

Qwest Choice™ TV Terms and Conditions

These Qwest Choice TV Terms and Conditions (“Agreement”) are between Qwest® Broadband Services, Inc. (“Qwest”) and you (“Customer”) for Qwest Choice™ TV, and the installation of Equipment. Please review the Agreement carefully; it governs your use and Qwest’s provision of Qwest Choice TV and Equipment.

BY ACTIVATING, USING, OR PAYING FOR THE SERVICE AND/OR EQUIPMENT, FAILING TO CANCEL THE SERVICE AND RETURN THE EQUIPMENT WITHIN 30 DAYS AFTER ORDERING SERVICE AND EQUIPMENT, OR INSTALLING THE EQUIPMENT, YOU AFFIRM THAT YOU UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, EVEN IF YOU CHOOSE NOT TO READ IT. FURTHER, YOU AFFIRM THAT YOU UNDERSTAND AND AGREE TO THE PRICES, CHARGES, AND OTHER TERMS AND CONDITIONS QUOTED TO YOU DURING THE ORDERING PROCESS AND ON www.qwest.com/legal/choicetvandonline which is subject to change, ALL OF WHICH ARE INCORPORATED BY REFERENCE, AND YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND ARE BOUND BY IT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT (INCLUDING FUTURE REVISIONS), DO NOT USE THE SERVICE OR EQUIPMENT, CALL QWEST AT 1-800-654-2180 TO CANCEL THE SERVICE IMMEDIATELY, AND RETURN THE EQUIPMENT TO QWEST ACCORDING TO THE RETURN POLICY AT www.qwest.com/legal/choicetvandonline.

Qwest may change this Agreement, the pricing, and the Product Information, at any time, and from time to time upon reasonable notice to the existing Customer. If any such change(s) is (are) unacceptable to the Customer, the Customer may terminate this Agreement by prompt written notice to Qwest. The Customer’s use of the Services following publication of such change(s) will be conclusively deemed as the Customer’s acceptance of and agreement to such changes on a prospective basis.

1. Definitions.

“*Equipment*” means Qwest-provided equipment, devices and material related to the Service, including but not limited to Digital Gateway Box with Balen and Diplexers/Splitters, Set Top Box(es) or Analog Converter(s)/Cable Box(es), Remote Control(s); Converter Remote(s); and DMX Tuner with DMX Remote.

“*Force Majeure Event*” means an unforeseeable event beyond the reasonable control of a party, including without limitation: act of God; fire; flood; labor strike or unrest; sabotage; cable cuts; acts of terror; power shortage or power failure, e.g., rolling blackouts; material shortages or unavailability or other delay in delivery not resulting from Qwest’s failure to timely place orders therefore; lack of or delay in transportation; government codes, laws, regulations, ordinances, rules, or restrictions; war or civil disorder; or failures of suppliers of goods and services.

“*Late Charge*” is the portion of the payment not received by or immediately available to Qwest by the due date multiplied by the highest lawful amount for commercial transactions in the state you receive Service, Equipment, and/or Software in.

“*MRCs*” means monthly recurring charges.

“*NRCs*” means non-recurring, one-time charges.

“*Product Information*” means information about the Service that may be provided in product literature, user manuals, brochures, welcome material, and on www.qwest.com.

“*Regulatory Activity*” means any regulation and/or ruling, including modifications thereto, by any franchise authority, regulatory agency, legislative body or court of competent jurisdiction.

“*Service*” means video and audio programming and other services available on Qwest Choice TV (whether subscription based or pay per view based) and related Qwest installation, repair, support and provisioning that Qwest may provide to Customer either now or in the future.

“*Taxes*” means all foreign, federal, state and local taxes, surcharges, other similar charges, and any other imposition that may be passed on by Qwest to Customer.

2. Service Description. Qwest will provide, and you will purchase the Service. Further details regarding the Service may be provided in Product Information which is incorporated herein by reference.

(a) Availability. The Service is available in Arizona, Colorado, Nebraska and Utah where Qwest has obtained appropriate franchise authority to offer the Service. Qwest will make reasonable efforts to assure that the Service is available to you 24-hours-per-day, seven-days-per-week. It is possible, however, that interruptions of service may occur.

(b) Moves. The Service is provided to you at your residence. You may not transfer your subscription or your rights and obligations under this Agreement to any other person or to yourself at a new residence. If you move to another location (including a move within the same building) you are not guaranteed to have service at the new location. If you desire to move, please contact Qwest at 1-800-654-2180 for assistance with new service. In addition, the Service is provided to you at the location within your residence installed by a Qwest technician. If you want to move your Service to a different location within your residence, you agree to call Qwest at 1-800-654-2180 for assistance and follow the procedures set forth in the User Guide at www.qwest.com/residential/userguides, which are incorporated herein by reference.

(c) Qwest facilities and equipment to provide service. Certain Qwest facilities and equipment used to provide you Service may be located on your premise. These facilities and equipment are the property of Qwest and must be installed, relocated, rearranged, tested, inspected, and maintained only by Qwest. You are responsible for damage to such facilities and equipment resulting from your negligence (including failure to reasonably prevent damage by others) or willful conduct. You may only attach or connect authorized items identified in the User Guide (www.qwest.com/residential/userguides), and such items must be connected in accordance with the User Guide, which are incorporated herein by reference. Any unauthorized attachments or connections may be removed or

disconnected by Qwest and your Service may be suspended or terminated as a result. You agree to provide Qwest access to your premises at reasonable hours if necessary to terminate or cancel Service or to maintain or remove the facilities and/or equipment. Customer shall inform Qwest if Customer sells, vacates, rents or sublets the premises wherein the Equipment is located so Qwest may enter the premises or remove the Equipment. Qwest is not liable for defacement or damage to your premises resulting from the existence of Qwest facilities or equipment and associated wiring, or from the installation or removal thereof, when such defacement or damage is not the result of Qwest negligence. You may be required to provide, install, and maintain, at your expense, certain items such as space and power, and rights or licenses, to receive Service, if such items are not already in place. These items may include without limitation suitable commercial power, power wiring and outlets, housing, heat, light, and ventilation for the operation of telephone facilities, rights to use or install pathways, shafts, risers, conduit, telephone closets, interior wiring, service areas, racks, cages, utility connections, entries and/or trench (for purpose of providing entrance facilities into multi-unit housing complexes, commercial properties or business developments to reach points of termination).

(d) Dispatch Fee. Qwest may assess a separate dispatch fee for Customer-requested technician visits for problems not caused by Qwest facilities or equipment.

3. **Equipment, Software, Delivery, and Installation.**

(a) Equipment.

(i) All of the Equipment supplied or installed at the premises by Qwest, will be and remain the sole property of Qwest. Customer-owned internal wiring is not part of the Equipment. The Customer will not remove any of the Equipment from the premises and will not damage, alter or tamper with any of the Equipment. Qwest is hereby expressly granted the right at reasonable times to enter the premises to inspect, service or remove the Equipment. If the Customer sells, vacates, rents or sublets the premises where the Equipment is located, the Customer will inform Qwest prior to any such change. If the Service is discontinued by either party for any reason, the Customer will be responsible for the return of the Equipment to Qwest in the same condition as received, ordinary wear and tear excepted, at the scheduled disconnect appointment time, or at any other time upon request by Qwest in accordance with the Return Policy. If the Customer fails to return the Equipment to Qwest in such manner, the Customer will be liable to Qwest for any and all damages to or loss of the Equipment, as determined by Qwest, including but not limited to the full agreed upon value of the Equipment, plus any costs, including reasonable legal fees, to collect such amounts. The Customer agrees that the value of the Equipment placed in the Customer's premises is **\$370** for each Digital Gateway Box, **\$500** for each Set Top Box, **\$50** for each Analog Converter(s)/Cable Box(es), **\$15** for each Remote Control, **\$10** for each Converter Remote, **\$75** for each DMX Tuner and **\$25** for each DMX Remote (each an "Equipment Charge").

(ii) Customer will bear all risk of loss of, theft of, casualty to or damage to the Equipment from the time it is received by you until the time when it is returned by you, pursuant to this Agreement, and has been received by Qwest.

(iii) *Digital Video Recorder (DVR)*. DVR Equipment is currently available in limited service areas. Your DRV Equipment gives you the ability to see and record televised programs ("Third Party Content"). Actual DVR recording capacity varies based on the type of programming being recorded. High definition programming requires more capacity than analog and digital programs. Pay per view and music channels cannot be recorded. You understand that Qwest does not guarantee the access to or recording of any particular program, or the length of time any particular recorded program may remain available for your viewing. You also understand that Third Party Content is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws, and may not be reproduced, published, broadcast, rewritten or redistributed without the written permission of the third party that supplied it, except to the extent allowed under the "fair use" provisions of the U.S. copyright laws or comparable provisions of foreign laws. You agree that Qwest will have no liability to you, or anyone else who uses your DVR Equipment, with regard to any Third Party Content

(b) Software.

(i) *License*. If the Software contained in your Equipment is accompanied by an end user license agreement ("EULA"), your use of the Software is governed by the terms of that agreement and by the terms of this Agreement where applicable. Your use of the Equipment and Software constitutes acceptance and agreement to the terms of the EULA. If the Software is not accompanied by a EULA, Qwest grants you a limited, personal, revocable, nonexclusive, nontransferable, non-assignable license to use the Software for purposes of using the Equipment and Service. The license is effective upon the earlier of delivery or installation, and extends only to Customer's own use of such Software and only on the designated Equipment or with the designated Service.

(ii) *Ownership*. You acknowledge that Qwest or the third-party licensor or supplier of the Software, as applicable own all right title and interest, including without limitation all copyright, patent, trademark, and trade secret rights in the Software and related documentation, updates, and upgrades. You are not granted any ownership rights in the Software and may not sublicense, loan, rent, lease, distribute, share, or otherwise transfer the Software to any one else.

(iii) *No Export*. The Software may be used only in the United States and any export of the Software is strictly prohibited.

(iv) *Updates, Upgrades, or Changes*. Qwest may update, upgrade or change the Software in your Equipment and related settings in your Equipment from time to time through periodic downloads. You agree to cooperate with Qwest in performing such activities. Qwest will use commercially reasonable efforts to schedule these downloads in a manner that results in the least amount of interference with or interruption to your Service.

(v) *Termination of Associated Service*. The license terminates upon termination of your Service for any reason.

(c) Delivery. Equipment may be delivered to you in the United States by a Qwest technician.

(d) Installation.

(i) Customer authorizes Qwest to disconnect any Customer-owned wiring from another company's incoming cable and authorizes connection of the Services to their existing wire.

(ii) The Customer warrants that he/she either owns the residence at which the Service is being performed or if a tenant, he/she has obtained permission from his/her landlord for Qwest to make whatever alterations to their residence that are necessary for the installation. In the event of failure to secure such permission, the Customer will indemnify and hold harmless Qwest from all claims and damages arising therefrom.

(iii) Qwest will not install the Service on any TV set that is connected to another cable or satellite TV service. Qwest provides no customer support, assistance, or repair for Customer's TVs that are connected to other cable or satellite TV services.

(e) Your Equipment contains certain components and Software which are proprietary to Qwest. You agree that you will not try to reverse-engineer, decompile or disassemble any Software or hardware contained within your Equipment, nor will you otherwise attempt to reduce the Software to a human readable form. Such actions are strictly prohibited and may result in the termination of your Services and/or legal action. You may not modify the Software in any way or change or delete any copyrights, trademarks, service marks or other proprietary rights or notices of Qwest or a third party that appear or are used in connection with the Software or the Service. You agree that the Software is the confidential and proprietary property of its owner and may not be disclosed or reproduced unless specifically authorized by Qwest or the third party licensor or supplier

(f) If your Equipment is stolen or otherwise removed from your premises without your authorization, you must notify Qwest immediately, at 1-800-654-2180 but in any event not more than three (3) business days after such removal to avoid liability for payment for unauthorized use of the Equipment. You will not be liable for unauthorized use after we have received your timely notification.

(g) Equipment shall at all times remain the sole and exclusive property of Qwest and we will have the right, at our discretion, to replace it with new or reconditioned equipment and to remove the equipment upon termination of Services. None of the equipment shall be deemed fixtures or part of your realty. Our ownership of the equipment may be displayed by notice or Qwest brand logo contained on the equipment. You shall have no right to pledge, sell, mortgage, give away or remove, relocate, alter or tamper with the equipment (or any notice of our ownership thereon) at any time. Any reinstallation, return of or change in location of the equipment shall be performed by us at the service rates in effect at the time of service.

(h) You shall notify us promptly of any defect in, damage to, or accident involving the equipment. All maintenance and repair of the equipment shall be performed by us or our designees. Qwest may charge you for any repairs that are necessitated by any damage to the Equipment in accordance with the Limited Warranty provision below.

(j) Third Party Services, Software and Equipment. Use of any third party services, software, or equipment offered by or through Qwest is subject to the third party provider's terms and Qwest is not responsible or liable for any such services, software, or equipment.

4. Changes to Service or this Agreement. Subject to any applicable rules or laws, Qwest may:

(a) at any time, effective upon posting to www.qwest.com/legal or any written notice to you, including e-mail: (i) stop offering the Service and/or Equipment, (ii) modify the Service and/or any of the terms and conditions of this Agreement, and/or (iii) reduce MRCs or NRCs. Please check such Web site and your e-mail regularly for changes.

(b) upon 30 days notice to you: (i) increase MRCs and/or NRCs or (ii) change this Agreement or the Service in a way that directly results in a material and adverse economic impact to you. Qwest may reduce the foregoing notice period where commercially reasonable and/or if such increase is based upon Regulatory Activity.

Your continued use of the Service and/or Equipment constitutes acceptance of those changes. You must immediately stop using the Service and Equipment and cancel your Service if you do not agree to the changes. Any changes or other terms you make to this Agreement, or propose in any other documents, written or electronic, are void.

5. Service Conditions. The following conditions apply to the Service. Qwest may suspend or terminate your Service if you violate any of these conditions.

(a) No Resale, Distribution, Transfer, or Assignment. You agree not to resell or distribute, transfer or assign this Agreement and/or the Service via any means including but not limited to wireless and/or internet technology, except with Qwest's prior consent and according to Qwest's policies and procedures.. This Agreement is intended solely for you and it will not benefit or be enforceable by any other person or entity. Qwest may assign this Agreement and your rights and obligations under this Agreement, in whole or in part, at any time without notice to you and you agree to make all subsequent payments as directed. If we do that, we have no further obligations to you.

(b) Authorized Use. You (i) will not permit any unauthorized use of the Service, including but not limited to unauthorized copies; and (ii) will ensure that all use of the Service complies with this Agreement. You are responsible for unauthorized and non-compliant use of the Service. The Customer is aware that any unauthorized reception of the Services and/or un-permitted use of the Equipment or the Services is unlawful and the Customer may be subject to penalties and damage to the extent permitted under applicable Federal, State, and Local laws, rules and regulations.

(c) Compliance. The Service cannot be used for any unlawful, abusive, or fraudulent purpose, including without limitation, using the Service in a way that: (i) interferes with Qwest's ability to provide service to Qwest customers, (ii) avoids your obligation to pay for services, (iii) constitutes a criminal offense, (iv) gives rise to a civil liability, or (v) otherwise violates any law, order, ordinance, governmental requirement or regulation or this Agreement.

(d) Intellectual Property Rights. Unless otherwise expressly provided in this Agreement, all aspects of the Service are the property of Qwest and are protected by trademark, copyright or other intellectual property laws and international treaty provisions. Qwest grants you a personal, revocable, limited, nonexclusive, nontransferable, non-assignable right and license to use the Service in accordance

with the terms and conditions of this Agreement. No other license or rights are granted by Qwest or will be implied or arise by estoppel, with respect to any Service.

(e) Qwest will make reasonable efforts to have its Service available at all times, but it has no responsibility for interruptions in the Service, other than to use good faith efforts to restore the Service, and except that the Customer will receive credit for any Service interruptions or failure upon verifiable notification to Qwest. **Qwest makes no warranty, either expressed or implied, regarding the Service. All such warranties are expressly excluded. In no event will Qwest be liable for incidental or consequential damages arising out of failure of the Services or the Equipment provided.** QWEST'S SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY FOR QWEST'S FAILURE TO PROVIDE THE SERVICES, REGARDLESS OF THE THEORY OF LIABILITY WILL BE LIMITED TO THE OUT-OF SERVICE CREDIT WHICH WILL BE EQUAL TO THE PRO-RATA CHARGE FOR THE TIME THE CUSTOMER WAS UNABLE TO USE THE SERVICE.

(f) Qwest will not be responsible for the operation, maintenance, service or repair of Customer owned devices i.e. TV, VCR, DVD, PC, set-top box, stereo, radio, game console, the Customer-owned wiring, or any other Customer-owned device or any other damage to the Customer's TV, VCR, DVD, PC, set-top box, stereo, radio, game console, the Customer wiring or any other Customer-owned devices except due to Qwest's negligence.

(g) Signal leakage. Pursuant to the rules of the Federal Communications Commission, Qwest is responsible for any excessive signal leakage while providing the Services over the system. Should excessive leakage originate from the Customer-owned internal wiring, the Customer's responsibility will be to correct the problem and until corrected, Qwest's obligation will be to disconnect the Services to the Customer.

(h) The Customer is aware that any unauthorized reception of the Service and/or un-permitted use of property is unlawful and the Customer may be subject to penalties and damage to the extent permitted under applicable Federal, State, and Local laws, rules and regulations.

(i) Service Guarantee. Qwest will provide you with a 4-hour (or less depending upon location) installation, service appointment, and/or service outage response period.

(j) Programming Availability and Blackouts. Certain Services transmitted by us, including but not limited to some subscription Services, sporting events and broadcast network Services, may be blacked out in your area of reception. Blackout restrictions are decided by the sports leagues and other entities that own the local broadcast rights. If you circumvent or attempt to circumvent any of these blackouts, you may be subject to legal action.

(k) Ordering Pay Per View. In most areas, Customers may order Qwest pay-per-view Services by using the on-screen Program Guide and remote control unit to select the movies and other events we offer (some areas lack the capability of ordering pay-per-view Services using the on-screen Program Guide). You may also order Qwest special events and pay-per-view Services over the telephone by calling Qwest at 1-800-654-2180. You must be at least 18 years of age, or the applicable age of majority where you reside, in order to receive adult-oriented programming services. You are responsible for the security of your Service and Equipment. All pay per view programming that is ordered for your Service either through your Equipment or through a Qwest Sales Representative will be deemed to have been authorized by you, regardless whether you actually place the order yourself. All refunds, if any, are at the sole discretion of Qwest.

(l) Private Viewing. Qwest provides Services to you for your private home viewing, use and enjoyment. You agree that the Services provided will not be viewed outside of your private residence. You are permitted to exhibit the Services solely in your private residence and not in any other areas. The Services may not be rebroadcast, transmitted, recorded or performed, nor may admission be charged for listening to or viewing any Services provided by us. If we later determine that you utilized your Equipment (including any additional Digital Gateway Boxes or Set Top Boxes) or sold, leased or otherwise gave possession of the same to a third party who you knew or reasonably should have known intended to use it to permit the viewing of the Services in a commercial establishment or any other area open to the public, we may terminate the Services and in addition to all other applicable fees, you agree to pay us the difference between the price actually paid for the Services and the full commercial rate for such Services, regardless of whether we have or had the commercial rights to such Services. The payment of that amount and/or the termination of Services shall not prejudice our ability to exercise any other rights and remedies we may have under this Agreement, at law, in equity, or otherwise.

(m) Additional Equipment. Depending upon your location, additional Equipment may be required to view the Services on additional televisions. Please contact Qwest at 1-800-654-2180 for assistance.

(n) Programming. You acknowledge that Qwest has the right at any time to pre-empt without prior notice specific programs advertised as available to customer and to substitute what Qwest deems to be programming of comparable quality. In addition, Qwest reserves the right to increase or change the application fees at any time.

6. Privacy. Qwest may provide customer information to third parties or governmental entities when required, or permitted by law; to establish rights or obligations under this Agreement; or to protect Qwest's or others rights or property regarding our services or the services of other providers from fraudulent, abusive or unlawful use of, or subscription to, such services. See the Qwest Privacy Policy and the Qwest Choice TV & OnLine Services Customer Privacy Policy posted at www.qwest.com/legal/privacy, which may change from time to time. Further, Qwest does not require or intend to access or use confidential health related information of Customer or Customer's clients (collectively "End Users") that constitutes Protected Health Information ("PHI"), as defined in 45 C.F.R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The obligation to comply with HIPAA is the sole responsibility of the Customer. Standard commercial telecommunications service providers acting as a conduit for such information are not considered "business associates" as defined in 45 CFR 160.103 under HIPAA. In its role as a conduit telecommunications service provider, HIPAA does not apply to Qwest. Any exposure to End Users' PHI will be incidental to Qwest's provision of Service and is not meant for the purpose of managing the PHI or creating or manipulating the PHI. Such incidental exposure is allowable under 45 CFR

164.502(a)(1)(iii) and, as such, Qwest represents that it is not a "Business Associate" or "covered entity" under HIPAA for the purposes of this Agreement.

7. Rates and Charges; Payment.

(a) Rates and Charges. All Service and Equipment is provided to you at the MRCs and NRCs quoted to you during the ordering process and as set forth on www.qwest.com/legal/choicetvandonline under "Rate Card" which is subject to change, at the time(s) you order Service and Equipment. (ii) Customer agrees to pay for the installation of the Services and the Equipment, and for monthly service charges, and any local, state or federal taxes, surcharges and fees imposed or arising with respect to the Services and any charges. Customer agrees to pay all charges billed by Qwest when due. Customer acknowledges the reasonableness of a late payment fee in lieu of assessing specific damages for late payments and that the late payment fee is not a penalty. In the event Qwest offers the ability to pay any of the charges in installment payments over time ("Installment Option"), the aggregate payments under the Installment Option may be greater than the charge(s) paid by customers who pay the total charge(s) in one payment.

You will not be eligible for any discounts or promotional offers other than those you qualify for at the time you order qualifying Service and/or Equipment, unless the discount or promotional offer specifically states that existing customers are eligible and in that instance you will receive the discount or promotional offer strictly in accordance with its terms. Customers who move Service or disconnect and reconnect Service may not be eligible for promotional pricing available to new customers. You may only take advantage of one special pricing promotion per Service per account during any 12 month period.

(b) Payment

(i) Billing. Charges are billed in advance and are payable 18-25 days after the bill cycle date (varies by state). The Customer understands that Qwest may reduce or disconnect the Services offered to the Customer for non-payment of any charges due. The Customer agrees that Qwest may require a reconnection charge, advance payment, and/or a deposit if the Services are disconnected for non-payment. Deposits are held for a minimum of one year and can be refunded after 12 consecutive months without a delinquency notice or late payment.

(ii) If Qwest incurs any charges or fees to collect money owed or to assert any other right which Qwest may have, the Customer agrees to pay such reasonable costs of collection or other action.

(iii) You will provide all information necessary for Qwest to provide and bill for the Service and Equipment. You affirm that the information you supply to us is correct and complete and will promptly notify Qwest whenever your personal or billing information changes. You understand that false or incorrect information may result in Service provisioning or delivery delays or the suspension or termination of your Service.

(iv) Disputes. The billed rate will continue unless you call us promptly and inform us that the billed monthly rate is not the one quoted to you. You must give Qwest notice of any dispute on your bill. If you pay the disputed amount you will receive interest at the lesser of the highest lawful amount for commercial transactions or 1% per month on any amounts Qwest determines were wrongly charged to you. If you give notice of a billing dispute within 90 days of the billed date such interest will be from the due date to the date Qwest credited back or refunded the wrongly charged amount. If you give notice after this 90-day period, such interest will be from the date Qwest received your notice to the date Qwest credited back or refunded the wrongly charged amount. You will be charged a Late Charge on any amounts withheld that are undisputed or ultimately determined to have been correctly charged. You will pay all Qwest expenses incurred to recover such withheld amounts, including attorneys' fees.

(v) Deposit. Qwest may reasonably modify the payment terms or require other assurance of payment, including a deposit, based on Customer's payment history, lack of established credit, or a material and adverse change in Customer's financial condition. Refunded deposit amounts will be credited to your account and any credit balance will be refunded. If you make a cash deposit, you will receive interest at the rate required in the state you receive Service, Equipment, or Software from date Qwest received deposit until date Qwest refunded the deposit.

8. Term and Termination.

(a) 30-Day Cancellation Policy. You may cancel Service and return the Equipment within 30 days following your order of the Service and avoid payment of monthly recurring charges if: (i) you are a new Service customer, and (ii) you notify Qwest you wish to cancel Service because you do not agree with the terms and conditions of this Agreement. You must pay all NRCs related to your canceled Service, including without limitation installation, maintenance and shipping charges. You must also pay MRCs related to your canceled Service and any Equipment charges if you cancel Service and return your Equipment more than 30 days after ordering and/or fail to follow the Return Policy set forth below in Section 8(d) to return Equipment.

(b) Month-to-Month Term. Service is offered on a monthly basis for a term that begins on the date your Service order is completed, ends on the last day of the billing cycle during which you placed the order for Service, and automatically renews monthly.

(c) Termination. You may terminate this Agreement and your use of the Services at any time and for any reason by calling Qwest at 1-800-654-2180; **you cannot terminate your Service online or by e-mail.** Qwest may terminate this Agreement and/or your use of the Service, without notice and for any reason, including, without limitation, if you fail to pay any charges when due, if Qwest ceases to offer the Service, or if Qwest believes you or someone using your Service has violated this Agreement. Qwest may, but is not obligated to, send notice of any violations to you before termination. If Service is terminated by you or Qwest prior to the end of a monthly term, you will be required to pay a prorated amount of the MRCs for the month and the full amount for any NRCs or other charges for the month and any accrued but unpaid amounts related to Service and Equipment through the effective date of termination.

(d) Return of Equipment. Upon termination, you must promptly return your Equipment to Qwest by following the Return Policy at www.qwest.com/legal/choicetvandonline. Qwest will, at its option, either: (1) charge you the Equipment Charge if Qwest does not

receive the Equipment within 30 days after termination or (2) charge you the Equipment Charge upon termination and credit you back for such charge ONLY if Qwest receives your Equipment within 45 days following termination.

(f) **Seasonal Service (Vacation Service).** You may temporarily suspend Service ("Seasonal Service or "Vacation Service") for a minimum of 30 days and a maximum of 6 months at the rates and charges set for in the Rate Card. If you put your Service on Seasonal Service, your Service will be unavailable for your use. If you do not reinstate Service after 6 months, Qwest may terminate your Service. While you are on Seasonal Service, any term commitment period will continue to run, and bundle discounts you may be otherwise entitled to will not apply, until you reinstate your Service.

9. Limitation of Liability. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

(a) YOU ASSUME TOTAL RESPONSIBILITY FOR USE OF THE SERVICE, AND EQUIPMENT. QWEST EXERCISES NO CONTROL OVER AND DISCLAIMS ANY RESPONSIBILITY FOR THE CONTENT ACCESSIBLE USING THE SERVICE OR EQUIPMENT.

(b) REGARDLESS OF THE LEGAL THEORY UNDER WHICH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER QWEST HAS BEEN ADVISED OF THE POSSIBILITY OF LIABILITY, LOSS, OR DAMAGE, QWEST, ITS AFFILIATES, AND CONTRACTORS WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, LOSS OF BUSINESS, LOST OR IMPUTED PROFITS OR REVENUES, LOSS OF INFORMATION OR DATA, COSTS OF COVER, INTERRUPTED SERVICE, OR RELIANCE UPON THE SOFTWARE, EQUIPMENT AND/OR ASSOCIATED DOCUMENTATION) ARISING OUT OF OR RELATED TO THIS AGREEMENT, SERVICE, SOFTWARE, OR EQUIPMENT EVEN IF ANY SUCH DAMAGES ARE CAUSED BY QWEST, ITS AFFILIATES OR CONTRACTORS.

(c) THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE LIMITED WARRANTY FOR EQUIPMENT SECTION BELOW IS THE ONLY REMEDY AVAILABLE WITH RESPECT TO THE EQUIPMENT. WITH REGARD TO ANY SERVICE RELATED CLAIM FOR DAMAGES THAT IS NOT LIMITED BY THIS SECTION, YOUR EXCLUSIVE REMEDIES FOR SUCH CLAIM WILL BE LIMITED TO THE TOTAL MRCs OR USAGE CHARGES PAID BY YOU TO QWEST FOR THE AFFECTED SERVICE IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. QWEST'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL MRCs AND USAGE CHARGES PAID BY YOU TO QWEST UNDER THIS AGREEMENT IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM ("DAMAGE CAP").

(d) QWEST DISCLAIMS ALL LIABILITY OR RESPONSIBILITY FOR ACTS AND OMISSIONS OF OTHER PROVIDERS. ADDITIONALLY, IF PART OF THE SERVICE IS PROVIDED BY A THIRD-PARTY AND THE THIRD-PARTY FAILS TO PROVIDE THAT SERVICE, QWEST WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DEFICIENCIES IN OR LACK OF SERVICE.

(e) QWEST DISCLAIMS ALL LIABILITY OR RESPONSIBILITY IF SERVICE CHANGES REQUIRE EQUIPMENT CHANGES, DEGRADE EQUIPMENT PERFORMANCE OR SERVICE PERFORMANCE WITH THE EQUIPMENT, OR MAKE EQUIPMENT OBSOLETE.

(f) QWEST'S SOLE LIABILITY AND YOUR SOLE REMEDY FOR QWEST'S FAILURE TO PROVIDE THE SERVICE OR TO MEET PUBLISHED CUSTOMER SERVICE GUARANTEES, SHALL BE LIMITED TO AN OUT-OF-SERVICE CREDIT OR THE AMOUNT OF CREDIT STATED IN THE PUBLISHED CUSTOMER SERVICE GUARANTEES IN THE USER GUIDE AT www.qwest.com/residential/userguides.

(g) As part of providing Service we will access your premises, television and television-related equipment. We do not represent or warrant that the technicians doing such work have any special expertise regarding your television or such equipment. Qwest will not be responsible for damage to property arising from the installation, maintenance or removal of the Equipment, other work associated with the Service, or the provision of the Services. Qwest liability is limited to damage arising from willful misconduct or grossly negligent acts of Qwest technicians in accessing your premises, television and television-related equipment up to \$2,500, and under no circumstances will Qwest be liable for special or consequential damages. This is your sole remedy for such activity and neither Qwest nor its affiliates, agents, or contractors is liable for any other damages, loss or destruction regardless of the theory, whether direct, indirect, incidental, special or consequential. This is a limitation upon the remedy for such grossly negligent or willful misconduct, and is NOT part of any benefit under this Agreement.

(h) Any claim or dispute arising out of or relating to this Agreement must be brought within one year after the cause of action arises.

10. Personal Injury, Death, and Property Damage. QWEST'S LIABILITY TO YOU ON ACCOUNT OF ANY ACT OR OMISSION OF QWEST RELATED TO THIS AGREEMENT WILL BE LIMITED TO BODILY INJURY OR DEATH DIRECTLY CAUSED BY QWEST'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. EXCEPT FOR DAMAGES DESCRIBED IN THE PREVIOUS SENTENCE, YOU WILL NOT BE ENTITLED TO ANY OTHER DAMAGES, INCLUDING INDIRECT OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION. QWEST AND OUR EMPLOYEES, AGENTS, CONTRACTORS AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR MODIFICATIONS TO, OR LOSS OR DESTRUCTION OF, ANY OF YOUR PROPERTY, EQUIPMENT, SOFTWARE, FILES, DATA OR PERIPHERALS, REGARDLESS OF THE CAUSE. Damages under this Section will be subject to the limitation of liability in this Agreement but not the Damage Cap. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

11. Warranty.

(a) **Limited Warranty for Equipment.** Qwest extends a Limited Warranty to you for the Equipment. The terms of the Limited Warranty are set out below (the Limited Warranty") and are part of this Agreement. Nothing in this Agreement will be deemed to alter the terms

of the Limited Warranty. THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE LIMITED WARRANTY IS THE ONLY REMEDY AVAILABLE WITH RESPECT TO THE EQUIPMENT, WHETHER ARISING UNDER THE LIMITED WARRANTY, UNDER A LEGALLY EFFECTIVE IMPLIED WARRANTY OR OTHERWISE.

LIMITED WARRANTY

(i) This Equipment is warranted by Qwest to the person that ordered the Service, and no others, to be free of manufacturing defects during the term of your Service.

(ii) This Limited Warranty covers only repair and/or replacement of the Equipment due to equipment malfunctions or manufacturer defect, and Qwest does not warrant the compatibility of the Equipment with any computer, operating system, nor does this Limited Warranty cover any defect present in any computer, network, or operating or other system. To make a claim under this Limited Warranty, you must notify Qwest at 1-800-654-2180 and report that the Equipment is not functioning properly, and cooperate with the Qwest Sales Representative to evaluate the circumstances and schedule a service call in accordance with the Service Guarantee set forth above in Section 5.

(iii) *Repaired/Replacement Equipment.* Qwest may use new or reconditioned parts to repair the Equipment, or replace the Equipment with new, repaired, or reconditioned Equipment, all at the sole discretion of Qwest. All replaced products or parts become the property of Qwest and will not be returned.

(iv) *Exception and Exclusions.* This Limited Warranty does not cover defects due to defacement, misuse, abuse, neglect, improper use, improper electrical voltages or current, repairs by others, alterations, modifications, accidents, fire, flood, vandalism, acts of God or the elements or malicious conduct. No advice or information given by Qwest, its affiliates, its contractors, or their respective employees will vary the terms of the Limited Warranty.

(v) *No Other Express Warranties and Limitation of Implied Warranties.* This Limited Warranty is the only express warranty extended by Qwest in connection with the Equipment. Implied warranties which may not be disclaimed are limited in time to the duration of this Limited Warranty, and all remedies for all such implied warranties are restricted to the remedy and procedure set forth for this Limited Warranty. This Limited Warranty is in lieu of all other warranties, however arising, and all such other warranties are hereby disclaimed. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

(vi) This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

(b) *Disclaimer of Warranties.* THE SERVICE, AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT FOR THE LIMITED WARRANTY IN THE PRECEEDING SECTION, QWEST PROVIDES THE SERVICE, AND EQUIPMENT WITHOUT WARRANTIES OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INTERFERENCE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING OR COURSE OF TRADE AND DISCLAIMS ANY SUCH WARRANTIES. QWEST DOES NOT WARRANT THE INTEROPERABILITY OF QWEST SERVICE AND EQUIPMENT WITH ANY AUTHORIZED BUT UNSUPPORTED ITEMS (AS DESCRIBED IN SECTION 2(c) ABOVE AND IN THE USER GUIDE) YOU ATTACH, CONNECT OR USE WITH THE SERVICE. QWEST DOES NOT WARRANT THAT THE SERVICE, EQUIPMENT OR SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NO ADVICE OR INFORMATION GIVEN BY QWEST, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL VARY THE TERMS OF THE LIMITED WARRANTY OR THIS AGREEMENT OR CREATE ANY WARRANTY. QWEST IS NOT RESPONSIBLE FOR DEFACEMENT, MISUSE, ABUSE, NEGLIGENCE, IMPROPER USE, IMPROPER ELECTRICAL VOLTAGES OR CURRENT, REPAIRS BY OTHERS, ALTERATIONS, MODIFICATIONS, ACCIDENTS, FIRE, FLOOD, VANDALISM, ACTS OF GOD, OR THE ELEMENTS. QWEST TECHNICAL SUPPORT IS NOT WARRANTED AND IS USED AT YOUR OWN RISK. QWEST MAKES NO WARRANTY REGARDING TRANSACTIONS EXECUTED AND CONTENT AND INFORMATION ACCESSED BY USING THE SERVICE. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

12. Indemnification. You agree to indemnify, defend, and hold harmless Qwest and its subsidiaries, affiliates, contractors, officers, employees, agents, suppliers, or other partners from any and all third-party claims, liabilities, costs, and expenses, including reasonable attorney fees and punitive damages arising from: (a) violation of any provision of this Agreement by you or others who use your Service and/or Equipment; (b) installation, modification, or use of the Service, and/or Equipment by you and/or any parties who use your Service, and/or Equipment, with or without your permission; (c) claims for libel, slander, invasion of privacy, or infringement of any intellectual property rights arising from the use of the Service; (d) patent infringement arising from your acts combining or using the Service in connection with facilities or equipment (circuit, apparatus, system or method) furnished by you; (e) negligent acts, errors, or omissions by you; or (f) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the gross negligence or willful misconduct of Qwest.

13. Dispute Resolution and Arbitration; Governing Law. PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH MANDATORY ARBITRATION WITH A FAIR HEARING BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION.

(a) *Arbitration Terms.* You agree that any dispute or claim arising out of or relating to the Services or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration. The sole exceptions to arbitration are that either party may pursue claims: (1) in small claims court that are within the scope of its jurisdiction, provided the

matter remains in such court and advances only individual (non-class, non-representative, non-consolidated) claims; and (2) in court if they relate solely to the collection of any debts you owe to Qwest.

(i) *Arbitration Procedures.* Before commencing arbitration you must first present any claim or dispute to Qwest in writing to allow Qwest the opportunity to resolve the dispute. If the claim or dispute is not resolved within 60 days, you may request arbitration. The arbitration will be conducted by the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, will govern the arbitration of the dispute. Colorado state law, without regard to choice of law principles, will otherwise govern and apply to any and all claims or disputes. All face-to-face proceedings will be conducted at a location which is reasonably convenient to both you and Qwest. Arbitration is final and binding. Any arbitration will be confidential, and neither you nor Qwest may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. The arbitrator may award any relief or damages that a court could award, except an arbitrator may not award relief in excess of or contrary to what this Agreement provides. Judgment on any arbitration award may be entered in any court having jurisdiction.

(ii) *Costs of Arbitration.* The party requesting arbitration must pay the applicable AAA filing fee, except that if you are an individual using the Services for household or personal use and you initiate arbitration against Qwest: (1) you must pay one-half the arbitrator's fees up to a maximum of \$125 if your claim does not exceed \$10,000; (2) you must pay one-half the arbitrator's fees up to a maximum of \$375 if your claim is more than \$10,000 but less than \$75,000; and (3) you must pay an Administrative Fee in accordance with the AAA's Commercial Fee Schedule if your claim exceeds \$75,000 or if your claim is non-monetary. Except as provided in the preceding sentence, each party will pay its own expenses of the arbitration, including the expense of its own counsel, witnesses, and presentation of evidence at the arbitration. If any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorneys' fees.

(b) Waiver of Jury and Class Action. By this Agreement, both you and Qwest are waiving rights to litigate claims or disputes in court (except as set forth in paragraph (a) above). Both you and Qwest also waive the right to a jury trial on your respective claims, and waive any right to pursue any claims on a class or consolidated basis or in a representative capacity.

14. Notices. Except as otherwise provided herein, all required notices to Qwest must be in writing and sent to 1801 California Street, Suite 900, Denver, Colorado 80202; Facsimile #: 1 888-778-0054; Attn.: Legal Department. Except as otherwise provided herein, you agree that all required notices to you will be provided by one or more of the following: posting, bill message, bill insert, postcard, letter, call to your billed telephone number, **or e-mail to an address provided by you when you ordered Service or Equipment.** You agree to provide Qwest with any and every change to your e-mail address by calling 1-800-654-2180. Except as otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by facsimile so long as duplicate notification is also sent by regular U.S. Mail.

15. General. If any term of this Agreement is held invalid, illegal or unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder. All terms of this Agreement that should by their nature survive the termination of this Agreement will so survive. Qwest will not be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by a Force Majeure Event. This Agreement, together with the other agreements and policies and posted information referenced herein, constitutes the entire agreement between you and Qwest with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written agreements or understandings relating to the subject matter hereof. No undertaking, representation or warranty made by an agent or representative of Qwest in connection with ordering, authorization, maintenance or provision for the Service and/or the Equipment will be binding upon Qwest, except as expressly set forth herein. In the event of any inconsistency between this Agreement and any other documents exchanged between you and Qwest related to the Service or Equipment, the provisions of this Agreement will control.

Please call Qwest at 1-800-654-2180 if you have any questions regarding your account.

Where required by law, customers who cancel their Service within the first three days, or seven days, as applicable, following acceptance of this Agreement will be refunded all charges incurred with respect to their account.