

## OPTINET TERMS OF SERVICE

These Terms of Service apply to QuantumVu, QuantumHome, OptiNet Phone and Internet and related services ("Services") delivered by the OptiNet Division of BVU Authority in Bristol, Virginia, a political subdivision of the State of Virginia, and doing business as OptiNet ("OptiNet").

The services that you receive from OptiNet are subject to the terms of our Acceptable Use Policy (AUP), these Terms of Service and any Addendums ("Terms of Service"). These agreements have been provided to you in your Welcome Kit and are also available online under "Legal Notices" at [www.bvu-optinet.com](http://www.bvu-optinet.com).

### **I. PAYMENT and FEES**

#### **Payment**

Payment is due within 20 days of the invoice date. Accounts unpaid more than 21 days after the invoice date may be subject to an interest charge of 1.5% per month and may have service terminated or disconnected. Such termination does not relieve you of your obligation to pay the amount owed. Returned checks are subject to a \$30 charge. If you default on payment, you agree to pay the amount owed and reasonable expenses, including attorney fees, court costs, service fees and collection agency fees, incurred in enforcing its rights under the OptiNet Internet Agreement. Monthly fees will be charged one month in advance. Monthly service charges will be pro-rated if you cancel service. You may cancel service at any time by notifying OptiNet at 1-855-835-1288, or in person at 15022 Lee Highway, Bristol, VA, 24202.

Payments may be mailed to ***P. O. Box 8100; Bristol, VA; 24203***, brought into our business office at 15022 Lee Highway, Bristol, VA 24202, or paid online at [www.bvu-optinet.com](http://www.bvu-optinet.com). OptiNet also offers automatic payment services. Customers may pay their bill by using a debit or credit card. OptiNet reserves the right to change monthly fees. You will be notified at least 30 days prior to any proposed change in rates.

#### **Deposits**

If you are unable to establish a satisfactory credit rating with OptiNet or if your credit rating becomes impaired, you may be required to make a suitable cash deposit to be held as security for the payment of bills. If a satisfactory credit rating has been established, upon request, the deposit will be credited to your bill, or if requested by you, refunded by check.

## **Resolution of Dispute**

Any dispute regarding charges to your account must be lodged within sixty (60) days of the date of the statement, or you will be deemed to have accepted the charges.

## **Taxes, Fees and Surcharges**

State and local governments may assess taxes, surcharges and/or fees on your use of the OptiNet Network and OptiNet Services. These charges may be a flat fee or a percentage of your charges and may change from time to time without notice. These charges are based on the rates applicable to the address you provided to us. You are responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the OptiNet Network and OptiNet Services. Such amounts are in addition to payment for the OptiNet Network and OptiNet Services.

## **II. SERVICE INSTALLATION**

### **Appointments**

Installation and service call appointments are scheduled in advance. If OptiNet cannot meet a scheduled commitment, OptiNet will attempt to notify you and reschedule the appointment for a convenient time.

### **Moving?**

If you are moving within the same service area, OptiNet will be glad to schedule an appointment to install OptiNet services at your new location. Please notify OptiNet at least ten (10) days prior to your move and we'll arrange to transfer your services. Some fees and restrictions may apply. When you transfer your services, your account must be in current standing and any credits and charges from your previous service address will be transferred to your new account address. These credits and charges may take up to two (2) months to appear on your OptiNet bill.

### **Access to Customer Premises**

From time to time, OptiNet may need to enter the premises at which you will use the Services ("Premises") in order to install, maintain, inspect, repair, and remove the OptiNet Equipment or Services. Accordingly, you authorize OptiNet and its employees, agents, contractors, and representatives to enter the Premises as necessary, at a time agreeable to you and us. You warrant either that you are the owner of the Premises, or if you are a tenant, that you have the authority to allow 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, evidence that the owner has authorized you to grant access to the Premises, and written consent from the owner.

"Adult at Home" Policy: Our installers and technicians will not enter your home to perform any work unless a responsible adult is present. We realize this may cause an inconvenience for some of our customers, but this policy is essential to protect you and our employees.

### **III. EQUIPMENT**

All equipment, including converters, terminals, and remote controls provided by OptiNet are the property of OptiNet and must be returned if you move or terminate your service. Your account will be charged a fee for any equipment which is not returned to OptiNet at the time your service is disconnected. This charge also applies should any of the equipment be stolen from your home or returned damaged beyond the normal wear and tear.

OptiNet will repair and/or replace the equipment we use to provide your services at no charge if the repair or replacement is not the result of your negligence, fault, or theft from your home. If you are experiencing problems with your service, contact your local Customer Service office. Customer Service contact information is available online at [www.bvu-optinet.com](http://www.bvu-optinet.com) or by calling 1-866-835-1288. OptiNet does not repair equipment owned by you, such as DVD players, telephones, modems, computers and televisions and is only responsible for bringing service to the input of such equipment.

#### **Damage to or Failure to Return OptiNet Equipment**

In the event the OptiNet Equipment is lost, stolen, damaged, destroyed, or otherwise not returned promptly to OptiNet, you agree to pay the current replacement cost of the OptiNet Equipment. We suggest that the OptiNet Equipment in your possession be covered by your homeowners, renters, or other insurance. You understand that failure to pay the replacement charge will result in the matter being turned over to a collection agency and attorneys to pursue legal action.

#### **Unauthorized Use of OptiNet Equipment or Services**

Unauthorized use of OptiNet Equipment or Services constitutes a violation of federal and state law and a breach of this Agreement. OptiNet will press charges against all violators. You will be liable for all unauthorized use of the Services and for any and all stolen Services. You agree to notify OptiNet immediately in writing or by calling our customer service line during normal business hours if you become aware at any time that the OptiNet Equipment has been stolen or that your Services are being stolen or used without your authorization. If you fail to notify OptiNet in a timely manner, your Services may be terminated without notice, with additional charges to you.

## **Service and Maintenance Procedures**

In the event of a problem with your Service or OptiNet Equipment, you should contact OptiNet Customer Service at 1-866-835-1288. Depending on the nature of the problem, we may at our option schedule an appointment for our Service Technician to visit your service location home, usually by the next business day. OptiNet does not charge for service calls if OptiNet Equipment caused the problem. You agree to cooperate by all reasonable means to allow an OptiNet representative to inspect its facilities either inside or outside the place of attachment and with its attempts to resolve a service or equipment problem. You agree that OptiNet is not obliged to service any Customer Equipment, including your telephone or fax equipment. In the event that OptiNet determines in its sole judgment that the problem was caused by Customer Equipment, Customer negligence, lack of knowledge, Customer software, Customer-installed wiring or hardware, Purchased Equipment not covered by its limited warranty, or any problem not caused by OptiNet, you agree to pay for the service appointment and our reasonable charges for repair. In some cases, OptiNet may decline to undertake the repair.

If a problem is not resolved to your satisfaction, you may write or call us with concerns or complaints. Emergencies such as fallen trees or utility poles, violent storms or very cold weather may interfere with the Services. Our crews are promptly dispatched to correct any emergency when practicable. As these situations may affect a large service area, it may take several days to resume full service to the entire area.

## **Limitation of Liability; Indemnification; No Warranties**

### **No Warranties**

THE OPTINET EQUIPMENT AND SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE OPTINET PARTIES NOR THEIR SERVICE PROVIDERS WARRANT THAT THE OPTINET EQUIPMENT OR THE SERVICES WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR, OR THAT THEY WILL NOT INTERFERE WITH OTHER THIRD-PARTY EQUIPMENT OR SERVICES. NEITHER THE OPTINET PARTIES NOR THEIR SERVICE PROVIDERS WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED COMPLETELY OR 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. NEITHER THE OPTINET PARTIES NOR THEIR SERVICE PROVIDERS WARRANT, OR SHALL BE RESPONSIBLE IN ANY REGARD, FOR ANY MERCHANDISE OR SERVICES ORDERED THROUGH THE SERVICES FROM THIRD PARTIES OR OTHER COMMERCIAL TRANSACTIONS WITH THIRD PARTIES. CUSTOMER SHALL BE RESPONSIBLE FOR ALL SUCH CHARGES AND SHALL INDEMNIFY SHENTEL FOR ALL LIABILITY IN CONNECTION THEREWITH.

### **Limitations on Liability for Malfunctions and Intellectual Property Claims.**

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 OPTINET PARTIES OR THEIR SERVICE PROVIDERS 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 SERVICES, INCLUDING LACK OF 911/E911 OR DIALING ASSOCIATED WITH A SECURITY SYSTEM, OR THE USE OR ATTEMPTED USE OF OR CUSTOMER'S RELIANCE ON OR USE OF THE OPTINET EQUIPMENT, PURCHASED EQUIPMENT, OR THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY MISTAKES, OMISSIONS, INTERRUPTIONS, FAILURES OR MALFUNCTION, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, LOSS OF INFORMATION OR DATA, OR FAILURE OF PERFORMANCE OF THE OPTINET EQUIPMENT OR 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 THE OPTINET EQUIPMENT OR THE SERVICES BY CUSTOMER 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.

### **Limitations on OptiNet'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 OptiNet Equipment and the Services. Except for gross negligence or willful misconduct by us, none of the OptiNet Parties shall have any liability whatsoever for any damage, loss, or destruction to the Customer Equipment. In the event of gross negligence or willful misconduct by OptiNet, we shall pay at our sole discretion for the repair or replacement of the damaged parts up to a maximum of \$250. This shall be your sole remedy relating to such activity. Use of certain features of the Services, such as integrated messaging (where available), may require special software, applications, or access to web portals. OptiNet makes no representation or warranty that any software or application installed on your computers 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. NEITHER THE OPTINET PARTIES NOR ITS SERVICE PROVIDERS

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.

OptiNet 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. NEITHER THE OPTINET PARTIES NOR ITS SERVICE PROVIDERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.

### **Limitations on OptiNet'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 Services, including without limitation their services, equipment, and infrastructure ("Service Providers"). OptiNet is not responsible for the performance or non-performance of third-party services, equipment, or infrastructure, whether or not they constitute components of the Services. OptiNet shall not be bound by any undertaking, representation, or warranty made by an agent or employee of OptiNet or of our Service Providers in connection with the installation, maintenance, or provision of the Services, if that undertaking, representation, or warranty is inconsistent with the terms of this Agreement. The limitations of liability set forth herein apply to any acts, omissions, and negligence of the OptiNet Parties and their Service Providers which, but for that provision, would give rise to a cause of action in contract, tort, or any other legal doctrine.

### **Customer's Indemnification of OptiNet**

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD THE OPTINET PARTIES AND THEIR SERVICE PROVIDERS, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO OR ARISING OUT OF YOUR BREACH OF THIS AGREEMENT OR YOUR AND YOUR USERS' USE OF THE SERVICES OR ANY OPTINET EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY CLAIMS OR DAMAGES ARISING OUT OF THE LACK OF 911/E911 OR DIALING ASSOCIATED WITH A SECURITY SYSTEM, HOME DETENTION, OR MEDICAL MONITORING SYSTEM. YOU AGREE THAT OPTINET SHALL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE OF THE SERVICES OR THE OPTINET EQUIPMENT. FURTHER, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS.

## **Service Interruptions Due to Technical Malfunctions and Force Majeure Events**

In the event of complete failure of a Service due to technical malfunction for 24 consecutive hours or more, you are entitled to a prorated credit upon request. To qualify for a credit, you must request it within 30 days of the failure. THE FOREGOING IS YOUR SOLE REMEDY FOR A SERVICE INTERRUPTION. YOU UNDERSTAND AND ACKNOWLEDGE THAT THERE MAY BE INTERRUPTIONS OF THE SERVICES DUE TO ACTS OF GOD, WAR, WEATHER, POWER FAILURES, EQUIPMENT FAILURES, OR OTHER SIMILAR EVENTS BEYOND THE CONTROL OF OPTINET. NONE OF THE OPTINET PARTIES OR THEIR SERVICE PROVIDERS SHALL HAVE ANY LIABILITY, INCLUDING AS SET FORTH IN THIS SECTION 12(g), FOR INTERRUPTIONS OF SERVICE DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL, OR FOR CLAIMS OR DAMAGES ARISING FROM SUCH INTERRUPTIONS.

## **Customer's Sole Remedies**

Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. If any of the above exclusions is found invalid, the liability of the OptiNet Parties and their service providers is limited to the maximum extent permitted by law.

## **Home Wiring**

The following notice will serve to inform you of your options regarding the home wiring located within your dwelling that is used to provide cable service. Home wiring is the cable which runs from your TV set to a point approximately twelve inches outside of your dwelling unit. It includes extra outlets, splitters, connections and fittings or wall plates attached to the wire but does not include devices such as converters, descramblers, CableCARDS, A/B switches, parental lockout devices, security devices and the like.

Pursuant to FCC regulations, all customers are given the option to acquire the home wiring within their dwelling unit upon termination of cable service. However, even prior to termination of cable service, we allow our customers to remove, replace, rearrange, repair or maintain any cable wiring located within the interior space of the customer's dwelling unit so long as such actions do not interfere with our ability to meet FCC technical standards or to provide services to you or your neighbors. For example, you may not attach any device or equipment to your home wiring in a way that impairs the integrity of the cable system, such as by creating signal leakage, or which may cause a violation of government regulations. Furthermore, you may not attach devices or equipment to the wiring which alone or together result in a degradation of signal quality to you or your neighbors.

If you choose to have us remove, replace, rearrange or maintain the wiring inside your home, you will be charged our regular hourly service charge on a per-visit basis. For maintenance, you have the option of purchasing our optional inside wiring maintenance plan for a small monthly fee. This optional program covers most but not all home wiring problems. For example, it does not cover damage to home wiring caused by you or any third party should you attempt to

undertake your own removal, replacement, rearrangement, repair, extension or maintenance of that wiring. Furthermore, we are not responsible for problems relating to the operation of customer-owned consumer electronics equipment such as televisions, DVDs, DVRs, home antennas, etc., which may be connected to home wiring. We are, however, responsible for problems relating to any equipment which you lease from us, other than problems caused by tampering, neglect or abuse.

You also have the option of removing, repairing, rearranging or maintaining the home wiring yourself or of hiring a qualified outside contractor to do the work for you. It is extremely important that only high quality home wiring materials be used and that these materials be properly installed in order to avoid signal leakage and to maintain signal quality in compliance with FCC technical regulations.

Please Note...

In the event improper installation by anyone other than OptiNet or the use of improper materials causes signal degradation and/or leakage, you may be held responsible for the cost of rectifying the problem. Also, OptiNet may be required under federal law to terminate your cable service until the problem can be remedied.

#### **IV. SERVICE DISCONNECTION**

You may request that your services be disconnected at any time. OptiNet will schedule a disconnect appointment for you, or you may come to our cable office to return any OptiNet equipment (converter boxes/remote controls/modems). Unless otherwise provided by applicable law, billing for any disconnected services will stop on the date that the service disconnection takes effect and all equipment is returned. If you have entered a service contract to receive discounted pricing, you will be subject to an early termination fee if you disconnect your service before the end of your contract term.

#### **V. CUSTOMER OWNED and/or PROVIDED EQUIPMENT**

##### **Specifications**

Any customer-owned or provided equipment that you use in connection with the Services (except equipment purchased from OptiNet) ("Customer Equipment") must meet OptiNet's current minimum technical and other requirements.

##### **No Warranty**

If you install or use Customer Equipment in connection with the Services that does not meet the minimum technical or other requirements described above (a "Non-Recommended Configuration"), you agree that you will not be entitled to customer support relating to any issues other than the quality of the signal delivered to the Customer Equipment. NEITHER



OPTINET NOR ANY OF ITS OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, THEIR AGENTS, OR ASSOCIATED PARTIES ("OPTINET PARTIES") WARRANT THAT A NON-RECOMMENDED CONFIGURATION OR THE USE OF CUSTOMER EQUIPMENT WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICES. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT. NONE OF THE OPTINET PARTIES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE, INCLUDING BUT NOT LIMITED TO LACK OF 911/E911 OR DIALING ASSOCIATED WITH A SECURITY SYSTEM. For purposes of this Agreement, "affiliate" means any entity that controls, is controlled by, or is under common control with OptiNet. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

### **Maintenance of Customer Equipment**

OptiNet shall have no obligation to provide, maintain, or service Customer Equipment. You agree to allow us the rights to send software and/or downloads to Customer Equipment and install, configure, maintain, inspect and upgrade the Customer Equipment.

### **National Do Not Call List**

If you would like to add or remove your number from the National Do Not Call List, you may do so by calling 1-888-382-1222 or online at [www.donotcall.gov](http://www.donotcall.gov).

## **VI. SPECIFIC PROVISIONS REGARDING VIDEO SERVICES**

### **Products, Services and Pricing**

OptiNet provides customers with a wide selection of programming choices. All customers must subscribe to Basic service to access other programming choices, including tiers of service and services offered on a per program or per channel basis. A complete list of programming choices is provided to you upon subscription to our service or upon request.

### **Instructions on How to Use Your Cable Service**

Instructions on how to use your cable service are outlined in our Welcome Kit, which will be provided to you when your services are installed. This information is also available by request or on-line at [www.bvu-optinet.com](http://www.bvu-optinet.com).

### **Pricing and Service Changes**

Unless otherwise provided by applicable law, OptiNet will notify you 30 days in advance of any price or service change. Notice of these changes may be provided on your monthly bill, as a bill insert, as a separate mailing, in the Legal Notice section of the newspaper, or through other written means.

## **Complaint Procedures**

If you have a complaint about your service, billing, or terms and conditions of service, you may call us directly at 1-866-835-1288. In addition, where applicable, we have identified on your monthly bill the franchising authority that you may contact should we fail to resolve your complaint.

## **Maintenance**

Our technicians must periodically test and occasionally repair our cable equipment throughout the cable system. Cable repair may cause a temporary loss of cable service to an entire neighborhood known as a “maintenance outage.” If your cable is not working properly, contact Customer Service at 1-866-835-1288. If a maintenance outage is affecting your area, you will be informed when you call. If the problem is not being caused by maintenance, we will determine the source of the problem and will restore your service as quickly as possible.

## **Service Interruptions**

OptiNet maintains a high standard of technical operations within our cable systems and responds promptly to most service interruptions. On occasion, service interruptions may arise due to unforeseen problems such as power outages, electrical storms, severe weather conditions, equipment failures, auto accidents involving utility poles, and in some cases, loss of signal at the origination point of the program. In addition, twice a year our satellite reception is disrupted by activity from the sun. This disturbance, which affects most cable and satellite companies within the United States, occurs at the end of February and again in October, due to direct alignment of the sun with our satellite and our earth stations. Unless otherwise provided by applicable law, if you experience a verifiable service outage of more than two hours and notify us in a timely manner, we'll credit your account for such loss of service.

## **Sports Blackouts**

Professional sporting events, both local and national, may be subject to blackouts per the league's broadcast rules. Due to these blackouts, not all programming and services will be available in all areas and programming may be subject to change.

## **Equipment Compatibility**

You may encounter problems when your television is connected directly to cable. This includes an inability to receive higher-numbered cable channels. Some channels may be scrambled and are only viewable with a digital set-top box. When using a digital set-top box, you may be unable to use certain features of your TV or DVR without additional equipment, including recording one program while watching another, recording two or more consecutive programs that appear on different channels, and picture-in-picture viewing.

Digital set-top boxes are available for lease from OptiNet. If you see advertisements for digital set-top boxes with built-in descramblers (so-called “pirate boxes” or “black boxes”) or for CableCARD security devices, please remember that these devices are illegal to sell or use unless authorized by OptiNet. OptiNet does not authorize the use of any “pirate boxes.” Receivers with descrambling capabilities and separate security devices may only be obtained from OptiNet.

CableCARDS are available from OptiNet for a low monthly fee and allow this equipment to connect directly to digital cable systems without a digital set-top box. Digital cable ready equipment cannot access two-way cable services such as pay-per-view events and video-on-demand without a digital set-top box. If your television cannot receive UHF television broadcast signals or the standard or high definition digital signals of television broadcast stations, you may need a digital set-top box to view these stations on primary and/or additional outlets. You must have an HD compatible television or other HD compatible video equipment to view services in high definition format.

A remote control is provided at no extra charge when you lease a digital set-top box from OptiNet. The remote control that came with your TV or other video equipment may also be capable of controlling OptiNet’s set-top boxes, or you may also purchase a “universal” remote control unit from a retail store that is capable of working with a digital set-top box. A representative list of compatible remote control models currently available through local retailers includes:

Scientific Atlanta Remotes Past and Present

AT2300 (4200 or 3250HD DHCT's)

AT8400 (DVR Capable DHCT's)

AT8550 (Universal)

AT8560 (Universal)

AT2400 (Universal)

Synergy RC-U62DCR

Synergy RT-U63CP

PHAZR UR5L 9000L

Quantum View Past and Present

Motorola URC62440 (NOVA)

Please note that these remotes may stop functioning if OptiNet begins to offer a different type of box. If you have any questions about the compatibility of your remote control unit, please call OptiNet’s Technical Service Department at 1-866-835-1288, or E-mail [support@bvu.net](mailto:support@bvu.net).

Although every effort has been made to provide you with a complete and accurate list of universal remote controls, other remotes might be available that will work with your home electronics equipment. Although these remote controls are compatible with the converters, descramblers or other equipment we currently offer, they may not be functional should equipment technology change. Should you have a question about the compatibility of a remote control, please call us.

## **VII. SPECIFIC PROVISIONS REGARDING INTERNET SERVICES**

### **Prohibition from Unlawful Use**

You may use the Services for lawful purposes only. You may not submit or transmit through the OptiNet Network or via any OptiNet Service any material, or otherwise engage in any conduct that:

1. violates or infringes the rights of others including, without limitation, patent, trademark, trade secret, copyright, publicity or other proprietary rights;
2. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortuous, or contains explicit or graphic descriptions, or accounts of, sexual acts;
3. victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
4. impersonates any person, business or entity, including and its employees and agents;
5. contains viruses or any other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, or otherwise permit the unauthorized use of a computer or computer network;
6. encourages conduct that would constitute a criminal offense, or that gives rise to civil liability;
7. violates these Terms of Service, the Acceptable Use Policy guidelines or any policy posted on the OptiNet Network, or
8. interferes with the use of the OptiNet Network or any OptiNet Service by others.

You may not use the OptiNet Network or any OptiNet Service in any manner that could damage, disable, overburden, or impair our servers or networks, or interfere with any other party's use and enjoyment of the OptiNet Network or OptiNet Service. You may not attempt to gain unauthorized access to any services, user accounts, computer systems or networks, through hacking, password mining or any other means. We may take any legal and technical remedies to prevent the violation of this provision and to enforce these Terms of Service.

If OptiNet believes that you have used the OptiNet Network or any OptiNet Service in any of the aforementioned ways, OptiNet may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, OptiNet will provide information in response to law enforcement requests, subpoenas, or court orders, to protect our rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others. OptiNet reserves all of our rights at law and equity to proceed against anyone who uses the OptiNet Network or any OptiNet Services illegally or improperly.

## **Content**

You may only post text, messages, information, software, images, audio and video (“Content”) to public areas on the Services that you created or that you have permission to post. You may not post Content that violates these Terms of Service. We do not claim ownership of any Content that you may post. However, by submitting Content to public areas of the Services, you grant us, our parent, affiliates, and distributors the right to use, copy, display, perform, distribute, adapt and promote this Content in any medium.

We are not liable for Content that is provided by others. We have no duty to pre-screen Content. We reserve the right to remove Content for any reason, but we are not responsible for any failure or delay in removing such material. We are not responsible for content made available on the Internet or any dealings that you have with advertisers found on the OptiNet Network are between you and the advertiser and you acknowledge and agree that we are not liable for any loss or claim you may have against an advertiser.

It is your responsibility to impose any restrictions on viewing of any Video Programming available over the OptiNet Network or through any OptiNet Service by you, other members of your household, or guests, and we shall have no liability to anyone due to or based on the content of any of the OptiNet Services furnished to you.

## **Content You May Use**

OptiNet, our suppliers, and our other users who lawfully post Content on the OptiNet Network own the property rights to that Content. The Content is protected by copyright, trademark, patent, trade secret, international treaties, laws and other proprietary rights, and also may have security components that protect digital information. You may only use such Content for personal, non-commercial purposes. You may use Content offered for downloading, such as photos and music, for personal use only and subject to the rules that accompany that particular Content. You may not use the Content in a manner that exceeds the rights granted for your use of the Content, which includes unauthorized copying or distribution of the Content or creating an unauthorized derivative work. You may not circumvent any mechanisms for preventing the unauthorized reproduction or distribution of the Content.

## **VIII. SPECIFIC PROVISIONS REGARDING PHONE SERVICES**

### **Restrictions Applicable to Residential Customers**

If you purchased service under a residential plan, we reserve the right to immediately disconnect or modify your access to the OptiNet Network or any OptiNet Service if we determine, in our sole and absolute discretion, that your use of the OptiNet Network or any OptiNet Service is, or at any time was, inconsistent with normal residential usage patterns. In addition, you will be required to pay our higher rates for commercial service for all periods in which your use of the Service was inconsistent with normal residential use.

## **Calling Plans**

OptiNet offers several different Calling Plans. Some Calling Plans include popular calling features, including Call Waiting, Caller ID, Call Waiting ID, Call Forwarding, Speed Dialing, Three-Way Calling and Anonymous Call Rejection. Voice Mail and special features may be available for an extra monthly charge. All rates and fees are subject to change.

Unlimited Local and Long Distance Calling service allows you to call anyone, anytime, anywhere in the United States, U.S. Territories and Canada as frequently as you like for one simple monthly price, based on the package of services you purchase from OptiNet. Current rates and offers are available at [www.bvu-optinet.com](http://www.bvu-optinet.com) Additional charges apply for taxes, fees, international calling and calls to directory assistance and operator services. Unlimited Local and Long Distance Calling may be used to make calls using calling cards.

Unlimited Local Calling allows you to call anyone, anytime, anywhere within the boundaries of your local calling area as frequently as you like for one simple monthly price, based on the package of services you purchase from OptiNet. Information regarding current rates, offers and local calling area information is available at [www.bvu-optinet.com](http://www.bvu-optinet.com). Additional charges apply for taxes, fees, international calling, directory assistance and operator services calls. Unlimited Local Calling may be used to make calls using calling cards.

Your OptiNet phone charges will appear as a series of line items on your OptiNet bill. You may request a mailed copy of your recent outbound calling details by contacting Customer Service at 1-866-835-1288. All calls to international locations will be billed on a per-minute basis. Current rates for calls to all locations outside the United States, Canada, Mexico, the Caribbean and U.S. Territories can be found at [www.bvu-optinet.com](http://www.bvu-optinet.com). Charges for directory assistance, operator services, and unpublished listings (“Additional Charge Services”) are not included in Calling Plans and will be billed separately, based on usage. Additional information about Calling Plans, rates and additional charge services may be requested by calling Customer Service at 1-866-835-1288.

OptiNet phone service is compatible with most home monitoring and security systems. If you plan to use OptiNet phone service with your home monitoring and security system, you must contact your service provider in order to test the compatibility of the service with OptiNet phone service. OptiNet will not be responsible for the cost of conducting any tests or configuring your monitoring or security system. OptiNet does provide a home security and automation service called QuantumHome.

## **Emergency 911 Access**

Our OptiNet Voice (VoIP) phone service is electrically powered, and phone service, including access to emergency 9-1-1 and home security services, may not operate in the event of an electrical power outage. If a power outage occurs in your home, your OptiNet equipment is equipped with a battery, which may enable back-up service for a limited period. If your local

OptiNet system loses power or experiences other service issues, OptiNet phone service may not be available.

You may not move your equipment to a new address. If you do so, Enhanced 9-1-1 services will not operate properly as emergency operators will be unable to accurately identify your location in an emergency. If you would like to establish service at a new address, you must call OptiNet.

### **Charges and Billing**

Usage charges are billed after each monthly usage cycle, unless otherwise specified in the Rates and Services Schedules. Usage charges and monthly recurring charges may be billed in advance or in arrears, depending upon the Service Plan selected by you.

### **Per-call and Measured-Call Charges**

Calling plans billed on a flat monthly fee basis do not include certain call types. These call types will instead be charged on a per-call (e.g., operator services) 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 OptiNet for a completed call when the called party's line rings or after a certain number of rings. In these situations, OptiNet will charge for the call as if it were answered by the called party. Consult the Rates and Services Schedules at [www.bvu-optinet.com](http://www.bvu-optinet.com) for information on per-call.

### **Rounding of Fractional Charges**

If the computed charge for a measured call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. If the computed charge for taxes or surcharges includes a fraction of a cent, the fraction is rounded up to the nearest whole cent.

### **Third-Party Charges**

The 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.

## **Taxes and Other Charges**

All charges stated in the Rates and Services Schedules are computed by OptiNet exclusive of any federal, state, local, use, excise, gross receipts, sales or privilege taxes, universal service fees, duties, surcharges, fees or similar liabilities. Such taxes, fees, surcharges, duties, liabilities or other charges must be paid in addition to the rates and charges set forth in the Rates and Services Schedules. You must pay all taxes, fees, surcharges, and other charges that we bill you for the Services. Taxes and surcharges will be in the amounts that federal, state, and local authorities require us to bill you. OptiNet will not provide advance notice of changes to taxes and surcharges, except as required by applicable law.

## **Use and Maintenance of Equipment for Phone Service**

### **Handset and Wiring**

In order to use the Services, you are required to provide certain Customer Equipment such as a phone handset or equivalent, phone inside wire and outlets, and a powered electrical outlet. OptiNet does not guarantee that you will also be able to attach telephones to the jacks within your premises to use the Service, but you may request our assistance in attempting to enable such use. Additional charges may apply.

### **Incompatible Equipment and Services**

You acknowledge and understand that the OptiNet Phone Services may not support or be compatible with (i) Non-Recommended Configurations as defined in Section 8(b); (ii) certain non-voice communications equipment, including but not limited to alarm or 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) 211, 311, or other x11 calling (other than 411, 511, 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 OPTINET PARTIES AND THEIR SERVICE PROVIDERS, FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE OPTINET EQUIPMENT OR THE 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 19.

### **You Assume the Risk of High-Risk Activities**

The 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 Services could lead to material injury to business, persons, property, or the environment.

### **No Tampering with or Relocation of Equipment**

You will not service, alter, modify, or tamper with OptiNet Equipment or with the Services, or permit any other person not expressly authorized by OptiNet to do so. You agree that the equipment and the Phone 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 such equipment or the Phone Services at another location, the Services, including but not limited to 911/E911, may fail to function or may function improperly. As described in Section 5 above, you must notify OptiNet if you wish to relocate the equipment or OptiNet Phone Services. If you move the equipment or Services to another location without complying with Section 5, you do so in violation of this Agreement and at your own risk.

### **Limitations of 911/E911 Dialing**

#### **Limitations**

The Services includes the ability to place calls to emergency dispatch operators by dialing "911" ("911/E911") that may differ from 911/E911 functions furnished by traditional telephone service providers. As such, the 911/E911 Services may have certain limitations. CAREFULLY READ THE INFORMATION BELOW. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS ON 911/E911. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY HAVE OCCASION TO PLACE CALLS OVER THE SERVICES. If you have any questions about 911/E911, call OptiNet customer service at 1-866-835-1288.

#### **Correct Address**

In order for your 911/E911 calls to be properly directed to emergency services, OptiNet must have your correct service address. If you move the Services to a different address without OptiNet's approval, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address, or the Services (including 911/E911) may fail altogether. Therefore, you must call OptiNet customer service at 1 866 835 1288 at least **10** days before you move the Services to a new address. All changes in service address require OptiNet's prior approval. YOU UNDERSTAND AND ACKNOWLEDGE THAT OPTINET WILL NEED SEVERAL BUSINESS DAYS TO UPDATE YOUR SERVICE ADDRESS IN THE E911 SYSTEM SO THAT YOUR 911/E911 CALLS CAN BE PROPERLY DIRECTED.

#### **Network Congestion or Failures**

Calls, including calls to 911/E911, may not be completed if there is a problem with network facilities, including network congestion, network or network equipment failure, or another technical problem. Similar congestion and failures can occur with traditional phone service.

## **Service Interruptions Caused by Power Failures**

OptiNet uses the electrical power from your service location. YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU MAY LOSE ACCESS TO AND USE OF THE SERVICES, INCLUDING 911/E911, UNDER CERTAIN CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: (i) IF OUR NETWORK OR FACILITIES ARE NOT OPERATING; (ii) IF ELECTRICAL POWER TO THE EQUIPMENT IS INTERRUPTED AND SUCH DEVICES ARE NOT SUPPORTED BY A WORKING BATTERY BACKUP. You also understand and acknowledge that the battery backup included in the OptiNet EQUIPMENT may provide power for only a limited time, that the performance of the battery backup is not guaranteed, and that if the battery is exhausted, the Services will not function until normal power is restored. You understand and acknowledge that your equipment may not have battery backup or another power source of its own.

## **Limitation on Liability**

YOU ACKNOWLEDGE AND AGREE THAT THE OPTINET PARTIES AND THEIR SERVICE PROVIDERS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OPTINET PARTIES AND THEIR SERVICE PROVIDERS, 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 SERVICES, INCLUDING THOSE RELATED TO 911/E911 SERVICES PROVIDED TO YOU IN CONNECTION WITH THE SERVICES. \*\*You agree to read and comply with the "OptiNet Phone Agreement for Residential & Small Business Service" posted on OptiNet's website at [www.bvu-optinet.com](http://www.bvu-optinet.com) which is hereby incorporated herein by this reference. \*\*

## **Transferring Your Phone Number**

### **Switching to OptiNet from Another Provider**

If you are switching to OptiNet Services from another service provider, you may transfer your existing phone number (if any) to our Services, provided that (i) you request the phone number transfer when you place your order for our Services; (ii) your current service provider releases your existing phone number, at our request, without delay or charge; (iii) transfer of your existing phone number to our Services would not, in our view, violate applicable law or our processes and procedures; (iv) you acknowledge and agree that OptiNet will not transfer numbers from certain other service providers, (v) you acknowledge and agree that if your equipment is set up before the date that the number transfer becomes effective ("Port Effective Date"), you may only be able to make limited outgoing calls over the phone that you have connected to such equipment. In that event, you should keep another phone connected to an existing phone extension at your service location to receive incoming calls until the Port Effective Date, after which you will be able both to make and to receive calls using our Services; and (vi) you acknowledge and agree that to avoid an interruption in your phone service, it is

extremely important that you have the equipment installed on or before the Port Effective Date. Your existing phone service for the number you are transferring will be disconnected on the Port Effective Date; if your equipment is not yet activated, you will not have access to our Services. Therefore, you will not have service for that phone number. If you have questions about the timing of your Port Effective Date, please contact OptiNet.

### **Switching from OptiNet to Another Provider**

To transfer your phone number from OptiNet to another service provider, you must terminate the Phone Services and place the transfer order through your new service provider (and not through OptiNet). OptiNet will release your phone number to your new service provider, provided that (i) your new service provider requests the transfer upon termination of your account; (ii) your new service provider is willing to accept transfer of the phone number without delay or charge; and (iii) transfer of your existing phone number to the new service provider would not, in our view, violate applicable law or our processes and procedures.

### **Limitations on Liability for Directories and Directory Assistance**

THE LIMITATIONS IN THIS SECTION SHALL APPLY WHERE WE MAKE AVAILABLE A DIRECTORY LISTING OR PUBLICATION OPTION. IF (i) ANY PHONE NUMBER FOR WHICH YOU HAVE REQUESTED UNLISTED STATUS IS PUBLISHED IN ANY DIRECTORY; (ii) ANY PHONE NUMBER FOR WHICH YOU HAVE REQUESTED NONPUBLISHED STATUS IS INCLUDED IN ANY DIRECTORY, ANY DIRECTORY ASSISTANCE DATABASE, OR IS OTHERWISE DISCLOSED TO ANY UNAUTHORIZED PERSON; (iii) ANY PHONE NUMBER WHICH YOU REQUESTED BE PUBLISHED OR LISTED IN ANY DIRECTORY OR DIRECTORY ASSISTANCE DATABASE IS NOT SO PUBLISHED OR LISTED, OR (iv) ANY PUBLISHED OR LISTED PHONE NUMBER CONTAINS MATERIAL ERRORS OR OMISSIONS, THEN THE TOTAL LIABILITY OF THE OPTINET PARTIES AND THEIR SERVICE PROVIDERS IN CONNECTION WITH THE DESCRIBED ERROR OR OMISSION SHALL NOT IN THE AGGREGATE EXCEED THE MONTHLY CHARGES, IF ANY, WHICH YOU HAVE ACTUALLY PAID TO OPTINET TO LIST OR NOT TO LIST OR TO PUBLISH OR NOT PUBLISH THE NUMBER FOR THE AFFECTED PERIOD. YOU SHALL HOLD THE OPTINET PARTIES AND THEIR SERVICE PROVIDERS HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS DESCRIBED ABOVE.

## **IX. MISCELLANEOUS**

### **How to Contact OptiNet**

For any inquiries or notices required in connection with this Agreement, you may contact us in writing at OptiNet Customer Service, P. O. Box 8100, Bristol, VA 24203, or by calling our customer service line at 1-866-835-1288 during normal business hours.

## **How You Will Receive Notices**

Notices from you to OptiNet must be provided as specified in this Agreement or the Rates and Services Schedules. Notice from you to OptiNet made by calling OptiNet is effective as of the date that our records show that we received your call. OptiNet 's notice to you under this Agreement will be provided by one or more of the following methods: posting on the OptiNet web site ([www.bvu-optinet.com](http://www.bvu-optinet.com)), recorded announcement, bill message, bill insert, newspaper ad, postcard, letter, call to your billed telephone number, or e-mail to an address provided by you.

## **X. PRICING**

You can find more information about pricing for the Services by calling OptiNet at 1-866-835-1288. Pricing of Services may change from time to time. THIS AGREEMENT INCORPORATES BY REFERENCE THE PRICING INCLUDED IN OPTINET'S THEN-CURRENT RATES AND SERVICES SCHEDULES.

## **XI. ARBITRATION**

(a) EXCEPT FOR (i) CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW; (ii) CLAIMS BROUGHT BY OPTINET RELATED TO UNPAID CHARGES FOR THE SERVICES OR OPTINET EQUIPMENT; OR (iii) CLAIMS BROUGHT BY OPTINET FOR UNAUTHORIZED USE OF THE SERVICES OR OPTINET EQUIPMENT, ALL THREE OF WHICH MAY BE BROUGHT IN ANY FORUM, 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. 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 IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

(b) If any clause within this Arbitration section (other than the class action waiver clause) is found to be illegal or unenforceable, that clause will be severed from the Arbitration Provision, and the remainder of this Arbitration section will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Arbitration section will be unenforceable. In the event that this entire Arbitration section is determined to be illegal or unenforceable for any reason, or if a claim is brought that is found by a court to be excluded

from the scope of this Arbitration section, you and OptiNet have each agreed to waive, to the fullest extent allowed by law, any trial by jury.

## **XII. REPRESENTATIONS AND WARRANTIES OF CUSTOMER**

You represent and warrant that you are at least eighteen (18) years of age. You may, at your discretion, permit minors to use the Services under adult supervision. You are solely responsible for monitoring all material that is accessed by minors using your Services. You also represent and warrant that you have provided and will continue to provide to OptiNet accurate, complete, and current customer information, including but not limited to your legal name, address, phone numbers, and payment data (including but not limited to credit card numbers and expiration dates). You agree that during the term of this Agreement you will promptly notify us if there is any change in the information that you have provided to us in accordance with the terms of this Agreement. If you fail to provide and maintain accurate information, you thereby breach this Agreement.

## **XIII. NO RELATIONSHIP BETWEEN OPTINET AND OTHER PROVIDERS**

Nothing in this Agreement will create any joint venture, joint employer, franchisor-franchisee, employer-employee, or principal-agent relationship between OptiNet and any providers of content or of backbone, network, circuit, and other technology or communications; between OptiNet and any software and other licensors; between OptiNet and any hardware and equipment suppliers; or between OptiNet and any other third-party providers of elements of the Services. Nor will anything in this Agreement impose upon any such companies any obligations for any losses, debts, or other obligations incurred by the other.

## **XIII. TERMINATION**

### **Term**

The term of this Agreement shall commence from the time that the Services are activated and shall continue thereafter until terminated as provided for in this Agreement. If you self-install OptiNet Equipment that we have provided to you, Service charges begin the earlier of (i) the day you install, or pick up from an OptiNet office or employee, such equipment, or (ii) five (5) days after the shipment date. Service is provided on a month-to-month basis unless you agreed to a specified minimum term, in which case you agree to maintain and pay for your Service for the duration of the specified minimum term.

### **Termination by You**

You may change or cancel individual Services by calling the OptiNet customer Service number on your OptiNet bill, subject to the applicable terms and conditions in the OptiNet Rates and Services Schedules. This Agreement remains in effect for any Services that you continue to be enrolled in, use, or pay for.

### **Suspension and Termination by OptiNet.**

Upon five (5) days' written notice, we may suspend, restrict, or cancel the Services and this Agreement, if you do not make payments for current or prior bills by the required due date, including payments for late fees, deposits, or any other required additional charges. If Services are suspended, restricted, or cancelled, charges will continue to accrue through the date that OptiNet fully processes the suspension, restriction, or cancellation. You must pay all outstanding charges for these Services, including payment of any bills that remain due after the date of cancellation. You must reimburse us for any reasonable costs we incur, including attorneys' fees, to collect charges and other amounts owed to us. If you want us to restore Services following any such suspension, restriction, or cancellation, we may require that you pay a deposit and installation charges. You understand and acknowledge that all OptiNet Phone Services, **excluding** 911/E911, will be disabled because of termination of your account.

### **Your Obligations Upon Suspension or Termination**

You agree that upon suspension of Services or termination of this Agreement you will (i) immediately cease use of the Services and all OptiNet Equipment; (ii) pay in full for your use of the Services and the OptiNet Equipment up to the later of the effective date of termination of this Agreement or the date on which the Services are disconnected and all OptiNet Equipment has been returned; and (iii) return the OptiNet Equipment to OptiNet, by any method reasonably requested by us, within ten (10) days after termination of the Agreement. Upon our request, you will permit OptiNet and our employees, agents, contractors, and representatives to access your premises during regular business hours to remove the OptiNet Equipment and other material provided by OptiNet. OptiNet will conduct this removal at a time agreed on by you and us, and you will ensure that all OptiNet Equipment is returned to OptiNet. You may be responsible for paying an equipment return charge and any previously agreed to charges if OptiNet must come to the Premises to recover the OptiNet Equipment. If OptiNet incurs collection or legal costs as a result of your failure to comply with this Section, you will be liable for not only the value of the OptiNet Equipment, but also for collection and attorneys' fees as well as court costs upon judgment.

### **Deletion of Customer Information**

OptiNet and its service providers reserve the right both during the term of this Agreement and upon its termination to delete your voice-mail, data, files, or other Customer information that is stored on OptiNet's or its Service Providers' servers or systems, in accordance with our storage policies. You understand and acknowledge that we shall have no liability whatsoever as a result of the loss or removal of any such voice-mail, data, files, or other Customer information.

### **OptiNet Firmware and Software**

The Services and OptiNet Equipment, including any firmware or software that may be embedded in the OptiNet Equipment or used to provide the Services, are protected by

trademark, copyright, and/or other intellectual property laws and international treaty provisions. You are granted a revocable license to use such firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. This license will commence upon your acceptance of the relevant Services and will terminate immediately upon the termination of the Services for any reason. OptiNet and its licensors retain all rights and interests in and to any such software or firmware. You acknowledge and understand that you are not granted any other license to use the firmware or software embedded in the OptiNet Equipment or used to provide the Services. You expressly agree that you will use the OptiNet Equipment exclusively in connection with the Services. You are permitted to archive the software or re-load the software disk in its original format. All such copies must contain the same copyright notices and proprietary markings as the original software. You shall not reverse compile, disassemble, or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software. If you decide to use the Services through an interface device not provided by OptiNet, which OptiNet reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights to use that interface device with the Services, including all software and firmware licenses. You will indemnify and hold harmless OptiNet against any and all liability arising out of your use of such interface device with the Services.

#### **XV. NO RESALE**

You shall not resell or transfer the OptiNet Service or access to the OptiNet Network to another party without our prior written consent. You are prohibited from using the OptiNet Network or any OptiNet Service for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voice-mail broadcasting or fax or voice-mail blasting or bulk e-mailing.

#### **XVI. NO THIRD PARTY RIGHTS**

These Terms of Service shall not provide any third party with a remedy, claim or right of reimbursement.

#### **XVII. ACTS BEYOND OPTINET CONTROL**

Neither you nor OptiNet will be responsible to the other for any delay, failure in performance, loss or damage due to fire, explosion, power blackout, earthquake, volcanic action, flood, the weather elements, strike, embargo, labor disputes, civil or military authority, war, terrorist acts, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond our reasonable control.

## **XVIII. Severability**

If we do not enforce any right or remedy available under these Terms of Service, that failure is not a waiver. Except where these Terms of Service specifically provide otherwise, if any part of these Terms of Service is held invalid or unenforceable, the remainder of these Terms of Service will remain in force.

## **XVIII. PROTECTION of OPTINET'S INFORMATIONS and MARKS**

All Services information, documents, and materials on our websites are protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively " OptiNet Marks") of OptiNet are and shall remain the exclusive property of OptiNet. Nothing in this Agreement shall grant you the right or license to use any of the OptiNet Marks.

## **XX. GOVERNMENT TORT LIABILITY**

Nothing contained in these Terms and Conditions or in bond or in any certificate or policy of insurance or in any provision of indemnity shall be construed to constitute a waiver by OptiNet of any provision, substantive or procedural, Virginia Torts Claim Act, as amended, VA Code Ann. § 8.01-195.1., et seq., or of any other provision of federal, state, or local law affording OptiNet protection from or limitation of tort or other liability.

PLEASE NOTE THAT BY AGREEING TO THESE TERMS OF SERVICE, YOU ARE: (1) WAIVING CLAIMS THAT YOU MIGHT OTHERWISE HAVE AGAINST OPTINET BASED ON THE LAWS OF OTHER JURISDICTIONS, INCLUDING YOUR OWN; (2) IRREVOCABLY CONSENTING TO THE EXCLUSIVE JURISDICTION OF, AND VENUE IN, STATE OR FEDERAL COURTS IN THE COMMONWEALTH OF VIRGINIA OVER ANY DISPUTES OR CLAIMS YOU HAVE WITH OPTINET; AND (3) SUBMITTING YOURSELF TO THE PERSONAL JURISDICTION OF COURTS LOCATED IN THE COMMONWEALTH OF VIRGINIA FOR THE PURPOSE OF RESOLVING ANY SUCH DISPUTES OR CLAIMS, EXCEPT AS SET FORTH IN THE ARBITRATION TERMS CONTAINED IN THESE TERMS OF SERVICE.

## **XXI. TRADEMARKS**

All trademarks appearing on the Services are the property of their respective owners, including, without limitation, BVU OptiNet.

**OptiNet reserves the right to modify these Terms of Service at any time in its sole and absolute discretion. Changes and modifications will be effective when posted and any use of the Services after the posting of any changes will be considered acceptance of those changes.**

This OptiNet Terms of Service document was last updated on November 19, 2015.