



## SIMPLY BITS, LLC TERMS AND CONDITIONS

These Terms and Conditions are an integral part of the agreement between Simply Bits, LLC ("Provider") and Customer ("Customer") and are incorporated into the Business or Home Master Order Form and Agreement ("Master Order Form"). The Master Order Form, these Terms and Conditions, and all other documents, policies, and attachments referenced in the Master Order Form, or attached hereto comprise the agreement between Provider and Customer (collectively, the "Agreement"). The following terms and conditions apply to the design, construction, provision, and use of Provider's network and related products ("Services") referenced in the Master Order Form.

**1. Contract Period:** These Terms and Conditions are effective when Customer signs the Master Order Form and the Master Order Form is accepted by Provider. The Contract Period, for Business Service Customers, commences on the date services are provisioned ("Effective Date") and, unless terminated in accordance with the provisions herein, will continue in effect for the Term of Contract stated in the Master Order Form. For Home Service Customers, regardless of whether there is a Contract Period in force or there is no Contract Period stated in the Master Order Form, these Terms and Conditions are in force for as long as Customer is receiving services from Provider.

**1a. Home Services | Contract Period** For Customers who have a Contract Period, following the expiration of the Term of Contract, home Customer's contract will automatically revert to a month-to-month term at Provider's then prevailing month-to-month rate unless Provider receives written notice of cancellation from home Customer at least thirty (30) days in advance of the expiration of the Contract Period.

**1b. Business Services | Contract Period** Following the expiration of the Term of Contract, business Customer's contract will automatically renew on a month-to-month term at Provider's then prevailing month-to-month rates, which may be up to 125% of Customer's contracted fees for Services unless Provider receives written notice of cancellation from Customer at least thirty (30) days in advance of the expiration of the Contract Period or a new contract for Services is signed with Provider.

**2. Billing and Payment:** Customer shall pay Provider all charges due under this Agreement, without deduction or setoff. All payments shall be made by Credit Card and/or eCheck (ACH) via the Customer Portal as provided by Simply Bits or if granted terms for paper checks mailed to the address stated on the bill. Bills will be issued monthly and are due immediately upon receipt or specific to terms noted on an individual Invoice. All setup fees are due before beginning the project. Furthermore, customer agrees to pay any taxes due on the Services, unless Customer provides a valid tax exemption certificate.

**2b. Fees and Penalties:** Simply Bits reserves the right to charge the following Fees to Customers:

- \$25.00 NSF Fee on all payments resulting in Insufficient Funds (NSF) and/or Returned Checks;
- \$10.00 Late Fee on any Invoice that remains unpaid after payment terms due date stated on the Invoice;
- \$10.00 Suspend Fee for delinquent accounts which results in a suspension of services due to unpaid Invoices and/or Fees;
- \$15.00 Reconnect Fee for reinstatement of suspended services due to unpaid Invoices and/or Fees;

Attempts to satisfy unpaid balances for Invoices and/or Fees will be made at the earliest convenience of Simply Bits. Services may be suspended due to non-payment of any outstanding balance on or after the 1st day a balance becomes delinquent. Reconnection of suspended services will only be made when outstanding balances are brought current.

**3. Taxes and Surcharges:** In addition to the rates and charges for the Service(s), Customer shall be responsible for all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services, excluding taxes based on Provider's net income. Customer also shall be responsible for the payment of all surcharges in effect from time to time, including but not limited to contributions Provider is required to make to the federal Universal Service Fund, as required or permitted by applicable law, regulation or tariff and/or as specified.

### 4. Termination:

**4a. Home Services | Termination** If home Customer fails to pay any outstanding charges within ten (10) days after receipt of written notice from Provider of delinquency, or if Customer fails to perform or observe any other material term or condition of this Agreement within ten (10) days after receipt of written notice from Provider of such failure, Provider may terminate this Agreement, in which case, all unpaid charges previously billed under this Agreement shall be immediately due and payable.

Where applicable, if home Customer chooses to terminate service during the minimum Contract Period as defined in Section 1a, a cancellation fee may apply. Such cancellation fee will be due and payable immediately upon Provider's receipt of Customer's written notice of termination.

**4b. Business Services | Termination** If business Customer fails to pay any outstanding charges within ten (10) days after receipt of written notice from Provider of delinquency, or if Customer fails to perform or observe any other material term or condition of this Agreement or Provider's Acceptable Use Policy within ten (10) days after receipt of written notice from Provider of such failure, Provider may terminate this Agreement, in which case, all such charges not previously due and payable under this

Agreement shall be immediately due and payable (including recurring monthly charges for the remainder of the Contract period).

If business Customer chooses to terminate service during the minimum Contract Period as defined in Section 1b, the total sum of monthly recurring charges will be due and payable immediately upon Provider's receipt of Customer's written notice of termination.

**5. Customer Responsibilities:** Customer shall ensure that all Customer-provided equipment on its premises that connects to the Services will perform according to published technical specifications for such equipment and Provider's interface specifications and otherwise complies with Provider's specifications for the Services.

A. Customer shall adhere to the terms and conditions of the Acceptable Use Policy which is posted at <http://www.simplybits.com/about/policiesanddisclosures/SBAUP.html>.

B. In cases in which Customer and Provider agree to have Provider act as Customer's authorized agent for ordering and coordinating local access circuits for a Service outside of this Agreement, a separate Agency Agreement will be executed.

C. Customer is solely responsible for the content of any transmissions using the Services, or any other use of the services, by Customer or by any person or entity Customer permits to access the Services (a "User" or "Users"). Customer agrees that it and any User will not use the Services for illegal purposes, or to interfere with or disrupt other network users, network services or network equipment. Disruptions include, but are not limited to, distribution of unsolicited advertising or chain letters, propagation of computer worms and viruses, and using the network to make unauthorized entry to any other machine accessible via the network. Customer shall defend, indemnify, and hold harmless Provider from and against all liabilities and costs (including reasonable attorneys' fees) arising from any and all claims by any person based upon the content of any transmissions by Customer or any User using the Services or any other use of the Services by Customer or any User.

D. Customer shall not authorize any person to use the Services other than for Customer's home or business purposes, and shall not resell or otherwise generate income by providing access to the Services to any User.

If Customer permits Users to access the Services, Customer shall defend, indemnify, and hold harmless Provider from and against all liabilities and costs (including reasonable attorneys' fees) arising from any and all claims by or against any such Users in connection with the Services, regardless of the form of action, whether in contract, tort (including Provider's active or passive negligence), warranty, or strict liability.

E. To the extent deemed necessary by Customer, customer shall implement security procedures necessary

to limit access to the Services to Customer's authorized users and shall maintain its own procedure external to the Services for reconstruction of lost or altered files, data or programs. Provider does not provide backup services for reconstruction of lost or altered files, data or programs, unless Customer separately contracts for such service.

F. Customer is responsible for establishing designated points of contact to interface with Provider.

G. Customer agrees to comply, and to cause any User to comply, with United States law with regard to the transmission of technical data which is exported from the United States using the Services.

H. Customer understands that Services provided under this Agreement (including internet use) may require registrations and related administrative reports that are public in nature. In addition, Customer agrees that Provider may include its name; IP, electronic mail, street, and other addresses; and telephone information.

I. All Provider supplied equipment remains the property of the Provider unless specified at time of order. Customer is responsible for the replacement cost of Provider's equipment in the event of theft or damage to the equipment and/or return equipment at time of cancellation or contract termination. Such equipment is not the Customer's responsibility with regard to Acts of God and War. If Customer moves from the location at which the equipment is installed, Customer shall notify Provider immediately and allow Provider to remove or relocate the equipment.

**6. Provider Responsibilities:** Provider will provide the Services as described in the Master Order Form. However, Provider's policy is to continually improve its products and services, and so may from time to time change the Services as provided to Customer under this Agreement.

**7. Right to Use:** Provider hereby grants to Customer a personal, nonexclusive, nontransferable license during the term of this Agreement to use, in object code form, all software and documentation ("Licensed Material") which may be furnished by Provider to Customer under this Agreement. Customer agrees to use its best efforts to ensure that its Users of all Licensed Material hereunder comply with the terms and conditions set out in this Agreement. Customer also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent to the software. All Licensed Material furnished to Customer under this Agreement shall be used by Customer only to support Customer's use of the Services, shall not be reproduced or copied in whole or in part, shall not be removed from the United States, and shall be returned to Provider at the conclusion of the term of this Agreement. In addition, to the extent Licensed Material includes software or documentation provided by any third party pursuant to a sublicense from Provider

("Third Party Material"), Customer agrees, as a condition to the right to use such Third Party Material, to abide by the terms and conditions of such sublicense (including such additional end user terms and conditions as shall be required by such sublicense), and Customer shall be bound by such terms and conditions by virtue of its use of such Third Party Material following notice of such terms and conditions.

**8. Server Collocation:**

If Customer has purchased collocation services, the following applies:

- A. Customer will be provided with Collocation space at the Terminal Facility ("Space") in accordance with the Collocation Services Details Form attached to the Master Order Form.
- B. Customer agrees to maintain, at Customer's expense, during the entire time this Agreement is in effect for each Terminal Facility (i) Comprehensive General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or property damage, (ii) Employers Liability in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence, and (iii) Workers Compensation in an amount not less than that prescribed by statutory limits. Prior to taking occupancy of the Space, Customer shall furnish Provider with certificates of insurance which evidence the minimum levels of insurance set forth herein and which name Provider as an additional insured.
- C. Customer may not provide, or make available to any third party, space within the Space without Provider's prior written consent. If Customer should provide, or make available to any third party, use of the Space without obtaining the written consent of Provider, Customer shall be in breach of this Agreement and Provider may pursue any legal or equitable remedy, including but not limited to the immediate termination of the Agreement.
- D. Customer shall not make any construction changes or material alterations to the interior or exterior portions of the collocation facility, including any cabling or power supplies for Equipment, without first obtaining Provider's written approval for Customer to have the work performed or having Provider perform the work.
- E. Provider shall not arbitrarily or discriminatorily require Customer to relocate the Equipment; however upon sixty (60) days prior written notice or, in the event of an emergency, such time as may be reasonable, Provider reserves the right to change the location of the Space or the Terminal Facility to a site which shall afford comparable environmental conditions for the Equipment and comparable accessibility to the Equipment; provided, however, that, notwithstanding anything in this Agreement to the contrary, in no event shall such relocation result in any disruption of Customer's services or the interruption of the interconnection of the Equipment to the Provider Network or the LEC network that does not fit into the

permissible scheduled downtime guidelines. In no event shall the Space be relocated to a site outside the boundaries of Pima County, Arizona. Provider and Customer will work together in good faith to minimize any disruption of Customer's services as a result of such relocation. Provider shall be responsible for the cost of improving the Space to which the Equipment may be relocated, and for relocation of the equipment interconnected to Provider services, except that Provider shall not be responsible for relocating facilities installed in violation of Section 7.C.

- F. Backup services are provided only if Customer contracts for such services.

**9. WARRANTY AND LIMITATION OF LIABILITY:**

- A. FOR PURPOSES OF THIS PARAGRAPH 8, "PROVIDER" INCLUDES PROVIDER, ANY AFFILIATED AND SUBSIDIARY COMPANIES OF PROVIDER, ANY SUBPROVIDERS AND SUPPLIERS OF THE FOREGOING, AND THE DIRECTORS, EMPLOYEES, OFFICERS, AGENTS, SUBPROVIDERS AND SUPPLIERS OF ALL OF THEM.
  - B. PROVIDER MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT, AND PROVIDER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
  - C. PROVIDER SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS OR LOST REVENUES, WHETHER OR NOT PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
  - D. PROVIDER SHALL NOT BE LIABLE FOR ANY DAMAGE THAT CUSTOMER MAY SUFFER ARISING OUT OF USE, OR INABILITY TO USE, THE SERVICES OR PRODUCTS PROVIDED HEREUNDER. PROVIDER SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS BY THIRD PARTIES TO CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT, LOSS OR DESTRUCTION OF CUSTOMER'S NETWORK, SYSTEMS, APPLICATIONS, DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD.
- EXCEPT AS EXPRESSLY SET FORTH IN OR CONTEMPLATED BY THIS AGREEMENT, IN ANY INSTANCE INVOLVING PERFORMANCE OR NONPERFORMANCE BY PROVIDER WITH RESPECT TO SERVICES OR PRODUCTS PROVIDED HEREUNDER, CUSTOMER'S SOLE REMEDY SHALL BE (A) IN THE CASE OF SERVICES, REFUND OF THE

PRO RATA PORTION OF THE PRICE PAID FOR SERVICES WHICH WERE NOT PROVIDED, OR (B) IN THE CASE OF PRODUCTS, REPAIR OR RETURN OF THE DEFECTIVE PRODUCT TO PROVIDER FOR REFUND.

E. THESE LIMITATIONS ON LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE, AND SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

F. PROVIDER SHALL NOT BE RESPONSIBLE FOR (1) ANY DAMAGE TO CUSTOMER'S EQUIPMENT, (2) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CUSTOMER, USERS, ITS EMPLOYEES, AGENTS, SUBPROVIDERS, SUPPLIERS OR LICENSEES, (3) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS, (4) INABILITY OF CUSTOMER TO ACCESS OR INTERACT WITH ANY OTHER SERVICE PROVIDER THROUGH THE INTERNET, OTHER NETWORKS OR USERS THAT COMPRISE THE INTERNET OR THE INFORMATIONAL OR COMPUTING RESOURCES AVAILABLE THROUGH THE INTERNET, (5) INTERACTION WITH OTHER SERVICE PROVIDERS, NETWORKS, USERS OR INFORMATIONAL OR COMPUTING RESOURCES THROUGH THE INTERNET, (6) SERVICES PROVIDED BY OTHER SERVICE PROVIDERS, OR (7) PERFORMANCE IMPAIRMENTS CAUSED ELSEWHERE ON THE INTERNET.

G. PROVIDER AND CUSTOMER EACH UNCONDITIONALLY AND IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF, AN / OR THE RELATIONSHIP BETWEEN THE PARTIES, WHICH WAIVER IS INTENDED TO INCLUDE, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

**10. Home Use of Service:** If you have subscribed to Provider's Home services, the services are provided to you as a home user, for your personal, home, non-business and non-professional use. This means that you are not using them for any business or governmental activities, profit-making or non-profit, including but not limited to home office, business, sales, tele-commuting, tele-marketing, autodialing, continuous or extensive call forwarding, fax broadcast, fax blasting or any other activity that would be inconsistent with normal home usage patterns. This also means that you are not to resell or transfer the services to any other person for any purpose, or make any charge for the use of the service, without express written permission from Provider in advance. You agree that your use of the Service for any business or

governmental purpose will obligate you to pay Provider's higher rates for business service on account of all periods, including past periods, in which you use, or used, the Service for business or governmental purposes. Provider reserves the right to immediately terminate or modify the Service, if Provider determines, in its sole discretion, that Customer's Service is being used for non-home or business use.

**11. Business Use of Service - Prohibition on Resale:** If you have subscribed to Provider's Business services, the Service is provided to you as a small business user. This means that you are not to resell or transfer the service or device to any other person for any purpose, without express written permission from Provider in advance. You agree that the Provider's Business Plans do not confer the right to use the service for web hosting, auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting. Provider reserves the right to immediately terminate or modify the Service, if Provider determines, in its sole discretion, that Customer's Service is being used for any of the aforementioned activities.

**12. Wholesale Use of Service:** If you have subscribed to Provider's Wholesale services, the Service is provided to you as a Wholesale user. This means that you intend to use the service for resale, including but not limited to web hosting, e-commerce, or ISP products. All customers of Wholesale users are also bound to the AUP referenced in section 4A.

**13. Emergency Services – Critical Components: 911 Dialing:** Customer acknowledges and understands that the Service does NOT support traditional 911 access to emergency services. Furthermore, Provider's EQUIPMENT AND SERVICES ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS WITHOUT THE EXPRESS WRITTEN APPROVAL OF A MANAGING PARTNER OF PROVIDER. Life support devices or systems are those which are intended to support or sustain life and whose failure to perform can be reasonably expected to result in a significant injury to the user. Critical components are those whose failure to perform can be reasonably expected to cause failure of a life support device or system or affect its safety or effectiveness. Provider will register into a national (E911) emergency database the physical address and telephone number provided by Customer (the "Customer Provided Information") in order to route 911 calls to Customer's local emergency center. The E911 registry for Customer depends on the accuracy of the Customer Provided Information, including Customer's call back telephone number and physical address. CUSTOMER IS RESPONSIBLE FOR THE ACCURACY OF THE CUSTOMER-PROVIDED INFORMATION SUBMITTED TO PROVIDER. ANY EQUIPMENT MOVE INITIATED BY CUSTOMER MAY INVALIDATE CUSTOMER'S E911 REGISTRY INFORMATION. PROVIDER'S EQUIPMENT AND SERVICES WILL NOT SUPPORT E911 OR OTHER

EMERGENCY FUNCTIONS IN THE ABSENCE OF ELECTRICAL POWER AND/OR A PROPER INTERNET CONNECTION AND FUNCTION.

**14. Confidentiality:** All tangible technical or business information disclosed by one party to the other party and marked as proprietary shall be deemed the property of the disclosing party and shall be returned upon request. The receiving party shall: (1) hold such information in confidence for three (3) years after any termination of this Agreement; (2) restrict disclosure of such information solely to its employees and employees of its affiliated companies with a need to know; (3) and use a reasonable degree of care (in no event less than the same degree of care as it uses for its own proprietary information) to prevent the unauthorized disclosure, use or publication of such proprietary information.

B. The receiving party shall have no obligation to preserve the confidentiality of any information which: (1) was previously known to the receiving party or any of its affiliated companies free of any confidentiality obligation; (2) is disclosed to third parties by the disclosing party without restrictions; (3) becomes publicly available by other than unauthorized disclosure; (4) was not identified as confidential or proprietary; or (5) is independently developed by the receiving party.

C. The pricing, terms and conditions of this Agreement are proprietary information and shall be treated in confidence.

**15. CPNI:** Certain information is made available to Provider solely by virtue of a Customer's relationship with Provider. Under U.S. federal law, Customer has a right and Provider has a duty to protect the confidentiality of information that relates to Customer's usage of Provider's services and the type of services Customer purchases from Provider. This information is known as Customer Proprietary Network Information (CPNI). Specifically, CPNI is information that relates to the quantity, technical configuration, type, destination, location, and amount of use of the telecommunications services a Customer purchases from Provider.

Except as permitted by law or with Customer approval, Provider will only use, disclose, or permit access to the CPNI it receives or obtains by virtue of its provision of telecommunications service in connection with (a) marketing service offerings to Customer from within the category of service the customer subscribes, or (b) providing telecommunications service, such as, but not limited to, billing, provisioning, and collecting payments.

**16. GENERAL:** A. IF A DISPUTE ARISES WITH RESPECT TO THIS AGREEMENT, OR ANY SERVICES PROVIDED OR WORK PERFORMED HEREUNDER, EITHER PARTY MAY SUBMIT THE DISPUTE TO A SOLE MEDIATOR SELECTED AND AGREED TO BY THE PARTIES OR, AT ANY TIME, TO MEDIATION BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA").

IF NOT THUS RESOLVED, IT MAY BE REFERRED BY EITHER PARTY TO A SOLE ARBITRATOR SELECTED AND AGREED TO BY THE PARTIES OR TO AAA ARBITRATION.

THE ARBITRATION SHALL BE GOVERNED BY THE ARIZONA ARBITRATION ACT (A.R.S. § 12-1501 ET. SEQ.) AND JUDGMENT ON THE AWARD MAY BE ENTERED BY ANY COURT HAVING JURISDICTION. THE PARTIES SHALL AGREE ON WHAT, IF ANY, DISCOVERY SHALL BE MADE AVAILABLE; IF THE PARTIES FAIL TO AGREE ON THE FORM OF DISCOVERY WITHIN 30 DAYS AFTER THE APPOINTMENT OF THE ARBITRATOR, THERE SHALL BE NO DISCOVERY OR ISSUANCE OF ANY SUBPOENAS. THE ARBITRATOR SHALL NOT LIMIT, EXPAND, OR MODIFY THE TERMS OF THIS AGREEMENT NOR AWARD DAMAGES IN EXCESS OF COMPENSATORY DAMAGES PERMITTED UNDER THIS AGREEMENT, AND EACH PARTY WAIVES ANY CLAIM TO SUCH EXCESS DAMAGES. THE ARBITRATOR SHALL NOT HAVE ANY ABILITY TO AWARD ANY EQUITABLE REMEDIES, AND SHALL BE LIMITED TO REMEDIES AVAILABLE AT LAW. THE ARBITRATOR SHALL NOT HAVE THE RIGHT TO AWARD ANY DAMAGES IN EXCESS OF DAMAGES THAT COULD LAWFULLY BE AWARDED BY A COURT OF COMPETENT JURISDICTION. THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION CONTAINING FINDINGS AND CONCLUSIONS ON ALL SIGNIFICANT ISSUES. A REQUEST BY A PARTY TO A COURT FOR INTERIM PROTECTION SHALL NOT AFFECT EITHER PARTY'S OBLIGATION HEREUNDER TO MEDIATE AND ARBITRATE. EACH PARTY SHALL BEAR ITS OWN EXPENSES AND AN EQUAL SHARE OF ALL COSTS AND FEES OF THE MEDIATION AND/OR ARBITRATION. ANY MEDIATOR OR ARBITRATOR SELECTED SHALL BE COMPETENT IN THE LEGAL AND TECHNICAL ASPECTS OF THE SUBJECT MATTER OF THIS AGREEMENT. THE CONTENT AND RESULT OF MEDIATION AND/OR ARBITRATION SHALL BE HELD IN CONFIDENCE BY ALL PARTICIPANTS. EACH OF WHOM WILL BE BOUND BY AN APPROPRIATE CONFIDENTIALITY AGREEMENT.

B. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF ARIZONA, WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PRINCIPLES.

C. Any legal action arising from or in connection with this Agreement, or any Services provided or work performed hereunder, must be brought within one (1) year after the cause of action arises.

D. Neither party shall publish or use any advertising, sales promotions, press releases or other publicity which use the other party's name, logo, trademarks or service marks without the prior written approval of the other party.

- E. Nothing in this Agreement shall create or vest in Customer any right, title, or interest in the Services, other than the right to use the Services under the terms and conditions of this Agreement.
- F. If any portion of this Agreement is found to be invalid or unenforceable, the remaining portions shall remain in effect and the parties will begin negotiations for a replacement of the invalid or unenforceable portion.
- G. This Agreement may not be assigned by either party without the prior written consent of the other. However, Provider may, without Customer's consent, assign this Agreement or its right to receive payments hereunder to an affiliate or subsidiary, or an entity that buys substantially all of Provider's assets. Provider may subcontract any or all of the work to be performed by it under this Agreement, but shall retain responsibility for the work that is subcontracted.
- H. Provider's performance obligations under this Agreement shall be solely to Customer and not to any third party. Other than as expressly set forth herein, this Agreement shall not be deemed to provide third parties with any remedy, claim, right of action, or other right.
- I. PROVIDER SHALL NOT HAVE ANY LIABILITY FOR DAMAGES OR DELAYS DUE TO FIRE, EXPLOSION, LIGHTNING, POWER SURGES OR FAILURES, STRIKES OR LABOR DISPUTES, WATER, ACTS OF GOD, THE ELEMENTS, WAR, CIVIL DISTURBANCES, ACTS OF CIVIL OR MILITARY AUTHORITIES OR THE PUBLIC ENEMY, INABILITY TO SECURE PRODUCTS OR TRANSPORTATION FACILITIES, FUEL OR ENERGY SHORTAGES, ACTS OR OMISSIONS OF COMMUNICATIONS CARRIERS OR SUPPLIERS, OR OTHER CAUSES BEYOND ITS CONTROL WHETHER OR NOT SIMILAR TO THE FOREGOING.
- J. All formal notices, requests, demands and other communications required or permitted under this Agreement shall be in writing unless otherwise specified in this Agreement and shall be deemed to have been duly made and received when personally served, or when mailed by first class mail, postage prepaid, to the addresses indicated on Page 1 of this Agreement. The parties may change the addresses on ten (10) days' prior written notice. In addition, the parties may provide other notices in connection with the provision of the Services under this Agreement (such as notices relating to service outages and maintenance) by other means, including by telephone, facsimile or electronic mail.
- K. THIS IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER AND IT SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS, REPRESENTATIONS, STATEMENTS, OR UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, CONCERNING SUCH SERVICES. No change, modification, or waiver of any of the terms of this

Agreement shall be binding unless included in a written agreement and signed by both parties.

=====

CUSTOMER'S SIGNATURE ON THE MASTER ORDER FORM ACKNOWLEDGES THAT CUSTOMER HAS READ AND UNDERSTANDS EACH OF THE TERMS AND CONDITIONS OF THESE TERMS AND CONDITIONS AS WELL AS ANY ATTACHED AMENDMENTS AND REFERENCED ONLINE DOCUMENTS AND AGREES TO BE BOUND BY THEM.

=====