

## SEBASTIAN SERVICES AGREEMENT

The individual or business named on the associated Service Order (“Subscriber”) agrees that the Service Order, this Sebastian Services Agreement (“Agreement”), and any applicable Price List and Tariff(s) collectively set forth the terms and conditions governing the receipt and use of any and all Services from Sebastian. Services rendered through regulated tariffs will be governed by those tariffs and supersede any provisions of this Agreement. Provisions within this Agreement will only apply to the extent they address a non-tariffed service, or to the extent a tariffed service is bundled and additional requirements may be applicable to the bundle of services. All capitalized terms used in this Agreement are defined in Section 15 of this Agreement. This Agreement shall be effective as of the date of the Service Order.

In consideration of Sebastian’s provision of the Services that Subscribers has requested, subject to applicable federal and California law, Subscriber agrees as follows:

### 1. GENERAL INFORMATION REGARDING THIS AGREEMENT AND BUNDLED SERVICES

a. **Entire Agreement.** This Agreement may be amended by Sebastian as set forth below, and together with the Sebastian Internet Acceptable Use Policy, Website Privacy Policy, Subscriber Privacy Notice which are incorporated herein by reference, the Service Order, and any applicable state or federal Tariff(s) constitute the entire agreement between Subscriber and Sebastian regarding Subscriber’s receipt and use of Services, and supersedes all prior written or oral agreements between Subscriber and Sebastian regarding such Services. Subscriber is not entitled to rely on any oral or written statements by Sebastian’s representatives relating to the subjects covered by these documents, whether made before or after the date of the Service Order (other than changes made pursuant to Sections 1(b) and 1(c) of this Agreement), and Sebastian will have no liability to Subscriber except in respect of its obligations as described in this Agreement and the other documents referred to above. The use of Services by any person or entity other than Subscriber is also subject to the terms of this Agreement, the Service Order and any applicable Tariff(s).

b. **Changes to this Agreement and Obligation to Regularly Review Changes Posted Online.** Sebastian has the right to add to, modify, or delete any term of this Agreement. Further, Subscriber acknowledges and understand that applicable Tariff(s) may change at any time. An online version of this Agreement, as so changed from time to time, will be posted at <http://www.sebastiancorp.com> or another online location designated by Sebastian by written notice to Subscriber, or can be obtained by calling the Sebastian office number indicated on Subscriber’s monthly bill. Subscriber acknowledges the responsibility to regularly review the terms and conditions posted online.

c. **Notice of Changes.** Sebastian shall provide Subscriber with written notice of any significant change(s) to this Agreement by mail or by electronic transmission to the e-mail account set forth on the Service Order. Subscriber shall be responsible for actively maintaining said e-mail account for purposes of receiving and reviewing such notices, and is obligated to notify Sebastian of any changes (such as a change in Subscriber's e-mail address or the closing of Subscriber's e-mail account) that prevent Subscriber from receiving and/or reviewing such notices. If for any reason Subscriber is unable to receive and review notices by email, Subscriber shall immediately notify Sebastian and request that Sebastian provide all future notices by mail. Any changes set forth in a notice provided by Sebastian will become effective as of the date specified in such notice. Upon the effectiveness of any change to this Agreement, Subscriber's continued use of the Services will constitute consent to such change and Subscriber's agreement to be bound by the amended terms of this Agreement. If Subscriber does not agree to any such change, Subscriber will immediately stop using the Services and notify Sebastian that Subscriber is terminating the Services.

d. **Acceptance of Services Constitutes Acceptance of this Agreement.** Subscriber's acceptance of any of the Services constitutes acceptance of the terms and conditions contained of this Agreement, as amended from time to time. In the event that any portion of the Services is terminated, or any aspect of the Services is changed, any remaining Service or replacement service will continue to be governed by this Agreement. If Subscriber objects or does not agree to any change to or modification of this Agreement, Subscriber will promptly notify Sebastian of such changes by calling the Sebastian office number indicated on the monthly bill and cancelling the Services.

e. **Combined Services.** Subscriber acknowledges that, as described in the Service Order, Sebastian provides certain Services only when such Services are combined with others as Combined Services. Subscriber understands that the cancellation of any Service under this Agreement, therefore, may result in or require the cancellation of one or more other Services. Additionally, Subscriber understands that certain promotional or discounted charges for Services are only available when such Services are subscribed to as Combined Services. Subscriber further understands that the cancellation of any one or more of the Combined Services may cause the loss of the benefit of any discounted or promotional charges offered in connection with the Combined Services, and that, beginning on the date of cancellation, Subscriber will be charged the regular charge set forth on the then current Price List as of the date of such cancellation for any Service(s) not cancelled. The early termination of any Combined Services or other promotional Service or Services may also result in the additional charges or fees described in Section 2(a), below.

## **2. PAYMENT AND CHARGES**

a. **Payment.** Subscriber agrees to pay Sebastian for (i) all Services provided under this Agreement, (ii) installation and applicable service charges, (iii) Sebastian

Equipment and Software, and (iv) all applicable local, state and federal taxes, fees, and surcharges. Subscriber acknowledges that charges for the Services have been provided to Subscriber. Other charges are set forth on the Price List that Subscriber has either received, or may request at any time. Subscriber will be billed monthly in advance for recurring monthly charges. Other charges will be billed in the next practicable monthly billing cycle following use, or as otherwise specified in the Price List. SUBSCRIBER ACKNOWLEDGES THAT SEBASTIAN MAY CHANGE THE TYPES AND AMOUNTS OF THE FEES AND CHARGES (E.G., PERIODIC, TIME-BASED, OR USE-BASED, AND THE AMOUNTS THEREOF) FOR ANY OF THE SERVICES FROM TIME TO TIME PURSUANT TO SECTIONS 1(b) and 1(c) OF THIS AGREEMENT. If Subscriber participates in a promotional offer that requires a minimum time commitment and Subscriber terminates early, Subscriber agrees to be responsible for any early termination fees that were described at the commencement of such promotion, including, but not limited to, Subscriber's immediate payment of any installation fees originally waived by Sebastian at the time of installation. For High-Speed Internet service in the Kerman or Foresthill exchange, early termination fees are calculated as follows: A maximum \$300 charge applies if Subscriber terminates or disconnects service prior to the end of their minimum term. The charge will be prorated by multiplying the number of months remaining in Subscriber's commitment by \$12.50 for a 24-month term, or \$25.00 for a 12-month term. For High-Speed Internet service in West Fresno, Tranquillity or San Joaquin, early termination fees are calculated as follows: If a Subscriber terminates or disconnects service prior to the end of their minimum term they are responsible for paying the monthly installation charge multiplied by the number of months remaining in the Subscriber's commitment. If the Subscriber does not have a monthly installation charge, they will pay a maximum of \$300, prorated by multiplying the number of months remaining in Subscriber's commitment by \$12.50 for a 24-month term.

b. **Description of Charges.** Charges for installation services and related equipment available from Sebastian for standard Services installation may be described in the Price List and any applicable Tariff(s) and can be provided on request. Non-standard installations may result in additional charges as described in the Price List. Subscriber agrees to pay charges for repair service calls resulting from any misuse of the Sebastian Equipment by Subscriber, Subscriber's guests, other members of Subscriber's household, and any other third parties, and for failures in equipment other than Sebastian Equipment.

c. **Collection Fees.** If Subscriber's account is past due and the Company sends a collector to the Premises, the then current field collection fee may be charged as set forth on the then current Price List. Subscriber will also be responsible for all other expenses (including reasonable attorneys' fees and costs) incurred by Sebastian in collecting any amounts due under this Agreement and not timely paid by Subscriber.

d. **Late Fees.** All charges are payable on the due date specified, or as otherwise indicated on the bill. Subscriber agrees that late charges may be assessed if the account is past due. Subscriber's failure to deliver payment by the due date is a breach of this Agreement. The current late fees are on the Price List or can be provided upon request

and, if applicable, will not exceed the maximum late fees as set forth by applicable law. Sebastian reserves the right to change the late fees from time to time.

e. **Termination for Failure to Pay.** Subscriber agrees that, upon failure to timely pay Sebastian for any Services, Sebastian may terminate any Services or accounts in accordance with applicable law. If Subscriber has a credit or a deposit is being held on any account with Sebastian, Subscriber agrees that the credit or deposit may be used to offset amounts past due on any of accounts that Subscriber may have with Sebastian without notice to Subscriber. To reconnect any terminated Services, Subscriber may be required to pay, in addition to payment of all outstanding balances on all accounts with Sebastian, a reconnect charge or other charges (where applicable) and/or security deposits before reconnection.

f. **Credit Report.** Sebastian may verify Subscriber's credit standing with credit reporting agencies and require a deposit based on Subscriber's credit standing or other applicable criteria. Sebastian may require a security deposit, or a bank or credit card or account debit authorization from Subscriber as a condition of providing or continuing to provide Services. If Sebastian requires a security deposit, the funds will be kept in a non-interest bearing account for 12 months from the date of service activation. If Subscriber's account remains in good standing during that period, the deposit will be refunded after the 12th month. If one or more Services are temporarily or permanently disconnected for non-payment, the deposit will be retained for another 12 months from the time of disconnection. Subscriber agrees that Sebastian may deduct amounts from Subscriber's security deposit, bill any bank or credit card submitted by Subscriber, or utilize any other means of payment available to Sebastian, for any past due amounts payable by Subscriber to Sebastian, including in respect of damaged or unreturned Equipment.

g. **Automatic Billing.** If Subscriber has elected to be billed by credit card, debit card or ACH transfer, Subscriber agrees to be automatically billed each month for any amounts due under this Agreement. Subscriber understands there is no obligation to pay bills electronically and may elect at any time to make payments by check. If Subscriber makes payment by check, Subscriber authorizes Sebastian and its agents to collect such amounts electronically.

h. **Blocked Payments.** Sebastian may charge fees for all returned checks and account debits, bank card or credit card chargebacks. The current return/chargeback fees are as listed on the Price List or can be provided on request. Sebastian reserves the right to change return/chargeback fees from time to time.

i. **Responsibility for Use of Services.** All use of Services provided by Sebastian, whether or not authorized by Subscriber, will be deemed Subscriber's use, and Subscriber will be responsible in all respects for all such use, including for payment of all charges attributable to Subscriber's account (e.g., for video on demand programs, merchandise ordered via Internet, long distance charges, etc.). Sebastian is entitled to

assume that any communications made through Subscriber's Services or from the location at which Subscriber receives the Services are communications attributable to Subscriber or have been authorized by Subscriber, and Subscriber authorizes Sebastian to provide any Services to the person making such communications. Subscriber's Services may contain or make available information, content, merchandise, products and Services provided by third parties and for which there may be charges payable to third parties (which may include both entities affiliated and entities not affiliated with Sebastian). Subscriber agrees that all such charges incurred by Subscriber or attributed to Subscriber's account will be Subscriber's sole and exclusive responsibility and agrees to pay the same when due, and shall indemnify and hold harmless the Sebastian Parties for all liability for such charges. Subscriber agrees that Sebastian is not responsible or liable for the quality of any content, merchandise, products or Services (or the price(s) thereof) made available to Subscriber via the Services, for the representations or warranties made by the seller or manufacturer of any such item, or for damage to or injury, if any, resulting from the use of such item.

j. **Governmental Fees, Taxes and Surcharges.** Subscriber acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services Sebastian provides and, consequently, uncertainty about what fees, taxes and surcharges are due from Sebastian and/or its customers. Accordingly, Subscriber agrees that Sebastian has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Subscriber. Subscriber further agrees to waive any claims Subscriber may have regarding Sebastian's collection or remittance of such fees, taxes and surcharges. Subscriber further understands that Subscriber may obtain a list of the fees, taxes and surcharges that Sebastian currently collects or passes through by writing to Sebastian at the following address and requesting same: Sebastian, 811 S. Madera Avenue, Kerman, CA 93630, Attention: Regulatory Department.

k. **Billing Errors.** Subscriber agrees that it is Subscriber's responsibility to report Sebastian billing errors within 30 days from receipt of the bill so that service levels and all payments can be verified. If not reported within 30 days, the errors are waived.

l. **No Obligation to Match Subsequent Offers.** Subscriber agrees that Sebastian has no obligation to notify Subscriber of, or change Subscriber's rate to reflect, promotional, special, or any other offers it may make to other customers that contain different prices for Services (or packages of Services) that are the same as, or similar to, the Services and prices Subscriber receives.

### **3. INSTALLATION AND EQUIPMENT AND SOFTWARE**

a. **Access to the Premises.** Subscriber authorizes each of the Sebastian Parties to enter the Premises as necessary or convenient to install, maintain, inspect, repair or remove the Sebastian Equipment and/or Software. If Subscriber is not the owner of the Premises, Subscriber warrants that Subscriber has obtained the consent of the

owner of the Premises to grant such authorization, and, upon request, Subscriber will provide Sebastian with the owner's name and address, evidence that Subscriber is authorized to grant access to the Premises on the owner's behalf, or (if needed) written consent from the owner of the Premises. Subscriber shall indemnify and hold the Sebastian Parties harmless from and against any claims of the owner of the Premises arising out of the performance of this Agreement (including costs and reasonable attorneys' fees). Subscriber agrees to provide Sebastian and its authorized agents access to the Premises during regular business hours upon reasonable notice during the term of this Agreement and after its termination to install, connect, inspect, maintain, repair, replace, alter or disconnect or remove the Sebastian Equipment, to install Software, to conduct service theft audits, or to check for signal leakage. Subscriber agrees that Sebastian may have reasonable access to easements and Sebastian Equipment located on the Premises.

b. **Property of Sebastian.** The Sebastian Equipment and Software is and at all times shall remain the sole and exclusive personal property of Sebastian, and Subscriber shall not become an owner of any Sebastian Equipment or Software by virtue of making the payments required under this Agreement or the Tariff(s) or the attachment of any portion of the Sebastian Equipment or Software to the Premises or otherwise. Upon termination of any Services, subject to any applicable laws or regulations, Sebastian may, but shall not be obligated to, retrieve any associated Sebastian Equipment or Software not returned by Subscriber as required under Section 3(c) below.

c. **No Right to Possession.** If any of the Services are terminated, Subscriber shall have no right to possess or use the Sebastian Equipment or Software related to such terminated Services. As required under Section 10(b), Subscriber shall arrange for the return of Sebastian Equipment and Software to Sebastian, in the same condition as when received (excepting ordinary wear and tear), upon termination of the Services. If Subscriber does not promptly return the Sebastian Equipment or schedule with Sebastian for its disconnection and removal, Sebastian may enter any premises where the Sebastian Equipment may be located for the purpose of disconnecting and retrieving the Sebastian Equipment. Subscriber will pay any expense incurred by Sebastian in any retrieval of the unreturned Sebastian Equipment. Sebastian may charge Subscriber a continuing monthly fee until any outstanding Sebastian Equipment is returned, collected by Sebastian or fully paid for by Subscriber. The current fee is listed in the list of charges on the Price List or can be provided on request.

d. **Liquidated Damages.** Subscriber agrees to pay Sebastian liquidated damages in the amount demanded by Sebastian, but not to exceed that specified in the then-current Price List, for the replacement cost of the Sebastian Equipment without any deduction for depreciation, wear and tear or physical condition of such Sebastian Equipment and Software if (i) Subscriber tampers with, or permit others to tamper with, Sebastian Equipment, (ii) the Sebastian Equipment is destroyed, lost, or stolen, whether or not due to circumstances beyond Subscriber's reasonable control, and even if Subscriber

exercised due care to prevent such destruction, loss, or theft, or (iii) the Sebastian Equipment is damaged (excluding equipment malfunction through no fault of Subscriber, or any of Subscriber's guests, members of Subscriber's household, or other third parties) while in Subscriber's possession, whether or not due to circumstances beyond Subscriber's reasonable control, and even if Subscriber exercised due care to prevent such damage. Subscriber agrees that these liquidated damages are reasonable in light of the existence of a "black market" for Sebastian Equipment and similar equipment; the ability of third parties to steal Services with unlawfully obtained Sebastian Equipment, causing loss of revenues for installation and service fees; and the difficulty in determining the actual damages that arise from the unauthorized tampering with, loss, destruction, or theft of Sebastian Equipment. Subscriber agrees to return any damaged Sebastian Equipment to Sebastian. The liquidated damages provided for under this Section 3(d) are only with respect to damages relating to the replacement cost of Sebastian Equipment and Software and shall not limit Sebastian's rights or remedies with respect to any other damages, losses, costs, fees, liability, or expenses incurred by Sebastian in relation to the use of the Services under this Agreement.

e. **Upgrades.** Sebastian shall have the right to upgrade, modify and enhance Sebastian Equipment and Software from time to time through "downloads" from Sebastian's network or otherwise. Without limiting the foregoing, Sebastian may, at any time, employ such means to limit or increase the Connection Speed available through individual modems whether or not provided by Sebastian.

#### **4. USE OF SERVICES, SEBASTIAN EQUIPMENT AND SOFTWARE**

a. **Changes to Services.** Subscriber agrees that Sebastian has the right to add to, modify, or delete any aspect, feature or requirement of the Services (including content, price, equipment and system requirements). Subscriber further agrees that Sebastian has the right to add to, modify, or delete any aspect, feature or requirement of the Internet Service (including content, price and system requirements). If Sebastian changes its equipment requirements with respect to any Services, Subscriber acknowledges that Subscriber may not be able to receive such Services using then-current equipment. Upon any such change, the continued use of Services will constitute Subscriber's consent to such change and agreement to continue to receive the relevant Services, as so changed, under this Agreement. If Subscriber participates in a promotional offer for any Service(s) that covers a specified period of time, Subscriber is only assured of being charged the promotional price for such Service(s) during the time specified and so long as Subscriber is not in breach of this Agreement or does not early terminate any of the Services. Subscriber agrees that Sebastian shall have the right to add to, modify, or delete any aspect, feature or requirement of the relevant Service(s), other than the price charged for such Service(s), during such promotional period.

b. **Limitations on Use.** Subscriber agrees that the Services requested are offered only for reasonable use by the household or business on whose behalf this

Agreement is entered into. Subscriber will not resell or redistribute (whether for a fee or otherwise) the Services, or any portion thereof, or charge others to use the Services, or any portion thereof. Among other things:

i. If Subscriber receives Phone Service, Subscriber agrees not to use the Services for telemarketing, call center, medical transcription or facsimile broadcasting services or for any enterprise purpose whether or not the enterprise is directed toward making a profit. Subscriber agrees that, among other things, the use of the Services to make available Phone Service, or any portion thereof, to (or to provide or permit access by) persons outside the location identified in the Service Order (even if to a limited group of people or to other residences that I own or have the right to use), will constitute an enterprise purpose.

ii. If Subscriber receives Internet Service, Subscriber agrees not to use the Internet Service for operation as an Internet service provider, for the hosting of websites (other than as expressly permitted as part of the Internet Service) or for any similar purpose which could be deemed a competitive service to those which Sebastian provides pursuant to this Agreement, whether or not such activity is directed toward making a profit. Subscriber agrees that, among other things, the use of any form of transmitter or wide area network that enables persons or entities outside the location identified in the Service Order to use the Services, whether or not a fee is sought, will constitute an impermissible use of the Internet Service. Furthermore, if Subscriber uses a wireless network within the Premises, Subscriber will limit wireless access to the Internet Service (by establishing and using a secure password or similar means) to individuals present within the Premises.

c. **Location.** The location and address associated with the Services will be the address identified on the Service Order. Subscriber shall not move Sebastian Equipment from the location and address in which it has been installed.

d. **Theft or Destruction.** Theft or willful damage, alteration, or destruction of Sebastian Equipment or Software, or unauthorized reception, theft or diversion of Services, or assisting such theft, diversion, or unauthorized reception is a breach of this Agreement and potentially punishable under law (including by way of statutory damages, fine and/or imprisonment). Nothing in this Agreement, including, Section 3(d) of this Agreement, shall prevent Sebastian from enforcing any rights it has with respect to theft of, or unauthorized tampering with any Services or Sebastian Equipment or Software under applicable law.

e. **Limited Use.** Subscriber will not, nor will Subscriber allow others to, open, alter, misuse, tamper with or remove the Sebastian Equipment or Sebastian Software as and where installed by Sebastian or use it contrary to this Agreement. Subscriber will not, nor will Subscriber allow others to, remove any markings or labels from the Sebastian Equipment indicating Sebastian ownership or serial or identity numbers. Subscriber will safeguard the Sebastian Equipment from loss or damage of any kind, including accidents, breakage or house fire, and will not permit anyone other than an authorized representative



of Sebastian to perform any work on the Sebastian Equipment. By installing, or permitting to be installed, and using the Services, Subscriber agrees to abide by the terms and conditions of all applicable end-user software licenses. Subscriber will not modify the Software in any way, or change or delete any copyrights, trademarks, service marks, and logos on the Services. In addition, Subscriber will not reverse assemble, reverse compile, or reverse engineer the Software.

f. **Lawful Purposes.** Subscriber may use the Services for lawful purposes only, and in accordance with this Agreement, and the Tariff(s).

g. **Confidentiality.** Subscriber agrees to be responsible for protecting the confidentiality of screen names, passwords, personal identification numbers (PINs), parental control passwords or codes, and any other security measures made available, that Subscriber uses or that are recommended or required by Sebastian. To the extent this information is acquired by any other person (through no fault of Sebastian), Sebastian may assume that Subscriber has authorized such person's use of the information. Subscriber also acknowledges that Sebastian's Services may from time to time include interactive features, the use of which may result in the transmission to, and use by, Sebastian or certain third parties of information that may constitute personally identifiable information (as such term is used in the Federal Communications Act of 1934) about Subscriber and for which Sebastian may be required, under the Federal Communications Act of 1934, to obtain Subscriber's consent. Subscriber agrees that Sebastian may seek such consents (or indications of an election to "opt in" to certain Sebastian programs) electronically, including through the use of a "click through" screen, and that Sebastian is entitled to assume that any such consent or opt-in election communicated through the Services or from the location at which Subscriber receives the Services is Subscriber's consent or opt-in election or has been authorized by Subscriber.

h. **Transmitted Information.** Subscriber agrees that Sebastian has no liability for the completeness, accuracy or truth of the programs or information that Sebastian transmits.

i. **Data Storage.** Subscriber agrees that any online or physical data storage services provided by Sebastian are used at Subscriber's sole risk and that Sebastian will have no liability in the event Subscriber's data is corrupted or lost as a result of or while using such services. Subscriber agrees that, upon return of Sebastian Equipment to Sebastian, Subscriber is responsible for ensuring that all data is removed from such Sebastian Equipment and acknowledges that Sebastian has no responsibility for any such data that is not removed.

j. **Emergency Services.** Subscriber agrees that Sebastian will not be responsible for any losses or damages arising as a result of the unavailability of any of the Services, including the inability to reach 911 or other emergency Services, or the inability to contact a home security system or remote medical monitoring service provider. Subscriber

acknowledges that Sebastian does not guarantee that the Services will operate with home security and/or medical monitoring systems, and that Subscriber must contact the home security or medical monitoring provider in order to test Subscriber's system's operation with the Phone Service. Subscriber agrees to be responsible for the cost of any such testing or any fees for configuring a home security or medical monitoring system to work with the Services. Further, Subscriber acknowledges that, in the event of a power outage at the Premises, any battery system installed in connection with the Services may enable back-up Service, including Phone Service, for a limited period of time or not at all, depending on the circumstances, and that the installation of the battery system does not ensure that the Services will be available in all circumstances. Subscriber also acknowledges that system devices such as a home security system, medical alert, and door bell or residential gate answering service that are set up to automatically dial the local police, fire departments, or the Premises, or other similar automatic reporting systems using telephones lines may not be compatible with the Services. In such cases, Sebastian may charge additional installation fees.

k. **Multiple Users.** Subscriber acknowledges that Subscriber is agreeing to the provisions of this Agreement on behalf of anyone who uses the Services on the Premises or through Subscriber's computer systems. Subscriber has the sole responsibility for ensuring that anyone who uses the Services through on the Premises or through Subscriber's computer systems understands and complies with the terms and conditions of this Agreement. Subscriber further acknowledges and agrees to be solely responsible and liable for any violations of the terms and conditions of this Agreement, whether by Subscriber or by any other user of the Services on the Premises or through Subscriber's computer systems.

## 5. PHONE LISTINGS

Subscriber agrees that in the event of a material error or omission affecting Subscriber's directory listing information, regardless of form or fault by Sebastian, including the erroneous inclusion in published directory listings of any information that Subscriber intends not to have published, the sole remedy shall be a service credit in an amount set by Sebastian's then-current standard policies or an amount prescribed by applicable regulatory requirements, whichever is greater. Sebastian shall have no other liability for errors, omissions or mistaken inclusions in directory listings.

## 6. SPECIAL PROVISIONS REGARDING INTERNET SERVICE

a. **Acceptable Use Policy.** Subscriber acknowledges review of the Acceptable Use Policy for Internet Services available at [www.sebastiancorp.com/](http://www.sebastiancorp.com/), the terms of which are incorporated herein by reference.

b. **Speed of Service.** Subscriber acknowledges that the actual Connection Speed of Internet Service may vary and depends on a number of factors, such as the

location of the Premises, the amount of traffic on the Internet, the ability of a computer to process data, environmental factors, and other factors beyond the control of Sebastian. Subscriber further acknowledges that no minimum level of Connection Speed is guaranteed by Sebastian.

c. **Unfiltered Internet Access.** Subscriber acknowledges that Sebastian provides a connection to the Internet that is unfiltered, and that the Sebastian Parties neither control nor assume responsibility for any content on the Internet or content that is posted by a subscriber. Subscriber further acknowledges that Sebastian does not currently make available control features, including parental control features, relating to the Internet Services, and that Subscriber is solely responsible for the Internet content to which the individuals using the Internet Services are exposed.

d. **Use of Internet Service.** Subscriber agrees that Sebastian has the right, but not the obligation, to edit, refuse to post or transmit, request removal of, or remove or block any material transmitted through, submitted to or posted through or on the Internet Service, if it determines in its discretion that the material violates the terms of this Agreement, any Sebastian consumption limits or any other Terms of Use. Such material might include personal home pages and links to other sites. In addition, Subscriber agrees that, under such circumstances, Sebastian may suspend Subscriber's account, take other action to prevent Subscriber from utilizing certain account privileges (e.g., home pages) or cancel Subscriber's account without prior notification. Subscriber also agrees that Sebastian may suspend or cancel Subscriber's account for using all or part of the Internet Service in a manner that violates this Agreement or the Terms of Use.

e. **Computer Requirements.** Subscriber agrees that each Computer will need to meet certain minimum hardware and software requirements that will be specified for the Internet Service, and that such requirements may be changed from time to time by Sebastian.

f. **Notices and Procedure for Making Claims of Copyright Infringement.** Sebastian has adopted an Acceptable Use Policy in accordance with law that provides for the suspension and/or termination of Internet service to users who are found to have infringed on the rights of Sebastian or of third parties, or otherwise violated intellectual property laws or regulations. Sebastian's policy is to investigate any allegations of copyright infringement brought to its attention. If Subscriber has evidence, knows, or has a good faith belief that Subscriber's rights or the rights of a third party have been violated (e.g. copied, posted, stored, or transmitted) and Subscriber wants Sebastian to delete or edit the material in question, Subscriber must provide Sebastian with all of the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) identification of the material that is claimed to be infringed or to be the subject of infringing activity and that is

to be removed, and information reasonably sufficient to permit Sebastian to locate the material; (d) information reasonably sufficient to permit Sebastian to contact Subscriber, such as an address, telephone number, and if available, an electronic mail address at which Subscriber may be contacted; (e) a statement that Subscriber has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that Subscriber is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement under United States copyright law should be e-mailed to Sebastian at [copyright@sebastiancorp.com](mailto:copyright@sebastiancorp.com) or sent to Sebastian, 811 S. Madera Avenue, Kerman, CA 93630, Attention: Jason Tikijian, Regulatory & Government Affairs Manager.

## **7. SUPPORT, SERVICE AND REPAIRS**

a. **Service and Maintenance Calls.** The Services include the right to request reasonable service and maintenance calls to check and correct problems with the Services. Sebastian will, at its own expense, repair damage to or, at Sebastian's option, replace Sebastian Equipment, and otherwise attempt to correct interruptions of the Services, due to reasonable Sebastian Equipment wear and tear, or technical malfunction of the system or network operated by Sebastian. The Subscriber Materials contain details on contacting Sebastian for this support.

b. **Responsibility for Installed Equipment and Software.** Unless Subscriber has obtained an inside wire maintenance plan from Sebastian (if available), Subscriber agrees to be responsible for all wiring, equipment and related software installed in the Premises that is not Sebastian Equipment or Sebastian-licensed Software, and Sebastian will have no obligation to install, connect, support, maintain, repair or replace any Computer, television, telephone or telephone answering device, audiovisual recording or playback device (e.g., VCR, DVR, DVD), audio equipment, any software, or any modem, cabling or other equipment (other than Sebastian Equipment or Sebastian-licensed Software).

c. **Non-Sebastian Equipment and Software.** Subscriber agrees that Sebastian has no responsibility for the operation of any equipment, software or service other than the Services, the Sebastian Equipment and Software. If Subscriber receives Internet Service, Sebastian has no responsibility to support, maintain or repair any equipment, software or service (including without limitation any network interface card) that Subscriber elects to use in connection with the Internet Service. For assistance with technical problems arising from such equipment, software or Services, Subscriber should refer to the Subscriber Materials for information.

d. **Additional Service Charges.** If Sebastian determines that non-Sebastian equipment or software connecting the Premises to Sebastian Equipment or Software

installed on the side of or adjacent to the Premises (i.e., at a ground block) is the cause of a service problem, Subscriber agrees that Sebastian may charge to resolve such service problem at Subscriber's sole cost and expense. If available from Sebastian, Subscriber may subscribe to a Sebastian service protection plan that covers service-related calls within the Premises. If any other support Services are available from Sebastian, such Services will be at additional charges as described in Sebastian's Price List.

## **8. SERVICE INTERRUPTIONS; FORCE MAJEURE**

a. **Delays and Interruptions.** Subscriber agrees that Sebastian has no liability for delays in or interruption to the Services except that, if for reasons within Sebastian's reasonable control, for more than twenty-four (24) consecutive hours, (i) service on all television channels is interrupted, or (ii) there is a complete failure of the Internet Service, Sebastian will provide a prorated credit for the period of such interruption or failure if Subscriber requests such a credit within 30 days of the interruption or failure. Notwithstanding the above, Sebastian will issue credits for video-on-demand, pay-per-view and pay-per-play events for service problems where a credit request is made within 30 days of the interruption or failure. In no event shall Sebastian be required to credit an amount in excess of applicable service fees. Sebastian will make any such credit on the next practicable bill for the Services. State and local law or regulation may impose other outage credit requirements with respect to some or all of the Services. In such event, the relevant law or regulation will control.

b. **Maintenance.** Subscriber acknowledges that Sebastian may conduct maintenance from time to time that may result in interruptions of the Services.

c. **Force Majeure.** The Sebastian Parties shall have no liability, except as set forth in Section 8(a), for interruption of the Services due to circumstances beyond their reasonable control, including acts of God, flood, natural disaster, vandalism, terrorism, regulation or governmental acts, fire, civil disturbance, electrical power outage, computer viruses or worms, strike or weather.

d. **Credits.** Sebastian is only obligated to provide the credits for loss of Services referred to in this Section 8 if Sebastian is billing Subscriber for the relevant Service at the time of the outage. If a third party is billing Subscriber, Subscriber will look solely to such third party for a credit with respect to that Service.

## **9. REVIEW AND ENFORCEMENT**

a. **Suspension or Termination of Services.** Sebastian may suspend or terminate all or a portion of the Services without prior notification if Sebastian determines in its discretion that Subscriber has violated this Agreement, any of the Terms of Use or any Tariff(s), even if the violation was a single occurrence. If all or a portion of the Services are suspended for more than 24 hours, Subscriber will not be charged for the relevant Services

during the suspension. If Subscriber's account is terminated, Subscriber will be refunded any pre-paid fees minus any amounts due Sebastian.

b. **Review of Content.** If Subscriber receives Internet Service, Subscriber acknowledges that Sebastian has the right, but not the obligation, to review content on public areas of the Internet Service, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and the Terms of Use.

c. **Necessary Action.** Subscriber agrees that Sebastian shall have the right to take any action that Sebastian deems appropriate to protect the Services, Sebastian's facilities or Sebastian Equipment.

## 10. TERMINATION OF SERVICE

a. **Termination At Will.** Either Sebastian or Subscriber, each in their sole discretion, may terminate all or any portion of the Services at any time for any or no reason, in their sole discretion, in accordance with applicable law. Subscriber understands early termination of certain Services may result in additional or increased charges or fees as described in this Agreement.

b. **Notice of Termination Required.** If Subscriber moves or wishes to terminate all or any portion of the Services for any reason, Subscriber will notify Sebastian by phone or by mail to schedule an appointment to disconnect the Services and provide Sebastian with access to the Premises to disconnect the relevant Services and recover the Sebastian Equipment specified on the Service Order on a date prior to the last date of Subscriber's occupancy of the Premises. This also applies if Subscriber is receiving a period of free or discounted Services. In other words, at the end of the free or discounted period, Sebastian is entitled to begin billing Subscriber for the usual charges associated with the relevant Services unless Subscriber takes the appropriate steps to terminate the Services as described in this paragraph.

c. **No Legal Effect.** Subscriber cannot terminate the Services by writing "Canceled" (or any other messages, instructions or statements) on a bill or check, or by making a disconnect appointment that does not result in Sebastian's physical recovery of the Sebastian Equipment. In addition, Subscriber agrees that any restrictive endorsements (such as "paid in full"), releases or other statements on or accompanying checks or other payments accepted by Sebastian shall have no legal effect.

d. **Third Party Rights.** Subscriber acknowledges that notice given by Subscriber to Sebastian of termination of any Services may not be sufficient to terminate billing by any third party for additional or continuing Services, for example continuing long distance phone or other Services. Subscriber shall be solely responsible for contacting any such third party in addition to Sebastian to ensure that all such Services are terminated in accordance with the third party's terms of service, if applicable.

## **11. DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY**

a. SUBSCRIBER AGREES THAT THE SERVICES ARE PROVIDED BY SEBASTIAN ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE OR NONINFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES THAT ARE IMPLIED BY, AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. SEBASTIAN MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE, OR THAT THE SEBASTIAN EQUIPMENT WILL OPERATE AS INTENDED. IN PARTICULAR, SUBSCRIBER AGREES THAT USE OF THE INTERNET SERVICE (INCLUDING THE CONTENT, INFORMATION, SERVICES, EQUIPMENT AND SOFTWARE, THE PURCHASE OF MERCHANDISE AND SERVICES, THE TRANSMISSION OF INFORMATION AND OTHER COMMUNICATIONS BY AND TO SUBSCRIBER AND THE DOWNLOADING OF COMPUTER FILES) IS AT SUBSCRIBER'S SOLE RISK AND THAT SEBASTIAN DOES NOT WARRANT THAT THE PHONE SERVICE, INTERNET SERVICE, OR EQUIPMENT PROVIDED BY SEBASTIAN WILL PERFORM AT A PARTICULAR SPEED, QUALITY, RESOLUTION OR BANDWIDTH. SUBSCRIBER FURTHER AGREES THAT SEBASTIAN IS NOT RESPONSIBLE FOR THE RECORDING OF OR FAILURE TO RECORD ANY PROGRAM OR PORTION THEREOF, OR FOR THE CONTENT OF ANY PROGRAM OR CONTENT OF THE INTERNET SERVICES. WITHOUT LIMITING THE FOREGOING:

i. ANY AND ALL PRODUCTS AND SERVICES PROVIDED BY SEBASTIAN AND/OR ANY OTHER SERVICE PROVIDER AND/OR OTHER THIRD PARTY TO SUBSCRIBER THAT ARE NOT PART OF THE SERVICES AS DEFINED HEREIN ARE OUTSIDE THE SCOPE OF THIS AGREEMENT, AND THE SEBASTIAN PARTIES HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY SUCH PRODUCTS OR SERVICES; AND

ii. NONE OF THE SEBASTIAN PARTIES MAKES ANY WARRANTIES AS TO THE SECURITY OF COMMUNICATIONS VIA SEBASTIAN'S FACILITIES OR THE SERVICES (WHETHER SUCH COMMUNICATIONS ARE DIRECTED WITHIN THE SERVICES, OR OUTSIDE THE SERVICE TO OR THROUGH THE INTERNET), OR THAT THIRD PARTIES WILL NOT GAIN UNAUTHORIZED ACCESS TO OR MONITOR SUBSCRIBER'S EQUIPMENT OR COMMUNICATIONS. SUBSCRIBER AGREES THAT NONE OF THE SEBASTIAN PARTIES WILL BE LIABLE FOR ANY SUCH UNAUTHORIZED ACCESS. SUBSCRIBER HAS THE SOLE RESPONSIBILITY TO SECURE SUBSCRIBER'S EQUIPMENT AND COMMUNICATIONS.

b. SUBSCRIBER ACKNOWLEDGE THAT SEBASTIAN'S OR SUBSCRIBER'S INSTALLATION, USE, INSPECTION, MAINTENANCE, REPAIR, REPLACEMENT OR REMOVAL OF THE SERVICES, SEBASTIAN EQUIPMENT AND SOFTWARE MAY RESULT IN DAMAGE TO SUBSCRIBER'S COMPUTER(S), TELEPHONES AND TELEPHONE ANSWERING DEVICES, TELEVISIONS, RECORDING AND PLAYBACK DEVICES, AUDIO EQUIPMENT, OR ANY

PHONE LINES OR OTHER EQUIPMENT OR HARDWARE, INCLUDING SOFTWARE AND DATA FILES STORED THEREON. SUBSCRIBER SHALL BE SOLELY RESPONSIBLE FOR BACKING UP ALL EXISTING COMPUTER OR OTHER SOFTWARE OR DATA FILES PRIOR TO THE PERFORMANCE OF ANY OF THE FOREGOING ACTIVITIES. NONE OF THE SEBASTIAN PARTIES, OR THEIR VENDORS, LICENSEES OR PROGRAMMERS, SHALL HAVE ANY LIABILITY, AND EACH EXPRESSLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER, FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY EQUIPMENT, SOFTWARE, HARDWARE, DATA OR FILES.

c. EXCEPT FOR THE REFUND OR CREDIT AS EXPRESSLY PROVIDED IN SECTIONS 8(a) AND 9(a), RESPECTIVELY, IN NO EVENT (INCLUDING NEGLIGENCE) WILL ANY SEBASTIAN PARTY OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SERVICES (INCLUDING THE CONTENT INCLUDED THEREIN OR THE SERVICES ACCESSED THEREBY) OR EQUIPMENT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING THE USE OF OR INABILITY TO USE EMERGENCY 911 SERVICES; FOR ANY ERRORS, OMISSIONS, MISTAKEN INCLUSIONS OR PUBLICATION OF ANY DIRECTORY LISTING INFORMATION, REGARDLESS OF FORM; FOR ANY ACTION TAKEN BY SEBASTIAN TO PROTECT THE SERVICES; OR THE BREACH BY SEBASTIAN OF ANY WARRANTY.

d. SUBSCRIBER AGREES THAT THE PROVISIONS OF THIS SECTION 11 SHALL APPLY TO ALL CONTENT OR SERVICES INCLUDED IN, OR ACCESSIBLE THROUGH, THE SERVICES, AND ARE FOR THE BENEFIT OF, AND MAY BE ENFORCED BY, ALL OF THE SEBASTIAN PARTIES.

## 12. PRIVACY

a. **General.** Subscriber's privacy interests, including the ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Communications Act of 1934, as amended, and the Electronic Communications Privacy Act. Personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Subscriber Privacy Notice delivered to me by Sebastian and the Website Privacy Notice available on the Sebastian Website. Subscriber acknowledges receipt of the Subscriber Privacy Notice and Website Privacy Notice, which are hereby incorporated into and deemed to form a part of this Agreement, and expressly consents to the collection, use and disclosure of personally identifiable and other information as described in the Subscriber Privacy Notice and Website Privacy Notice, as they may be amended from time to time.

b. **Protection of Sebastian's Interests.** Subscriber agrees that, in addition to actions and disclosures specifically authorized by law or statute or authorized elsewhere in this Agreement, Sebastian has the right (except where prohibited by law notwithstanding consent), but not the obligation, to disclose any information to protect its respective rights,



property and/or operations, or where circumstances suggest that individual or public safety is in peril. Subscriber consents to such actions or disclosures.

c. **Phone Service Disclosures.** If Subscriber receives Phone Service from Sebastian, Subscriber consents to Sebastian's disclosure of Subscriber's name, address and/or telephone number to the general public in connection with Caller ID functions, telephone directories and 411 services. If Subscriber wishes to have Sebastian remove this information from one or more of these Services, Subscriber may direct Sebastian to do so, subject to any applicable fees. Subscriber also consents to Sebastian's disclosure of Subscriber's name, address and/or telephone number in response to 911 and similar public safety requests and to the telephone companies serving those end users to whom Subscriber makes calls so that the calls can be completed.

### **13. CONSENT TO PHONE AND EMAIL CONTACT**

a. **Contact by Phone.** Subscriber consents to Sebastian calling the phone numbers Subscriber supplies to Sebastian for any purpose, including the marketing of its current and future Services. Subscriber agrees that these phone calls may be made using any method, including an automatic dialing system or an artificial or recorded voice. Upon request, the phone numbers Subscriber has previously provided will be removed from Sebastian's phone marketing list. Subscriber can make this request by calling or writing Sebastian and asking to be placed on Sebastian's Do Not Call List.

b. **Government "Do Not Call" Registries Insufficient.** Subscriber acknowledges that being included in any state or federal "do not call" registry will not be sufficient to remove Subscriber from Sebastian's phone marketing list.

c. **Contact by Email.** Subscriber consents to Sebastian emailing Subscriber, at any email address, including that of a wireless or mobile device, that Subscriber provides to Sebastian (or that Sebastian issues to Subscriber in connection with the Services), for any purpose, including the marketing of Sebastian's current and future Services. If Subscriber's wireless or mobile provider charges for receipt of such messages, Subscriber acknowledges and agrees to be responsible for paying such charges. Subscriber may revoke this authorization insofar as it relates to marketing messages at any time by calling or writing a Sebastian office.

### **14. ARBITRATION, INJUNCTIVE RELIEF, CLASS ACTIONS, AND VENUE**

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF AND CLASS ACTION LAWSUITS, 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.

CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED, AND THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF. THE VENUE FOR ANY ACTION SEEKING INJUNCTIVE RELIEF, OR ANY CLASS ACTION LAWSUIT SHALL BE THE COUNTY OF FRESNO, STATE OF CALIFORNIA, IF IN INSTITUTED IN STATE COURT, OR THE EASTERN DISTRICT OF CALIFORNIA (FRESNO), IF IN INSTITUTED IN FEDERAL COURT. 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, EXCEPT THAT THE ARBITRABILITY OF ANY DISPUTE PURPORTING TO CONSTITUTE A CLASS ACTION SHALL BE DETERMINED BY A COURT OF COMPETENT JURISDICTION AND VENUE, AS REQUIRED BY THIS SECTION 14. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

## **15. DEFINITIONS**

a. "Agreement" means this Residential Services Agreement, as amended from time to time, including all Price Lists and Subscriber Privacy Notices, as such lists and notices are amended from time to time.

b. "Bundled Services" refers to the multiple Services set forth on the Service Order that Subscriber has subscribed to under this Agreement, and that may be offered together as a promotion at discounted prices, and/or on other terms and conditions, including the condition that Sebastian shall only provide certain of the Services in conjunction with certain other Services as described in Section 1(e) of this Agreement.

c. "Computer" means the personal computer(s) located on the Premises that will be used to access the Internet Services specified on the Service Order, if any.

d. "Connection Speed" refers to the throughput rate or the amount of data that can be transferred between the Premises and the Sebastian facilities serving the Premises over a given period of time. Connection Speeds described in Sebastian materials, including marketing materials, Price Lists and Terms of Use refer to Maximum Connection Speeds.

e. "Including" or "include" shall mean inclusion, without limitation.

f. [Reserved.]

g. "Internet Service" means access to the internet, and its content, features and functions, provided by Sebastian through DSL broadband, dial-up, fiber to the Premises (FTTP), wireless, or any other any other means.

h. [Reserved.]

i. "Phone Service" means the Sebastian phone service that provides users with the ability to send and receive local and/or long distance calls and to access additional related features and functions through Sebastian phone lines and systems.

j. "Premises" means the premises located at the street address set forth on the Service Order.

k. "Price List" means the separate list of prices and charges, including without limitation, monthly and installation fees for Services and Equipment, as well as late fees, early-termination fees, cancelled check charges and charge backs, and other fees, penalties, and charges, as such fees, charges, and penalties are established by Sebastian from time to time.

l. "Sebastian" means Sebastian or the Sebastian affiliate providing the Services, or any similar operator to whom Sebastian assigns this Agreement.

m. "Sebastian Equipment" means any equipment provided by Sebastian including, but not limited to, phone lines, conduit, splitters, junction boxes, decoders, terminals, modems, remote control units, and any other equipment or materials provided by Sebastian for use in connection with the receipt of Services. Sebastian Equipment does not include any network interface card installed in Subscriber's Computers.

n. "Sebastian Parties" means Sebastian and its corporate parents, affiliates and subsidiaries and their respective directors, officers, employees and agents.

o. "Service Order" means the Sebastian service order provided to Subscriber in connection with the installation or commencement of the Services.

p. "Services" means any and all Services provided to me by Sebastian, which may include Video Service, Internet Service, Phone Service, and equipment-based Services such as digital video recorder Services.

q. "Software" means the computer software, if any, licensed by Sebastian or any of the Sebastian Parties to Subscriber to access the Internet Service. Software also refers to any executable code that may be included in, downloaded to, or utilized by, any Sebastian Equipment.

r. "Subscriber" means the account holder identified on the Service Order who is authorized by Sebastian to access and use the Services.

s. "Subscriber Materials" means the handbooks, manuals and other guide materials provided by Sebastian regarding use of the Services.

t. “Subscriber Privacy Notice” means the Subscriber Privacy Notice described in Section 12(a), as it may be amended from time to time by Sebastian.

u. “Tariff(s)” means the materials describing the terms upon which Sebastian offers Phone Service, which have been filed at the California Public Utilities Commission and the FCC.

## **16. INDEMNIFICATION**

Subscriber agrees to defend, indemnify and hold harmless the Sebastian Parties from and against any and all claims and expenses, including costs of court and reasonable attorneys' fees, arising out of or related in any way to Subscriber's use of the Services, Sebastian Equipment or Software, or otherwise arising out of the use of Subscriber's account or any equipment or facilities in connection therewith, or Subscriber's use of any other Sebastian products or Services.

## **17. TERM**

This Agreement, as amended from time to time in the manner described herein, will remain in effect until terminated by either party or superseded by a subsequent agreement for services entered into by and between Sebastian and Subscriber.

## **18. INTERPRETATION; SEVERABILITY**

Except as explicitly stated in Section 14, in the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties as set forth herein, and the remainder of this Agreement shall remain in full force and effect.

## **19. CONSENT TO ELECTRONIC NOTICE**

Subscriber agrees that unless otherwise specified, all notices required or contemplated hereunder will be provided by Sebastian by such means as Sebastian shall determine in its discretion. Without limiting the foregoing, Subscriber agrees that Sebastian may provide any notices required or contemplated hereunder or by applicable law, including notice of changes to this Agreement, the Tariff(s) or the Privacy Notice, by electronic means (for example, email or online posting). An online version of this Agreement, the Subscriber Privacy Notice and any applicable Tariff(s), as so changed from time to time, will be accessible at <http://www.sebastiancorp.com> or another online location designated by Sebastian, or can be obtained by calling a Sebastian office.

## **20. WAIVER**

Subscriber agrees that failure by Sebastian to enforce any of its rights hereunder shall not constitute a waiver of any such rights. No waiver by either party of any breach or default shall be deemed to be a waiver of any preceding or subsequent breach or default.

## **21. ASSIGNMENT**

Subscriber understands that the Services are being provided only to the Premises and that Subscriber is not allowed to transfer all or any portion of the Services, or Sebastian's Equipment, to any other person, entity or location, including a new residence. Subscriber not assign or transfer this Agreement. Sebastian may transfer or assign any portion or all of this Agreement at any time without notice to Subscriber, and Subscriber waives any such notice which may be required.

## **22. EFFECT OF APPLICABLE LAW**

This Agreement, the Service Order, and/or the Subscriber Privacy Policy are subject to all applicable federal, state or local laws and regulations in effect in the jurisdiction(s) in which the Services are provided. If any provision of this Agreement, the Service Order, and/or the Subscriber Privacy Policy contravene or are in conflict with any such law or regulation, or if Subscriber is entitled to more favorable rights under any such law or regulation than are set forth in any provision in this Agreement, the Service Order, and/or the Subscriber Privacy Policy, then the terms of such law or regulation, or the rights to which Subscriber is entitled under such law or regulation, shall take priority over the relevant provision of this Agreement, the Service Order, and/or the Subscriber Privacy Policy. If the relevant law or regulation applies to some but not all of the Service(s), then such law or regulation will take priority over the relevant provision of this Agreement, the Service Order, and/or the Subscriber Privacy Policy only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this Agreement, nothing contained in this Agreement shall constitute a waiver by Subscriber or Sebastian of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

## **23. PARENTAL CONTROL OPTIONS**

Subscriber acknowledges to have been advised that Sebastian DOES NOT PROVIDE ANY PARENTAL CONTROL DEVICES, FILTERING SERVICES OR OTHER MEANS OF BLOCKING OF INTERNET CONTENT AND THAT SUBSCRIBER IS SOLELY RESPONSIBLE FOR CONTROLLING AND MONITORING ACCESS TO INTERNET CONTENT BY INDIVIDUALS IN THE PREMISES.

## **24. CONFLICTING TERMS**

In the event of a conflict between the terms and conditions of this Agreement and those of the Service Order, this Agreement shall control. However, in the event of a conflict in the

terms and conditions of this Agreement, and any applicable Tariff(s), the applicable Tariff(s) shall control.