

# GENERAL TERMS AND CONDITIONS

These General Terms and Conditions govern the provision to Customer of Services and Equipment related to such Services.

## 1. Definitions

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

**Agreement:** This agreement consists of the Master Agreement Cover Page (“MSA”) executed by Customer and PHS, these General Terms and Conditions (“General Terms and Conditions”), any written amendments to the Agreement MSA executed by both Parties (“Amendments”), and any and all Service Orders accepted hereunder accepted by PHS.

**Amendment(s):** Any written amendment to the Agreement, executed by both Parties, including any supplemental terms and conditions.

**Confidential Information:** All information regarding PHS’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, the Agreement, 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 PHS’s communications regarding such items.

**Custom Installation:** An extension, build or upgrade to the PHS Network that PHS deems required in order to provide the ordered Services at the requested Service Location(s).

**Custom Installation Fee:** A fee imposed on Customer resulting from the need to perform a Custom Installation. Custom Installation Fees may also be referred to as Construction Charges on a Service Order or invoice.

**Customer:** Means the customer purchasing Services from PHS hereunder.

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

**Demarcation Point:** The point of interconnection between the 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 PHS Equipment at a Service Location.

**Effective Date:** Refers to the Service Commencement Date as defined herein.

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

**Initial Term:** Refers to the initial term of the Agreement as set forth on the MSA.

**Licensed Software:** Computer software or code provided by PHS or required to use the Services, including without limitation, associated documentation, and all updates thereto.

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

**Notice:** Written notice given pursuant to Section 13.4.

**Party:** A reference to PHS or the Customer. PHS and Customer may be referred to herein collectively as the “Parties”.

**PHS:** Princeton Hosted Solutions, LLC. References to PHS in the Limitation of Liability, Disclaimer of Warranties and Indemnification Articles shall also include its directors, officers, employees, agents, Affiliates, suppliers, licensors, successors, and assigns, as the case may be.

**PHS Equipment:** Any and all facilities, equipment or devices provided by PHS (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 PHS, shall not be considered PHS Equipment.

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

**Sales Order:** A Service Order.

**Service Commencement Date:** As defined in Section 3.5 of these General Terms and Conditions.

**Service Order:** A request for PHS to provide Service(s) to a Service Location(s) submitted either electronically or on a PHS designated form by Customer to PHS. Service Orders become binding on PHS when accepted by PHS in writing. A Service Order may also be referred to as a Sales Order.

**Service(s):** A service provided by PHS pursuant to the MSA or a Service Order.

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

**Service Term:** The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in the MSA or a Service Order. If no term is specified

in the MSA or Service Order then the default Service Term will be five (5) years. 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 Service Term unless specified otherwise. Service Term may also be referred to as the “Term”.

**Tariff:** A federal or state PHS tariff and the successor documents of general applicability that replace such tariff in the event of detariffing.

**Termination Charges:** Charges that may be imposed by PHS if, prior to the end of the applicable Service Term (a) PHS terminates Services for cause or (b) Customer terminates Services without cause. The formula for calculating Termination Charges is set forth in Section 6.3 of these General Terms and Conditions.

**Use Policies:** Policies that PHS may have adopted or may adopt from time to time governing the use or other aspects of the Service(s) or PHS operations that that may limit or affect how Customer or end users can use the service. Use Policies include without limitation, PHS’s acceptable use policy and other security policies concerning the Services which are posted on the Website. All Use Policies are incorporated into this Agreement by reference

## **2. Agreement Revisions.**

PHS may change or modify the Agreement from time to time (including without limitation these General Terms and Conditions), and any related policies from time to time (“Revisions”) by posting such Revisions to the PHS website at <https://princetonhs.com>. All such Revisions shall be effective upon posting to the Website. If PHS determines that the Revisions materially affect Services provided to Customer and except where the Revisions result from changes to a PHS tariff, PHS will use commercially reasonable effort to notify Customer of the Revisions in the next applicable monthly invoice.

## **3. Services**

**3.1 Orders.** Customer may order Service(s) in the initial MSA. The terms and conditions for the Services ordered in the MSA are binding upon Customer upon signature of the MSA. In order to purchase additional Service(s) other than those ordered in the initial MSA, Customer shall submit to PHS a properly completed Service Order to initiate Service to a Service Location(s). A Service Order shall become binding on the Customer when (i) it is specifically accepted by PHS either electronically or in writing, (ii) PHS begins providing the Service described in the Service Order (iii) PHS begins Custom Installation for delivery of the Services described in the Service Order, or (iv) Customer uses Services, whichever is earlier. When a Service Order becomes binding, it shall be deemed part of, and shall be subject to, the Agreement. Service(s) are at all times subject to continued availability of required facilities and capacity. If PHS determines in its sole discretion that the continuation of Service is not lawful or economically feasible, PHS may terminate Service upon such Notice to Customer as is reasonably practicable. Any use of Services by Customer shall create a Service Order binding on the Customer regardless of whether the Service being used or Service Location where Service is being used is accurately described in the completed Service Order form.

**3.2 Access.** In order to deliver certain Services to Customer, PHS may require access, right-of-way, conduit, and/or common room space, both within and/or outside each Service Location. Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the PHS 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 Service Term and/or Renewal Term, such access within each Service Location unless PHS has secured such access prior to this Agreement. In the event that Customer, fails to secure or maintain such access within a particular Service Location, PHS may cancel or terminate Service at such particular Service Location, without further liability, upon written notice to Customer. In such event, if PHS has incurred any costs or expense in installing or preparing to install the Service that it otherwise would not have incurred, a charge equal to those costs and expenses shall apply to Customer's final invoice for that particular Service Location. If PHS is unable to secure or maintain access outside a particular Service Location, which access may be needed to provide Services to such Service Location, PHS may cancel or terminate Service at such particular Service Location, without further liability beyond the termination date, upon a minimum thirty (30) days' prior written notice to Customer. In such event, if PHS 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.

**3.3 Ownership, Impairment and Removal of Network.** The Network is and shall remain the property of PHS 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 PHS's title to the Network, or any portion thereof, or exposes PHS to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Nothing in this Agreement shall preclude PHS from using the Network for services provided to other PHS customers. For a period of twelve (12) months following PHS's discontinuance of Service to the Service Location(s), PHS retains the right to remove the Network including, but not limited to, that portion of the Network that is located in the Service Location. Customer is obligated to provide access to the facilities in order to remove the Network. To the extent PHS removes such portion of the Network it shall be responsible for returning the Service Location(s) to its prior condition, reasonable wear and tear excepted.

**3.4 Service Configuration; Engineering Review.** PHS will configure the Service (including, but not limited to, call-flow configuration) in connection with the installation of Services; provided, however, that Customer and/or the End User shall have sole 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 PHS. The MSA and each Service Order submitted by Customer may be subject to an engineering review in PHS's sole discretion. The engineering review will determine whether and to what extent a Custom Installation is required. PHS 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 the Equipment and Services.

**3.5 Service Commencement Date.** Except as may otherwise be identified, the Service Commencement Date shall be the later of (a) the date PHS completes installation and connection of the necessary facilities and equipment to provide the Service at all Service Location identified in the MSA or Service Order; (b) the date upon which all Service under a given MSA or Service Order has been made available; or (c) the date upon which Customer uses any PHS service. For example, if the MSA or a given Service Order requires installation or construction at multiple locations, the Service Commencement Date shall be no earlier than the date where the last location's installation has been completed. Customer shall be responsible for payment for any Services received prior to the Service Commencement Date at the rates described in the MSA or Service Order. 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 PHS, 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 would be ready to provide the Service, regardless of whether Customer is ready to use the Service. In the event that PHS installs dedicated connectivity between PHS and Customer, including, but not limited to, DSL, T-1s, DS3s, Ethernet services, and fiber connectivity, and there has been any delay attributable (in PHS'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, PHS reserves the right to begin invoicing Customer for the dedicated access, and Customer agrees to pay for such charges.

**3.6 Maintenance.** Following the Service Commencement Date, 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, PHS shall have the right to perform maintenance and/or restoration of its network, PHS Equipment, and the Services immediately, and will make commercially reasonable efforts to notify Customer (by whatever means) as soon as reasonably practicable thereafter. PHS 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, PHS 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 PHS at PHS'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 PHS in providing any Service shall be as set forth expressly in an applicable amendment, or Service Order.

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

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

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

C. If PHS 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 PHS by any third party for such reconfiguration or termination including any penalties or liquidated damages for early termination. Additionally, Customer acknowledges that PHS's costs for access facilities are based on geography, and in the event of such a move PHS'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, PHS reserves the right to charge Customer an additional access fee, and Customer agrees to pay such fee.

#### **4. Billing and Payment**

**4.1 Charges.** Except as otherwise expressly provided, Customer shall pay PHS one hundred percent (100%) of any required Custom Installation Fee prior to the installation of Service. Customer further agrees to pay in advance all anticipated or actual charges associated with the Services, as set forth or referenced in the MSA or applicable Service Order(s) or invoice from PHS. 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 PHS 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 recoups (however designated). Some Services may be invoiced after the Service has been provided to Customer. PHS shall not be restricted from billing and collecting any charges incurred by Customer prior to the Service Commencement Date or at any point over the lifetime of the Agreement or Service Order unless specifically barred by law. Notwithstanding any other provision of this Agreement to the contrary, PHS 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.

**4.2 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 PHS. These may include,

without limitation, charges resulting from third party network charges or 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.

**4.3 Payment of Bills.** Except as otherwise indicated herein, PHS will invoice Customer in advance on a monthly basis for all monthly recurring charges, recurring third party pass through fees and fees arising under the Agreement. 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 PHS if received within thirty (30) days of the invoice date. Any charges not paid to PHS 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, PHS 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 PHS. PHS 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.

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

**4.5 Credit Approval and Deposits.** Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide PHS with credit information requested by PHS. Customer authorizes PHS to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's records. Customer represents and warrants that all credit information that it provides to PHS will be true and correct. PHS, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Additionally, subject to applicable regulations, PHS 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 PHS's provision of the Services, or as a condition to PHS's continuation of the Services. The deposit will not, unless explicitly required by law, bear interest and shall be held by PHS as security for payment of Customer's charges. PHS may apply the deposit to any delinquent Customer charges upon written notice to Customer. If PHS 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 PHS. If the provision of Service to Customer is terminated, or if PHS determines in its sole discretion that such deposit is no longer necessary, then the amount of the deposit (plus any required deposit interest) will be credited to Customer's account or will be refunded to Customer, as determined by PHS.

**4.6 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). Tax exemption certificates will not be applied retroactively to services billed prior to the date the tax exemption certificate is received by PHS and PHS will not refund any payments for Taxes and surcharges made to PHS 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 PHS under this Agreement are subject to any reduction by reason of a required deduction or withholding of any tax, the Customer agrees to pay PHS such further amounts as would have been necessary so that the aggregate net amount received by PHS after deduction or withholding of any Taxes, shall be the same amount as would have been received by PHS if there had been no requirement to deduct or withhold any Taxes.

**4.7 Other Government-Related Costs and Fees.** PHS reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by 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 PHS 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.

**4.8 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 PHS's costs of providing Services, Customer shall pay PHS's additional costs of providing Services under the new law, rule, regulation or judgment.

**4.9 Disputed Invoice.** If Customer disputes any portion of an invoice by the due date, 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 PHS for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve any billing dispute but PHS shall make the final decision on any billing dispute at its sole discretion. Customer may not dispute any charge or invoice that were incurred by Customer more than ninety (90) days prior to the date of the filing of a billing dispute. PHS will refund/credit all valid disputes resolved in Customer's favor as of the date the disputed charges first appeared on the Customer's invoice.

**4.10 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, PHS may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or any PHS Equipment which Customer fails to return in accordance with the Agreement. If PHS is required to use a collection agency or attorney to collect any amount owed by Customer or any unreturned PHS 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 PHS under the Agreement or at law or in equity.

**4.11 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.

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

## **5. Term and Revenue Commitment**

**5.1 Agreement Term.** Upon execution of the MSA, Customer shall be allowed to submit Service Orders to PHS during the term referenced on the MSA. After the expiration of the Initial Term, PHS may continue to accept Service Orders from Customer under the Agreement, or require the Parties to execute a new agreement at its sole discretion. This Agreement shall continue in effect until the expiration or termination date of the MSA or the last Service Order entered under the Agreement, unless terminated earlier in accordance with the Agreement.

**5.2 Service Order Term/Revenue Commitment.** The applicable Service Term and minimum revenue commitment (if any) shall be set forth in the MSA or Service Order or if not specified a default period of five (5) years. The Service Term shall be measured from the Service Commencement Date (as defined herein) and not the date of signature of the MSA or from the first payment of Customer to PHS. In the event Customer fails to satisfy a minimum revenue commitment, Customer will be billed a shortfall charge. Customer recognizes that pricing for Services and 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%), PHS reserves the right to either (a) bill Customer for the quantity of Services as defined on the signed Service Order, or b) increase the monthly recurring charge of any Service.

**5.3 Service Term Renewal.** Upon the expiration of the Service Term, and unless otherwise agreed to by the Parties in the MSA or Service Order, the MSA and each Service Order shall automatically renew for successive periods for the same length of time as the initial Service Term ("Renewal Service Term(s)"), unless otherwise stated in these terms and conditions or prior Notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the Service Term or the then current Renewal Service Term but not more than ninety (90) days prior to the expiration date. In the case when a prior Notice of non-renewal is submitted by Customer, upon expiration, services will automatically continue to be provided on a month to month basis until a successor agreement is established unless the Customer has given a separate Notice to PHS at least forty-five (45) days prior to the expiration that it will not receive service on a month to month basis. If Customer wishes to terminate the month to month arrangement, Customer must provide PHS at least forty-five (45) days prior Notice to PHS. Effective at any time after the end of the Service Term and from time to time thereafter, PHS

may, modify the charges for Service subject to thirty (30) days prior written notice to Customer. If a Customer remains on a month-to-month basis for three (3) consecutive months, then Customer will automatically be converted to a Service Term of an additional one year Service Term starting from the end of the last of the three (3) monthly terms.

## **6. Termination and Default**

**6.1 Termination for Convenience.** Notwithstanding any other term or provision in this Agreement, PHS shall have the right, in its sole discretion, to terminate any or all Service Order(s) at any time during the Service Term(s), upon thirty (30) days prior written notice to Customer. PHS may terminate this Agreement immediately upon notice if Customer does not take any Service under this Agreement for twelve (12) consecutive months or longer.

**6.2 Termination for Cause.** PHS may temporarily suspend or permanently terminate one or more Service(s) without notice or liability to Customer: (a) in the event Customer: (i) fails to timely pay any amount due to PHS (including without limitation submission of a required deposit); (ii) provides insufficient or fraudulent billing information, or (iii) violates any term of this Agreement, a Use 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) PHS 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 Section 6.3 hereof.

**6.3 Early Termination.** If (i) Customer cancels or terminates a Service under this Agreement or any Service Order prior to the end of the Service Term for any reason; or (ii) PHS terminates this Agreement and/or any Service Order(s) for any reason, then in addition to any other rights or remedies available to PHS hereunder, at law, or in equity, Customer shall pay PHS early termination charges (as liquidated damages and not as a penalty) equal to:

A. the aggregate fees, charges, expenses, and taxes payable by PHS 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 Service(s); and

B. the total of the nonrecurring charges and any monthly recurring charges multiplied by the number of months remaining on the Agreement/Service Order, plus the monthly average of any usage based charges (as determined by averaging the charges incurred the previous three (3) months) multiplies by the number of months remaining on the Agreement/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) business 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 PHS, and do not represent or constitute a penalty, because actual damages would be difficult or impossible to ascertain. Customer acknowledges and agrees that the actual damages would be difficult or impossible to ascertain and waives any right it has to seek a showing of actual damages by PHS. Upon cancellation, termination, or expiration of a Service Order, PHS 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.

**6.4 Effect of Expiration/Termination of a Service Order.** Upon the expiration or termination of the MSA or a Service Order for any reason:

- A. PHS shall disconnect the applicable Service;
- B. PHS may delete all applicable data, files, electronic messages, or other information stored on PHS's servers or systems;
- C. If Customer has terminated the MSA or a Service Order prior to the expiration of the Service Term for convenience, or if PHS has terminated the MSA or a Service Order prior to the expiration of the Service Term as a result of material breach by Customer, PHS may assess and collect from Customer applicable termination charges (if any);
- D. Customer shall, permit PHS to retrieve from the applicable Service Location any and all PHS Equipment. If Customer fails to permit such retrieval or if the retrieved PHS Equipment has been damaged and/or destroyed, PHS may invoice Customer for the manufacturer's list price of the relevant PHS Equipment, or in the event of minor damage to the retrieved PHS Equipment, the cost of repair, which amounts shall be immediately due and payable; and
- E. Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return all Licensed Software to PHS.

**6.5 Resumption of Service.** If a Service has been suspended or discontinued by PHS for cause and Customer requests that the Service be restored, PHS shall have the sole and absolute discretion to restore such Service. At PHS's option, deposits, advanced payments, nonrecurring charges, and/or an extended Service Term may apply to restoration of Service.

**6.6 Regulatory and Legal Changes.** The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement upon its execution are based on applicable law and regulations as they exist on the date of execution of this Agreement. The Parties agree that in the event of any subsequent 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 the Agreement, PHS may, by providing written notice to the Customer, require that the affected provisions of the Agreement be renegotiated in good faith. If Customer refuses to enter such renegotiations, or the Parties can't

reach resolution on new Agreement terms, PHS may, in its sole discretion, terminate this Agreement, in whole or in part, upon written notice to Customer.

## **7. Limitations of Liability; Disclaimer of Warrantees**

### **7.1 Limitation of Liability.**

**A. THE AGGREGATE LIABILITY OF PHS FOR ANY AND ALL LOSSES, DAMAGES AND CAUSES ARISING OUT OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE, 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 PHS DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR THE SERVICE OR EQUIPMENT FOR WHICH DAMAGES ARE CLAIMED.**

**B. IN NO EVENT SHALL PHS 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 PHS 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 THIS AGREEMENT.**

### **7.2 Disclaimer of Warranties.**

**A. Services shall be provided pursuant to the terms and conditions in the Service Level Agreements contained there (if any), and are in lieu of all other warranties, express, implied or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, satisfactory condition or quality, title, and non-infringement. TO THE MAXIMUM EXTENT ALLOWED BY LAW, PHS EXPRESSLY DISCLAIMS ALL SUCH EXPRESS, IMPLIED AND STATUTORY WARRANTIES.**

**B. Without limiting the generality of the foregoing, and except as expressly otherwise stated in this Agreement, PHS does not warrant that the Services, Equipment sold or provided to Customer hereunder (including without limitation PHS Equipment), or Licensed Software will be uninterrupted, error-free, or free of latency or delay, or that the Services, PHS Equipment, or Licensed Software will meet customer's requirements, or that the Services, PHS Equipment, or Licensed Software will prevent unauthorized access by third parties. All Service and Equipment is sold "as is" and "with all faults" unless otherwise specified in writing.**

C. In no event shall PHS, 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.

**7.3 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.

**7.4** Customer's sole and exclusive remedies are expressly set forth in the Agreement. Certain of the above exclusions may not apply if the state 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 PHS 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.**

**8.1 Indemnification Obligations.** Customer shall indemnify, defend, and hold harmless PHS 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 Service provided under the Agreement, 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.

**8.2 Indemnification Procedures.** In the event that PHS claims indemnification under this Section 8, PHS 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 PHS. PHS 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 PHS to take or refrain from taking any action or purports to obligate PHS, then Customer shall not settle such claim without the prior written consent of PHS, which consent shall not be unreasonably withheld, conditioned or delayed.

## **9. Equipment.**

## **9.1 PHS Equipment.**

A. Ownership. PHS may agree to deploy PHS Equipment in connection with the provision of the Services. PHS retains rights, title and interest in and to all PHS Equipment that PHS has deployed or Customer has rented from PHS. Customer is strictly prohibited from encumbering in any way or granting any interest in PHS's Equipment to any third party. Customer agrees that this Agreement shall not grant Customer any property rights in any of the PHS Equipment. Customer shall use PHS Equipment solely in the conduct of its business, in a manner and for the use contemplated by the manufacturer thereof. PHS shall be entitled to inspect the Equipment at reasonable times. PHS may require markings to be affixed to the Equipment. Customer shall keep all PHS 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 PHS, Customer shall not assign, lend, pledge, transfer, or sublease any PHS Equipment, permit to exist any security interest, lien or encumbrance with respect to any PHS Equipment; or cause or permit any PHS Equipment to be moved from the location specified in the Agreement. Any move of equipment to a new premise must be done by PHS 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 PHS Equipment during the Term. Customer shall obtain and maintain at its own expense insurance against the loss of or damage to all PHS Equipment, including without limitation, loss by fire or other casualty. Customer acknowledges that PHS may lease the Equipment from, or pledge any or all of its rights in PHS 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 PHS Equipment, including releasing the PHS Equipment to such financing source upon written request by PHS. Customer hereby irrevocably authorizes PHS 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 PHS's and/or the financing source's interest in the PHS Equipment. Customer and Customer's end users will not allow or cause any PHS Equipment to be rearranged, moved, modified, repaired or relocated without PHS's written consent. All PHS Equipment will be provided for the sole purpose of use in connection with the Service(s), shall remain the exclusive property of PHS or its supplier, respectively, and shall be immediately returned to PHS upon termination of the Service(s).

B. Removal. At any time PHS may remove or change PHS 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 PHS Equipment or permit others to do so, and shall not use the PHS Equipment for any purpose other than that authorized by the Agreement. PHS shall maintain PHS Equipment in good operating condition during the term of this Agreement; provided, however, that such maintenance shall be at PHS's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the PHS Equipment. Customer is responsible for damage to, or loss of, PHS 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 PHS Equipment for any period after termination or expiration of this Agreement or the applicable Service Order, Customer shall be subject to month-to-month fees.

## **9.2 Customer Equipment.**

A. PHS 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 PHS 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 PHS. CE shall at all times be compatible with the Network as determined by PHS 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 PHS'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 PHS.

B. If Customer purchases Equipment from PHS, the terms and conditions of such purchase shall be set forth on the MSA or applicable Service Order. If Customer is unable or unwilling to schedule or accept delivery or installation on the date PHS tenders delivery or installation, PHS 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 PHS's sole discretion if Customer delays delivery or installation by more than ten (10) days.

C. Return Policy. In the event that Customer is required to return any Equipment purchased from PHS to PHS for warranty service, Customer agrees to obtain PHS's concurrence prior to returning any Equipment for repair or replacement and must reference any return material authorization number issued by PHS with such returned Equipment. Customer further agrees to ship the item prepaid and suitably package to a location designated by PHS. PHS will return to the Customer any repaired or replaced CE at PHS's expense. PHS is responsible for loss of or damage to CE solely for so long as such CE is in PHS's possession. 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 and Services**

**10.1 License.** If and to the extent that Customer requires the use of Licensed Software in order to use the Service supplied under the MSA or any Service Order, Customer shall have a personal, nonexclusive, nontransferable, 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 PHS 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 PHS, including, without limitation, end-user license agreements for the Licensed Software. PHS 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 this Agreement.

**10.2 Restrictions.** Customer agrees that it shall not: (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 PHS; (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.

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

**10.4 Export Law and Regulation.** Customer acknowledges that any products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement 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 PHS, Customer also agrees to sign written assurances and other export-related documents as may be required for PHS to comply with U.S. export regulations.

**10.5 Ownership of Telephone Numbers and Addresses.** Some Services may require PHS 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, PHS retains ownership of all of such telephone numbers and IP addresses, including but not limited to IP addresses, e-mail addresses and web addresses.

**10.6 Intellectual Property Rights in the Services.** Title and intellectual property rights to the Services are owned by PHS, 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 PHS or other owner of such material, is prohibited.

**10.7 Non-Availability of Traditional 911.** Customer acknowledges and agrees the Service(s) does NOT support traditional 911 or E911 access to emergency services. Customer further acknowledges and agrees 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 non-availability of traditional 911 or E911 dialing and access from PHS Service(s) and equipment. PHS relies on third parties for the forwarding of information underlying such routing and, accordingly, PHS and PHS's third party provider(s) disclaim any and all liability or responsibility in the event any such information or

routing is incorrect. As described herein, this 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 PHS nor PHS'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 PHS's gross negligence or intentional misconduct. Customer shall indemnify and hold harmless PHS and PHS'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 PHS any inaccurate, outdated, or incorrect information in connection therewith.

## **11. Confidential Information and Privacy**

**11.1 Disclosure and Use.** All Confidential Information disclosed by PHS shall be kept by Customer in strict confidence and shall not be disclosed to any third party without PHS'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 performing this Agreement 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 this Agreement. Customer agrees to treat all PHS 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.

**11.2 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 PHS; or (iv) is required to be disclosed by law or regulation.

**11.3 Publicity.** Neither Party shall issue any publication or press release relating to, or otherwise disclose the existence of, the terms and conditions of any contractual relationship between PHS and Customer, except as permitted by the Agreement or otherwise consented to in writing by the other Party.

**11.4 Remedies.** Notwithstanding any other provision of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests pursuant to this Section 11, including, but not limited to, injunctive relief.

**11.5 Monitoring of Services.** Except as otherwise expressly set forth, PHS assumes no obligation to pre-screen or monitor Customer's use of the Service, including without limitation postings and/or transmission and PHS assumes no responsibility for Customer's use of the

Service(s). Customer acknowledges and agrees that PHS 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 PHS, or in emergencies, and that PHS may disclose the same to the extent necessary to satisfy any law, regulation, or governmental request. PHS 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 PHS 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 11.5 refers to aggregate data and types of traffic (protocol, upstream/downstream utilization, etc.). PHS does not have access to the content of encrypted data transmitted across PHS networks.

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

## **12. Use of Service and Privacy Policies**

**12.1 Prohibited Uses and PHS Use 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 Use Policy (as defined below); (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 PHS 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 Agreement. PHS 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 PHS determines that such use is prohibited as identified herein, or information does not conform with the requirements set or PHS 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 PHS's Use Policies. The Use Policies and other security policies concerning the Services are posted on PHS website. PHS may update its Use Policies from time to time, and such updates shall be deemed effective immediately upon posting, with or without actual notice to Customer. PHS'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.

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

**12.3 Resale.** In the event that Customer purchases Service(s) for resale, Customer shall be solely responsible for the interaction between Customer and Customer's customers with respect to the Services. Customer will cooperate with PHS to enable PHS to fulfill its operations under this Agreement and the applicable Service Orders and will allow PHS 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 PHS 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 PHS 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:

A. 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 PHS shall have no liability to Customer's end users under this Agreement. 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 in this Agreement, if Customer fails to make payment for the underlying Service that is being resold to a third party then PHS reserves the right to directly bill the end user customer for the Service at PHS's sole discretion.

B. PHS may suspend any or all of the Services immediately and/or terminate the Agreement 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 the subject matter of this Agreement; or (c) Customer uses the Services for any purpose or in any manner other than as prescribed in this Agreement. 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 PHS 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 PHS, 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 PHS, 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. PHS 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 PHS is under no obligation to undertake such action.

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

**12.5 Customer Consent to Use of Customer Proprietary Network Information.** Customer consents that PHS may use Customer Proprietary Network Information (“CPNI”) for marketing purposes to offer Customer the full range of products and services available from PHS that may be different from the type of services Customer currently buys from PHS. For the purposes of this section, CPNI shall include, without limitation, information about the type and quantity of telecommunications services purchased by Customer from PHS, Customer account activity, and charges incurred by Customer. Customer also consents to PHS to share Customer CPNI with its affiliates, agents, and partners to offer other services and products. Customer may refuse CPNI consent by notifying PHS 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 PHS 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.**

**13.1 Dispute Resolution.** In the case of a dispute, PHS shall have the ability, at PHS’s sole discretion, to cause a dispute to be settled by binding arbitration in accordance with the rules, then obtaining, of the American Arbitration Association, and judgment on the award rendered may be entered in any court possessing jurisdiction pursuant to this Agreement. The hearing relating to said arbitration shall be held at a place and time determined by PHS. The arbiter hearing such matter shall be bound by the terms of this Agreement 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 this Agreement unless said Agreement has been terminated.

**13.2 Force Majeure.** None of PHS 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, power blackout, cable cut, pole hits, acts of regulatory or governmental agencies, unavailability of right-of-way, third party services or materials, or other causes beyond PHS’s reasonable control.

**13.3 Assignment or Transfer.** Customer shall not assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of PHS.

All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Nothing herein is intended to limit PHS's use of third-party consultants and contractors to perform services.

**13.4 Notices.** Any notice sent pursuant to the Agreement shall be deemed given and effective only when sent by USPS certified mail (return receipt) to the address specified on the MSA for Customer or for PHS to: 30 Washington Ave. Suite D2, Haddonfield, NJ 08033. Each Party shall notify the other Party in writing of any changes in its address.

**13.5 Entire Understanding.** The Agreement, together with any applicable Tariffs, constitutes the entire understanding of the Parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the Parties' rights or obligations relating to Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not embodied in the Agreement are of no effect. No subsequent agreement among the Parties concerning Service shall be effective or binding unless it is made in writing by authorized representatives of the Parties. Terms or conditions contained in any Service Order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect.

**13.6 Tariffs.** Notwithstanding anything to the contrary in the Agreement, PHS may elect or be required to file with regulatory agencies tariffs for certain Services. In such event, where required by law, the terms set forth in the Agreement may be superseded by the terms and conditions of the Tariffs. Without limiting the generality of the foregoing, in the event of any inconsistency with respect to rates, the rates and other terms set forth in the applicable Service Order shall be treated as individual case based arrangements to the maximum extent permitted by law. If PHS voluntarily or involuntarily cancels or withdraws a Tariff under which a Service is provided to Customer, the Service will thereafter be provided pursuant to the Agreement and the terms and conditions contained in the Tariff immediately prior to its cancellation or withdrawal. In the event that PHS is required by a governmental authority to modify a Tariff under which Service is provided to Customer in a manner that is material and adverse to PHS, PHS may terminate the applicable Service Order upon a minimum thirty (30) days' prior written notice to Customer, without penalty or liability.

**13.7 Construction.** In the event that any portion of the Agreement 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 the Agreement shall remain in full force and effect.

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

**13.9 Choice of Law and Venue.** This Agreement shall be governed by the laws of the State of New Jersey without reference to its choice of law provisions. Any and all suits and claims

pertaining to this Agreement shall be brought solely in the state and federal courts located in Camden County in the State of New Jersey.

**13.10 No Third Party Beneficiaries.** This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

**13.11 Parties' Authority to Contract.** The persons whose signatures appear on the MSA represent and warrant that they are duly authorized to enter into the Agreement on behalf of the Parties name therein.

**13.12 No Waiver; Etc.** No failure by PHS to enforce any right(s) hereunder shall constitute a waiver of such right(s). This Agreement may be executed in counterpart copies.

**13.13 Independent Contractors.** The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

**13.14 Headings.** The section headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

**13.15 Compliance with Laws.** Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.