

BARGER CREEK WIRELESS GENERAL TERMS AND CONDITIONS OF SERVICE

In addition to these General Terms and Conditions of Service ("General Terms"), You, individually ("You" or "Subscriber"), and You, on behalf of every member of your household, current and future, every visitor to or guest in your household, and any other person who uses the Services (together with Subscriber, the "Subscriber Group"), agree to be bound by the terms of service applicable to the service(s) to which You subscribe (hereafter, "Service" or "Services"), as well as the Subscriber Privacy Notice which may each be found at www.bargercreek.com, as such may be updated from time to time (collectively, the "Terms of Service"), which are incorporated herein by this reference. For purposes of these Terms of Service, all references to "BCW" mean Barger Creek Wireless and any of its affiliates providing Subscriber the Services (including third parties BCW may retain to provide the Services).

Subscriber's signature on a work order presented upon installation of Services, a Subscriber Group's use of Services, and/or any other form of signature or action indicating intention to use (e.g., online acceptance, e-signature or breaking the seal on the box of a self-installation kit) are evidence of Subscriber Group's agreement to these General Terms, including the service specific Terms of Service. BCW may change its prices, fees, the Services, and/or the Terms of Service. The Subscriber Group's continued use of the Services after notice of the change shall be considered Subscriber's acknowledgement and acceptance of the changes, and the most-recent version of these Terms of Service control Subscriber's relationship with BCW and BCW's provision of Services to Subscriber. The current version of the Terms of Service may be found at "www.bargercreek.com". Subscriber may not modify these General Terms by making any typed, handwritten, or any other changes to it for any purpose. This is a binding legal document. In the event that a portion of the Services is terminated, or any aspect of it is changed, any remaining Service or replacement Service will continue to be governed by these General Terms.

1. Subscriber Representations and Obligations.

- a. **Use.** Subscriber represents and warrants to BCW that: (i) Subscriber has the authority to execute, deliver and carry out these General Terms, and (ii) the Subscriber Group and any person who accesses any Services at the Service location will comply with this Services Agreement.
- b. **Electrical Power.** Subscriber shall provide all electrical power required for BCW to provide the Service. Any backup electrical power source must be provided by Subscriber. In no event shall BCW be responsible to provide electrical service.
- c. **No Reselling.** Subscriber shall not re-sell or re-distribute (whether for a fee or otherwise) access to the Service(s) or system capacity, or any part thereof, in any manner other than for Subscriber internal private use without the express prior consent of BCW, including without limitation, any use to provide

services for the benefit of, or on behalf of, any third party other than Subscriber Group.

- d. **No Illegal Purpose or Unauthorized Access.** Subscriber shall not use or permit third parties to use the Services, including the Equipment, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material.
- e. **No Interference.** Subscriber shall not interfere with or cause technical difficulties for other subscriber's use of equipment or Services or interfere with or disrupt the BCW network, backbone, nodes or other Services. Subscriber shall not install any equipment, including without limitation, any antenna or signal amplification system, at the Service location that interferes with the Services.
- f. **Applicable Laws.** With respect to Subscriber's use of the Service (including the transmission or use of any content via the Service), Subscriber shall comply, and shall ensure that the Subscriber Group comply with all applicable laws and regulations in addition to these General Terms.
- g. **Acceptable Use.** Subscriber is solely responsible for (i) all use (whether or not authorized) of the Service by Subscriber, the Subscriber Group, or any unauthorized person or entity, which use shall be deemed Subscriber's use for purposes of these General Terms, (ii) all content that is viewed, stored or transmitted via the Service, as applicable, and (iii) all third-party charges incurred for merchandise and services accessed via the Service, if any. Subscriber shall not use, or allow the Services to be used, in any manner that would violate these General Terms or that would cause, or be likely to cause, BCW to qualify as a "Covered 911 Service Provider" as defined in 47 C.F.R. §12.4 or any successor provision of the rules of the Federal Communication Commission. For avoidance of doubt, Subscriber and BCW agree that any failure to satisfy the covenants set forth in the preceding sentence shall constitute a material breach of these General Terms.

2. Payment of Charges:

- a. Subscriber will be billed monthly in advance for Services to be received, plus pro-rata charges, if any, for periods not previously billed. Subscriber shall pay all monthly charges and all applicable fees and taxes as listed on the BCW monthly bill. The failure of the Subscriber to receive an invoice does not release the Subscriber from obligation to pay charges by the due date.
- b. Subscriber shall notify BCW of disputed charges or items in writing within thirty-five (35) days of the invoice date, or longer as required by applicable

law. Failure to pay charges billed (including checks returned for insufficient funds) may result in discontinuance of Service, the removal of all Equipment (as defined in Section 5 below) and/or imposition of a late payment or service charge. If the Subscriber has more than one account (business and/or residential) served by BCW, all BCW-provided Services at all locations may be subject to suspension or discontinuance of Service in the event any one account remains unpaid, and BCW may apply any funds received from Subscriber first to such delinquent account(s). Should Subscriber wish to resume a Service after any suspension, Subscriber may be subject to reconnection fees. Should Subscriber wish to resume a Service after termination of Service, BCW may charge fees for installation, service calls and/or activation. These fees are in addition to all past due charges and other fees. In the event collection activities are required, additional collection charges may be imposed, which shall include reasonable attorney fees and costs.

- c. Charges will apply for service visits when BCW-owned equipment is not the cause of any service degradation, outage, or other problem with your service.
- d. If partial payment is made of any bill and without waiving its right to collect the full balance owed, BCW will apply that payment to any outstanding charges in the amounts and proportions that it determines.
- e. Subscriber agrees and understands that by entering into the financial arrangement described herein, BCW is not extending Subscriber any credit and therefore that BCW and Subscriber are not entering into a consumer credit or similar transaction.
- f. Subscriber agrees that BCW may utilize a third-party payment processor for the collection of charges and other fees; Subscriber hereby authorizes the use of a third-party payment processor for that purpose.

3. Payment by Check; Non-Sufficient Funds/Returned Items; Third Party Processing.

If Subscriber makes payment by check, Subscriber authorizes BCW to collect such payment electronically. Subscriber may not amend or modify these General Terms with any restrictive endorsements (such as "paid in full"), releases, or other statements on or accompanying checks or other payments accepted by BCW; any of which notations shall have no legal effect. If Subscriber's card issuer or financial institution refuses payment for insufficient funds, closed or unauthorized accounts, or any other reason, Subscriber may be charged an insufficient fund charge for each instance in which such payment is refused. Subscriber hereby authorizes BCW to

collect any declined amount and the insufficient funds charge(s) electronically from the subject account. In addition, Subscriber's Service may be suspended and/or terminated. This fee is in addition to any charges Subscriber's financial institution may assess. If initially rejected, BCW may make additional multiple attempts to execute the payment for up to thirty (30) days following the initial refusal. Subscriber shall be responsible for any payment processing fees incurred when using a third party to process Subscriber's payments to BCW.

4. BCW Refund Policy/30-Day Guarantee.

New Subscribers (those who have not been BCW customers prior to subscription) qualify to have all levels of subscription Service refunded/credited if not fully satisfied with the Service within 30 days of service activation. Current Subscribers adding a new level of subscription Service qualify to receive a refund/credit only on those newly added Services. Such refund is valid for customers who pay for their first month of new or upgraded monthly recurring subscription Services. Subscriber is limited to one refund or credit per household for a maximum of 30 days of Service. Refunds/credits will be given only when request for cancellation of Service is received by BCW within 30 days of installation of Service. Any equipment associated with the new subscription must be arranged to be returned, and removed by BCW, prior to release of refund/credit. Any state taxes, franchise fees and other fees or charges that may apply are the responsibility of the Subscriber and will not be refunded or credited. Other restrictions per any offer apply.

5. BCW Property:

All BCW-provided equipment distributed to and/or installed for use at the Subscriber's Service location(s) by or on behalf of BCW, including but not limited to antennas, modems, mounting brackets, tripods, cabling, and power adapters, ("Equipment") , remains the property of BCW with the exception of the Router (see next section). Equipment is intended to service and reside at the specific Service location where installed by BCW personnel and is not to be used or relocated off premises without BCW authorization. IN NO EVENT SHALL SUBSCRIBER UNINSTALL, REMOVE, OR OTHERWISE RELOCATE THE EQUIPMENT WITHOUT THE EXPRESS PERMISSION OF BCW. Subscriber agrees to contact BCW if Subscriber desires to relocate any Equipment. Subscriber will be charged standard service call charges for the time required for BCW personnel to relocate Equipment. Subscriber must arrange for BCW to collect all Equipment upon substitution of use or termination of Service. Failure to do so will result in a charge to be determined in accordance with BCW 's then current schedule of charges for Equipment, which amount shall be due immediately. Subscriber agrees to pay such charge whether the Equipment is lost (through theft or otherwise), damaged or destroyed.

- 6. Routers:** A Router is required to connect to the internet through the BCW network. The term "Router" applies to a single device or device and any number of satellite units.

Routers are available for purchase from BCW as a convenience or Subscriber may choose to purchase their own routers through a third party. Upon purchase, including a purchase with a grant credit through BCW, the Router becomes the property of the purchaser/Subscriber and is not considered BCW-owned Equipment. Routers are manufactured and warranted by a third-party. All support and warranties are provided by the manufacturer. Routers purchased from any source other than BCW must be approved for use on the BCW network by the BCW installer. BCW installers will configure routers to connect to the BCW network at the time of installation including setting an initial password. Routers must be password protected at all times. Subscribers are responsible for documenting these passwords. Subscriber will not reconfigure the Router once it has been configured by BCW without the permission of BCW staff. Service calls to the Subscriber by BCW staff to reset Routers due to lost or forgotten passwords or reconfiguring/resetting of the Router WILL result in a service call charge to the customer's account. Routers will impact the speed of the internet connection within the premises. BCW package speeds are based on and measured from the connection to the premise as it is delivered to the Router. BCW will make every effort to configure Routers to work at the highest speed possible however this is not a guarantee that the speed post Router will attain the advertised package speed. All installed Equipment remains the property of Barger Creek Wireless except the Router. The Router becomes the property and responsibility of the Subscriber. Routers have a fixed operational life and require firmware updates and eventual replacement. This is the responsibility of the Subscriber. Barger Creek is available to assist with and replace Routers with a charge to the Subscriber for time and materials including the cost of any replacement Router.

7. **Security Deposit:** BCW may charge a security deposit before or at the time of installing the Equipment in accordance with BCW's then current schedule of charges for Equipment. The security deposit shall be first applied toward any past-due charge for service, then to any balance for damaged or non-returned Equipment, before being refunded to Subscriber at the termination of the Service for which the Equipment is provided.

8. **Quality and Disruption of Service:** All Services are provided on an "AS IS" and "AS AVAILABLE" basis. In no event shall BCW be liable for any failure or interruption of Service, including without limitation those failures and interruptions resulting in part or entirely from circumstances beyond BCW's reasonable control. Subject to applicable law and at BCW's sole discretion, BCW may give credit with respect to Subscriber's Service. BCW offers residential and commercial customers their choice of a variety of broadband Internet access service tiers, each of which offers varying speeds and features that may affect the suitability of such service for real-time applications. The features, pricing and other commercial terms of our service offerings are modified from time to time and not all packages are available in all areas. Full descriptions of currently available packaging and pricing can be found at www.bargercreek.com. BCW provisions its Subscribers' radios and engineers its network to maximize Subscribers' ability to receive the maximum speed levels for each tier of service. However, BCW does not guarantee that a

customer will achieve those speeds at all times. Like all other ISPs, BCW advertises its speeds as "up to" a specific level based on the tier of service to which a customer subscribes. The "actual" speed a customer experiences may vary based on a number of factors and conditions, many of which are beyond the control of BCW.

9. **Equipment:** BCW will repair and/or replace damaged or defective Equipment, if any, as long as such damage or defect was not caused by misuse or other improper operations or handling by Subscriber with the exception of routers purchased from BCW. BCW shall have the right to presume misuse or other improper operations or handling by Subscriber based on BCW staff observations of the equipment or in the event Subscriber requests repair or replacement more than once in any twelve (12) month period, or more than two times in any twenty-four (24) month period, and shall have no obligation to fulfill any such repair or replacement. BCW is not responsible for the maintenance or repair of Subscriber provided equipment, including but not limited to routers (even if purchased from BCW), connected devices, mobile devices, home telephones, computers, modems, televisions, or any other related Subscriber-provided equipment. A service charge may be imposed upon the dispatch of a technician if there is damage to Equipment due to negligent use or abuse or if no fault is discovered in BCW's system or Equipment. BCW makes no warranties, with respect to Equipment or Service provided by BCW or with respect to the compatibility of the Service or the Equipment with any Subscriber-provided equipment.
10. **ALL EQUIPMENT IS PROVIDED "AS IS", AND BCW HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A SPECIFIC PURPOSE. BCW SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING FROM THE USE, DEPLOYMENT, AND/OR FUNCTIONALITY OF ITS EQUIPMENT.**

BCW's sole obligation and Subscriber's sole remedy with respect to any liability or damage caused by Subscriber's use or deployment of Equipment, shall be a refund of fees paid by Subscriber for such Equipment for the previous billing month/cycle.

11. **Subscriber Property:** BCW assumes no responsibility and shall have no responsibility for the condition or repair of any Subscriber-provided equipment and/or software including routers purchased from BCW. Subscriber is responsible for the repair and maintenance of Subscriber-provided equipment and/or software. BCW is not responsible or liable for any loss or impairment of BCW's Service due in whole or in part to a malfunction, defect or otherwise caused by Subscriber-provided equipment and/or software. Notwithstanding anything to the contrary, Subscriber agrees to allow BCW and its agents the right (A) to install hardware in, (B) send software downloads to, and (C)

install, access, configure, maintain, inspect or upgrade Subscriber-provided equipment to the extent necessary to provide Service. Subscriber warrants that Subscriber is either the owner of such equipment or that Subscriber has the authority to give BCW access to it.

12. **Taxes/Fees:** Subscriber agrees to pay any local, state or federal taxes and fees imposed or levied on or with respect to the Services, the Equipment or installation or service charges incurred with respect to the same (including franchise fees). With respect to fees and taxes, including franchise fees, imposed by applicable government and regulatory authorities, BCW will review the amount it collects in such fees and taxes on a quarterly and annual basis.

13. **Care of BCW Property and Service:** Subscriber agrees that neither Subscriber nor any other person (except BCW's authorized personnel) will: (A) open, tamper with, service, or make any alterations to the Equipment; nor (B) remove or relocate any Equipment from the service address of initial installation. Any alteration, tampering, removal, or the use of Equipment which permits the receipt of Services without authorization or the receipt of Services to an unauthorized number of outlets, or to unauthorized locations, constitutes theft of Service and is prohibited. Notwithstanding the foregoing, upon receipt of a request by Subscriber, BCW shall relocate the Equipment for Subscriber within Subscriber's home at a time mutually agreed to by BCW and Subscriber. Subscriber may incur a charge for such relocation and should consult a current BCW schedule of rates and charges prior to requesting such relocation. If the Subscriber moves residences outside of BCW's service area, Subscriber shall notify BCW that these General Terms shall be terminated, and the provisions below apply to such termination.

14. **Access to Subscriber Premises:** Subscriber authorizes BCW and its employees, agents, contractors and representatives to access and otherwise enter the Subscriber's premises to install, inspect, maintain and/or repair the Equipment and, upon the termination of Service, to remove the same from the premises. BCW's failure to remove its Equipment shall not be deemed abandonment. If the installation and maintenance of Service are requested at premises that, in BCW's sole discretion, are or may become hazardous or dangerous to our employees, the public or property, BCW may refuse to install and maintain such Service. This includes hazardous conditions created by winter weather and the Subscriber is responsible for any snow removal to enter and service the premises.

15. **Contact Rights:**

a. **Notices.** Subscriber authorizes BCW to provide notices to Subscriber using any method BCW determines appropriate, including by electronic means (for example, email or online posting).

- b. **Consents.** BCW may ask Subscriber to provide other consents or authorizations, including by electronic means, email or Subscriber's equipment (for instance, using Subscriber's remote control to purchase a VOD movie, to request information regarding an advertiser's products or to "opt in" to a consumer study), and BCW is entitled to assume that any consent or authorization BCW receives through the Services or from Subscriber's location has been authorized by Subscriber.
 - c. **Email Address for Notice.** Upon BCW's request, Subscriber will provide BCW with a current email address that Subscriber regularly checks so that BCW may provide notices and communications to Subscriber at that address. BCW's right to contact Subscriber as described in this Section survives the termination of these Terms of Service. It is the Subscriber's responsibility to provide an alternate method of communication if the Subscriber does not use an email account.
- 16. **Secure Connection Requirements.** Without abrogating or otherwise limiting Subscriber's separate obligations to secure Subscriber's account and equipment under the Terms of Service, BCW shall have the right to implement reasonable measures necessary to track, manage, and/or ensure the security of the connection between any device or application used by Subscriber, members of Subscriber's household, Subscriber's guests, or any third parties and BCW's Equipment, system, or other network facilities (whether by physical, WiFi, wireless, software, or other means of connection), including without limitation authentication, access security, or other processes and means.
- 17. **Assignment or Transfer:** These General Terms and the Services and/or Equipment supplied by BCW are not assignable or otherwise transferable by Subscriber, without specific written authorization from BCW.
- 18. **Termination and Expiration:**
 - a. **Termination by Subscriber:** Unless otherwise terminated, these General Terms shall automatically renew on a month-to-month basis. Subscriber acknowledges that upon such renewal all pricing is subject to change. To terminate any recurring Service, Subscribers must contact BCW at the contact information then displayed at www.bargercreek.com.
 - b. **Termination for Bankruptcy:** BCW shall have the right to terminate these General Terms immediately in the event that Subscriber makes an assignment for the benefit of creditors, or a voluntary or involuntary petition is filed by or against Subscriber under any law having for its purpose the adjudication of Subscriber as a bankrupt or

the reorganization of Subscriber.

- c. **Termination for Breach:** In the event of any breach of these General Terms by Subscriber, the failure of Subscriber to abide by the rates, rules and regulations of BCW, the failure of Subscriber to provide and maintain accurate registration information, or any illegal activity by the Subscriber using any Service, these General Terms may, at BCW's option, be terminated and the Equipment removed. Failure of BCW to remove such Equipment shall not be deemed abandonment. Subscriber shall pay reasonable collection costs, including attorney fees, to BCW in the event that BCW shall, in its discretion, find it necessary to enforce collection or to preserve and protect its rights under these General Terms. BCW may terminate these General Terms or BCW may reject an application or block access to or use of any component of any Service for any reason including, but not limited to, if:
- i. Subscriber violated these General Terms as to this or another BCW account;
 - ii. The information required in the application process is or becomes incorrect, absent or incomplete;
 - iii. Subscriber threatened or harassed any BCW employee, agent, contractor or representative;
 - iv. Subscriber's credit card issuer refuses a charge or any other payment method fails to compensate BCW;
 - v. There is a violation of the Terms of Service or other agreements with respect to any Service, as determined in the sole discretion of BCW; or
 - vi. The amount of technical support required to be provided to Subscriber is excessive as determined in the sole discretion of BCW.

Subscriber further agrees that in the event of termination pursuant to subsections (b) or (c), BCW shall have no liability to Subscriber.

19. Obligations Upon Termination: The Subscriber agrees that upon termination of these General Terms:

- a. Subject to 18a, Subscriber will pay BCW in full for Subscriber's use of the Equipment and the Services, as applicable, up to the later of the effective date of termination of these General Terms or the date on which the Service has been disconnected. The Subscriber agrees to pay BCW on a pro-rated basis for any use by the Subscriber of any Service for a part of a month;
- b. Subscriber will not uninstall, remove, or relocate any Equipment without the express consent of BCW. Subscriber agrees to contact BCW if Subscriber desires to relocate any Equipment.

c. Subscriber will promptly contact BCW to arrange for the return of all Equipment which shall be removed only by BCW. In the event that

- i. Subscriber fails to contact BCW for the removal and return of Equipment within ten (10) days of the termination of these General Terms in addition to Equipment charges set forth above, Subscriber shall be liable to BCW in accordance with BCW's then current schedule of charges for non-returned Equipment.

20. **Renewal after Cancellation or Termination:** Subscriber acknowledges and agrees that in the event of renewal after cancellation or termination of a Service, Subscriber shall be subject to the pricing, warranties, and Terms of Service as are effective at the time of such renewal.

21. **BCW's Right to Pursue Remedies and Subscriber's Indemnification Obligations.** If Subscriber breaches these General Terms, BCW has the right to seek compensation from Subscriber for such breach through an order requiring you to do or refrain from doing something, in court. Additionally, if any person or entity brings a claim against BCW that arises out of Subscriber's relationship with BCW, the Services provided to Subscriber, the General Terms, or Subscriber's breach or failure to comply, Subscriber will indemnify, defend (at BCW's exclusive election), and release BCW from liability and reimburse BCW for any losses that BCW may incur, including reasonable attorneys' fees and costs, as a result of such claim. Subscriber's responsibilities under this Section cover any dispute, whether arising under contract, tort (for example, a negligence or product liability claim), violation of law or regulation or any other legal theory.

22. **Content and Services:** All Services are subject to change in accordance with applicable law.

23. **Rates:** All rates are subject to change in accordance with applicable law.

24. **Late Fee:** If Subscriber's account is 15 days past due, all Services may be immediately suspended. Services will be restored upon payment in full, plus a late fee at BCW's then current rate. If Subscriber's account thereafter remains unpaid for 60 days, Subscriber's Services may be terminated as set forth in Section 18. Subscriber can avoid incurring late fees by paying Subscriber's monthly bill promptly. Any late fees assessed are not considered interest credit service charges, finance charges or penalties. BCW expects that Subscriber will pay for Services on a timely basis, and BCW does not extend credit to customers.

25. **Disclaimer:** BCW assumes no liability for any program, services, content or information distributed on or through the Services and BCW expressly disclaims any responsibility or liability for Subscriber's use thereof. Further, BCW shall not be responsible for any products, merchandise or prizes promoted or purchased through the use of the Services. BCW assumes no liability for the maintenance of any computer system connected to or using the Services. Subscriber agrees to be responsible for the maintenance and security of Subscriber's own computers and devices using the Service.
26. **Right to Make Credit Inquiries:** Subscriber authorizes BCW to make inquiries and to receive information about Subscriber's credit experiences, including Subscriber's credit report, from others, to enter this information in Subscriber's file, and to disclose this information concerning Subscriber to appropriate third parties for reasonable business purposes.
27. **BCW 's Reservation of Rights:** BCW reserves the right to refuse, suspend or terminate Service to any person at any time for any reason not prohibited by law. When practical, BCW will provide notice that is reasonable under the circumstances before suspending or terminating Service to an existing Subscriber, and BCW will provide any prior notice of suspension or termination that is required by law. The Service is subject to availability as it is contingent on available BCW facilities and unique signal path conditions between such facilities and the Subscriber premises. Due to the nature of the Service technology, BCW reserves the right to deem the Service unavailable to the Subscriber up to, including, and after the installation. BCW assumes no liability whatsoever for any claims, damages, losses or expenses arising out of or otherwise relating to the unavailability of the Service in Subscriber's geographical area, for any reason, even where such unavailability occurs after installation of the Service.
28. **Indemnification.** In requesting and accepting BCW Services, Subscriber agrees to defend, indemnify, and hold BCW, including its officers, directors, employees, affiliates, subsidiaries, and authorized agents (individually and collectively, "BCW Indemnitees") harmless from and against any and all demands, claims, suits, judgments, expenses (including without limitation reasonable attorney or witness fees), loss, damages to, or destruction of personal, real, or intellectual property, bodily injury or death of any person, and other liabilities arising from:
- a. The installation, operation, provision, or other use of BCW Services and/or Equipment;
 - b. Any violation of BCW 's Terms of Service, Acceptable Use Policy, or other published policies or requirements;
 - c. The negligence, willful misconduct, violation of a third party's rights, or failure to comply with applicable law by (i) Subscriber, (ii) members of Subscriber's household, or (iii) Subscriber's guests, or (iv) any other person using the Services provided to Subscriber;

- d. Libel or slander resulting from any use of the Services by (i) Subscriber, (ii) members of Subscriber's household, (iii) Subscriber's guests, or (iv) any other person using the Services provided to Subscriber;
- e. Infringement or misappropriation of any patent, copyright, trademark, trade name, service mark, trade secret, or other intellectual property rights (whether by transmission or material or otherwise) by (i) Subscriber, (ii) members of Subscriber's household, (iii) Subscriber's guests, or (iv) any other person using the Services provided to Subscriber, including that effected through combination of Subscriber's use of the respective Service(s) with facilities, equipment, or services provided or used by Subscriber or obtained from third parties;
- f. Any unauthorized, unlawful, or fraudulent use of or access to the Services, except as otherwise provided by applicable law; and
- g. Any infringement or invasion of the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, or use of the 911 or E-911 service features and the equipment associated therewith, or by the use of any Voice Services furnished by BCW in connection with the 911 or E-911 service, including but not limited to, the telephone number, address or name associated with the telephone used by persons accessing 911 or E-911 service thereunder, and/or that which arises out of the negligence or other wrongful act of (i) Subscriber, (ii) members of Subscriber's household, (iii) Subscriber's guests, or (ii) any other person using the Services provided to Subscriber. The foregoing defense and indemnity obligations exclude damages to the extent caused by the gross negligence or willful misconduct of the BCW Indemnitees. Subscriber agrees that BCW Indemnitees are not liable for any damages or liability resulting from the loss of Services (whether Internet, Cable, Voice, or other Services), nor will Subscriber make any claims or undertake any actions against BCW Indemnitees for loss of Service. Subscriber shall be solely responsible for any damage to or loss of BCW Equipment, unless such damage or loss is caused solely by the negligence or willful misconduct of BCW Indemnitees.

29. LIMITATION OF LIABILITY. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION APPLY TO ANY ACTS, OMISSIONS AND NEGLIGENCE OF BCW AND ITS THIRD PARTY SERVICE PROVIDERS, AGENTS AND SUPPLIERS (AND EACH OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES). UNDER NO CIRCUMSTANCES SHALL BCW BE LIABLE TO CUSTOMER FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICE OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH, INCLUDING ANY ACTS OR OMISSIONS BY THIRD-PARTY SERVICE PROVIDERS, AGENTS OR SUBCONTRACTORS OF BCW, OR RELATING TO ANY SERVICES FURNISHED, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF THE CAUSES OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER

REMEDY PROVIDED HEREIN FAILS. BCW 'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF THE SERVICES OR ANY BREACH BY BCW OF ANY OBLIGATION BCW MAY HAVE UNDER THESE TERMS OF SERVICE OR APPLICABLE LAW, SHALL BE CUSTOMER'S ABILITY TO TERMINATE THE SERVICE OR TO OBTAIN THE REPLACEMENT OR REPAIR OF ANY DEFECTIVE EQUIPMENT PROVIDED BY BCW. IN NO EVENT SHALL BCW'S LIABILITY TO CUSTOMER FOR ANY CLAIM ARISING OUT OF THESE GENERAL TERMS EXCEED THE AMOUNT PAID BY CUSTOMER DURING THE PRECEDING THIRTY (30) DAY PERIOD.

SUBSCRIBER ALSO AGREES THAT IT SHALL NOT BE PERMITTED TO BRING ANY CLAIM WHATSOEVER AGAINST BCW THAT RESULTS IN WHOLE OR IN PART FROM SUBSCRIBER'S FAILURE TO COMPLY WITH THESE GENERAL TERMS.

THIS SECTION SHALL SURVIVE THE TERMINATION OF THESE GENERAL TERMS.

30. **Privacy Policy.** BCW will provide Subscriber with a copy of its customer privacy policy at the time BCW provides Service to Subscriber, and annually afterwards, or as otherwise required by law. Subscriber can view the most current version of our privacy notice by going to "www.bargercreek.com". Subscriber assumes sole responsibility for all privacy, security and other risks associated with providing personally identifiable information to third parties via the Service. To the extent that BCW is expressly required to do so by applicable law, BCW will provide notice to Subscriber of a breach of the security of certain personally identifiable information about Subscriber. Subscriber agrees that BCW may collect and disclose information concerning Subscriber and Subscriber's use of Service in the manner and for the purposes set forth herein and in BCW 's privacy policy. In order to protect the privacy of Subscriber's account information, BCW may require that Subscriber use a security code or other method, in addition to the username and password, to confirm Subscriber's identity when requesting or otherwise accessing account information or making changes to Subscriber's Service through BCW's customer service representatives. Subscriber may also choose to designate an authorized user of Subscriber's account (an "Authorized User"), who will be able to access Subscriber's account information and make changes to Subscriber's account. Once established, an Authorized User may be required to authenticate his/her identity in the same manner according to BCW 's policies.
31. **SUBSCRIBER HAS ONE YEAR TO BRING A CLAIM AGAINST BCW.** Subscriber must bring any claim against BCW within one (1) year after the date on which the claim arose or, unless applicable law provides that the normal statute of limitations for that claim may not be shortened by agreement. If Subscriber does not bring a claim within this period, Subscriber waives, to the fullest extent permitted by law, all rights Subscriber has to such claim and BCW will have no liability with respect to such claim. This Section shall survive the termination of these General Terms.
32. **Force Majeure:** BCW shall not be liable for any failure of performance or equipment of any kind (including BCW Equipment) due to causes beyond its control, including but not

limited to: acts of God, fire, flood, or other catastrophes; loss of electrical power; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over BCW, or of any department agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrection; riots, wars; unavailability of rights-of-way or materials; or strikes, lock-outs, pandemics, work stoppages, or other labor difficulties.

33. **Survival of Terms.** In addition to the terms that are specifically noted in these General Terms as surviving termination of these General Terms, all representations, warranties, indemnifications, and limitations of liability shall survive these General Terms. BCW's right to contact Subscriber shall also survive these General Terms unless Subscriber opts out in the manner described in these General Terms. All other obligations of Subscriber and BCW under these General Terms also survive termination if they relate to the period before termination or, if by their terms, they would be expected to survive such termination.

34. **Entire Agreement:** These General Terms (including the Terms of Service incorporated herein by reference) constitute the entire agreement between the Subscriber and BCW. No undertaking, representation or warranty made by an agent or representative of BCW in connection with the sale, installation, maintenance or removal of BCW 's Services or Equipment shall be binding on BCW except as expressly included herein. Subscriber agrees that, if any portion of these General Terms is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and if severed or rendered null and void thereby, the remaining portions will remain in full force and effect. If BCW fails to insist upon or enforce strict performance of any provision of these General Terms, it does not thereby waive any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of these General Terms.