

Wyverd Fiber Residential Subscriber Agreement

This Residential Subscriber Agreement (“Agreement”) sets forth the terms and conditions under which Wyverd Connect LLC, Accipiter Communications, Inc., and Media 3 Communications LLC, collectively d/b/a Wyverd Fiber, (“Wyverd Fiber”, “us,” “we,” or “our”) and any of Wyverd Fiber’s affiliates, will provide the Services described herein. This Agreement is hereby incorporated into any Service Orders signed or submitted by you, and incorporates by reference the terms and conditions of all other service agreements, including the CPNI Policy, Acceptable Use Policy (“AUP”), Tariff (where applicable), and/or other materials referenced herein. By using our Services, you agree to abide by, and require others using the Services to abide by, this Agreement and all of the documents referenced herein.

1. Definitions

- 1.1 “Affiliate” means any entity that owns or is owned by, or is under common ownership with Wyverd Fiber.
- 1.2 “Wyverd Fiber-Supplied Equipment” means any equipment provided by Wyverd Fiber to you for use in connection with receipt of the Services, including, but not limited to Optical Network Terminals (ONT), routers, modems, converters, WiFi extenders, and adapters.
- 1.3 “Customer-Owned Equipment” means any hardware or software equipment or service owned and supplied by you.
- 1.4 “Dispute” means any dispute, claim, or controversy between you and Wyverd Fiber arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof.
- 1.5 “Services” means all the services you receive from us, including, but not limited to, internet, phone, over-the-top video, ProtectIQ, ExperienceIQ, and associated products and features.
- 1.6 “Service Order” means a request by you for Wyverd Fiber to provide one or more of the Services to you on an Wyverd Fiber designated form, either in person, over the telephone or via Wyverd Fiber’s website.
- 1.7 “Tariff” means a federal or state Wyverd Fiber tariff and the successor documents of general applicability that replace such tariff in the event of detariffing.

2. Delivery of Services

- 2.1 This Agreement is effective as of the date Services begin, and continues as long as you use our Services. Services begin when we accept the Service Order either electronically, verbally, or in writing, we begin providing the Services described in the Service Order, or we begin installation for delivery of the Services described therein, whichever is earliest. This Agreement supersedes all prior oral or written agreements between Wyverd Fiber and you, and Wyverd Fiber will have no liability to you except with respect to its obligations described in this Agreement. In the event that any aspect of your Services is terminated or changed, remaining Services will continue to be governed by this Agreement.

3. Charges and Billing

- 3.1 By using our Services, you agree to pay all charges associated with the Services, including all applicable fees, taxes, and surcharges, as well as non-standard installation (including complex, underground, custom work, special construction

and/or additional outlets), and/or equipment charges, and applicable service charges. Price information for our products is available on our website, at <https://wyverd.com>. **PAYMENT FOR ANY GOVERNMENT IMPOSED FEES AND TAXES THAT BECOME APPLICABLE RETROACTIVELY OR OTHERWISE IS YOUR RESPONSIBILITY.**

- 3.2 **Billing.** Unless otherwise specified, you will be billed monthly for recurring service charges, equipment charges, and applicable state and federal taxes and fees. Your billing cycle will be determined by your installation date. Payment in full for all billed charges, including recurring service charges, any additional charges for non-recurring services, and all taxes, fees, and surcharges must be received by the due date indicated on your billing statement. You acknowledge that you are liable for the payment of all Services rendered by Wyverd Fiber and billed to your account. No acceptance of partial payment(s) by Wyverd Fiber shall constitute a waiver of any rights to collect the full balance owed under this Agreement. If your payment is returned, we may charge a processing fee for each returned payment. You acknowledge that writing statements to the effect of “paid in full” on any checks or other payments provided to Wyverd Fiber has no legal effect. We reserve the right to notify you with payment and billing reminders based on intervals that we determine appropriate. **Your first bill may be for more than a single month’s service due to pro-rated charges from the date you first began receiving our Services, as well as monthly recurring charges for the next month and charges for any non-recurring services you have received.**
- 3.3 In some cases, you may be billed for Services outside of your recurring service charges. You will be responsible for any charges resulting from, but not limited to, service calls, orders, upgrades made from your account. Additionally, certain types of calls may be billed on a measured basis including, domestic intra and inter lata long distance, international long distance and directory assistance calling.
- 3.4 **Late Fees.** If you fail to pay your bill by the due date on your billing statement, we may charge you late fees and collection fees. Except where late fees are set pursuant to law or an applicable Wyverd Fiber tariff, the current late fee you will incur each month is \$5.00, or 1.5% of the amount past due, whichever is greater. You will be responsible for reasonable attorney’s fees and costs incurred by Wyverd Fiber in our collection attempts of any past due amounts not paid by you. You are eligible for a one-time forgiveness of a late payment charge each calendar year. If your eligibility has been used, and you fail to pay the amount owed, we may suspend or terminate any Services provided to you, and may require you to pay a reconnect fee of \$20 per line of service (or Wyverd Fiber’s then current reconnect fee), in addition to paying all outstanding balances, prior to restoring your Services. However, you will be required to pay a standard reconnect fee of \$100 if a tech visit is required or if you are attempting to reconnect after disconnecting Services within the last twelve (12) months. It is your responsibility to ensure Wyverd Fiber is in receipt of your payment on or prior to the due date indicated on your billing statement.

- 3.5 **Trial/Introductory Rates and Promotions.** If you are receiving promotional or trial/introductory rates, you may cancel your Services at any time prior to the end of the promotional period by notifying us in writing, in person, or by telephone. Once the promotional or introductory period expires, regular charges for the Services will apply unless you notify us you would like to terminate such Services.
- 3.6 **Legacy Pricing.** If you are receiving legacy pricing due to a Wyyerd Fiber determined price change, that pricing will remain in effect as long as the account is in good standing and no Service changes have been initiated by you or Wyyerd Fiber. Service changes including but not limited to, a speed upgrade or downgrade, addition or removal of a service plan or equipment, responsible party account holder change, or move of service to a new location. Any changes to Service or account may result in a price increase to the current standard offerings based on service location.
- 3.7 **Deposits.** We may require a security deposit from you when you initiate our Services. If Services are terminated and you have an outstanding balance owed to us, we may deduct that amount from your security deposit.
- 3.8 **Billing Errors.** Disputes concerning your bill may be directed to Wyyerd Fiber by telephone, in person, or in writing. In the event of a dispute concerning the bill, you understand you are still required to pay a sum of money equal to the amount of the undisputed portion of the bill. Your Services shall not be disconnected for nonpayment of the disputed amount. A late fee may be assessed upon any outstanding undisputed balance due that remains after the due date indicated on your billing statement. We limit retroactive adjustments for billing errors to ninety (90) days prior to the date the error is discovered. In the event of a billing error, you must notify us within thirty (30) calendar days of the day you receive your bill. If no notice is received, you waive any right to receive a refund or credit.
- 3.9 **Credit Card Payments.** By providing us with a credit card number, you authorize us to charge the card for all charges generated under this Agreement. It is your responsibility to provide Wyyerd Fiber with updated credit card information on a timely basis.
- 3.10 **Taxes and Fees.** Taxes and governmental fees and surcharges and/or cost recovery charges may be changed and/or implemented with or without notice.
4. **Changes to Services, Fees, and Prices**
- 4.1 We reserve the right, in our sole discretion, to modify the terms in this Agreement, add to, rearrange, or discontinue any or all aspects of the Services offered and/or change or impose new prices and fees. This Agreement, as revised from time to time, is accessible at <https://www.wyyerd.com/subscriberagreement>. The most recent version of this Agreement shall supersede any prior versions which may have been provided to you.
- 4.2 Unless otherwise specified by applicable law, Wyyerd Fiber will give you thirty (30) calendar days prior notice of any material changes affecting our Services, prices, or fees, and the effective date of such changes. Notice of such changes will be included with your billing statement or sent via mail or email.
5. **Force Majeure**

5.1 We have no responsibility for service problems that are beyond our reasonable control. Examples of problems beyond our reasonable control include acts of God, flood, fire, epidemic, pandemic (including the Covid-19 pandemic), quarantine, fiber cuts, those caused by storms and other natural disasters, third party damage to access networks, failure of any signal at the transmitter, failure of a communications satellite, loss of use of utility facilities, vandalism, terrorism, unavailability of right-of-way, any law, order, regulation, or governmental act, civil disturbances, power failures, computer viruses, or strikes.

6. Content

6.1 We exercise no control over the content of the information passing through our network and accessed through the Services. We have no duty to monitor, review, remove, or edit any material passing through or residing on our network or servers, although we reserve the right to do so. Some sites contain information that you may consider obscene or harmful. We shall not be responsible in any manner and to any extent for sites or postings that might be considered obscene, offensive, harmful, or illegal. You are responsible for your own monitoring and viewing habits, including those of minors within your household. We make no warranties of any kind, whether express or implied, about the content of the information passing through our network or accessed by you through the Services. Use of any information obtained through the Services is at your sole risk. We specifically disclaim any responsibility for the accuracy or quality of information obtained through the Services. We will abide by the Safe Harbor rules adopted by the Federal Communication Commission ("FCC").

6.2 The provisions of the AUP and CPNI Policy are incorporated by reference herein and shall be deemed to have the same force and effect as if set forth herein.

6.3 You are responsible for securing your data and communications. We will not be responsible if a third-party gains access to your data or communications, the Services, or your Customer-Owned Equipment. We deem all use of the Services from the location which you receive such Services, including any communications made through the Services, whether authorized by you or not, as your use. All charges attributed to your account will be your sole responsibility, and you agree to indemnify Wyverd Fiber from any liability which may arise relating to such charges.

7. Equipment

7.1 **Wyverd Equipment.** We will install equipment in and around your residence. This equipment may include, but is not limited to, an Optical Network Terminal ("ONT"), remote controls, and cabling (collectively the "Equipment"). Unless you purchase the Equipment, the Equipment is our property. You agree that you will not move any of the Equipment to another location outside your residence either temporarily or permanently. You are responsible for the reasonable care of the Equipment located at your residence. You agree not to modify the Equipment in any way. If any of the Equipment is damaged, modified, lost, destroyed, tampered with, or stolen while in your possession, you will be responsible for the reasonable cost of repair or replacement of the affected Equipment. When you cease being a customer or move from your current location, you are responsible for returning the Equipment to us, with the exclusion of any wiring or Equipment

located outside your residence, and obtaining a signed receipt from us. If you fail to return any Wyverd Equipment, you agree to pay Wyverd the fair market value of such Wyverd Equipment. You agree that you are responsible for the cost of the commercial electric service required to operate the NID.

7.2 **Customer-Owned Equipment.** You alone shall be responsible for the proper installation, operation, and maintenance of any Customer-Owned Equipment that is used in connection with the Services, including technically and operationally compatibility.

7.3 **Fiber Network.** You understand and agree that the fiber installed or provided by Wyverd Fiber will remain connected on the premise through the duration of your Services with us, as well as after termination of the Services. Fiber service is installed either underground or aerial, and will usually follow the same route as existing telephone or television cabling. You acknowledge that Wyverd Fiber will need access to your property, depending on your neighborhood utility locations. For new and existing single unit installations, the fiber shall become a fixture to the realty upon installation. You may not alter or remove the fiber network and may be liable for the cost of rectifying the fiber network under such circumstances.

8. **Software and Intellectual Property**

8.1 **Software License.** To facilitate your use of our Services, we may provide you with software and/or firmware. Any software or firmware provided with our Services or contained within the Wyverd Fiber-Supplied Equipment may only be used for non-commercial and private use to the extent necessary to use or receive the related Services. You are being granted a revocable, personal, limited, non-transferable, non-assignable, and non-exclusive license to download, install, and use the software or firmware, so long as this Agreement remains in full force and effect. Use of such software or firmware does not give you any ownership rights, and you may not sublicense, lease, rent, or assign the software or firmware. Except for your limited license to use the software or firmware, all other intellectual property rights associated with them shall remain at all times with us and/or our licensors. You agree that you shall not, nor shall you permit others, to publish, duplicate, display, modify, distribute, reverse engineer, transmit, decompile, attempt to create the source code from the object code for the software, or create derivative works from the software or firmware, in whole or in part, including any written materials provided in conjunction with them.

8.2 We may, from time to time, modify the software or firmware, including through remote downloads to Wyverd Fiber-Supplied Equipment and your Customer-Owned Equipment. If you receive a software update notification from us, it is your responsibility to promptly perform an update. Failure to do so may result in the Wyverd Fiber-Supplied Equipment and/or your Customer-Owned Equipment no longer being compatible with our Services. You represent that you have the authority to grant us access to your Customer-Owned Equipment to make such modifications. You agree to take no action to interfere with such automatic upgrades, scanning, and related services.

8.3 **Intellectual Property.** Wyverd Fiber is registered under the Digital Millennium Copyright Act of 1998. If you believe that material available through our Service

has infringed your intellectual property rights, you may file a complaint of such claimed infringement with Wyverd Fiber's legal department.

8.4 Copyrights and Trademarks. Materials available on the Wyverd Fiber website(s) are protected by copyright law. Wyverd Fiber is a registered trademark.

9. Deletion of Materials

9.1 Based on storage limitations, we reserve the right, in our sole discretion, to delete your voicemail, call details, data, files, emails, and other information stored on our servers, systems, or any Wyverd Fiber-Supplied Equipment. In the event you do not port your telephone number to another service provider, you will forfeit the telephone number. You understand and agree that we shall have no liability whatsoever for any loss or removal of such data or information.

10. Wyverd Fiber Phone Subscribers

10.1 Battery Backup. Our Services use electrical power in your home. If your power is interrupted, for example due to a power outage, you may not be able to make or receive calls, use 911, or home security or medical monitoring services unless you have an Uninterruptible Power Supply (UPS) or battery backup. While you are solely responsible for purchasing a battery backup unit, at Wyverd Fiber, we offer all our customers the option to buy an optional battery backup. A battery backup does not guarantee you will always be able to make or receive calls or use 911 in the event of a power interruption. Calls may not be completed if there is a problem with network facilities, including network congestion, network/equipment/power failure, or any other technical or service-related issue. In such instances, you may be unable to use our phone service to call 911. Additionally, Wyverd Fiber battery backup options will not provide power to any other service except to your phone plugged directly into the Wyverd Fiber ONT (i.e. if Customer has a cordless/wireless phone or like equipment NOT plugged directly into the Wyverd Fiber ONT, then such phone or equipment will not have battery backup and may not be operational in the event of a power outage). If you have a home alarm system, medical monitoring devices, cordless/wireless home phones not plugged directly into the ONT, or other similar equipment that utilizes your telephone line to operate, you will need a separate power supply to operate those devices during a power outage in addition to the backup battery for your Wyverd Fiber phone service. We will not be liable for the failure of your service during a power outage, including failure due to the lack or nonperformance of battery backup power. Please visit Wyverd Fiber's website(s) to learn more about Wyverd Fiber battery backup options and capabilities.

10.2 Home Security and Medical Monitoring. You understand that our phone service may not be compatible with certain home security systems or medical monitoring and personal emergency alert devices, and that we accept no responsibility for the performance of such devices and systems with our phone service. If you intend to use our phone service with a third party's home security or medical monitoring system or device, you are responsible for making sure it works properly and for the cost of doing so. You should contact your home security or medical monitoring provider to determine whether our phone service is compatible with its systems and to test the system's operation.

- 10.3 **911 Information.** The device that we provide to you for your phone service is linked to the address you provided to Wyverd Fiber. In order for your 911 calls to be properly directed to emergency services, ensure you have provided us with your correct premise address. If you move the device to a new address without first obtaining the necessary approval from us, you will be in violation of this Agreement. Furthermore, moving the device to an unauthorized address may result in emergency personnel being unable to locate you. Ensuring we have the correct address listed with the 911 database can take several business days from the time that you subscribe to our phone services.
- 10.4 **Directory Listing Errors.** If we make available the option to list your name, address, and/or telephone number in a published directory or database, and fail to comply with your request regarding directory listing information (for example, we list the wrong information, fail to include information you requested be listed, or list information you requested remain unpublished,) you may be entitled to a credit under our policies, equal to one month's service or, if greater, an amount prescribed by applicable regulatory requirements. Please contact our office for more information. Other than these credits, we have no liability with respect to directory listings. YOU AGREE TO HOLD WYYERD FIBER, OUR OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, OUR AGENTS, AND ANY OTHER PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THIS AGREEMENT, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, INCLUDING LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFITS, ARISING FROM THE ERRORS OR OMISSIONS REFERENCED IN THIS PARAGRAPH.
- 10.5 **Unlimited Calling.** Wyverd Fiber unlimited calling (unlimited means up to 5,000 minutes per month) applies to the continental contiguous 48 states, Hawaii, Washington, D.C, and Canada and is based on normal residential, non-commercial use. Unlimited calling excludes all calls made to Alaska, United States territories and possessions, Mexico, and all other foreign countries or protectorates and territories. Unlimited calling also excludes 900, and 900-like numbers, and entertainment phone services. Additional charges will apply for all calls outside of the contiguous 48 states, Hawaii, Washington, D.C., and Canada, and directory assistance calling, and operator services. Wyverd Fiber's rate card is available upon request. In addition, Wyverd Fiber may provide additional long distance calling plans (including Mexico and other countries) in certain Wyverd Fiber markets. Such additional long distance calling plans will be provided on Wyverd Fiber's website.
- 10.6 **Tariffs.** If Wyverd Fiber has filed a tariff with your local public utility commission (or similar state agency), then the tariff will govern, in whole or in part, your receipt of Wyverd Fiber regulated phone service.

11. Internet Service

- 11.1 **Service Level Limits.** Each Service level has a maximum throughput rate or other characteristics. We can set or change the maximum throughput rate or other

characteristics of any Service level. If we do, we may put in place additional terms to address usage that is not consistent with the resulting Service level.

11.2 **Throughput Rates.** The throughput rate will be tested to your premise. You acknowledge that you may not receive maximum throughput speeds at certain times. The throughput rate you experience at any time may be affected by a number of factors, including the nature of the Internet and its protocols, the condition and configuration of our Equipment or your Customer-Owned Equipment at your location, whether you use a WiFi network (which can significantly limit the throughput rate obtained by devices attached to it.), data volume and congestion on the Internet, and the performance of the website servers you try to access.

11.3 **Your Transmissions.** If you send or post materials through the Service, you are responsible for the material and confirm that you have all necessary rights to do so. You grant us, with no obligation to pay you, all rights we need to complete your transmission or posting. If we determine that the transmission or posting violates our policies, we may (but have no duty to) delete the materials, block access to them, or cancel your account.

11.4 **Addresses.** Use of the Service does not give you any ownership or other rights in any Internet Protocol, email or Internet addresses that may be provided to you as part of the Services. Upon termination of your Service account, we reserve the right to permanently delete or remove any or all addresses associated with such account.

12. Violations of this Agreement

12.1 If Wyverd Fiber receives notice from a third party, or if we reasonably believe that you have violated any of the terms of this Agreement (including, without limitation, for failure to pay for the Services when due), then we shall have the right, in our sole discretion, without prior notification to you, without limiting any other rights or remedies we might have, and without incurring any obligation or liability to you, to temporarily discontinue furnishing Services to you, in whole or in part, or to terminate Services to you. We may charge a fee for any discontinued Service that is subsequently reconnected.

13. Telephone and Email Contact Consent

13.1 **Telephone.** To provide you with better and more efficient customer service we may contact you regarding your account with us, in response to your inquiries and questions, your request for service(s), or for other purposes, including marketing of products or services provided by us or our affiliates. You certify that you are the subscriber to the provided cellular or other wireless number and you authorize us, and our representatives and agents to contact you at any current and future number(s) that you provide for your residential, cellular telephone, or other wireless device using automatic dialing systems, artificial or prerecorded messages, and/or automated text messages, even if you may be charged by your service provider(s) for receiving such communications. You may revoke your consent (opt-out) to receiving such automated or artificial or prerecorded calls and text messages at any time. To do so, call us at 623-455-4555 or email us at serviceAZ@wyverd.com for AZ market and 619-732-6100, serviceCA@wyverd.com for CA market.

13.2 Call Monitoring. To ensure the quality of our Services and for other lawful purposes, you agree that we may monitor or record telephone conversations you make to us or we make to you (for example, conversations you have with our customer service representatives).

13.3 Email. You authorize us, or our representatives or agents, to deliver certain disclosures, notices, and communications, including promotional communications of our Services (collectively “Communications”) to you in electronic form. Your agreement to this Agreement confirms your ability to consent to receive such Communications electronically. Communications will be delivered via email, using the email address(es) you provide to us, including that of a wireless or mobile device, posted to our Website, or otherwise communicating them to you via the Services. You agree that you are responsible for any charges by your wireless or mobile provider for receipt of such emails. You have the option of maintaining copies of communication by printing copies or saving electronic copies, as applicable. If you do not wish to receive promotional emails, such as emails describing promotions or new services, you may click “unsubscribe” on such emails, and your address will be removed from any future marketing emails. To access and retain electronic Communications, you will need to maintain or have access to the following computer hardware and software at your own expense:

1. Access to the Internet
2. Access to a valid e-mail address
3. Access to a computer or similar device that includes 128-bit encryption and current browser software capable of receiving, displaying, and accessing Communications.
4. Access to software which permits you to receive and access Portable Document Format Files.

14. Waiver to Bring Legal Action

14.1 You acknowledge that you waive your right to commence any proceeding against Wyyerd Fiber if the relevant events occurred more than one year earlier.

15. Dispute Resolution

PLEASE READ THIS SECTION CAREFULLY. IT PROVIDES YOU WITH INFORMATION ON RESOLVING DISPUTES THROUGH ARBITRATION.

15.1 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

15.2 Confidentiality. The arbitration proceedings under this Section shall be as confidential and private as permitted by law. To that end, we each agree not to disclose the existence, content, or results of any proceedings conducted in accordance with this Section, and material submitted in connection with such proceeding shall not be admissible in any other proceeding; provided, however, that this confidentiality portion shall not prevent a petition to vacate or enforce an arbitral award, and shall not bar disclosures required by any laws or regulations.

15.3 **Continuation.** This Dispute Resolution Section shall survive the termination of your Services with us.

16. Termination of Service

16.1 Unless otherwise agreed, this Agreement will be in effect from the time the Services are initiated until they are terminated by either you or Wyverd Fiber. All applicable charges and fees will accrue in accordance with this Agreement until the Services have been disconnected and all Wyverd Fiber-Supplied Equipment has been returned, subject to all applicable laws.

16.2 Wyverd Fiber or you may terminate any or all portions of the Services at any time, in our or your sole discretion, and for any reason in accordance with applicable laws and terms of any promotional offers, as specified in this Agreement. No financial penalty, aside from those mentioned in Section 3, will be assessed for termination of Services. If you terminate all or any portion of the Services, you agree to notify Wyverd Fiber. We will schedule a disconnect appointment, and you agree to provide Wyverd Fiber personnel, its agents or representatives access to the premise in order to disconnect all or a portion of the Services and recover Wyverd Fiber-Supplied Equipment.

16.3 Upon termination, you agree to (i) immediately cease all use of the Services and all Wyverd Fiber-Supplied Equipment and (ii) pay in full for your use of the Services up to the date the termination of this Agreement took effect and the Services were disconnected. You must return the Wyverd Fiber-Supplied Equipment to our local business office or have an Wyverd Fiber technician retrieve the Wyverd Fiber-Supplied Equipment from your premise at your expense. You may be charged a continuing monthly fee until all Wyverd Fiber-Supplied Equipment is returned to us. We will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due to Wyverd Fiber for the Services, Wyverd Fiber-Supplied Equipment, or other applicable charges and fees.)

16.4 **Refund Upon Termination.** If you terminate your service with Wyverd Fiber and are warranted a credit refund, you will receive a refund check in the mail within forty-five (45) calendar days of termination. Your refund will be the pro-rated portion of any fees and charges which you have paid in advance. If the pro-rated portion is less than \$5.00, a refund will only be issued upon request. You are responsible with providing Wyverd Fiber your correct mailing address for the refund check.

16.5 You agree that termination of any or all portions of the Services cannot occur simply by writing "canceled" or any other message to that effect on your check, bill, or other such communication.

16.6 We reserve the right, subject to applicable law, to immediately and with or without notice, terminate or suspend the Services and/or to remove from the Services any information transmitted by or to any authorized user. These actions may be taken if we (i) determine your use of the Services is in violation of this Agreement; (ii) determine your use of the Services interferes with our ability to provide Services to you or others, or adversely affects our equipment; (iii) believe any Wyverd Fiber-Supplied Equipment has been subject to tampering; (iv) reasonably believe your use of the Services violates any laws, regulations, or

requirements for use; or (v) reasonably believe your use of the Services interferes with or endangers the health and/or safety of our personnel or third parties. If we suspend the Services we may require that you pay us a fee for restoring your Service, in addition to charging you the regular cost for such Services during the suspension.

17. Indemnification

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS WYERD FIBER, ITS AGENTS OR REPRESENTATIVES, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES, AND ANY OTHER PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THIS AGREEMENT, FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, DAMAGES, CLAIMS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S AND ACCOUNTANT FEES) ARISING FROM OR IN ANY WAY RELATED TO A SUIT BROUGHT BY A THIRD PARTY BASED ON YOUR USE OF OUR SERVICES OR EQUIPMENT, OR BY YOUR VIOLATION OF THIS AGREEMENT.

18. Limitation of Liability; Disclaimer of Warranty

18.1 LIMITED LIABILITY. NEITHER WE NOR OUR EMPLOYEES, AGENTS, OR AFFILIATES WILL BE LIABLE TO YOU FOR ANY LOSSES OR DAMAGES OF ANY KIND BASED DIRECTLY OR INDIRECTLY ON YOUR RELATIONSHIP WITH US OR OUR PROVISION OF THE SERVICES, WHETHER BASED ON BREACH OF CONTRACT, TORT, OR FOR ANY LOSSES OR DAMAGES THAT MAY RESULT FROM INSTALLATION, USE, MODIFICATION, REPAIR, OR REMOVAL OF WYERD FIBER-SUPPLIED AND NON-WYERD FIBER SUPPLIED EQUIPMENT.

18.2 NO OTHER WARRANTIES. WYERD FIBER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF TITLE OR NON-INFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANT ABILITY OR FITNESS WITH RESPECT TO THE PROVIDED SERVICES. WE MAKE NO GUARANTEES THAT OUR SERVICES, EQUIPMENT, OR SOFTWARE WILL BE WITHOUT INTERRUPTION, ERROR-FREE OR VIRUS-FREE, OR WILL BE COMPATIBLE WITH CUSTOMER-OWNED EQUIPMENT OR OPERATE AS INTENDED. OUR SERVICES AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

18.3 EXCLUSION OF CERTAIN DAMAGES. IN NO EVENT SHALL WYERD FIBER, ITS AFFILIATES, OR ITS AGENTS OR REPRESENTATIVES, BE LIABLE TO YOU FOR ANY LOST PROFITS, LOSS OR DAMAGE TO YOUR OWN EQUIPMENT, LOSS OF DATA, LOSS OF USE, SERVICE INTERRUPTION OR OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING YOUR INABILITY TO USE 911 EMERGENCY SERVICES.

18.4 ANY AND ALL EQUIPMENT AND SERVICES PROVIDED BY WYYERD FIBER THAT ARE NOT PART OF THE SERVICES AS DEFINED HEREIN ARE OUTSIDE THE SCOPE OF THIS AGREEMENT AND NEITHER WYYERD FIBER, ITS AGENTS NOR ITS REPRESENTATIVES HAVE ANY RESPONSIBILITY OR LIABILITY FOR SUCH EQUIPMENT OR SERVICES. WYYERD FIBER, AND ITS AGENTS OR REPRESENTATIVES, MAKE NO WARRANTIES AND ARE FREE FROM LIABILITY WITH REGARD TO THE SECURITY OF YOUR COMMUNICATION VIA OUR NETWORKS OR SERVICES, OR THIRD PARTIES GAINING UNAUTHORIZED ACCESS TO MONITOR YOUR COMMUNICATIONS. YOU ACKNOWLEDGE THE SOLE RESPONSIBILITY OF SECURING YOUR COMMUNICATIONS (INCLUDING VOICE AND ONLINE) IS YOURS.

19. Miscellaneous

- 19.1 **Governing Law; Claims.** This Agreement and all Service Orders will be governed by and interpreted in accordance with the laws of the state in which our Services are provided to you, without reference to its choice of laws. You and Wyverd Fiber submit to the exclusive jurisdiction of the courts located in the state and county where our Services are provided to you and agree not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum.
- 19.2 **Entire Agreement.** This Agreement, including any documents which are incorporated herein by reference, are the entire agreement between you and Wyverd Fiber and supersede any prior agreements between us with respect to the Services.
- 19.3 **Partial Invalidity.** In the event that any Section of this Agreement shall be held to be unenforceable, such Section shall in good faith be renegotiated to be enforceable and shall reflect as closely as possible the intent of the original Section of this Agreement. Such negotiations shall not affect the enforceability of the remainder of this Agreement.
- 19.4 **Assignment.** You may not assign this Agreement or any or all portions of this Agreement or Services whether by operation of law or otherwise, to any other person, entity, or location, without our prior written consent. You acknowledge that Wyverd Fiber may transfer or assign any portion or all of this Agreement at any time, without notice to you.
- 19.5 **No Waiver.** Failure by us to enforce at any time or for any period of time any Section or right hereunder shall not constitute a waiver of such Section.
- 19.6 **Headings.** All article and section headings herein are for convenience only and shall not be deemed to control or affect the meaning or construction of any Sections hereof.
- 19.7 **No Third-Party Beneficiaries.** This Agreement does not expressly or implicitly provide any third party with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.
- 19.8 **Approvals, Consents and Agreements.** Whenever a Section in this Agreement requires the approval, consent, agreement or authorization or the like from Wyverd Fiber, Wyverd Fiber's decision to grant the same shall be in Wyverd Fiber's sole discretion.

19.9 **Privacy Policy.** For more information about our privacy policies regarding our collection, use, and disclosure of your personal information, see our website at, <https://www.wyyerd.com/privacypolicy>.