance, or where an error or interruption in the Services could lead to severe injury to businesses, persons, property, or the environment. High Risk Activities also include vital business or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risk of any damages resulting from use of the Services in connection with High Risk Activities.

We will not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances beyond our immediate control, including (but not limited to) the following: (a) causes attributable to you, your Customer Equipment, your Premises, your property, or third parties, including our inability to access your Premises or any third-party negligence or

willful misconduct; (b) failure of any signal or satellite, loss of use of poles or other utility facilities, or any failure or reduction of power; (c) labor disputes, riot or insurrection, war, explosion, malicious mischief, fire, flood, lightning, earthquake, weather conditions, or other acts of God; or (d) any court order, law, act, or order of government restricting or prohibiting the operation or delivery of the Services.

In all other cases of an interruption of the Services, you may request a pro rata credit for any Service interruption exceeding twenty-four (24) consecutive hours after the interruption is reported to us (or another period of time provided by law). You must request a pro rata credit within 120 days of the Service interruption. Unless required by law, your pro rata credit will not exceed your fixed monthly charges for the Services that month. Your pro rata credit will exclude all nonrecurring charges, one-time charges, per-call or measured charges, regulatory fees, and surcharges, taxes, and other governmental and quasi-governmental fees. **EXCEPT AND UNLESS SPECIFICALLY PROHIBITED BY LAW, A CREDIT WILL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICES.** Any additional credits, if any, are provided by us at our sole discretion and will not constitute, or be construed as, a course of conduct.

If your Services are interrupted, you may have certain rights depending on where you live.

**g. Our liability for third parties is limited**

Notwithstanding anything to the contrary in this Agreement, you acknowledge and understand that we may use third parties to provide the Services. This may include third-party services, equipment, infrastructure, or content. We are not bound by any undertaking, representation, or warranty made by an agent, or employee of ours, or of our underlying third-party providers and suppliers in connection with the installation, maintenance, or provision of the Services if that undertaking, representation, or warranty is inconsistent with the terms of this Agreement. We are not responsible for and have no liability with respect to any services, equipment, infrastructure, and content that are not provided by us, or the performance (or non-performance) of third-party services, equipment, infrastructure, or content, even if they are components of the Services. You should address questions or concerns relating to third-party services, equipment, infrastructure, and content to the corresponding third-party provider. We do not endorse or warrant any third-party services, equipment, infrastructure, or content that are distributed or advertised over the Services.

**h. Our liability for damages is limited**

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, WE AND THE RELEASED ENTITIES WILL HAVE NO LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TORT OR CONTRACT):

(1) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST DATA, LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES, OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH CUSTOMER EQUIPMENT OR THE SERVICES (INCLUDING, BUT NOT LIMITED TO, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, HARDWARE OR SOFTWARE BREACH, FAILURES OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, OR DELAYS IN TRANSMISSION); OR

(2) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, LEGAL FEES, OR OTHER COSTS THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE SERVICES OR THE CUSTOMER EQUIPMENT BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES UPON THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

**i. These are your sole remedies**

This Agreement sets forth your sole and exclusive remedies. Some of the above limitations on your liability may not apply if your state does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, our liability and the liability of any Released Entity is limited to the maximum extent permitted by law.

**j. These limitations survive termination**

All representations, warranties, indemnifications, and limitations of liability contained in this Agreement will survive termination of this Agreement. Any other obligations hereunder will also survive if they relate to the period before termination or if, by their terms, they would be expected to survive termination.

**12. ONE YEAR LIMITATION PERIOD**

YOU MUST COMMENCE ANY ACTION WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT

OR FACTS GIVING RISE TO A DISPUTE OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED ON SUCH EVENTS OR FACTS. FOR BILLING DISPUTES, YOU MUST NOTIFY US WITHIN 120 DAYS AND MUST COMMENCE AN ACTION WITHIN ONE (1) YEAR OF RECEIVING THE CHARGES.

**13. ARBITRATION**

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THIS AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRARINESS OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE<sup>15</sup>. INDEMNIFICATION YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD US AND EACH RELEASED ENTITY HARMLESS FROM AND AGAINST ANY DAMAGES, LOSSES, OR EXPENSES (INCLUDING, WITHOUT

LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) INCURRED IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS, AND CAUSES OF ACTION ARISING OUT OF (a) YOUR USE OF THE SERVICES OR THE CUSTOMER EQUIPMENT; (b) YOUR ACTUAL OR ALLEGED VIOLATION OF APPLICABLE LAW; (c) YOUR FAILURE TO NOTIFY US OF A CHANGE IN OR THE INACCURACY OF THE INFORMATION YOU PROVIDED (INCLUDING, FOR EXAMPLE, CLAIMS UNDER THE TELEPHONE CONSUMER PROTECTION ACT AND RELATED REGULATIONS); AND (d) YOUR BREACH OF THIS AGREEMENT OR ANY APPLICABLE POLICIES. YOUR INDEMNIFICATION OBLIGATIONS WILL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

## **15. INDEMNIFICATION**

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD DUKE BROADBAND, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES, ITS/THEIR AGENTS, AND ANY OTHER PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THIS AGREEMENT, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO OR ARISING OUT OF YOUR BREACH OF THIS AGREEMENT OR YOUR AND YOUR USERS' USE OF THE SERVICES OR ANY DUKE BROADBAND EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY CLAIMS OR DAMAGES ARISING OUT OF THE MALFUNCTION OR LACK OF 911/E911 OR DIALING ASSOCIATED WITH A SECURITY SYSTEM. YOU AGREE THAT DUKE BROADBAND SHALL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE OF THE SERVICES OR THE DUKE BROADBAND EQUIPMENT. FURTHERMORE, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS.

## **16. MONITORING AND RECORDING**

You agree that, in accordance with our Privacy Policy, located at [www.DukeBroadband.com/policies](http://www.DukeBroadband.com/policies), we (and our agents) may monitor and record any telephone calls or other communications, regardless of medium (1) between us (and our agents) and you or your agents, or (2) between us (and our agents) and any user of your Services or Customer Equipment.

## **17. OUR INTELLECTUAL PROPERTY RIGHTS**

All Services, information, documents, materials, firmware, and software we provide are protected by trademark, copyright, patent, and other intellectual property laws and international treaty provisions. You are granted a revocable license to use our firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. You have no other license to use firmware or software embedded in or used to provide the Services. You must not take any action nor allow anyone else to take any action that will reverse compile, disassemble, reverse engineer, or otherwise attempt to derive the source code from the binary code of the firmware or software.

All of our and our affiliates' websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "**Marks**") are and will remain our and our affiliates' exclusive property. Nothing in this Agreement grants you the right or license to use any of the Marks.

## **18. YOUR REPRESENTATIONS AND WARRANTIES**

**You represent and warrant that you are at least 18 years of age and that you have provided us with information that is accurate, complete, and current.** For example, you

must provide us with your accurate, complete, and current legal name, address (including apartment, unit, suite number, etc., where applicable), telephone number(s), the number of devices on which or through which the Services are being used, and payment information. You must also provide accurate information when authorizing recurring payments. You agree to promptly update your contact information to keep it accurate and complete. YOU ARE RESPONSIBLE FOR MAINTAINING THE ACCURACY OF YOUR INFORMATION, EVEN AFTER TERMINATION OF THIS AGREEMENT, UNTIL YOU PAY ALL AMOUNTS DUE AND RETURN ALL DUKE BROADBAND EQUIPMENT. FAILURE TO DO SO IS A BREACH OF THIS AGREEMENT. THIS OBLIGATION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**You represent and warrant that you will comply with all applicable laws, including export rules.**

## **19. CONSENT TO COMMUNICATIONS FROM DUKE BROADBAND**

You agree that Duke Broadband or third parties acting on Duke Broadband's behalf may call or text you at any telephone number that you provide to Duke Broadband or that Duke Broadband issues to you and may do so for any purpose relating to your account and/or the Services to which you subscribe. You expressly consent to receive such calls and texts and agree that these calls and texts are not unsolicited. You understand and acknowledge that these calls and texts may entail the use of an automatic telephone dialing system and/or artificial or prerecorded messages. If you do not wish to receive these communications, you may visit the Preference Center at [www.DukeBroadband.com](http://www.DukeBroadband.com) to manage your communications preferences. You understand and acknowledge that this is the exclusive means of opting out of such communications. You may not opt-out of receiving certain communications pertaining to your account, including but not limited to communications regarding emergencies, fraud or other violations of law, security issues, and harm caused to the network. Message frequency depends on your activity with your Services. Message and/or data rates may apply.

## **20. INFORMATION PROVIDED TO THIRD PARTIES**

We are not responsible for any information provided by you to third parties including credit/debit card or banking information, and this information is not subject to the privacy provisions of this Agreement or the privacy notice for the Services. You assume all privacy, security, and other risks associated with providing any information, including customer proprietary network equipment or personal information, to third parties via the Services. For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

## **21. ASSIGNABILITY**

You may not assign your right to use the Services without our authorization. You may not assign your rights and obligations under this Agreement. We may freely assign this Agreement, any of our rights and obligations, or any debt you owe us, without notifying you.

## **22. RETENTION OF RIGHTS**

We may decide not to enforce our rights or exercise a remedy under this Agreement in a specific instance. This will not be a waiver of our rights or remedies. Nothing contained in this Agreement limits our rights and remedies available at law or in equity. If this Agreement terminates, we (and the Released Entities) reserve the right to delete all of your data, files, electronic messages, voicemails, user account names, email addresses, IP addresses, websites, or other information that are stored and/or used with the Services. If you cancel Voice without porting your service or telephone number to another service provider, you will forfeit the telephone number. We and the Released Entities will not be liable for the loss of any data, information, or phone numbers.

## **23. ENTIRE AGREEMENT**

This Agreement, any additional terms related to the Services, and any other documents incorporated into this Agreement by reference, form the entire agreement between you and us. No other written or verbal agreements between us have any legal force or effect. If any part of this Agreement is found invalid or unenforceable, that part will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties. The remainder of the Agreement will remain in effect. Neither the course of conduct between us, nor trade practice, can modify this Agreement.

## **24. CONTACT US**

If our local office cannot resolve your problem to your satisfaction, you may write to the Duke Broadband corporate offices at 1341 S. Range Rd. Saint Clair, MI 48079, Attention: Executive Customer Relations. If you experience a problem with your Services, please contact us first and give us an opportunity to resolve your problem: (833) 444-3853