

BEYOND COMMUNICATIONS SERVICE AGREEMENT

READ THE TERMS AND CONDITIONS IN THIS SERVICE AGREEMENT CAREFULLY BEFORE USING ANY BEYOND SERVICE OR BEYOND EQUIPMENT AS IT CONTAINS THE TERMS AND CONDITIONS APPLICABLE TO THE SERVICES AND EQUIPMENT PROVIDED BY BEYOND.

1. SERVICE AGREEMENT ("SA")

Beyond Communications is the trade name for SmartResort Co., LLC a Mississippi limited liability company with offices located at 5540 Centerview Drive, Suite 200, Raleigh, NC 27606, and its toll free phone number is (866) 713-5182. The Company's website is www.discoverbeyond.com.

This Service Agreement includes by reference the applicable Service Activation Form (the "Order Form") when you initiated Services, and the current prices provided therein ("Prices" or "Price Lists") relating to the voice, video, Internet access, Web hosting and/or other related services provided by Beyond, its affiliates, or associated parties (together, "Beyond"), (each individually a "Service", and collectively, "the Services"). This Service Agreement sets forth the terms and conditions under which residential customers ("Customer(s)," "you," "your") will be provided services by Beyond ("we," "us," "our"). This Service Agreement constitutes the entire agreement between you and Beyond (individually a "party" or collectively the "parties") with respect to the Services that you are purchasing from Beyond. All Services are offered subject to availability. Nothing may be amended except by an agreement in writing signed by you and Beyond or their respective successors in interest. Your rights and obligations shall be governed by and construed in accordance with the laws of the state of Alabama. Any capitalized terms used in the Service Agreement without definition, shall have the respective meanings assigned to such terms in the Order Form.

For purposes of this Service Agreement, "affiliate" means any entity that controls, is controlled by, or is under common control with Beyond, and the term Beyond's "associated parties" means Beyond's officers, directors, employees, affiliates, suppliers, their agents or representatives, or any other provider or its agents or representatives that furnishes services in connection with Beyond.

BY ESTABLISHING AN ACCOUNT, PAYING FOR OR USING THE SERVICES, USING OUR SOFTWARE AND/OR EQUIPMENT OR INDICATING AGREEMENT THROUGH THE SOFTWARE, WEBSITE OR OTHERWISE, YOU AGREE TO BE BOUND BY THIS SERVICE AGREEMENT AND ANY AMENDMENTS TO THIS SERVICE AGREEMENT AND ANY FUTURE REVISIONS THEREOF. THE FIRST DATE OF SUCH PAYMENT, INSTALLATION, USE OR AGREEMENT IS REFERRED TO THROUGHOUT THESE TERMS AS THE "EFFECTIVE DATE". IF YOU DO NOT AGREE WITH BEYOND'S PRICE LISTS OR ANY PART OF THIS SERVICE AGREEMENT INCLUDING ITS ADDENDUMS AND REFERENCED DOCUMENTS, DO NOT USE THE SERVICES OR THE BEYOND-PROVIDED SOFTWARE AND/OR EQUIPMENT, AND PLEASE CALL US IMMEDIATELY FOR INSTRUCTIONS ON HOW TO CANCEL THE SERVICES. THE SERVICES ARE OFFERED SUBJECT TO ANY AND ALL FINAL REGULATORY AND/OR GOVERNMENTAL REVIEW, APPROVAL AND REQUIREMENTS IN ACCORDANCE WITH APPLICABLE LAW.

1.1 Tariffs (Reserved for later use if applicable.)

1.2 Changes to these Terms

Beyond, in its sole discretion, reserves the right to change this Service Agreement including the Price Lists incorporated by reference at any time. Unless the Service Agreement specifies otherwise, Beyond will provide you thirty (30) days notice of any material changes to this Service Agreement and/or the Price Lists applicable to the Services you have purchased from Beyond. If the Service Agreement specifies a different notice period for a particular change, Beyond will give you the specified prior notice; however, you will receive no prior notice of any change that this Service Agreement specifies that we may make without notice. YOUR CONTINUED USE OF THE SERVICES FOLLOWING SUCH NOTICE CONSTITUTES YOUR ACCEPTANCE

OF THE REVISED SERVICE AGREEMENT INCLUDING, BUT NOT LIMITED TO THE PRICE LISTS THAT ARE EFFECTIVE AT THE TIME YOU CONTINUE TO USE THE SERVICES. IF YOU DO NOT AGREE TO ONE OR MORE OF THE MODIFICATIONS, YOU MUST IMMEDIATELY STOP USING THE SERVICES AND NOTIFY US THAT YOU ARE TERMINATING THE AGREEMENT. YOU WILL THEN BE ENTITLED TO A REFUND OF ANY UNUSED PORTION OF ANY RECURRING MONTHLY SERVICE FEE THAT HAS BEEN PAID BY YOU IN ADVANCE (LESS ANY OUTSTANDING AMOUNTS DUE BEYOND AND/OR ITS AFFILIATES, FOR EQUIPMENT, SERVICES OR OTHER APPLICABLE FEES AND CHARGES ASSOCIATED WITH THE TERMINATED SERVICES.

2. TERM OF SERVICE

The commencement of services and your responsibility for payment begins on the day you activate service with us ("Effective Date") as noted above. If the Service Agreement provides for a specific length for the term of service (for example, twelve months), the term of service shall become effective on the Effective Date and shall remain effective until the expiration of such term of service, whereupon the Service Agreement shall automatically renew for successive periods equal in length to the initial term of service unless terminated as permitted herein. If the Service Agreement does not provide for a specific term of service, the term shall begin on the Effective Date and shall remain effective for automatically renewing one (1) month terms of service until and unless terminated as permitted herein.

3. REQUIREMENTS FOR SERVICE

3.1. Additional Acknowledgements

Before Beyond provides you with Services, Beyond may require you to: (i) sign a Letter of Agency (LOA) or other document authorizing changes in your existing local and/or long distance telephone service provider(s); and/or (ii) verify in writing that (1) you are authorized to order Services for use at all premises that you request and (2) you assume financial responsibility for Services to those premises. Beyond may also require you to establish credit as set forth below. With respect to the long distance and/or local telephone portion of the Services, you acknowledge and agree that (1) Beyond has the right to, at any time and from time to time, assign and change the local and/or long distance carrier providing you with such Services for each line; (2) Beyond may block all 700/900 calling and usage unless you explicitly request access to such Services and pay all applicable fees, deposits and charges with respect to such Services, which may include, without limitation, a deposit in the amount of \$150 or expected usage, whichever is greater, and upon which deposit Beyond may, and you hereby authorize Beyond to, draw in the event of your non-payment of any such fees and/or charges as and when they become due; and (3) if Beyond at any time draws on such deposit, all 700/900 calling and usage may again be blocked unless and until the deposit is replenished with additional funds. In addition, Beyond reserves the right to block additional NPAs (area codes) to the extent it deems it necessary unless you have adhered to the aforementioned deposit requirements.

3.2. Credit

- (a) **Creditworthiness, Release of Credit History:** Before providing you with any Services, we may require you to establish your credit, and may choose to perform a credit check with applicable credit reporting agencies. You hereby authorize us to request any information that we determine to be reasonably necessary to assess your credit history to our satisfaction. You agree that any such investigation does not constitute an extension of credit, and that we may alter the terms and/or conditions of the Services provided to you based on the results of such credit investigation.
- (b) **Security Deposit, Prepayment, or Other Security; Application of Unused Balance:** Beyond, at any time, may require you to provide Beyond with a security deposit as a condition of continued Services. Alternatively, Beyond may (1) require the prepayment of Services; (2) require a guarantor meeting Beyond's

creditworthiness standards to guaranty payment of all sums due in connection with the Services; or (3) request such other security as Beyond may deem reasonably necessary. Unless otherwise required by applicable law, upon any termination of the Services, Beyond may, and you hereby authorize Beyond to, apply any unused balance of such deposit or prepayment amounts to the payment of any outstanding balances. Any remaining amounts of such deposit after such application will be refunded to you.

3.3. Discretion to Accept Orders for Service

Except as otherwise required by law, Beyond may accept or reject your order for Services in its sole discretion. All new orders for Services must include an authorized signature which can be electronic, faxed or an original, or such other authentication as Beyond may deem appropriate. Unless Beyond advises you otherwise at the time you place your order for Services or unless you request a specific mutually acceptable service activation date, Beyond will activate the Services as soon as commercially reasonable after receiving your order.

3.4. Additional Requirements

To order and receive any of the Services, you must be at least 18 years old and may have to provide a valid credit card or other mutually acceptable form of payment. Some Services require separate active telephone, Internet or other services in order for the Services to work. You are responsible for charges for the Services ordered from Beyond regardless of the status of these separate services. Changing service providers may result in substantial interruption of the Services and may result in fees associated with cancellation and setting up a new account. You understand and agree that use of the Services requires certain equipment that you must provide, such as a telephone, personal computer, appropriate operating system, certain wiring and other equipment (collectively, "Subscriber Equipment"). You represent that you own or have a valid lease or license to all of the Subscriber Equipment or otherwise have the right to use it in connection with the Services.

4. THE SERVICES

Beyond grants to Customer a non-exclusive, personal, non-transferable license to access and use the Services solely on and as part of Beyond's World Wide Web site and servers. Depending on the type of Service that you sign up for, the Services may include, but not be limited to, local and/or long distance telephone service, DBS video services, Internet access, software, hardware, e-mail, Web hosting and/or other features, each as more particularly described in our website.

4.1. Required Actions

For as long as you receive the Services from Beyond, you shall:

- i. Provide Beyond with current, complete and accurate information in connection with your application for the Services and/or any credit check, and promptly update such information as required. Beyond will only use such information as provided in its Privacy Policy located on our website.
- ii. Maintain the confidentiality of any username or password issued to or created by you in connection with your use of the Services, including and without limitation, any access to your account.
- iii. Immediately notify Beyond of any use of the Services not authorized by you, or of any theft or misappropriation of your username or password.
- iv. Provide reasonable assistance to Beyond to enable it to provide the Services, including, without limi-

tation, reasonably cooperating with Beyond in the installation and maintenance of, trouble-shooting and error detection with respect to, the Services and/or any equipment provided by Beyond or its affiliates or associated parties in connection with the Services.

- v. Comply in all respects with the Service Agreement and any and all other policies, rules and regulations regarding the use of the Services imposed by Beyond, and all laws, rules, regulations and directives of any regulatory or governmental entity, and ensure compliance with the same by anyone you authorize to use the Services.
- vi. Use the Services only in accordance with applicable laws, rules, regulations, ordinances or other government directives and actions.
- vii. Safeguard, and provide Beyond with access to, any equipment or software furnished by Beyond or its affiliates or associated parties in connection with the Services.
- viii. Ensure that your Subscriber Equipment is in good working order and complies with all FCC standards and approvals, and the minimum requirements set forth at <http://www.discoverbeyond.com/beyond/>, so as to enable the provision of Services.
- ix. Provide Beyond's or its affiliates or associated parties, at mutually agreeable times, with access to all applicable areas at your premises at which the Services are being provided in order to conduct removal, replacement, installation, updating and/or maintenance of all equipment used in connection with the delivery of the Services;
- x. Pay Beyond at its then current Prices for all such visits to your premises in accordance with, and to the extent required by the Service Agreement.
- xi. Promptly notify Beyond of any interruption in any of the Services which is not caused by you or any equipment not furnished by Beyond or its authorized suppliers.
- xii. Ensure that you do not use your phone line(s) for an "always on" or "substantially on" open circuit for uses such as dial-up computer modems if you have an unlimited and/or bulk rate plan. Beyond reserves the right to monitor such usage and, in the event you do not adhere to the immediately preceding requirement, terminate the bulk rate or unlimited plan and bill for usage on an incremental basis.
- xiii. Utilize the Services in the manner appropriate for the class of service purchased. If you utilize a residential service to operate a business, Beyond reserves the right to either discontinue your access to that class of service or require you to convert your services to a business class of service and rate plan (which is to your benefit, as business class service provides higher levels of service).

4.2. Prohibited Acts

You must not abuse the Services or perpetrate any illegal, unethical or fraudulent act while using the Services, or otherwise use the Services for or in connection with any improper or unlawful purpose or act, or permit any third party to do the same.

You must not use or permit any third party to use the Services in a way that impairs the quality of or interferes with the use of the Services by others;

In connection with any Internet-related Services, including, without limitation, any access to or use of any Internet web site owned or operated by Beyond (collectively, the "Beyond Sites"), you must not:

- i. Post, distribute or transmit any chain letters, junk, spam or pyramid scheme electronic mail;
- ii. Post, distribute or transmit any message which is libelous, defamatory, or which discloses private or personal matters concerning any person;
- iii. Post any link to any of the Beyond Sites on any Internet web site without Beyond's express prior written permission;
- iv. Post, distribute or transmit any message, data, image or program which is indecent, illegal or that would violate the intellectual property rights of others;
- v. Post, distribute or transmit any file which contains viruses, "time bombs", worms, "Trojan Horses" or any other destructive features, regardless of whether damage is intended or unintended; and/or
- vi. Post, distribute or transmit any message that is harmful, threatening, abusive or hateful.

4.3. Internet-Related Services

- (a) **Content of Online Material:** Opinions, advice, statements, offers, or other information or content made available through any public portion of any Beyond Sites are those of their respective authors and not of Beyond, and should not be relied upon. Such authors are solely responsible for such content. Beyond does not guarantee the accuracy, completeness, or usefulness of any such information on the Beyond Sites, and neither adopts nor endorses nor is responsible for the accuracy or reliability of any opinion, advice or statement made on or available through such services. Under no circumstances will Beyond be responsible for any loss or damage resulting from anyone's reliance on information or other content posted on the Beyond Sites or transmitted to any user of such services. Beyond may change the content of the Beyond Sites at any time and without prior notice.
- (b) **Downloading of Data or Files at Your Peril:** You expressly recognize that Beyond cannot and does not guarantee or warrant that files available for downloading through the Beyond Sites will be free of infection, viruses, worms, time bombs, Trojan Horses or other code that manifests contaminating or destructive properties. You are solely responsible for implementing sufficient procedures to satisfy your particular requirements for accuracy of data input and output, and for maintaining a means external to Beyond for the reconstruction of any lost data. You also expressly recognize that the Internet contains unedited materials, some of which may be unlawful, inaccurate, indecent, or offensive to you, and access to such materials by you is done at your sole risk.
- (c) **Personal and Non-commercial Use Limitation:** You may use any Internet-related Services only for your personal and non-commercial use. You may not modify, copy, distribute, transmit, display, transform, reproduce, publish, license, create derivative works from, transfer or sell any information, software, products or services obtained from the Services.
- (d) **Speed of Service:** The speeds of the Internet access, Web hosting, e-mail, and other Internet-related portions of the Services can vary depending on location, line quality, inside wiring, Internet traffic, and other factors beyond the control of Beyond. Beyond provides the Services on a "best efforts" standard and does not guarantee upload or download speeds. Some line stabilization may be necessary for service. Line stabilization could include the lowering of provisioned line speed. Should the lowering of line

speed occur, Beyond will NOT be able to increase the line speed once the connection is stabilized. Some Services may only work using certain phone service carriers or non-PBX (including rollover/party line) phone systems.

- (e) Bandwidth: Your Services may limit the amount of data that you can upload and/or download each month ("bandwidth") or may be priced according to the amount of bandwidth you use per month. If during any month, you exceed a monthly bandwidth limit associated with your Services, Beyond may, going forward, change your Services to one permitting such bandwidth use (as provided for in the Services description) and you agree to pay the then-current Prices Beyond charges for such Services. Beyond will provide you with thirty (30) days notice of any such change to your Services.

4.4. No Resale

You agree and represent that you are buying the Services for your own personal use only and that you will not resell or permit another to resell the Services in whole or in part.

5. CANCELLATION/TERMINATION

Upon the effectiveness of any cancellation/termination or expiration of the Services, whether by you or Beyond, all past due balances, monthly recurring charges and other outstanding fees, charges and other amounts (including call toll/usage charges already incurred) shall immediately become due and payable in full on demand and you shall have no right to withhold or set off any such amounts. Unless otherwise specified in the SA, in such event, you shall have no right to be reconnected, except on terms acceptable to Beyond in its sole discretion.

5.1. Your Right to Terminate or Cancel the Services

You may terminate the Service Agreement for any reason at any time by providing notice of termination to Beyond in one of the following ways:

- (a) Via e-mail at SPCustomerSupport@discoverbeyond.com (or such other e-mail address as may be designated);
- (b) In writing at 5540 Centerview Drive, Suite 200, Raleigh, NC 27606 or
- (c) By calling our customer service line at (866) 713-5182 during normal business hours.

However, if the Service Agreement provides for a specific term of service (such as twelve months), such cancellation shall not relieve you of your obligation to pay for all monthly recurring charges and other fees, charges and other amounts (other than call toll/usage charges not yet incurred) that would otherwise be due and payable during the balance of such term of service if you had not cancelled the Services, all of which will immediately become due and payable as provided in the preceding paragraph. If you receive Services through your homeowners, property owners or condominium association, you may continue to be billed by that association for subscription fees after termination. Services used by you but provided through the homeowners, property owners or condominium association are not covered by this section.

5.2. Beyond's Right to Cancel the Services:

- (a) Upon Written Notice: Beyond may suspend all or any portion of your Service or terminate the Service Agreement for any reason. If we suspend Service or terminate the Service Agreement because in our sole discretion you have failed to comply in full with any term of the Service Agreement, we must first give you seven (7) days Notice, unless the Service Agreement expressly permits us to do so without Notice or

with less than seven (7) days Notice. If we suspend Service or terminate the Service Agreement for any other reason, we must first give you thirty (30) days Notice. If we suspend Service or terminate the Service Agreement for a reason other than your violation of the Service Agreement, all applicable fees and charges will accrue until the date of suspension or termination.

Unless otherwise prohibited by law, immediately upon written notice to you, Beyond may cancel your Service without additional liability to you for any one or more of the following reasons:

- i. You fail to pay any amount required under the Service Agreement when due and such failure continues for five (5) business days after written or electronic notice is sent to you indicating that such sums are due and payable.
- ii. A court or other governmental authority prohibits Beyond from providing you with the Services.
- iii. You violate or fail to comply with any state or municipal law, ordinance or regulation pertaining to telephone service or any other Service (including, without limitation, applicable State regulatory Commission regulations or Beyond's regulations on file with such Commission), and you do not remedy any such violation or failure to comply within 10 days after Beyond notifies you of such violation or failure to comply.
- iv. You refuse or neglect to provide Beyond or its authorized agents or other third party service providers with reasonable access to equipment owned or provided by Beyond for inspection, installation, removal, replacement or maintenance after reasonable notice.

(b) Without Notice or Opportunity to Cure: Unless otherwise prohibited by law, Beyond may immediately and without notice block access to its network from particular phone numbers from which Beyond is experiencing toll fraud, or usage of Services in an amount that is not supported by your credit. In addition, unless prohibited by law, Beyond may immediately, without notice and without liability to you suspend or discontinue your service in the following situations:

- i. Beyond may disconnect calls that are in progress that violate Beyond's fraud control parameters; and
- ii. Beyond may cancel or discontinue your access to the Services in the event of fraudulent or unauthorized use of the Services; and
- iii. Beyond may cancel or discontinue your access to the Services in the event of any use of the Services or any equipment provided by Beyond that is determined by Beyond to adversely affect the equipment or Beyond's provision of any services to others; and
- iv. Beyond may cancel or discontinue your access to the Services in the event of hazardous conditions or tampering with any equipment owned or furnished by Beyond.

Unless otherwise specified in the Service Agreement, the date of contact with you, either by phone, or receipt of email or USPS mail, shall become the termination date for you.

5.3. Your Obligations upon Termination

You agree that upon termination of the Service Agreement you will do the following:

- i. You will immediately cease use of the Services and all Beyond Equipment;
- ii. You will pay in full for your use of the Services and the Beyond Equipment up to the later of the effective date of termination of your Service Agreement or the date on which the Services are disconnected

and all Beyond Equipment has been returned; and

- iii. You will return Beyond Equipment to Beyond, by any method reasonably requested by us, within (10) days after termination of the Agreement. If any Beyond Equipment is not returned, you agree that Beyond may bill you for applicable charges reflected in the Price list and charge your credit card, or debit card if applicable. Once charged, these fees are non-refundable and Beyond Communications reserves the right to refuse or return shipments from you. Equipment return methods may include:
1. Beyond will send you a return shipping label and box, which you are to use to package and return ship your equipment to Beyond, and Beyond will bill your account for the then-current return shipping fee.
 2. Upon YOUR request, Beyond, its affiliates, associated parties or other representatives, will pick up Beyond Equipment for the then-current truck roll fee which will be billed to your account.
 3. Upon OUR request, you will permit us and our employees, agents, contractors, and representatives to access your premises during regular business hours to remove Beyond equipment and other material provided by Beyond. We will conduct this removal at no charge to you and at a time agreed on by you and us, and you will ensure that all Beyond Equipment is returned to Beyond.

5.4. Retention of Rights

Nothing contained in this Agreement shall be construed to limit Beyond's rights and remedies available at law or in equity. Beyond and its affiliates, agents, and other service providers and suppliers that furnish services in connection with Beyond reserve the right both during the term of this Service Agreement and upon its termination to delete your detail, data, files, or other Customer information that is stored on Beyond's or its affiliates, agents, and other service providers and suppliers' servers or systems. You understand and acknowledge that we shall have no liability whatsoever as a result of the loss or removal of any such detail, data, files, or other Customer information.

6. CHARGES, BILLING AND PAYMENT

6.1. Prices

You agree to pay all recurring and non-recurring charges associated with the Services, including, but not limited to, installation charges, disconnect charges, monthly service charges, charges for the use of Beyond Equipment, charges for service calls, and other charges from Beyond, its affiliates or associated parties at the current Prices and subject to any applicable restrictions. If an entity other than Beyond (e.g. another carrier or supplier) imposes charges on Beyond associated with the provision of Services to you, these charges will be passed on to you. In addition to the Prices for using the Services, you are responsible to pay taxes, fees, tariffs, regulatory charges and other surcharges which may also apply to your Services.

6.2. Your Responsibility for Payment

You are responsible for payment of all charges for Services furnished to you, including, but not limited to, unauthorized charges incurred on calls placed from your premises. This responsibility is not changed by any use, misuse, or abuse of the Services or systems, equipment, facilities, or services interconnected to the Services, whether such use, misuse, or abuse was undertaken by you or any third party, including, without limitation, your family members, employees or other members of the public. You agree to promptly notify

Beyond in connection with any misuse or abuse, or any lost, stolen or misappropriated authorization codes. Questions regarding charges to an account should be directed to our Customer Service Department at toll-free at (866) 713-5182. All charges are considered valid unless disputed in writing to the following address within thirty (30) days of the billing date.

Beyond Communications
5540 Centerview Drive, Suite 200
Raleigh, NC 27606
Tel. (866) 713-5182
Fax (800) 547-2115
SPCustomerSupport@discoverbeyond.com

Adjustments will not be made for charges that are more than thirty (30) days old.

6.3. Billing

Service is provided and billed monthly on a thirty (30) day billing cycle basis, beginning on the Effective Date. Beyond will prorate fixed monthly recurring charges for any initial partial month on a 30-day basis. Except for the initial month (or fraction thereof), monthly recurring charges will be billed in advance. The monthly recurring charges for the initial month (or fraction thereof) will be billed on your first invoice. Certain Services are billed based on Customer usage and are billed in arrears after the usage occurs. Contact us for additional information on usage and non-usage based charges and the timing of billing. For billing or refund purposes, each month will be presumed to have thirty (30) days.

Your invoice may also contain charges for other services provided by us or our subsidiaries or affiliates. You agree to pay in full each month the charges for Services as provided in Section 6.4. In the event that we launch a Web-based billing platform, upon thirty (30) days notice to you, we shall have the option of charging you for paper invoices. If a Web-based billing platform is available, we will provide email notification of when the current month's bill is available for on-line viewing to those customers that provide us with a valid and working email address for such notification purposes.

6.4. Payment

Unless otherwise indicated on an invoice, all payments are due and payable within fifteen (15) days of the invoice date. All payments must be made in U.S. dollars. Accounts may be in default if payment of all amounts due is not received within such fifteen (15) day period, and may be subject to late payment charges as provided in Section 6.6. Any interruption or cancellation of Service for non-payment pursuant to Section 6.6 does not relieve you of your obligation to pay for the Services. You agree to maintain valid and current credit card, debit card or other appropriate billing information on file with Beyond at all times. If you designate credit card or debit card payment as your method of payment for the Services, you hereby authorize Beyond to charge your credit card or debit card, as applicable, (1) for all charges for the Services due hereunder and (2) on or after any cancellation of the Services, to pay what you then owe (including, but not limited to, payment of all past due balances, monthly recurring charges and other outstanding fees, charges and other amounts (including call toll/usage charges already incurred, and those that would otherwise be due and payable during the balance of the term if the Services had not been cancelled, and any cancellation or termination fees)). You agree to inform us immediately of any change in credit card, debit card or other billing information (including but not limited to a change in expiration date). Your use of the credit card or debit card to pay for the Services is governed by the card issuer agreement, and you must refer to that agreement for your rights and liabilities as a cardholder. If you have not authorized charges to your credit card or debit card, as applicable, or if you revoke such authorization, or if for any reason your credit card or debit card issuer does not pay Beyond, Beyond must receive payment on or before the due date. Report changes to your account by contacting us as noted in the above ways in Section 6.2.

Beyond shall not be responsible for any charges or expenses (e.g., for overdrawn accounts, exceeding credit card limits, etc.) resulting from charges billed by Beyond. If you default, you agree to pay Beyond its reasonable expenses, including, but not limited to attorneys' and/or collection agency fees, incurred in enforcing its rights hereunder.

If you make partial payment of any invoice, unless otherwise required by applicable law, we will apply that payment to the outstanding charges in the amounts and proportions that we determine. However, if we accept any partial payment from you, we do not waive our rights subsequently to collect the full balance owed to us. You understand and agree that that our paper bills may contain only a summary of charges, and that detailed information about your calls and charges will be available only for a limited period at a password-protected portion of our website. You may contact us for a paper copy of outbound toll call records related to your most recent bill. There may be an additional charge for these outbound toll call records.

6.5. Taxes, Surcharges and Other Fees

Prices for Services are exclusive of applicable federal, state and local taxes, fees and surcharges, including but not limited to specific surcharges imposed on you to recover assessments levied on Beyond whether we or our affiliates, agents, or any other providers that furnish services in connection with Beyond pay the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from you. You must pay all applicable taxes, fees and surcharges described in this sub-section which apply to the Services you choose. The charges described in this sub-section are in addition to all other Prices. Such taxes, fees and surcharges may include, but are not limited to: gross receipt and excise taxes, access charges, ad valorem taxes, communications services taxes, universal service fund fees, local number portability charges, 911 service charges, utility and other fees.

You must pay all taxes, fees and other governmental charges levied by a governing body or bodies for Services, unless you provide Beyond with proof that you are exempt from doing so.

6.6. Late Payment Charges; Default Interest; Discontinuance or Suspension of Service

- (a) **Agreement to Pay:** You agree to pay all fees or charges for the Services, including any late fees and related fees, charges, and assessments related to late payments or non-payments. You may be charged such fees, charges, and assessments (1) if for any reason Beyond does not receive from you any required payment for the Services by the date on which the payment is due; or (2) if you pay less than the full amount due for the Services. If Beyond, or its affiliates or associated parties provide multiple products or services to you, and you fail to pay the full amount due for any or all of them, then Beyond may also suspend or disconnect, at our sole discretion, the Services as well as any and all other products and/or services provided by us our affiliates, associated parties or any other provider that furnishes services in connection with us.
- (b) **Late Payment Charge:** All past due balances for Services may be assessed a late payment charge at the rate of 1••• % per month or the greatest rate allowed by law, whichever is lower, until paid in full. The late payment charge may be charged in the event that you receive services through your homeowners, property-owners or condominium association and your account with the association is past due. Beyond may also charge you a fee for each check, bank draft or electronic funds transfer that is returned for insufficient funds. Fees vary by state. The address where your bill is sent will determine your charge. Any new or changed fees will be posted in the Price Lists before they are assessed. We may revise Beyond's late fee practices to comply with applicable state or local laws, rules, or regulations.

- (c) Denial of Credit or Debit Card Payments: If you pay by credit card or debit card and your credit card or debit card is denied, for any reason when Beyond applies charges, you may be charged a credit card denial fee as listed in the Price List. This credit card denial fee will be charged to your credit card directly, or if not possible, billed directly to you for payment by other means.
- (d) Termination for Non-Pay: If you fail to pay any outstanding balance by its due date, unless otherwise prohibited by law, Beyond may interrupt or discontinue your Services permanently. Termination of Services does not eliminate or reduce your obligation to pay all sums due hereunder that were incurred as part of your Service Agreement or Beyond's efforts to collect its fees, and You agree Beyond may charge these fees directly to your credit card or debit card in accordance with Section 6, without prior notice. You understand that once charged, these fees are non-refundable and Beyond reserves the right to refuse or return shipments from you.

6.7. Fees Not Considered Interest or Penalties:

Beyond does not anticipate that you will fail to pay for the Services on a timely basis, but we will not extend further credit to customers that fail to pay. Any fees, charges, and assessments due to late payment or nonpayment are not interest, credit service charges, or finance charges. Such fees, charges, and assessments are not penalties. Rather, they are liquidated damages intended to be a reasonable advance estimate of our costs resulting from late payments and non-payments. These costs will be difficult to calculate or to predict when we set such fees, charges, and assessments, because we cannot know in advance: (1) whether you will pay for the Services on a timely basis, if ever; (2) if you do pay late, when you will actually pay; and (3) what costs we will incur because of your late payment or non-payment.

6.8. Collection Costs

If we are required to use a collection agency or attorney to collect money owed by you or to assert any other right that we may have against you, you agree to pay the reasonable costs of collection or other action. These costs include but are not limited to any collection agency's fees, reasonable attorneys' fees, and arbitration or court costs.

6.9. Activation and Reactivation Fees, and Related Charges

Should you wish to resume the Services after a suspension of the Services, Beyond may require you to pay an activation and/or reactivation fee, as applicable. Should you wish to reinstate the Services after disconnection of the Services, we may require you to pay a new installation fee and/or service activation fee, as applicable, may require a deposit, or may require you to pay with a credit card or debit card as provided in Section 3.2 and 6.4. These fees are in addition to all past due charges and other fees. Activation, reactivation, and re-initiation of the Services are subject to our credit policies.

6.10. Your Responsibilities Concerning Billing Questions

Subject to applicable law, you must contact us within thirty (30) days of the date on the bill to dispute charges or request a billing credit.

6.11. Notification of Changes

Beyond may change the fees and charges for the Services from time to time; specifically, we may decrease fees and charges with or without advance Notice, and we may increase fees and charges for the Services after thirty (30) days notification. Taxes and other government-related fees and surcharges may be changed with or without Notice. You will also be responsible to pay any fees, payment obligations, and taxes that

become applicable retroactively.

6.12. REFUNDS FOR EXTENDED INTERRUPTIONS IN SERVICE

EXCEPT IN THE EVENT OF ANY NEGLIGENCE, INTENTIONAL MISCONDUCT OR ANY FAILURE BY YOU (OR ANYONE AUTHORIZED BY YOU TO USE THE SERVICES) TO COMPLY WITH THIS SERVICE AGREEMENT, IF ANY PORTION OF YOUR SERVICES ARE INTERRUPTED AND REMAIN OUT OF ORDER FOR MORE THAN TWENTY-FOUR HOURS AFTER YOU NOTIFY US OF SUCH INTERRUPTION, AND PROVIDED YOU ALLOW US REASONABLE ACCESS TO MAKE ANY REQUIRED REPAIRS, WE WILL REFUND TO YOU A PRO RATA PORTION OF THE MONTHLY CHARGE FOR THE INTERRUPTED SERVICE. SUCH REFUND MAY BE PAID AS A CREDIT TO YOUR ACCOUNT. YOU AGREE THAT THE REMEDY SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE CONSTITUTES YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY INTERRUPTION OF THE SERVICES OR ANY OTHER FAILURE TO PROVIDE THE SERVICES. IF YOU BELIEVE THAT YOU HAVE OVERPAID US, YOU MUST SUBMIT A CLAIM WITHIN SIXTY (60) DAYS AFTER THE CLAIMED OVERPAYMENT, ALONG WITH EVIDENCE SUPPORTING THE CLAIM. IF A BILLING ERROR RESULTS IN AN OVERBILLING OR OVERCHARGE, WE MAY REFUND THE AMOUNT OVERBILLED OR OVERCHARGED BY ISSUING A CREDIT TO YOUR ACCOUNT. WE MAY PROVIDE CREDITS OR OTHER COMPENSATION FOR SERVICE INTERRUPTION.

6.13. Promotions

We may offer one or more promotions indicating pricing which varies from the Price List. Such promotions will either have an explicit expiration date or contain language to the effect of, "Promotion may expire at any time." Such promotion will be honored in strict accordance with the stated rules applicable to the specific promotion. We reserve the right to limit customers to one discount or free trial promotion.

7. YOUR ACCOUNT

7.1 Password and Security

Upon registration for Internet-based Services, you will receive a username, password, and other account information. You and members of your household are the only authorized users of your account and must comply with this Service Agreement in all respects. You must keep your username and password confidential so that no one else may access the Services through your account. You acknowledge and agree that you are responsible and shall be liable for the activity of any person who uses your account to access the Internet and for any liability resulting from the disclosure of your usernames and/or passwords. You further agree that, upon becoming aware that any of your usernames or passwords or your account is being used without your authorization, you will immediately change your usernames and/or passwords, as applicable, and notify us of such unauthorized use. You agree that we will not be liable for any loss that you may incur as a result of a third party using your usernames, passwords and/or account, either with or without your knowledge. You acknowledge that you could be held liable for losses incurred by us or another party as a result of someone using your usernames, passwords and/or account. You agree not to use another subscriber's usernames, passwords or accounts without the permission of that subscriber.

Unless your service includes a static IP address, you will be allocated a dynamic IP address. Beyond reserves the right to timeout inactive connections. Beyond technical support may be limited to Beyond Services. Your email and Web hosting may be inactivated if you exceed storage limits. Usage and Web hosting exceeding the allotted amount of bandwidth may be billed for excess traffic. Email, Web hosting, and bandwidth limits are to be posted throughout our Web site and may also be obtained by calling Customer Service. Beyond reserves the right to change data storage capacity limits at any time upon thirty (30) days prior notice.

7.2 Technical Support

Beyond may provide technical support for Beyond Equipment via telephone seven days a week. Technical support can be obtained by calling (866) 713-5182. Beyond reserves the right to adjust these hours at its sole discretion at any time without prior notice to you. Beyond is not responsible for the functionality of any equipment not obtained through Beyond and will not provide technical support related to that equipment.

8. INSTALLATION AND Beyond EQUIPMENT

The Services that you have purchased may include Beyond Equipment (as defined at the end of this paragraph). The installation, use, inspection, maintenance, repair, replacement and removal of the Beyond Equipment may result in service outage or potential damage to your hardware, software, firmware, system, files, data, or peripherals. You assume responsibility for impacts to or loss of any warranty associated with the installation, opening, or use, as applicable, of your hardware, software, firmware, system, files, data, or peripherals for installation purposes. As used herein, "Beyond Equipment" means all equipment, such as external cabling and related electronic devices, and any software, that is installed and/or provided by Beyond, its affiliates or associated parties to you or to your premises by Beyond or its affiliates or associated parties as part of or in connection with the delivery of the Services.

8.1. Ownership of Beyond Equipment

You acknowledge that the Beyond Equipment is merely a means for us to provide you the Services and that we may remove or change it at our discretion.

You agree not to use Beyond Equipment for any purpose other than to use the Services in accordance with this Service Agreement. You agree that title in and to any and all of the Beyond Equipment shall at all times remain with Beyond or its designee while Beyond's equipment is on your premises, you shall ensure that it is kept safe and secure and is not interfered with by any persons. You further agree that the Beyond Equipment will not be modified or removed from the premises to which the Services are being provided without prior written consent from Beyond.

8.2. Installation and Access to Beyond Equipment

Beyond, its affiliates, agents, or any other provider that furnishes services in connection with Beyond may install, maintain, service and operate all necessary Beyond Equipment. You hereby grant to Beyond, its affiliates or its associated parties, upon reasonable notice, the right to enter the premises that are the subject of the Services at reasonable times for purposes of connecting, disconnecting, inspecting, repairing, replacing in whole or in part, maintaining, updating and/or removing any or all of the Beyond Equipment and/or the Services. Accordingly, you authorize Beyond, its affiliates or its associated parties to enter the Premises as necessary, at a time agreeable to you and us. Upon any cancellation of the Services, you agree to promptly return all Beyond Equipment (other than Beyond Equipment that is physically affixed (without being able to be disconnected) to the premises), unless otherwise stated in the Service Agreement. You agree to be responsible to pay Beyond for the full amount of all costs and expenses associated with replacing any missing or damaged Beyond Equipment and such costs and expenses will be billed directly to you by Beyond (based on the most current value of like equipment). If the Services are cancelled by either party (you or Beyond) before the Effective Date or if Beyond finds, for any reason and in its sole discretion, that the Services are not able to be provided to you, you must return all Beyond Equipment (other than Beyond Equipment that is physically affixed (without being able to be disconnected) to the premises) with all of its original packaging to Beyond.

- (a) You warrant either that you are the owner of the Premises, or if you are a tenant, that you have the authority to afford Beyond access to the Premises. If you are not the owner of the Premises, you agree to supply Beyond, if we ask, the owner's name and address, evidence that the owner has authorized you to grant access to the Premises, and/or written consent from the owner.

8.3. Repair and Maintenance of Beyond Equipment

Beyond will repair and maintain all Beyond Equipment. You agree that you will not allow anyone other than Beyond employees or agents to service the Beyond Equipment. You agree not to sell, transfer, lease, encumber, or assign all or any part of the Beyond Equipment to any third party. If any Beyond Equipment or part thereof is lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered, or assigned, you agree to pay Beyond our prevailing list price for its replacement, together with any incidental costs that we incur relating to its replacement.

8.4 Tampering With, Relocating or Disconnecting Beyond Equipment

YOU WILL NOT SERVICE, ALTER, TAMPER WITH OR RELOCATE BEYOND EQUIPMENT OR PERMIT ANY OTHER PERSON (NOT EXPRESSLY AUTHORIZED BY BEYOND) TO DO SO. UNLESS SPECIFICALLY AUTHORIZED OTHERWISE BY BEYOND, YOU AGREE THAT THE BEYOND EQUIPMENT AND SERVICES WILL ONLY BE USED AT YOUR SERVICE ADDRESS APPEARING IN OUR RECORDS. AT YOUR REQUEST, WE MAY RELOCATE THE BEYOND EQUIPMENT WITHIN THE PREMISES FOR AN ADDITIONAL CHARGE, AT A TIME AGREEABLE TO YOU AND TO US. IF YOU CHANGE RESIDENCES, YOU MUST CONTACT US FOR INFORMATION ON WHETHER THE BEYOND EQUIPMENT AND SERVICES MAY BE TRANSFERRED TO YOUR NEW RESIDENCE AND WHAT THE RELOCATION WILL COST. IF YOU WISH TO DISCONNECT THE SERVICES, YOU MUST CONTACT US FOR INFORMATION ON THE NECESSARY PROCEDURES AND COST. IF YOU VIOLATE ANY OF THE RESTRICTIONS IN THIS SECTION 8.4, BEYOND RESERVES THE RIGHT TO TERMINATE THE SERVICES IMMEDIATELY AND WITHOUT NOTICE, LEAVING YOU RESPONSIBLE FOR ALL OUTSTANDING CHARGES, WHICH IMMEDIATELY BECOME DUE AND PAYABLE.

8.5. No Representations, Warrants or Covenants

BEYOND DOES NOT REPRESENT, WARRANT, OR COVENANT THAT INSTALLATION BY YOU OR ANY THIRD PARTY CHOSEN BY YOU WILL ENABLE YOU TO SUCCESSFULLY ACCESS, OPERATE, OR USE THE SERVICES, NOR THAT ANY INSTALLATION (WHETHER OR NOT PROVIDED BY BEYOND) WILL NOT CAUSE DAMAGE TO YOUR HARDWARE, DATA, SOFTWARE, FIRMWARE, SYSTEM, FILES, OR PERIPHERALS. YOU ARE SOLELY RESPONSIBLE FOR BACKING UP ALL OF YOUR EXISTING COMPUTER FILES AND DATA. BEYOND AND ITS EMPLOYEES, AGENTS, CONTRACTORS, AND REPRESENTATIVES SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY OF YOUR HARDWARE, SOFTWARE, FIRMWARE, SYSTEM, FILES, DATA, OR PERIPHERALS IN CONNECTION WITH THE INSTALLATION OF THE SERVICES, THE BEYOND EQUIPMENT, THE SUBSCRIBER EQUIPMENT AND/OR ANY OTHER EQUIPMENT. BEYOND SHALL BE RESPONSIBLE ONLY TO MAINTAIN AND SERVICE THE BEYOND EQUIPMENT TO THE POINT OF INTERCONNECTION WITH THIRD PARTY OPERATORS AND SHALL HAVE NO LIABILITY FOR OR IN CONNECTION WITH THE FAILURE OF THIRD PARTY OPERATORS' NETWORK OR EQUIPMENT. BEYOND WILL MAKE ITS BEST EFFORT TO PROVIDE THE SERVICE. HOWEVER, BECAUSE OF THE COMPLEX NATURE OF INTERNET SERVICE, AVAILABILITY, AND THE UNDERLYING INFRASTRUCTURE, IT MAY NOT BE POSSIBLE TO PROVIDE THE SERVICES TO EVERYONE. IN ITS SOLE DISCRETION, BEYOND MAY CANCEL THE INSTALLATION PROCESS AND REFUND ANY MONEY THAT YOU HAVE PAID. SUCH REFUND WILL CONSTITUTE YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY SUCH FAILURE TO PROVIDE THE SERVICES AND BEYOND AND ITS AFFILIATES AND ASSOCIATED PARTIES SHALL HAVE NO FURTHER LIABILITY IN CONNECTION THEREWITH. BEYOND WILL NOTIFY YOU OF ITS INTENT TO CANCEL AS SOON AS REASONABLY POSSIBLE. IT MAY TAKE 90 OR MORE DAYS TO DETERMINE IF BEYOND IS ABLE TO PROVIDE SERVICE. BEYOND

AND ITS EMPLOYEES, AGENTS, CONTRACTORS, AND REPRESENTATIVES SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR CLAIMS ARISING OUT OF ITS FAILURE OR REFUSAL TO COMPLETE THE INSTALLATION OR PROVIDE THE SERVICE. THE FOREGOING LIMITATIONS OF LIABILITY ARE IN ADDITION TO AND SHALL IN NO WAY BE CONSTRUED TO LIMIT ANY AND ALL LIMITATIONS OF LIABILITY SET FORTH ELSEWHERE IN THIS SERVICE AGREEMENT.

8.6 Your Obligation to Report Theft of Service Immediately

- (a) You will be liable for all use of the Services and for any and all stolen Services or unauthorized use of the Services. If you become aware at any time that any Beyond Equipment or any of the Services using the Beyond Equipment are stolen or that your Services are being stolen or used without your authorization, you agree to notify Beyond immediately by one of the ways previously mentioned in this agreement.

When you call or write, you must provide your account number and a detailed description of the circumstances of the theft or unauthorized use of the Beyond Equipment or Services. If you fail to notify us in a timely manner, your Services may be terminated without Notice, with additional charges to you.

9. MONITORING THE SERVICES

9.1. Acceptable Use

You agree to ensure that all uses of the Beyond Equipment and/or the Services installed at your premises ("use") are legal and appropriate. Specifically, you agree to ensure that all uses by you or by any other person ("user"), whether authorized by you or not, comply with all applicable laws, regulations, and written and electronic instructions for use. Beyond reserves the right to act immediately and without Notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to you or users (e.g., emails or voicemail), if Beyond (1) determines that such use or information does not conform with the requirements set forth in this SA, (2) determines that such use or information interferes with Beyond's ability to provide the Services to you or others, or (3) reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. Beyond's action or inaction under this Section shall not constitute review or approval of your or any other users' use or information.

9.2. Right to Monitor

Beyond has no obligation to monitor your Services, but may do so and disclose information regarding use of the Services for any reason if Beyond, in its sole discretion, believes that it is reasonable to do so, including to: satisfy laws, regulations, or governmental or legal requests; operate the Services properly; or protect itself and its customers. Please see the Privacy Policy on our website. Beyond may immediately remove your material or information from Beyond's servers, in whole or in part, which Beyond, in its sole and absolute discretion, determines to infringe another's property rights or to violate the Beyond High-Speed Internet Acceptable Use Policy (refer to the Beyond High-Speed Internet Acceptable Use Policy Addendum in Section 19) or other Beyond policies or laws.

10. SOFTWARE LICENSE

10.1 Limited, Non-Exclusive, Nontransferable and Non-Assignable License

Beyond grants to you a limited, nonexclusive, nontransferable and non-assignable license to install and use Beyond software (including software from third-party vendors that Beyond distributes and any firm-

ware or software embedded in Beyond Equipment; in object code format), its associated documentation, and any updates thereto ("Licensed Programs") in order to access and utilize the Services. You agree to use the Licensed Programs solely in conjunction with the Services and for no other purpose. Beyond may modify the Licensed Programs at any time, for any reason, and without providing notice of such modification to you. All third-party software license agreements, if any, are hereby incorporated and made a part of the Service Agreement by reference.

10.2 Confidential and Proprietary Information, Trade Secrets and Intellectual Property

The Licensed Programs constitute confidential and proprietary information of Beyond and Beyond's licensors and embody trade secrets and intellectual property protected under United States copyright laws, other laws, and international treaty provisions. All right, title, and interest in and to the Licensed Programs, including associated intellectual property rights, are and shall remain with Beyond and Beyond's licensors. You shall not, and shall cause your employees and agents not to, disclose or transfer any portion of the Licensed Programs or the Services to any third party. You further agree not to translate, decompile, reverse engineer, disassemble, modify, reproduce, rent, lease, lend, sublicense, distribute, remarket or otherwise dispose of any portion of the Licensed Programs or the Services. You hereby acknowledge that, if Beyond at any time or from time to time performs any customizations or modifications to Services, all rights and interests to such customizations or modifications shall be the sole property of Beyond.

You may not download, use, or otherwise export or re-export the Licensed Programs or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations. By installing or downloading the Software, you represent and warrant that you are not located in, under the control of or a national or resident of any country on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders.

10.3 Limits on Your License to Use Beyond Firmware or Software

The Services and Beyond Equipment, including but not limited to the Licensed Programs are protected by trademark, copyright, and/or other intellectual property laws and international treaty provisions. You are granted a revocable license to use such Licensed Programs (without making any modification thereto) strictly in accordance with the SA. You acknowledge and understand that you are not granted any other license to use the Licensed Programs. You expressly agree that you will use the Beyond Equipment exclusively in connection with the Services. You shall not take any action nor allow anyone else to take any action that will reverse compile, disassemble, or reverse engineer or otherwise attempt to derive the source code from the binary code of the Licensed Programs.

If you decide to use the Services through an interface device not provided by Beyond, which Beyond reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights to use that interface device with the Services, including all software and firmware licenses. You will indemnify and hold harmless Beyond against any and all liability arising out of your use of such interface device with the Services.

10.4 Protection of Beyond's Information and Marks

All Beyond Service information, documents, and materials on our websites are protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "marks") of Beyond are and shall remain the exclusive property of Beyond. Nothing in this Service Agreement shall grant you the right or license to use any of the marks.

10.5 Export Laws

You expressly agree to comply with all applicable export and re-export laws, including but not limited to the Export Administration Act, the Arms Export Control Act, and their implementing regulations. You further expressly agree not to use the Services in any way that violates any provision of these export and re-export laws or their implementing regulations.

11. WARRANTIES

11.1. Beyond Limited Warranty

THE BEYOND EQUIPMENT AND THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER BEYOND NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, NOR ANY OTHER PROVIDER THAT FURNISHES SERVICES IN CONNECTION WITH BEYOND WARRANT THAT THE BEYOND EQUIPMENT OR THE SERVICES WILL MEET YOUR REQUIREMENTS, BE ERROR-FREE OR FREE OF VIRUSES, OR OTHER HARMFUL COMPONENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NEITHER BEYOND NOR ITS AFFILIATES OR ASSOCIATED PARTIES WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM. BEYOND MAKES NO EXPRESS WARRANTIES AND HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING THE SERVICES AND/OR THE BEYOND EQUIPMENT AND/OR ANY PRODUCTS, MERCHANDISE, INFORMATION AND/OR SERVICES PROVIDED OR OBTAINED IN CONNECTION WITH THE SERVICES, OR OTHERWISE THROUGH BEYOND OR THE INTERNET GENERALLY. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED. NO ADVICE OR INFORMATION GIVEN BY BEYOND OR ITS AFFILIATES OR ASSOCIATED PARTIES SHALL CREATE A WARRANTY.

11.2 Customer Representations and Warrantees

You represent and warrant that you are at least 18 years of age. You also represent and warrant that you have provided and will continue to provide to Beyond accurate, complete, and current Customer information, including but not limited to your legal name, address, phone number(s), and payment data (including but not limited to credit card numbers and expiration dates). You agree that during the term of the Service Agreement you will promptly notify us if there is any change in the information that you have provided to us in accordance with the terms of the Service Agreement. If you fail to provide and maintain accurate information, you thereby breach this Service Agreement.

12. LIMITATION OF LIABILITY AND INDEMNIFICATION

12.1. Limitation of Beyond's General Liability

EXCEPT AS SPECIFICALLY PROVIDED IN THIS SERVICE AGREEMENT, BEYOND AND ITS AFFILIATES AND ASSOCIATED PARTIES SHALL NOT UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO TORT OR CONTRACT) HAVE ANY LIABILITY TO THE CUSTOMER OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS:

- (i) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF ASSETS, LOSS OF USE, LOSS OF DATA, LOSS OF REVENUES, LOSS OF BUSINESS OR LOSS OF PROFITS, PERSONAL INJURIES OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (1) CUSTOMER'S

RELIANCE ON OR USE OF THE BEYOND EQUIPMENT OR THE SERVICES OR (2) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, REMOVAL, OR USE OF THE SERVICES (INCLUDING BUT NOT LIMITED TO ANY MISTAKES, OMISSIONS, INTERRUPTIONS, FAILURES OR MALFUNCTION, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION OF THE BEYOND EQUIPMENT OR THE SERVICES OR ANY OTHER MISTAKES, OMISSIONS, OR LOSS OF OTHER INFORMATION OR DATA)

- (ii) ANY LOSSES (INCLUDING BUT NOT LIMITED TO LOSS OF ASSETS, LOSS OF USE, LOSS OF DATA, LOSS OF REVENUES, LOSS OF BUSINESS OR LOSS OF PROFITS), 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 BEYOND EQUIPMENT OR THE SERVICES BY CUSTOMER OR ANY OTHER PERSON OR ENTITY INFRINGES THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INDUSTRIAL OR INTELLECTUAL PROPERTY RIGHTS, PROPRIETARY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.
- (iii) ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, PROCEEDINGS, COSTS, EXPENSES, FEES, PENALTIES, OR OTHER AMOUNTS RESULTING FROM (1) OTHER USERS ACCESSING YOUR COMPUTER; (2) SECURITY BREACHES; (3) EAVESDROPPING; (4) DENIAL OF SERVICE ATTACKS; (5) INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICES; (6) YOUR RELIANCE ON OR USE OF THE BEYOND EQUIPMENT OR THE SERVICES, OR THE MISTAKES, OMISSION, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSIONS, OR ANY FAILURE OF PERFORMANCE OF THE BEYOND EQUIPMENT OR THE SERVICES; (7) THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ALL SERVICES, PRODUCTS, AND OTHER INFORMATION, AND THE QUALITY AND MERCHANTABILITY OF ALL MERCHANDISE PROVIDED OR OBTAINED THROUGH OR IN CONNECTION WITH THE SERVICES OR THE INTERNET; (8) FAULTS, DEFECTS OR OTHER PROBLEMS WITH THE SUBSCRIBER EQUIPMENT; AND/OR (9) REASONS NOT WITHIN BEYOND'S REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO FORCE MAJEURE, ANY ACTS OF GOD OR ANY PUBLIC ENEMY, FIRES, METEOROLOGICAL PHENOMENA, FLOODS, HURRICANES, SEVERE WEATHER OR OTHER NATURAL DISASTERS, NATIONAL EMERGENCIES, INSURRECTIONS, RIOTS, WARS, ACTS OF TERRORISM, STRIKES, LOCKOUTS, WORK STOPPAGES, OR OTHER LABOR DIFFICULTIES, ACTS OF THE UNITED STATES OR ANY STATE OR POLITICAL SUBDIVISION THEREOF.

12.2 Limitations on Beyond's Liability for Customer Equipment and Software

Customer Equipment may be damaged or suffer service outages as a result of the installation, self-installation, use, inspection, maintenance, repair, and removal of the Beyond Equipment and the Services. Except for gross negligence or willful misconduct by us, neither Beyond nor any of its affiliates or associated parties shall have any liability whatsoever for any damage, loss, or destruction to the Customer Equipment. In the event of gross negligence or willful misconduct by Beyond, we may pay at our sole discretion for the repair or replacement of the damaged parts up to a maximum of \$250. This shall be your sole remedy relating to such activity.

When you use certain features of the Services, such as online features of the Services (where available), you may require special software, applications, and/or access to the Internet. Beyond makes no representation or warranty that any software or application installed on your computer(s) or the Internet does not contain a virus or other harmful feature. It is your sole responsibility to take appropriate precautions to protect any computer and other hardware of yours from damage to its software, files, and data as a result of any such virus or other harmful feature. We are not required to provide you with any assistance in removal of viruses. If we decide, in our sole discretion, to install or run virus check software on your computer(s), we make no representation or warranty that the virus check software will detect or correct any or all viruses. You acknowledge that you may incur additional charges for any service call made or required on account

of any problem related to a virus or other harmful feature detected on your system. NEITHER BEYOND NOR ITS AFFILIATES NOR ITS ASSOCIATED PARTIES SHALL HAVE ANY 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.

Beyond does not represent, warrant, or covenant that the installation of the special software or applications described in the preceding paragraph or access to our web portal(s) will not cause the loss of files or disrupt the normal operations of any Customer Equipment, including but not limited to your computer(s). FOR THESE AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP FILES. NEITHER BEYOND NOR ITS AFFILIATES NOR ITS ASSOCIATED PARTIES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.

12.3 Limitations on Beyond's Liability for Third Parties

Notwithstanding anything to the contrary in the Service Agreement, you acknowledge and understand that we may use third parties to provide components of the Services, including without limitation their services, equipment, and infrastructure. Beyond is not responsible for the performance (or non-performance) of third-party services, equipment, or infrastructure, whether or not they constitute components of the Services. Beyond shall not be bound by any undertaking, representation, or warranty made by an agent or employee of Beyond or of our underlying third-party providers in connection with the installation, maintenance, or provision of the Services, if that undertaking, representation, or warranty is inconsistent with the terms of the SA. The limitations of liability set forth in Section 12 apply to any acts, omissions, and negligence of and associated third parties which, but for that provision, would give rise to a cause of action in contract, tort, or any other legal doctrine.

12.4 Limitation of Beyond Compensation for Service Interruptions

Beyond will compensate you for a service interruption only if the Services fail completely because of a technical malfunction for twenty-four (24) or more consecutive hours. In that case, your sole remedy, available upon your request, will be limited to a prorated credit against the net monthly recurring charge (exclusive of nonrecurring charges, other one-time charges, per call charges, measured charges, regulatory fees and surcharges, taxes, and other governmental and quasi-governmental fees). To qualify, you must request the credit from Beyond within sixty (60) days of the failure. Credits will be applied only against current and future fees payable by you for the Services. Any credits provided by Beyond are at our sole discretion and in no event shall constitute or be construed as a course of conduct by Beyond. In any event, Beyond's cumulative liability to you for any and all claims relating to the services and/or the Beyond Equipment shall not exceed the total amount of service charges paid by you during the three months immediately preceding a claim.

12.5 Indemnification by You

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE SERVICE AGREEMENT YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BEYOND, ITS AFFILIATES AND ASSOCIATED PARTIES FROM ANY CLAIMS, DAMAGES, DEMANDS, SUITS, ACTIONS, JUDGMENTS, LOSSES, COSTS, EXPENSES, FEES, CHARGES, PENALTIES AND OTHER AMOUNTS (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES) THAT BEYOND MAY SUSTAIN OR INCUR BY REASON OF ANY BREACH OR ALLEGED BREACH OF ANY TERM OR CONDITION OF THE SERVICE AGREEMENT AND FOR ANY ACT OR OMISSION OF YOU OR YOUR FAMILY WHICH ARE IN ANY WAY RELATED TO THE SERVICES OR THE BEYOND EQUIPMENT. THIS INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING:

- i. Claims of the infringement or unauthorized use of any third parties' intellectual property rights (including, without limitation, copyright, trademark, trade name, service mark, trade secret, and/or patent) arising from the use of the Services or the Beyond Equipment in any manner not contemplated by this Service Agreement (including, without limitation, combining the Services or the Beyond Equipment with any equipment, systems or other apparatus not provided by Beyond or its authorized third party providers);
- ii. Claims of libel, and slander; and
- iii. All other claims arising out of or related to any act or omission in connection with the Services or the Beyond Equipment by you or anyone authorized by you to use the same.

YOU AGREE THAT BEYOND, ITS AFFILIATES AND ASSOCIATED PARTIES SHALL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS, DAMAGES, DEMANDS, SUITS, ACTIONS, JUDGMENTS, LOSSES, COSTS, EXPENSES, FEES, CHARGES, PENALTIES AND OTHER AMOUNTS (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES) AGAINST US THAT ARISE FROM YOUR USE OF THE Beyond EQUIPMENT OR THE SERVICES. FURTHER, YOU AGREE TO REIMBURSE Beyond FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS.

12.6 Customer's Sole Remedies

Your sole and exclusive remedies under the Service Agreement are as expressly set forth in the Service Agreement. Certain of the above exclusions 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, the liability of Beyond, its affiliates and its associated parties is limited to the maximum extent permitted by law.

12.7 Regulatory Limitations

You understand and acknowledge that the Services may be subject to regulatory or tax treatment that differs from the regulatory or tax treatment applicable to services not covered by the Service Agreement. This different treatment may limit or otherwise affect your rights of redress before federal or state regulatory or tax agencies.

12.8 Survival of Limitations

All representations, warranties, indemnifications, and limitations of liability contained in the Service Agreement shall survive the termination of the Service Agreement; any other obligations of the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.

13. JURISDICTION AND VENUE

The Service Agreement is governed by the applicable law in the state in which service is provided without regard to conflict of law provisions. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by in the state of Alabama, to the exclusion of all other jurisdictions and venues, except for arbitration per Section 14. You agree not to join in any class action against Beyond, its affiliates or its associated parties, to the extent you have the lawful ability to do so, to elect not to be a member of any class that is maintaining or attempting to maintain an action against Beyond its affiliates or its associated parties.

NOTE TO CALIFORNIA CUSTOMERS: IF YOU ARE A BEYOND VOICE CUSTOMER IN CALIFORNIA, BEYOND WILL NOT SEEK TO ENFORCE THE FOLLOWING SECTION 14, UNLESS WE HAVE NOTIFIED YOU OTHERWISE.

14. DISPUTE RESOLUTION

If you have a Dispute (as defined below) with Beyond, its affiliates or its associated parties and all entities using the brand name "Beyond," and its/their affiliates or its/their associated parties, that cannot be resolved through our informal dispute resolution process, you agree to submit the Dispute to binding arbitration of the state in which the property is located, before the American Arbitration Association in accordance with the terms of this Section 14 rather than to litigate the Dispute in court. Arbitration means you will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury. Either you or Beyond may initiate arbitration of the Dispute.

As used in this Section 14, the term "Dispute" means any dispute, claim, or controversy between you and Beyond that has accrued by the commencement date of the Service Agreement, or any dispute, claim, or controversy that accrues after the commencement date of the Service Agreement, whether based in contract, statute, regulation, ordinance, tort (including but not limited to fraud, misrepresentation, fraudulent inducement, negligence, or any other intentional tort), or any other legal or equitable theory, and includes the validity, enforceability, or scope of this Section 14 (with the exception of the enforceability of the class action waiver clause provided in Section 14.2 (ii)). "Dispute" is to be given the broadest possible meaning that will be enforced.

14.1 Arbitration Procedures

Because the Services provided to you by Beyond may concern interstate commerce, the Federal Arbitration Act ("FAA"), not state arbitration law, shall govern the arbitrability of all Disputes. However, applicable federal law or the law of the state where you receive the service from Beyond may apply to and govern the substance of any Disputes. Any state statutes pertaining to arbitration, however, shall not be applicable under this arbitration provision.

If there is a conflict between this Section 14 and the rules of the American Arbitration Association, the rules contained in this Section 14 shall govern. If the American Arbitration Association will not enforce this Section 14 as written, it cannot serve as the arbitration organization to resolve your dispute with Beyond. If this situation arises, the parties may agree on a substitute arbitration organization. In the event that the parties are unable to agree, the parties may mutually petition a court of appropriate jurisdiction to appoint an arbitrator that will enforce this Section as written. If there is a conflict between this Section 14 and the rest of the Service Agreement, this Section 14 shall govern.

You and Beyond agree that a single arbitrator will resolve the Dispute. You should know that participating in arbitration may result in limited discovery based on the rules of the arbitration organization. The arbitrator will apply applicable statutes of limitation (as modified by this Section 14), will honor claims of privilege recognized by law, and will take reasonable steps to protect customer account information and other confidential or proprietary information, including the use of protective orders to prohibit disclosure outside of the arbitration, if requested to do so by you or Beyond.

The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Upon a request by you or Beyond, the arbitrator will provide a brief statement of the reasons for the award. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties.

14.2 Restrictions

- (a) YOU MUST CONTACT BEYOND WITHIN ONE-HUNDRED EIGHTY (180) DAYS OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE (EXCEPT FOR BILLS WHICH YOU DISPUTE), OR YOU WAIVE THE RIGHT TO PURSUE A CLAIM BASED UPON SUCH EVENT, FACTS, OR DISPUTE.
- (b) ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS-ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE

CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS SIMILARLY SITUATED.

14.3 Location of Arbitration

The arbitration will take place at a neutral location convenient to you and Beyond.

14.4 Payment of Arbitration Fees and Costs

THE PREVAILING PARTY IN THE APPEAL SHALL BE ENTITLED TO RECOVER ALL REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN THAT APPEAL. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 14, BEYOND WILL PAY ALL FEES AND COSTS WHICH IT IS REQUIRED BY LAW TO PAY.

14.5 Severability

If any clause within this Section 14 (other than the class action waiver clause identified in Section 14.2 (ii)) is found to be illegal or unenforceable, that clause will be severed from the arbitration provision, and the remainder of this Section 14 will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Section 14 will be unenforceable, and the dispute will be decided by a court.

In the event that this entire Section 14 is determined to be illegal or unenforceable for any reason, or if a claim is brought in a dispute that is found by a court to be excluded from the scope of this Section 14, you and Beyond have each agreed to waive, to the fullest extent allowed by law, any trial by jury.

14.6 Exclusions from Arbitration

YOU AND BEYOND AGREE THAT THE FOLLOWING WILL NOT BE SUBJECT TO ARBITRATION:

- i. ANY CLAIM FILED BY YOU OR BY BEYOND THAT IS NOT AGGREGATED WITH THE CLAIM OF ANY OTHER SUBSCRIBER AND WHOSE AMOUNT IN CONTROVERSY IS PROPERLY WITHIN THE JURISDICTION OF A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS.
- ii. ANY DISPUTE OVER THE VALIDITY OF ANY PARTY'S INTELLECTUAL PROPERTY RIGHTS
- iii. ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR THEFT OF SERVICE
- iv. ANY DISPUTE THAT ARISES BETWEEN BEYOND AND ANY FEDERAL, STATE, OR LOCAL REGULATORY

AUTHORITY OR AGENCY THAT HAS JURISDICTION OVER THE VOICE SERVICES

v. ANY DISPUTE THAT IS NOT AGGREGATED WITH THE CLAIM OF ANY OTHER SUBSCRIBER AND THAT CAN BE PROPERLY

BROUGHT BEFORE A FEDERAL, STATE, OR LOCAL REGULATORY AGENCY THAT HAS JURISDICTION OVER THE VOICE SERVICES.

14.7 Continuation of Section 14

This Section 14 shall survive the termination of your Services with Beyond.

15. MISCELLANEOUS

15.1. General

The Service Agreement constitutes the entire agreement between you and Beyond with respect to the Services and the Beyond Equipment and supersedes all previous representations, understanding or agreements between us and shall prevail notwithstanding any variances with the terms and conditions thereof. Beyond may revise, amend, or modify the Service Agreement at any time and in any manner. Nothing in the Service Agreement or in the understanding of the parties construes upon the parties the status of agency, partnership, or other form of joint enterprise between the parties. Beyond may subcontract any work, obligations or other performance required of Beyond under the Service Agreement without your consent. Any portions of these Terms which, by their terms are meant to survive any termination or expiration of the Service Agreement, shall survive any such expiration or termination.

15.2. Notices

(a) Notice to Beyond: Unless otherwise specified in the Service Agreement, all notices and other communications required or permitted to be given by you to Beyond under the Service Agreement shall be in writing (including electronic transmission) and may be (as elected by the person giving such notice) hand delivered by messenger or courier service, electronically transmitted, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to: SmartResort Co., LLC d/b/a Beyond, 5540 Centerview Drive, Suite 200, Raleigh, NC 27606 Attention: Customer Service or by email to SPCustomerSupport@discoverbeyond.com.

(b) Notices to You: Except as otherwise required by law, regulation, ordinance or other government action, Beyond may deliver the Service Agreement and Price Lists and updates to the Service Agreement and Price Lists and any other required notices or communications that Beyond must give you under the Service Agreement in at least one of the following ways:

- i. Postcard or letter mailed to the most recent physical address of record for your account;
- ii. E-mail (if an address provided to Beyond);
- iii. Message on your monthly bill;
- iv. Bill insert;
- v. Posting on the Beyond web site;

- vi. Call to your telephone number (either speaking to you or leaving a voicemail message); or
- vii. Hand delivery.

Notices to you shall be deemed delivered three (3) days after deposit of any postcard, letter or bill in the U.S. mail, properly addressed to the most recent address on your account with postage prepaid; one (1) day after posting on the Beyond web site or transmittal via electronic mail; or on the day a Beyond representative contacts you by phone or leaves a voicemail message.

YOU AGREE THAT ANY ONE OF THE FOREGOING WILL CONSTITUTE SUFFICIENT NOTICE. YOU HAVE THE RIGHT, WITHOUT PENALTY, TO WITHDRAW YOUR CONSENT TO RECEIVE NOTICE IN THE MANNER DESCRIBED ABOVE, BUT IF YOU DO, BEYOND MAY TERMINATE THE SERVICES.

BECAUSE WE MAY FROM TIME TO TIME USE THE METHODS DESCRIBED ABOVE TO NOTIFY YOU ABOUT IMPORTANT INFORMATION REGARDING THE SERVICES, THIS AGREEMENT, AND RELATED MATTERS, YOU AGREE TO CHECK YOUR POSTAL MAIL, E-MAIL, AND ALL POSTINGS ON OUR WEBSITE. YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU BEAR THE RISK OF FAILING TO DO SO.

15.3 Contacting Beyond

Unless otherwise specified in the Terms or the SA, you may contact Beyond in any of the ways previously referenced in this agreement.

15.4 Severability of Unenforceable Provisions

The provisions of the Service Agreement shall be severable, and if any of them are held invalid or unenforceable because of duration, geographic scope, scope of activity or other reason, such unenforceable provision shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. The invalidity or unenforceability of one provision shall not affect any other. Beyond's failure to insist upon or enforce strict performance of any provision of the Service Agreement shall not be construed as a waiver of any provision or right.

15.5 No Waiver

Any delay or forbearance by Beyond in exercising any right hereunder shall not be deemed a waiver of that right. Beyond's failure to insist upon or enforce strict performance of any provision of the Service Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of the Service Agreement.

15.6 Equitable Remedies

You acknowledge that Beyond will be irreparably damaged (and damages at law would be an inadequate remedy) if this Service Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by any party of any provision of this Service Agreement, Beyond shall be entitled, in addition to all other rights or remedies, to an injunction restraining such breach, and/or to a decree for specific performance of the provisions of this Service Agreement.

15.7 No Use of Beyond's Trademarks

You may not use any service mark or trademark or other proprietary mark of Beyond, including, but not limited to, the Beyond name and logo and the names of the Services, in connection with any service, prod-

uct, equipment offering, promotion, or publication, without Beyond's prior written consent.

15.8 Prevailing Party Entitled to Costs

In any action to enforce the Service Agreement, the prevailing party will be entitled to recover from the other party the costs and reasonable attorneys' fees incurred by the prevailing party in connection with such action.

15.9 Titles and Subtitles are for Convenience Only

The titles and subtitles used in this Service Agreement are used for convenience only and are not to be considered in construing or interpreting this Service Agreement.

15.10 Assignment

You may not assign your rights or delegate any of your obligations under this Service Agreement without the prior written consent of Beyond and any such attempted assignment or delegation shall be void and of no force or effect. Beyond may assign its rights under the Service Agreement without Notice, to any of the following:

- (a) Any affiliate of Beyond;
- (b) Any person or entity (or its affiliate) acquiring all or substantially all of the assets or stock, by merger, or otherwise, of Beyond or any affiliate of Beyond; or
- (c) Any person or entity (or its affiliate) purchasing or otherwise acquiring the affiliated Beyond video system serving your premises.

You may not assign or transfer this Agreement without Beyond's prior consent.

15.11 Cumulative Remedies

The remedies contained in the Service Agreement are cumulative and do not preclude the existence or pursuit of any other remedies whether specifically provided for in the Service Agreement or which are provided for by law or equity in the event of a breach of the Service Agreement.

15.12 No Third Party Beneficiaries

There are no third party beneficiaries to the Service Agreement.

16. VIDEO ADDENDUM

This Video Services Addendum (Video Addendum) sets forth additional terms and conditions under which residential customers ("Customer(s)," "you," "your") will be provided Beyond Video Services and, if necessary, devices used in connection with the Video Services, including but not limited to the "Beyond-owned Equipment" as defined below. This Video Addendum provides additional terms and conditions applicable to customers purchasing Video Services from Beyond. The Video Addendum is an integral part of the Service Agreement and not an independent agreement.

16.1 Definitions:

For purposes of this Video Addendum, the following definitions apply:

- (a) "Beyond Web site" shall mean any internet domains and content residing on internet domains owned by Beyond including, but not limited to, www.smartresort.com.
- (b) "Video Services" shall mean any services provided by Beyond as set forth in this Video Addendum and the Service Agreement.
- (c) "DBS Equipment" shall mean Beyond-owned Direct Broadcast Satellite (DBS) receiver(s), remote control(s), smart card(s), and/or any other related equipment for use with Subscriber's Direct Broadcast Satellite Network Programming.
- (d) "Direct Broadcast Satellite Network Programming" or "DBS Programming" shall mean the digital video and audio services offered by Beyond, via a direct relationship with a Direct Broadcast Satellite Network service provider (DBS Provider).
- (e) "Subscriber" shall mean person subscribing to video services (You).

16.2. Services and Equipment.

- (a) Video Services: Subject to your compliance with the terms and conditions of this Video Addendum, including payment of associated fees promptly when due, Beyond will provide to you the DBS Programming and local TV Programming Service for which you have subscribed either directly with Beyond or through your homeowners, property-owners or condominium association, as applicable. No other special services are implied or included unless specified in writing by Beyond.
- (b) DBS Equipment Rental. Subject to your compliance with the terms and conditions of this Video Addendum, including payment of associated fees promptly when due, Beyond will rent to you and install in your residence the DBS Equipment for you to receive the Video Services. THE DBS EQUIPMENT SHALL AT ALL TIMES REMAIN THE PROPERTY OF Beyond. Upon termination of the Video Service by you or Beyond, you agree to return the DBS Equipment to Beyond in good working order. Beyond may maintain and repair or replace the DBS Equipment, provided, however, that you will be responsible for the cost of repair or replacement of the DBS Equipment due to improper handling, misuse, abuse, casualty, loss, or theft or any other circumstances other than common use under normal circumstances.
- (c) Technical Support: Beyond may provide technical support for the Video Services and DBS Equipment via telephone at (866) 713-5182. Beyond reserves the right to adjust and/or reduce these hours at its sole discretion at any time without prior notice to you. Beyond is not responsible for the functionality of your TV or other video equipment not obtained through Beyond, and will not provide technical support related to that equipment. Beyond may provide technical support for the DBS equipment and programming to the extent possible in a third-party arrangement with the DBS provider.

16.3 Your Obligations

You agree to the following additional obligations related to DBS Equipment:

- (a) You must be 18 years of age or older.
- (b) You must be present for installation, repair or replacement of DBS Equipment.

- (c) Your name must match the name on any credit card used to pay charges for your account.
- (d) You agree to direct all technical support inquiries related to DBS Equipment and/or DBS Programming to Beyond. Changes to DBS Programming should only be made with a Beyond technical support representative via telephone at (866) 713-5182.
- (e) Any questions, concerns, or problems related to upgrades, downgrades, equipment returns, and/or cancellations of DBS Equipment or DBS Programming should be coordinated through Beyond Customer Support at (866) 713-5182 or 5540 Centerview Drive, Suite 200, Raleigh, NC 27606.
- (f) Return of DBS Equipment: You agree to return DBS Equipment to Beyond. You agree that you are renting specific DBS Equipment, uniquely identified by a serial number, and this specifically-identified DBS Equipment rental. All DBS Equipment remains the property of Beyond. If malfunctioning DBS Equipment is exchanged directly through Beyond, your obligations will transfer to the reissued DBS Equipment serial numbers. In the event of malfunction, all replacements must be requested by you directly through Beyond (not the DBS provider). Should you ship any Beyond-owned DBS Equipment directly to the DBS Provider, such equipment will be deemed as not returned, and you will be charged associates fees for replacement equipment as set forth in Section 16.5 (c) (i). This also applies to Beyond-owned equipment left in your residence should you move. You will return Beyond Equipment to Beyond, by any method reasonably requested by us, within (10) days after termination of the Agreement. If any Beyond Equipment is not returned, you agree that Beyond may bill you for applicable charges reflected in the Price List and charge your credit card, or debit card if applicable. Once charged, these fees are non-refundable and Beyond reserves the right to refuse or return shipments from you. Equipment return methods may include:
 - 1. Beyond will send you a return shipping label and box, which you are to use to package and return ship your equipment to Beyond, and Beyond will bill your account for the then-current return shipping fee.
 - 2. Upon YOUR request, Beyond, its affiliates, associated parties or other representatives, will pick up Beyond Equipment for the then-current truck roll fee which will be billed to your account.
 - 3. Upon OUR request, you will permit us and our employees, agents, contractors, and representatives to access your premises during regular business hours to remove Beyond equipment and other material provided by Beyond. We will conduct this removal at no charge to you and at a time agreed on by you and us, and you will ensure that all Beyond Equipment is returned to Beyond.
- (g) You agree to maintain accurate contact information on file with Beyond for the entire period Video Services and DBS Equipment are provided to you.

Should you change your mailing address, phone number, or any other information required for subscription for Video Services and DBS Equipment, you must immediately notify Beyond of all changes. You agree to take full and complete responsibility for the accuracy of the information given to Beyond and you are aware and agree to pay any costs, fees, and/or penalties administered by Beyond as a result of outdated or inaccurate information, particularly as it relates to billing.

16.4 Indemnification

You agree to indemnify and hold harmless Beyond and its affiliates, associated parties, and any other provider that furnishes services in connection with Beyond and independent content providers from all liabilities, claims and expenses (including reasonable attorneys' fees and expenses) arising from breach, by you, of the Video Addendum or from use of, or in connection with, the transmission by or through the Video Services and/or DBS Equipment of any content, other than those caused by the gross negligence or willful misconduct of Beyond, or its employees.

16.5 Payment of Costs and Fees

- (a) **Payment:** You agree to allow Beyond to charge your account for all amounts that are to be billed directly to you for Video Services and DBS Equipment rental and to pay all taxes, fees and other charges, if any, which are now or may in the future be assessed by Beyond, including but not limited to collection charges, cancellation fees and other charges as set forth in this Video Addendum or in the Service Agreement. Amounts will be billed in advance.
- (b) **Subscription Fees and Charges:** Beyond will bill your credit card (or other mutually acceptable payment method) immediately upon enrollment for Video Services and DBS Equipment that is to be billed directly to you, and thereafter on a monthly basis until Video Services and DBS Equipment rental are terminated. Beyond reserves the right to change the DBS Equipment offered to you. You acknowledge that Beyond reserves the right to change programming services and rates (including equipment rental rates). You understand and agree that the DBS Provider reserves the right to change the DBS Programming and rates at any time and without notice, and Beyond has no control over DBS Programming and rates.
- (c) **Additional Fees and Charges:** In addition to installation fees and any other Video Services fees or DBS Equipment rental fees that may be billed directly to you, you agree to pay additional fees and charges referenced below:
 - i. **DBS Equipment Replacement Fee.** You agree to pay Beyond then-current DBS Equipment replacement fees for any (and all) Beyond-supplied DBS Equipment that is not returned promptly following termination of service in accordance with this Video Addendum, or for return of DBS Equipment different than that originally issued to you by

Beyond as identified through the unique serial numbers. These fees will also apply to DBS Equipment that is lost, stolen, or damaged while in your possession.

16.6 Service Outages

The Video Services are provided using multiple programming vendors. Therefore, the Video Services cannot be solely controlled by Beyond. Periodic short-duration outages in service (all Video Services or one or more specific channels) should be expected and you acknowledge these outages are outside of Beyond's control and considered an unavoidable event associated with the use of satellite broadcast video services.

16.7. Termination

- (a) **Cancellation by Beyond:** If you violate any terms and conditions of this Video Addendum, Beyond, in its sole discretion, shall have the right to immediately suspend or terminate any Video Services to you, without notice.
- (b) **Termination by you:** You may cancel this Video Addendum in accordance with the terms and conditions of this Video Addendum and the Service Agreement. You should not contact the

DBS provider directly to terminate the DBS provider Programming without the coordination assistance of Beyond.

- (c) Return of DBS Equipment: If service is terminated for any reason, any and all DBS Equipment must be returned to Beyond within ten (10) business days of terminating the Video Services, or you shall pay any and all replacement fees as set forth in this Video Addendum and the Service Agreement. If any Beyond Equipment is not returned, you agree that Beyond may bill you for applicable charges reflected in the Price list and charge your credit card, or debit card if applicable. Once charged, these fees are non-refundable and Beyond Communications reserves the right to refuse or return shipments from you. Equipment return methods may include:
1. Beyond will send you a return shipping label and box, which you are to use to package and return ship your equipment to Beyond, and Beyond will bill your account for the then-current return shipping fee.
 2. Upon YOUR request, Beyond, its affiliates, associated parties or other representatives, will pick up Beyond Equipment for the then-current truck roll fee which will be billed to your account.
 3. Upon OUR request, you will permit us and our employees, agents, contractors, and representatives to access your premises during regular business hours to remove Beyond equipment and other material provided by Beyond. We will conduct this removal at no charge to you and at a time agreed on by you and us, and you will ensure that all Beyond Equipment is returned to Beyond.
- (d) Reconciliation of Accounts upon Termination: In the event that your use of the Video Services is terminated for any reason, no refund of any fees or credits will be granted. Upon termination, you shall remain obligated to pay all charges due hereunder up to and including the termination date. In the event of termination, you shall have no right to be reconnected, except on terms acceptable to Beyond in its sole discretion.

16.8 Disclaimer of Other Warranties.

TO THE EXTENT PERMITTED BY LAW, BEYOND DISCLAIMS ALL OTHER WARRANTIES ON THE VIDEO SERVICES AND DBS EQUIPMENT, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE. BEYOND, ITS AFFILIATES AND ASSOCIATED PARTIES MAKE NO OTHER WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE QUALITY, ACCURACY, OR VALIDITY OF THE DATA AND/OR INFORMATION AVAILABLE THROUGH THE VIDEO SERVICES OR RESIDING ON OR PASSING THROUGH ITS INTERCONNECTING NETWORKS, OR THAT BEYOND'S VIDEO SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE DURATION OF ANY STATUTORILY REQUIRED WARRANTY PERIOD SHALL BE LIMITED TO THE TERM OF THE LIMITED WARRANTY. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, DEPENDING UPON WHERE YOU LIVE. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.

16.9 Entire Video Addendum:

This Video Addendum is the entire addendum to the Service Agreement between the parties with respect to the Video Services and rental of the DBS Equipment. Nothing may be amended except by an agreement in writing signed by the parties hereto or their respective successors in interest. Your rights and obligations shall be governed by and construed in accordance with the laws of the state of Alabama.

17. VOICE ADDENDUM

This Voice Services Addendum sets forth additional terms and conditions under which residential customers ("Customer(s)," "you," "your") will be provided Beyond voice services ("Voice Services") and, if necessary, devices used in connection with the Voice Services, including but not limited to the "Beyond Equipment" as defined below. The Voice Addendum is an integral part of the Service Agreement and not an independent agreement.

WHEN YOU ENROLL IN, USE, OR PAY FOR THE VOICE SERVICES, YOU AGREE TO THE PRICES SET FORTH IN THE PRICE LISTS AND THE TERMS, AND CONDITIONS SET FORTH IN THE SERVICE AGREEMENT AND THIS VOICE SERVICES ADDENDUM (INCLUDING THOSE RELATED TO 911/E911 SERVICE, SERVICE INTERRUPTIONS, AND BINDING ARBITRATION). IF YOU DO NOT AGREE TO THE PRICING OR TO ANY OF THE TERMS OR CONDITIONS, YOU MUST CANCEL THE VOICE SERVICES IMMEDIATELY BY CALLING US DURING NORMAL BUSINESS HOURS.

17.1 Nature of the Voice Services

The Voice Services convert voice communications into Internet protocol ("IP") for two-way calling and provide a range of other associated features and functionalities.

The Voice Services and any necessary devices will be provided by Beyond and its affiliates and associated parties. The Voice Services are subject to availability.

17.2 Voice Services Pricing

You can find information about pricing for the Voice Services in the Beyond Price Lists provided at service initiation, by calling or emailing us, as prices vary by property and region.

THIS VOICE SERVICES ADDENDUM INCORPORATES BY REFERENCE THE VOICE SERVICE PRICING INCLUDED IN THE PRICE LISTS. YOU MAY CONTACT US AT (866) 713-5182 TO OBTAIN A COPY OF THE CURRENT PRICE LISTS OR VOICE SERVICES ADDENDUM.

17.3 LIMITATIONS OF 911/E911

- (a) **LIMITATIONS:** THE VOICE SERVICES INCLUDE 911/ENHANCED 911 FUNCTIONS (911/E911) THAT MAY DIFFER FROM THE 911 OR ENHANCED 911 FUNCTIONS FURNISHED BY TRADITIONAL PHONE PROVIDERS. AS SUCH, THEY MAY HAVE CERTAIN LIMITATIONS. CAREFULLY READ THE INFORMATION BELOW. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS OF 911/E911. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY HAVE OCCASION TO PLACE CALLS OVER THE VOICE SERVICES. IF YOU HAVE ANY QUESTIONS ABOUT 911/E911, PLEASE CONTACT US.
- (b) **Correct Address:** In order for your 911/E911 calls to be properly directed to emergency services, Beyond must have your correct service address. If you move the Voice Services to a different address without Beyond's approval, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address, and/or the Voice Services (including 911/E911) may fail altogether. Therefore, you must call Beyond customer service at (866) 713-5182 before you move the Voice Services to a new address. Beyond will need several business days to update your service address in the E911 system so that your 911/E911 calls can be properly directed. All changes in service address require Beyond's prior approval.
- (c) **Service Interruptions:** Beyond's Voice Services use the electrical power in your home. If there

is an electrical power outage, 911 calling may be interrupted if the battery backup* (if supplied at your location) in the associated Beyond Equipment (defined below) is not installed, fails, or is exhausted after several hours. Furthermore, calls, including calls to 911/E911, may not be completed if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

- (d) **LIABILITY: YOU ACKNOWLEDGE AND AGREE THAT BEYOND AND ITS AFILIATES AND ASSOCIATED PARTIES WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE VOICE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BEYOND, ITS AFILIATES AND ASSOCIATED PARTIES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF THE VOICE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE VOICE SERVICES, INCLUDING THOSE RELATED TO 911/E911.**

17.4 Customer Equipment, Beyond Equipment and Beyond's Access to Customer's Premises.

(a) "Customer Equipment" That You Must Provide

- i. **Handset and Inside Phone Wiring:** In order to use the Voice Services, you are required to provide certain equipment such as a phone handset or equivalent, inside phone wiring and outlets, and an electrical power outlet. All equipment provided by you is defined as Customer Equipment. Certain makes and models of cordless phones use the electrical power in your home or office. If there is an electrical power outage, the cordless phone will cease to operate during the outage, preventing use of the Voice Services via the cordless phone.
- ii. Unless otherwise approved by Beyond, you agree that the Voice Services will only be used at your service address appearing in our records. You understand and acknowledge that if you attempt to install or use the Beyond Equipment or Voice Services at another location, the Voice Services, including but not limited to 911/E911, may fail to function or may function improperly. If you move the Beyond Equipment or Voice Services to another location without authorization from Beyond, you do so in violation of the Service Agreement and the Voice Addendum and at your own risk. Certain online features of the Voice Services may be accessible from locations other than your service address appearing in our records, using the Customer Equipment.

(b) Ownership and Specifications of Customer Equipment

- i. **Ownership:** You represent that you either own the Customer Equipment or have the right to use that equipment in connection with the Voice Services. Beyond shall have no obligation to provide, maintain, or service the Customer Equipment.
- ii. **Specifications:** Any Customer Equipment that you use in connection with the Voice Services must meet Beyond's current minimum technical and other requirements.

- (c) **Non-Recommended Configurations:** If you install or use Customer Equipment that does not meet the minimum technical or other specifications described above (a "Non-Recommended Configuration"), you agree as follows:

- i. The Voice Services or some features of the Voice Services may degrade or fail,
- ii. You will not be entitled to customer support relating to any issues other than the quality of the signal delivered to the Beyond Equipment, and
- iii. The following limitation of liability shall apply: NEITHER BYEOND NOR ANY OF ITS AFFILIATES OR ASSOCIATED PARTIES WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE VOICE SERVICES. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT. NEITHER BEYOND NOR ANY OF ITS AFFILIATES OR ASSOCIATED PARTIES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in the Service Agreement or the Voice Services Addendum.

17.5 Service Interruptions Caused by Power Failures

You understand and acknowledge that you will not be able to use the Voice Services, including 911/E911, under certain circumstances, including but not limited to the following:

- (a) Our network or facilities are not operating,
- (b) Normal electrical power to the Beyond Equipment is interrupted and the battery backup* (if supplied at your location) in the associated Beyond Equipment fails, or is exhausted after several hours, or
- (c) The Beyond Equipment is tampered with or modified by the Customer or any other unauthorized personnel.

You understand and acknowledge that the performance of the battery backup (if supplied at your location) is not guaranteed. If a power failure occurs and the battery backup does not provide power, the Voice Services will not function until normal power is restored. You also understand and acknowledge that you will not be able to use online features of the Voice Services, where we make those features available, under certain circumstances including but not limited to the interruption of your Internet connection.

17.6 Incompatibility of the Voice Service with Certain Equipment, Services and Activities

- (a) Incompatible Equipment and Services: You acknowledge and understand that the Voice Services may not support or be compatible with:
 - i. Non-Recommended Configurations as defined above (including but not limited to configurations not currently certified by Beyond as compatible with the Voice Services);
 - ii. Certain non-voice communications equipment, including certain makes or models of alarm and home security systems, certain medical monitoring devices, certain fax machines, and certain "dial-up" modems;
 - iii. Rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units;
 - iv. Casual/dial around (10-10) calling; 976, 900, 700, or 500 number calling;

v. 311, 511, or other x11 calling (other than 411, 611, 711, and 911); and

vi. Other call types not expressly set forth in our product literature (e.g., outbound shore-to-ship calling).

BY ACCEPTING THIS AGREEMENT AND VOICE SERVICES ADDENDUM, YOU WAIVE ALL CLAIMS AGAINST BEYOND FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE BEYOND EQUIPMENT OR THE VOICE SERVICES AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE VOICE SERVICES.

(b) **Your Assumption of the Risk for High-Risk Activities:** As further discussed in this Voice Services Addendum, the Voice Services are not represented as fail-safe. They are not designed for use in situations where error-free or uninterrupted service is essential. You expressly assume the risk of any damages from high-risk activities involving vital communications in which an error or interruption in the Voice Services could lead to material injury to business, persons, property, or the environment.

17.7 Billing

(a) **Charges and Taxes:** You agree to pay all charges and applicable federal, state, and local taxes (however designated) associated with the Voice Services whether Beyond, its affiliates or associated parties pay the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from you as required under the Service Agreement. These charges may include but are not limited to installation charges, monthly service charges, charges for the use of Beyond Equipment, charges for service calls, and other charges.

(b) **Other Government-Related Costs and Fees:** Beyond reserves the right to invoice you for any fees or payment obligations in connection with the Voice Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Voice Services. These obligations may include those imposed on Beyond, its affiliates or associated parties by an order, rule, or regulation of a regulatory body or a court of competent jurisdiction, as well as those that Beyond, our affiliates or associated parties are required to pay to others in support of statutory or regulatory programs whether or not we are required to collect these charges from you or not. For example, you may be charged a monthly regulatory recovery fee to help defray our and/or our affiliates' or associated parties' contributions to municipal, state, and federal programs including, without limitation, universal service, telecom relay services for the visually/hearing impaired, and 911/E911 programs and infrastructure. This regulatory recovery fee is not a tax, and it is not government-mandated.

(c) **Per-Call and Measured-Call Charges:** Beyond calling plans billed as a flat monthly fee may not include certain call types. These call types will instead be charged on a per-call basis (e.g., operator services) or a measured basis (e.g., international calls). For billing purposes, a measured call begins when the call is answered by the called party or an automated answering device (such as an answering machine or fax machine); it ends when one of the parties disconnects the call. Measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. However, some providers (e.g., those involved in calls to foreign countries) charge for a completed call when the called party's line rings or after a certain number of rings. If such a provider charges Beyond, its affiliates, or suppliers as if your

call were answered by the called party, Beyond will charge you for a completed call. Contact us for additional information on such charges.

- (d) **Rounding of Fractional Charges:** If the computed charge for a measured call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. If the computed charge for taxes or surcharges includes a fraction of a cent, the fraction is rounded up to the nearest whole cent.
- (e) **Third-Party Charges That Are Your Responsibility:** The Voice Services may allow you to access "dial-up" Internet service providers, other enhanced service providers (e.g., information services accessible through 800, 888, and 877 numbers), and other third-party providers. You acknowledge that you may incur charges with such providers that are separate and apart from the amounts charged by us. You agree that all charges payable to third parties, including all applicable taxes, are your sole responsibility. In addition, you are solely responsible for protecting the security of credit card information provided to others in connection with such transactions.
- (f) **Notification of Changes:** Beyond may change the fees and charges for the Voice Services from time to time at our discretion; specifically, we may decrease certain fees and charges with or without advance Notice, and we may increase fees and charges for the Voice Services after we post them as part of the Price Lists. Taxes and other government-related fees and surcharges may be changed with or without Notice. You will also be responsible to pay any fees, payment obligations, and taxes that become applicable retroactively.

17.8 Customer Information and Privacy

Beyond will respect your privacy interests, including your ability to limit disclosure of certain information to third parties in the manner described in Beyond's Privacy and CPNI Policies for Voice Services which can be viewed at our website at [and is incorporated into the Service Agreement by reference](#). We delivered this document to you at the time of the initial installation of the Voice Services and will deliver it to you annually as long as you receive the Voice Services. You acknowledge that you have received Beyond's Privacy and CPNI Policies for Voice Services and that you expressly consent to the terms of those policies. We may amend our policies from time to time. Amendments are posted at our website. If you do not have access to the Internet, you may contact Beyond at (866) 713-5182 to obtain a copy of the policies.

17.9 Limits on Your Use of the Voice Services

Unless you subscribe to a Service plan that expressly permits otherwise, you agree to use the Voice Services solely in a private residence or in the residential portion of a premises used for both business and residential purposes. Without limiting the generality of the foregoing, you agree to use Voice Services only for personal and non-commercial purposes; however, you are permitted to use the Voice Services to make business calls that are incidental to your personal and non-commercial use of the Voice Services at the premises described in the preceding sentence.

You expressly agree not to use the Voice Services for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in excessive usage inconsistent with normal residential calling patterns. If we determine, in our sole discretion, that your Service is being used for any of the aforementioned activities, we reserve the right to immediately and without Notice to terminate or modify the Service and to assess additional charges for each month in which excessive usage occurred.

17.10 Termination of the Voice Services Addendum

- (a) **Termination by You:** You may terminate the Voice Services Addendum for any reason at any time by providing notice of termination to Beyond pursuant to the requirements of Section 5 of the Service Agreement. If you wish to transfer your phone number to another provider, you must follow the procedures in Section 17.11. All applicable fees and charges will accrue until the date of termination, but we will refund any prepaid monthly service fees charged for Voice Services after the date of termination (less any outstanding amounts due Beyond for the Voice Services, affiliate or associated party services, equipment, or other applicable fees and charges).
- (b) **Suspension and Termination by Beyond:** We may suspend the Voice Services or terminate this Voice Services Addendum for any reason pursuant to the notice requirements of Section 5. If we suspend Service or terminate this Voice Services Addendum for a reason other than your violation of this Voice Services Addendum, all applicable fees and charges will accrue until the date of suspension or termination, but we will refund all prepaid monthly service fees charged for Voice Services after the date of termination (less any outstanding amounts due Beyond, its affiliates or associated parties for the Voice Services, equipment, or other applicable fees and charges). **YOU UNDERSTAND AND ACKNOWLEDGE THAT ALL BEYOND VOICE SERVICES, INCLUDING 911/E911, AS WELL AS ALL ONLINE FEATURES OF THE VOICE SERVICES, WHERE WE MAKE THOSE FEATURES AVAILABLE, WILL BE DISABLED IF YOUR ACCOUNT IS SUSPENDED OR TERMINATED.**
- (c) **Your Obligations upon Termination:** You agree that upon termination of this Voice Services Addendum you will do the following:
- i. You will immediately cease use of the Voice Services and all Beyond Equipment associated with the Voice Services;
 - ii. You will pay in full for your use of the Voice Services and the Beyond Equipment up to the later of the effective date of termination of this Voice Services Addendum or the date on which the Voice Services are disconnected and all Beyond Equipment has been returned; and
 - iii. You will return Beyond Equipment to Beyond, by any method reasonably requested by us, within (10) days after termination of the Voice Addendum or you shall pay any and all replacement fees as set forth in this Voice Addendum and the Service Agreement. If any Beyond Equipment is not returned, you agree that Beyond may bill you for applicable charges reflected in the Price list and charge your credit card, or debit card if applicable. Once charged, these fees are non-refundable and Beyond Communications reserves the right to refuse or return shipments from you. Equipment return methods may include:
 1. Beyond will send you a return shipping label and box, which you are to use to package and return ship your equipment to Beyond, and Beyond will bill your account for the then-current return shipping fee.
 2. Upon YOUR request, Beyond, its affiliates, associated parties or other representatives, will pick up Beyond Equipment for the then-current truck roll fee which will be billed to your account.
 3. Upon OUR request, you will permit us and our employees, agents, contractors, and representatives to access your premises during regular business hours to remove Beyond equipment and other material provided by Beyond. We will conduct this removal at no charge to you and at a time agreed on by you and us, and you will

ensure that all Beyond Equipment is returned to Beyond.

(d) **Retention of Rights:** Nothing contained in this Voice Addendum shall be construed to limit Beyond's rights and remedies available at law or in equity. Beyond and its affiliates and associated parties reserve the right both during the term of this Voice Addendum and upon its termination to delete your voicemail, call detail, data, files, or other Customer information that is stored on Beyond's or its affiliate's or associated parties' servers or systems. You understand and acknowledge that we shall have no liability whatsoever as a result of the loss or removal of any such voicemail, call detail, data, files, or other Customer information.

17.11 Transfer of your Phone Numbers

(a) **Switching to Beyond from Another Provider:** If you are switching to Beyond Voice Services from another service provider, you may transfer your existing phone number (if any) to our Service, provided that the following conditions apply:

- i. You request the phone number transfer when you place your order for our Service.
- ii. Your current service provider releases your existing phone number, at our request, without delay and without imposing non-industry-standard charges on us.
- iii. Transfer of your existing phone number to our Service would not, in our view, violate applicable law or our processes and procedures.
- iv. Voice Services at your address have been activated by Beyond.

(b) **Switching from Beyond to Another Provider:** To transfer your phone number from Beyond to another service provider, you must place the order to transfer the Voice Services through your new service provider (and not through Beyond). Beyond will release your phone number to your new service provider, provided that:

- i. Subject to applicable laws, payment on your account is current.
- ii. Your new service provider submits a properly completed transfer request to Beyond.
- iii. Your new service provider will accept transfer of the phone number without delay or charge to Beyond.
- iv. Transfer of your existing phone number to the new service provider would not, in our view, violate applicable law or our processes and procedures.

(c) **Assignment of Telephone Numbers:** If Beyond determines that your telephone number assignment does not conform with applicable industry guidelines, our internal policies, and/or the law, we reserve the right, with prior notice to you, to change the telephone number, without liability.

17.12 Limitation of Liability and Indemnification

In addition to the liability limitation and indemnifications in Section 12 of the Service Agreement, the following additional liability limitations and indemnifications apply to the Voice Services and Voice Addendum:

- (a) Limitations on Beyond's Liability for Directories and Directory Assistance: THE LIMITATIONS IN THIS SECTION SHALL APPLY WHERE BEYOND MAKES AVAILABLE AN OPTION TO LIST YOUR NAME, ADDRESS, AND/OR TELEPHONE NUMBER IN A PUBLISHED DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, AND ONE OR MORE OF THE FOLLOWING CONDITIONS OCCURS:
- i. YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE OMITTED FROM A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS INCLUDED IN EITHER OR BOTH;
 - ii. YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE INCLUDED IN A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS OMITTED FROM EITHER OR BOTH; OR
 - iii. THE PUBLISHED OR LISTED INFORMATION FOR YOUR ACCOUNT CONTAINS MATERIAL ERRORS OR OMISSIONS.

IF ANY OF CONDITIONS i – iii PERTAINS, THEN THE TOTAL LIABILITY OF BEYOND AND ITS AFFILIATES AND ASSOCIATED PARTIES SHALL NOT IN THE AGGREGATE EXCEED THE MONTHLY CHARGES, IF ANY, WHICH YOU HAVE ACTUALLY PAID TO Beyond TO LIST, PUBLISH, NOT LIST, OR NOT PUBLISH THE INFORMATION FOR THE AFFECTED PERIOD. YOU SHALL HOLD HARMLESS BEYOND AND ITS AFFILIATES AND ASSOCIATED PARTIES AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS IN i – iii ABOVE.

17.13 Miscellaneous

- (a) Your System Requirements: To view the Service Agreement and Voice Addendum online, receive electronic Notices, and to access and retain electronic Notices and other records in connection with the Voice Services, you must have the necessary computer hardware and software ("system requirements"). By using the Voice Services, you represent to us that you satisfy the system requirements of this Section.

TO PRINT OR DOWNLOAD ELECTRONIC NOTICES, YOU MUST HAVE A PRINTER CONNECTED TO YOUR COMPUTER OR SUFFICIENT HARD-DRIVE SPACE TO SAVE THE NOTICES.

- (b) No Relationship Between Beyond and Other Providers: Nothing in the Agreement or the Voice Addendum will create any joint venture, joint employer, franchisor-franchisee, employer-employee, or principal-agent relationship between Beyond and any providers of content or of backbone, network, circuit, and other technology or communications; between Beyond and any software and other licensors; between Beyond and any hardware and equipment suppliers; or between Beyond and any other third-party providers of elements of the Voice Services. Nothing in the Service Agreement or the Voice Addendum will impose upon any such companies any obligations for any losses, debts, or other obligations incurred by the other.

* The Battery Back Up Unit (if supplied at your location) uses a battery. The average life of the battery is between two and four years, depending on the average temperature of the environment. Replacement of the batteries is the responsibility of the customer. When your battery does need replacing, you can purchase a replacement battery at major electronics outlets and home improvement stores. Alternatively, your Service Provider may offer a Maintenance program, for a reasonable fee, that will cover battery replacement. The Service Provider is not liable for any failure to replace batteries as needed. The problems as-

sociated with backup battery failure are consistent with the risks and liability associated with, for example, your choice to use a cordless phone, which operates on electricity, VoIP service, or cellular phone services in place of a traditional land line service.

Note: Battery disposal standards and requirements vary by state. If you need to replace the sealed lead-acid battery in your back-up unit, please use the following Environmental Protection Agency resources for proper disposal instructions: visit www.epa.gov/epr/products/batteries.html or call the EPA directly at 1-800-424-9346.

18. WEB HOSTING ADDENDUM

The Web Hosting Addendum sets forth additional terms and conditions under which residential customers ("Customer(s)," "you," "your") will be provided Beyond Web Hosting services ("Web Hosting Services") and, if necessary, devices used in connection with the Web Hosting Services, including but not limited to the Beyond Equipment as defined below. This Web Hosting Addendum provides additional terms and conditions applicable to customers purchasing Web Hosting Services where available from Beyond. The Web Hosting Addendum is an integral part of the Service Agreement and not an independent agreement.

18.1 Order Acceptance, Payment

A Web Hosting order is only accepted by Beyond sending written, email or phone confirmation to you. Beyond may charge your credit card (or charge you in any other mutually agreeable format) for applicable set-up fees and monthly fees according to the Web Hosting Package ("Package") you select. Such fees and charges may include, without limitation, the fees for connectivity, design services, and charges by any and all third parties whose materials are included as part of the Package. Beyond reserves the right to change the amount of, or basis for determining, any Prices and institute new Prices upon prior notice to you.

18.2 Beyond Web Hosting Service

During the term of the SA, Beyond may provide the Web hosting portion of the Services, if any, according to the Package selected by you. Current Packages if any may be found at <http://www.discoverbeyond.com/beyond/>. Packages shall be deemed incorporated by reference into this Service Agreement. You shall retain copies of such Package for future reference. Beyond has the right to change Prices, or add or delete product features of any existing product or Service. The right to change products or services extends to any software supporting a product or service. Beyond has the right to discontinue products or services and the right to remove or reassign IP addresses of a customer's web site. From time to time Beyond may impose reasonable rules and regulations regarding the use of the Web hosting portion of the Services, including, without limitation, revisions to the applicable Acceptable Use Policy. You acknowledge and agree that Beyond is under no obligation to host or continue to host any of the following types of Internet Web sites.

(a) Sites which Beyond believes, in its sole discretion, offer for sale goods or services, or uses or displays materials, that are illegal, pornographic, obscene, vulgar, offensive, dangerous, or are otherwise inappropriate;

(b) Sites which Beyond believes, in its sole discretion, has substantially changed in content from the time it was accepted by Beyond;

(c) Site with respect to which Beyond has received or become aware of complaints by customers that have failed to be reasonably accessible to such customers or to timely fulfill such customers' orders; or

(d) Sites which have become the subject of a government complaint or investigation.

If you violate any portion of the Web Hosting Addendum or the Service Agreement, Beyond reserves the right to remove any information or materials, in whole or in part, from any Internet Web site that Beyond hosts that, in Beyond's sole discretion, are unacceptable, undesirable, or in violation of the Web Hosting Addendum or the Service Agreement.

18.3. Third Party Providers

In order to access and use the Web-hosting Services, you may be required to subscribe to other Services, including, but not limited to, the Beyond Internet access Services. In addition, you acknowledge that in order to access certain of the Web-hosting Services, Beyond, at its option, may provide you with access to certain software programs from third party software companies and that, in such event, you may have to agree to and execute agreements with such third party providers. Such third party providers may charge additional fees and charges in addition to Beyond. You agree to comply with the applicable license agreement provided by any such software provider, and Beyond shall have no obligations or liability in connection therewith.

18.4 Term and Termination

The Web-hosting Services shall be provided on a month-to-month basis. You may cancel the Web-hosting Services upon thirty (30) days prior notice. Beyond may immediately and without prior notice terminate the Web-hosting Services upon a violation by you of the Web Hosting Addendum or Service Agreement including any Acceptable Use Policies, or for non-payment of fees when due or, if after notice, you fail to correct any breach of the Web Hosting Addendum or Service Agreement.

Upon any termination, Beyond may permit you forty-eight (48) hours to download or otherwise copy any of your information and data residing on Beyond's facilities prior to removing such information and data from Beyond's facilities. Upon termination by Beyond under its sole discretion, Beyond may immediately remove all of your data and information from Beyond's facilities and you shall have no right to copy or download such data or information, and, in such event, all such information and data, including all copyrighted or copyrightable material therein, shall then become the property of Beyond. In cases where your account has been cancelled, and you are requesting reactivation, Beyond, at its option, may reactivate the same account, only if the account had been cancelled less than sixty (60) days prior thereto. After sixty (60) days, you will be required to set up a new account.

To cancel Beyond Web Hosting Services, domain name services or electronic commerce services, you may contact Beyond in any of the ways previously referenced in this agreement.

For assurance of delivery, Beyond recommends that when using the mail, requests for cancellation be sent via certified mail.

18.5 Confidentiality

You acknowledge that by reason of your relationship with Beyond, you may have access to certain information and materials relating to Beyond's business, customers, software technology and marketing which Beyond treats as confidential (collectively "Confidential Information"). You shall:

- (a) Hold in confidence, and not disclose or reveal to any person or entity, any Confidential Information without the clear and express prior written consent of a duly authorized representative of Beyond; and

- (b) Not use or disclose any of the Confidential Information for any purpose at any time, other than for the limited purpose of performance under this Agreement.

These obligations shall continue indefinitely for so long as the Confidential Information is a trade secret under applicable law, and, with respect to Confidential Information which does not rise to the level of a trade secret, shall continue until such Confidential Information becomes public knowledge.

19. Beyond HIGH-SPEED INTERNET ACCEPTABLE USE POLICY ADDENDUM

BEYOND MAY REVISE THIS ACCEPTABLE USE POLICY (POLICY) FROM TIME TO TIME WITHOUT NOTICE BY POSTING A NEW VERSION OF THIS POLICY ON THE BEYOND WEB SITE. ALL REVISED VERSIONS OF THE POLICY ARE EFFECTIVE IMMEDIATELY UPON POSTING. ACCORDINGLY, CUSTOMERS AND USERS OF THE BEYOND HIGH-SPEED INTERNET SERVICE SHOULD REGULARLY VISIT OUR WEB SITE AND REVIEW THIS POLICY TO ENSURE THAT THEIR ACTIVITIES CONFORM TO THE MOST RECENT VERSION. IN THE EVENT OF A CONFLICT BETWEEN ANY OTHER ASPECT OF THE SERVICE AGREEMENT OR ANY OTHER CUSTOMER AGREEMENT AND THIS POLICY, THE TERMS OF THIS POLICY WILL GOVERN. QUESTIONS REGARDING THIS POLICY AND COMPLAINTS OF VIOLATIONS TO IT BY BEYOND CUSTOMERS AND USERS CAN BE DIRECTED TO SPCustomerSupport@discoverbeyond.com.

19.1 Purpose

It is Beyond's intent to provide our customers with the best Internet service possible. In order to accomplish this task, we have adopted this Acceptable Use Policy ("AUP" or "Policy"). This Policy outlines acceptable use of the Beyond High-Speed Internet service (the "Service"), as well as permissible and prohibited conduct for using the Service to access the Internet. This Policy, including its customer use restrictions, is in addition to the restrictions contained in the Beyond Service Agreement and any other Beyond Subscriber agreements. All capitalized terms used in this AUP that are not defined here have the meanings given to them in the Service Agreement.

It is the responsibility of all Beyond High-Speed Internet customers and all others who have access to Beyond's network ("customer," "you," or "your"), to comply with this AUP and all Beyond policies. As a High-Speed Internet Service customer, it is your responsibility to secure your computer equipment so that it is not subject to external threats such as viruses, spam, and other methods of intrusion. Failure to comply with these or any other Beyond policies could result in the suspension or termination of your Service. If you do not agree to comply with all of these policies including the AUP, you must immediately stop use of the Service and notify Beyond so that your account may be closed.

Beyond reserves the right to immediately terminate the Service and the Service Agreement if you engage in any of the prohibited activities listed in this AUP or if you use the Beyond Equipment or Service in a way which is contrary to any Beyond policies or any of Beyond's affiliates or associated parties' policies. You must strictly adhere to any policy set forth by another service provider accessed through the Service.

19.2 Prohibited Uses and Activities

Prohibited uses include, but are not limited to, using the Service, Customer Equipment, or the Beyond Equipment to do any of the following:

- i. Undertake or accomplish any unlawful purpose including, but not limited to, posting, storing, transmitting or disseminating information, data or material which is libelous, obscene, unlawful, threatening, defamatory, or which infringes the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal offense, give rise to civil liability,

ity, or otherwise violate any local, state, federal or international law, order or regulation.

ii. Post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be objectionable, offensive, indecent, pornographic, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate, regardless of whether this material or its dissemination is unlawful.

iii. Access any other person's computer or computer system, software, or data without their knowledge and consent; breach the security of another user; or attempt to circumvent the user authentication or security of any host, network, or account including, but not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other hosts, networks, or accounts.

iv. Use or distribute tools designed or used for compromising security, such as password guessing programs, decoders, password gatherers, unauthorized keystroke loggers, analyzers, cracking tools, packet sniffers, encryption circumvention devices, or Trojan Horse programs. Network probing or port scanning tools are only permitted when used in conjunction with a residential home network, or if explicitly authorized by the destination host and/or network. Unauthorized port scanning, for any reason, is strictly prohibited.

v. Upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through the Service or otherwise that is protected by copyright or other proprietary right, without obtaining permission of the owner.

vi. Copy, distribute, or sublicense any software provided in connection with the Service by Beyond or any third party, except that you may make one copy of each software program for back-up purposes only.

vii. Restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Service, including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to send or retrieve information.

viii. Restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Service or any Beyond (or Beyond affiliate or associated party) host, server, backbone network, node or service, or otherwise cause a performance degradation to any Beyond (or Beyond affiliate or associated party) facilities used to deliver the Service.

ix. Resell the Service or otherwise make available to anyone outside the premises the ability to use the Service (i.e. wi-fi, or other methods of networking), in whole or in part, directly or indirectly, or on a bundled or unbundled basis. The Service is for personal and non-commercial use only and you agree not to use the Service for operation as an Internet service provider or for any business enterprise or purpose, or as an end-point on a non-Beyond local area network or wide area network.

x. Connect multiple computers to set up a LAN (Local Area Network) that in any manner would result in a violation of the terms of this Policy or an applicable Service plan.

xi. Transmit unsolicited bulk or commercial messages or "spam" including, but not limited to, unsolicited advertising, promotional materials or other solicitation material, bulk mailing of commercial advertising, chain mail, informational announcements, charity requests, and petitions for signatures.

xii. Send numerous copies of the same or substantially similar messages, empty messages, or messages which contain no substantive content, or send very large messages or files to a recipient that disrupts a server, account, newsgroup, or chat service.

- xiii. Distribute programs that remove locks or time-outs built into software.
- xiv. Run programs, equipment, or servers from the premises that provide network content or any other services to anyone outside of your premises LAN (Local Area Network), also commonly referred to as public services or servers. Examples of prohibited services and servers include, but are not limited to, e-mail, Web hosting, file sharing, and proxy services and servers.
- xv. Initiate, perpetuate, or in any way participate in any pyramid or other illegal soliciting scheme.
- xvi. Participate in the collection of e-mail addresses, screen names, or other identifiers of others (without their prior consent), a practice sometimes known as spidering or harvesting, or participate in the use of software (including "spyware") designed to facilitate this activity.
- xvii. Collect responses from unsolicited messages.
- xviii. Impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity.
- xix. Service, alter, modify, or tamper with the Beyond Equipment or Service or permit any other person to do the same who is not authorized by Beyond.
- xx. Connect the Beyond Equipment to any computer outside of your Premises.
- xxi. Collect, or attempt to collect, personal information about third parties without their consent.
- xxii. Interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to "crash" a host.
- xxiii. Violate the rules, regulations, or policies applicable to any network, server, computer database, or Web site that you access.

19.3 Security

You are responsible for any misuse of the Service, even if the misuse was committed by a friend, family member, or guest with access to your Service account. Therefore, you must take steps to ensure that others do not use your account to gain unauthorized access to the Service by, for example, strictly maintaining the confidentiality of your Service login and password. In all cases, you are solely responsible for the security of any device you choose to connect to the Service, including any data stored or shared on that device. Beyond recommends against enabling file or printer sharing unless you do so in strict compliance with all security recommendations and features provided by Beyond and the manufacturer of the applicable file or printer sharing devices. Any files or devices you choose to make available for shared access on a home LAN, for example, should be protected with a strong password or as otherwise appropriate.

19.4 Inappropriate Content and Transmissions

Beyond reserves the right, but not the obligation, to refuse to transmit or post and to remove or block any information or materials, in whole or in part, that it, in its sole discretion, deems to be offensive, indecent, or otherwise inappropriate, regardless of whether this material or its dissemination is unlawful. Neither Beyond nor any of its affiliates, suppliers, or agents have any obligation to monitor transmissions or postings (including, but not limited to, e-mail, newsgroup, and instant message transmissions as well as ma-

terials available on the Personal Web Pages and Online Storage features) made on the Service. However, Beyond and its affiliates, suppliers, and agents have the right to monitor these transmissions and postings from time to time for violations of this Policy and to disclose, block, or remove them in accordance with the Service Agreement or any other Subscriber Agreement and any other applicable agreements and policies.

19.5 Electronic Mail

The Service may not be used to send unsolicited bulk or commercial messages and may not be used to collect responses from unsolicited e-mail sent from accounts on other Internet hosts or e-mail services that violate this Policy or the acceptable use policy of any other Internet service provider. Moreover, unsolicited e-mail may not direct the recipient to any Web site or other resource that uses the Service. Activities that have the effect of facilitating unsolicited commercial e-mail or unsolicited bulk e-mail, whether or not the e-mail is commercial in nature, are prohibited. Forging, altering, or removing electronic mail headers is prohibited. You may not reference Beyond or the Beyond network (e.g. by including "Organization: Beyond" in the header or by using an IP address that belongs to Beyond or the Beyond network) in any unsolicited e-mail even if that e-mail is not sent through the Beyond network or Service.

Beyond is not responsible for deleting or forwarding any e-mail sent to the wrong e-mail address by you or by someone else trying to send e-mail to you. Beyond is also not responsible for forwarding e-mail sent to any account that has been suspended or terminated. This e-mail will be returned to the sender, ignored, deleted, or stored temporarily at Beyond's sole discretion. In the event that Beyond believes in its sole discretion that any subscriber name, account name, or e-mail address (collectively, an "identifier") on the Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, Beyond (1) reserves the right to block access to and prevent the use of any such identifier and (2) may at any time require any customer to change his or her identifier. In addition, Beyond may at any time reserve any identifiers on the Service for Beyond's own purposes.

19.6 Newsgroups

Messages posted to newsgroups must comply with the written charters or FAQs for those newsgroups as well as any other terms and conditions applicable to any particular newsgroups or provider of newsgroups. Advertisements, solicitations, or other commercial messages should be posted only in those newsgroups whose charters or FAQs explicitly permit them. You are responsible for determining the policies of a given newsgroup before posting to it. Beyond reserves the right to discontinue access to any newsgroup at any time for any reason. Beyond may permit users of the Service to download a maximum of two gigabytes (2GB) of newsgroup content in any one month, unless users are subject to a Service plan that permits downloading more newsgroup content. If you exceed two gigabytes (2GB) of newsgroup content in any one month, after thirty (30) days notice Beyond may change your Service plan to a Service plan that permits downloading more newsgroup content.

19.7 Instant Messages and Video Messages

Users alone are responsible for the contents of their instant messages and video messages and the consequences of any such messages. Beyond assumes no responsibility for the timeliness, mis-delivery, deletion or failure to store instant messages or video messages.

19.8 Personal Web Page and File Storage

As part of the Service, Beyond may provide you with access to personal Web pages and storage space through personal Web pages and online storage features (collectively, the "Personal Web Features"). You are solely responsible for any information that you or others publish or store on the Personal Web Features. You must ensure that the intended recipient of any content made available through the Personal

Web Features is appropriate. For example, you must take appropriate precautions to prevent minors from receiving or accessing inappropriate content. Beyond reserves the right to remove, block, or refuse to post or store any information or materials, in whole or in part, that it, in its sole discretion, deems to be offensive, indecent, or otherwise inappropriate regardless of whether this material or its dissemination is unlawful. This includes, but is not limited to: obscene material; defamatory, fraudulent or deceptive statements; threatening, intimidating or harassing statements, or material that violates the privacy rights or property rights of others (copyrights or trademarks, for example). For purposes of this Policy, "material" refers to all forms of communications including narrative descriptions, graphics (including photographs, illustrations, images, drawings, logos), executable programs and scripts, video recordings, and audio recordings. Beyond may remove or block content contained on your Personal Web Features and terminate your Personal Web Features and/or your use of the Service if we determine that you have violated the terms of this Policy.

19.9 Network, Bandwidth, Data Storage and Other Limitations

Beyond may provide versions of the Service with different speeds and bandwidth usage limitations, among other characteristics, subject to applicable Service plans. You shall ensure that your use of the Service does not restrict, inhibit, interfere with, or degrade any other user's use of the Service, nor represent (in the sole judgment of Beyond) an overly large burden on the network. In addition, you shall ensure that your use of the Service does not restrict, inhibit, interfere with, disrupt, degrade, or impede Beyond's ability to deliver and provide the Service and monitor the Service, backbone, network nodes, and/or other network services.

You further agree to comply with all Beyond network, bandwidth, and data storage and usage limitations as posted on our website. You shall ensure that your bandwidth consumption using the Service does not exceed the limitations that are now in effect or may be established in the future. If your use of the Service results in the consumption of bandwidth in excess of the applicable limitations, that is a violation of this Policy. In such cases, Beyond may, in its sole discretion, terminate or suspend your Service account or request that you subscribe to a version of the Service with higher bandwidth usage limitations if you wish to continue to use the Service at higher bandwidth consumption levels.

In addition, you may only access and use the Service with a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). You may not configure the Service or any related equipment to access or use a static IP address or use any protocol other than DHCP unless you are subject to a Service plan that expressly permits otherwise.

19.10 Copyright Infringement

Beyond is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Service to comply with these laws. Accordingly, you may not store any material or content on, or disseminate any material or content over, the Service (or any part of the Service) in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is Beyond's policy in accordance with the DMCA and other applicable laws to reserve the right to terminate the Service provided to any customer or user who is either found to infringe third party copyright or other intellectual property rights, including repeat infringers, or who Beyond believes in its sole discretion is infringing these rights with or without notice for any affected customer or user.

Copyright owners may report alleged infringements of their works that are stored on the Service or the Personal Web Features by sending Beyond a written notification (including electronic notification) of claimed infringement that satisfies the requirements of the DMCA. Upon Beyond's receipt of a satisfac-

tory notice of claimed infringement for these works, Beyond will respond expeditiously to either directly or indirectly (1) remove the allegedly infringing work(s) stored on the Service or the Personal Web Features or (2) disable access to the work(s). Beyond will also notify the affected customer or user of the Service of the removal or disabling of access to the work(s). If the affected customer or user believes in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then that person may send a counter notification to Beyond. Upon Beyond's receipt of a counter notification that satisfies the requirements of DMCA, Beyond will provide a copy of the counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. In all events, you expressly agree that Beyond will not be a party to any disputes or lawsuits regarding alleged copyright infringement.

Copyright owners may send Beyond a written notification (including electronic notification) of claimed infringement to report alleged infringements of their works to:

Beyond Communications
5540 Centreview Drive, Suite 200
Raleigh, NC 27606
Tel. (919) 424-6300
Fax (800) 547-2115

Under the DMCA anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to Beyond, the alleged infringer, and the affected copyright owner for any damages incurred in connection with the removal, blocking, or replacement of allegedly infringing material.

19.11 Violation of Acceptable Use Policy

Beyond does not routinely monitor the activity of Service accounts for violation of this AUP. However, in our efforts to promote good citizenship within the Internet community, we will respond appropriately if we become aware of inappropriate use of our Service. Although Beyond has no obligation to monitor the Service and/or the network, Beyond and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content from time to time to operate the Service; to identify violations of this Policy; and/or to protect the network, the Service and Beyond users.

Beyond prefers to advise customers of inappropriate behavior and any necessary corrective action. However, if the Service is used in a way that Beyond or its affiliates or associated parties, in their sole discretion, believe violate this AUP, Beyond or its suppliers may take any responsive actions they deem appropriate. These actions include, but are not limited to, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Service. Neither Beyond nor its affiliates, suppliers, or agents will have any liability for any these responsive actions. These actions are not Beyond's exclusive remedies and Beyond may take any other legal or technical action it deems appropriate.

Beyond reserves the right to investigate suspected violations of this AUP, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on Beyond's servers and network. During an investigation, Beyond may suspend the account or accounts involved and/or remove or block material that potentially violates this Policy. You expressly authorize Beyond and its suppliers to cooperate with (1) law enforcement authorities in the investigation of suspected legal violations, and (2) and system administrators at other Internet service providers or other network or computing facilities in order to enforce this Policy. This cooperation may include Beyond providing available personally identifiable information about you to law enforcement or system administrators, including,

but not limited to, username, subscriber name, and other account information. Upon termination of your account, Beyond is authorized to delete any files, programs, data and e-mail messages associated with your account.

The failure of Beyond or its suppliers to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this Policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.

You agree to indemnify, defend and hold harmless Beyond and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) resulting from you engaging in any of the prohibited activities listed in this AUP or resulting from your violation of the AUP or of any other posted Beyond policy related to the Service. Your indemnification will survive any termination of the Subscriber Agreement and this High-Speed Internet Addendum.

These policies are intended to be consistent in all aspects with Beyond's underlying email services provider, which is Google, and its policies shall take precedence in the event of any inconsistency. Google's terms and conditions are located at http://www.google.com/apps/intl/en/terms/user_terms.html.