



City of Jonesboro

300 S. Church Street
Jonesboro, AR 72401

Signature Copy

Resolution: R-EN-121-2019

File Number: RES-19:122

Enactment Number: R-EN-121-2019

A RESOLUTION AUTHORIZING THE ENTRY INTO A CONTRACT WITH RITTER COMMUNICATIONS FOR THE PURPOSE OF RENEWAL FOR THE CLOUD STORAGE FOR THE CITY OF JONESBORO

WHEREAS, the City of Jonesboro, Arkansas, would like to renew the cloud storage with Ritter Communications for the City of Jonesboro; and,

WHEREAS, Ritter Communications will provide the city this product with the two year term contract for a yearly subscription fee of \$7,000 (seven thousand dollars); and,

WHEREAS, the City of Jonesboro in accord with the terms of A.C.A. Section 14-58-303 states that bidding in this matter is not practical and would lead to an interruption in services. In addition, this service is unique to other providers in that it does not go through the internet, which significantly decreases the risk factor of cyber threats and hereby waives the requirement of competitive bidding.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS, THAT:

Section 1. That the City of Jonesboro, Arkansas, hereby waives competitive bidding and approves the contract with RITTER COMMUNICATIONS for the two year term. A copy of said contract is attached as Exhibit A.

Section 2. The Mayor, Harold Perrin and City Clerk, Donna Jackson, are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate the agreement.

PASSED AND APPROVED THIS 17TH DAY OF SEPTEMBER, 2019.

Customer Quote



Customer Name:	City of Jonesboro	Term (months):	24	Business Contact:	Jason Ratliff
Service Address:	300 South Church Street	Issue Date:	7/30/2019	Phone:	870.336.6279 or 870.680.2746 cell
Service City/State/Zip:	Jonesboro AR 72401	Expiration Date:	8/29/2019	Email:	jratliff@jonesboro.org
Billing Address:	PO Box 1845	Contract Number:	Opp-026309	Sales Representative:	Scott Roberson
Billing City/State/Zip:	Jonesboro AR 72403-1845	Account Number:	00035309-5		

*Quotes are good for 30 days

Product Description	Quantity	Unit Price	Total Price
Production Environment			
IaaS Plan 5 - 64CPU / 128G RAM	1	\$900.00	\$900.00
Cloud Solutions - 100MB Network Connect	1	\$100.00	\$100.00
Cloud Solutions - Performance Storage (per GB)	13000	\$0.12	\$1,560.00
Veeam Backups - per GB (includes Agents + Storage)	21000	\$0.10	\$2,100.00
Cisco ASAv5 NextGen Firewall	1	\$100.00	\$100.00
Disaster Recovery Environment			
IaaS Plan 5 - 64CPU / 128G RAM	1	\$450.00	\$450.00
Veeam Replication Licensing - per server	8	\$28.75	\$230.00
Cloud Solutions - Performance Storage (per GB)	13000	\$0.12	\$1,560.00

I hereby authorize Ritter Communications to proceed with the services and equipment defined in this quote at the monthly rate defined as "Monthly Service Total" for the term specified above (in months) from the date of service activation. Recurring service charges associated with this quote are effective upon the installation date of these services. Any dispute for these service charges must be addressed through the process defined in the Terms and Conditions, within the Bill Disputes section. Additionally, I agree to pay in-full all charges defined as "Installation Fees" defined on this agreement as well as any taxes and regulatory fees charged in addition to quoted amounts contained herein. By authorizing this quote, you are agreeing to the Master Services Agreement and Terms and Conditions appended to this document. Services, Service Level Agreements, procedures and term will be further defined in the Master Services Agreement (MSA) or appended to any existing MSA. *Quote does not include local, state, federal taxes or 911 fees.

Total Price*
\$7,000.00

Notes: To accept this proposal please sign and fax to 870.336.9443 or scan and email to scott.roberson@rittercommunications.com. Thank you! Scott R. (870.336.3443 office)

Ritter Representative

Signature: Scott Roberson
 Printed Name: Scott Roberson
 Position Title: Business Sales Representative
 Date: 8/6/2019

Customer

Right by You
870.336.3434



Ritter Communications – Master Services Agreement

Purpose:

This Master Service Agreement ("Agreement") is made effective as of the last date signed below and entered into by and between Ritter Communications, Inc. ("Ritter" or "Company") and

City of Jonesboro ("Customer").

Company shall provide the Products and Services with applicable tariffs, as specified in the Sales Quote, or any addenda under the terms of this Agreement. This Agreement consists of a Sales Quote (with signature), Additional Terms and Conditions (below), our Acceptable Use Policy, the applicable Product and Service Attachments, if any, and any addenda and all applicable tariffs.

1. SERVICE TERM COMMITMENT: Customer agrees to the Service Term Commitment as stated in the attached Sales Quote. The Service Term will begin upon the date of service activation upon which billing is applied for the service.

2. RATES: The Company's charges for the Products and Services are as specified in the applicable tariff and on Customer's Sales Quote (Rates). Because Customer agrees to a Service Term Commitment, throughout the Term of this Agreement, the Sales Quote may reflect and the Customer may receive a discounted rate based upon the length of such Service Term Commitment. Such discounts vary according to specific products and services and Service Term Commitments.

Applicable solely to Video Services, including Cable Television and NexTV, Company may change Services, Equipment, and tariffs, including deleting Services, with or without notice. Customer acknowledges that the content, programs, or formats of Video Services may be discontinued, modified, or changed by the owners of the services at any time without prior notice. If the Customer is listed as a Multiple Dwelling Units (MDU) in the attached Sales Quote, pricing changes to existing Services, Equipment and tariffs on existing units shall begin upon the end of the initial Service Term Commitment. Any new units or upgrades shall be either addressed in the quote or, if not, shall be subject to Paragraph 3 or a new service request as the case may be.

Customer agrees to pay any and all applicable federal, state, and local taxes (however designated) levied upon Company and our affiliates in connection with the sale, installation, use, or provision of the Services, Products and customer premises equipment ("CPE") including amounts that Company or its affiliates are required by governmental or quasi-governmental authorities to collect from or to pay to others in support of statutory or regulatory programs, including universal service fees, 911/E911 surcharges, telecommunications relay service surcharges, franchise fees, right-of-way fees, number portability fees, etc.



If Customer is tax-exempt under federal or state law, it may submit to Company a valid tax-exempt certificate, and Company will not assess the applicable tax to Customer. Customer agrees to notify Company if its tax-exempt status changes during the term of this Agreement.

3. UPGRADES: If Customer upgrades the Products or Services before the end of Term, no early termination penalty will be charged. Customer may be required to purchase the upgrade under a new Service Term Commitment.

4. RENEWAL: Following the initial Service Term Commitment, all agreed services will continue on a month-to-month basis unless services are otherwise cancelled by the Customer or the Agreement is renewed in writing. Any services continuing on a month-to-month basis may be subject to month-to-month rates dictated by Company and/or applicable tariffs.

5. PAYMENT: Unless otherwise provided in the attached Sales Quote, Customer will be billed monthly. The first bill will include all non-recurring charges, recurring charges for the first full month, any additional charges incurred as a result of any special requests from Customer (such as expedite charges) and the pro-rated amount for Products/Services provided during installation. Customer will be billed for all applicable taxes and fees. Customer will not be billed for taxes that are based on the Company's net income.

Customer agrees to pay all charges by the due date of the company's invoice to Customer. Payment made after the due date will be assessed late fees. Customer shall pay interest on payments made following the Due Date at the rate of one and a half percent or the maximum rate allowed by law, whichever rate is lower. If the Customer's check is returned by Customer's bank, or if Customer does not pay all undisputed amounts by the Due Date, the Company reserves the right to disconnect Services and refuse to continue to provide the Products and Services.

Company also reserves the right to bill Customer retroactively for any services not previously billed by the Company.

6. EARLY TERMINATION PENALTY: If Customer decides to terminate a Product or Service after the effective date and prior to the end of the Service Term Commitment, Customer will be subject to early termination charges equal to the number of months remaining in the Service Term Commitment multiplied by the Monthly Service Total including rented equipment and all non-recurring charges. This includes, but is not limited to, any instance where pre-service costs are incurred (e.g., planning, construction, installation or the like).

A particular Product or Service may be provisioned through a third-party. If that is the case, Customer will be charged and will pay all costs incurred by the Company from such third-party that are caused by Customer's early termination. Customer shall be obligated to pay all such charges within thirty days of Customer's notice of termination.



All termination requests must be submitted in writing to the Company at least 30 days prior to the requested termination date. Billing for Services will terminate 30 days from the receipt of the written termination request.

7. BILL DISPUTES: For other than Product or Service Outages, Customer will have up to ninety days (commencing five days after the date of the Company's bill) to initiate a dispute over charges or to receive credits, if applicable. The applicable Product Attachment will contain remedies for Product or Service Outages. To dispute a bill, Customer must send to the Company a written itemized description of the specific charges being disputed by Customer. The Company must receive this information prior to the date set above. Customer agrees to pay all charges by the Due Date not specifically itemized in such written notice of dispute. Credits for Service Outages will be based on the applicable tariff and the Product Attachment.

8. EQUIPMENT: Along with the Products, the Company may rent or sell to Customer standard Customer Premise Equipment ("Standard CPE"). Standard CPE will either be located at the Company's facility or at Customer's premises. Standard CPE only includes equipment manufactured by vendors with whom the Company has an established business relationship.

All CPE that Customer rents from us will be made available for Customer's use only for the Term of this Agreement ("Rented CPE"). Customer has no property rights in the Rented CPE. The Company reserves the right to replace any Rented CPE at the Company's expense and with minimal interruption to the Services.

Customer shall not alter, misuse, repair, or in any manner tamper with rented CPE or remove from the Equipment any markings or labels. Equipment cannot be removed from Customer premises and used in another location. Customer is responsible for the safekeeping of all Equipment. If any Equipment is destroyed, damaged, lost or stolen while in Customer's possession, Customer shall be liable for the cost of repair or replacement of the Equipment. Company reserves its rights to charge up to \$500 per item of unreturned Equipment at the termination of your Service.

9. COMPANY EQUIPMENT: Company may enter upon Customer's premises upon reasonable request to remove any Company-owned or operated equipment. This provision shall apply after termination of this Agreement.

10. ACCEPTABLE USE: Customer agrees to independently assess Customer's need for the Products and Services. The Company's AUP discusses policies including security, email, Usenet, and copyright. Customer agrees to fully comply with AUP. The Company's AUP may be viewed at <http://rittercommunications.com/terms-and-policies/>. The Company's AUP is dynamic and is modified from time-to-time without prior notice to Customer. At any time, Customer may also send a written request for the most recent copy of the AUP. Violation of the Company's AUP by Customer or any of Customer's end users may result in immediate termination of the Agreement and/or discontinuation of Products or Services.



11. LIMITATIONS: COMPANY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS TO ANY PRODUCTS, EQUIPMENT OR SERVICES PROVIDED UNDER THIS AGREEMENT. IN NO EVENT SHALL COMPANY BE LIABLE FOR INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES FROM WHATEVER CAUSE, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, LOSS OF PROFITS OR LOSS OF WAGES. THE SERVICE AND PRODUCTS ARE SUBJECT TO THE TERMS AND LIMITATIONS OF ANY APPLICABLE TARIFF. TO THE EXTENT COMPANY'S PRODUCT OR SERVICE IS NOT TARIFFED THEN THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED AND COMPANY DOES NOT WARRANT THAT THE PRODUCT OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NEITHER THE COMPANY NOR ITS SERVICE PROVIDERS WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED. NOTHING CONTAINED HEREIN IS MEANT TO LIMIT THE SCOPE OR REMEDIES UNDER AN APPLICABLE TARIFF FOR TARIFFED SERVICE.

12. ACCEPTANCE TESTING: ACCEPTANCE TESTING SHALL BE CONDUCTED IN ACCORDANCE WITH INDUSTRY STANDARDS OR A MUTUALLY AGREED UPON TESTING PLAN. IF CUSTOMER INDICATES NON-ACCEPTANCE OF ANY SERVICE, CUSTOMER WILL SO NOTIFY SUPPLIER IN WRITING NO LATER THAN TWO (2) BUSINESS DAYS AFTER THE firm order commitment ("FOC") DATE, AND SUCH NOTICE MUST SET FORTH THE SPECIFIC PROBLEM WITH THE SERVICE IN QUESTION AND PROVIDE AN INDUSTRY STANDARD AND COMMERCIALY REASONABLE DESCRIPTION OF THE REQUESTED IMPROVEMENT OR REMEDY. SUPPLIER WILL REVIEW CUSTOMER'S EXPLANATION OF NON-ACCEPTANCE AND WILL WORK WITH CUSTOMER TO CORRECT ANY DEFICIENCIES RELATED TO THE APPLICABLE SERVICE. UPON SUCCESSFUL COMPLETION OF ACCEPTANCE TESTING AND, IF APPLICABLE, NOTIFICATION OF ACCEPTANCE FROM CUSTOMER, SUPPLIER WILL TURN UP THE SERVICE IN ACCORDANCE WITH THE ORDER, THEREBY ESTABLISHING THE IN-SERVICE DATE. IN THE EVENT THAT CUSTOMER DOES NOT PROVIDE NOTICE OF NON-ACCEPTANCE WITHIN TWO (2) BUSINESS DAYS AFTER THE FOC DATE, THEN THE IN-SERVICE DATE SHALL BE THE FOC DATE.

13. ARBITRATION

(a) Purpose. If Customer has a Dispute (as defined below) with Company, the parties agree to endeavor first to settle the dispute by mediation with a mediator selected by the parties or, if the parties are unable to agree, by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. The Parties further agree that if mediation does not completely resolve the dispute, Customer or Company shall arbitrate that Dispute in accordance with the terms of this Arbitration Provision rather than litigate the Dispute in court, subject



to subparagraph (j). Arbitration means Customer will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury. Proceeding in arbitration may result in limited discovery and may be subject to limited review by courts.

(b) Definitions. The term "Dispute" means any dispute, claim, or controversy between Customer and Company regarding any aspect of the relationship with Company, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, or any other intentional tort), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Arbitration Provision. "Dispute" is to be given the broadest possible meaning that will be enforced. As used in this Arbitration Provision, "Company" means Company and its parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents.

(c) Initiation of Arbitration Proceeding/Selection of Arbitrator. The party initiating the arbitration proceeding may open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-493-4185, <http://www.adr.org> under the Commercial Arbitration Rules of the American Arbitration Association "AAA".

(d) Arbitration Procedures. Because the Service(s) provided to Customer by Company concerns interstate commerce, the Federal Arbitration Act ("FAA"), not state arbitration law, shall govern the arbitrability of all Disputes. Applicable federal law or the law of the state where Customer receive the Service from Company may apply to and govern the substance of any Disputes. No state statutes pertaining to arbitration shall be applicable under this Arbitration Provision. If there is a conflict between this Arbitration Provision and the rules of the arbitration organization, this Arbitration Provision shall govern. If AAA will not enforce this Arbitration Provision as written, it cannot serve as the arbitration organization to resolve Customer's dispute with Company. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will enforce this Arbitration Provision as written. If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern.

1. A single arbitrator will resolve the Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party.
2. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.
3. If an award granted by the arbitrator exceeds \$75,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within thirty (30) days from the date of entry of the written arbitration award. The members of the three-arbitrator panel will



be selected according to the rules of the arbitration organization. The arbitration organization will then notify the other party that the award has been appealed. The three-arbitrator panel will issue its decision within one hundred and twenty (120) days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which exists under the FAA.

(f) Restrictions:

1. CUSTOMER MUST CONTACT US WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE (EXCEPT FOR BILLING DISPUTES) ABOUT WHICH CUSTOMER MUST CONTACT COMPANY WITHIN SIXTY (60) DAYS AS PROVIDED IN SECTION 2 OF THIS AGREEMENT, OR CUSTOMER WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS OR DISPUTE.

2. ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS OR OTHER PERSONS.

3. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

(g) Location of Arbitration. The arbitration will take place at a location convenient to Customer in the area where Customer receive the service from us.

(h) Payment of Arbitration Fees and Costs. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator(s), all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

(i) Severability. If any clause within this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of this Arbitration Provision will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable, and the dispute will be decided by a court. If this entire Arbitration Provision is determined to be illegal or unenforceable for any reason, or if a claim is brought in a Dispute that is found by a court to be excluded from the scope of this Arbitration Provision, Customer and Company have each agreed to waive, to the fullest extent allowed by law, any trial by jury.



(j) Exclusions from Arbitration. Customer and Company agree that the following will not be subject to Arbitration: (1) any claim filed by customer or by company that is not aggregated with the claim of any other subscriber and whose amount in controversy is properly within the jurisdiction of a court that is limited to adjudicating small claims; (2) any dispute over the validity of any party's intellectual property rights; (3) any dispute related to or arising from allegations associated with unauthorized use or receipt of service; (4) any dispute that arises between company and any state or local regulatory authority or agency that is empowered by federal, state or local law to grant a franchise 47 U.S.C. § 522(9); and (5) any dispute that can only be brought before the local franchise authority under the terms of the franchise.

(k) Continuation. This Arbitration Provision shall survive the termination of Customer's Service(s) with Company for any reason.

14. MONITORING: Company has no obligation to monitor content; however, Customer agrees that Company has the right to monitor your use of the Services which may, as a matter of system operation, include content or portions of content, and to disclose any information as permitted or required by any law, regulation, or governmental request, or to protect us or our other customers. Generally, the information content is transitory.

ATTACHMENTS TO THE MASTER SERVICES AGREEMENT

SERVICE DESCRIPTIONS AND STATEMENTS OF WORK: Service Descriptions or Statements of Work for all applicable services will be added as Attachments to the Master Services agreement to detail the equipment, solution, and/or service being provided by Company to Customer.

SALES QUOTES: Sales Quote documents will be attached to the Master Services Agreement to detail pricing for each and every equipment, solution, and/or service provided by Company to the Customer.

SERVICE LEVEL AGREEMENTS: For applicable products and services, Company may provide detailed Service Level Agreements (SLA) to the Customer as Attachments to the Master Services Agreement at the time of contract execution.

ACCEPTABLE USE POLICY: All Internet related services provided by Company to Customer will be subject to all applicable terms set forth by the Company Acceptable Use Policy (AUP) available by request from Company, or by access at <http://rittercommunications.com/terms-and-policies>



ADDITIONAL ATTACHMENTS: Any additional Attachments to this Master Services Agreement will be subject to approval and execution by both Company and Customer and will be subject to all applicable Terms as set forth by this Agreement.

Ritter Communications

Signature: Brian Thomas

Printed Name: Brian Thomas

Position Title: Cloud Solutions Sales

Date: [Click here to enter a date.](#)

08/8/2019



Ritter Communications – Additional Terms and Conditions

- 1. BANDWIDTH:** The Products and Services may be provided in conjunction with a third-party, or Customer communications may travel outside of the Company's network. The Company does not guarantee bandwidth or port speed for circuits and connections outside of the Company's network.
- 2. AUTHORITY:** Customer represents and warrants that it is the owner of, or a tenant in, the premises where the Service is to be provided and has authority to enter into this Agreement and abide by its terms. Customer agrees to indemnify and hold Company harmless from any claims arising from a breach of the previous sentence.
- 3. SUBSCRIBER PRIVACY NOTICE:** As a subscriber, Customer is entitled under Federal law to certain privacy notices, including a Customer Proprietary Network Information and Cable Privacy Notification (for Video services) privacy notices. Company includes its subscriber privacy notices in the package of information provided to Customer when Customer activates Service. If Customer desires additional copies of the privacy notice, please contact a customer service representative to have a notice sent to Customer.
- 4. GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Arkansas, without regard to Arkansas conflict of law principles, and the parties agree that any appropriate state or district court serving Craighead County, Arkansas, shall have exclusive jurisdiction over any case or controversy arising hereunder, and Customer hereby consents to the personal jurisdiction of all such courts over Customer.
- 5. TARIFF:** Customer recognizes, understands and agrees that Tariffs on file with the Arkansas Public Service Commission or Tennessee Regulatory Authority, depending on the state in which services are provided, are applicable to various services and products provided herein.
- 6. "UP TO" INTERNET SPEEDS:** Access speeds for internet packages deemed "up to" may vary and are not guaranteed. The speeds quoted are the maximum rates by which downstream Internet access data may be transferred between Company's facilities and the network interface device at Customer's premise. The maximum rate is not guaranteed and may vary. The quoted speeds should not be confused with the speed at which Customer's modem receives and sends Internet access data through the public internet as such speeds are impacted by many factors beyond Company's control. Actual internet speeds vary due to many factors including the capacity or performance of Customer's computers or modems and their configuration, Customer's wiring and any wireless configuration, Customer's destination and traffic on the Internet, Customer's internal network or other factors at the internet site with which Customer is communicating.
- 7. SECURITY:** Customer is responsible for securing its network, CPE, modems, voice mail systems and other Customer equipment from unauthorized access and to assure that it is not used in any fraudulent, unauthorized or unlawful manner, whether by Customer's employees or third parties, including but not



limited to accessing outbound services through the use of any voice mail system. Customer is responsible for establishing adequate passwords, securing passwords and changing passwords that allow access to its service, voicemail system and equipment, including changing passwords when necessary due to employees leaving the Customer. Customer is responsible for any and all costs and charges, including long distance and toll charges associated with such usage including any fraudulent, unauthorized or unlawful usage or failure to secure, including by adequate password protection, its network, voice mail system, CPE, modems or other Customer equipment.

8. COMPANY HOSTED CALL RECORDING SERVICES: The Parties acknowledge that Company may provide a hosted service to Customer whereby Customer will have the ability to record telephone calls between Customer or its representatives and third parties. The Parties further acknowledge that certain state and federal laws provide penalties in the event parties to a recorded telephone call have not consented to such recording. Customer, and not Company, will control how Customer's recording ability will be used. By executing this Agreement, Customer assumes all responsibility for ensuring that recorded calls with third parties comply with all federal laws and the laws in which Customer and third party are domiciled. Customer hereby consents to Company's recording of calls to the extent Company can be considered as the party recording telephone calls for purposes of any state or federal law. Paragraph 10, Claims Against Company applies to any failure to abide by the provisions concerning Call Recording.

9. TELEPHONE SERVICES

A. Limitations of Phone Service.

Power/Network Outages. Customer acknowledges and understands that the Service may not work if the necessary Equipment is unplugged or otherwise disconnected from necessary power sources. Customer further acknowledges and understands that the Service may not function in the event of power failure or if your internet connection is disrupted or not working properly. Should there be an interruption to the power supply to Customer premises, the Service may be powered by backup battery supply, but the inclusion of a battery backup does not ensure that the Service will work in all circumstances. In the event that there is a loss of power or other problem that disrupts Company network, Service will not be available until the network is restored. Cordless telephones powered by electricity will not function during a power outage, even if the Service is functioning properly.

CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT COMPANY DOES NOT GUARANTEE THAT E911 OR 911 DIALING WILL BE AVAILABLE IN THE EVENT OF A POWER FAILURE OR FAILURE OF THE NETWORK.

Enhanced 911 Service. Enhanced 911 ("E911"), or 911 service is a feature of the Service. Prior to initiation of Service, Customer must provide Company the valid street address where the Service will be utilized ("Registered Address"). IF CUSTOMER MOVES EQUIPMENT FROM THE



REGISTERED ADDRESS, PHONE SERVICE MAY NOT FUNCTION PROPERLY AND E911/911 OPERATORS WILL NOT BE ABLE TO IDENTIFY THE CORRECT LOCATION OF A CALLER IN THE EVENT OF AN EMERGENCY.

Customer May Not "Opt-out" of E911 Service. Customer acknowledges that pursuant to federal law the provision of E911 or 911 service is provided as an express condition of Service by Company. As a result E911 or 911 service is not an optional feature and customer may not "opt-out," or decline to accept, E911 or 911 Service.

Resetting Equipment after a Power Failure. A power failure or disruption in Service may require Customer to reset or reconfigure equipment prior to utilizing the Service of E911 or 911 dialing. A power failure may also include a battery failure in Equipment.

Use of TDD or TYY Devices. Customer acknowledges that E911/911 service may not be fully compatible with all types of TDD or TYY devices for the hearing impaired. Company does not guarantee or offer emergency services compatible with any TDD/TYY or other hearing impaired devices.

Security Systems and other Non-Voice Communications Equipment. Customer acknowledges that the Service may not be compatible with certain third party security, medical monitoring and other non-voice communications systems. It is the Customer's responsibility to test Customer's security, medical monitoring system or other non-voice communications system. Customer acknowledges that these systems may not function properly in the event of a power outage or disruption in network service.

- B. Service Charges Related to Phone Service.** In addition to monthly recurring charges, Customer agrees to pay Company for all usage-based charges including, but not limited to, collect calls, charges for calls to Alaska and Hawaii, international calls, directory assistance, and/or Company assisted calls. Customer is responsible for the payment of any applicable sales, use, gross receipts, excise, access or other local, state and federal taxes, fees or surcharges (however designated) based upon the provision of the Service, all of which will be separately designated on invoices. It shall be the responsibility of the Customer to pay any such taxes that subsequently become applicable retroactively. Customer also agrees to pay any applicable fees or payment obligations in connection with the Service that may be imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Service and any regulatory fees that Company invoices to help defray Company's contribution to municipal, state and federal government programs in which Company participates, including but not limited to, universal service, telecom relay services for the visually/hearing impaired, 911/E911 programs and associated infrastructure. The Company, in its sole discretion, has the right to determine what fees, taxes and surcharges are due by Customer and to collect and



remit them to the governmental authority. The Company shall in no way be liable to Customer for the collection or remittance of any fees, taxes and surcharges.

Surcharges. A surcharge may be imposed on charges for Service originating from states which levy, or assert a claim of right to levy, a gross receipts tax on Company's operations in any such state, or a tax on interstate access charges incurred by Company for originating access to telephone exchanges in that state. This surcharge is based on state imposed receipts tax and other state taxes imposed directly or indirectly upon Company by virtue of, and measured by, the gross receipts or revenues of the Company in that state and/or payment of interstate access charges in that state. Surcharges may also be imposed for international directory assistance, international mobile termination fees charged by foreign wireless telecommunication providers, operator assisted calls, and calls made to premium services such as chat lines. Any applicable surcharge will be shown as a separate line item on any monthly invoice.

Charges Caused by Third Parties. Customer is responsible in all respects (including payment obligations) for all use of the Service under your account, whether or not Customer actually authorized the use. Customer is responsible for ensuring that all use of the Service under your account fully complies with this Agreement.

Casual Calling Charges. Customer agrees to pay for any charges arising out of the use of any "casual calling" (e.g., 10-10-333) services provided by any third party.

Pay-Per-Call/900 Calls. It is Customer's sole responsibility to pay all charges or fees assessed by any pay-per-call service provider (if such service is available). Company does not assist such providers in billing or collecting for their services, and will not intervene on Customer's behalf in a billing dispute with pay-per-call providers.

Wiring. Customer agrees that the Company and its authorized agents may disconnect existing service to the local telephone company, and that the Company or its authorized agent may disconnect, rearrange, splice or otherwise manipulate the existing telephone wiring in or on your premises in order to connect the premises to the Service.

- C. **Use of Phone Service.** Customer will not use the Service for any unlawful purpose, or for any use which Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits. Nor will Customer use any features, functions, or other inputs to the Service (including the features, functions and services of a third party) for any unlawful purpose, or for any use which Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits. Company may terminate Customer Service without notice if it finds, in its sole judgment, that Customer use is unauthorized or fraudulent.

Interference/Hazardous Conditions. Company may shut down Customer's Service without prior notice if it finds, in its sole discretion, that use of the Service is causing interference to others or



Customer has moved or tampered or allowed others to tamper with any Equipment. Company may also shut down your Service without prior notice if it finds, in its sole discretion, that hazardous conditions exist that would make your continued use of the Service unsafe.

D. Phone Numbers/Portability.

Switching to Company from Another Provider. If Customer is switching to Company's Service from another service provider, Customer may transfer existing phone number (if any) to the Service, provided that the following conditions apply:

- a) Customer requests the phone number transfer when the order is placed for the Service.
- b) Customer provides complete and accurate information, including address, existing phone number and name of the current service provider.
- c) Customer's current service provider releases existing phone numbers, without delay and without imposing non-industry-standard charges on Company.
- d) Transfer of Customer's existing phone numbers to the Service would not, in Company's sole discretion, violate applicable law or Company's processes and procedures.
- e) Customer acknowledges and agrees that if any Equipment is self-installed (where Company makes that option available) before the date that the number transfer becomes effective ("Port Effective Date"), Customer should keep current phone services until after the Port Effective Date, after which it will be able both to make and receive calls using the Service. Customer acknowledges and agrees that to avoid an interruption in telephone service, all necessary equipment must be installed on or before the Port Effective Date. The current telephone services for the number that will be transferred on the Port Effective Date. Company will provide Customer with an estimate of the Port Effective Date at the time of service ordering or via e-mail following your completion of the ordering process.
- f) In the event that Customer desires to cancel or reschedule the date that Service is desired ("Customer Requested Due Date"), Customer must notify Company no later than three (3) days prior to the Customer Requested Due Date in order to assure no interruption in telephone service.
- g) Customer acknowledges and agrees that they have separate long distance service and local service providers.

Switching from Company to Another Provider. To transfer phone numbers from Company to another service provider, an order must first be placed to transfer the Services through the new service provider (and not through Company). Company will release Customer's phone number to Customer's new service provider, provided that:

- a. The new provider submits a properly completed transfer request to Company;



- b. The new service provider will accept transfer of the phone number without delay or charge to Company; and
- c. Transfer of existing phone numbers to the Service would not, in Company's sole discretion, violate applicable law or Company's processes and procedures.

Reserved Telephone Numbers. If Customer is receiving new telephone numbers from Company, Company will reserve telephone numbers for the new telephone service. Reserved telephone numbers may change prior to the time of installation of service. Customer shall not use, publish or advertise reserved numbers until Service has been activated. Customer has no property rights in the telephone numbers associated with the Service and is solely responsible for any expense or loss resulting from its use, publication or dissemination of reserved numbers.

Directory Listing. Liability for damages arising from errors or omissions in the making up or printing of directories or for error or omission in intercept service or in accepting listings as presented by Customers or prospective Customers shall be limited to the amount of actual impairment of the Customer's Service, and in no event shall liability exceed an amount equal to the Service charges during the period covered by the directory in connection with which the error or omission occurs.

Non-Published Listings. For an additional fee, Customer may choose to have a non-published telephone number. Company will make reasonable efforts to prevent the disclosure of non-published numbers, but in no case will it be liable should such number be divulged. Company will not be liable for failure or refusal to complete any call to non-published telephone numbers. When a call is placed to the Emergency 911 service, Company will release the name and address of the Customer, where such information can be determined, to the appropriate local governmental authority responsible for the Emergency 911 service.

10. ENTIRE AGREEMENT: This Agreement and the applicable tariff provisions are the complete agreement between the parties concerning its subject matter and replaces any prior oral or written communications between them. Except for prior obligations of confidentiality and/or nondisclosure, there are no conditions, understandings, agreements, representations, or warranties, expressed or implied which are not specified in this Agreement and the applicable tariff. Neither the course of conduct between the parties nor trade practice shall act to modify any provisions of this Agreement. The Agreement and all matters relating to the validity, construction, performance and enforcement are governed by applicable federal law, the rules and regulations of the FCC and applicable laws, regulations or ordinances for the state and local areas where Service is provided. This Agreement can only be modified by a written document executed by the parties. Agreeing to be bound by its terms, Customer and Company have caused this Agreement to be executed by their respective duly authorized representatives on the dates written in the Sales Quote.

11. Assignment. Customer shall have the right to assign this Agreement only with the written consent of Company, and such consent shall not be unreasonably withheld. All covenants, promises, conditions and



representations herein contained shall be binding upon, apply and inure to the parties hereto and their respective successors and assigns.

12. FOR E-RATE CUSTOMERS ONLY: Company agrees that acceptance of this agreement by Customer is contingent upon approval for E-rate funding and that, in the event E-rate funding is no longer available at or above the approved level set by Customer as a Priority One service funding resource, Customer may choose to end all contractual obligations with no financial burden. Company will assume all responsibility for removal of leased equipment and services.