



## Subscriber Agreement

Pursuant to this agreement Fibersphere Communications, Inc. an Oregon Corporation (“Fibersphere,” “we,” “us,” “our”) will provide you (“you,” “your,” or “Subscriber”) with bulk internet service included in your Homeowners Association Dues (the “Service”) on the terms and conditions set forth in this Subscriber Agreement (this “Agreement”). For purposes of this Agreement, “affiliate” means any entity that controls, is controlled by or is under common control with Fibersphere.

### Required Equipment

You understand and agree that the Service requires certain equipment provided by you, including but not limited to, a personal computer, an Ethernet or other networking device, if required, and an appropriate operating system (the “Customer Equipment”), as well as certain other equipment installed and/or provided by Fibersphere or its affiliate, including but not limited to, software, hardware, and external wiring owned by Fibersphere (“Fibersphere Equipment”). Fibersphere reserves the right to provide the Service only to the extent that you use equipment, including but not limited to a gateway/router, that is compatible with the Service and meets Fibersphere’s specifications and requirements. If you use any equipment that is not compatible with the Service or does not meet Fibersphere’s specifications and requirements, you may not be able to use the Service or some features of the Service and we reserve the right to terminate the Service. Whether a gateway/router, or other device is owned by you or us, we have the unrestricted right, but not the obligation, to request that you upgrade or change the firmware in gateway/router, or other device at any time that we, in our sole discretion, determine is necessary or desirable in order to provide the Service to you in accordance with our specifications and requirements. In certain cases, you may need additional specific equipment in order to receive certain Service features and/or functions. All of this equipment must also meet Fibersphere’s specifications and requirements. You understand any upgrades, patches or other fixes to firmware, software, drivers or configuration changes requested by Fibersphere or its affiliates, Fibersphere does not warrant, guarantee the equipment will function correctly thereafter and may cause irreparable harm, any incidental costs incurred by performing upgrades, patches or other fixes and resulting costs relating to the repair or replacement thereof is your sole responsibility and not that of Fibersphere or its affiliates. If you use any equipment that is not compatible with the Service or does not meet Fibersphere’s specifications and requirements, you may not be able to use the Service or some features of the Service and we reserve the right to terminate the Service. Whether a gateway/router, or other device is owned by you or us, we have the unrestricted right, but not the obligation, to

upgrade or change the firmware in gateway/router, or other device at any time that we, in our sole discretion, determine is necessary or desirable in order to provide the Service to you in accordance with our specifications and requirements. We may perform these upgrades or changes remotely or on the Premises as we determine in our sole discretion. In certain cases, you may need additional specific equipment in order to receive certain Service features and/or functions. All of this equipment must also meet Fibersphere’s specifications and requirements;

### Access to Customer’s Premises

You authorize Fibersphere and its employees, agents, contractors, and representatives to enter your premises at which the Service will be accessed (the “Premises”) in order to install, configure, maintain, inspect, repair and remove the Fibersphere Equipment, and to install, configure and inspect the Customer Equipment. All such access will occur during normal business hours or by appointment. You warrant that you are the owner of, or a tenant in, the Premises, and that you have the authority to enter into this Agreement. If you are not the owner of the Premises, upon request, you will supply us with the owner’s name and address, evidence that you are authorized to grant access to the Premises on the owner’s behalf and (if requested by Fibersphere) written consent from the owner of the Premises. You agree to indemnify, defend and hold harmless Fibersphere and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) arising out of any breach of this Section;

### Fibersphere Equipment

The Fibersphere Equipment will at all times remain the property of Fibersphere or its affiliate. You acknowledge that the Fibersphere Equipment is merely a means through which the Service is provided by us and may be removed or changed by us at our discretion as we deem appropriate, including through “downloads” to your computer(s) or otherwise. You agree not to use the Fibersphere Equipment for any purpose other than to use the Service pursuant to this Agreement. During the term of this Agreement, Fibersphere will repair and maintain all Fibersphere Equipment and you agree



that the Fibersphere Equipment will not be serviced by anyone other than Fibersphere employees, agents, or designees. You shall not sell, transfer, lease, encumber, or assign all or part of the Fibersphere Equipment to any third party. You will not relocate the Fibersphere Equipment. At your request, we may, at an additional charge, relocate the Fibersphere Equipment within the Premises at a time agreed to with you. You shall pay to Fibersphere the full cost for the replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered, or assigned Fibersphere Equipment or part thereof, together with any incidental costs incurred by us relating to the replacement of the Fibersphere Equipment or part thereof;

#### **Customer Equipment**

NEITHER Fibersphere NOR ANY OF ITS AFFILIATES, SUPPLIERS, OR AGENTS WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICE. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT, INCLUDING WITHOUT LIMITATION, CUSTOMER'S COMPUTER, PERIPHERALS, SOFTWARE OR DATA. NEITHER Fibersphere NOR ANY OF ITS AFFILIATES, SUPPLIERS, OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement. In addition, Fibersphere reserves the right to terminate Service in the event of your use of a Non-Recommended Configuration.

#### **Ownership of Addresses**

You acknowledge that use of the Service does not give you any ownership or other rights in any Internet/on-line addresses provided to you, including but not limited to Internet Protocol ("IP") addresses. We may modify or change these addresses at any time without notice and shall in no way be required to compensate you for these changes.

#### **IP Addresses**

Fibersphere will provide you with a private dynamic Internet protocol ("IP") address(es) as a component of the Service and these IP address(es) can and do change over time. You will not alter, modify, or tamper with these dynamic IP address(es) or those of any other subscriber. You agree not to use a dynamic domain name server or DNS to associate a host name with the public IP address(es) for any commercial purpose. You also agree not to use any software on or in conjunction with any computer(s) or network device connected to the Service that provides for static IP address(es). If applicable, Fibersphere will release and/or recover the dynamic IP address(es) upon disconnection, discontinuance, or termination of the Service or this Agreement. In addition, you may only access and use the Service with a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). You may not configure the Service or any related equipment to access or use a static IP address or use any protocol other than DHCP unless you are subject to a Service plan that expressly permits otherwise. You may not use your own DHCP server that broadcasts IP Address assignments on the Network; Fibersphere reserves the right to terminate the Service without prior notice in the event a DHCP server is detected on your connection.

#### **Authorization**

Fibersphere does not claim any ownership of any material that you publish, transmit or distribute using the Service. By using the Service to publish, transmit or distribute material or content, you warrant that the material or content complies with the provisions of this Agreement, consent to and authorize Fibersphere, its agents and affiliates to reproduce, publish, distribute, and display the content worldwide and warrant that you have the right to provide this authorization. You acknowledge that material posted or transmitted using the Service may be copied, republished or distributed by third parties, and you agree to indemnify, defend and hold harmless Fibersphere, its agents and affiliates for any harm resulting from these actions.

#### **Subscriber Content, Backups, and Data Loss**

To prevent any loss of content, Fibersphere highly recommends that any content stored on Fibersphere servers on behalf of the Subscriber, that such content have a backup copy stored elsewhere in a secure location in the event of a hardware or system failure. Fibersphere assumes no liability for any information published to any server including all Subscriber web site content, related files, backup files, databases or mail belonging to the Subscriber. Fibersphere assumes no liability for lost of content in the event a hardware or system failure occurs and data maintained on the affected servers cannot be recovered.

#### **Access to Subscriber Content**

Access to Subscriber content is provided at any time unless the system is unavailable for service, maintenance, or service outage. It is the sole responsibility of Subscriber to insure that they maintain their own backup copy of any materials placed on the Hosting Servers, or of any database maintained on any server operated by Fibersphere in the event the content is lost. AT NO TIME SHALL Fibersphere ASSUME ANY LIABILITY FOR LOST SUBSCRIBER CONTENT.

#### **Charges Resulting From Service Usage**

The Service will allow you, with some restrictions, to access the Internet, content providers, providers of services, on-line services and other information. You acknowledge that you may incur charges on account of such access or usage through the Service separate and apart from the Service. In addition, you may incur charges as a result of accessing on-line services or purchasing or subscribing to other offerings via the Internet or otherwise. You agree that all charges payable to third parties, including all applicable taxes, are your sole responsibility. In addition, you are solely responsible for protecting the security of credit card and other banking or sensitive personal information provided in connection with such transactions.

#### **Subscriber Privacy**

Fibersphere will not read or disclose to third parties private e-mail or instant messaging service communications that are transmitted using the Service except as required to operate the service or as otherwise authorized by law. Fibersphere may also use subscriber identifiable information to investigate and help prevent potentially unlawful activity or activity that threatens the network or otherwise violates this Agreement or the Acceptable Use Policy and Agreement.



### Information Provided To Third Parties

The Service will allow you to access third parties, including without limitation, content providers, on-line services and other providers of goods, services, and information. Some of these goods, services, and information may be accessible directly from the Service, and others may be accessible from the third parties referenced above. In connection with this third party access, you may be requested or required to provide your name, address, telephone number, credit card number, and other personally identifiable information to such third parties. Fibersphere is not responsible for any such information provided by you to third parties, and this information is not subject to the privacy provisions of this Agreement or the Service. You assume all privacy and other risks associated with providing personally identifiable information to third parties via the Service. For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

### Acceptable Use Policy

Prohibited Uses of the Service. You expressly agree not to use the Fibersphere Service, directly or indirectly, to undertake or accomplish any unlawful purpose or in violation of any posted Fibersphere policy applicable to the Service, including without limitation, any Fibersphere Acceptable Use Policy and Agreement (the "AUP") or other policy posted at <http://www.fibersphere.net/customer/policies/aup.pdf> about which you have been notified, and that the AUP or other policy may be modified by Fibersphere from time to time without notification. Notwithstanding, anything to the contrary in this Agreement, you acknowledge and agree that the terms of the AUP and any other applicable Fibersphere policies may be put into effect or revised from time to time without notice by posting a new version of the AUP or the other policy as set forth above. Accordingly, you and other users of the Service should consult the AUP and all other posted policies regularly to conform to the most recent version.

### Prohibited Uses of the Service

Use of the Fibersphere Equipment or the Service for transmission or storage of any information, data, or material in violation of any federal, state, or local law, or regulation is prohibited. In addition the Service is to be used, and you expressly agree to use it, solely in your private residence. Without limiting the generality of the foregoing, the Service is for personal and non-commercial use only and you agree not to use the Service for operation as an Internet service provider, a server site for ftp, telnet, rlogin, e-mail hosting, "web hosting", file sharing, peer-to-peer file sharing or other similar applications or services, for any business enterprise, whether for profit, non-profit or otherwise, or as an end-point on a non-Fibersphere local area network or wide area network.

### Representations and Warranties of Subscriber

You represent and warrant that you are at least 18 years of age.

### Subscriber Information

The Subscriber information that you have provided and will provide to Fibersphere during the term of this Agreement, including without limitation, your legal name, address, telephone number(s), the number of computers on which the Service is being accessed is accurate, complete, and current. You agree to promptly notify

us, in accordance with the terms of this Agreement, if there is any change in the information that you have provided to us. Failure to provide and maintain accurate information constitutes a breach of this Agreement.

### Notification of Moving or Vacating Residence

The Subscriber agrees to contact Fibersphere within 30 days prior to moving or vacating the residence where the service is being provided of the intent to move and terminate the service.

### Subscriber's Obligation of Notification

If Subscriber owns the Premises, Subscriber is solely responsible for disclosing to any homebuyer that buys the Subscriber's home the general terms and obligations of the Service set forth in this Agreement and the terms and obligations set forth in the Acceptable Use Policy and Agreement.

### Multiple Users

The Service and the Fibersphere Equipment shall be used only by you and by members of your immediate household living with you at the same address. You acknowledge that you are executing this Agreement on behalf of all persons who use the Fibersphere Equipment and/or Service by means of the Subscriber Equipment. You shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement. You further acknowledge and agree that you are solely responsible for and liable for any and all breaches of the terms and conditions of this Agreement, whether the breach is the result of use of the Service and/or the Fibersphere Equipment by you or by any other user of the Subscriber Equipment. You agree to indemnify, defend, and hold harmless Fibersphere and its affiliates and agents against all claims and expenses (including reasonable attorney fees) arising out of the use of the Service and/or the Fibersphere Equipment or the breach of this Agreement by you or any other user of the Subscriber Equipment.

### Export Laws

You will comply with all export and re-export control laws, including but not limited to the Export Administration Act, the Arms Export Control Act and their implementing regulations, and you will not 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 via the Service any data or software that cannot be exported without prior written government authorization. The terms "export" and "re-export" mean transferring or releasing technology to another country or to a national of another by any means - physical, electronic, or otherwise. This includes the electronic transmission of information and software to foreign countries and to certain foreign nationals.

### No Tampering

You will not service, alter, modify, or tamper with the Fibersphere Equipment or with the Service, or permit any other person (unless authorized by Fibersphere) to do so. This prohibition includes, without limitation, altering the Ethernet port or optical network termination devices or enclosures housing such equipment installed in your residential home. You also agree to pay a reasonable repair fee to

Fibersphere or its affiliates to restore connectivity in such case it is determined by the discretion of an authorized Fibersphere technician upon inspection the equipment was tampered with.

#### **Limitation of Accessibility to Some Services**

The Fibersphere Service is a public addressable network meaning that the IP address assigned to you will be publicly accessible on the internet outside the Fibersphere network. Fibersphere makes no provisions, warranties either expressed or implied as to what service may or may not be accessible.

#### **Theft of Service**

You will not connect the Service or any Fibersphere Equipment to more computers, either on or outside of the Premises, than are reflected in your disclosure with us. You acknowledge that any unauthorized receipt of the Service constitutes theft of service, which is a violation of federal law and can result in both civil and criminal penalties. In addition, if the violations are willful and for commercial advantage or private financial gain, the penalties may be increased.

#### **Termination and Expiration**

The term of this Agreement shall commence upon the installation of your Service, and shall continue on a month to month basis thereafter until terminated as provided for in this Agreement or until superseded by a revised Subscriber Agreement.

#### **Termination by Subscriber**

You may terminate this Agreement for any reason at any time by providing Fibersphere with verbal or written notice of termination, in accordance with the terms of this Agreement. By terminating this agreement does not constitute a right to relinquish your obligation to pay your monthly HOA dues.

#### **Termination by Fibersphere**

We may terminate this Agreement at any time without prior notice if you fail to comply in full with any term of this Agreement, or for any other reason without notice to you.

#### **Retention of Rights**

Nothing contained in this Agreement shall be construed to limit Fibersphere's rights and remedies available at law or in equity.

#### **Survivability**

All representations, warranties, indemnifications, and limitations of liability contained in this Agreement shall survive the termination of this Agreement, as well as any other obligations of the parties hereunder which, by their terms, would be expected to survive such termination or which relate to the period prior to termination.

## **Limitation of Liability; No Warranties; Warnings**

#### **Limited Warranty**

THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER Fibersphere NOR ITS AFFILIATES OR AGENTS WARRANT THAT ANY CONNEC-

TION TO, TRANSMISSION OVER, OR RESULTS OF THE Fibersphere EQUIPMENT, OR THE SERVICE WILL MEET SUBSCRIBERS REQUIREMENTS, OR WILL PROVIDE UNINTERRUPTED USE, OR WILL OPERATE AS REQUIRED, UNINTERRUPTED, AT ANY MINIMUM SPEED, OR ERROR FREE. THERE WILL BE NO REMEDY FOR SERVICE INTERRUPTION IN THE EVENT OF COMPLETE FAILURE OF THE SERVICE DUE TO A TECHNICAL MALFUNCTION. NEITHER Fibersphere NOR ITS AFFILIATES OR AGENTS WARRANT THAT ANY DATA OR FILES SENT BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY, ARE HEREBY EXCLUDED.

#### **Limitation of Liability**

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, IN NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (INCLUDING WITHOUT LIMITATION TORT, CONTRACT, AND OTHERWISE), SHALL Fibersphere OR ITS AFFILIATES OR AGENTS HAVE ANY LIABILITY TO SUBSCRIBER OR TO ANY PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL, LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, AND PERSONAL INJURIES (INCLUDING DEATH), RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, REMOVAL OR USE OF THE SERVICE OR THE Fibersphere EQUIPMENT OR SUBSCRIBER'S RELIANCE ON OR USE OF THE Fibersphere EQUIPMENT OR THE SERVICE, INCLUDING WITHOUT LIMITATION, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE FAILURE OR MALFUNCTION, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE Fibersphere SERVICE; OR ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE Fibersphere EQUIPMENT OR THE SERVICE BY SUBSCRIBER OR ANY OTHER PERSON OR ENTITY INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.

#### **No Liability for Viruses and Vulnerabilities**

Fibersphere makes no representation or warranty that any software or content installed on your computer(s) or downloaded or incidentally transmitted via the Service does not contain a virus or other harmful feature and it is your sole responsibility to take appropriate precautions to protect any computer or other hardware of yours from damage to its software, files, or data as a result of any such virus or other harmful feature. Fibersphere makes no representation or warranty that any operating software vulnerabilities installed on your computer(s). It is recommended that regular security patches or



updates are frequently checked for and installed as a preventative measure to inhibit the proliferation and spread of potential exploits. We may, but are not required to, terminate all or any portion of the installation or operation of the Service if a virus or vulnerability exposure is found to be present on your system. We are not required to provide you with any assistance in removal of the virus or vulnerability. If we decide, in our sole discretion, to install or recommend to install or run virus scanning software or install patches or updates on your computer(s), we make no representation or warranty that the virus checking software, patches, or updates will detect or correct any or all viruses or vulnerabilities. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus, vulnerability or other harmful feature detected on your system. NEITHER Fibersphere NOR ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM ANY VIRUS, VULNERABILITY, OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

#### **Subscriber's Hardware and Software**

The installation, use, inspection, maintenance, repair, and removal of the Fibersphere Equipment and certain Subscriber Equipment used in connection with the Service may result in service outage or potential damage to your computer(s) and other Subscriber Equipment Except for gross negligence or willful misconduct by us, neither Fibersphere nor any of its affiliates and agents shall have any liability whatsoever for any damage, loss, or destruction to the Subscriber Equipment (including without limitation, your computer(s) and peripheral(s)). In the event of such gross negligence or willful misconduct by Fibersphere, at our sole discretion, we shall pay for the repair or replacement of the damaged parts up to a maximum of \$100 and this shall be your sole remedy relating to such activity. In addition, as part of the installation process for the software and other components of the Service, system files on your computer may be modified. Fibersphere does not represent, warrant, or covenant that these modifications will not disrupt the normal operations of any Subscriber Equipment including without limitation, your computer(s), or cause the loss of files. FOR THESE AND OTHER REASONS, IT IS RECOMMENDED THAT YOU BACK-UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE ASSOCIATED RISKS OF ANY DECISION BY YOU NOT TO DO SO. NEITHER Fibersphere NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, FILES, OR DATA. In addition, the opening of your computer may void warranties provided by the computer manufacturer or other parties relating to the computer's hardware or software. You understand that your computer may need to be opened, either by you or by us or our agents, in connection with the installation or repair of the Service. NEITHER Fibersphere NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

#### **Not Liable For Third Parties**

You acknowledge that we may use the services, equipment, infrastructure, and content of others in providing the Service and

that third parties may provide components of the Service. We are not responsible for the performance (or non-performance) of such services, equipment, infrastructure, or content of others whether or not they constitute components of the Service. In addition, you understand that you will have access to the services and content of third parties through the Service, including without limitation, that provided by content providers (whether or not accessible directly from the Service). Services, equipment, infrastructure, and content that are not provided by us (even if they are components of the Service) are not the responsibility of Fibersphere and we shall have no liability with respect to such services, equipment, infrastructure, and content. You should address questions or concerns relating to such services, equipment, infrastructure, and content to the creators of such services, equipment, infrastructure, and content. We do not endorse or warrant any third-party products, services, or content that are distributed or advertised over the Service. No undertaking, representation, or warranty made by an agent or employee of Fibersphere or our underlying third party providers in connection with the installation, maintenance, or provision of the Service which is inconsistent with the terms of this Agreement shall be binding on Fibersphere The limitations of liability set forth herein apply to the acts, omissions, and negligence of Fibersphere and its underlying third party providers (and their respective officers, employees, agents, contractors, or representatives) which, but for that provision, would give rise to a cause of action in contract, tort, or any other legal doctrine.

#### **Subscriber Responsibility for Content**

You acknowledge that there is some content and material on the Internet or otherwise available through the Service which may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules, or regulations or may violate your protected rights or those of others. We assume no responsibility for this content or material. All content and material accessed by you or others through the Service is accessed and used by you or others at their own risk, and neither Fibersphere nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise relating to access to such content or material by you or others. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs claiming to be capable of restricting access to sexually explicit material on the Internet are commercially available. We make no representation or warranty regarding the effectiveness of such programs.

#### **Monitoring of Postings and Transmissions**

Fibersphere shall have no obligation to monitor postings or transmissions made in connection with the Service. However, you acknowledge and agree that Fibersphere and its agents shall have the right to monitor any such postings and transmissions, including without limitation, e-mail, newsgroups, chat, IP audio and video, and web space content, from time to time and to use and disclose them in accordance with this Agreement, and as otherwise required by law or government request. We reserve the right to refuse to upload, post, publish, transmit, or store any information or materials, in whole or in part, that, in our sole discretion, is unacceptable, undesirable, or in violation of this Agreement.

### **Eavesdropping and Firewall**

Our facilities are used by numerous persons or entities including, without limitation, other subscribers to the Service. As a result, there is a risk that you could be subject to “eavesdropping.” This means that other persons or entities may be able to access and/or monitor your use of the Service. This risk of eavesdropping exists not only within our facilities, but also on the Internet and within the network by other users of the service and are connected to the system and other services to which access is provided as a part of the Service. It is recommended firewall software or preferably network router hardware with NAT (Network Address Translation) and SPI (Stateful Packet Inspection) capabilities be installed on your computer(s) and/or physically located between your computer(s) and the Fibersphere network port. Any sensitive or confidential information posted, stored, transmitted or disseminated, by you is done so at your sole risk, and neither Fibersphere nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise relating to such actions by you. You acknowledge that software programs claiming to be capable of encryption and firewall software and hardware are commercially available. We make no representation or warranty regarding the effectiveness of these programs or hardware appliances.

### **FTP/HTTP Service Setup**

You acknowledge that when using the Service there are certain applications such as FTP (File Transfer Protocol) or HTTP (Hyper Text Transfer Protocol) which may be used by other persons or entities to allow such other persons or entities to gain access to Subscriber’s Equipment. You are solely responsible for the security of the Subscriber Equipment or any other equipment you choose to use in connection with the Service, including without limitation, any data stored on such equipment. Neither Fibersphere nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from, arising out of, or otherwise relating to the use of such applications by you, or the access by others to the Subscriber Equipment or other equipment of yours.

### **File and Print Sharing**

The Service functions as a Local Area Network (LAN) with each Subscriber constituting a node on the network. As such, users inside and outside of the Premises may be able to access the Subscriber Equipment and other equipment connected in some way to the Subscriber Equipment. In addition, some available software includes capabilities that will permit other users to gain access to the Subscriber Equipment and other equipment connected in some way to the Subscriber Equipment, and to the software, files, and data stored on such equipment. For example, operating systems such as Windows, Unix, Linux, and Macintosh include file sharing and print sharing capabilities which, when enabled, will permit other users to gain access to the Subscriber Equipment and other equipment connected in some way to the Subscriber Equipment, even if you are not using the Service. We recommend that you disable file and print sharing and other capabilities that allow outside users to gain access to the Subscriber Equipment. You acknowledge that if you choose to run these applications, you should take appropriate security measures, and that any failure by you to follow this recommendation is at your sole risk. Neither Fibersphere nor its affiliates or agents shall have

any liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from, arising out of, or otherwise relating to access by others of the Subscriber Equipment, or any other equipment connected in some way to the Subscriber Equipment, or to the software, files, and data stored on such equipment.

### **High Risk Activities**

The Service is not fail-safe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service could lead to severe injury to business, persons, property, or environment (“High Risk Activities”). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risks of any damages resulting from High Risk Activities.

### **Facilities Allocation**

Fibersphere reserves the right to determine, in its discretion, and on an ongoing basis, the nature and extent of its facilities allocated to support the Service, including, but not limited to, the amount of bandwidth to be utilized and delivered in conjunction with the Service.

### **Cookies**

You acknowledge that accessing certain web sites through the Service may result in a “cookie” being placed on your computer system. Cookies are small files stored on a computer’s hard drive to simplify and improve a user’s Web experience. It is your responsibility to disable or restrict the placement of cookies through whatever procedures are available on your browser if you don’t want them placed on your computer system.

### **IP Spoofing**

You acknowledge that accessing certain web sites through the Service may result in users of the system being inadvertently lulled into providing sensitive information through a Internet browser or other software that allows fake URLs to obscure the real domain. You expressly assume the risks of any damages resulting from such activity.

### **Spyware, Adware or Malware**

You acknowledge that accessing certain websites or services may unknown to you install Spyware, Adware, or Malware that may reduce the performance of your computer and/or add additional network traffic as well make certain sensitive information about you, your browsing habits, sites you visit or products you buy transmitted to others without your consent or knowledge as well as disrupt your computer(s) performance or disable it altogether. It is your responsibility to detect, disable, or restrict the installation and transmission of such programs. You acknowledge the existence of such programs claiming to be capable of disabling Spyware, Adware, and/or Malware to be commercially available if you want them removed from your computer system. We make no representation or warranty regarding the effectiveness of these programs.

### **Sole Remedy**

Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Some states do not allow the exclusion or limitation of implied warranties, and some states do

not allow the limitations or exclusion of incidental or consequential damages, so certain of the above exclusions may not apply. In such states, the liability of Fibersphere, its affiliates, and agents is limited to the maximum extent permitted by law.

## Mandatory and Binding Arbitration

### Binding Arbitration

If you and Fibersphere are unable to resolve informally any claim or dispute related to or arising out of this Agreement or the services provided, you and Fibersphere agree to binding arbitration except as provided below. You must contact us within one (1) year of the date of the occurrence of the event or facts giving rise to a dispute, or you waive the right to pursue a claim based upon such event, facts or dispute.

### Parties

All parties to the arbitration must be individually named. There shall be no right or authority for any claims to be arbitrated on a class action or consolidated basis or on bases involving claims brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other subscribers, or other persons similarly situated unless your state's laws provide otherwise.

### Arbitration Services and Procedures

You may select the service to arbitrate the dispute. The arbitration will take place at a location, convenient to you, in the area where you receive service from us. Fibersphere will advance all reasonable arbitration filing fees and arbitrator's costs and expenses, except that YOU ARE RESPONSIBLE FOR ALL COSTS THAT YOU INCUR IN THE ARBITRATION, INCLUDING, BUT NOT LIMITED TO, EXPERT WITNESSES OR ATTORNEYS. IF THE ARBITRATION IS DECIDED IN Fibersphere'S FAVOR, YOU AGREE TO REIMBURSE Fibersphere FOR ALL FILING FEES, COSTS AND EXPENSES ADVANCED. You and Fibersphere agree that a single arbitrator will resolve the dispute. Moreover, participating in arbitration may result in limited discovery.

### Contacting Us

For any inquiries or notices required in connection with this Agreement, you may contact us at: [techhelp@fibersphere.com](mailto:techhelp@fibersphere.com).

### Changes to the Service and the Agreement

Fibersphere may, in its sole discretion, change, add to, or remove portions of the Service (including without limitation, content, functionality, hours of availability, equipment requirements, speed, and upstream and downstream rate limitations) at any time without notice. In addition, we may modify this Agreement at any time in our sole discretion. We will post at <http://www.fibersphere.net/customer/policies/sa.pdf> any such modifications as set forth herein. You agree that any one of the foregoing will constitute sufficient notice of these changes. Your continued use of the Service following notice of these changes shall be deemed to be your acceptance of any the changes. If you do not agree to any changes, you must immediately stop using the Service and notify Fibersphere that you are terminating this Agreement.

### No Relationship

Nothing in this Agreement will create any joint venture, joint employer, franchisee-franchisor, employer-employee, or principal-agent relationship between Fibersphere, any content, backbone, network, circuit, and other technology or communications providers, software, and other licensors, hardware and equipment suppliers, or other third party providers of elements of the Service, nor impose upon any such companies any obligations for any losses, debts, or other obligations incurred by the other.

### Assignment

Fibersphere may assign its rights and obligations under this Agreement, without notice, to any affiliate of Fibersphere, to any party (or its affiliate) acquiring all or substantially all of the assets or stock, by merger or otherwise, of Fibersphere or any affiliate of Fibersphere, or to any person or entity purchasing or otherwise acquiring the Fibersphere system serving the Premises. This Agreement may not be assigned or transferred by Subscriber without Fibersphere's prior consent.

### General

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement, and supersedes and replaces any and all prior written or verbal agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. Fibersphere's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.