

# GENERAL TERMS AND CONDITIONS

## 1. APPLICATION

These General Terms and Conditions ("**Terms and Conditions**") are generally applicable to the services and products provided by Barry County Telephone Company, Inc. ("**BCTC**" or "**Company**"). Application and priority of these Terms and Conditions are governed by the following provisions:

**A. Applicability.** These Terms and Conditions shall apply to Services in each of the following instances:

(1) Where referenced or incorporated by reference in a Contract, Service Order or other written agreement entered into between Company and a customer ("**Customer**").

(2) Where no other terms and conditions govern the Services being provided by the Company (such as where the Company enters into a service order that has no attached terms and conditions), these Terms and Conditions shall serve as the terms and conditions of service by default.

(3) In any and all instances where these Terms and Conditions apply, they shall apply even if the Customer is not the actual user of the Services.

**B. Non-Applicability.** These Terms and Conditions shall not apply in the following circumstances:

(1) Tariffed Services – These Terms and Conditions do not and are not intended to replace the tariffs of the Company or its affiliates that are on file with the Federal Communications Commission or a state public service commission. To the extent that the provision of services or products is governed by such tariffs, the terms of such tariffs shall control instead of these Terms and Conditions.

(2) Service Contracts – From time to time, the Company reserves the right to enter into customized service arrangements with specific individual customers (for example, where, in the opinion of the Company the nature of the services, required network arrangements or circumstances warrant specifically tailored service arrangements) which contracts contain provisions intended to replace these Terms and Conditions. To the extent that the Company enters into such service contracts, the terms of such service contracts shall supersede these Terms and Conditions where such terms directly conflict with these Terms and Conditions with respect to the services addressed in such service contracts.

(3) In the event that Company and Customer enter into a written agreement that expressly disclaims the use of these Terms and Conditions or states that these Terms and Conditions shall not apply, consistent with such agreement, these Terms and Conditions shall not apply.

## C. Deviations, Revisions and Priority.

(1) Deviations. From time to time, Service Orders executed in writing by the Company and Customer may include terms that modify, expand, disclaim, partially disclaim or otherwise affect these Terms and Conditions. The terms of any Service Order agreed to by Company and Customer in writing shall take precedence over a conflicting term in these Terms and Conditions.

(2) Revisions. Company reserves the right to change or modify these Terms and Conditions and the Policies from time to time ("Revisions") by posting such Revisions to the Company's website (currently located at [barryarea.com](http://barryarea.com)). In addition to posting Revisions to the Company's website, Company may provide additional written notice Customer (for example, as communication sent with the Company's invoice) where Company determines or believes that the Revision may materially affect Customer's Services. Unless otherwise expressly stated by Company in writing in such notice, however, all Revisions shall be effective upon posting to the Company's website regardless of the magnitude of impact on the Services and whether Customer has received actual notice.

## 2. **Definitions.**

Where capitalized in these Terms and Conditions, the following terms are defined as set forth in this section.

**Affiliate:** Any entity is affiliated with a Party if the entity controls, is controlled by or is under common control with such Party.

**Company (or BCTC):** Barry County Telephone Company, Inc.

**Company Equipment:** Any and all facilities, equipment or devices provided by Company (except where purchased or owned by Customer) or its authorized contractors at the Service Location(s) that are used to deliver any of the Services including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks. Notwithstanding the above, inside telephone wiring within the Service Location and Equipment provided by or sold to Customer hereunder, whether or not installed by Company, shall not be considered Company Equipment.

**Confidential Information:** All information regarding Company's business which has been marked or is otherwise communicated as being "proprietary" or "confidential" or which reasonably should be known by Customer to be proprietary or confidential information under the circumstances. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, all Licensed Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as Company's communications regarding such items.

**Contract:** An agreement between Company and Customer that may contain customer specific information, additional information regarding the Services and customizations. Contracts may contain information which facilitates the issuance of Service Orders by Customer.

**Customer:** Means the entity purchasing Services from Company.

**Customer-Provided Equipment (or CE):** Any and all facilities, equipment or devices supplied by Customer or sold by Company to Customer for use in connection with the Services.

**Demarcation Point:** The point of interconnection between the Company's Network and Customer's provided equipment located at a Service Location. In some cases, the Demarcation Point shall be to the User Network Interface (UNI) port on Company Equipment at a Service Location.

**Effective Date:** Refers to the date upon which a Customer executes and Company accepts an order for Service.

**Equipment:** Equipment used for the provision of the Service.

**Initial Term:** Refers to the initial term of the Services to be provided to Customer as specified in a Service Order, order form or other written agreement.

**Licensed Software:** Computer software or code provided by Company in connection with the Services or the use thereof, including without limitation, associated documentation, and all updates thereto.

**Network:** Consists of the Company's Equipment, facilities, fiber optic cable associated with electronics and other equipment used to provide the Services.

**Notice:** Written notice given in accordance with Section 13.D.

**Party:** Either Barry County Telephone Company, Inc. or Customer as context requires. Barry County Telephone Company, Inc. and Customer may be referred to herein collectively as the "**Parties**".

**Policies:** Policies that Company adopts from time to time governing the use or other aspects of the Service or Company operations that that may limit or affect how Customer or end users can use the Service. Use Policies include without limitation, the Company's Acceptable Use Policy, Privacy Policy and other security policies concerning the Services which are posted on the Company's website. All such Policies are incorporated into these Terms and Conditions by reference. Further information regarding Policies is provided in Section 12 of these Terms and Conditions.

**Professional Services:** Custom installation, technical or other services provided by Company to Customer.

**Renewal Service Term:** See Service Term.

**Revisions:** See Section I.C.

**Sales Order:** A Service Order.

**Service(s):** A service or product provided by Company.

**Service Commencement Date:** The date that the Service commences as determined in accordance with Section 3.E. of these Terms and Conditions.

**Service Order:** A request for Company to provide Service(s) to a Service Location(s) submitted either electronically or on a Company designated form by Customer to Company. A Service Order may also be referred to as a Sales Order.

**Service Level Agreement:** an agreement governing the provision of a particular Service.

**Service Location(s):** The Customer location(s) where Company provides the Services.

**Service Term:** The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in a Service Order or other written agreement executed between Company and Customer. A renewal term may be referred to herein as a “**Renewal Service Term**”. The renewal periods will be the same length of time as the **Initial Term** unless specified otherwise. The Service Term may also be referred to as the “**Term**”.

**Tariff:** A Federal or state Company tariff on file with the Federal Communications Commission or a state public service commission as applicable.

**Taxes:** See Section 4.F.

**Termination Charges:** Charges that may be imposed by Company if, prior to the end of the applicable Service Term (a) Company terminates Services for cause or (b) Customer terminates Services without cause. The formula for calculating Termination Charges is set forth in Section 5 of these Terms and Conditions.

**Terms and Conditions:** These General Term and Conditions.

### **3. SERVICES**

#### **A. Contract Documents**

(1) Contract. Customers may (but in some instances may not) execute a Contract with Company in order to receive Services from Company. Such Contract may be in the form of an agreement that incorporates these Terms and Condition by reference. In some instance, Company and Customer may execute a Service Order without further Contract, in which event these Terms and Conditions shall control. The terms and conditions for the Services ordered in

the Contract are binding upon Customer upon execution. In some cases, the Company may execute a Service Level Agreement that contains terms and conditions for a particular Service. These Terms and Conditions shall be incorporated in the Service Level Agreement by reference.

(2) **Service Orders.** Customer may order Services from Company by executing a Service Order. Such Service Order may incorporate these Terms and Conditions by reference. In order to purchase additional Services, Customer shall submit additional Service Orders to Company. A Service Order shall become binding on Customer when any of the following occur: (i) the Service Order is specifically accepted by Company in writing either electronically or in hard copy; (ii) Company begins providing the Service described in the Service Order; (iii) Company begins Custom Installation for delivery of the Services described in the Service Order, or (iv) Customer uses Services, whichever is earlier. Services are at all times subject to continued availability of required facilities and capacity. If Company determines in its sole discretion that the continuation of one or more Services is not lawful or feasible, Company may terminate the affected Services without penalty upon such Notice to Customer as is reasonably practicable.

**B. Access.** In order to deliver certain Services to Customer, Company may require access, right-of-way, conduit, and/or common room space, both within and/or outside each Service Location. Customer shall provide adequate access, facilities, space and inputs (such as electricity) as may be required for installation, operation, maintenance and provisioning of any required Company Equipment used to provide the Services within the Service Location(s). Customer shall be responsible for securing and maintaining, on an initial and ongoing basis during the applicable Term, access within each Service Location. In the event that Customer, fails to secure or maintain such access with respect to a particular Service Location, Company may cancel or terminate Service at such particular Service Location, without further liability, upon written notice to Customer. In such event, if Company has incurred any costs or expense in installing or preparing to install the Service that it otherwise would not have incurred, a charge not less than the amount required for Company to recover such costs and expenses shall apply to Customer's final invoice for that particular Service Location. If Company is unable to secure or maintain access outside a particular Service Location, which access may be needed to provide Services to such Service Location, Company may cancel or terminate Service at such particular Service Location, without further liability beyond the termination date, upon a minimum of ten (10) days' prior written notice to Customer. In such event, if Company has incurred any costs or expense in installing or preparing to install the Service that it otherwise would not have incurred, Customer shall be responsible for such costs or expenses. Any other failure on the part of Customer to be ready to receive Service, or any refusal on the part of Customer to receive Service, shall not relieve Customer of its obligation to pay charges for any Service that is otherwise available for use.

**C. Ownership, Impairment and Removal of Network.** The Network is and shall remain the property of Company regardless of whether installed within or upon the Service Location(s) and whether installed overhead, above, or underground and shall not be considered a fixture or an addition to the land or the Service Location(s) located thereon. Customer agrees that it shall take no action that directly or indirectly impairs Company's title to the Network, or any portion thereof, or exposes Company to any claim, lien, encumbrance, or legal process, except as

otherwise agreed in writing by the Parties. Customer understands and agrees that Company may use any and all parts of the Network for services provided to other Company customers. For a period of twelve (12) months following Company's discontinuance of Service to the Service Location(s), Company retains the right to remove any Network located in the Service Location. Customer is obligated to provide access to such Service Location as may be reasonably necessary to permit Company to remove the Network.

**D. Service Configuration; Engineering Review.** Company will configure the Services (including, but not limited to, call-flow configuration) in connection with the installation of Services; provided, however, that Customer shall have responsibility for configuration with respect to all of its own CE, any and all end user or third party equipment and other networks, systems, equipment, facilities, or property not provided by Company. All Service arrangements may be subject to an engineering review in Company's sole discretion. The engineering review will determine whether and to what extent a Custom Installation is required. Company will provide Customer written notification in the event Service installation at any Service Location will require an additional non-recurring Custom Installation Fee. In the event that the Custom Installation Fee exceeds two hundred dollars (\$200), Customer will have five (5) days from receipt of such notice to reject the Custom Installation Fee and terminate, without further liability, the Service Order with respect to the affected Service Location(s). Custom Installation Fees of less than two hundred dollars (\$200) do not require any notice to the Customer and must be paid promptly after being invoiced. For certain Services, the engineering review may be conducted prior to Service Order submission. In such case, Customer will have accepted the designated Custom Installation Fee upon submission of the applicable Service Order regardless of the magnitude of the Custom Installation Fee. Customer agrees, at its sole expense, to provide the proper environmental and electrical and telecommunications connections for Company Equipment and Services.

**E. Service Commencement Date.** Except as may otherwise be agreed in writing, the Service Commencement Date shall be the earlier of: (1) the date Company completes installation and connection of the necessary facilities and equipment to provide the Service to the Service Location per the Service Order; (2) the date upon which Services under a given Service Order has been made available (in some instances Services may have difference Service Commencement Dates); or (3) the date upon which Customer uses any Company Service. Any failure of performance or delay attributable to Customer or Customer's agents, representatives, or other contractors, or any failure, incompatibility, or unavailability on the part of Customer's CE, facilities, or systems not provided by Company, shall not serve to delay the Service Commencement Date or otherwise excuse Customer from being required to make payment for the Service at such time as Company has made the Service available for use, regardless of whether Customer actually ready to use the Service. In the event that Company installs dedicated connectivity between Company and Customer, including, but not limited to, DSL, T-1s, DS3s, Ethernet services, and fiber connectivity, and there has been any delay attributable (in Company's sole discretion) to Customer that delays the Service Commencement date for more than five (5) business days past the date of the installation of such dedicated access, Company reserves the right to begin invoicing Customer for the dedicated access, and Customer agrees to pay for such charges.

**F. Maintenance.** Where it affects Customer, Company will provide as much advance telephonic, written, or electronic notice as reasonably practicable with regard to any scheduled maintenance with respect to the Services. Notwithstanding the foregoing, in the event of an emergency, Company shall have the right to perform maintenance and/or restoration of its Network, Company Equipment, and the Services immediately, and will make commercially reasonable efforts to notify Customer (by whatever means) as soon as reasonably practicable of any impact to Customer. Company will provide to Customer procedures and processes for reporting repair, problem, and maintenance requirements associated with the Services. If, upon responding to a Customer-initiated service call, Company determines that the source of the trouble or failure is a failure, malfunction, or inadequacy on the part of Customer, CE, or any other of Customer's suppliers or contractors or third party equipment or network, Customer shall compensate Company at Company's then-prevailing rates for time and materials expended during the service call. Customer's sole and exclusive remedies with respect to any failure or delay of Company in providing any Service shall be as set forth expressly in an applicable Service Order or written agreement between Company and Customer. Unless otherwise agreed in writing, such remedy shall not exceed an amount equal to the monthly Service charge for the affected Service pro-rated by the duration of the unavailability of the Service.

**G. Relocation of Services.** If, during the Term, a change (such as movement of Customer or an end user to a different location) requires modification of the location to which Service is provided, thereby necessitating a move of the Service, the following conditions will apply:

A. Customer will pay Company's then-current non-recurring charges for Professional Services to complete the move of Services for Customer. The Professional Services provided will include: (1) Company's provisioning of new Company Equipment (including, but not limited to, switches and routers); (2) Installation of the new Company Equipment at the Customer's new location prior to the move; and (3) Reclamation of the existing Company Equipment from Customer's old location after the move.

B. Customer and/or the End User will be required to pay Company its prevailing hourly rate for its employees or agents to move any Company-provided telephone handsets and any and all CE and other third party equipment and network facilities.

C. If Company is required to terminate the access facilities (including, but not limited to, T-1s, DS3s, fiber, etc.) at the Customer's old location and install new access facilities into a new location, Customer agrees to pay any and all charges assessed to Company by any third party for such reconfiguration or termination including any penalties or liquidated damages for early termination. Additionally, Customer acknowledges that Company's costs for access facilities are based on geography, and in the event of such a move Company's monthly-recurring cost for the new access facilities may be greater than the cost of the current access facilities. In the event that the monthly recurring cost of the new access facilities is greater than the current cost, Company reserves the right to charge Customer an additional access fee, and Customer agrees to pay such fee.

#### **4. BILLING AND PAYMENT**

**A. Pre-Service Initiation Charges.** Except as otherwise expressly agreed in writing, Customer shall pay in advance any and all Custom Installation Fees prior to the installation of Service. Customer further agrees to pay in advance all anticipated or actual charges associated with the Service, as set forth or referenced in the applicable Service Order or invoiced by Company. These charges may include, but are not limited to standard and custom non-recurring installation charges, monthly recurring service charges, usage charges including without limitation charges for the use of Company Equipment, per-call charges, pay-per-view charges, charges for service calls, maintenance and repair charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). Some Services may be invoiced after the Service has been provided to Customer. Company shall not be restricted from billing and collecting any charges incurred by Customer prior to the Service Commencement Date or at any point during the Term unless specifically barred by law. Notwithstanding any other provision of these Terms and Conditions to the contrary, Company shall be entitled to increase the monthly recurring charges or usage-based charges payable by Customer with respect to any Service upon thirty (30) days' prior written or electronic notice to Customer.

**B. Third-Party Charges.** Customer may incur charges from third party service providers that are separate and apart from, or based on the amounts charged by Company. These may include, without limitation: (1) charges resulting from third party network charges or (2) other services obtained from third parties in order to provide Service to Customer. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility. In addition, Customer is solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

**C. Payment of Bills.** Except as otherwise indicated herein, Company will invoice Customer in advance on a monthly basis for all monthly recurring charges, recurring third party pass through fees and fees. Any usage charges relating to PBX service will also be billed in advanced. All other usage based charges will be billed monthly in arrears. Payment is due upon presentation of an invoice. Payment will be considered timely made to Company if received within thirty (30) days of the invoice date. Any charges not paid to Company within such period will be considered past due. Customer shall make all payments due hereunder free and clear without deduction or withholding. If Service is provided prior to the first day of a billing period, Customer's first monthly invoice shall include any pro-rated charges for the Services. In certain cases, Company may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between the third party and Customer and/or Company. Company shall not be responsible for any dispute regarding these charges between Customer and such third party. Customer must address all such disputes directly with the third party.

**D. Partial Payment.** Partial payment of any bill will be applied to the Customer's outstanding charges in amounts and proportions solely determined by Company. No acceptance of partial payment(s) by Company shall constitute a waiver of any rights to collect the full balance owed.

**E. Credit Approval and Deposits.** Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide Company with any and all credit information



reasonably requested by Company. By initiating a request for Service, Customer authorizes Company to make inquiries and to receive information about Customer's credit history from others and to enter this information into Customer's records. Customer represents and warrants that all credit information that it provides to Company will be true and correct. Company, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Additionally, subject to applicable regulations, Company may require Customer to make a deposit (in an amount not to exceed an estimated three (3) months charge for the Services) as a condition to Company's provision of the Services, or as a condition to Company's continuation of the Services. The deposit will not, unless explicitly required by law, bear interest or be held in a separate account and shall be held by Company as security for payment of Customer's charges. Company may apply the deposit to any delinquent Customer charges upon written notice to Customer. If Company uses any or all of the deposit to pay an account delinquency, Customer will replenish the deposit by that amount within five (5) days of its receipt of written notice from Company. If the provision of Service to Customer is terminated, or if Company determines in its sole discretion that such deposit is no longer necessary, then the amount of the deposit will be credited to Customer's account or will be refunded to Customer, as determined by Company.

**F. Taxes and Fees.** Except to the extent Customer provides a valid tax exemption certificate prior to the delivery of Service, Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes, charges, surcharges and fees (however designated) ("**Taxes**"). Tax exemption certificates will not be applied retroactively to Services billed prior to the date the tax exemption certificate is received by Company and Company will not refund any payments for Taxes made to Company even if Customer was eligible for an exemption from those Taxes. Customer also will be responsible to pay any Service fees, payment obligations and Taxes that become applicable retroactively. In the event that any payment to be made to Company for Taxes is subject to any reduction by reason of a required deduction or withholding of any Tax, the Customer agrees to pay Company such further amounts as would have been necessary so that the aggregate net amount received by Company after deduction or withholding of any Taxes, shall be the same amount as would have been received by Company if there had been no requirement to deduct or withhold any Taxes. Company reserves the right to charge a regulatory recovery fee or similarly fee to recover the administrative costs of Taxes and other fees including administration, collection and remittance.

**G. Other Government-Related Costs and Fees.** Company reserves the right to invoice Customer for any fees or payment obligations imposed by any governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees, right of way fees and Universal Service Fund charges (if any), regardless of whether Company or its Affiliates pay the fees directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer.

**H. Changes to Taxes and Fees.** Taxes and other government-related fees and surcharges may be changed with or without notice. In the event that any newly adopted law, rule, regulation or judgment increases Company's costs of providing Services, Customer shall pay Company's additional costs of providing Services under the new law, rule, regulation or judgment.

**I. Disputed Invoice.** If Customer disputes any portion of an invoice, Customer shall pay the disputed charges, in addition to the undisputed portion of the invoice, and submit a written claim including all documentation substantiating Customer's claim to Company for the disputed amount of the invoice by the invoice due date. Such written claim shall include a reasonably detailed explanation of the basis for Customer's dispute. The Parties shall negotiate in good faith to resolve any billing dispute but Company shall make the final decision on any billing dispute at its sole discretion. Customer may not dispute any charge more than ninety (90) days past the date that the Service pertaining to such charges was provided. In the event that a properly disputed charge is resolved in the Customer's favor, Company will refund/credit such charges on Customer's invoice within sixty (60) days.

**J. Past-Due Amounts.** Any payment not made when due will be subject to a late charge of 1.5% per month or the highest rate allowed by law on the unpaid invoice, whichever is lower. If Customer's account is delinquent, Company may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or any Company Equipment which Customer fails to return. If Company is required to use a collection agency or attorney to collect any amount owed by Customer or any unreturned Company Equipment, Customer agrees to pay all costs of collection or other action, including attorneys' fees and court costs. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Company under these Terms and Conditions, a Contract or Service Order with Customer or at law or in equity.

**K. Rejected Payments.** Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution regardless for the reason for such rejection.

**L. Fraudulent Use of Services.** Customer is responsible for all charges attributable to Customer with respect to the Services, even if incurred as the result of fraudulent or unauthorized use of the Services. Company may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. Company reserves the right, at Company's sole discretion, to restrict, suspend or discontinue providing any Service in the event of fraudulent use of Customer's Services.

## **5. TERM AND TERMINATION**

**A. Term.** In the event that a Service Order executed between Company and Customer has a term of limited duration, the Service Term shall be governed by such Service Order. Unless otherwise provided for in a Contract or Service Order, upon expiration of the Initial Term of Service: (1) Company may continue to provide Service; (2) Company may require that the Parties execute a Service Order prior to continuing to provide Services; or (3) Company may terminate Service effective as of the termination of the Initial Term. In the event that the Company continues to provide Service and Customer has not terminated such Service however, Customer shall be obligated to continue to pay for the Service at the rates specified in the Service Order. These Terms and Conditions shall survive the termination or expiration of any Service Order.

**B. Revenue Commitment.** In some instances, the Contract between Company and Customer may specify a minimum revenue commitment. In the event Customer fails to satisfy a minimum revenue commitment, Customer will be billed a shortfall charge. Customer recognizes that pricing for Services (including Equipment) is extended to Customer based on the quantities identified on the Service Order. If at any time during the implementation process, or after the Service Commencement Date, Customer reduces the quantity of any ordered Service by greater than five percent (5%), Company reserves the right to either (1) bill Customer for the quantity of Services as defined on the signed Service Order, or (2) increase the monthly recurring charge of any Service.

**C. Default Service Arrangements.** In the absence of a valid/unexpired Service Order (either because no Service Order was executed by the Parties or because the applicable Service Order has expired and not been renewed), Service shall be deemed to be provided on a month to month basis (i.e. with automatic monthly Renewal Terms), terminable in accordance with Subsection D. below. Company and Customer shall each be entitled to terminate the Service arrangements for convenience upon thirty (30) days written notice. Pricing for any such Services shall be deemed to be provided at the Company's generally available rates for such Services then in effect. From time to time thereafter, Company may, modify the charges for Service subject to thirty (30) days prior written notice to Customer.

**D. Termination and Default**

(1) Termination for Convenience. Unless expressly stated in the applicable Contract or Service Order, Company shall have the right, in its sole discretion, to terminate such Contract and/or any or all Service arrangements and Service Order(s) without penalty, upon thirty (30) days prior written Notice to Customer.

(2) Termination for Cause. Company may temporarily suspend or permanently terminate one or more Service(s) upon five (5) business days' Notice and without penalty or liability to Customer: (a) in the event Customer: (i) fails to timely pay any amount due to Company (including without limitation submission of a required deposit); (ii) provides insufficient or fraudulent billing information, or (iii) violates any term of its Contract, Service Order, these Terms and Conditions, a Policy, or applicable laws or governmental rules or regulations; (b) by reason of an order of a court or regulatory or other governmental authority; (c) upon institution by or against Customer of a proceeding for relief under the Bankruptcy Code, the insolvency of Customer or the appointment of a receiver of Customer's property; or (d) Company deems such action necessary to protect itself or third parties against fraud or to protect its personnel, agents, or Services provided, however, that such suspensions or termination of the Term shall not relieve Customer of its obligations to pay charges due for its remaining Term and early termination charges may apply as set forth in (3) hereof.

(3) Early Termination. If (i) Customer cancels or terminates a Service under any Contract or Service Order prior to the end of the Service Term for any reason; or (ii) Company terminates a Contract with Customer and/or any Service Order(s) for cause, then in addition to any other rights or remedies available to Company hereunder, at law, or in equity, Customer

shall pay Company early termination charges (as liquidated damages and not as a penalty) equal to:

(a) the aggregate fees, charges, expenses, and taxes payable by Company to any third party (including, but not limited to, liquidated damages, disconnection, early cancellation or termination charges payable to third parties) in connection with the cancellation or termination of the terminated Service(s); and

(b) the total of the nonrecurring charges and any monthly recurring charges multiplied by the number of months remaining on the Service Order, plus the monthly average of any usage based charges (as determined by averaging the charges incurred the previous three (3) months) multiplied by the number of months remaining on the Service Order. Customer must continue to pay all charges for Services until any disconnection upon cancellation or early termination occurs.

All early termination charges are due and payable within thirty (30) days of the effective date of cancellation or termination, as applicable. Customer acknowledges and agrees that the cancellation charges and early termination charges are reasonable liquidated damages payable to Company, and do not represent or constitute a penalty, because actual damages would be difficult or impossible to ascertain. Customer waives any right it has to seek a showing of actual damages by Company. Upon cancellation, termination, or expiration of a Service Order, Company shall owe Customer no further duties, obligations, or consideration; provided, however, that cancellation, termination, or expiration shall not affect the rights, obligations, or liabilities of either Party that have arisen before the date of cancellation, termination, or expiration.

**E. Effect of Expiration/Termination of a Service Order.** Upon the expiration or termination of a Service Order or upon any discontinuance of Service as set forth above:

(1) Company shall disconnect the applicable Service;

(2) Company may (but is not obligated to) delete all applicable data, files, electronic messages, or other information of Customer stored on Company's servers or systems;

(3) If Customer has terminated the Service arrangements prior to the expiration of the Service Term for convenience, or if Company has terminated the MSA or a Service Order prior to the expiration of the Service Term for cause, Company may assess and collect from Customer applicable termination charges (if any);

(4) Customer shall, permit Company to retrieve from the applicable Service Location any and all Company Equipment. If Customer fails to permit such retrieval or if the retrieved Company Equipment has been damaged and/or destroyed, Company may invoice Customer for the manufacturer's list price of the relevant Company Equipment, or in the event of minor damage to the retrieved Company Equipment, the cost of repair, which amounts shall be immediately due and payable; and

(5) Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return all Licensed Software to Company.

**F. Resumption of Service.** If a Service has been suspended or discontinued by Company for cause and Customer requests that the Service be restored, Company shall have the sole and absolute discretion to decide whether or not to restore such Service. At Company's option, deposits, advanced payments, nonrecurring charges, and/or an extended Service Term may apply to restoration of Service.

**G. Regulatory and Legal Changes.** The Parties acknowledge that the respective rights and obligations of each Party as set forth in these Terms and Conditions are based on applicable law and regulations. The Parties agree that in the event of any decision by a legislative, regulatory or judicial body, including any regulatory or judicial order, rule, regulation, decision in any arbitration or other dispute resolution or other legal or regulatory action that materially affects the provisions or ability to provide Services on economic terms of a Service arrangement, Company may unilaterally modify the affected provision in a reasonable manner (or require renegotiation of an agreed upon term in a Service Order) by providing written notice to Customer. If Customer object in writing to such modified term (or the Parties can't reach resolution on replacement term for a Service Order) Company may, in its sole discretion, terminate the Service Order and/or Contract with Customer, in whole or in part, without penalty, upon written Notice to Customer.

## **7. LIMITATIONS OF LIABILITY AND DISCLAIMERS**

### **A. Limitation of Liability.**

**A. THE AGGREGATE LIABILITY OF COMPANY FOR ANY AND ALL LOSSES, DAMAGES AND CAUSES ARISING OUT OF THE COMPANY'S PROVISION OF OR CUSTOMERS USE OF SERVICES, INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE (INCLUDING PROVISION OF EQUIPMENT), AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO COMPANY DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR THE SERVICE OR EQUIPMENT FOR WHICH DAMAGES ARE CLAIMED.**

**B. TO THE GREATEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND INTENTIONAL MISCONDUCT) OR OTHERWISE, EVEN IF COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH**

**POSSIBILITY WAS REASONABLE FORESEEABLE. DAMAGES PAID BY CUSTOMER TO ANY THIRD PARTY SHALL BE CONSIDERED INDIRECT DAMAGES FOR THE PURPOSES OF THIS PROVISION. THIS SECTION SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY AND THE TERMINATION OF THE PROVISION OF SERVICE BY COMPANY AND/OR ANY CONTRACT OR SERVICE ORDER BETWEEN THE PARTIES.**

**B. Disclaimer of Warranties.**

(1) All Service and Equipment is sold “as is”, “with all faults” and without recourse unless otherwise specified in writing. In some instances, Company may offer service level agreements that provide for outage credits in the event of Service unavailability or interruption. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY CONDITION OR QUALITY, TITLE, AND NON-INFRINGEMENT.**

(2) Without limiting the generality of the foregoing, and except as expressly otherwise stated in a Contract between the Parties or these Terms and Conditions, Company does not warrant that the Services or Equipment sold or provided to Customer hereunder (including without limitation Company Equipment), or any Licensed Software will be uninterrupted, error-free, or free of latency or delay, or that the Services, Company Equipment, or Licensed Software will meet Customer’s requirements, or that the Services, Company Equipment, or Licensed Software will prevent unauthorized access by third parties. Customer specifically acknowledges that provision of the Services may be affected by circumstances or factors beyond the reasonable control of Company and that Customer is not entitled to rely on the Services being uninterrupted or error free.

(3) In no event shall Company, be liable for any loss, damage or claim arising out of or related to: (i) stored, transmitted, or recorded data, files, or software; (ii) any act or omission of Customer, its users or third parties; (iii) interoperability, interaction or interconnection of the Services with applications, equipment, services or networks provided by Customer or third parties; or (iv) loss or destruction of any Customer hardware, software, files or data resulting from any virus or other harmful feature or from any attempt to remove it. Customer is advised to back up all data, files and software prior to the installation of Service and at regular intervals thereafter.

**C. Disruption of Service.** The Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment (“High Risk Activities”). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required.

**D.** Customer's sole and exclusive remedies are expressly set forth in these Terms and Conditions or other agreement executed in writing between the Parties. Certain of the above exclusions may not apply if the jurisdiction in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Company is limited to the maximum extent permitted by law. Each Party acknowledges and accepts the reasonableness of the foregoing warranty disclaimer and limitations of liability.

## **8. INDEMNIFICATION**

**A. Indemnification Obligations.** By utilizing the Services, Customer agrees to indemnify, defend, and hold harmless Company and its parent company, affiliates, employees, directors, officers, and agents from and against any and all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) (each a "Claim") arising on account of or in connection with Customer's use of, resale of or sharing of the Services, including with respect to: libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the Service; for patent infringement arising from Customer's combining or connection of CE to use the Service; and for damage arising out of the negligence, gross negligence or willful misconduct of Customer with respect to use of the Service. If Customer permits third parties to utilize the Services, Customer agrees to indemnify Company for any and all third party claims arising out of or related to such usage.

**B. Indemnification Procedures.** In the event that Company claims indemnification under these Terms and Conditions, Company shall advise Customer of the Claim and shall cooperate to facilitate the defense or settlement of such Claim. Customer shall assume the defense of any Claim with counsel satisfactory to Company. Company may employ its own counsel in any such case, and shall pay such counsel's fees and expenses. Customer shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires Company to take or refrain from taking any action or purports to obligate Company, then Customer shall not settle such claim without the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed.

## **9. EQUIPMENT**

### **A. Company Equipment.**

(1) Ownership. Company may agree to deploy Company Equipment in connection with the provision of the Services. Company retains rights, title and interest in and to all Company Equipment that Company has deployed or that Customer has rented from Company. Customer is strictly prohibited from encumbering in any way or granting any interest in Company's Equipment to any third party. Customer shall use Company Equipment solely for receiving Services provided by the Company, in a manner and for the use contemplated by the manufacturer thereof. Company shall be entitled and Customer shall provide any and all access for Company to inspect the Equipment at reasonable times. Company may require markings to be affixed to the Equipment. Customer shall keep all Company Equipment free from any

markings or labeling which might be interpreted as a claim of ownership thereof by Customer or any third party. Without the prior written consent of Company, Customer shall not assign, lend, pledge, transfer, or sublease any Company Equipment, permit to exist any security interest, lien or encumbrance with respect to any Company Equipment; or cause or permit any Company Equipment to be moved from the Service Location to which it is deployed. Any move of equipment to a new premise must be done by Company and shall be charged as a Professional Service on an individual case basis. Customer shall bear the risk of any loss, theft, damage or destruction to Company Equipment during the Term. Customer shall obtain and maintain at its own expense insurance against the loss of or damage to all Company Equipment, including without limitation, loss by fire or other casualty. Customer acknowledges that Company may lease the Equipment from, or pledge any or all of its rights in Company Equipment to any entity or other financing source and in such event Customer shall comply with any and all directions from such financing source regarding the Company Equipment, including releasing the Company Equipment to such financing source upon written request by Company. Customer hereby irrevocably authorizes Company and/or the financing source to file and record such Uniform Commercial Code financing statement(s), amendments and continuations and/or other lien recordation documents as may be prudent to confirm and maintain Company's and/or the financing source's interest in the Company Equipment. Customer and Customer's end users will not allow or cause any Company Equipment to be rearranged, moved, modified, repaired or relocated without Company's written consent. All Company Equipment will be provided for the sole purpose of use in connection with the Service(s), shall remain the exclusive property of Company or its supplier, respectively, and shall be immediately returned to Company upon termination of the Service(s).

(2) Removal. At any time Company may remove or change Company Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Company Equipment or permit others to do so, and shall not use the Company Equipment for any purpose other than that specifically authorized by the Company in writing. Customer is responsible for damage to, or loss of, Company Equipment caused or contributed to by Customer's acts or omissions, and its noncompliance with this Section 9, or by fire, theft or other casualty at the Service Location(s). If Customer retains the Company Equipment for any period after termination or expiration the Service arrangements, Customer shall be subject to month-to-month fees.

## **B. Customer Equipment.**

(1) Company shall have no obligation to install, operate, or maintain CE. Customer shall have sole responsibility for providing maintenance, repair, operation and replacement of all CE, inside telephone wiring and other Customer equipment and facilities on the Customer's side of the Demarcation Point. Neither Company nor its employees, Affiliates, agents or contractors will be liable for any damage, loss, or destruction to CE, unless caused by the willful misconduct of Company. CE shall at all times be compatible with the Network as determined by Company in its sole discretion. In addition to any other service charges that may be imposed from time to time, Customer shall be responsible for the payment of service charges for visits by Company's



employees or agents to a Service Location when the Service difficulty or trouble report results from the use of CE or facilities provided by any party other than Company.

(2) If Customer purchases Equipment from Company, the terms and conditions of such purchase shall be set forth in the Service Order or other Contract between Customer and Company. If Customer is unable or unwilling to schedule or accept delivery or installation on the date Company tenders delivery or installation such equipment, Company shall have the right to initiate billing for the amounts due hereunder as of the date delivery or installation was tendered. Equipment prices and service charges are subject to change at Company's sole discretion if Customer delays delivery or installation by more than ten (10) days.

(3) **Return Policy.** In the event that Customer is required to return any Equipment purchased from Company to Company for warranty service, Customer agrees to obtain Company's concurrence prior to returning any Equipment for repair or replacement and must comply with Company's return processes (including referencing any return material authorization number issued by Company with such returned Equipment). Customer further agrees to ship the item prepaid and suitably package to a location designated by Company. Company will return to the Customer any repaired or replaced CE at Company's expense. Customer agrees to ensure that any returned Equipment is free of any legal obligations or restrictions that may prevent its exchange and represents that all returned Equipment is genuine and unaltered.

## **10. SOFTWARE**

**A. Software License.** In some instances, Company may provide Licensed Software where required for the use of the Services. In the event that Company provides Licensed Software to Customer, such license shall be strictly limited to the rights granted in writing. Where a software license is granted, such license shall be limited to a personal, nonexclusive, nontransferable, revocable, and limited license to use such Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. All Licensed Software provided to Customer, and each revised version thereof, is licensed (not sold) to Customer by Company only for use in conjunction with the Service. Customer may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto), and Customer shall execute any documentation reasonably required by Company, including, without limitation, end-user license agreements for the Licensed Software. Company and its suppliers shall retain ownership of the Licensed Software, and no rights are granted to Customer other than a license to use the Licensed Software under the terms expressly set forth in these Terms and Conditions.

**B. Restrictions.** Customer agrees not to: (i) copy any the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Company; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

**C. Updates.** Customer acknowledges that the use of Service may periodically require updates and/or changes to certain Licensed Software resident in the Company Equipment or CE. If Company has agreed to provide updates and changes, such updates and changes may be performed remotely or on-site by Company, at Company's sole option. Customer hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by Company. If Customer fails to agree to such updates, Company will be excused from providing remedies under any applicable service level agreement and other performance credits, and any and all liability and indemnification obligations regarding the applicable Service.

**D. Export Law and Regulation.** Customer acknowledges that any products, software, and technical information (including, but not limited to, services and training) may be subject to U.S. export laws and regulations. Customer agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by Company, Customer also agrees to sign written assurances and other export-related documents as may be required for Company to comply with U.S. export regulations.

**E. Ownership of Telephone Numbers and Addresses.** Some Services may require Company to provide telephone numbers and/or Internet protocol ("IP") addresses to Customer for use in connection with the Service. To the greatest extent permitted by law, Company retains ownership of all of such telephone numbers and IP addresses, including but not limited to IP addresses, e-mail addresses and web addresses.

**F. Intellectual Property Rights in the Services.** Title and intellectual property rights to the Services are owned by Company, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, bundling or publication of the Services, in whole or in part, without express prior written consent from Company or other owner of such material, is prohibited.

**G Non-Availability of Traditional 911.** Customer acknowledges and agrees that the Company provides no assurances that the Service will support traditional 911 or E911 access to emergency services. Customer further acknowledges and agrees that for some Services, emergency dialing is NOT automatic, that Customer must separately take affirmative steps to activate such emergency dialing capabilities and that such emergency dialing is different in a number of significant ways from traditional 911 service. Customer shall inform ALL employees, staff, users, and other third persons who may be present at Customer's physical location(s) where Customer uses Service(s) of the possible non-availability of traditional 911 or E911 dialing and access from Company Service(s) and equipment. In some instances, Company may rely on third parties for the forwarding of information underlying such routing and, accordingly, Company and Company's third party provider(s) disclaim any and all liability or responsibility in the event any such information or routing is incorrect. Such emergency dialing currently is NOT the same as traditional 911 or E911 calling, and does not necessarily include all of the capabilities of traditional 911 dialing. Neither Company nor Company's officers, directors, employees, agents, suppliers, contractors, or vendors shall be held liable for any claim, damage, or loss, and Customer hereby waives any and all such claims, causes of action, liability, and damages arising from or relating to emergency dialing unless such claim, damage, cause of

action, or loss directly results from Company's gross negligence or intentional misconduct. Customer shall indemnify and hold harmless Company and Company's officers, directors, employees, agents, suppliers, contractors, or vendors from any claim, cause of action, liability, or loss arising out of or related to misrouting of or inability to make emergency calls, including without limitation Customer's failure to follow correct activation procedures for emergency calling or Customer supplying Company any inaccurate, outdated, or incorrect information in connection therewith.

## 11. CONFIDENTIAL INFORMATION AND PRIVACY

**A. Disclosure and Use.** All Confidential Information disclosed by Company shall be kept by Customer in strict confidence and shall not be disclosed to any third party without Company's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to Customer's employees, affiliates, and agents who have a need to know for the purpose of the arrangements between Company and Customer and/or using the Services (provided that in all cases Customer shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by Company in writing. Customer agrees to treat all Company Confidential Information in the same manner as Customer treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

**B. Exceptions.** Notwithstanding the foregoing, Customer's confidentiality obligations hereunder shall not apply to information that: (i) is already known to Customer without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without Customer's fault; (iii) is rightfully obtained by Customer from a third party without restriction as to disclosure, or is approved for release by written authorization of Company; or (iv) is required to be disclosed by law or regulation.

**C. Remedies.** Customer agrees that in the event of Customer breach of the confidentiality provisions contained in these Terms and Conditions, the magnitude of Company's loss will be difficult to ascertain and that therefore, Company shall be entitled to equitable relief to protect its interests pursuant to this Section 11, including, but not limited to, injunctive relief.

**D. Monitoring of Services.** Except as otherwise expressly set forth, Company assumes no obligation to pre-screen or monitor Customer's use of the Service, including without limitation postings and/or transmission and Company assumes no responsibility for Customer's use of the Service(s). Customer acknowledges and agrees that Company and its agents shall have the right to pre-screen and monitor such use from time to time and to use and disclose such results to the extent necessary to operate the Service properly, to ensure compliance with applicable use policies, to protect the rights and/or property of Company, or in emergencies, and that Company may disclose the same to the extent necessary to satisfy any law, regulation, or governmental request. Company shall have no liability or responsibility for content received or distributed by Customer or its users through the Service, and Customer shall indemnify, defend, and hold Company and its directors, officers, employees, agents, subsidiaries, affiliates, successors, and assigns harmless from any and all claims, damages, and expenses whatsoever (including reasonable attorneys' fees) arising from such content attributable to Customer or its users. For

the avoidance of doubt, the monitoring of data described in this Section 11 refers to aggregate data and types of traffic (protocol, upstream/downstream utilization, etc.). Company does not have access to the content of encrypted data transmitted across Company networks.

**E. Survival of Confidentiality Obligations.** The obligations of confidentiality and limitation of use described in this Section 11 shall survive the expiration and termination of Customer's Service for a period of two (2) years (or such longer period as may be required by law).

## **12. SERVICE USE AND PRIVACY POLICIES**

**A. Prohibited Uses and Company Policies.** Customer is prohibited from using, or permitting the use of, any Service (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of any Policy; (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, and permits; or (iv) to interfere unreasonably with the use of Company service by others or the operation of the Network. Customer is responsible for assuring that any and all of its users comply with the provisions of the applicable Service Order and these Terms and Conditions. Company reserves the right to cooperate with law enforcement authorities and/or to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if Company determines that such use is prohibited as identified herein, or information does not conform with the requirements set or Company reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. Furthermore, to the extent applicable, Services shall be subject to Company's Policies. The Policies and other security policies concerning the Services are posted on Company website. Company may update its Policies from time to time, and such updates shall be deemed effective immediately upon posting, with or without actual notice to Customer. Company's action or inaction in enforcing acceptable use shall not be constitute as review or approval of Customer's or any other users' use or information.

**B. Privacy Policy.** Company's commercial privacy policy may apply to Company's handling of Customer confidential information. Company's privacy policy is available on Company's website. Company is not responsible for any information provided by Customer to third parties. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties, including without limitation, via the Services.

**C. Resale.** Customer shall not resell the Company's Services without the Company's express written consent. In the event that resale is permitted and Customer purchases Service(s) for resale, Customer shall be solely responsible for the interaction between Customer and Customer's end users with respect to the Services. Customer will cooperate with Company to enable Company to provide the Services and will allow Company to use any customer proprietary network information (information that relates to the quantity, technical configuration, type, destination and amount of use of the Services by an end user and that is made available to Company as a result of Company's provision of the Services) from such end users to facilitate the provision of Service and to offer additional services to such users. Customer's authorization

to Company to use, disclose and permit access to customer proprietary network information will remain in effect until Customer affirmatively terminates such access. The following terms and conditions shall apply to Customer's rights and responsibilities as an authorized reseller of the Services:

(1) Customer is solely responsible for obtaining all licenses, approvals, and regulatory authority for its use and operation of the Services and the provision of Services to its end users. In connection with its resale of the Services, Customer is solely responsible for all billing, billing adjustments/credits, customer service, creditworthiness and other service-related requirements of its end users, and Company shall have no liability to Customer's end users. Customer's payment obligations hereunder are not contingent upon Customer's ability to collect payments or charges from its end users or any other third party. In addition to the remedies for failure of Customer to make payment set out elsewhere (including in these Terms and Conditions), if Customer fails to make payment for the underlying Service that is being resold to a third party then Company reserves the right to directly bill the end user customer for the Service at Company's sole discretion.

(2) Company may suspend any or all of the Services immediately and/or terminate Contract and/or Service Order(s) with Customer then in place if: (a) Customer fails to comply with any applicable foreign, federal, state or local law or regulation applicable to Customer's resale of the Services; (b) Customer or its end user(s) commit any illegal acts relating to or involving the Services; or (c) Customer uses the Services in a manner which, in the opinion of Company, are illicit or improper. During any period of suspension pursuant to the foregoing sentence, no Service outage or interruption shall be deemed to occur. Customer shall: (i) be liable to Company for any damages caused by any acts of Customer or its end users, in connection with its use or resale of the Services; and (ii) indemnify, defend and hold Company, its Affiliates, agents, and contractors harmless from and against any third party (including end users') claims, actions, damages, liabilities, costs, judgments or expenses (including attorney fees) arising out of or relating to Customer's or end user's use, resale or modification of the Services or Customer's failure to comply with any regulatory filing or reporting requirements or failure to make any required regulatory or contributory payments (including but not limited to universal service support mechanisms).

C. Customer shall not be excused from paying for Services on the basis that fraudulent calls, unauthorized use or other usage of the Service comprised a portion (or all) of Customer's utilization of the Service. Customer shall protect, defend, indemnify, and hold harmless Company, its officers, directors, employees, contractors, and agents, from and against any and all liabilities, allegations, claims, losses, damages, expenses (including reasonable attorney's fees and costs), judgments, and causes of action arising from or related to fraudulent calls, unauthorized use or usage of the Service to the extent that the person or entity claiming the calls or usage to be fraudulent is (or had been at the time of the call or usage) a user or other person or entity that would have had access to the Service through Customer. Company shall be entitled to take immediate action without notice or liability to Customer as it deems necessary in its sole discretion to prevent fraudulent calls or other usage of the Service; provided, however, that Company is under no obligation to undertake such action.

**D. Violation.** Any breach of this Section 12 shall be deemed a material breach of these Terms and Conditions. In the event of such material breach, Company shall have the right to restrict, suspend, or terminate immediately any or all Service Orders, without liability on the part of Company, and then to notify Customer of the action that Company has taken and the reason for such action, in addition to any and all other rights and remedies under these Terms and Conditions.

**E. Customer Consent to Use of Customer Proprietary Network Information.** Customer consents that Company may use Customer Proprietary Network Information (“CPNI”) for marketing purposes to offer Customer the full range of products and services available from Company that may be different from the type of services Customer currently buys from Company. For the purposes of this section, CPNI shall include, without limitation, information about the type and quantity of telecommunications services purchased by Customer from Company, Customer account activity, and charges incurred by Customer. Customer also consents to Company to share Customer CPNI with its affiliates, agents, and partners to offer other services and products. Customer may refuse CPNI consent by notifying Company in writing of Customer’s decision to withhold Customer’s consent. Customer’s consent or refusal to consent will remain valid until Customer otherwise advises Company in writing. Customer’s decision to approve or disapprove use or disclosure of Customer CPNI as described in this Section will not affect the provision of services to Customer.

### **13. MISCELLANEOUS**

**A. Dispute Resolution.** In the case a dispute arises between Company and Customer, Company shall have the ability, at Company’s sole discretion, to cause a dispute to be settled by binding arbitration in accordance with the rules, then in effect, of the American Arbitration Association, and judgment on the award rendered may be entered in any court possessing jurisdiction. The hearing relating to said arbitration shall be held at a place and time determined by Company. The arbiter hearing such matter shall be bound by these Terms and Conditions and shall issue written findings of fact and law. In the event that a claim or controversy is referred to arbitration the Parties shall continue to perform their respective duties or obligations under the Service Order unless such Service Order or the applicable Service arrangement(s) have been terminated.

**B. Force Majeure.** None of Company or its affiliates and subsidiaries shall be liable to Customer or any third party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, flood, explosion, severe weather, power blackout, cable cut, pole hits, acts of regulatory or governmental agencies, unavailability of right-of-way, unavailability of third party services or materials, or other causes beyond Company’s reasonable control.

**C. Assignment or Transfer.** Customer shall have no right to assign any right, obligation, duty, or Service arrangement in whole or in part, or of any other interest in the relationship between Customer and Company, without the prior written consent of Company. All obligations and duties of Customer shall be binding on all successors in interest and assigns of Customer.

Nothing herein is intended to limit Company's use of third-party consultants and contractors to perform services.

**D. Notices.** Any notice that may be sent with respect to the Services shall be deemed given and effective when sent by USPS certified mail (return receipt) to the address by each Party in the Service Order. Each Party shall notify the other Party in writing of any changes in its address.

**E. Entire Understanding.** These Terms and Conditions, along with any written Contract or Service Order constitutes the entire understanding of the Parties related to the subject matter hereof. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not embodied in an agreed upon writing are of no effect.

**F. Construction.** In the event that any portion of these Terms and Conditions or a Service Order or other Contract between the Parties related to the Service is held to be invalid or unenforceable, the Parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the Parties, and the remainder of these Terms and Conditions shall remain in full force and effect.

**G. Survival.** The rights and obligations of either Party that by their nature would continue beyond the termination or expiration of a Service Order or Service arrangement, including without limitation this section and Sections 6, 7, and 8 of these Terms and Conditions, shall survive termination or expiration of the Service Order or other Service arrangement.

**H. Choice of Law and Venue.** All disputes between the Parties with respect to the Services shall be governed by the laws of the State of Michigan, excluding any provisions pertaining to choice of law. Any and all suits and claims pertaining to the Services shall be brought solely in the state and Federal courts located in the State of Michigan.

**I. No Third Party Beneficiaries.** Except for indemnification, nothing in these Terms and Conditions shall any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

**J. Parties' Authority to Contract.** By ordering Service from the Company, Customer represents and warrants that they are duly authorized to bind Customer with respect to such Services.

**K. No Waiver; Etc.** No failure by Company to enforce any right(s) hereunder shall constitute a waiver of such right(s).

**L. Headings.** The section headings used in these Terms and Conditions are for reference only and shall not limit or control any term or provision of these Terms and Conditions or the interpretation or construction thereof.

**M. Compliance with Laws.** Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances with respect to the Services.

