

# CableAmerica

## Broadband Service Agreement

April 1, 2013

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING CABLEAMERICA'S INTERNET SERVICE AND BEFORE USING THE COMPUTER SOFTWARE RECEIVED FROM CABLEAMERICA. BY SIGNING AT THE END OF THIS DOCUMENT YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SIGN THIS AGREEMENT, AND YOU MAY NOT ACCESS OR USE THE SERVICE AND YOU MAY NOT USE ANY COMPUTER SOFTWARE YOU MAY HAVE RECEIVED FROM CABLEAMERICA.

This CableAmerica Broadband Service Agreement ("Service Agreement") is entered into as of the date signed or, if subsequently modified, the effective date, between Cable America Missouri LLC, a Delaware limited liability company (dba CableAmerica) and the person whose name and address are shown on the signature page of this Service Agreement (hereinafter referred to as "you" or "your") to provide Internet service to you.

### 1. OUR RESPONSIBILITY TO YOU

#### 1.1 Internet Access

CableAmerica Internet Service ("the Service") provides you interactive access to the Internet as a registered customer or Authorized User. The Service includes Internet access, e-mail, and other optional services provided through a single modem connection. To access the Service you must have a personal computer ("PC") or Client (any other network device that an IP is assigned to) along with equipment such as a modem, a network interface card, a USB port, and software. We will provide you with an Internet connection from a single computer via either a cable modem ("CableAmerica Service") or by dial-up access ("Dial-up Service").

If you subscribe to the Service, you may lease or purchase from us a cable modem or you may purchase a DOCSIS-compliant CableAmerica approved cable modem from a third party provider. CableAmerica will provide the connection between the modem and your computer and a network interface card or USB port. We will provide a single-user routable or non-routable Internet Protocol ("IP") address for each authorized modem and computer and at least one (1) email address or account.

If you subscribe to Dial-Up Service, we will provide software, a single-user IP address for each authorized modem, and at least on (1) e-mail address or account. It will also be your responsibility to provide a dial-up modem and telephone line.

#### 1.2 Other Services

CableAmerica may provide other services such as web page hosting, static IP addresses, routable IP addresses, additional bandwidth, additional e-mail addresses, remote file backup/storage, peer-to-peer networking and other services that may be covered by separate agreements. We may describe some of the other services that we may provide in other written materials provided with your installation kit or that we may provide you at other times (such as, a Services Guide or web page). You will be bound by all of the terms and conditions of services included in other written materials, with your installation kit and/or posted at Internet addresses that have been included in the earlier materials. HOWEVER, if there is any difference between the terms of this Service Agreement and any of those other materials, terms or conditions, the terms of this Service Agreement control. Those other materials, terms and conditions are subject to change from time to time by CableAmerica, in CableAmerica's sole discretion pursuant to section 1.3 of this Agreement.

#### 1.3 Changes to Agreement

We reserve the right to amend, alter, or modify this Service Agreement or any Service Guide at any time and in any manner. Any amendment, alteration, or modification (referred to collectively as "changes") may be either posted on CableAmerica's websites (www.cablemo.net or www.cableamerica.com) and/or sent to your e-mail address. YOU ARE OBLIGATED TO CHECK CABLEAMERICA'S WEBSITE AT LEAST EVERY THIRTY (30) DAYS FOR SUCH CHANGES. Any change is effective on the thirty first (31st) day after it's posted on CableAmerica's website or sent to your email address. Your continued use of the Service on or after that thirty-first (31st) day means that you agree to be legally bound by such change(s).

### 2. GENERAL SUBSCRIBER RESPONSIBILITIES

#### 2.1 Personal Agreement

The Service is provided to you as an individual and is for your personal use. The Service is to be used only by you, your employees, and members of your immediate family living with you or working for you at the same address. We call these people, including you, "Authorized Users". You may not transfer your subscription or your rights and obligations under this Agreement to any other person. If you subscribe to the Service, you may not move your Account to a different location and you may only use the cable modem provided or approved and configured by us. If you subscribe to Dial-Up Service, you may move your account to a different location, but you must notify us of the address of this new location.

Only one person at a time you or one of the "Authorized Users" may use your Account at any particular time. If you subscribe to Dial-Up Service, you may access your Account from locations other than your home or business. You are personally responsible for all of the use of the Service under your Account even if you did not authorize someone to use it. You assume responsibility to ensure that all Authorized Users understand this Agreement and comply with its terms. You agree that you are fully responsible for any consequences if such individual misuse the Service violates this Service Agreement, or accesses material or information that you feel is obscene or otherwise objectionable. You agree to provide all Authorized Users a copy of this agreement, and to inform them that their use of the Service is subject to the terms and conditions of this Agreement.

#### 2.2 Age Restrictions

The Service is restricted to individuals of at least 18 years of age. By subscribing to the Service you certify that you are at least 18 years old. You may, at your discretion, permit an Authorized User less than 18 years of age to use the Service. If you do, you acknowledge that you are personally responsible for providing adult supervision for any person who is less than 18 years of age who may use the Service, whether or not a member of your family or household. The Service may not be used to enable persons less than 18 years of age to obtain material that is prohibited by law to be sent or displayed, including material deemed to be indecent or obscene.

#### 2.3 Provide Accurate Information

You agree to provide us with accurate, complete, and current information for yourself and all Authorized Users, including legal name, age, address, telephone number(s), and payment data upon subscribing to the service. You agree to promptly inform us if this information changes.

#### 2.4 No Resale; Acceptable Use Policy

You may not allow anyone who is not an Authorized User to use or access the Service without first obtaining written permission from us. You agree not to use the Service for any type of business or commercial enterprise, including (but not limited to) the provision of Internet access to others or provision a server site for FTP, Telnet,

RLOGIN, Electronic Mail, P2P, web hosting, or other comparable applications. You also agree not to use the Service to operate as an Internet Service Provider ("ISP") or to operate any other business enterprise in competition with the Service. In addition, proxy servers are not allowed under this Account, and if you attempt to connect more than one computer to a given modem via proxy of any type, we reserve the right to terminate the Service. Without limiting the foregoing, applications that may not be run on this Service include, but are not limited to, FTP, HTTP, POP and SMTP, DNS, NNTP, P2P and PROXY. We may make other accounts available that would allow commercial or server access if you need it, but at a different fee schedule and at our sole discretion. If you believe you need some other type of account, for example, if you wish to add a hub and provide access to more than one computer in your household, or business, additional services can be purchased for this purpose (to be provided at our sole discretion). Please contact us for a description of those other services and their pricing.

## **2.5 Passwords and Password Security**

You agree not to reveal your passwords to others and you agree to indemnify and hold us harmless for any improper or illegal use of your account. This includes illegal or improper use by someone to whom you have given permission to use your account. Your account is at risk if you let someone use it inappropriately. You are responsible for the use of the Account and the confidentiality of your password(s). We will make a reasonable effort to suspend access to the Service through a particular password, or change your access password, upon notification by you that the particular password has been stolen, lost, or otherwise compromised. You must immediately notify us of any known or suspected unauthorized use of your Account and/or any known or suspected breach of security, including without limitation loss, theft, and or unauthorized disclosure of your password.

## **2.6 Corporations**

We may accept corporations or other entities as members under other billing arrangements at our sole discretion.

## **3. COMPUTER EQUIPMENT REQUIREMENTS**

### **3.1 Computer**

The personal Computer that you use to access the Service must meet the minimum configuration standards as listed on our website at [www.cablemo.net](http://www.cablemo.net) or [www.cableamerica.com](http://www.cableamerica.com). You must provide and maintain this equipment and software at your cost. You are responsible for the proper installation, operation and maintenance of your equipment used in connection with the Service. You must ensure that such equipment is technically and operationally compatible with the Service and in compliance the applicable Federal Communications Commission rules and regulations.

### **3.2 Equipment, Software, and Services Provided By CableAmerica**

#### **3.2(a) If You Subscribe To Cable Modem Service**

##### **3.2(a) 1. Network Interface Card (NIC)**

When we install the Service, we may provide you with a Network Interface Card. This card will become your property, even if you terminate the Service. If you terminate, we will not remove it from your computer nor are you required to remove it from your computer. You are responsible for all maintenance and repair of the Network Interface Card.

##### **3.2(a) 2. Cable Modem**

You may purchase a DOCSIS-compliant CableAmerica approved cable modem from us or a third party provider or lease the modem from us. If you purchase the cable modem it will become your property. If you lease the cable modem and connecting cables, they will remain our property and the monthly lease charge for it may be added as an additional charge on your bill. If you lease the cable modem, the following conditions will apply:

- The cable modem must be returned to us in good condition (as determined by us) when you terminate service.
- You will use reasonable care to avoid damaging it, and will not move, relocate, alter, sell, lease, assign, encumber or otherwise tamper with it. If the cable modem and its connecting cables are not returned to CableAmerica in good condition (as determined by us) upon termination, you will be charged on your credit or debit card, and agree to pay \$250 for the replacement.
- You agree to make your residence or business (wherever the Equipment is installed) available by appointment for the inspection, repair, replacement, and/or removal of the Equipment between the hours of 8:00AM and 5:00PM Monday through Friday.

#### **3.2(b) If You Subscribe To Dial-Up Service**

If you subscribe to Dial-Up Service, we will provide you with access software under a limited, non-exclusive license as described in Section 3.3.

### **3.3 Software**

We grant you a limited personal, non-transferable, non-exclusive license to use any software provided and installed by us, or an authorized independent contractor, for use in connection with the Service only. The software and all intellectual and industrial property rights therein remain our property at all times. You agree not to transfer, distribute, rent, sub-license, lease, alter, modify, adapt, decompile, translate, reverse engineer, or disassemble the software or any portion of it. You may make one copy for back-up purposes only. The software license terminates upon termination of this Service Agreement or disconnection or discontinuation of the Service. At that time, you will promptly destroy the software and any copy you have made.

### **3.4 E-mail And IP Addresses**

You agree that any E-mail addresses we assign to you as part of the Service belong to us, and that you may use such e-mail addresses only so long as you subscribe to the Service. You also agree that any IP address that we allow you to use to access the Service belong to our providers or us, and that you acquire no rights in such IP addresses by virtue of your subscription to the Service.

### **3.5 Cable Outlet For Cable Modem Service Only**

Unless you reside in an area serviced by one-way cable system, CableAmerica will install an additional cable outlet at your residence or business for the use of the Cable Modem Service. This Outlet may be used only to access the Cable Modem Service. You may not relocate this outlet, or use the Cable Modem Service from any other cable outlet, without prior written approval.

### **3.6 Software And Equipment Installation**

You may install the computer software and hardware received from CableAmerica or an authorized independent contractor or we can install it at your expense.

### **3.6(a) Damage To Your Home Or Business During Installation**

Neither CableAmerica, our suppliers, nor our contractors shall be liable for any damage to, or loss or destruction of, your equipment during installation, including but not limited to any damage to, or loss or destruction of any software, files, or data. In addition, you understand that opening your computer to install the network interface card may void warranties provided by the computer manufacturer or other parties relating to the computer's hardware or software. You consent to the opening of the computer for the installation and removal of equipment related to the Service. CableAmerica, our suppliers, nor our contractors shall have any liability as the result of voiding of any such warranties.

### **3.6(b) Damage, Loss or Destruction of Software Files and/or Data**

You understand that, as part of the installation of the Service, system files on your computer may be modified or deleted. We do not represent, warrant, or covenant that these modifications will not disrupt the normal operations of your computer. For these reasons, WE STRONGLY RECOMMEND, AND YOU AGREE, THAT YOU WILL BACKUP ALL FILES PRIOR TO INSTALLATION AND START-UP OF THE SERVICE. If you do not back up all existing computer files, you understand and accept the risks associated with that decision. We and our contractors and suppliers are not responsible for damage resulting from these or other file modifications.

### **3.7 Modifications of Equipment**

If use or modification of the software, hardware, or equipment we supply requires a visit to your home or business for repair or correction, we reserve the right to charge you for the visit and labor required to correct the situation. We do not undertake to correct or repair software, hardware, or equipment that we do not supply and all corrections or repairs will be at our sole discretion.

## **4. FEES AND PAYMENT**

### **4.1 Monthly Fees**

We will charge you, and you agree to pay, standard monthly fees for the Service. If you lease a cable modem from us, additional monthly charges will apply. You may provide us with credit or debit account information, and we will charge your fees and other charges to that account. Those fees and other charges will appear on your monthly credit card statement, or bank statement, if payment is through your debit card. Subscription fees are not refundable in whole or in part. Each time you use the Service you agree and reaffirm that we are authorized to charge your designated credit card or debit card. Your card issuer agreement governs your use of your designated credit card or debit card in connection with the Service, and you must refer to that agreement with respect to your rights and liabilities as a cardholder. If for any reason you pay by check, we may charge a service fee, in our sole discretion, for any returned check and/or bankcard and/or charge card charge backs.

### **4.2 Pricing Schedule and Billing Questions**

We will charge you in accordance with our Pricing Schedule in effect at the time the Service is provided. The pricing schedule may be included in a Service Guide, may be provided to you with your application for services or in materials that come in your start-up kit, or may be posted at our website. That pricing schedule is incorporated in this Service Agreement by this reference. We can change our fees at any time, pursuant to Section 1.3 of this Agreement.

### **4.3 Billing Questions or Discrepancies**

The pricing schedule and answers to many common billing questions can be found at our website ([www.cablemo.net](http://www.cablemo.net) or [www.cableamerica.com](http://www.cableamerica.com)). You must notify us of any billing problems or discrepancies within 90 days from the date they first appear on your account statement. If you do not bring them to our attention within 90 days, you waive your right to dispute these charges.

### **4.4 Installation Fees**

If we provide installation, you may owe us an installation fee. If you prepaid that installation fee, we will credit that prepaid fee against the installation fee you owe under this section. If you did not prepay, we will bill you for that fee or collect it upon installation, in our discretion. Installation fees are due at the time of installation.

### **4.5 Taxes**

You agree to pay all applicable local, state and federal taxes (including any cable franchise taxes and general sales or use taxes), and any additional telephone company charges that may apply to your service.

### **4.6 Late Fees, Collections Expenses, and Termination for Unpaid Balances**

We expect you to pay your account balance on time. You will also be liable for all attorney and collection fees arising from efforts to collect any unpaid balances on your account. You agree to be charged and to pay any outstanding balance in the event of cancellation, disconnection, or termination of your account. Without limiting any other right we may have to terminate your access to the Service, we may terminate your access to the Service if you fail to pay any fees when they are due, in addition to any other remedies we may have.

## **5. CHARGES FOR ONLINE SERVICES, INTERNET TRANSACTIONS, OR TOLL CHARGES FOR DIAL-UP SERVICES**

### **5.1 Online Services**

Through the Service, you may access certain information, products, and services of others, for which there is a charge. These include, for example, on-line services such as America Online. You agree that you are solely responsible for all fee or charges for these on-line services, products or information.

### **5.2 Internet Transactions**

Some entities offer products and/or services for sale or other types of transactions through the Internet, and charge a price and/or fee for such products, services, and/or transactions. You agree that all of the charges by other entities are in addition to the fees and charges payable to us for access to and through the Service. You are solely responsible for any payments associated with such products, services, and/or transactions.

YOU ALSO AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR PROTECTING THE SECURITY OF YOUR CREDIT CARD INFORMATION FROM UNWANTED OR UNAUTHORIZED CHARGES FOR INTERNET BASED TRANSACTIONS.

## **6. SYSTEM REQUIREMENTS**

You agree to use the Service only for lawful purposes and in accordance with local, state, and federal laws, and the following rules.

WE RESERVE THE RIGHT TO IMMEDIATELY DISCONNECT THE SERVICE TO YOU AND TO TERMINATE THIS AGREEMENT WITHOUT NOTICE FOR ANY REASON, OR NO REASON, AT OUR SOLE DISCRETION INCLUDING WITHOUT LIMITATION, IF YOU OR OTHERS USE YOUR ACCOUNT IN A WAY THAT WE BELIEVE, IN OUR SOLE DISCRETION VIOLATES THE FOLLOWING RULES. ALSO, WE RESERVE THE RIGHT TO IMMEDIATELY REMOVE WITHOUT NOTICE, ANY MATERIAL OR INFORMATION FOR ANY REASON WHATSOEVER AT OUR SOLE DISCRETION (WITH OR WITHOUT TERMINATING YOUR ACCOUNT). YOU AGREE TO WAIVE AND HOLD US HARMLESS FROM ANY AND ALL CLAIMS RELATING TO US AS A RESULT OF ANY REMOVAL OF MATERIALS, OR INFORMATION, DISCONNECTING OF SERVICE TO YOU OR TERMINATION OF THIS AGREEMENT.

If we terminate the Service because you violated this Agreement, our express permission will be necessary before you are allowed to use the service again.

### **6.1 No Violation of Copyright, Trademark, or Trade Secret Rights**

You agree that you will not use the Service to publish, post, distribute, or disseminate another's proprietary information, including but not limited to trademarks, trade secrets, or copyrighted information, without the express authorization of the rights holder.

### **6.2 No Illegal Or Encouragement Of Illegal Behavior**

You agree that you will not use, or allow others to use your account to post, transmit, promote, or facilitate the distribution of any unlawful or illegal material, including but not limited to, material that constitutes or encourages a criminal offense, gives rise to civil liability or otherwise violates any applicable local, state, national, or international law. You will not use the Service to commit a crime, to plan, encourage or help others commit a crime.

### **6.3 No Offensive Content**

You agree that you will not use, or allow others to use, your account to post, transmit, promote, or facilitate the distribution of any threatening, abusive, libelous, defamatory, obscene, pornographic, profane or otherwise objectionable information of any kind.

### **6.4 No "Spamming," Advertisements, or Chain Letters**

You agree that you will not use, or allow others to use, your account to post, transmit, promote, or facilitate in the distribution of any unsolicited advertising (including but not limited to mass or bulk e-mail), promotional materials or any other forms of solicitation to other individuals or entities. You will not post or transmit requests for money to persons not personally known to you, petitions for signature, chain letters or letters relating to pyramid schemes. You will not post or transmit any advertising, promotional materials or any other form of solicitation. We reserve the right, in our sole discretion, to determine whether such post or transmission constitutes an advertisement, promotional material, or any other form of solicitation.

### **6.5 No "Hacking"**

You agree that you will not use, or allow others to use, your account to unlawfully access other computers or services, or to cause a disruption of service to other on-line users.

### **6.6 No System Disruption**

You may not use, or allow others to use, your account to cause disruption of the normal use of the Service by others including without limitation disrupting our backbone network, nodes, services, or any other Internet service provider or backbone provider.

### **6.7 No Web Page Creation**

You agree that you will not use or allow others to use, your account to establish a web page or site on your computer.

### **6.8 No Impersonation Of Others**

You agree that you will not impersonate another user or falsify one's user name in e-mail or in any post or transmission to any newsgroup or mailing list or other similar groups of lists.

### **6.9 No Abuse Of Newsgroups**

You agree that you will not post a single item to more than three (3) newsgroups or mailing lists or other similar groups or lists. You agree that you will not post to any newsgroup or mailing list or other similar groups or lists, items which are off-topic (for example, off-topic according to the charter of the newsgroup or mailing list or other similar groups or lists or if the item provokes complaints from regular readers of the newsgroup or mailing list or other similar groups or lists for being off-topic). You agree that you will not post or transmit any private, third party email to any newsgroup or mailing list or other similar groups or lists without the explicit approval of the sender.

### **6.10 No Violation of Other Laws Or Online Service Rules**

You agree that you will comply with all laws and regulations that govern your conduct in connection with the use of the Service and the Internet. These include restrictions on exportation of encryption software.

### **6.11 Use Of Bandwidth, Excessive or Improper**

CableAmerica is committed to the ongoing management of its network to improve its service offerings, protect customers, and create new services and feature enhancements for its customers. CableAmerica does not shape or throttle Internet traffic based on the particular online content, protocols or applications a customer uses. CableAmerica uses other measures to ensure the best overall experience for our Data customers, including, without limitation: rate limiting of email (as set forth in our email policies), email storage limits (including deletion of dormant or unchecked email), rejection or removal of "spam" or otherwise unsolicited bulk email, and data

usage allowances. CableAmerica also employs other means to protect customers, children, and its network, including blocking access to child pornography (based upon lists of sites provided by a third party and an international police agency), and security measures (including identification and blocking of botnets, viruses, phishing sites, malware, and certain ports). CableAmerica may take any appropriate measures, whether or not they are described above, in response to extraordinary levels of usage, denial of service attacks, or other exigent circumstances that have a significant effect on our subscribers' ability to obtain service or CableAmerica's ability to provide service. CableAmerica will attempt to update and maintain an outage list or notice on its website describing outside "significant effect" issues. It is up to the customer to check for these updates and notices. If we determine, in our sole discretion, that your account is using, or has consistently used, an excessive amount of bandwidth, we may terminate your account at any time and without notice, or require you to upgrade your service level and pay additional fees.

### **6.12 No "Viral" or "Trojan" Infections**

You agree that you will maintain all equipment (including PC's and Clients connected to the Service free of viruses or Trojans (A Trojan is a malicious file used to spread or cause damage to networks, PCs or Clients. Trojans are typically not sent through e-mail messages, but propagate through open ports or operating system vulnerabilities). We reserve the right, in our sole discretion, to determine whether such infection or signs of infection exist. If we find evidence of a virus or Trojan, we will use our best efforts to contact you. We will temporarily suspend your service for at least 24 hours or until the problem can be corrected and confirmed repaired.

### **6.13 No aggressive P2P Clients or Servers**

You agree you will not run aggressive P2P Clients, which cause thousands of connections to your PC per minute, such as Kazaa, BitTorrent, eMule, eDonkey, or other similar software. You agree to not run software that acts like a file server. You agree to not run software that allows others to anonymously connect to a PC or other network appliance on the Service to transmit files like a server. We reserve the right, in our sole discretion, to determine whether such software or signs of software exist.

## **7. SERVICE AND PERFORMANCE**

### **7.1 Service Availability**

We will make reasonable efforts to assure that the Service will be available to you 24 hours per day, 7 days per week. It is possible, however, that there will be interruptions of the Service. You acknowledge and agree the Service may be temporarily limited, interrupted or curtailed for many reasons, including without limitation, limitations of either your or our equipment, software, forward error correction overhead (FEC), 10Base-T Ethernet connections to your PC; network traffic or other technical glitches or malfunctions; system capacity limitations imposed on or experienced by the underlying communications carriers; governmental action; acts of God or other reasons beyond our control; equipment or system failures or modifications, upgrades, maintenance, repairs or similar activities required or appropriate for the delivery or improvement of the Service. With respect to Dial-Up Service, we will make reasonable efforts to assure that we have sufficient capacity and facilities to support our Dial-Up subscribers. It is possible, however, that there will be times during which these facilities will be fully utilized by other subscribers. You acknowledge and agree that Dial-Up Service may be unavailable for reasons beyond our control, such as problems with your local telephone network.

### **7.2 Finite Bandwidth of Cable Modem Service**

CableAmerica offers multiple packages of Service with varying speeds, features and data usage allowances (not all packages are available in all areas). You must comply with the current bandwidth, data storage, email limits and other requirements associated with the package of Service you selected. Information on speeds, usage and other features can be found at CableAmerica's website. You must ensure that your activities do not improperly restrict, inhibit, or degrade any other user's use of the Service, nor represent (in CableAmerica's sole judgment) an unusually great burden on the

network itself. In addition, you must ensure that your use does not improperly restrict, inhibit, disrupt, degrade or impede CableAmerica's ability to deliver the Service and monitor the Service, backbone, network nodes, and/or other network services. If your bandwidth usage exceeds the amount included in your Internet package, CableAmerica may suspend the Service or require you to upgrade the Service to a higher package and/or pay additional fees. In rare cases, CableAmerica may terminate or lower your Service or Service speeds if you have not reduced your bandwidth usage after consultation with CableAmerica.

### **7.3 Shared Network**

The Service is provided on a shared network. The bandwidth used by the Service coexists with cable television service using the same facilities. You and all other users share a large but still limited amount of bandwidth. As a result, depending among other things upon the intensity of customer use of the Service, the bandwidth available to you and the speed of the Service will not always be at optimum levels. We do not guarantee any particular amount of bandwidth. We will, however, manage the Service to provide appropriate bandwidth for as many customers as is reasonably practical.

### **7.4 Disruption of Cable Service**

If you subscribe to the Service, it may affect the video-programming portion of your television service. You waive any and all claims arising out of, or alleged to arise out of, the impact of the foregoing video programming. You also agree to promptly report any problems with your video programming service to the local CableAmerica office by telephone.

## **8. LIMITATION OF LIABILITY: NO WARRANTIES**

### **8.1 No Liability For Content**

We supply access to the Internet through the Service, but we are not the publisher of any information provided by others through the Internet other than information on our own websites. We do not review, censor, or monitor any programs or content sent or accessed over the Internet or made available by any individual user, information provider, online service or content provider. Such content or programs may include, without limitation, programs, or content of an infringing, abusive, profane or sexually offensive nature. All content from other parties accessed via the Service by you and those you have authorized is accessed at your own risk. We are not in any manner responsible for such content or programs. We assume no liability whatsoever for any claims, losses, action, damages, suits or proceedings arising out of or otherwise relating to such content accessed using the Service.

### **8.2 No Liability For Viruses**

Files downloaded from the Internet and/or World Wide Web, any Internet service content or other on-line service provider, or other information provider, may contain corrupted, damaging or self-executable files that could corrupt, destroy or otherwise damage data, files, software and/or hardware on your home computer. Typically these are called "viruses." We make NO REPRESENTATION OR WARRANTY that any software and/or files and/or e-mail you may download from the Internet, the World Wide Web, any other Internet service provider, content provider, on-line service provider or other information provider is free from any viruses or other damaging or destructive attribute. We make no representation or warranty that any software installed on the computer, including software installed by us, our agents, employees and contractors does not contain any virus or other damaging or destructive attribute. We have no responsibility, and assume no liability for, such acts or occurrences.

### **8.3 No Liability for Unauthorized Access**

Because the Service is a shared network, and because it provides access to the Internet and the World Wide Web, it is possible that others may access or monitor the data you send and/or receive to and/or from the Internet and/or the Service. Also, the Internet uses facilities that are generally used for public access to transmit voice and data communications. For these reasons, the Service may not be

completely private or secure. Accordingly, we do not warrant that any data or files you send over the Service and/or receive through the Service will be free from unauthorized access by others, or that other users (often called "hackers") would be unable to gain access to your computer. You agree that we are not liable for any claim, loss, damage or costs that may result from your lack of privacy or breach of security on or through the Internet and/or the World Wide Web or otherwise through your use of the Service. If you choose to run applications from your computer that permits others to gain access to it, you must take appropriate security measures. Failure to do so may cause immediate termination of the Service by us. We are not responsible for and assume no liability for any damages resulting from others accessing your computer.

### **8.4 Peer-To-Peer Networking**

Some software includes capabilities that permit other users across a network such as the Service or the Internet to gain access to your computer and to the software, files and data stored on the computer. For example, operating systems such as Windows 95/98 and Apple Macintosh include file sharing and print sharing capabilities which, when enabled, may permit other users to gain access to your computer even if you are not using the Service. The Service is typically configured NOT to permit peer-to-peer networking or file sharing. If you request that we enable that feature, we may ask you to sign a separate release and liability waiver through which you would acknowledge the extreme security risks to your computer and the privacy of your data and files associated with peer-to-peer networking. Moreover, if you choose to run an application that might permit others to gain access to your computer, you do so at your own risk and should take appropriate security measures. You may want to consider installing third-party authentication encryption software to protect your hardware, data, and/or e-mail files. We shall have no liability for any claims, losses, actions, damages, suits and proceedings arising out of or otherwise relating to use of peer-to-peer networking, file-sharing, and/or authentication encryption software by you.

### **8.5 NO WARRANTY/LIMITATION OF LIABILITY/YOUR EXCLUSIVE REMEDY**

YOU EXPRESSLY AGREE THAT USE OF THE SERVICE, SOFTWARE, AND EQUIPMENT SUPPLIED BY US OR OUR AGENTS, EMPLOYEES OR CONTRACTORS (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "COMPANY") IS AT YOUR SOLE RISK. THE SERVICE, EQUIPMENT AND SOFTWARE SUPPLIED BY THE COMPANY ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION.

THE COMPANY'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF THE SERVICE, E-MAIL SERVICES, SOFTWARE, AND EQUIPMENT, AND/OR ANY BREACH BY US OF ANY OBLIGATION WE MAY HAVE UNDER THIS AGREEMENT SHALL BE YOUR ABILITY TO TERMINATE THE SERVICE UNDER SECTION 10 OF THIS AGREEMENT OR THE REPLACEMENT OF ANY DISKETTE OR CABLEAMERICA SUPPLIED EQUIPMENT FOUND TO BE DEFECTIVE. IN NO EVENT SHALL CABLEAMERICA'S LIABILITY TO YOU, FOR ANY CLAIM ARISING OUT OF THIS SERVICE AGREEMENT, EXCEED THE AMOUNT PAID BY YOU TO ACCESS AND USE THE SERVICE WITHIN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. IN NO EVENT SHALL CABLEAMERICA BE LIABLE, EVEN UPON THE FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY, FOR ANY INCIDENTAL, DIRECT, INDIRECT PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING IN ANY MANNER OUT OF THE INSTALLATION, MAINTENANCE, FAILURE, REMOVAL OR USE OF THE SERVICE, E-MAIL SERVICES OR CABLEAMERICA SUPPLIED SOFTWARE OR EQUIPMENT.

### **8.6 NO WARRANTY, NOR LIABILITY FOR INTERNET CONTENT OR TRANSACTIONS**

YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE INTERNET. GENERALLY IT IS ALSO SOLELY YOUR

RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS, USEFULNESS OR VALIDITY OF ALL OPINIONS, ADVICE, SERVICE, PROMOTIONS, ADVERTISEMENTS, AWARDS, PRIZES OR OTHER INFORMATION, AND THE QUALITY AND MERCHANTABILITY OF ALL MERCHANDISE, PROVIDED THROUGH THE INTERNET OR ON THE INTERNET GENERALLY. NEITHER WE, NOR OUR AFFILIATES OR SUBSIDIARIES, MAKE ANY REPRESENTATIONS, WARRANTIES OR ENDORSEMENTS, EXPRESS OR IMPLIED, WITH REGARD TO THE INTERNET OR ANY MERCHANDISE, INFORMATION OR SERVICE PROVIDED THROUGH THE INTERNET OR ON THE INTERNET GENERALLY, OR AS TO THE ACCURACY, QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE OF ANY MATERIALS ACCESSED THROUGH THE INTERNET. WITH RESPECT TO THE SERVICE, E-MAIL SERVICES AND OUR SOFTWARE AND EQUIPMENT, WE HEREBY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT ENDORSE, WARRANT OR GUARANTEE ANY PRODUCT OR SERVICE OFFERED THROUGH THE SERVICE OR THE INTERNET AND WILL NOT BE IN ANY WAY RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD PARTY PROVIDERS OF PRODUCTS OR SERVICES. YOU ARE SOLELY RESPONSIBLE FOR ALL COSTS OR CHARGES YOU INCUR THROUGH YOUR PURCHASING OR OTHER ACTIVITIES THROUGH OR ON THE INTERNET.

### **8.7 No Liability For Use In A Hazardous Environment**

The Software is not fault-tolerant. It is not designed, manufactured or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage. Our licensors and we specifically disclaim any express or implied warranty for fitness for such use.

## **9. INDEMNIFICATION**

If the use of your account causes us to be exposed to legal claims, you are responsible for the cost of defending against such claims. You agree to defend, indemnify and hold harmless us, our officers, directors, employees, affiliates and subsidiaries and telecommunications providers from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs and expenses (including attorneys' fees) arising out of or relating to any acts by you (or others who use your account) or materials or information transmitted by you (or others who use your Account) in connection with this Service Agreement, the Service or the Internet. This includes any illegal or improper use of the Account by those individuals whom you authorized to use your Account or who have accessed your Account due to your negligence or carelessness. If we choose, we may (but we will have no obligation to) monitor the defense of any matter otherwise subject to indemnification by you, and you will take such steps (including providing direction to your legal counsel) as we may request to assure us full access to all information about the defense of the matter. In addition, or in the alternative, if we choose we may (but we will have no obligation to) assume control of the defense of any matter otherwise subject to indemnification by you, using your counsel, or through our own separate counsel (or both), all at your cost and expense (including all attorneys' fees, whether your or our counsel) and without derogating your indemnity obligations. In any event, regardless of who controls the defense of any matter otherwise subject to indemnification by you, no settlement of any such matter may occur without our prior written consent, which we may give or withhold in our discretion.

## **10. TERMINATION OF SERVICE**

### **10.1 Termination By Either Party**

Either you or we may terminate or cancel your account at any time. In the event that your account is terminated or cancelled, no refund,

including any fees you have paid to us, will be granted; no online time or credits (for example, points in an online game) will be credited to you, nor can it be converted to cash or another form of reimbursement. If you or we terminate your account, we reserve the right to require you to change your login name and/or password(s) and your e-mail addresses, to delete all program or data files associated with the Account, and/or take any other actions we may deem appropriate to terminate fully all of your rights, access to, and/or use of the Service. We have no obligation to visit your home or office upon termination to reconfigure your computer, and we will not do so.

### **10.2 Termination Methods**

You may terminate your Account by delivering notice to our billing department by calling your local CableAmerica office. You must still pay for all charges, including late charges, accrued until your password and e-mail account has been deactivated, including full monthly charges for the month in which the termination occurs. We reserve the right to collect fees, surcharges, or costs incurred before you cancel your account. In addition, you are responsible for any charges incurred to third-party vendors or content providers prior to your cancellation.

### **10.3 Sole Remedy Is In Section 8**

If you have any dispute with us, and we do not resolve it to your satisfaction, your only remedy is as provided in Section 8 above. Unresolved disputes include, but are not limited to, any dispute related to, or arising out of: (1) any term of this Agreement or out enforcement or application of this Agreement; (2) any of our practices or policies; (3) the content available through the Service or the Internet or any change in the content provided through the Service; (4) your ability to access or use the service; (5) the amount or type of fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods; or (6) our replacement or attempted replacement of any diskette CableAmerica supplied equipment found to be defective.

### **10.4 Survival Of Provisions Of This Agreement**

The provisions of Section 4 (Fees and Payment), Section 8 (Limitation of Liability), Section 9 (Indemnification), Section 10.4 (Survival of Provisions of this Agreement), Section 11 (Proprietary Rights), Section 12 (Miscellaneous), and Section 13 (Privacy Procedures) shall survive any termination of this Service Agreement. This means that those provisions remain in effect as between you and us even after this Service Agreement has been terminated.

## **11. PROPRIETARY RIGHTS**

Except as may be provided by law [or Section 13 of this Agreement], by posting messages, uploading files, inputting data, or engaging in any form of communication (collectively, "Communications") in or through the Internet, you are granting to us a perpetual, irrevocable, worldwide non-exclusive license (the "License") to use, perform, display, copy, modify, adapt or document such Communications. We may use the Communications and any derivative works thereof in conjunction with providing, promoting, distributing or otherwise exploiting the Service, and you shall have no recourse against us for any alleged or actual infringement of any proprietary rights to which you may claim ownership as a result of such actions. Except as provided in this Service Agreement, the License does not grant us any ownership rights in or to your Communications. We and/or our suppliers own all rights, title, and interest in and to all components of the Service, but expressly excluding content owned by third parties that may be accessible through the Service and/or the Internet generally. Our ownership rights in the Service include, but are not limited to, the look and feel of the end-user interfaces associated with the Service, the name of the Service, and the collective works consisting of all public messages on the Service. You may not reproduce any sequence of messages from the Service without our permission.

## **12. MISCELLANEOUS**

### **12.1 Entire Agreement**

This Service Agreement, including the Services Guide, if any, and the Pricing Schedule mentioned in Sections 1.2 and 4.2, constitutes the entire agreement between you and us with respect to the Service.

## **12.2 No Rights Or Remedies For Third Parties**

You agree that this Service Agreement is not intended to give and does not give any rights or remedies to any person other than you and us.

## **12.3 Enforceability**

You agree that this Agreement is enforceable against you in accordance with its terms. You waive any objections to its enforcement, including any claim that it is a "contract of adhesion."

## **12.4 Governing Law**

This Service Agreement and all matters arising out of or related to this Service Agreement will be governed by and construed in accordance with the laws of the state of Arizona, without regard to conflicts of laws provisions. Both parties hereby expressly reject the application of the United Nations Convention on Contracts for the International Sale of Goods.

## **12.5 Jurisdiction**

You agree that sole and exclusive jurisdiction for any action or proceeding arising out of or related to this Service Agreement will be an appropriate state or federal court located in Maricopa County, Arizona. You further agree and expressly consent to the exercise of personal jurisdiction in the courts of Arizona in connection with any dispute arising out of or related to this Service Agreement, including any claim involving us or our affiliates, subsidiaries, employees, contractors, officers, directors, and telecommunications providers.

## **12.6 Statute of Limitations**

Any cause of action you may have with respect to the Service, the E-Mail Services, our software, or our equipment must be commenced within one (1) year after the claim or cause of action arises.

## **12.7 Severability**

If for any reason a court of competent jurisdiction finds any provision of this Service Agreement, or portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible so as to affect the intent of this Service Agreement, and the remainder of this Service Agreement will continue in full force and effect.

## **12.8 No Assignment**

You may not assign this Agreement or your rights or obligations under this Agreement without our prior written consent.

## **12.9 Notices**

You may provide notice to us of any matters affecting this Agreement at the following address: CableAmerica Broadband, 7822 E. Gray Rd. Scottsdale, Arizona 85260 emailing us at [helpdesk@cablemo.net](mailto:helpdesk@cablemo.net). You agree that we may deliver notice to you by means of electronic mail on the Service, a general notice on our website ([www.cablemo.net](http://www.cablemo.net) or [www.cableamerica.com](http://www.cableamerica.com)) or by written communication delivered by first class U.S. mail to your address on record in our account information.

## **12.10 Waiver**

Except as otherwise provided herein, the failure of any part to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

## **12.11 Export**

The United States export control laws regulate the export and re-export of technology originating in the United States. This includes the electronic transmission of information and software to foreign

countries and to certain foreign nationals. You agree to abide by these laws, including but not limited to the Export Administration Act, the Arms Export Control Act and their implementing regulations, and not to transfer, by electronic transmission or otherwise, any content derived from the Service to either a foreign national or a foreign destination without first obtaining any required government authorization. You further agree not to upload to the Service any data or software that cannot be exported without prior written government authorization.

## **12.12 Force Majeure**

We shall not be liable in any way for interruption or delay due to causes beyond our reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor disputes, inability to obtain the necessary supplies and the like.

## **12.13 Section Titles**

The section titles in this Service Agreement are for convenience only and have no legal or contractual effect.

## **12.14 General Information**

The name, address and telephone number of the provider of the Service is:

Cable America Missouri LLC  
7822 E. Gray Rd.  
Scottsdale, Arizona 85260  
1.866.871.4492

Charges to you imposed by CableAmerica for use of the Service are as follows:

Current rates for using the Service are in our Pricing Schedule, which may be provided to you with your installation kit, may be included in our Services Guide or may be posted at our website ([www.cablemo.net](http://www.cablemo.net) or [www.cableamerica.com](http://www.cableamerica.com)). We reserve the right to change fees, surcharges, and monthly fees or to institute new fees at any time, all pursuant to Section 1.3 of this Agreement.

## **13. CABLE PRIVACY ACT STATEMENT**

### **13.1 The Cable Privacy Act**

As a CableAmerica Broadband customer, you are entitled under federal law to this statement about our collection, use and disclosure of certain information about you. By using the Service, you consent to these practices as described below.

### **13.2 Business Records - Information Collected/Nature of Use**

CableAmerica collects information on use of our Broadband Internet service ("Service") as necessary to render the Service, or otherwise undertake legitimate business activities related to the Service, and to comply with law. So that we may provide reliable, high-quality service, maintain adequate records, and send you pertinent information about the Service, we keep regular business records that contain your name, address, telephone numbers, other relevant billing information and other personally identifiable information. Such records include billing, payment, deposit, complaint and service information and other information you have furnished to us, such as equipment specifications and the service options you have chosen. We may also collect and maintain information about you that enables us to provide a more personalized online experience, such as your locale and preferences you indicate with respect to service options. CableAmerica may also collect information in accordance with applicable law concerning your use of the Service and your preferences which are reflected in the choices that you make among the range of services offered as part of the Service, the time that you actually use the Service, the menus and features used most often by you, and other information about your "electronic browsing."

We use the above-described information to sell, maintain, disconnect and reconnect services; to make sure that you are being billed

properly for the services you receive; and to maintain financial accounting, tax, service and property records, including records required by the terms of any local franchise applicable to the Service. With certain information we collect and maintain, like your locale, we can deliver to your area appropriate weather, sports or news information.

### 13.3 Inspection Rights

You have the right to inspect our records that contain information about you and to correct any errors. If you wish to inspect such records, please contact Customer Service to set up an appointment during regular business hours at our offices. Your inspection of records is limited to records containing information about you; you are not entitled to inspect records containing information about other customers, and you are not entitled to access our billing system.

### 13.4 Confidentiality of Business Records - Disclosure - Nature/Frequency/Purpose

We consider information we keep to be confidential. We may collect personally identifiable information from you and disclose it to a third party, if disclosure is necessary to render data services and other services we provide to you and to conduct related business activities. In that regard, we may make your records available routinely to our employees, agents and contractors to install, market, provide and audit services; to an independent billing house to send bills; to a mailing service to send information about other CableAmerica products and services that complement the Service; to programmers and outside auditors to check our records; to attorneys and accountants as necessary to render service to us; to potential purchasers of our business in connection with a potential sale of that business; to local franchise authorities to demonstrate compliance with any applicable local franchise terms; to collection services if required to collect past due bills; and to one or more third parties if necessary to render a service to you or to conduct a legitimate business activity related to such service. The frequency of disclosure varies according to business needs. We also may electronically test the system from time to time to determine whether you are being billed properly for the services you are receiving. We will take reasonable precautions to prevent unauthorized access to the information.

### 13.5 Right To Monitor Communications and Disclose Information

It is generally our policy not to share personal information about you. However, we have the right to monitor our Broadband service. In addition, we may disclose personal information about you and/or your account at our sole discretion under the circumstances described below.

#### 13.5(a) Mandatory Disclosure to Government Entities

Under the USA PATRIOT Act of 2001 ("Act"), a governmental entity may require us to disclose certain information concerning your subscriber account for the Service. If we receive a subpoena, we are required to disclose to the government the following records without advance notice to you: your name and address; records of your Internet sessions (including session times and duration); how long you have subscribed to our service(s) (including start date and the type(s) of service(s) utilized; your telephone number or other subscriber account identifying number(s), including any Internet or network address(es) assigned to you by our network; and the means and source of your payment(s) (including any credit card or bank account number). In addition, if we receive a Federal or State search warrant or court order, we are required to disclose to law enforcement agencies the content of and other records relating to electronic mail messages (including attachments to electronic mail messages and records relating to your electronic mail and Internet use), without advance notice to you.

Please also note that law enforcement agencies may, by Federal or State court order, and without notice to you, obtain the right to install a device that monitors the addressing and routing of your Internet and electronic mail use, but not the contents of your electronic mail.

#### 13.5(b) Voluntary Disclosure to Government Entities

The Act also allows us to voluntarily disclose certain information to law enforcement agencies and governmental entities in circumstances of immediate danger. If we reasonably believe that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay, we may voluntarily disclose to law enforcement agencies, without advance notice to you, the contents of your cable Internet subscriber communications. The Act, under certain conditions, also allows the government, at our request, to intercept the communications of a computer trespasser, without obtaining a court order or search warrant. Finally, we may also disclose to law enforcement agencies the contents of your Internet communications that were inadvertently obtained and appear to pertain to the commission of crime.

#### 13.5(c) Other Disclosures

CableAmerica may also disclose personal information about you and/or your account at our sole discretion in order to comply with the Digital Millennium Copyright Act or any other laws, to enforce our Acceptable Use Policy, to protect the integrity of CableAmerica's operations, or to protect our customers. In such circumstances, CableAmerica may disclose your personal information to private individuals or to government entities.

### 13.6 Third Parties

You should be aware that third parties might acquire information about you when you use or visit their websites, software, or services via CableAmerica Broadband. We do not undertake to monitor, and may not be capable of monitoring, the collection, use or disclosure of such information by third parties and we are not liable for third party collection or use of information about you.

### 13.7 Mailing Lists and Removal

Unless you expressly object in writing, we may also, from time to time, disclose your name and address for mailing lists and other purposes permitted by law. We will not disclose the extent of use of a particular service or the nature of any transaction you may make over the cable system, but we may disclose that you are among those who subscribe to a particular service. If you wish to remove your name from such lists or limit the use of your name at any time, please so advise us by sending a written request to that effect to us. This request should specify your name, address, service account number, and the specific action(s), which you wish us to take on your behalf. Send this request to Customer Service, CableAmerica Broadband, 7822 E. Gray Rd, Scottsdale, Arizona 85260, by certified mail, return receipt requested. Within a reasonable time after receipt of such request, we shall remove your name from such lists or limit the use of your name.

### 13.8 Retention of Records -Maintenance Period

We will maintain information about you as long as we provide service to you and for a longer time if we deem it necessary (in our sole discretion) for our business purposes. When we decide that information is no longer necessary for our purposes, we may periodically destroy the information unless there is a legitimate request or order to inspect the information still outstanding.

## SUBSCRIBER ACKNOWLEDGEMENT

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Customer's Signature

\_\_\_\_\_  
Date