

## **Commercial Facilities Agreement For CATV, Mediacom Online Services and Mediacom Business Phone—General Terms**

### **1. ACCESS TO PREMISES**

Customer agrees to provide Mediacom all necessary or desirable access at all reasonable times to the Premises, adequate secured space in the Premises for the cable, wiring, equipment and other items supplied by Mediacom (“Mediacom Facilities”) and adequate electrical power, climate control and protection against fire, theft, vandalism and casualty, to insure that non-Mediacom-supplied wiring, equipment and other items in the Premises are adequate and compatible with the Mediacom Facilities and to obtain all governmental and other third-party authorizations needed for access to and work on the Premises. Access shall be permitted 24 hours a day, seven days a week to deal with an outage or emergency.

### **2. PURCHASE OF SERVICES; NO RESALE**

Other than Customer’s authorization of Service to End Users for use in accordance with this Agreement, Customer shall not, and shall not permit any End User or other person to, (i) resell, distribute or provide any Service to any person(s), (ii) provide or extend any Service for secondary uses in any location other than the Premises or (iii) use any Service for any unlawful activity, engage in any unauthorized copying, taping, posting, downloading, sharing or other reproduction or dissemination of any third party’s copyrighted or proprietary music, movies, television programming or other material or disable or interfere with any copy/retransmission protection technology contained in the signal of any programming service or otherwise used.

### **3. FEES AND CHARGES**

Customer agrees to pay Mediacom, when due, the Monthly Service Fee for each Service, all other fees and charges provided for in this Agreement and all federal, state and local taxes, copyright, FCC and franchise fees and pass-throughs and other governmental charges or surcharges from time to time levied upon Customer or Mediacom because of or based on the services or other items furnished (excluding taxes on Mediacom’s income). All recurring Monthly Service Fees are billed in advance. Non-recurring charges are due at time of service. If Mediacom, at any time or from time to time, increases the monthly fee or charge for the System’s full-rate customers for any service corresponding to a Service (or any component thereof) or for any related equipment, then the applicable Monthly Service Fee shall automatically and correspondingly increase as of the same date. All fees and other amounts may be billed and will be due in accordance with Mediacom’s standard practices in effect from time to time. Overdue payments accrue interest at 1.5% per month or, if less, the maximum lawful rate. Customer shall reimburse Mediacom for its collection agency fees, attorneys’ fees and other reasonable costs and expenses of collecting any overdue amount. The Monthly Service Fee for each Service includes the kind and level of support service, if any, that Mediacom normally provides without separate charge in the same community to customers receiving comparable service. Mediacom may charge Customer for additional support service. If, for any period, support for the Premises exceeds that typical for similar customers, Mediacom may charge Customer an appropriate additional fee.

### **4. RELATIONSHIPS WITH END USERS**

Customer shall be solely responsible for entering into and performing all agreements and arrangements related to provision of any Service to End Users, including connecting or disconnecting the Service. Usage of any Service by any End User or other person in or through the Premises shall be subject to, and constitutes acceptance of, Mediacom’s applicable subscription or customer agreement, terms, conditions and policies, as from time to time in effect and modified or replaced by Mediacom in its discretion (“Subscriber Terms”). Continued use of any Service after any change to or replacement of the Subscriber Terms constitutes acceptance. Mediacom may suspend or terminate any or all Services to the Premises as a whole if Customer breaches this Agreement, if Mediacom believes in good faith that any user on the Premises may have violated any applicable Subscriber Terms or under any other circumstances stated in the Subscriber Terms.

### **5. EQUIPMENT**

#### **5.1 CUSTOMER PREMISE EQUIPMENT SUPPLIED BY MEDIACOM**

If requested by Mediacom, Customer shall promptly replace customer premises equipment supplied by Mediacom that is installed on the Premises (“CPE”) with substitute equipment and return the original equipment to Mediacom unless it is equipment that Customer has purchased and paid for in full (“Purchased Equipment”). If Mediacom upgrades or otherwise changes the kind of required CPE generally throughout the System, then it may increase the applicable Monthly Service Fee by the amount of any increased charge for the newly required item (and for any integrated services) that it from time to time applies generally within the System. On the date that the Service Term ends for any reason, Customer shall promptly return any and all CPE in Customer’s possession or control (other than Purchased Equipment) to Mediacom.

#### **5.2 EQUIPMENT NOT SUPPLIED BY MEDIACOM**

In addition to a cable modem, use of the Service requires that a User supply their own computers, Ethernet devices (if required) and operating systems that meet our technical requirements, and Customer acknowledges that Mediacom has made those requirements available to Customer before the execution and delivery of this Agreement. If the Service cannot be used because of the incompatibility of any of such items with the Service, Customer will remain liable for all fees and charges under this Agreement. Customer is solely responsible for any unavailability, degradation or interruption of the Service, damage to equipment, software or property or loss of data or other consequences suffered by Customer or any User resulting from use by Customer or other Users of any modem, computer, operating system or other item that does not conform to our technical requirements. Mediacom will not be obligated to provide customer support relating to any issues or problems that result from use of any such nonconforming item. The fact that we rent, sell, recommend, require or approve a cable modem, computer, operating system or other item for use in the Service does not make us responsible if it has defects or problems. It is strongly recommended

that the number of computers connected through a proxy or hub not exceed five computers per modem. Mediacom is not responsible or liable for any degradation in speed or functionality of the Service or other consequences if Customer does not follow that recommendation. Mediacom is not responsible for the performance, maintenance or repair of equipment or other items it does not furnish.

## **6. USER SOFTWARE**

In connection with the Service, Mediacom may periodically require or permit Customer to download, install or use software or firmware and related documentation (“Software”) that is (or claimed as) the intellectual property of Mediacom or of one or more of its affiliates, licensors or suppliers (“our Licensors”). Use of any such Software is governed by this Agreement and any additional terms that Mediacom identifies as applicable, as they may be periodically modified or replaced (“Additional Terms”).

## **7. CERTAIN OBLIGATIONS OF CUSTOMER.**

Customer shall take reasonable steps to protect the Mediacom Facilities and all other property of Mediacom from damage, loss or theft while on the Premises and shall pay the reasonable costs of repairing or replacing any item suffering such loss, theft or damage not caused by Mediacom. Customer shall not, and shall not permit any End User or other person to, (i) interfere with provision of Mediacom Services or disturb, alter, disconnect, move or interfere with any of the Mediacom Facilities or grant any easement or right that could have any such effect, (ii) attach, connect, interconnect, install or place any equipment, cable, wire, fiber or other item to, with, through or in any Mediacom Facilities or any related conduits, racks, lock boxes, connection boxes, distribution frames or similar items or (iii) use any of the Mediacom Facilities in any manner or for any purpose except as expressly authorized by Mediacom in writing.

## **8. MEDIACOM BUSINESS PHONE**

### **8.1 TARIFFS**

Telephone Services may be provided pursuant to rates, terms, and conditions contained in tariffs on file with state and/or federal regulatory authorities, and Mediacom may amend such tariffs and Telephone Service shall be subject to such tariffs, as amended.

### **8.2 INTERNATIONAL SERVICES**

If Customer wishes to subscribe to or use International Calling Services from Mediacom, Customer may activate that function by providing Mediacom a credit card number to secure payment for such services. Customer will be billed for all services including International Calling monthly, and shall pay all invoices timely.

### **8.3 CUSTOMER PROPRIETARY NETWORK INFORMATION (“CPNI”)**

Pursuant to federal law, CPNI is (A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by Customer, and that is made available to Mediacom by Customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone service received by Customer. Mediacom will not use, disclose, or permit access to Customer’s CPNI except in connection with the provision of services from which such information

is derived, or as authorized or required by federal law, or as expressly authorized by Customer. The Federal Communications Commission (“FCC”) has adopted additional rules in 47 C.F.R. § 64.2010 that would restrict our ability to disclose certain information to or permit certain changes to accounts by inbound callers or visitors to our offices, and that would regulate our ability to provide customers with account access over online portals. However, the FCC permits business customers and their telephone service providers to agree to more flexible customer authentication methods that are better suited for an efficient business relationship. Customer hereby agrees that its dedicated account representative assigned by Mediacom and Mediacom’s personnel who are responsible for commercial accounts may disclose your CPNI or make changes to your account at the request of persons that they reasonably believe to be your authorized representatives, that Mediacom may provide online access to your CPNI in any commercially reasonable manner, and that the requirements of Section 64.2010 of the FCC’s rules shall not apply to the relationship between Mediacom and Customer.

## **9. MEDIACOM ONLINE SERVICE**

### **9.1 SERVICES**

The Services may be used only by Customer’s authorized users while physically present at a Service Location or Premises, except that Customer may allow its employees to also access the Service through Customer’s internal network from authorized remote locations. The only authorized users of the Service are your employees and persons whom you allow to use the Service while at a Service Location in furtherance of a commercial relationship with you. Neither you nor any User may directly or indirectly (i) resell the Service to any person in any manner, or (ii) use the Service in support of or otherwise in connection with the sale of any telecommunications, Internet access or television or other video or music service to third parties. Customer is responsible for providing technical or other support required by any User. “User” means you and any other person that uses or accesses any Service, whether or not authorized. You are responsible for restricting use of the Service to authorized Users for authorized purposes. Without limiting the generality of the foregoing, if Customer permits or makes possible use of the Service by any person under eighteen, Customer is responsible for such use and agrees to hold Mediacom harmless from such use. Mediacom recommends that any such use by a minor be permitted only under the supervision of a responsible adult. Inclusion in this Agreement of references to Users does not give any User any right or remedy.

### **9.2 IP ADDRESSES**

Unless the ISP Features expressly include assignment of static IP addresses, IP addresses related to the Service will be dynamically assigned. IP addresses are subject to the policies and procedures of any third party from whom Mediacom obtains such addresses and of the Internet Assigned Numbers Authority, the registrar authorizing the use of the IP addresses, and the Internet Engineering Task Force, the issuing registrar. Mediacom makes no representations or warranties regarding: (i) the ability to obtain or to continue to use any particular IP addresses, or (ii) the route ability of any IP addresses. Customer’s use of all IP addresses allocated to Customer by Mediacom must cease upon

expiration or termination of this Agreement. All IP addresses assigned by Mediacom will continue to be the property of Mediacom or its suppliers, are not transferable by Customer and must be relinquished by Customer upon the expiration or termination of this Agreement.

### **9.3 ACCEPTABLE USE POLICY**

(a) Use of the Service by each User must comply with Mediacom's Business Acceptable Use Policy (the "BAUP"). The BAUP is posted online at [business.mediacomcable.com/baup](http://business.mediacomcable.com/baup) and any future changes will be posted there or at another Webpage we designate by notice to Service customers. Since the BAUP may be revised periodically, Customer and other Users should regularly visit the appropriate webpage to be sure the most recent version is being followed. The Service shall not be used by Customer or any other User in any way that violates any law, infringes, violates or constitutes a misappropriation of any person's intellectual property, publicity, privacy or other legally protected rights, otherwise violates the BAUP, interferes with the use of the networks and services of Mediacom by any other customer or subjects Mediacom or any of its suppliers, contractors, agents or affiliates to liability. Mediacom shall not be liable to Customer or any other User for any action we take if we believe that Customer or any other User has violated the BAUP, any law or regulation or any third party rights. Customer agrees that those actions may include immediate suspension or termination of the Service or removal of or restriction of access to content or material. We may take those actions without notice to Customer or any other User. The Service may also be subject to blocking if used in a manner that places a disproportionate burden on the Mediacom Network or any of the Shared Networks, impairs services received by other customers or otherwise adversely affects Mediacom, its service providers or any of the Shared Networks. (b) Subject to applicable law, Mediacom may, at any time and periodically modify or replace our Acceptable Use Policy. Mediacom will give Customer at least ten days' prior notice of any such changes that, in our good faith judgment, materially adversely affect Customer's rights or obligations under this Agreement or otherwise with respect to the Service, except that shorter advance notice may be given if We believe reasonably and in good faith that We or the Service might be adversely affected if longer notice were given. We will give notice by a posting at [business.mediacomcable.com/baup](http://business.mediacomcable.com/baup) (or another Web location of which Customer is notified) or via e-mail, postal mail or another appropriate means. Customer will ensure that all Users are informed of and comply with the terms of this Agreement, including Mediacom's AUP. Customer will be liable for any non-compliance by any User.

### **9.4 RISKS OF INTERNET USAGE**

The Service enables access to the Internet and, therefore, to the Websites and content of third parties, some of which may be offensive to Customer or some Users or may violate law or protected rights of others. Third parties may misuse the Internet, including to promote fraudulent schemes or to sell products or services that are misrepresented. Mediacom has no responsibility or liability with respect to the Websites, information, products, services, content or other materials of third parties that are accessed, distributed, provided or advertised through or over the Service. Technological characteristics of the Internet and methods of access may create the risk that third parties will gain unauthorized access to a User's computer, files and communications or learn about the User and his, her or its activities. Use of the Internet may result in the introduction into Customer's or a User's computers or internal network of computer viruses or other harmful elements. The foregoing

is not an exhaustive list of the risks associated with Internet access and Customer fully understands those risks. It is Customer's or each User's sole responsibility to prevent and detect unauthorized access, to protect against damage to or destruction of hardware, software, files and data because of infection by computer virus or other harmful attacks and other risks. Mediacom is not responsible or liable for the actions of third parties or harm, loss, damage or other consequences to Customer or Users resulting from such actions. Use of the Service is at your and each User's own risk, whether or not you use any security, antivirus or other software, technology or method at our recommendation or otherwise.

### **10. TERMINATION**

If either party materially breaches its representations, warranties, covenants, agreements or obligations under this Agreement, the other party may terminate this Agreement upon at least thirty days' prior written notice, unless such breach is cured within the notice period. If the breach is of such a nature that it cannot reasonably be cured within the notice period, but it is curable and the party in breach promptly begins and diligently continues to cure it, there shall be a reasonable additional period to complete the cure. Failure by Customer to make any payment due or a breach of Section 2, 6, 7 or 20.11 of this Agreement shall constitute a material breach that shall not be curable. Initial and continued availability of any Service is conditioned upon compliance by Customer with this Agreement, including all incorporated terms, and completion by Mediacom of the necessary and desirable construction, installation and other work. Mediacom may terminate its obligation to activate or provide any Service if it encounters unanticipated or higher than expected costs or expenses. Mediacom, in its discretion, may terminate this Agreement in whole or as to one or more Services at any time upon at least 60 days' prior written notice.

### **11. EFFECTS OF TERMINATION**

Upon expiration or termination of any Service or this Agreement for any reason (i) Customer must pay all accrued and unpaid fees and charges; (ii) Mediacom's access rights granted above shall continue for the period reasonably required (but in no event less than 120 days) for Mediacom to recover its property from the Premises; (iii) Customer and End Users must return all Mediacom-furnished equipment, software or other items (except Purchased Equipment) in good condition, ordinary wear and tear resulting from proper use excepted; (iv) subject to all applicable limitations and exclusions, all rights or remedies arising out of a breach of this Agreement shall survive for the applicable statute of limitations; and (v) the provisions of this Agreement which state that they survive or which reasonably should be expected to survive expiration or termination (including any provisions relating to disclaimers, limitations or exclusions of warranties and liability, confidentiality or indemnification) shall survive indefinitely.

### **12. WARRANTY DISCLAIMER**

To the maximum extent permitted by law, Mediacom disclaims all warranties not expressly and specifically set forth herein, whether express or implied, including any warranty of merchantability or fitness for a particular purpose, that Mediacom's systems, equipment, software or services will be free of errors, outages or defects, as to upstream or downstream transmission speed or arising from course of dealing or practice.

### **13. OUTAGES, ETC.**

Mediacom shall not be liable for any outage, loss of functionality, interruption, deficiency in quality, speed or reliability of or other defect or deficiency in any Service (an “outage or defect”) or any consequence that, directly or indirectly, in whole or in part, is caused by or results from any force majeure event or any act or omission of Customer, any End User or any other third party. If any outage or defect is caused solely by the willful misconduct or gross negligence of an authorized employee or agent of Mediacom, then Mediacom’s sole liability and responsibility shall be (i) to use commercially reasonable efforts to correct the problem within a reasonable time and (ii) if such outage or defect causes the Service to be unavailable to all or substantially all of the Premises for twenty-four consecutive hours or more, to allow Customer a credit against future Monthly Service Fees for such Service equal to one-thirtieth of the Monthly Service Fee for each period of twenty-four consecutive hours of interruption, with a maximum of three credits in any calendar month. This Section supplements, and does not supersede, modify or otherwise affect, any other exclusions, disclaimers or limitations of liability in this Agreement.

### **14. NO CONSEQUENTIAL DAMAGES**

To the maximum extent permitted by law, Customer agrees that none of the Mediacom Parties shall be liable (whether based on contract, warranty, negligence, strict liability or other legal or equitable theory or cause of action) for any indirect, incidental, consequential, reliance, special or punitive damages (or similar damages, however denominated) directly or indirectly arising out of, resulting from or relating to this Agreement or its subject matter, performance, nonperformance or breach, any of the Mediacom Facilities or any Mediacom Service, even if aware that they could result. This Section shall survive failure of any other disclaimer, exclusion or limitation or a finding of failure to provide an effective remedy. “Mediacom Parties” means Mediacom and its stockholders, partners, members, affiliates, directors, officers, employees, contractors, agents or representatives.

### **15. LIMIT ON DIRECT DAMAGES**

To the maximum extent permitted by law, Customer agrees that none of the Mediacom Parties shall be liable (whether based on contract, warranty, negligence, strict liability or any other legal or equitable theory or cause of action) for damages directly or indirectly arising out of, resulting from or relating to this Agreement or its subject matter, performance, nonperformance or breach, any of the Mediacom Facilities or any Mediacom Service in an amount that is, in the aggregate, for any and all persons and any and all claims, in excess of the lesser of (i) the Monthly Service Fees actually paid to Mediacom by Customer during the three months ended most recently before the date liability for such damages arose or (ii) Five Hundred Dollars.

### **16. ESSENTIAL ELEMENT OF THE BARGAIN**

Each of the parties waives any claim for damages or costs excluded under this Agreement or in excess of any limit contained in this Agreement. The provisions of Sections 12, 13, 14 and 15 and this Section 16 are essential elements of the bargain reflected in this Agreement and the parties intend for them to be strictly enforced. If, in a final decision of a court having jurisdiction (not subject to further appeal), it is nonetheless held that any of the disclaimers, exclusions or limitations contained herein may not be enforced, then in such jurisdiction the liability of Mediacom (or any of the other Mediacom Parties) to any and all persons

for any and all claims shall be limited to the smallest amount permitted by applicable law.

### **17. INDEMNIFICATION**

Customer agrees to indemnify, defend and hold harmless each of the Mediacom Parties for, against and from any and all claims, demands, damages, losses, penalties, actions, proceedings, costs and expenses, including attorneys’ fees, directly or indirectly arising out of, resulting from or relating to (i) Customer’s breach of this Agreement, (ii) injury to person or property or loss of life or property resulting from the condition or use of the Premises, unless directly caused by the gross negligence of Mediacom or its contractors, agents or representatives while acting within the scope of their employment, (iii) damage or loss to Mediacom or its affiliates or the Mediacom Facilities caused in whole or in part by Customer or any of its contractors, agents or representatives or any End User or other person in any Unit, (iv) noncompliance with any of the Subscriber Terms by any End User or other user of any Service or (v) any other act or omission of Customer or any of its contractors, agents or representatives.

### **18. LIQUIDATED DAMAGES**

The parties agree that it would be exceedingly difficult to accurately measure the damages from Customer’s breach of its obligation to purchase any Service for the full Service Term or obligations under Section 9. In the event of any such breach, Mediacom, in addition to exercising its termination rights, may elect as a remedy payment by Customer to Mediacom, as liquidated damages and not as a penalty the product of 75% of the combined Monthly Service Fees for the Services multiplied by the number of months remaining in the Service Term.

### **19. ARBITRATION**

(a) Any and all claims or disputes (a “Claim”), including any past, present or future claims or disputes shall be resolved, upon the election of either you or us, by binding arbitration pursuant to this Arbitration Provision and the procedures of the National Arbitration Forum (“NAF”) <http://www.adrforum.com/> or the American Arbitration Association (“AAA”) <http://www.adr.org/>, as selected by the party electing to use arbitration. (b) If you do not wish to be bound by this arbitration clause, you must notify Mediacom in writing within 60 days after receiving a copy of this Agreement (Mediacom Legal Department, 100 Crystal Run Rd., Middletown, NY 10941). (c) Whoever files the arbitration pays the initial filing fee. The arbitrator will decide who will ultimately be responsible for paying those fees. In no event will you be required to reimburse us for any arbitration filing, administrative, or hearing fees in an amount greater than what your court costs would have been if the Claim had been resolved in a state court with jurisdiction. (d) Any arbitration and its results shall be kept confidential, except as required by law or to enforce the award. (e) The arbitrator shall strictly enforce this Agreement and may not modify its terms. Except to the extent provided by substantive law, the arbitrator may award only damages or costs specifically permitted by this Agreement which are supported by admissible evidence and must apply all exclusions, disclaimers and limitations of liability contained herein. The arbitrator’s decision is final and binding on all parties and may be enforced in any federal or state court with jurisdiction. (f) Neither party is precluded from seeking interim injunctive relief from a court in order to preserve the status quo, prevent irreparable harm or protect assets or property until the arbitrator has been appointed and decided the matter of interim relief or resorting to court proceedings to

enforce the other party's compliance with this Section 19. Nothing in this Section shall affect Mediacom's right to suspend or terminate this Agreement or any Service for non-payment or preclude it from bringing an action in court having jurisdiction to collect unpaid amounts plus its collection costs, including attorneys' fees. (g) If any provision of this arbitration agreement should be found invalid or unenforceable by an arbitrator or court having proper jurisdiction, such a determination shall not affect the enforceability of the remaining provisions, which shall continue in full force and effect. However, this entire Section 19 shall be null and void with respect to any Claim if the "Class action waiver" paragraph above is held to be invalid or unenforceable with respect to such Claim by an arbitrator or court having proper jurisdiction.

## **20. MISCELLANEOUS**

### **20.1 INDEPENDENT CONTRACTORS; NO AGENCY; SERVICE CHANGES; SERVICE IS NON-EXCLUSIVE**

The parties are independent contractors. Neither party shall have the authority to act for or to assume, create or incur any liability or obligation binding upon the other party. Subject to mandatory, non-waivable applicable law and the express provisions of this Agreement, Mediacom (i) may change the terms, conditions, restrictions and policies applicable to any Service or add, delete, discontinue or change the composition, features, specifications and functionality of any Service; and (ii) otherwise retains sole and absolute discretion as to all aspects of and matters relating to any Service. Without limiting the generality of the foregoing, Mediacom (i) may alter the CATV Service (if separate), add or delete programming networks or services or require use of a digital converter or other CPE to receive any or all networks or services, (ii) does not guarantee the availability or continued availability of any programming service, network, program, Website or content and (iii) may institute or change limits on number and storage capacity of e-mail accounts and personal Webspace, impose charges for bandwidth usage exceeding specified levels or take other actions that affect any Service's speed or other characteristics. Each Service is provided to Customer on a non-exclusive basis.

### **20.2 FORCE MAJEURE**

Mediacom shall not be liable by reason of any failure or delay in the performance of its obligations because of strikes, shortages, fire, flood, weather, war, riot, terrorism, governmental action, labor conditions, earthquakes, interruptions in telecommunications services, Internet access, utilities or other services, acts or omissions of suppliers, carriers or other third parties, acts of God or any other cause beyond its reasonable control, whether or not similar to the foregoing.

### **20.3 PERSONS BOUND; ASSIGNABILITY; NO THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, legal representatives and permitted assigns. Customer may not assign or delegate this Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of Mediacom; provided, however, that Customer shall make the written assumption of this Agreement a condition of any sale, transfer or assignment of the Premises and shall notify Mediacom in the event of any such sale, transfer or assignment. Whether or not Customer complies with its obligation to require such assumption, the rights granted to Mediacom shall run with the land

and this Agreement shall bind each and every owner of the Premises. Mediacom may assign this Agreement or assign, delegate or subcontract any of its rights or obligations hereunder to any of its affiliates, any successor (by sale of assets, merger or otherwise) to ownership or operation of the System or other person. No End User or other person is a third party beneficiary of this Agreement. Customer shall not be a third party beneficiary of any contract, agreement or arrangement between Mediacom and any End User

### **20.4 SEVERABILITY**

If any provision of this Agreement or its application to any person or circumstance is held by a court with jurisdiction to be invalid or unenforceable, the remaining provisions, or the application of such provision to other persons or circumstances, shall remain in full force and effect. Such court may substitute a suitable and equitable provision to carry out, so far as may be valid and enforceable, the intent and purpose of the invalid or unenforceable provision and, if the court does not do so, the parties shall negotiate in good faith to agree upon such a provision. Any provision that is judicially unenforceable in any jurisdiction shall not be affected in any other jurisdiction.

### **20.5 GOVERNING LAW; WAIVER OF JURY TRIAL; NO CLASS ACTIONS**

This Agreement shall be governed by the laws of the State in which the Premises are located; however, the Federal Arbitration Act shall govern the arbitrability of disputes regarding this Agreement and any Service. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any action, suit or proceeding arising out of or relating to this Agreement. To the maximum extent permitted by applicable law, the parties agree that there shall be no right to have any Claim litigated or arbitrated on a class action basis or as a claim brought in a purported representative capacity on behalf of persons similarly situated or the general public.

### **20.6 ENTIRE AGREEMENT**

Customer accepts, and agrees that any Service shall be subject to, the Subscriber Terms, as they from time to time may be in effect and modified or replaced from time to time by Mediacom, with the same effect as though incorporated herein and as if Customer were a customer thereunder, except that any arbitration or payment provisions thereof are not incorporated. In the event of any conflict between the express provisions of the Subscriber Terms incorporated herein and the express terms of this Agreement other than such incorporated provisions, the express terms of this Agreement shall apply. This Agreement (including all incorporated terms) is the entire agreement between the parties pertaining to its subject matter. No course of dealing or practice shall be used to interpret, supplement or alter the express written terms of this Agreement. The statements made by a party otherwise than in an express written provision of this Agreement are not representations or warranties and do not create obligations. By entering into this Agreement, Mediacom does not waive or impair any easement, license or rights it or any of its affiliates may have to access to the Premises for any purpose under federal, state or local law, by contract or otherwise, and this Agreement does not supersede any other agreement by which any such easement, license or right is granted.

### **20.7 AMENDMENTS; WAIVERS; COUNTERPARTS**

Amendments of this Agreement must be in writing and signed by both

parties. No failure or delay in exercising any power, right or remedy will operate as a waiver. A waiver, to be effective, must be written and signed by the waiving party. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. To be effective, any amendment or waiver on behalf of Mediacom must be signed by a duly authorized officer of Mediacom at the level of Vice President or above.

#### **20.8 SPECIFIC PERFORMANCE**

Customer acknowledges that if it breaches any of its obligations under any of Sections 2, 6, 7, 8, 9 or 20.11 of this Agreement, Mediacom will be irreparably harmed and damages will be inadequate to compensate Mediacom for such breach. Accordingly, without limiting any other right or remedy of Mediacom, Mediacom shall be entitled to specific performance or injunctive relief if there is any breach or threatened breach thereof. This does not preclude Mediacom from seeking specific performance or injunctive relief in any other circumstance.

#### **20.9 REMEDIES ARE CUMULATIVE**

Unless otherwise expressly stated in this Agreement, all remedies (including suspension and termination rights) available under or with respect to this Agreement are cumulative and in addition to all other remedies, if any, available at law or in equity. The prevailing party in any litigation or arbitration between the parties arising out of this Agreement shall be entitled to recover its court costs and reasonable attorneys' fees.

#### **20.10 BINDING AGREEMENT**

Customer represents and warrants that it has all necessary right, power and authority to enter into and perform this Agreement, and that this Agreement has been duly authorized, executed and delivered by, and constitutes a legal, valid and binding agreement of, Customer. The foregoing representation and warranty shall survive the execution, delivery, expiration or termination of this Agreement.

#### **20.11 NO DISCLOSURE OF TERMS, ETC.**

Customer shall not disclose to any third party the specific terms of this Agreement or any other information that Mediacom has provided or hereafter may provide to Customer and that is marked as confidential or proprietary or that because of its nature should reasonably be considered to be confidential or proprietary information of Mediacom or any third party, other than disclosure under an obligation of confidentiality to (i) its officers, employees, accountants and attorneys who need to know such information to perform their duties for Customer or (ii) any purchaser or bona fide prospective purchaser of the Premises.

#### **20.12 NOTICES**

Any notice required or permitted to be given to a party under this Agreement shall be in writing and shall be deemed given when delivered personally, the next business day after being sent by reliable overnight courier or forty-eight hours after it is deposited in the United States mail with registered or certified mail postage prepaid, in each case addressed to such party at its notice address below its signature to this Agreement or another address designated by at least ten days' prior written notice to the other party.

#### **20.13 CERTAIN RULES OF INTERPRETATION; FURTHER ASSURANCES**

This Agreement shall be interpreted according to its fair meaning and not strictly for or against either party, regardless of authorship. All definitions apply equally to the singular and plural forms of the terms defined. Unless the context otherwise unambiguously requires, the word "or" means "and/or." The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "person" shall be broadly construed and includes any natural person, any corporation, trust, association, limited liability company, partnership, joint venture or other entity and any government or governmental agency, authority, body, instrumentality or subdivision. Whenever the context requires, any pronoun shall include the corresponding masculine, feminine and neuter forms. Headings in this Agreement shall not affect the interpretation of this Agreement. The parties shall cooperate with each other in carrying out the purposes of this Agreement and use their commercially reasonable efforts to cause third parties with whom they deal and whose cooperation is necessary to likewise cooperate.

#### **20.14 REGULATORY CHANGE**

If there is any change in any applicable law, rule or regulation or the interpretation thereof by any regulatory agency, court or other governmental entity or authority or any decision in any judicial or administrative case or arbitration which, in the reasonable opinion of Mediacom, would make the provision of any Service illegal or might, if Mediacom continued to perform this Agreement, subject Mediacom or any of its affiliates to any penalty, liability or new or increased regulation, require that Mediacom or any of its affiliates make any of its networks or facilities available to third parties, render the performance of this Agreement by Mediacom unprofitable or burdensome or subject Mediacom or any of its affiliates to any other adverse consequence, Mediacom may require that this Agreement be renegotiated in good faith to ameliorate the adverse effects of such change or decision to the extent reasonably possible or may terminate this Agreement upon written notice to Customer given at any time after such change or decision.