

# ACCESS MEDIA HOLDINGS, LLC D/B/A “Upstream”

## Subscriber Agreement

1. **Introduction.** Access Media Holdings, LLC d/b/a “Upstream” (“AMH” or “Provider”) provides its Internet services and/or video (“Services”), as they may exist from time to time, to units of properties whose owners or parties with authority (“Owners”) have entered into a property wide bulk agreement with AMH. Property Owners may pay a bulk monthly fee for all residents of the property (“Subscribers”) to receive access to our Services via a property wide broadband network. AMH may also enter into agreements directly with the property’s Subscribers for our Services. By accessing our Services, either through a property wide bulk agreement, or as an individual Subscriber, you agree to be bound by this Subscriber Agreement (“Agreement”) and to use the Services in compliance with this Agreement and our Acceptable Use Policy (“AUP”).

**Note: THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION IN SECTION 18 THAT AFFECTS YOUR RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ALL SERVICE(S). THE ARBITRATION PROVISION REQUIRES THAT DISPUTES BE RESOLVED IN INDIVIDUAL ARBITRATIONS OR SMALL CLAIMS COURT PROCEEDINGS. IN ARBITRATION, THERE IS NO JUDGE OR JURY AND THERE IS LESS DISCOVERY AND APPELLATE REVIEW THAN IN COURT.**

2. **Subscription Requirements.** Subscribers who access our Services through a property wide agreement must contact their property management team, who will provide the necessary materials to activate service. Individual Subscribers must be at least 18 years old, and have a valid major bank issued MasterCard or Visa credit card.

3. **Payment obligations of Subscribers.**

a. You agree to pay all charges associated with the Service(s), including, but not limited to, charges for installation, service calls, monthly service, AMH Equipment (as defined below), purchases or rentals or other services, measured and per-call charges, applicable federal, state, and local taxes and fees (however designated), fees to recoup any municipal, state and federal government fees or assessments on us, permitted fees and cost recovery charges, or any programs in which we participate, including, but not limited to, public, educational, and governmental access, universal service, telecom relay services for the visually/hearing impaired, rights-of-way access, and programs supporting the 911/E911 system and any fees or payment obligations imposed by governmental or quasi-governmental bodies for the sale, installation, use, or provision of the Service(s). **YOU WILL BE RESPONSIBLE FOR PAYING ANY GOVERNMENT IMPOSED FEES AND TAXES, WHETHER IMPOSED ON YOU OR US, THAT BECOME APPLICABLE RETROACTIVELY.** We will provide you with notice of applicable pricing contemporaneous with your order and/or activation, including information regarding standard pricing applicable at the end of a promotion via our rate card or other notice. We will provide you with notice of any change in our standard prices or fees or new prices or fees, unless the change in price or new fee

is related to a change in governmental or quasi-governmental taxes, fees, or assessments, in which case we may elect not to provide notice except where required by applicable law.

b. Subscribers under property wide agreements must complete billing and access documents as provided by their property management. These fees may be included in your monthly rent or assessment, as an additional fee, or may be covered as an amenity by your property Owner. Subscribers must provide AMH with accurate and complete billing information including legal name, address, telephone number, and credit card billing information. Subscribers must report all changes to this information within 15 days of the change. Subscribers are responsible for any changes to their billing information, or individual access accounts. If a Subscriber has questions regarding charges to an account, they may contact AMH's billing department via email at support@upstream.network. All charges are considered valid unless disputed in writing within 60 days from receipt of an invoice. Adjustments will not be made for charges that are more than 60 days old. If a Subscriber has ordered services, charges may be billed via a credit card on an auto-pay basis monthly for those Services including any pro-rated and one-time amounts. In the event a credit card has been declined, the Subscriber will be notified and have 10 days to provide AMH with correct billing information or be subject to termination. In the event a Subscriber's account has been terminated, additional fees will apply to reinstate service.

c. **Third-Party Charges That Are Your Responsibility.** You may incur charges with third-party service providers such as for accessing on-line services, purchasing or subscribing to other offerings via the Internet or interactive options on your video Service that are separate and apart from the amounts charged by us. You are solely responsible for all such charges payable to third parties, including all applicable taxes.

d. **Our Remedies if You Pay Late or Fail to Pay.** You may be billed fees, charges, and assessments related to late or non-payments if for any reason we do not receive payment for full amounts billed to you by the due date.

e. **Our Right to Make Credit Inquiries.** YOU AUTHORIZE US TO MAKE INQUIRIES AND TO RECEIVE INFORMATION ABOUT YOUR CREDIT EXPERIENCE FROM OTHERS, TO ENTER THIS INFORMATION IN YOUR FILE, AND TO DISCLOSE THIS INFORMATION TO APPROPRIATE THIRD PARTIES FOR REASONABLE BUSINESS PURPOSES. We will not discriminate in the application of our credit inquiries and deposit policy on the basis of race, color, sex, creed, religion, nationality, sexual orientation, gender identity, or marital status. Any risk assessments conducted by either us or by third party credit bureaus will be done in conformance with all applicable laws. We reserve the right to make credit inquiries even after having received a deposit from you with respect to our Services.

4. **Subscriber Use.** In accordance with our AUP, Subscriber shall not re-sell or re-distribute access to the Services or system capacity, or any part thereof, in any manner without express prior written consent. Subscriber shall not use or permit third parties to use the Services, including the Equipment and software provided by AMH, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Subscriber shall not interfere with other Subscribers' use of the Equipment or Services or disrupt the AMH Network, backbone, nodes

or other Services. Violation of any part of this Section or the AUP is grounds for immediate termination of the Services to a Subscriber in addition to any other rights or remedies AMH may have.

5. **Performance.** AMH will use commercially reasonable efforts in complying with normal industry standards to ensure that the Service is available to Subscriber 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond AMH's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Subscriber, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by AMH to perform its obligations under this Agreement, and Subscriber will not hold AMH at fault for loss of Subscriber revenue or lost employee productivity due to Service outages.

6. **Subscriber's Account, Password, and Security.** **Individuals do not have an assigned password or username to access the Services.** Access to our Services is determined by individual connection ports installed in a Subscriber's residence. AMH provides basic firewall services for all networks, however each individual is responsible for securing his / her computer. At no time will AMH be responsible for any unauthorized access to a Subscriber's computer.

7. **Changes to Services.** Subject to applicable law, we have the right to change our Service(s), Equipment, rates and charges, at any time. We also may rearrange, delete, add to, or otherwise change programming or features or offerings contained in the Service(s), including, but not limited to, content, functionality, hours of availability, equipment requirements, speed, and upstream and downstream rate limitations. We may deliver any notice concerning changes to the Service(s) and our relationship with you, including notice of any change to this Agreement, in any one or more of the following ways, as determined in our sole discretion: (1) by posting it on our website or any other website about which you have been notified; (2) by mail or hand delivery to your Premises; (3) by e-mail to the e-mail address for your account in our records; or (4) by including the information on or with your bill for Service(s). You agree that any one of the foregoing will constitute sufficient and effective notice under this Agreement. Because we may from time to time notify you about important information regarding the Service(s) and this Agreement by these methods, you agree it is your responsibility to regularly check your postal mail, e-mail, service texts, and all postings at our website or any other website about which you have been notified. If any material change negatively affects your Service(s), you have the right to cancel your Service(s). Your continued receipt of the Service(s) for more than 30 days after the change, however, will constitute your acceptance of the change.

8. **Equipment / Software.** AMH requires all computers to be configured with a 10/100/1000 Mbps network interface card, TCP /IP configured for DHCP (unless a static IP address has been ordered), and applicable software installed allowing the subscriber to access AMH's services. AMH will not support configuration of a user's computer, other than through email and documents posted on our website.

a. **Responsibilities and Safeguards.** Except as otherwise provided in this Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party; provided, however, that subject to the indemnification limitations set forth in this Agreement, each party shall be

responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through a party's gross negligence or willful misconduct.

Subscriber shall:

- i. Safeguard Equipment against others;
- ii. Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- iii. Not hire nor permit anyone other than authorized personnel acting in their official capacity to perform any work on Equipment; and
- iv. Not move nor relocate Equipment to another location or use it at an address other than the Service location without prior written consent.

b. **Customer Equipment.** "Customer Equipment" means software, hardware or services that you elect to use in connection with the Service(s) or AMH Equipment that is not provided or leased by us. You agree to allow us and our agents the rights to insert hardware in the Customer Equipment, send software and/or "downloads" to the Customer Equipment and install, configure, maintain, inspect and upgrade the Customer Equipment. You warrant you are either the owner of the Customer Equipment or that you have the authority to give us access to the Customer Equipment. If you are not the owner of the Customer Equipment, you are responsible for obtaining any necessary approval from the owner to allow us and our agents access to the Customer Equipment to perform the activities described in this paragraph. In addition, you agree to supply us or our agents, if we ask, the owner's name, address and phone number and/or evidence that the owner provided such authorization. When provided by the Subscriber or User, Customer Equipment is solely the responsibility of the Subscriber and AMH has no responsibility whatsoever for the installation, operation, and maintenance of such Customer Equipment. The Subscriber is solely responsible for all costs of installing, maintaining or repairing such Customer Equipment, including without limitation personnel charges, wiring costs, and costs associated with routing of electrical power, incurred in the attachment to and use of the AMH's facilities or Services. The Subscriber is responsible for ensuring that all such Customer Equipment conforms to the Federal Communications Commission's registration requirements set forth in Part 68 of the Code of Federal Regulations (as amended), and AMH may discontinue the provision of Services to any location where Customer Equipment provided by the Subscriber or User fails to conform to such regulations.

Subscriber shall be solely responsible for satisfying all legal requirements for interconnecting Subscriber or User-provided terminal equipment or communications systems with Other Providers' facilities, including, without limitation, application for all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. Satisfaction of all legal requirements, any interface equipment or any other facilities necessary to interconnect the facilities of AMH and Other Providers must be provided at the Subscriber's sole expense.

AMH shall allow Subscribers to secure the provision, repair, and maintenance of CPE from any supplier, provided that such equipment shall be in compliance with applicable registration standards promulgated by the Federal Communications Commission.

d. **Access To Your Premises And Customer Equipment.** You agree to allow us and our agents the right to enter your property at which the Services and/or AMH Equipment will be provided (the "Premises") at reasonable times, for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Services and/or AMH Equipment used to receive any of the Services. You warrant that you are either the owner of the Premises or that you have the authority to give us access to the Premises. If you are not the owner of the Premises, you are responsible for obtaining any necessary approval from the owner to allow us and our agents into the Premises to perform the activities specified above. In addition, you agree to supply us or our agent, if requested, the owner's name, address, and phone number and/or evidence that the owner has provided such authorization.

9. **Internet Access Services.** The following Services shall be provided to each Subscriber:

- Backbone wiring infrastructure will be provided under separate agreement depending on ownership of the infrastructure.
- A single connection to the Internet per unit.
- Support. Subscribers will be provided reasonably adequate technical support via local telephone access and email. All email support must be addressed to support@upstream.network.
- The following Upgrade Services will be offered to each Subscriber. Additional charges will apply.
  - Internet Static IP Addresses
  - On Site Installation
  - In-Unit wiring infrastructure maintenance

10. **Use of Services.** You agree that the Services and the AMH Equipment will be used only for personal, residential, non-commercial purposes, unless otherwise specifically authorized by us in writing. You are prohibited from reselling or permitting another to resell the Service(s) in whole or in part, or using or permitting another to use the AMH Equipment or the Service(s), directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any policy we post applicable to the Service(s). Use of the AMH Equipment or Services for transmission, communications or storage of any information, data or material in violation of any federal, state or local regulation or law is prohibited. You acknowledge that you are authorized to accept this Agreement on behalf of all persons who use the AMH Equipment and/or Services at the Premises or at other locations authorized by us and that you shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement and any applicable policies including, but not limited to, our acceptable use and privacy

policies. You are liable for all authorized and unauthorized use of the Service(s) and you agree to notify us immediately in writing or by calling us during normal business hours if the AMH Equipment has been stolen or the Service(s) is used without your authorization. If you fail to notify us in a timely manner, the Service(s) may be terminated without notice and you may incur additional charges.

#### 11. **LIMITATION OF LIABILITY.**

PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

(a) **Limited Warranty.** At all times during the Service Period, AMH warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Subscriber. AMH does not warrant that Services will be error free.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, AMH MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. AMH'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY SUBSCRIBER TO AMH FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Subscriber must be made within 30 days after the applicable Services have been performed. AMH's sole obligation and Subscriber's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Subscriber based on the period of time when the Services are out of compliance with this limited warranty provision.

(b) **Content.** Any content that Subscriber may access or transmit through any Service is provided by independent content providers, over which AMH does not exercise and disclaims any control. AMH neither previews content nor exercises editorial control; does not endorse any opinions or

information accessed through any Service; and assumes no responsibility for content. AMH specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Subscriber and its authorized users accessing other parties' content through Subscriber's facilities do so at Subscriber's own risk, and AMH assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.

(c) **Damage, Loss or Destruction of Software Files and/or Data.** Subscriber uses the Services and Equipment supplied by AMH at its sole risk. AMH does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. AMH assumes no responsibility whatsoever for any damage to or loss or destruction of any of Subscriber's hardware, software, files, data or peripherals which may result from Subscriber's use of any Service. AMH does not warrant that data or files sent by or to Subscriber will be transmitted in uncorrupted form or within a reasonable period of time.

(d) **Force Majeure Event.** Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond such party's control, including but not limited to denial of use of facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive condition shall not be considered a Force Majeure Event.

12. **INDEMNIFICATION.** In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Subscriber at its own expense, shall indemnify, defend and hold harmless AMH and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by AMH Indemnified Parties, including reasonable attorney fees and court costs incurred by AMH Indemnified Parties under this Agreement, to the full extent that such arise from Subscriber's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Orders, Subscriber's failure to comply with applicable law, and/or Subscriber's negligence or willful misconduct. AMH Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Subscriber's cost and Subscriber shall cooperate with AMH Indemnified Parties in such case.

13. **Assignability.** This Agreement and the Service(s) furnished hereunder may not be assigned by you. We may freely assign our rights and obligations under this Agreement with or without notice to you.

14. **Termination of this Agreement.**

a. **Term.** Except for those provisions which by their nature survive the termination of this Agreement, this Agreement will be in effect from the time that the Services are activated until (1) it is terminated as provided for by this Agreement or by any addendum to this Agreement or (2) it is replaced by a revised Agreement. If you self-install AMH Equipment, Services charges

begin the earliest of (1) the day on which you picked up AMH Equipment at our service center, (2) the day you install the Services, (3) the day your order for the Services is entered into our billing system if AMH Equipment is not required for the Services, or (4) five (5) days after the date we ship the AMH Equipment to you.

b. **Termination by You.** Unless your Services are subject to a minimum term agreement, you may terminate this Agreement for any reason at any time by notifying us in one of the following ways: (1) mailing a written notice to our local business office; (2) email to our email address with confirmation of receipt; or (2) calling our Subscriber service [during normal business hours]. Prior to effecting such termination, or any other change to your account, we may verify your identity and confirm your election. Subject to applicable law or the terms of any agreements with governmental authorities, all applicable fees and charges for the Services will accrue until this Agreement has terminated, the Service(s) has been disconnected, and all AMH Equipment has been returned. Except for non-refundable fees and charges, we will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due us for the Service(s), affiliate services, AMH Equipment, or other applicable fees and charges).

c. **Suspension and Termination by Us.** Subject to applicable law, we reserve the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to any users (e.g., email or voicemail). We may take these actions if we: (1) determine that your use of the Services does not conform with the requirements set forth in this Agreement or other agreements, (2) determine that your use of the Services interferes with our ability to provide the Services to you or others, (3) reasonably believe that your use of the Services may violate any laws, regulations, or written and electronic instructions for use, (4) reasonably believe that your use of the Services interferes with or endangers the health and/or safety of our personnel or third parties, or (5) you threaten, harass, or use vulgar and/or inappropriate language toward our personnel. Our action or inaction under this Section shall not constitute review or approval of your or any other users' use of the Services or information transmitted by or to you or other users.

d. **Your Obligations Upon Termination.** You agree that upon termination of this Agreement you will do the following: 1. You will immediately cease all use of the Services and all AMH Equipment; 2. You will pay in full for your use of the Services up to the date that this Agreement has been terminated and the Services are disconnected; and 3. You will return all AMH Equipment to us or to our designee in working order, normal wear and tear excepted within ten (10) days of the date on which Services are disconnected. Otherwise, you will be charged up to the retail price for a new replacement for such AMH Equipment. You may also be charged incidental costs that we incur in replacing the AMH Equipment. Upon our request during regular business hours at a time agreed upon by you and us, you will permit us and our agents, to access the Premises to remove all AMH Equipment and other material provided by us.

#### 15. **Standards Applicable to Broadband Services.**



- Viruses. The Provider must be capable of maintaining the network during virus attacks and will manage processes to address viruses that may impact the network. Provider may disconnect Broadband Services to a Subscriber whose computer is infected with viruses until the Subscriber demonstrates to Provider's satisfaction that the viruses have been eliminated. If a Subscriber is disconnected from Services due to virus-related issues on more than one occasion, Provider must approve reactivation of the Subscriber's Service, and Provider may charge the Subscriber (for the respective infected computer(s)) a reasonable reactivation fee.
- Spam. The distribution of Spam using Provider's Broadband Services may affect the provision of such Service. Provider may implement a SPAM management practice to reduce SPAM traffic, and the Provider may block any SPAM traffic emanating from the Property, the Owner's facilities or a Subscriber. The Provider may disconnect any Service to Owner or a Subscriber who repeatedly distributes SPAM traffic until the Subscriber demonstrates to Provider's satisfaction that SPAM activity has ceased. If Service to a Subscriber is disconnected for SPAM traffic on more than one occasion, the Provider may charge the Subscriber a reasonable fee for reactivation.

16. **Bandwidth and Service Availability**. Provider shall undertake appropriate efforts to provide the level of Bandwidth for Broadband Services to the Subscriber as per the bandwidth speed ordered. Provider will use commercially appropriate efforts to provide such bandwidth through the use of properly configured networks and routers to ensure that download speeds are maintained. Provider's speed commitments are for the network and Equipment maintained by the Provider between the Subscriber's Internet user's computer and the last device on Provider's network before such data packet is transmitted by a network or equipment beyond the control of Provider. The Subscriber acknowledges that data that enters the "Internet cloud" and networks that are beyond the control of Provider. The Subscriber accepts and acknowledges that conditions and circumstances outside of Provider's control can affect the connectivity speed of a Subscriber's device; such conditions and circumstances include without limitation: the speed, age and components of the device being used to access the Internet; viruses which may infect the device; and, Internet slowdowns within the computer or server being accessed by the individual user's device. Provider reserves the right to cap, throttle, or terminate the Internet Service provided to a Unit or Subscriber for a violation of Provider's Acceptable Use Policies or these Standards by such user.

- Any Internet user using Provider's high-speed Internet service must maintain certain minimum equipment and software to receive the Internet service. Owner will refer Subscribers to Provider's service information or website for the current specifications. Provider shall not warranty or maintain any devices installed by the Subscribers, including routers, modems, wireless hubs and other such devices, unless provided by Provider. Each Internet user shall be responsible for security with respect to his or her own equipment that interfaces with Provider's Broadband Service.

- Provider assumes no liability or responsibility whatsoever for any damage to or loss or destruction of any of the property of Subscribers (including but not limited to hardware, software, files, or data), which may result from the use of the Broadband Service by Subscriber, except as a direct result of Provider's gross negligence during installation or maintenance of Broadband Service or Provider's Equipment. Provider does not warrant that any data or materials sent by or to a Subscriber will be transmitted in uncorrupted form within a reasonable period of time. Subscriber shall, respectively, be solely liable and responsible for all fees or charges for any online services or products they may purchase or order. Provider shall have no responsibility to resolve disputes with other vendors or third parties.

17. **Monitoring and Privacy.** Provider is concerned with maintaining the privacy of Subscriber and treats private communications on and through its network as confidential. Provider has no obligation to monitor Internet content. However, Subscriber understands and agrees that Provider has the right to monitor such content from time to time; and to access, and/or disclose the contents of private communications in accordance with its Privacy Policy and with applicable law. In addition and as a condition to any obligation of Provider to provide Broadband Service, each user must agree when requested in writing by Provider that Provider has the right to monitor such content from time to time; and to access, and/or disclose the contents of private communications in accordance with its Privacy Policy and with applicable law. A copy of Provider's Privacy Policy can be found on Provider's website.

18. **Binding Arbitration.**

- a. **Purpose.** Any Dispute involving you and us shall be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court.
- b. **Definitions.** This Arbitration Provision shall be broadly interpreted. "Dispute" means any claim or controversy related to us or our relationship, including but not limited to any and all: (1) claims for relief and theories of liability, whether based in contract, tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (2) claims that arose before this or any prior Agreement; (3) claims that arise after the expiration or termination of this Agreement, and (4) claims that are the subject of purported class action litigation. As used in this Arbitration Provision, "us" means AMH and any of its predecessors, successors, assigns, parents, subsidiaries, and affiliates, and each of their respective officers, directors, employees and agents, and "you" means you and any users or beneficiaries of the AMH Service(s) or Equipment.
- c. **Right to Opt Out.** IF YOU DO NOT WISH TO ARBITRATE DISPUTES, YOU MAY DECLINE TO HAVE YOUR DISPUTES WITH US ARBITRATED BY NOTIFYING US IN WRITING, WITHIN 30 DAYS OF YOUR FIRST AMH SERVICE ACTIVATION. YOUR WRITTEN NOTIFICATION TO US MUST

INCLUDE YOUR NAME, ADDRESS AND OUR ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH US THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH US OR SERVICE(S) PROVIDED BY US. IF YOU HAVE PREVIOUSLY OPTED OUT OF ARBITRATION WITH RESPECT TO THE ACCOUNT GOVERNED BY THIS AGREEMENT, YOU DO NOT NEED TO DO SO AGAIN. YOU MUST SEPARATELY OPT OUT FOR EACH ACCOUNT UNDER WHICH YOU RECEIVE SERVICES. ANY OPT OUTS SUBMITTED AFTER THIS PERIOD WILL NOT BE CONSIDERED EFFECTIVE.

- d. **Initiation of Arbitration Proceeding/Selection of Arbitrator.** The party initiating the arbitration proceeding may open a case with the American Arbitration Association ("AAA") by visiting its website ([www.adr.org](http://www.adr.org)) or calling its toll free number (1-800-778-7879). You may deliver any required or desired notice to us by mail—ATTN: LEGAL DEPARTMENT.
  
- e. **Arbitration Procedures.** This Arbitration Provision shall be governed by the Federal Arbitration Act. Arbitrations shall be administered by the AAA pursuant to its Consumer Arbitration Rules (the "AAA Rules") as modified by the version of this Arbitration Provision that is in effect when you notify us about your Dispute. You can obtain the AAA Rules from the AAA by visiting its website ([www.adr.org](http://www.adr.org)) or calling its toll-free number (1-800-778-7879). If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern. If there is a conflict between this Arbitration Provision and the AAA rules, this Arbitration Provision shall govern. If the AAA will not administer a proceeding under this Arbitration Provision as written, the parties shall agree on a substitute arbitration organization. If the parties cannot agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision as written applying the AAA Consumer Arbitration Rules. A single arbitrator will resolve the Dispute. Unless you and we agree otherwise, any arbitration hearing will take place within Cook County, Illinois. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information. The arbitrator shall issue a reasoned written decision that explains the arbitrator's essential findings and conclusions. The arbitrator's award may be entered in any court having jurisdiction over the parties only if necessary for purposes of enforcing the arbitrator's award. An arbitrator's award that has been fully satisfied shall not be entered in any court.
  
- f. **Waiver of Class Actions and Collective Relief.** THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT 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. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. THE ARBITRATOR MAY NOT AWARD RELIEF FOR OR AGAINST ANYONE WHO IS NOT A PARTY. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THIS WAIVER OF CLASS ACTIONS AND COLLECTIVE RELIEF IS AN ESSENTIAL PART OF THIS ARBITRATION PROVISION AND CANNOT BE SEVERED FROM IT. THE REMAINING PORTIONS OF THIS ARBITRATION PROVISION ARE NOT ESSENTIAL PARTS OF THIS ARBITRATION PROVISION AND CAN BE SEVERED FROM IT BY A COURT OF COMPETENT JURISDICTION.

- g. **Arbitration Fees and Costs.** Subject to applicable law, if your claim seeks more than \$1,000 in the aggregate, the payment of the AAA's fees and costs will be governed by the AAA rules. If your claims seek less than \$1,000 in the aggregate, the payment of the AAA's fees and costs will be our responsibility. However, if the arbitrator finds that your Dispute was frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), the payment of the AAA's fees and costs shall be governed by the AAA Rules and you shall reimburse us for all fees and costs that were your obligation to pay under the AAA Rules. You may hire an attorney to represent you in arbitration. You are responsible for your attorneys' fees and additional costs and may only recover your attorneys' fees and costs in the arbitration to the extent that you could in court if the arbitration is decided in your favor. Notwithstanding anything in this Arbitration Provision to the contrary, we will pay all fees and costs that we are required by law to pay.
- h. **Survival.** This Arbitration Provision shall survive the termination of your Service(s) with us.
- i. **Waiver of Jury Trial.** WHETHER IN COURT OR IN ARBITRATION, YOU AND WE AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY.