SAN BRUNO MUNICIPAL CABLE TV

VOIP CUSTOMER AGREEMENT

THIS VOIP CUSTOMER AGREEMENT ("AGREEMENT") DESCRIBES THE TERMS AND CONDITIONS UNDER WHICH THE CITY OF SAN BRUNO, D/B/A SAN BRUNO MUNICIPAL CABLE TV ("SBMCTV," "WE," "US") WILL PROVIDE ITS VOICE OVER INTERNET PROTOCOL SERVICES (TOGETHER WEITH 911/E911 AND OTHER RELATED SERVICES "VOIP SERVICES") TO YOU. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE.

IF YOU ARE A NEW CUSTOMER, YOUR ACTIVATION OF AN ACCOUNT AND RECEIPT OF THE VOIP SERVICES SHALL CONSTITUTE YOUR ACCEPTANCE OF THIS AGREEMENT AND ITS TERMS AND CONDITIONS WILL BE LEGALLY BINDING UPON YOU.

IF YOU ARE AN EXISTING SBMCTV CUSTOMER, YOUR CONTINUED RECEIPT OF VOIP SERVICES FOLLOWING RECEIPT OR PUBLICATION BY SBMCTV ON ITS WEB SITE OF THIS AGREEMENT SHALL CONSTITUTE YOUR ACCEPTANCE OF ITS TERMS AND CONDITIONS, AND, ACCORDINGLY, THEY WILL BE LEGALLY BINDING ON YOU.

For purposes of this Agreement the terms "You," "Your" and "Customer" refer to you, the SBMCTV customer.

Thank you for choosing SBMCTV for your VoIP Services. SBMCTV is happy to answer any questions you may have and to provide you with technical and other customer support through the following toll-free number and email address:

(866) 668-0165
info@sanbrunocable.com

or you may write to:

San Bruno Municipal Cable TV
398 El Camino Real
San Bruno, CA 94066

and, for general knowledge, try our website at www.sanbrunocable.com

1. THE VOIP SERVICES

a. Services Defined. The VoIP Services convert voice communications into Internet protocol ("IP") for two-way calling, and provide a range of other related features and functionalities. You can find more information about the VoIP Services at www.sanbrunocable.com (or at an alternate site if we so notify you).

THIS AGREEMENT INCORPORATES BY REFERENCE ANY PRICING INCLUDED ON THE www.csanbrunocable.com WEBSITE. SBMCTV's contractors may perform some or all of SBMCTV's duties and obligations under this Agreement.

b. VoIP Services versus traditional telephone services. The VoIP Services are not traditional telephone services, and we provide them on an as-is basis. Important distinctions exist between traditional telephone services and the VoIP Services. Some but not all of these distinctions are outlined in this Agreement. The VoIP Services are

subject to different regulatory treatment than traditional telephone services. This treatment may limit or otherwise affect your rights and remedies before regulatory agencies and courts.

c. Changes in Services offered. SBMCTV reserves the right to change the VoIP Services that we offer, and our prices or fees related to such VoIP Services at any time. If the change affects you, we will provide you Notice (as defined in Section 14.b) of the change and its effective date. Changes in prices will become effective upon the earlier of 30 days' Notice under Section 14.b, or 30 days from posting on our website at www.sanbrunocable.com.

d. Acceptable use policy. You agree to ensure that all uses of the SBMCTV Equipment and the VoIP Services installed at your premises ("use" or "uses") are legal and that all uses by you or by any other person, whether authorized by you or not ("user"), comply with all applicable laws, regulations, and written and electronic instructions for use. SBMCTV reserves the right to act immediately and without Notice to terminate or suspend the VoIP Services and to remove from the VoIP Services any information transmitted by or to you or users if SBMCTV determines that such use or information does not conform with the requirements set forth in this Agreement, interferes with SBMCTV's ability to provide the VoIP Services to you or others, or reasonably believes that such use or information may violate any laws or regulations. SBMCTV's action or inaction under this Section shall not constitute review or approval of your or any other users' use or information.

e. Service outages. At SBMCTV's sole option, it may credit you for any outages of the VoIP Services in an amount to be determined by SBMCTV. The maximum amount of credit in any calendar month shall not exceed the monthly recurring fee and Installation Charge, which, absent the credit, would have been charged for the VoIP Services that month.

f. MTA/EMTA. To use the VoIP Services, you will need a multimedia terminal adaptor or enhanced multimedia terminal adaptor ("MTA/EMTA"). If the MTA/EMTA is provided by SBMCTV, it will be deemed SBMCTV Equipment (as defined below) under this Agreement. If the MTA/EMTA is not provided by SBMCTV, it must be approved in writing by us, and will be deemed Customer Equipment (as defined below) under this Agreement. You may have the option to self-install an MTA/EMTA, which is subject to availability and the terms of this Agreement.

g. Directory listing. The phone number that you use with the VoIP Services will not be listed in any directories.

2. BILLING POLICIES AND PAYMENTS FOR THE VOIP SERVICES

a. Billing and payment. You agree to pay all amounts billed for the VoIP Services and to pay all taxes, fees and other charges, if any, which are now or may in the future be assessed on the VoIP Services you receive from us, including to recover amounts that we may be required by governmental or quasi-governmental authorities to collect from or to pay to others in support of statutory or regulatory programs such as universal service fees, 911/E911 surcharges, telecommunications relay service surcharges, franchise fees, right-of-way fees, and the like. Consult SBMCTV's price lists at www.sanbrunocable.com for additional details. We will bill you each month, in

advance, for the recurring fees for VoIP Services used by you or anyone who uses your SBMCTV Equipment, whether with or without your permission, until you cancel the VoIP Services. Fees incurred for per-call and measured usage will appear on subsequent bills. The bills you receive will show the total amount due, the payment due date, payments, credits, purchases and other charges to your account. In the event of early cancellation of a Term Agreement, you will be required to pay 100% of the monthly recurring fees for each month remaining in the Term Agreement.

b. Service Activation Date. Billing for the VoIP Services will commence as of the Service Activation Date, which is the date that dial tone is established.

c. Payment. Payment is due on the date specified in your invoice. Accounts are in default if payment is not received by this due date. If payment is returned to SBMCTV unpaid, you are immediately in default and subject to a returned check charge of $25 from SBMCTV. Accounts unpaid 21 days after date of invoice may have service interrupted or terminated and reconnection fees and deposits may be required. Such interruption does not relieve you of the obligation to pay the monthly recurring fee for the VoIP Services or any other charges incurred. Deposits will not be held segregated from other funds and shall not earn or accrue interest. Prices are exclusive of any taxes which may be levied or assessed upon the equipment or services provided hereunder. Any such taxes shall be paid by you. Other fees and charges may also be assessed. If you are exempt from otherwise applicable taxes, you must submit your tax identification number and exemption certificate at the same time you submit your Term Agreement.

d. Late payments. You agree to pay us in full monthly by the payment due date for the Services and for any other charges due us, including any fees set forth in this Section 2. Accounts in default are subject to any interest charge on the outstanding balance of the lesser of 1.5% per month or the maximum rate permitted by law. You agree to pay SBMCTV its reasonable expenses, including attorney and collection agency fees, incurred in enforcing its rights under this Agreement. If partial payments are made, they will be applied first to the oldest outstanding bill. If you send checks or money orders marked "payment in full" we can accept them without losing any of our rights to collect any other amounts owed by you, notwithstanding your characterization of the payment. SBMCTV does not extend credit to our customers, and any late payment fee is not interest, a credit service charge or a finance charge. You understand and agree that in the case of late payment or nonpayment for any VoIP Services ordered by you or for any of the charges stated below, we may report such late payment or nonpayment to credit reporting agencies.

e. Failure to make payments, bankruptcy, insolvency. If you at any time fail, neglect, or refuse to make timely payments hereunder, or if a petition in bankruptcy shall be filed on your behalf or against you, or if you take advantage of any insolvency law or become insolvent or make an assignment for the benefit of creditors, or if a receiver, liquidator, or trustee is appointed for your property or affairs, we shall be wholly relieved from our obligations hereunder.

f. Costs of collection. If we use a collection agency or attorney to collect money you owe us or to assert any other right which we may have against you, you agree to pay the reasonable costs of collection or other action. These costs might include, but are not limited to, the costs of a collection agency, reasonable attorney's fees and court costs. If there are billing errors or other requests for credit, you can contact our customer support center by telephone or in writing. You must contact us within 60 days of the time you receive the billing statement for which you are seeking corrections. Failure to timely

notify us of a dispute shall constitute acceptance of the bill. Undisputed portions of the billing statement must be paid before the next billing statement is issued to avoid an administrative fee for late payment. All payments for VoIP Services must be made directly by you to us. SBMCTV shall have no obligation to provide VoIP Services for which payment is made by you to a third party.

g. Additional charges. In addition to the amounts due for the VoIP Services, you agree to pay the fees referenced below ("Fees") when applicable. SBMCTV reserves the right to increase these Fees or add additional Fees in the future, in our sole discretion, upon the earlier of 30 days' Notice to you under Section 14.b, or 30 days from posting on our website at www.sanbrunocable.com .

Returned Payment Fee $25.00

Installation Charge $9.95

Local Number Portability Charge $14.95

Number Change Charge $14.95

Monthly MTA/EMTA Rental Charge $1.95

Unreturned MTA/EMTA Charge $99.00

h. Per-Call and Measured-Call Charges. Our calling plans may not include certain call types. These call types will instead be charged on a per-call (e.g., operator services, directory assistance) or a measured basis (e.g., international calls). For billing purposes, a measured call begins when the call is answered by the called party or an automated answering device (such as an answering machine or fax machine); it ends when one of the parties disconnects the call. Measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. However, some providers (e.g., those involved in calls to foreign countries) charge SBMCTV, its affiliates or suppliers for a completed call when the called party's line rings or after a certain number of rings. In these situations, SBMCTV will charge for the call as if it were answered by the called party. Consult SBMCTV's price lists at www.sanbrunocable.com for information on per-call charges and the timing of measured-call charges.

i. Rounding of Fractional Charges. If a computed charge includes a fraction of a cent, the fraction is rounded up to the nearest whole cent.

j. Third-Party Charges That Are Your Responsibility. The VoIP Services may allow you to access "dial-up" Internet service providers, other enhanced service providers (e.g., information services accessible through 800, 888, and 877 numbers), and other third-party providers. You acknowledge that you may incur charges with such providers that are separate and apart from the amounts charged by us. You agree that all charges payable to third parties, including all applicable taxes, are your sole responsibility. In addition, you are solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

k. Term Agreements. If you enter into a Term Agreement for the VoIP Services and your account is past due, SBMCTV may, at its option, suspend your VoIP Services until payment is received, and/or terminate the Term Agreement. In the event that SBMCTV early terminates the Term Agreement as a result of your account being past due, you will be required to pay 100% of the monthly recurring fees for each month remaining in the Term Agreement.

l. Credit inquiries. You authorize SBMCTV to make inquiries and receive information about your credit from others, to enter this information in your file, and to disclose this information concerning you to appropriate third parties for reasonable business purposes.

3. TERMINATION OF THIS AGREEMENT

a. Continuation of Service. Your VoIP Services will continue until cancelled as provided for in Section 3.b below, or until otherwise terminated under the terms of this Agreement. If you have a Term Agreement with SBMCTV, after the expiration of the Term, SBMCTV will continue to provide the VoIP Services on a month-to-month basis under the terms of this Agreement until cancelled or terminated as provided in this Agreement.

b. How to cancel.

- **i. Month-to-month accounts**. You have the right to cancel the VoIP Services for any reason at any time by notifying SBMCTV via telephone or in writing at the phone number or address set forth above. For month-to-month accounts, the cancellation will be effective at the end of the period covered by the last monthly bill. No refunds or credits will be provided in connection with the cancellation of month-to-month accounts.
- **ii. Term Agreements.** If you have a Term Agreement, the cancellation will be effective as of the date the Term Agreement expires. Because you are receiving a discounted price in exchange for the Term Agreement, in the event that you cancel the VoIP Services prior to expiration of Term Agreement, you understand and agree that you are not entitled to any refund or credit for the unused portions of the Term Agreement and that SBMCTV has the right to retain any prepaid monies as liquidated damages. Please be aware that certain promotional offers have a Term Agreement.

c. Termination by SBMCTV. SBMCTV has the right to terminate your VoIP Services at any time without providing notice to you if: (i) you fail to pay your bill when it is due; (ii) we receive confirmation that you have received the VoIP Services, or any part of the VoIP Services without paying for them; or (iii) you otherwise violate the terms of this Agreement.

d. Outstanding balance. If your VoIP Services are cancelled for any reason, you are still responsible for payment of all outstanding balances accrued, including any applicable fees.

e. Charges nonrefundable. You understand that charges for the VoIP Services, once charged to your account, are nonrefundable.

4. CUSTOMER EQUIPMENT, DOWNLOADS, RESTRICTIONS ON SOFTWARE

a. "Customer Equipment" That You Must Provide. In order for you to receive the VoIP Services you are required to provide certain equipment such as a phone handset or equivalent, phone inside wire and outlets, and a powered electrical outlet. Equipment provided by you will be deemed “Customer Equipment” under this Agreement. Because we may have limited ability to install wire or outlets in a rental

property, you may wish to provide a cordless phone if you live in an apartment so that you can use the VoIP Services throughout your dwelling.

b. MTA/EMTA. To use the VoIP Services, you will also need a multimedia terminal adapter or enhanced multimedia terminal adapter ("MTA/EMTA"). If you provide the MTA/EMTA it will be deemed Customer Equipment under this Agreement and must be approved in writing by us. You agree to keep any MTA/EMTA used with the VoIP Services plugged into a working electrical power outlet at all times.

c. Downloads. To optimize the performance of its network, SBMCTV reserves the right to alter software in the SBMCTV Equipment and Customer Equipment (as defined above) through periodic downloads. SBMCTV 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 VoIP Services.

d. Restrictions on software. The SBMCTV Equipment and MTA/EMTA contain certain components and software which are proprietary to SBMCTV or its licensors. You agree that you will not try to reverse-engineer, decompile or disassemble any software or hardware contained within the SBMCTV Equipment or MTA/EMTA. Such actions are strictly prohibited and may result in the termination of your VoIP Services and legal action.

d. Ownership and specifications of Customer Equipment

i. Ownership. You represent that you either own the Customer Equipment or have the right to use that equipment in connection with the VoIP Services. SBMCTV shall have no obligation to provide, maintain, or service the Customer Equipment (including but not limited to any MTA/EMTA that you have purchased).

ii. Specifications for Customer Equipment and Internet connection. Any Customer Equipment that you use in connection with the VoIP Services must meet SBMCTV's current minimum technical and other requirements. You may not use the VoIP Services without an SBMCTV broadband Internet connection.

iii. Non-Recommended Configurations. If you install or use in connection with the VoIP Services Customer Equipment or an Internet connection that does not comply with Section 4.d.ii above (a "Non-Recommended Configuration"), you agree that (i) you will not be entitled to customer support relating to any issues other than the quality of the signal delivered to the MTA/EMTA; and (ii) the following limitation of liability shall apply: SBMCTV, ITS EMPLOYEES, OFFICERS, AGENTS, AFFILIATES, CONTRACTORS, REPRESENTATIVES AND THIRD-PARTY PROVIDERS (COLLECTIVELY "SBMCTV PARTIES") MAKE NO WARRANTY THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE VOIP SERVICES. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT. NONE OF THE SBMCTV PARTIES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH DAMAGE, NOR FOR ANY INJURIES OR DAMAGES RESULTING THEREFROM, INCLUDING

INJURIES OR DAMAGES RESULTING FROM FAILURE OF 911/E911, OR DIALING ASSOCIATED WITH A SECURITY SYSTEM. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

e. Retention of Rights. SBMCTV and its third-party providers reserve the right both during the term of this Agreement and upon its termination to delete your voicemail, data, files, or other customer information that is stored on SBMCTV's or its suppliers' servers or systems, in accordance with their storage policies. You understand and acknowledge that we shall have no liability whatsoever as a result of the loss or removal of any such voicemail, data, files, or other customer information.

5. "SBMCTV Equipment."

a. Equipment remains property of SBMCTV. At SBMCTV's option, we may lease you equipment ("SBMCTV Equipment") for your VoIP Services. If you lease SBMCTV Equipment, the SBMCTV Equipment shall at all times remain the sole and exclusive property of SBMCTV 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 your VoIP Services. SBMCTV will repair and maintain all SBMCTV Equipment during the term of this Agreement. You agree that you will not allow SBMCTV Equipment to be serviced by anyone other than SBMCTV's employees, contractors or agents. None of the SBMCTV Equipment shall be deemed fixtures or part of your realty. You shall have no right to pledge, sell, mortgage, give away or remove, relocate, alter or tamper with the SBMCTV Equipment (or any notice of our ownership thereon) at any time. **Any reinstallation, return of or change in location of the SBMCTV Equipment or VoIP Services must be approved by us and performed by us at the service rates in effect at the time of service.** You shall not attach any electrical or other devices to or otherwise alter the SBMCTV Equipment without our prior written consent. SBMCTV shall have the right to make such filings as are necessary to evidence our ownership rights in the SBMCTV Equipment, and you agree to execute any and all documents as are necessary for us to make such filings. Upon termination of the VoIP Services, you must notify us at 650-616-3100 to schedule the return the SBMCTV Equipment.

b. Damage and defects. You shall notify us promptly of any defect in, damage to, or accident involving the SBMCTV Equipment. All maintenance and repair of the SBMCTV Equipment shall be performed by us or our designees. SBMCTV may charge you for any repairs that are necessitated by any damage to, or misuse of, the SBMCTV Equipment.

c. Theft of SBMCTV Equipment. If your SBMCTV Equipment is stolen or otherwise removed from your premises without your authorization, you must notify us at 650-616-3100 immediately, but in any event not more than 3 business days after such removal to avoid liability for payment for unauthorized use of the SBMCTV Equipment. You will not be liable for unauthorized use after we have received your timely notification.

d. SBMCTV's Access to Customer Premises:

i. Access. From time to time, SBMCTV may need to enter the premises at which you will use the VoIP Services ("Premises") in order to install, maintain, inspect, repair, and remove the SBMCTV Equipment. Accordingly, you authorize

SBMCTV and its employees, agents, contractors, and representatives to enter the Premises as necessary, at a time agreeable to you and us.

ii. Authorization for Access. You warrant either that you are the owner of the Premises, or if you are a tenant, that you have the authority to afford us access to the Premises. If you are not the owner of the Premises, you agree to supply us, if we ask, the owner's name and address, and evidence or written consent from the owner that the owner has authorized you to grant access to the Premises and to install equipment.

6. LIMITATIONS ON 911/E911 SERVICES

The VoIP Services include 911/Enhanced 911 functions ("911/E911") that may differ from the 911 or Enhanced 911 functions furnished by other providers. As such, it may have certain limitations. CAREFULLY READ THE INFORMATION BELOW. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS ON 911/E911. YOU AGREE TO EXPLAIN THESE LIMITATIONS TO ALL PERSONS WHO MAY HAVE OCCASION TO PLACE CALLS OVER THE VOIP SERVICES. IF YOU HAVE ANY QUESTIONS ABOUT 911/E911, CALL SBMCTV AT 650-616-3100.

a. <u>Correct address necessary</u>. In order for your 911/E911 calls to be properly directed to emergency services, SBMCTV must have your correct service address. If you move the VoIP Services to a different address without SBMCTV's approval, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address, or the VoIP Services and 911/E911 services may totally fail to function. Accordingly, you must call 650-616-3100 before you move the VoIP Services to a new address.

b. <u>Delays in updating location information in emergency database</u>. SBMCTV will need several business days to update your service address in the emergency database so that your 911/E911 calls can be properly directed. In the meantime, 911/E911 calls may be directed to your former address. As noted in Section 6.a. above, all changes in service address require SBMCTV's prior approval.

c. <u>Electric outages</u>. SBMCTV's VoIP Services use the electrical power in your home. If there is an electrical power outage, 911/E911 calling will not function.

d. <u>Broadband outages</u>. All calls, including calls to 911/E911, may not be completed if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

e. <u>Network congestion; reduced speed for routing or answering 911 calls</u>. There may be a greater possibility of network congestion and reduced speed in the routing of a 911 call made with the VoIP Services as compared to traditional telephone services.

The MTA/EMTAs provided by SBMCTV have warning stickers summarizing the above limitations. If you provide your own MTA/EMTA, we will provide you with warning stickers that summarize the above limitations. It is your responsibility to place the warning stickers on each MTA/EMTA that you use with the VoIP Services. If you do not receive the warning stickers at the time of installation, or if you require additional warning stickers, please contact our customer service department at 650-616-3100.

LIMITATION ON LIABILITY: YOU ACKNOWLEDGE AND AGREE THAT THE SBMCTV PARTIES WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911/E911 USING THE VOIP SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SBMCTV PARTIES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF THE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE VOIP SERVICES, INCLUDING THOSE RELATED TO 911/E911 SERVICES PROVIDED TO YOU IN CONNECTION WITH THE VOIP SERVICES.

7. INCOMPATIBILITY OF THE VOIP SERVICES WITH CERTAIN EQUIPMENT, SERVICES, AND ACTIVITIES

a. Incompatible Equipment and Services.

You acknowledge and understand that the VoIP Services may not support or be compatible with:

i. Non-Recommended Configurations as defined in Section 4.d.iii (including but not limited to MTA/EMTAs not provided by SBMCTV);

ii. Certain non-voice communications equipment, including but not limited to alarm or home security systems that make automatic phone calls; medical monitoring devices; certain fax machines; and certain "dial-up" modems;

iii. Rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as answering machines and traditional Caller ID units;

iv. Casual/dial around (10-10) calling; 976, 900, 700, or 500 number calling;

v. 311, 511 or other x11 calling (other than 411, 611, 711, and 911); and

vi. Other call types not expressly set forth in our product literature (e.g., outbound shore-to-ship calling and outbound satellite calling).

BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST THE SBMCTV PARTIES FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN SBMCTV'S EQUIPMENT OR THE VOIP SERVICES AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE SERVICES IN ACCORDANCE WITH SECTION 3.

b. You Assume the Risk of High-Risk Activities. As further described in Section 12(a), The VoIP Services are not represented as fail-safe. They are not designed for use in situations where error-free or uninterrupted service is essential. You expressly assume the risk of any damages from high-risk activities involving vital communications in which an error or interruption in the VoIP Services could lead to material injury to business, persons, property, or the environment.

8. CUSTOMER PRIVACY. You have certain privacy rights under federal law. Please see the Subscriber Privacy Notice for more information. The Subscriber Privacy Notice is available on SBMCTV's website, or by calling SBMCTV at 650-616-3100.

9. LIMITS ON YOUR USE OF THE SERVICES

a. Residential Use Only. Unless you subscribe to a service plan that expressly permits otherwise, you agree to use the VoIP Services solely in a private residence; in living quarters in a hotel, hospital, dormitory, sorority or fraternity house, or boarding house; or in the residential portion of a premises which is used for both business and residential purposes. Without limiting the generality of the foregoing, you agree to use the VoIP Services only for personal and non-commercial purposes, however, you are permitted to use the VoIP Services to make business calls that are incidental to your personal and non-commercial use of the VoIP Services. You may not resell the VoIP Services. You expressly agree not to use the VoIP Services for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in excessive usage inconsistent with normal residential calling patterns. If we determine, in our sole discretion, that the VoIP Services are being used in violation of this Agreement, we reserve the right to immediately and without Notice to terminate or modify the VoIP Services and to assess additional charges for each month in which excessive usage occurred.

b. No resale. You agree and represent that you are buying the VoIP Services for your own personal use only and that you will not resell or permit another to resell the VoIP Services.

c. No tampering with or relocation of SBMCTV Equipment. You will not service, alter, modify, or tamper with SBMCTV Equipment or with the VoIP Services, or permit any other person (not expressly authorized by SBMCTV) to do so. You agree that the VoIP Services will only be used at your service address appearing in our records. You understand and acknowledge that if you attempt to install or use the MTA/EMTA or VoIP Services at another location, the VoIP Services, including but not limited to 911/E911, may fail to function or may function improperly. If you move the MTA/EMTA or VoIP Services to another location without complying with Section 5.a and this Section 9.c, you do so in violation of this Agreement and at your own risk. If you violate any of the restrictions in this Section 9.c, SBMCTV reserves the right to terminate the VoIP Services immediately and without Notice, leaving you responsible for all outstanding charges, which immediately become due and payable.

d. No piracy or theft. It is a violation of several U.S. federal and state laws to receive any VoIP Services, or any portion of the VoIP Services, without paying for them. The penalties for violating such laws can range from imprisonment to civil damage awards. You will be liable for all use of the VoIP Services using your MTA/EMTA and for any and all stolen VoIP Services or unauthorized use of the VoIP Services. You agree to

notify us immediately in writing or by calling us at 650-616-3100 during normal business hours if you become aware at any time that the MTA/EMTA is stolen or that your VoIP Services are being stolen or used without your authorization. Until such time as you notify us of theft or fraudulent or unauthorized use, you will be liable for any stolen, fraudulent, or unauthorized use of the VoIP Services. If you fail to notify us in a timely manner, your VoIP Services may be terminated without Notice, with additional charges to you.

e. No tampering with the VoIP Services. You shall not attempt to hack or otherwise disrupt the VoIP Services or make any use of the VoIP Services that is inconsistent with this Agreement or their intended purpose. We reserve the right to terminate your VoIP Services if we believe, in our sole and absolute discretion, that you have tampered with the VoIP Services. In the event of such termination, you will remain responsible for charges to the end of the month of termination, any unbilled charges, and a termination fee, all of which will be immediately due and payable.

10. REPRESENTATIONS AND WARRANTIES OF CUSTOMER. You represent and warrant that you are at least 18 years of age.

11. TRANSFER OF VOIP SERVICES OR PHONE NUMBER.

a. If you are switching to the VoIP Services from another service provider, you may not be able to transfer your existing phone number to the VoIP Services. If you are able to transfer ("port") your existing phone number to the VoIP services, you may be charged a fee by SBMCTV to complete the transfer.

b. To transfer your phone number from SBMCTV to another provider, you must place the order to transfer the VoIP Services with your new service provider. You cannot place the order with SBMCTV. SBMCTV will release your phone number to your new service provider, provided that:

(i) Your new service provider submits a properly completed transfer request to SBMCTV;
(ii) Your new service provider will accept transfer of the phone number without delay or charge to SBMCTV; and
(iii) Transfer of your existing phone number to the new service provider will not violate applicable law or our policies and procedures.

You may be charged a fee by SBMCTV to complete the transfer ("port") of your number to a new service provider.

c. Applicable number porting fees can be found at www.sanbrunocable.com or by calling us at 650-616-3100.

12. LIMITATION OF LIABILITY; INDEMNIFICATION; NO WARRANTIES; WARNINGS

a. Limited warranty. THE SBMCTV EQUIPMENT, MTA/EMTAs PROVIDED BY SBMCTV, AND THE VOIP SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NONE OF THE SBMCTV PARTIES WARRANT THAT THE SBMCTV EQUIPMENT, MTA/EMTAs

PROVIDED BY SBMCTV, OR THE VOIP SERVICES WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NONE OF THE SBMCTV PARTIES WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED.

b. Limitation of SBMCTV Parties' liability. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, IN NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (INCLUDING BUT NOT LIMITED TO TORT, CONTRACT, OR OTHERWISE), SHALL THE SBMCTV PARTIES HAVE ANY LIABILITY TO YOU OR TO ANY PERSON OR ENTITY FOR (i) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, OR PERSONAL INJURIES (INCLUDING DEATH), RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, REMOVAL, OR USE OF THE VOIP SERVICES, INCLUDING BUT NOT LIMITED TO: LACK OF 911/E911 SERVICES OR DIALING ASSOCIATED WITH A SECURITY SYSTEM OR SBMCTV EQUIPMENT OR YOUR RELIANCE ON OR USE OF SBMCTV EQUIPMENT OR THE VOIP SERVICES, INCLUDING BUT NOT LIMITED TO ANY MISTAKES, OMISSIONS, INTERRUPTIONS, FAILURES OR MALFUNCTIONS, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, LOSS OF INFORMATION OR DATA, OR FAILURE OF PERFORMANCE OF SBMCTV EQUIPMENT OR THE VOIP SERVICES; OR (ii) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF SBMCTV EQUIPMENT OR THE VOIP SERVICES BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS, OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.

c. Customer's Indemnification of SBMCTV Parties. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD THE SBMCTV PARTIES HARMLESS FROM CLAIMS OR DAMAGES RELATING TO OR ARISING OUT OF YOUR BREACH OF THIS AGREEMENT OR YOUR AND YOUR USERS' USE OF THE VOIP SERVICES OR ANY SBMCTV EQUIPMENT OR MTA/EMTA PROVIDED BY SBMCTV, INCLUDING BUT NOT LIMITED TO ANY CLAIMS OR DAMAGES ARISING OUT OF THE LACK OF 911/E911 SERVICES OR DIALING ASSOCIATED WITH A SECURITY SYSTEM.YOU AGREE THAT NONE OF THE SBMCTV PARTIES SHALL BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS THAT ARISE FROM YOUR USE OF THE VOIP SERVICES, SBMCTV EQUIPMENT, OR ANY MTA/EMTA PROVIDED BY SBMCTV. FURTHER, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS.

d. Limitations on SBMCTV's liability for Customer Equipment and software. Customer Equipment may be damaged or suffer service outages as a result of the installation, use, inspection, maintenance, repair, and removal of the SBMCTV Equipment and the VoIP Services, and upgrades to firmware or software embedded in the SBMCTV Equipment or the MTA/EMTA used with the VoIP Services. Except for gross negligence or willful misconduct by us, none of the SBMCTV Parties shall have any liability whatsoever for any damage, loss, or destruction to the Customer Equipment. Use of certain features of the VoIP Services may require special software, applications, or access to web portals. SBMCTV makes no representation or warranty that any software or application installed on your computer or web portal does not contain a virus or other harmful feature. It is your sole responsibility to take appropriate precautions to protect any computer and other hardware of yours from damage to its software, files, and data as a result of any such virus or other harmful feature. We are not required to provide you with any assistance in removal of viruses. If we decide, in our sole discretion, to install or run virus check software on your computer, we make no representation or warranty that the virus check software will detect or correct any or all viruses. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus or other harmful feature detected on your system. NONE OF THE SBMCTV PARTIES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM A VIRUS, ANY OTHER HARMFUL FEATURE, OR FROM ANY ATTEMPT TO REMOVE IT.

SBMCTV does not represent, warrant, or covenant that the installation of the special software or applications described in the preceding paragraph or access to our web portals will not cause the loss of files or disrupt the normal operations of any Customer Equipment, including but not limited to your computer. FOR THESE AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES.YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP FILES. NONE OF THE SBMCTV PARTIES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.

e. Limitations on SBMCTV's liability for third parties. Notwithstanding anything to the contrary in this Agreement, you acknowledge and understand that we may use third parties to provide components of the VoIP Services, including without limitation their services, equipment, and infrastructure. SBMCTV is not responsible for the performance or non-performance of third-party services, equipment, or infrastructure, whether or not they constitute components of the VoIP Services. SBMCTV shall not be bound by any undertaking, representation, or warranty made by an agent or employee of SBMCTV or of any third-party provider in connection with the installation, maintenance, or provision of the VoIP Services, if that undertaking, representation, or warranty is inconsistent with the terms of this Agreement. The limitations of liability set forth in Section 12 apply to any acts, omissions, and negligence of SBMCTV and its third-party providers (and their respective officers, employees, officers, agents, affiliates, contractors and representatives) which, but for that provision, would give rise to a cause of action in contract, tort, or any other legal doctrine.

f. Rights and remedies. Nothing contained in this Agreement shall be construed to limit SBMCTV's rights and remedies available at law or in equity. Your sole and

exclusive remedies under this Agreement are as expressly set forth in this Agreement. The liability of the SBMCTV Parties is limited as set forth by this Agreement, or, where applicable law limits such limitations of liability, to the maximum extent permitted by law.

g. Survival of Limitations. All representations, warranties, indemnifications, and limitations of liability contained in this Agreement shall survive the termination of this Agreement; any other obligations of the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.

13. ARBITRATION. EXCEPT FOR (i) CLAIMS BY SBMCTV FOR NON-PAYMENT FOR OR THEFT OF THE VOIP SERVICES; OR (ii) INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS-ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORATED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS OR OTHER PERSONS SIMILARLY SITUATED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THIS AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION 13 IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

This Section 13 shall survive the termination of your VoIP Services with SBMCTV.

14. MISCELLANEOUS

a. Physical Address/Change of Address. When setting up your account, you agree to provide us with the physical street address where SBMCTV Equipment will be located. A post office box does not constitute a physical address and is not sufficient to meet this requirement. You agree to give us prompt notice of your change of name, mailing address, physical address where SBMCTV Equipment is located or telephone number. You may do this by notifying us at 650-616-3100 or in writing.

b. Notice. If we send you notice, it will be considered given when deposited in the U.S. Mail, addressed to you at your billing address or hand-delivered to you, or sent to you via email to any SBMCTV email account. You acknowledge and agree that you are responsible for monitoring your SBMCTV email account for any notices. Our notice to you will also be effective if provided on your billing statement or by telephone. If you give

notice to us, it will be deemed given when received by us at the address listed on the first page of this Agreement.

c. Applicable Law. This Agreement, including all matters relating to its validity, construction, performance and enforcement, shall be governed by applicable federal law, the rules and regulations of the Federal Communications Commission, and the laws and regulations of California and the local area where the VoIP Services are provided. These terms and conditions are subject to amendment, modification or termination if required by such regulations or laws. If any provision in this Agreement is declared to be illegal or in conflict with any law or regulation, that provision may be deleted or modified, without affecting the validity of the other provisions.

d. Trademarks. Neither party may use the other party's name, trademarks, trade names or other proprietary identifying symbols without the prior written approval of the other party.

e. Force majeure. SBMCTV shall not be liable for any delay or failure in performance due to *force majeure*, which shall include without limitations, acts of God, earthquake, labor disputes, changes in law, regulation or government policy, riots, war, fire, epidemics, acts or omissions of vendors or suppliers, equipment failures, transportation difficulties, or other occurrences which are beyond SBMCTV's reasonable control. You are responsible and acknowledge 100% liability and responsibility for all customer network security systems, firewalls and any other network security necessary to protect your data, systems or networks.

f. Transfer of account, services or SBMCTV Equipment. SBMCTV may sell, assign or transfer your account to a third party without notice to you. You may not assign or transfer your VoIP Services without our written consent which will not be unreasonably withheld. We may, however, refuse to allow you to assign or transfer your VoIP Services if you lease your SBMCTV Equipment or if your account has an outstanding balance.

g. Other. This document and any Term Agreement contains the entire agreement between SBMCTV and you, the customer, and no salesperson, installer, customer service representative, authorized retailer, or other similarly situated individual is authorized to change the terms of this Agreement or any Term Agreement. SBMCTV may, however, change the terms and conditions of this Agreement in the future and will notify you if that occurs. The terms of this Agreement, which either are expressly stated to survive or by their nature would logically be expected to survive termination, shall continue thereafter until fully performed.