

# Master Service Agreement

## General Terms and Conditions



These General Terms and Conditions along with any Exhibits, Attachments and Service Orders and Addendums together constitute the “Master Service Agreement” (“Agreement”) is made by and between Midcontinent Communications, a South Dakota General Partnership (“Midco”), with a principal place of business at 3901 N Louise Ave Sioux Falls SD 57107, and Enter Customer Name, with a principal place of business at Enter Customer Address on behalf of itself and its affiliates (“Customer”); each a “Party” and, collectively, the “Parties.”

### TERMS AND CONDITIONS APPLICABLE TO ALL SERVICES

**1. Service.** Subject to the terms and conditions contained herein, Tariffs on file in each state and Federal Communications Commission (FCC), and the applicable usage policies as posted on [www.midcoomm.com](http://www.midcoomm.com), Midco agrees to provide to Customer the service or services identified in the accepted Business Solutions Service Order(s) (collectively, the “Service”). Except as required by law, Service is for end-use only and may not be resold by Customer. Customer is responsible for security and all usage of Service.

**2. Service Order.** Customer may purchase Services during the Term of this Agreement by completing a Service Order. Customer shall contact Midco to determine the availability of Service. As part of the Service Order, Customer may be asked to identify the location of Service, term of Service, type of Service requested, desired installation date, and any other information reasonably requested by Midco to determine the availability of Service. Upon receipt of Customer’s properly completed Service Order, Midco will review and respond to Customer within a commercially reasonable amount of time of Midco’s receipt of a Service Order and either accept such proposed Service in writing or email, or respond to Customer declining to provide the requested Service. By executing a Service Order, Customer represents and warrants that Customer: (a) either owns the Service Location or has received permission from the legal owner and/or any other necessary party of the Service Location to make any changes to the interior and/or exterior necessary to install Midco Equipment (as defined in Section 17); (b) is legally authorized to purchase and receive the Service and Midco Equipment (if applicable) and fulfill its obligations under this Agreement; and (c) affirms that the information Customer supplies to Midco is correct, accurate and complete. Upon acceptance by Midco, the executed Service Order shall be incorporated into and subject to the terms of this Agreement. (For purposes of clarification, throughout the remainder of this Agreement, references to Service Order shall mean a Service Order that has been accepted by Midco.)

**3. Service Upgrade.** At Customer’s election and subject to Midco’s approval and acceptance thereof, the Parties may amend this Agreement by executing a Service Order for additional quantities of or functionality enhanced versions of Service. The Service Order shall specifically reference, in addition to any other information required to be set forth in a Service Order, the additional quantities and/or functionality enhanced versions of Service desired by Customer to be provided by Midco thereunder.

**4. Engineering Review.** Each Service Order submitted by Customer shall be subject to an Engineering Review by Midco. Midco will provide Customer written notification in the event Service installation at any Service Location will require any additional fees. Customer will have five (5) business days from receipt of such notice to reject the new fees and terminate, without further liability, the Service Order with respect to the affected Service Location.

**5. Installation Schedule.** Midco shall provide Customer with an estimated availability date for each Service and Service Order. Midco shall use commercially reasonable efforts to provide the Service on or before the estimated availability date; provided, however, that Midco’s failure to provide the Service by said date shall not constitute a breach of this

Agreement. Requests to expedite the installation schedule and availability date will be reviewed and accepted at Midco’s discretion and may be subject to additional fees. Expedite requests will also be subject to any and all fees billed to Midco by other vendors in the support of the expedite request. Midco shall use commercially reasonable efforts to fulfill the expedite request, but does not warrant or represent that Service expedites requests will actually expedite delivery of Service. Customer shall be subject to any and all expedite fees regardless of the outcome of the expedite request.

**6. Additional Service Location.** The location(s) where Service is to be initially provided will be identified in a Service Order (“Service Location”). Additional locations may be added by submitting a Service Order for the new Service Location. The new Service Location will be subject to the terms of this Agreement upon Midco’s acceptance and approval of the Service Order.

**7. Replacement Service.** The installation and Customer’s use of the Service is location-specific to the Service Location indicated in this Agreement and any Service Order. Customer may terminate Service at an existing Service Location without incurring Termination Fees provided that Customer orders and Midco accepts the order for a Replacement Service. The Replacement Service (a) must have a Term equal to or greater than the remaining Term of the existing Service; and (b) must have monthly recurring charges equal to or greater than the monthly recurring charges for the existing Service. In addition, Customer must (a) submit a Service Order to Midco for the Replacement Service at least ninety (90) days prior to terminating the existing Service; (b) reimburse Midco for any and all installation charges that were waived with respect to the existing Service; and (c) pay the actual costs incurred by Midco in installing and provisioning the Replacement Service.

**8. Service Commencement Date.** Midco shall inform Customer when Service is available and performing to the specifications in the Service Order (“Availability Notification”). The term for Service shall commence and charges for Service shall begin to accrue as of the Service Commencement Date. The Service Commencement Date shall be the earliest of: (a) the date on which Customer confirms receipt of and concurrence with the Availability Notification; (b) five (5) business days following the date of the Availability Notification, if Customer fails to notify Midco that the Service does not comply materially with the specifications set forth in the Service Order; or (c) the date on which Customer first uses the Service. The Service Commencement Date will not be delayed or postponed due to problems with Customer’s equipment or Customer’s lack of readiness to accept or use Service. However, if Customer has an account balance that is more than sixty (60) days past due, Midco at its sole discretion may postpone Service activation until payment is received. A single Service Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.

**9. Term.** This Agreement shall be effective upon the signature of the Parties and Midco’s acceptance of this Agreement. This Master Service Agreement shall remain in effect until the expiration or termination of the Term (initial or any renewal) of the last Service Order executed pursuant to this

Agreement. The Term for Service shall be specified in the Service Order and will commence upon the Service Commencement Date. If multiple Service Orders are executed for different Services at one Service Location, the Term for Service will commence upon the Service Commencement and shall remain in effect until the expiration of any Service at that Service Location. The Term of Service at one Service Location does not affect the Term of Service at any other Service Location.

**10. Service Order Renewal.** Upon expiration, all Service Orders shall automatically renew for successive one (1) year terms and the price of Service will be adjusted to the then current one year rate for Service or its then current equivalent. Provided however, either Party may notify the other in writing of the Party's intent to cancel Service at least thirty (30) days prior to the expiration of any then existing term.

#### **11. Charges & Payments.**

**a.** Customer shall pay the monthly recurring charges (MRC) associated with Service as specified in the Service Order in advance of the month in which Service is provided. Any applicable surcharge, federal, state, local use, excise, franchise fee, or sales tax or similar levy, chargeable to or against Midco because of the Service provided to Customer, shall be charged to and paid by Customer in addition to the Service charge and other charges under this Agreement. Except as otherwise indicated herein or in the applicable Service Order, the MRC for Service will not increase during the Service Term. Provided, however, if Customer is receiving Service under a promotion, after the promotional period ends, regular charges for the Service will apply. In addition, charges may increase with or without notice in those cases where a third party vendor of resold services raises rates to Midco, or the change in price is related to a change in governmental or quasi-governmental taxes, fees, or assessments. Customer may also incur charges for usage based services and from third party service providers that are separate and apart from the amounts charged by Midco for Service. These charges may be billed monthly in arrears. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility.

**b.** Customer is responsible for payment for all charges within thirty (30) days of the invoice date. Any charges not paid within such period will be considered past due. Customer's first invoice will include all non-recurring charges (NRC) and the MRC and may include prorated charges for use since the Service Commencement Date. Midco does not waive its right to collect the full amount due if Customer's payment is late or remits a partial payment; even if Customer's payment includes the words "Paid in Full" or similar words on any correspondence or check. Midco will determine how to apply any partial payment to the outstanding charges. Customer shall be subject to a late fee of five dollars (\$5.00) for any bill not paid within thirty (30) days of the invoice date and interest at the rate of one-and-a-half percent (1.5%) per month will accrue upon any unpaid amount commencing thirty (30) days after invoice date. The minimum late fee charge per month is five dollars (\$5.00), unless prescribed by law, in which event at the highest rate allowed by law. If Midco utilizes a collection agency or attorney to collect any amount owed by Customer or any unreturned Midco Equipment, Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Midco under the Agreement or at law or in equity. Midco reserves the right to back-bill up to and including the date service was initially available, to correct any billing errors.

**c. E-Rate.** Customers applying for or receiving Schools and Libraries or Rural Health Care subsidies, or funds from any other subsidy or reimbursement program, remain responsible for the entire account balance. Customer must timely submit all information requested by and comply with all rules imposed by the program sponsor; for example, USAC. Notwithstanding Section 11b, Customer must pay its anticipated portion of any invoice within

sixty (60) days of the invoice date to avoid incurring any late payment charges.

**d.** This provisioning of Service to Customer is predicated on Customer's credit verification and approval by Midco. Customer authorizes Midco to receive information about Customer's credit history from others and enter that into Midco's records. Midco may, in its sole discretion, deny Service to Customer, or, at its sole discretion, require a deposit or some other form of security to ensure payment for Service.

**12. Disputed Charges.** In the event Customer disputes any portion of a Midco invoice, Customer shall pay the undisputed portion of the invoice by the due date, and shall submit to Midco a written claim for the disputed amount, which claim shall set forth with specificity Customer's grounds for such dispute. All disputes must be raised and claims submitted to Midco within sixty (60) days of the date of the invoice such claims shall be deemed waived and invoices shall be deemed correct. In the event the dispute is resolved against Customer, Customer shall pay such amounts plus interest at the rate referenced and calculated in accordance with Section 11b. If the Parties are unable to resolve any dispute timely brought by Customer, either Party may pursue legal or equitable remedies available.

**13. Credits.** Any credits granted to Customer for any reason will be applied towards the account balance. If the credit exceeds the current account balance, the credit will be carried over to apply to the next invoice(s) until the credit is fully applied. Under no circumstances (except for end of service credits) will Midco issue a check to Customer for payment on any type of credit.

**14. Termination; Termination Fee.** If Customer cancels any Service (other than as a result of Midco's default under Section 15) or if Midco terminates any Service pursuant to this Section, Section 15 or Section 25, then Customer shall pay Midco a Termination Fee in the amount of (a) the lesser of (i) twelve (12) months of service charges or (ii) the service charges payable during the remainder of the term plus (b) construction and other actual expenses incurred by Midco to enable the delivery of Service, any installation charges waived, and any discounts or credits issued under this Agreement. If Customer is subject to early termination fees and has multiple Service Locations, the early termination fee is applicable only to the Service Location(s) discontinuing Service(s). Either Party may cancel this Agreement without liability if Midco is prohibited from furnishing Service, or if any material rate or term contained herein is substantially changed by final order of a court, administrative agency, or other tribunal of competent jurisdiction. Customer is responsible for all fees that Midco incurs from third party vendors as a part of the termination of Service. The Parties agree that the Termination Fee is not a penalty, but rather the Parties' best estimate of the actual losses to be incurred by Midco as a result of such early termination. A WAIVER BY MIDCO OF ANY PART OF AN EARLY TERMINATION FEE SHALL NOT BE CONSIDERED AS A WAIVER OF ANY OTHER TERMINATION FEE ASSESSED AT A LATER DATE.

#### **15. Suspension or Termination.**

**a.** Midco may immediately suspend or terminate Service if: (i) Customer fails to pay all delinquent charges within seven (7) days after written notice thereof is given by Midco, or (ii) Customer fails to pay any sum due to Midco for more than thirty (30) days, or (iii) Customer fails, within thirty (30) days after written notice, to comply with this Agreement or any applicable tariff, or (iv) a violation of any regulation, rule or law of any governmental authority has occurred or is occurring, or (v) Midco suspects fraudulent usage, or (vi) Customer is in default under any other agreement with or obligation to Midco and has not cured such default within any applicable cure period. Customer may terminate Service if Midco fails, within thirty (30) days after written notice is received by Midco, to comply with any material provision of this Agreement. In addition, either Party may terminate Service or this Agreement if the other Party (a) files a voluntary petition for

bankruptcy, (b) an involuntary petition for bankruptcy is filed against it and not dismissed within sixty (60) days, or (c) makes an assignment for the benefit of creditors.

b. Midco reserves the right to delete Customer's voicemail, call detail, data, email, files or any other information of Customer on the Midco servers or systems thirty (30) days after Customer no longer receives Service from Midco.

c. The rights and remedies granted to a nondefaulting party pursuant to this Section 15 shall be in addition to all other rights and remedies such nondefaulting party may have at law or in equity. Failure or delay by a party in exercising a right or remedy shall not preclude the later exercise thereof. The defaulting party shall be responsible for the reasonable legal fees and expenses incurred by the nondefaulting party in exercising its rights and remedies.

**16. Customer Equipment.** Midco Technical Support is not responsible for end-user support of issues not directly related to Service. This includes, but is not limited to, Customer operating systems, Customer provided equipment or Customer application support. Equipment and services on Customer's side of the Demarcation Point are the responsibility of Customer. Midco shall not be responsible for the operation, support or maintenance of any Customer provided equipment, nor shall Midco have any liability whatsoever for the configuration, management, or performance of Customer provided equipment. All Customer provided equipment and wiring that Customer used in connection with the Service must be fully compatible with the Service. If changes in technology occur that make Service obsolete without Customer upgrading its equipment and/or wiring, and Customer is unable for any reason to upgrade, Midco has the right, but not the obligation, to terminate this Agreement and/or any affected Service Order upon sixty (60) days notice.

**17. Midco Equipment.** Midco Equipment is defined as any equipment that is owned by Midco or by a third party which has been provisioned by Midco to Customer. This equipment includes all transmission equipment, wiring and lines installed by Midco (or its contractor) and located on the Property of Customer. Midco Equipment shall not become a fixture of the property or part of the premises. Customer shall not, and shall not permit others, without the prior written consent of Midco, to (a) rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Midco Equipment, (b) use any Midco Equipment for any purpose other than that for which Midco provides them, or (c) take any action that causes the imposition of any lien or encumbrance on the Midco Equipment. In no event shall Midco be liable to Customer or any other person for interruption of Service or any other loss, cost or damage caused by or related to improper use or maintenance of the Midco Equipment by Customer or third parties provided access to the Midco Equipment by Customer in violation of this Section. Customer shall be responsible for any damage to Midco Equipment to the extent arising from the improper use or maintenance thereof by Customer or third parties provided access to Midco Equipment by Customer. Customer agrees to allow Midco to remove the Midco Equipment from Customer's premises after termination, expiration or cancellation of the Service in connection with which the Midco Equipment was used, and for maintenance, repair, replacement or otherwise as Midco may determine is necessary or desirable from time to time. If Customer fails to permit such retrieval or if the retrieved Midco Equipment has been damaged and/or destroyed other than by Midco or its agents, normal wear and tear excepted, Midco may invoice Customer for the replenishment cost of the relevant Midco Equipment, or in the event of minor damage to the retrieved Midco Equipment, the cost of repair, which amounts shall be immediately due and payable. Midco retains the right to remove the Midco Equipment for a period of three (3) months following Midco's discontinuance of Service to the Service Location.

**18. Facilities.** Customer shall allow Midco access to the Service Location

to the extent reasonably necessary for the Service. Customer shall provide and maintain facilities at the Service Location suitable for the provisioning of the Service. Proper facilities shall include, but may not be limited to, adequate space, sufficient electrical power and proper operating environment, including heating, cooling, and air quality, for the necessary equipment. Customer will ensure Midco has the right and, with reasonable notice, ability to access the facility space, building conduits and wiring for installation, inspection, maintenance, operation and removal of all Midco Equipment related to the Service. Customer shall also ensure the Service Location is secure and safe from hazards to the facilities, Midco Equipment and to Midco's employees, agents and contractors. Midco shall be responsible for any damage to the Service Location to the extent arising from the improper use of the facilities by Midco or third party agents or contractors acting on Midco's behalf during such installation, inspection or maintenance activities.

**19. Access.** Customer will take the steps necessary to ensure Midco, its agents and assigns, have the right to access the Service Location property during the term of this Agreement to install, operate, repair and replace such cable, conduit and equipment as may be necessary to provide Service. The installed cable, conduit and equipment will remain the property of Midco and use by Midco will not be interfered with. Midco will exercise due care in the performance of its activities on the property and will repair all damage to the property caused by the activities. Customer is responsible for locating and clearly marking all private utilities on the property. Midco is not liable for any damages or fees incurred as a result of striking private utilities that were not conspicuously and accurately marked.

**20. Disruption of Service.** Midco does not warrant that the Service or Midco Equipment will be uninterrupted, error-free, or free of latency or delay, or that the Service or Midco Equipment will meet Customer's requirements. The Service is not fail-safe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service 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.

**21. Limit of Liability.**

a. Midco shall not be liable for and credit shall not be given for any failure or interruption of Service caused by acts of God, strikes, emergencies, mechanical failure, cable cut, regulatory or other governmental action, action or inactions by Customer, its employees, agents, invitees, a breach of this Agreement by Customer or any other cause beyond Midco's control.

b. IN NO EVENT SHALL MIDCO BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES. MIDCO HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPLICIT OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LIABILITY OF MIDCO UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT ACTUALLY PAID TO MIDCO BY CUSTOMER FOR SERVICES HEREUNDER AT A SPECIFIC LOCATION DURING THE PRECEDING TWELVE (12) MONTHS.

c. IN NO EVENT SHALL MIDCO, OR ITS ASSOCIATED PARTIES, SUPPLIERS, CONTRACTORS OR LICENSORS 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 SERVICE 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 AN ATTEMPT TO REMOVE IT.

## **22. Indemnification.**

**a.** Customer agrees, at its own expense, to indemnify, defend and hold harmless Midco and its directors, employees, representatives, officers and agents, (the "Midco Indemnified Parties") against any and all third party claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses, including but not limited to, reasonable attorneys' fees and court costs, (collectively, "Claims") incurred by and/or brought against Midco Indemnified Parties, to the full extent that such Claims arise from: (i) Customer's noncompliance with the terms of this Agreement and/or any or all Service Orders; (ii) Customer's or their users failure to comply with applicable laws or violation or infringement upon the rights of any other party, including, without limitation, contractual rights, intellectual property rights, publicity and privacy rights and the rights against libel, defamation and slander; (iii) Customer's use or misuse of the Service, including claims resulting from use/misuse of the Service by Customer's users and/or the content of any communications transmitted via the Service; (iv) Customer's willful misconduct; and/or (v) physical damage to personal or real property or bodily injury, including death, caused by the negligent or willful misconduct of Customer or Customer's users, its employees or contractors, at the Service Location during the installation or maintenance of equipment in connection with Service. Customer shall have full authority to settle any such Claims; provided, however, that it may not enter into any settlement without Midco's advance written consent in which a full and final release of such Claim in favor of Midco Indemnified Parties is not obtained as a result of the settlement, or any admission or affirmative obligation is required or placed upon Midco Indemnified Parties.

**b.** Midco agrees, at its own expense, to indemnify, defend and hold harmless Customer, its directors, officers, employees, agents and/or representatives ("Customer Indemnified Parties") from and against any and all third party Claims incurred by and/or brought against Customer Indemnified Parties to the full extent that such Claims arise from: (i) physical damage to personal or real property or bodily injury, including death, caused by the negligent or willful misconduct of Midco, its employees or contractors, at the Service Location as a direct result from Midco's installation, removal or maintenance at the Service Location of the Midco Equipment; and/or (ii) Midco's failure to comply with applicable laws; and/or (iii) Midco's willful misconduct. Midco shall have full authority to settle any such Claims; provided, however, that it may not enter into any settlement without Customer's advance written consent in which a full and final release of such Claim in favor of Customer Indemnified Parties is not obtained as a result of the settlement, or any admission or affirmative obligation is required or placed upon Customer Indemnified Parties.

**23. Content.** Midco does not operate or control the content transported over the Service. Midco shall have no liability or responsibility for Customer created content or any communication transmitted via the Service hereunder. Customer shall defend, indemnify and hold harmless Midco from any and all third party claims (including claims by governmental entities seeking to impose penal sanctions) related to such content, and from any and all third party claims relating to Customer's use of Service hereunder. Customer shall make no claim against Midco regarding said content, or respecting any information, product, service, software or other item(s) ordered through or provided by virtue of the Service.

**24. Public Performance of Copyrighted Works.** Midco has no authority to grant any license for the public performance of copyrighted works. If Customer intends to play publicly any audio or visual content provided via the Service, Customer is advised that additional fees may be owed to copyright holders or public performance licensing organization such as ASCAP, SEASAC or BMI in certain situations.

**25. Legal Application.** This Agreement will be governed by the laws of the state of South Dakota and any claims hereunder shall be brought in the state or federal courts located in Minnehaha County, South Dakota.

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. This document, Exhibits, Attachments, Service Orders, and Midco's Acceptable Use Policy (as presented on [www.midco.net](http://www.midco.net)) represent the entire Agreement between the Parties and supersedes all prior conversations, representations, promises, and warranties (expressed or implied) made prior to or at the time of the signing of this document. This Agreement may be amended only in writing signed by an authorized representative of each Party. If any action at law or equity is necessary to enforce the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and expenses, in addition to any other relief to which it may be entitled. Each of Midco's rights and remedies under this Agreement shall be cumulative and additional to any other or further rights or remedies provided in law or equity or otherwise.

**26. Assignment.** This Agreement is binding upon the heirs, devisees, successors, and assigns of each Party. Provided, however, Customer shall not assign or transfer its rights or obligations under this Agreement without prior written consent of Midco, which consent shall not be unreasonably withheld, and further provided that any assignment or transfer without such consent shall entitle Midco to terminate the Service at its option upon ten (10) days prior written notice. In the event Customer changes ownership, if the remaining term of this Agreement is not assumed by the new owner, or if a new Agreement is not signed with Midco for like services by the new owner, Customer will be held accountable for any applicable Termination Fees as defined in Section 14 of this Agreement. Midco may assign this Agreement without consent to any affiliated entity or to any successor in interest whether by merger, reorganization or transfer of all or substantially all of its assets or otherwise.

**27. Confidential Information.** "Confidential Information" includes but is not limited to any and all business, technical, or third party information (including but not limited to rate information, discounts, network information, trade secrets, marketing plans, financial data, specifications, drawings, and documentation) provided, disclosed, or made available to one party (the "Disclosing Party") to the other (the "Receiving Party") under this Agreement that is either identified as, or reasonably understood to be, confidential or proprietary. The Receiving Party will: (a) not use Confidential Information of the Disclosing Party for any purpose other than the fulfillment of its obligations under this Agreement; and (b) protect and treat all Confidential Information of the Disclosing Party with the same degree of care as it uses to protect its own Confidential Information of like importance, but in no event with less than reasonable care. In the event the Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, the Receiving Party will notify the Disclosing Party of the required disclosure, if permitted, with sufficient time for the Disclosing Party to seek relief, will cooperate with the Disclosing Party in taking appropriate protective measures, and will make any such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure. Confidential Information also includes the terms and conditions of this Agreement. Confidential Information does not include information that the Receiving Party can clearly establish by written evidence: (a) is or becomes known to the Receiving Party from a third party without an obligation to maintain its confidentiality; or (b) is or becomes generally known to the public through no act or omission of the Receiving Party; or (c) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party.

**28. No Third Party Beneficiaries.** This Agreement shall be binding upon, enforceable by, and inure solely to the benefit of each Party hereto as well as their successors and assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit, or remedy of any nature under or by reason of this Agreement.

**29. Notice.** Any notice required or permitted to be given hereunder shall be (a) in writing, (b) effective upon the earlier of receipt or five (5) days after deposit with the respective courier or United States Postal Service, and (c) delivered by one of the following means: (i) by prepaid, nationally recognized, overnight package delivery or courier service; or (ii) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid. In addition to actual receipt by a Party, the following shall constitute receipt: (a) a Party's rejection or other refusal to accept notice, and (b) the inability to deliver notice to a Party because of a changed address of which no notice has been provided in accordance with this Section and received by the other Party. All notices given under the Agreement shall be addressed to the following addresses of the Parties: with respect to Customer, to the address set forth in a Service Order, or with respect to Midco, to: Midco Communications, Attn: Vice President of Business Solutions, 3901 North Louise Avenue, Sioux Falls, SD 57107. Each Party may change its respective address(es) for legal notice by providing notice to the other Party.

**30. Authority.** Each signatory to this Agreement does hereby represent and warrant that he/she has the authority to execute this Agreement on behalf of the Party to this Agreement for whom he/she is executing this Agreement.

**31. Customer Representatives.** Following the Service Commencement Date, someone seeking support of, or desiring to make non-material changes to Service on behalf of Customer will be qualified by Midco. If the individual can meet cursory qualification criteria, or if the person is listed as an authorized user or authorized vendor on the Service Order, Midco may assume the individual is an authorized user on the account and will follow that individual's direction. Alternately, Customer may provide to Midco a list of authorized users. Customer will be responsible for the maintenance of this list. Someone desiring to make a material change to Service must be noted on Customer's account as an authorized user. Midco will not be held liable for following the direction of qualified or authorized users.

**32. Electronic Signature.** This Agreement may be executed by the Parties by electronic signature. The Parties agree that an electronic signature is the legal equivalent of a manual printed signature on the Agreement; thus, an electronic signature is also a valid consent to be legally bound

by this Agreement's terms and conditions. The Parties also agree that no certification authority or other third party verification is necessary to validate an electronic signature and that the lack of such certification or third party verification will not in any way affect the enforceability of an electronic signature or any resulting Agreement between the parties.

**33. Survival.** The provisions of Sections 11, 12, 14, 15, 17, 21, 24 and 27, together with any provisions of this Agreement that by their nature are meant to survive, shall survive the termination or expiration of this Agreement.

**34. Severability.** Any provision of this Agreement held or determined by a court (or other legal authority) of competent jurisdiction to be illegal, invalid or unenforceable in any jurisdiction shall be deemed separate, distinct and independent, and shall be ineffective only to the extent of such holding or determination without (a) invalidating the remaining provisions of the Agreement in that jurisdiction or (b) affecting the legality, validity or enforceability of such provision in any other jurisdiction.

**35. Relationship of Parties.** Nothing in this Agreement shall be construed as creating a joint venture or partnership between the Parties hereto. Neither Party has or shall have any authority to bind, assume any obligation for or incur any debt on behalf of the other Party in any respect whatsoever.

**36. General Terms.** Customer's use of Midco's Services is specifically subject to this Agreement, and Customer's agreement to: (a) the Midco Acceptable Use Policy, Privacy Policy, and General Terms and Conditions found at [www.midco.net](http://www.midco.net) (the "General Terms"), which may be modified by Midco from time to time in accordance with the General Terms and applicable law, and which are incorporated herein by reference and made part of this Agreement; and (b) applicable Midco tariffs on file with the appropriate regulatory body.

**37. Order of Precedence.** In the event of a conflict or inconsistency between any Service Order and the remaining terms and conditions of this Agreement, the following is the order of precedence: 1) the applicable Service Order; 2) the General Terms and Conditions; and 3) any applicable and executed Exhibits or Attachments. To the extent that this Agreement is inconsistent with the terms of Midco's tariffs, the terms of the tariffs shall prevail.

## TERMS AND CONDITIONS APPLICABLE TO TELEPHONE SERVICE

**38a. Directory Listings.** In the event there is an error or omission in Customer's directory listing, Midco will provide Customer's correct name and telephone number to a calling party either upon request to or, where available, intercept messaging by Midco. Midco's liability for any errors or omission in any directory listings is limited to the charges paid by Customer for the listing itself. Midco is not liable to Customer or any third party for any incidental, indirect, special or consequential damages of any kind, including loss of use, loss of business, or loss of profit, arising from errors or omissions in directory listings.

**38b. Transferring Number(s).** If Customer is switching to Midco from another service provider, Customer may transfer existing phone number(s) to Midco, provided that: (a) Customer requests the phone number transfer when placing the order for Service; (b) Customer agrees not to contact the other phone service provider during the transfer period (which may take up to 30 days) in order to allow Midco the time to complete the phone number transfer; contacting the other service provider can delay the phone number transfer; (c) Customer's current service provider releases the existing phone number, at Midco's request, without delay or charge; and (d) transfer of Customer's existing phone to Midco would not, in Midco's view, violate applicable law or Midco procedures.

**38c. Call Usage.** Customer agrees not to use the Service for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in excessive usage inconsistent with normal calling patterns. If Midco determines, in its sole discretion, that the Service is being used for any of the aforementioned activates or in the event of an excessive number of calls during a fixed period, heavy usage during business hours, or heavy usage concentrated over consecutive dates, Midco reserves the right to terminate the Service immediately without notice or to assess additional charges for each month in which excessive usage occurred.

**38d. Charges & Payments.** In addition to the charges specified in the Agreement or Service Order, Customer may also incur usage based service and third party service provider charges that are separate and apart from the amounts charged by Midco for Service. These charges may be billed monthly in arrears and may include, without limitation, calls to parties who charge for their telephone-based services, per-call charges (e.g., operator services) and measured call charges (e.g., international calls). Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility.

**38e. Dialing & Routing.** Telephone Service may require 10-digit dialing for local calling in certain markets. Telephone Service may not be used to terminate traffic as a local call when the originating portion of the call occurred from the Public Switched Telephone Network (“PSTN”) as a local call and occurred outside the local calling area associated with the Telephone Service.

**38f. Third Party Services.** If Customer orders a Service that requires or Midco elects to obtain from a third party (“Third Party Provider”) on behalf of Customer, Midco shall procure the required Services subject to the following: (a) the Services will function and perform in accordance with the service level obligations provided by the Third Party Provider to Midco, (b) any rights, remedies or other service-specific terms that Customer may have or be entitled to under Service are limited to the same terms that Midco has in place with the Third Party Provider; (c) the costs for the Third Party Service will be incorporated into the MRC and NRC set forth in the applicable Service Order, and (d) if Customer cancels or terminates any Service which includes a Third party Service prior to the conclusion of the applicable Term, then Customer will pay any and all termination charges applicable under this Agreement plus any and all cancellation and/or early termination charges incurred by Midco.

**38g. E911 Service.** (a) Midco Telephone Service provides access to police, fire and rescue services through E911. The E911 service automatically provides the address Customer registers with Midco to the local E911 dispatcher when calls are made to 911 and permits the local dispatcher to call back if necessary. Midco has engineered its service to comply with the telephone industry standards for reliability and access to E911. This includes backup power for Midco’s telephone network and monitoring to provide additional backup for longer outages. As with any other phone service provider, Midco Telephone Service, including 911 calls and E911 service, will be unavailable if the lines between Customer’s Service Location and the network switch are disabled due to a catastrophic condition, such as a storm, or other event outside Midco’s control and E911 service may also be unavailable due to problems at the government’s call center that are outside Midco’s control. Customer’s telephone modem includes a battery backup that is designed to ensure the unit will continue to work during a power outage, in accordance with telephone industry standards. As long as this battery backup unit is charged and functioning, Midco Telephone Service will continue to work, but customers may not be able to make calls, including 911 calls, if there is a power outage for an extended period of time. (b) The telephone modem for Midco Telephone Service is set up to provide service to the address Customer provided at the time of service initiation, and will not work if it is moved outside the local Midco Telephone network. The equipment may not be moved to another location unless Customer first contacts Midco Customer Service at 800-888-1300, or via email to [mccomm@midco.net](mailto:mccomm@midco.net), so that Midco can change the address to reflect the new location and ensure that the right information is provided for any call to 911. Changes in location information will not be available to E911 operators immediately because of limitations in the process for updating that information. If the telephone modem is moved prior to informing Midco, it may be possible to call 911 but E911 service will not work properly. It will be considered a material violation of this Agreement if Customer moves the telephone modem to another location without first notifying Midco.

**38h. Ownership of Telephone Numbers.** Customer acknowledges that use of Service does not give it any ownership or other rights in any telephone number provided.

**38i. Customer Proprietary Network Information (CPNI).** In the course of providing Service to Customer, Midco collects information concerning the use of the Service. This information is known as “Customer Proprietary Network Information” or “CPNI.” CPNI includes any information on the quantity, technical configuration, type, destination, location and amount of use of Service that Midco obtains as the telephone carrier. It does not

include names and telephone numbers published in telephone directories or information Midco obtains as a result of providing video or Internet Service. Midco uses CPNI to monitor the quality of the Service provided and to prepare billing statements. Midco also uses CPNI to market services and equipment to customers, including telephone service and Internet access, as well as to provide Customer with Service related notifications. Midco shares CPNI with companies that provide billing and other services that Midco utilizes to offer telephone Service, and with companies that are affiliated with Midco. Companies not affiliated with Midco are required to enter into agreements to protect the confidentiality of Customer information. Customer has a right, and Midco has a duty, under federal law to protect the confidentiality of CPNI. Midco has the right under federal law to use Customer’s CPNI to provide telephone Service, generate billing statements, market other services related to the Services Customer is already receiving, protect Midco facilities and property and in response to lawful demands from law enforcement agencies. Customer has the right to disapprove of Midco’s use of CPNI for marketing services other than those that are related to Services Customer is already receiving from Midco and to withdraw access to CPNI at any time. Withdrawing access to CPNI will not affect Midco’s ability to provide telephone Service to Customer, or the quality of the service provided. However, if access to CPNI is withdrawn, it may be more difficult for Midco to assist Customer in purchasing the most cost-effective Service package. If Customer does not wish to allow us to use Customer’s CPNI for marketing services other than those that are related to Services already provided, Customer can send a written notice at any time to the following address: Attn: CPNI Opt Out, Midco Communications, P.O. Box 5010, Sioux Falls, South Dakota, 57117. The request must state that Customer wants to deny access to CPNI, and include account number, list of all telephone numbers to be covered with the request and be signed by an authorized party on the account. In accordance with Federal Communications Commission (FCC) rules, if Customer does not make a request to limit or disallow use of Customer’s CPNI within thirty (30) days of this notice, Midco will assume that Customer wishes to allow Midco to use Customer’s CPNI until Customer provides notice otherwise. Additional CPNI information can be found and may be updated from time to time on Midco’s website at [www.midcocomm.com](http://www.midcocomm.com). In the event of a conflict or inconsistency between the CPNI information in this Agreement and the CPNI information published on Midco’s website, the terms posted on Midco’s website shall control.

**38j. Access to Call Records.** The FCC has established regulations governing the records Midco retains about the telephone calls Customer makes on Midco’s network. These regulations specify when Midco can have discussions with customers regarding their call records. Midco is required to ensure that the communication is with the account holder or a person authorized to receive information regarding the account before Midco can release call record data. A call record is any information regarding a telephone call made to another party. Call records include specific information regarding telephone usage, such as: telephone numbers called, city and/or state, call duration, and date and time. If an authorized account user can provide the call detail, Midco can continue with the conversation as long as the caller has been authenticated. Midco can discuss only calls for which details have been provided. Midco cannot discuss or bring up any other call records during the conversation. If call detail cannot be provided, Midco is required to: arrange a time to call Customer or authorized account user, at the telephone number on the account; mail information to the address on the account; or provide the information to Customer if Customer can produce a photo ID at a Customer Service Center. Additional CPNI and privacy policy information can be found and may be updated to from time to time at [www.midcocomm.com](http://www.midcocomm.com). In the event of a conflict or inconsistency between the Call Record information in this Agreement and the Call Record information published on Midco’s website, the terms posted on Midco’s website shall control.

**38k. Unauthorized Access and Use.** Midco shall not be liable for any damages, including charges for Service under this Agreement that Customer may incur as a result of unauthorized use or misuse of the Service by Customer's employees, customers, contractors, agents, other third parties, or the public. Customer is responsible for all charges incurred on or through Service, including but not limited to charges incurred due to fraud, abuse, or misuse of services, whether known or unknown, and whether or not Midco takes any actions to stop or block the activity. Customer is

responsible for the access to and security of any Customer Equipment related to Service. Midco does not warrant or guarantee that it can prevent unauthorized use or misuse.

**38l. Non-Supported Equipment.** Certain equipment, particularly analog data devices, may not function properly when used in conjunction with the Telephone Service. Verification of compatibility may be required prior to the commencement of Service.

## TERMS AND CONDITIONS APPLICABLE TO ALL INTERNET AND DATA SERVICES

**39a. Services Warranty.** Each level of Service has limits on the maximum throughput rate at which Customer may send and receive data at any time.

**39b. Acceptance Testing.** Upon completion of installation, testing and activation of each Service, Midco shall notify Customer that such Service is installed and functioning properly for Customer's use. Customer may, in its discretion, conduct any reasonable tests of the Service within five (5) business days after receipt of such notice (except as another timeframe is agreed to by the Parties under the applicable Service Order) to confirm that the Service has been installed and is functioning properly. Unless Customer transmits written notice to Midco within such five (5) business day period (or such other time period in the applicable Service Order) that the Service is not installed and functioning properly, Customer shall be deemed to have accepted the Services as of the end of such five (5) business day period. In the event Customer notifies Midco within the time period stated above that the Service is not installed and functioning properly, then Midco shall, within five (5) business days after receipt of such notice, (a) commence efforts to correct any deficiencies to ensure that the Service is installed and functioning properly and deliver a new Service activation notice to Customer, or (b) confirm that the Service is correctly installed and functioning properly (along with supporting documentation). The procedure described above shall be repeated until the Customer expressly accepts such Services or is deemed to have accepted such Services as described herein. In the event Midco confirms proper installation and functionality of the Service in accordance with this Section, then the Service will be deemed accepted as of the fifth day following Midco's original installation notice and any further failure or refusal on the part of Customer to be ready to receive the Services shall neither relieve Customer of its obligation to pay the applicable Charges and fees, nor constitute a breach or default under this Agreement by Midco. Acceptance of the Service by Customer pursuant to this Section shall not be deemed a waiver of any rights Customer may have with respect to the availability, serviceability, performance, operation or other attributes of the Service that are described elsewhere within this Agreement or the associated Service Order. Rates and charges for Service shall be set forth in the respective Service Order. Charges for additional services required for installation or use of such Services shall also be set forth on the applicable Service Order as agreed by the Parties. Billing to Customer for recurring charges with respect to Service will commence on the date on which Customer accepts or is deemed to have accepted such Services in accordance with this Section, or as otherwise stated in the Service Order. Non-recurring charges may be billed at the times designated by Midco.

**39c. Demarcation Point.** The Demarcation Point shall be the point of interconnection between the Service and Customer's provided equipment located at a Service Location. In some cases the Demarcation Point shall be the User to Network Interface (UNI) port on Midco Equipment at a Service Location.

**39d. User Responsibility.** In order to utilize the Service provided by Midco, the Customer will need certain computer network equipment. It will be the responsibility of Customer to provide, operate, and maintain, all at

Customer's expense, all such necessary computer network equipment. The Customer shall also be responsible for security related to the Customer's use of and access to the Service. No user access security will be provided by Midco. Midco shall not be liable in any manner to the Customer for Midco's failure or inability to detect or identify security breaches. Customer agrees to comply with Midco's Acceptable Use Policy; as such policy may be modified from time to time. The Midco Acceptable Use Policy can be accessed through the Midco website at [www.midco.net](http://www.midco.net). Customer shall not use the Service to provide access to online services that Customer hosts on Customer's computer system or to provide electronic services of any nature to any third party.

**39e. Charges & Payments.** In addition to the charges specified in the Agreement or Service Order, Customer may also incur charges for usage based services and from third party service providers that are separate and apart from the amounts charged by Midco for Service. These charges may be billed monthly in arrears and may include, without limitation, purchasing or subscribing to other offerings via the Internet. 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.

**39f. Unauthorized Use.** Midco does not warrant or guarantee that it can prevent unauthorized use or misuse. Midco shall not be liable for any damages, including charges for Service under this Agreement that Customer may incur as a result of unauthorized use or misuse of the Service by Customer's employees, customers, contractors, agents, other third parties, or the public. Customer will remain responsible for all charges.

**39g. Network Integrity.** If Midco determines in its sole discretion that action is necessary to protect its network and/or resources, Midco may take actions it determines appropriate, including: circuit blocking, port blocking, email virus scanning, denying email access or transmission, and putting limits on bandwidth and email usage. The Parties further agree that none of their respective obligations to one another under the Agreement will be affected by any such action and no Party will have any obligation to the other Party for any claim, judgment or liability resulting from such action. Unless the circuit block was prompted and necessary due to Customer's action or inaction, Customer will be relieved of all obligations to make payments for charges relating to Service for the period of the circuit blockage.

**39h. Equipment Network Addresses.** In order to use the Service, Midco will provide to the Customer a non-portable TCP/IP network address(es). IP address space is a finite resource that is an essential requirement for all Internet access services. Midco may provide Customer with routable IP addresses. Customer may be required to provide documented justification to receive any routable IP addresses. Any pre-existing Customer network address(es) may not be routable on the Midco network due to Midco network configuration.

## TERMS AND CONDITIONS APPLICABLE TO BUSINESS INTERNET SERVICE

**40a. Services Warranty.** The throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation: the number of users and/or computer stations using a single connection; computer, router and firewall configurations; Internet network congestion; time of day; and the accessed website servers. Customer also understands that the general reliability of the Internet, connections to and from the Internet and connections to and from the Midco Internet server ("Host") may be controlled by factors beyond the control of Midco. As a result, Midco makes no representation regarding the speed of the Business Internet Service as actual speeds may vary and are not guaranteed. Midco cannot guarantee that the provision of the Business Internet Service will be uninterrupted, the Customer will be able to properly access and use the Business Internet Service, or the Business Internet Service will be provided without error. Once Midco has been informed that the Business Internet Service has been interrupted, or the Customer has not been able to access or use the Business Internet Service, or there is an error in the Business Internet Service, then Midco warrants that it will take reasonable efforts to correct such problem or error as soon as possible. THE ABOVE SERVICE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**40b. Email Accounts.** Midco may provide email accounts as part of the ordered Service. Any email account that is inactive for six (6) consecutive months will be deleted. Any email within an inactive email account will be deleted without inspection along with the email account. Once deleted, the email address associated with the email account will become available for assignment to other customers. An email account is inactive if it has not been checked in six (6) months, does not have an email forward associated with it and is not the primary login. Midco is not responsible for any loss of any kind because of the deletion of email accounts or email messages.

**40c. Internet Domain Names.** The Service described in the Service Order may include certain Internet domain name registration and maintenance services. Customer acknowledges that such services do not include any research or determination of any sort regarding whether Customer's selection of a domain name will infringe, dilute, or otherwise violate the scope of any third party's rights in a trademark, any other type of mark, trade name, or personal or legal entity name. Customer agrees to assume any and all risks associated with Customer's selection of an Internet domain name. Customer may wish to consult an attorney familiar with copyright law, trademark law and the Internet domain name registration process prior to selecting an Internet domain name.

## TERMS AND CONDITIONS APPLICABLE TO FIBER INTERNET SERVICE

**41a. Services Warranty.** Each level of Service has limits on the maximum throughput rate at which Customer may send and receive data at any time. Customer's access to the Internet is not shared with other users and will be delivered to the Demarcation Point at the rate specified by the Service. However, once packet traffic passes the Demarcation Point out to the Internet, the throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation: the number of users and/or computer stations using a single connection; computer, router and firewall configurations; Internet network congestion; time of day; and the accessed website servers. THE ABOVE SERVICE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**41b. Off-Net Services.** Off-Net Services may be provided to a Service Location under this Agreement that is outside of Midco's service area and/or a Service Location that is within Midco's service area but that is not readily accessible by Midco's network facilities. Customer understands and agrees that Midco, upon entering into a Service Order with Customer may, at Midco's discretion, utilize Off-Net Services to deliver the Service. All Off-Net Services are provided by third party service providers and may be subject to additional terms and conditions. For Off-Net Services, the length of Term for Service at a particular Service Location will match the term Midco is able to secure with the Off-Net service provider. Fees for

Off-Net services will include the cost of the Service, any fees imposed by the Off-Net provider, taxes, fees as well as any administrative or overhead expenses. Fees and expenses for Off-Net Services may change without notice. Maintenance of Off-Net Services is outside of Midco's control and maintenance outages may occur without notice. In the event Customer terminates Off-Net Services following Midco's acceptance of the applicable Service Order but prior to the end of the applicable Term, Customer shall pay termination fees equal to one hundred percent (100%) of the monthly recurring charges remaining through the end of the term plus one hundred percent (100%) of any remaining, unpaid installation fees. Customer shall also pay any third party service provider ancillary fees incurred by Midco due to the early termination of Service by Customer.

**41c. Internet Domain Names.** The Service described in the Service Order may include certain Internet domain name registration and maintenance services. Customer acknowledges that such services do not include any research or determination of any sort regarding whether Customer's selection of a domain name will infringe, dilute, or otherwise violate the scope of any third party's rights in a trademark, any other type of mark, trade name, or personal or legal entity name. Customer agrees to assume any and all risks associated with Customer's selection of an Internet domain name. Customer may wish to consult an attorney familiar with copyright law, trademark law and the Internet domain name registration process prior to selecting an Internet domain name.



**42a. Services Warranty.** Midco guarantees Service performance to the Demarcation Point. Equipment installed on Customer's side of the Demarcation Point can and may affect performance of the Service. Midco makes no representation regarding the performance of Service on Customer's side of the network. THE ABOVE SERVICE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**42b. Off-Net Services.** Off-Net Services may be provided to a Service Location under this Agreement that is outside of Midco's service area and/or a Service Location that is within Midco's service area but that is not readily accessible by Midco's network facilities. Customer understands and agrees that Midco, upon entering into a Service Order with Customer may, at Midco's discretion, utilize Off-Net Services to deliver the Service. All Off-Net Services are provided by third party service providers and may be subject to additional terms and conditions. For Off-Net Services, the length of Term for Service at a particular Service Location will match the term Midco is able to secure with the Off-Net service provider. Fees for

Off-Net services will include the cost of the Service, any fees imposed by the Off-Net provider, taxes, fees as well as any administrative or overhead expenses. Fees and expenses for Off-Net Services may change without notice. Maintenance of Off-Net Services is outside of Midco's control and maintenance outages may occur without notice. In the event Customer terminates Service at a Service Location where Off-Net Services are being provided following Midco's acceptance of the applicable Service Order but prior to the end of the applicable Term, Customer shall pay termination fees equal to one hundred percent (100%) of the monthly recurring charges remaining through the end of the term plus one hundred percent (100%) of any remaining, unpaid installation fees. Customer shall also pay any third party service provider ancillary fees incurred by Midco due to the early termination of Service by Customer.

**42c. Online Reporting.** Midco may provide Customer with a password-protected web portal to access online real time performance data regarding the circuit and reports containing historical network traffic information. Reports may vary based upon the Service.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly respective authorized representatives as of the Effective Date.

Customer Name: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Midco Rep: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Internal Use: MSA Number: \_\_\_\_\_

Midco is an Equal Opportunity/Affirmative Action employer. M/F/D/V