

Terms & Conditions

In the absence of a separate master services agreement between BCN Telecom, Inc. (“Company”) and its customer (“Customer”), these terms and conditions shall serve as the master services agreement (“Agreement”) made and entered into by and between Company, located at 1200 Mount Kemble Avenue, Morristown, New Jersey 07960 and its Customer. Customer has, and is deemed to have, accepted to be bound by this Agreement, including all terms and documents incorporated herein or therein by reference on the Effective Date. This Agreement may also refer to Company and Customer as a “Party,” or collectively as the “Parties.”

THIS AGREEMENT IS AVAILABLE ON COMPANY’S WEBSITE AND MAY BE MODIFIED BY COMPANY AT ANY TIME IN ITS SOLE AND ABSOLUTE DISCRETION, INCLUDING WITHOUT LIMITATION AS REQUIRED BY RULE, LAW OR REGULATION. ALL CHANGES TO THIS AGREEMENT BY COMPANY SHALL BE EFFECTIVE AND BINDING ON CUSTOMER ON THE DATE THAT SUCH CHANGES ARE POSTED ON COMPANY’S WEBSITE. NO CHANGES MADE BY COMPANY TO THIS AGREEMENT SHALL CONSTITUTE A BREACH BY COMPANY OR ALLOW FOR CUSTOMER’S TERMINATION OF THE AGREEMENT AND/OR SERVICES.

1. DEFINITIONS (Terms with initial caps not otherwise defined herein shall have the meanings ascribed in this Agreement.)

1.0 Affiliate: Affiliate means, with respect to either Company or Customer, any other entity which controls, is controlled by, or is under common control with the Company or Customer. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of Company or Customer management and policies, whether through the ownership of voting securities, by contract, or otherwise.

1.1 Communications Facilities: Facilities the Company is willing to specially construct or otherwise acquire in order to provide Service(s) to the Customer.

1.2 Effective Date: The earlier of the date that: (a) Customer submits a Service Request, (b) Customer executes this Agreement and/or the Subscription Agreement(s), (c) Equipment is shipped and/or installed, and/or (d) Services are utilized by Customer.

1.3 End User or User: Any person or entity that receives or uses Company’s Service provided to the Customer, irrespective of whether such person or entity is authorized by the Customer to use Service.

1.4 Equipment: Equipment managed, unmanaged, and/or provided directly or indirectly by or on behalf of Company for the set-up, installation and/or provision of Service.

1.5 Individual Case Basis: A Service arrangement in which service rate, charges or terms and conditions are non-standard and based on the specific requirements of the Customer.

1.6 Internet Access Services: All Services which use the public internet.

1.7 Network: The telecommunications network of Company or Customer, as the context of the provision requires or as contemplated.

1.8 Non-recurring Charges: One-time charges for Equipment and/or Service including, but not limited to, charges for specially constructed Communications Facilities, inside wiring charges, Service installation charges, Service activation charges, expedite charges or any other one-time charges pursuant to this Agreement or Subscription Agreements.

- 1.9** Payment Deadline: The Payment Deadline is fifteen (15) calendar days from the date of invoice.
- 1.10** Recurring Charges: Periodic recurring charges covering the monthly, quarterly, semi-annual, annual or such other service periods as the Parties may agree for Services. This Agreement refers to monthly Recurring Charges as either “Monthly Recurring Charges” or “MRCs”.
- 1.11** Regulatory Authorities: Federal, state, or local regulatory authorities, legislative bodies, quasi-regulatory authorities, governmental entities, or courts of competent jurisdiction.
- 1.12** Service or Services: A service, product and/or Equipment offered and provided to Customer by the Company.
- 1.13** Service Request: A Customer’s request made on a Company order form or otherwise for among other things, a particular Service and/or Equipment to be furnished at a designated location.
- 1.14** Service Term Agreement (“STA”) and Letter of Authorization (“LOA”): That part of the Subscription Agreements that are executed and entered into by the Customer and, among other things, accommodates the implementation of subsequent Service Requests.
- 1.15** Subscriber Service Agreement (“SSA”): That part of the Subscription Agreement executed by the Customer and, among other things, identifies the Service to be furnished and the location(s) at which that Service is to be provided.
- 1.16** Subscription Agreements: The SSA, LOA, STA, SPSS, and any and all Service Requests that are accepted by Company, in its sole absolute discretion, are referred to collectively as the “Subscription Agreements”.
- 1.17** Supplemental Product and Service Specific Terms and Conditions (“SPSS”): Terms and conditions additional to these general terms and conditions contained in this Agreement that apply to a specific Service and/or Equipment ordered or used by a Customer.
- 1.18** Start of Service Date: The earlier of the date the Company notifies a Customer that Service is available for use by Customer, the date when Customer begins utilizing the Service, or some other date mutually agreed in writing by the Parties. If the Start of Service Date is based upon the date that the Company notifies Customer that Service is available for use, then Customer has two (2) business days to test the applicable Service and notify Company of any deficiency or Customer shall be deemed to have accepted the Service as of the notification date.
- 1.19** United States: The 48 contiguous states and the District of Columbia, Hawaii, Alaska, Puerto Rico, the US Virgin Islands, as well as the off-shore areas outside the boundaries of the coastal states of the 48 contiguous states to the extent that such areas appertain to and are subject to the jurisdiction and control of the United States.
- 1.20** Usage Charges: Usage Charges generally consist of metered Services billed in arrears.

2. AGREEMENT FOR SERVICES AND EQUIPMENT

- 2.1** General. The Services and Equipment offered and provided to Customer by Company and/or its Affiliates are governed by this Agreement together, as applicable, with the Subscription Agreements, and the Company’s Acceptable Use Policies (“AUP”). The Parties incorporate all Subscription Agreements and the AUP by reference as if set forth in full within this Agreement. Customer may at any time request additional Service(s) from Company, which Company, in its sole and absolute discretion, may agree to provide pursuant to this Agreement and applicable Subscription Agreements.
- 2.2** Interpretation. In the event of an inconsistency between a term or condition contained in any component document(s) comprising this Agreement (but only to the extent of the inconsistency), including any incorporated attachments, appendices, exhibits or other documents, the order of precedence, from the most to the least controlling, shall be: (1) SPSS, including Exhibits, if any; (2) any mutually agreed upon SSA, LOA, STA or Addenda thereto, properly executed by both Company and Customer; (3) this Agreement; (4) AUP; and (5) the privacy policy found on Company’s website.

2.3 Equipment.

2.3.1 Title and Risk of Loss. Risk of loss for Equipment shall pass to Customer upon delivery of the Equipment to the shipping address provided by Customer. Customer is responsible for providing a complete and accurate shipping address to Company. Notwithstanding that Equipment may be or become attached or affixed to real property, title to Equipment shall remain at all times solely with Company. Customer shall not take any action that would directly or indirectly impair Company's title to the Equipment, including, but not limited to, allowing any claim, lien, encumbrance or other legal process.

2.3.2 Installation, Maintenance and Removal. Customer shall grant Company, its employees, contractors, agents and/or the ultimate network service provider access during normal business hours at each location where Service is to be provided and as otherwise reasonably requested by Company to install, maintain, repair, replace and/or remove any and all Equipment. The minimum point of entry for Service delivery shall be determined solely by Company's and/or its underlying carriers or vendors, as applicable. Customer is solely responsible for timely providing, at Customer's sole cost and expense, at each location where Service is to be provided, adequate facilities for the Equipment's intended use and the primary power source for the Equipment, and a failure to provide said facilities and/or primary power source within ten (10) business days' notice may result in Customer incurring cancellation or other charges, including but not limited to, an Early Termination Charge, as stipulated in said notice. Customer shall not (and shall not allow others to) move, remove, disconnect, or otherwise tamper with Equipment. Customer shall maintain all Equipment provided by Company to Customer in good working condition, ordinary wear and tear excepted, and shall return said Equipment to Company, at Customer's cost and expense, within ten (10) business days of the earlier of: (a) Company's replacing or upgrading of the Equipment; (b) suspension of Services; or, (c) termination of the Services. Except for ordinary wear and tear, Customer is solely responsible for all: (a) repair or replacement costs of Equipment; and, (b) return and/or expedited shipping costs related to the Equipment. Any Equipment not timely returned or damaged shall be deemed to have been duly purchased by Customer and Customer agrees to pay Company the greater of the original cost of such Equipment or the replacement cost of the Equipment.

2.3.3 Security Interest. Company may in certain circumstances, but is not obligated to, file a financing statement or other documentation to create a security interest in the Equipment. Customer shall, upon request, execute any and all documentation reasonably required by Company to create said security interest in Equipment.

2.4 Acceptance. Customer agrees that Customer has accepted and is bound by the terms of the Agreement, Subscription Agreements, as applicable, and AUP as of the Effective Date.

3. **SERVICE TERM, RENEWAL, AND CANCELLATION**

3.1 Service Term and Renewal. The initial term of Service shall be as set forth in the STA and other Subscription Agreement documents (the "Initial Service Term") and shall begin on the Start of Service Date for each Service activated under the Agreement. If the Subscription Agreements fail to identify an Initial Service Term then the initial term of Service shall be one (1) year from the Start of Service Date. Upon completion of the Initial Service Term, this Agreement and Service(s) provided pursuant hereto shall automatically continue in full force and effect on a month-to-month basis ("Monthly Service Term"). The Parties may mutually agree in writing to enter into an additional term (the "Renewal Service Term") for the Services at the completion of the Initial Service Term. (The Initial Service Term, Monthly Service Term(s) and Renewal Service Term(s) are collectively referred to as the "Service Term").

3.2 Cancellation by Customer

3.2.1 Cancellation for Cause by Customer following the Start of Service Date. Customer may cancel an affected Service at an affected location following the Start of Service Date if Company breaches or fails to perform material obligations of the Agreement materially impacting Company's delivery of such affected Service at an affected location and such material breach remains uncured for a period of thirty (30) calendar days after Company receives written notice of such material breach from the Customer. In the event of a Service cancellation under this Section 3.2.1, Customer shall have no further liability or obligation for payment of the affected Services at the affected location beyond the date of disconnection for such affected Service at the affected location.

3.2.2 Cancellation Without Cause by Customer.

3.2.2.1 Cancellation by Customer at the Conclusion of a Service Term. Following completion of the Service Term, the Customer may cancel or request disconnection of a Service with a minimum of thirty (30) days advance written notice but not more than sixty (60) days advance written notice to the Company, without incurring an Early Termination Charge relating to the cancelled or disconnected Service. In the event Customer elects to cancel or disconnect Service(s) under this Section 3.2.2.1, Customer will continue to be invoiced for such Service(s) through the latter of (a) the date that the Service disconnection or cancellation is completed, or (b) the date the Customer ceases using the Service.

3.2.2.2 Cancellation/Change by Customer Before Start of Service Date. If Customer, without any express right to do so, cancels, changes, or breaches this Agreement and/or the Subscription Agreements after the Effective Date but prior to the Start of Service Date, Customer shall pay Company a cancellation or change charge in an amount equal to the total of the Early Termination Charges, any Special Construction Charges and any applicable Non-recurring Charges.

3.2.2.3 Customer Default/Cancellation by Customer After Start of Service Date. Except as required by rule, law or regulation, in the event the Customer fails to pay any amount required under this Agreement by the Payment Deadline, the Company may suspend or cancel any and all Service provided by Company to Customer pursuant to this Agreement or any Subscription Agreements, if payment is not received from Customer within the period established in a notice of Service suspension/cancellation for nonpayment communicated to the Customer. Customer shall be responsible for any Early Termination Charge which may be incurred as a result of Service cancellation due to nonpayment as well as any outstanding unrecovered Special Construction Charges. If Company suspends or terminates for nonpayment, Company may assess reconnect fees and/or require Customer to pay a deposit prior to any reconnection of the Service. Customer agrees that with respect to any termination or planned termination for the nonpayment of monies due and owing Company: (i) such action would not result in irreparable harm to Customer; and (ii) Customer's remedies shall be limited to those provided in this Agreement.

3.2.2.4 Early Termination Charges as Liquidated Damages.

3.2.2.4.1 Early Termination Charge. In the event the Customer cancels or disconnects a Service either (a) following the Effective Date but prior to the Start of Service Date or (b) during the period of time covered by the Initial Service Term or a Renewal Service Term for such Service: Customer will be required to pay, in addition to all other amounts due and owing Company, including, but not limited, any and all actual expenses incurred by Company to purchase, activate, install and/or uninstall the Services and/or Equipment, including but not limited to any outstanding unrecovered Special Construction Charges, an early termination charge equal to one-hundred percent (100%) of any Monthly Recurring Charges that is or would be due for the cancelled or disconnected Service for the Service Term (regardless if the Service Term has commenced) less any invoice for Monthly Recurring Charges already paid by Customer (the "Early Termination Charge"). In addition, an Early Termination Charge will apply if: (i) the Company discontinues the furnishing of Service pursuant to Sections 3.2.2.2, 3.2.2.3, or 3.3, or (ii) Customer terminates Service, in whole or in part, for its convenience other than per Section 3.2.2.1. Early Termination Charges shall be immediately due and payable upon Customer's receipt of a Company invoice containing such charges.

3.2.2.4.2 Liquidated Damages. The Parties agree that the Company's damages in the event of a Services and/or Equipment change, cancellation or termination under Sections 3.2.2.2, 3.2.2.3 or 3.3 would be difficult or impossible to ascertain and, therefore, the Early Termination Charge and other cancellation charges stipulated in this Agreement serve as liquidated damages rather than penalties.

3.2.3 Notwithstanding Section 2.2 above, this Section 3.2 shall control in the event of an inconsistency between this Section 3.2 and the STA.

3.3 Discontinuance for Cause by Company

3.3.1 Fraud or Other Threats. The Company, without notice and without incurring any liability, may discontinue the furnishing of Service if it determines such action is necessary to (i) prevent or protect against fraud, scams, tampering, schemes, false or invalid numbers, false credit devices, software or electronic devices, including, but not limited to auto-dialer or other automated call generator technologies, or any other fraudulent means or devices, and/or (ii) protect its personnel, agents, networks, facilities or services.

3.3.2 Unlawful Use, Unauthorized Use or Violation of AUP. The Company may discontinue or suspend the furnishing of Service with or without notice, and without incurring any liability when it deems it necessary in its sole and absolute discretion, to take such action to prevent: unlawful use; unauthorized use; or any other use in violation of an AUP.

3.3.3 Breach, Misrepresentation or Insolvency. The Company, with notice and without incurring any liability, may discontinue the furnishing of Service if: (a) the Customer fails or refuses to furnish information regarding the Customer's creditworthiness or its past or current use of Company Services; (b) the Customer provides false information to the Company regarding the Customer's identity, address, creditworthiness, past or current use of Service; (c) the Customer indicates it will not comply with a request for security for the payment for Service or will not pay any amounts due and owing the Company; or (d) if Customer becomes insolvent, makes assignments for the benefit of creditors, files for bankruptcy or reorganization, or fails to discharge an involuntary petition for bankruptcy within the time permitted by law.

3.3.4 Customer's Obligation to Pay. The discontinuance of Service pursuant to this Section 3.3 will not relieve the Customer of its obligation to pay the Company for Service furnished up to the time of discontinuance. If Service is discontinued by the Company for cause before the Customer has fulfilled its Service Term, Customer will be obligated to pay the Company as if Customer had terminated Service for its convenience and shall be subject to any resulting Early Termination Charge.

4. BILLING AND PAYMENT ARRANGEMENTS

- 4.1 General.** Customer shall pay Company for Services, at the applicable rates, including all Recurring, Non-recurring and Usage Charges and such other charges as may be established from time-to-time by the Company. Recurring Charges are generally fixed in amount, not dependent on usage, and billed in advance. When Service commences other than on the first day of a monthly billing period or terminates on other than the last day of a monthly billing period, the charge for Service will be determined by prorating the monthly Recurring Charge by the number of days that Service was furnished during the monthly billing period. Non-recurring Charges are due and payable on the Start of Service Date or as otherwise billed by the Company. Usage Charges are billed in arrears. Service requested by Customer via the Subscription Agreements shall identify the type and quantities of Service desired, the location(s) at which Service is to be provided, the requested term of Service and such other information required by the Company to provision and invoice Service.
- 4.2 Payment Methods.** Customer payments for Service shall be made in US Dollars, either by check or by wire transfer, in accordance with instructions provided by the Company, unless the Company expressly authorizes some other payment method. Restrictive endorsements or statements appearing on checks shall not be binding on Company.
- 4.3 Rates.** The rates and charges for Service shall be as established in the Subscription Agreements. The Company reserves the right to modify the applicable rates and charges on not less than thirty (30) days prior written notice to Customer. The notice shall include the new rates and the date such rates will become effective. In the event Company increases Customer's rates charged for a Service during the Service Term, upon written notice to Company the Customer shall have the right to disconnect or cancel the affected Service(s) at the affected location(s) within sixty (60) days receipt of said rate increase notice without incurring any Early Termination Charge relating to such disconnection or cancellation.
- 4.4 Service Start Date; Invoicing; and Payment Deadline.** Company will use commercially reasonable efforts to notify Customer upon completing Service provisioning and the Service is available for use. Customer's obligation to pay for Service shall begin on the Start of Service Date. Service invoicing will occur on a monthly basis. All invoices are due and payable within the Payment Deadline.

- 4.5** Special Construction or Acquisition. Notwithstanding anything to the contrary in this Agreement, if Company undertakes special facilities construction costs to provide Service to Customer ("Special Construction Charges"), and the costs are not included in the MRC for the affected Service(s), Company will advise Customer in writing of the estimated cost associated with such Special Construction Charges prior to the undertaking of the activity by Company. If Customer executes and/or otherwise approves an order for Special Construction Charges and thereafter cancels the order prior to the Start of Service Date, or if Customer terminates the Service associated with the Special Construction Charges prior to the expiration of the committed Service Term, Customer must immediately reimburse Company for all unrecovered costs incurred by Company in connection with the Special Construction Charges. This payment obligation is in addition to any other rights and remedies Company may have at law, in equity, or as provided in this Agreement.
- 4.6** Equipment Invoicing and Payment Deadline. Equipment may be invoiced to the Customer as either a separate Non-recurring Charge or as a Recurring Charge in which case it may be incorporated into the Service charges. Customer's obligation to pay for Equipment shall begin on the date that the Equipment is shipped to Customer and shall be due and owing within the Payment Deadline. Customer shall be responsible for all return and/or expedited shipping costs of Equipment. Customer is not alleviated from its payment obligation for the Equipment and related charges if Customer, directly or indirectly, provides an incorrect shipping address and/or fails to provide adequate facilities for the Equipment.
- 4.7** False Callout/NTF Charges. Company may invoice Customer a dispatch charge for repair or other Service-related work performed by a Company technician or its suppliers at Customer or End User Premises when: (1) no trouble is found ("NTF") by the technician; or (2) the cause of any Service deficiency was not due to Company or was caused by the Customer premise equipment or facilities.
- 4.8** Set-up, Installation and Disconnect Fees. Customer agrees and shall pay all applicable set-up, installation and disconnect fees, which will be invoiced on a Non-Recurring Charge basis and are non-refundable. The schedule of installation fees contemplates installations in standard locations, including, but not limited to the minimum point of entry for Service, as determined solely by BCN and/or its underlying carriers or vendors, as applicable, under normal working conditions during regular business hours. Any installations under other circumstances including, but not limited to, installations in hazardous locations or made on an expedited basis outside of standard installation intervals will be subject to: (a) approval by Company and its underlying carriers or vendors, and (b) additional charges.
- 4.9** Regulatory, Compliance, Taxes and Other Charges. Service rates and charges applicable to Customer under this Agreement are subject to the imposition of additional fees, charges, surcharges and/or taxes that result from actions taken by Regulatory Authorities. The Company may: (i) pass through to Customer, in whole or in part, any such fees, charges, surcharges and/or taxes directly or indirectly relating to actions from Regulatory Authorities (except for taxes imposed on the net income of the Company); (ii) modify the fees, rates, charges or other terms and conditions of this Agreement to accommodate the impact of actions from Regulatory Authorities, including, without limitation, actions taken by third parties in response to actions from Regulatory Authorities; and/or (iii) impose discretionary fees and/or charges. Without regard to whether Company passes along the specific charge, or a separate single surcharge due to the fluctuation of such regulatory surcharges, Customer agrees to pay all such surcharges, regulatory fees and/or programs, however designated, imposed on or based upon the provision, sale or use of Services by Regulatory Authorities, and for certain other variable expenses incurred by Company as a result of local, state or federal regulation, including, its payments to government entities and agents and its internal costs of compliance associated with taxes and regulatory fees and/or programs including, but not limited to, 911 or E-911 access, universal service programs, franchise fees, FCC and state regulatory fees, and/or utility, telecommunications, excise or other taxes not recovered by Customer through a separate line item. Please find additional information regarding Company's taxing and other surcharge policies under "Disclosures" at www.bcntele.com.
- 4.10** Billing Disputes. Customer may withhold payment of any reasonably disputed charge in an amount not to exceed the disputed amount if Customer: (1) pays all undisputed charges on or before the Payment Deadline; and (2) notifies the Company in writing of the dispute within ninety (90) days after the date of the invoice on which such charges appear and furnishes with its notification information sufficient to allow the Company to investigate Customer's claim. The Company shall use commercially reasonable efforts to communicate to Customer all dispute resolutions within thirty (30) days of receipt by Company of Customer's claim. Company's communicated resolutions will be deemed to be final and no longer subject to further dispute and any remaining amounts due Company (if any) will be immediately

due and payable. If a disputed amount is determined by the Company to be legitimate, then Customer shall owe late fees pursuant to Section 4.11 below accruing as of the original Payment Deadline. Customer's further remedies shall be limited to those provided in this Agreement or to seeking damages at law pursuant to Section 16.3 below, but in no event will include seeking or obtaining equitable relief in any form in any forum. All invoiced charges shall be deemed to be correct and indisputable ninety (90) days after the date of the invoice on which such charges appear.

- 4.11** Late Payment Fee on Past Due Amounts. Invoices not paid in full by the Payment Deadline will be considered past due and subject to an additional charge equal to the lesser of a 1.5% per month late payment fee or the maximum monthly rate permitted by law on past-due balances.
- 4.12** Recovery of Collection Costs. Unless otherwise prohibited by law, Customer shall reimburse Company for any reasonable and actual third-party costs incurred by the Company in undertaking any collection activity, including, but not limited to, the reimbursement of reasonable attorney's fees.

5. CUSTOMER CREDIT HISTORY; SECURITY DEPOSITS; OTHER ASSURANCES OF PAYMENT

- 5.1** Credit History. Customer agrees to complete Company's credit application as a condition to applying for Service and Company may seek and acquire credit and related Customer information from reporting agencies furnishing such information for the purpose of ascertaining Customer's credit and payment history. Company will use the information acquired to make a determination of the financial conditions pursuant to which it may provide Service to Customer.
- 5.2** Deposits and Other Assurances of Payment. Company may require Customers with an unknown or unacceptable financial condition at any time to provide the Company with a deposit or other financial assurance of payment as a condition of the initial or continued receipt of Service. Company may establish or adjust any financial assurance required by the Company as a result of changing conditions, including Customer's Service usage volumes and patterns. In addition, the Company may require an applicant or Customer to pay Service invoices within a shorter period of time than the standard and to make payments by wire transfer in the equivalent of cash. The Company will pay no interest for the period during which it holds a Customer's cash deposit, unless required by law. The Company may refund a deposit at any time to Customer by crediting it, with accrued interest, against the Customer's account. The Company may refuse to accept a Service Request, cease processing a Service Request, or suspend or terminate Service if Customer refuses or fails to comply with any Company request for a security deposit or other assurance of payment.

6. CUSTOMER OBLIGATIONS

- 6.1** Customer shall adhere to all terms in this Agreement, Subscriptions Agreements, if any, and the AUP. If no executed Agreement or Subscription Agreements for a specific Service and/or Equipment exist, and Customer nevertheless uses the Service and/or the Equipment is either configured, programmed, shipped and/or installed, Customer is deemed to have consented to all terms of the Agreement for such Service and/or Equipment, including the Subscription Agreements and the AUP which are incorporated therein by earlier reference.
- 6.2** Customer shall allow Company, its agents or contractors reasonable access during normal business hours to Customer's premises to facilitate Service and/or Equipment installation, maintenance, testing, repair and termination of Service, including the retrieval of Equipment.
- 6.3** Customer shall not resell or otherwise re-distribute Services which are strictly for use by Customer.
- 6.4** Customer shall not utilize the Services to create a publicly accessed Wi-Fi hotspot outside of Customer's facility without prior written authorization of Company.
- 6.5** Customer shall adhere to all rules, laws and regulations applicable to use of the Services.

7. LIMITATIONS OF SERVICE AVAILABILITY

Service is offered and furnished subject to the availability of all necessary facilities, including, but not limited to, the purchase by the Company of such Network services from other entities. The Network facilities used to provide Service to the Customer will be exclusively at the Company's sole and absolute discretion during the period of time such Services are provided to the Customer. In no event will title to any of the Network facilities or Equipment used to provide Service

vest in the Customer.

The Parties acknowledge that Company's Services will evolve over time and consequently Company or any of its Affiliates may introduce new Services to replace existing Services or cease to offer new instances of a Service in whole or in part (referred to herein as grandfathering). The Parties further acknowledge and agree that Company's offer, provisioning and delivery of Services are subject at all times to the receipt by Company of all required approvals or authorizations from Regulatory Authorities having jurisdiction over the Services or the Company. Accordingly, Company may either modify with substantially similar Services or decommission and terminate Services in its sole and absolute discretion and without incurring any liability upon: (a) not less than sixty (60) days written notice in the event that it generally modifies or decommissions any Services or (b) thirty (30) days notice if either (i) any legal authority, including, but not limited to Regulatory Authorities or (ii) Company's supplier(s) effectuate changes, including but not limited to rules, orders, tariffs or other requirements or modifications, that, in Company's sole and absolute discretion, may materially and adversely affect Company's ability to maintain this Agreement in whole or in part. In the event of a modification, per above, Customer shall be bound by all changes to this Agreement once they become effective. Company may grandfather a Service (or any part thereof) at any time in its sole and absolute discretion. Where available, Company will advise Customer of any alternative service offerings that have comparable technical characteristics. In no event, shall any change(s) to this Agreement under this Section 7 affect the Customer's obligations under any of the Subscription Agreements, provided that Customer shall not incur an Early Termination Charge for Services terminated by Company under this Section 7.

8. WARRANTIES AND STANDARDS FOR SERVICES

The Company represents and warrants that it provisions Services in a professional and workmanlike manner consistent with industry standards and is duly licensed and authorized to provide Services and will remain so licensed and authorized by complying with all applicable Regulatory Authorities rules, laws and requirements. The Customer represents and warrants that it is duly authorized to receive and use Services and will remain so authorized by among other factors complying with all applicable Regulatory Authorities rules, laws and requirements. Company and Customer represent and warrant that each is authorized to enter into this Agreement and perform its obligations thereunder.

9. LIMITATIONS ON LIABILITY. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES ON ITS BEHALF OR ON BEHALF OF ITS UNDERLYING NETWORK PROVIDERS, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, AND/OR EQUIPMENT PROVISIONED UNDER THIS AGREEMENT. THIS EXCLUSION INCLUDES, BUT IS NOT LIMITED TO, ANY EXPRESS, IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS OF SERVICES OR EQUIPMENT FOR A PARTICULAR PURPOSE, UNINTERRUPTED OR ERROR FREE SERVICE, AND/OR NON-INFRINGEMENT OF ANY THIRD-PARTY RIGHTS. THE CUSTOMER ACCEPTS THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 (AND ALL SUBSECTIONS IN THIS SECTION 9) ARE FAIR AND REASONABLE AND APPLY TO ALL CAUSES OF ACTION AND CLAIMS REGARDLESS OF THEIR NATURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY OR TORT. ADDITIONAL WARRANTY LIMITATIONS THAT RELATE TO SPECIFIC PRODUCTS WILL BE SET FORTH IN AN APPLICABLE SPSS.

- 9.1** Even if advised of the possibility of losses or damages, Company and its underlying network providers shall not be liable for any losses or damages resulting from: (a) its provisioning of, inability to provision or deficient performance of Service to Customer, except as set forth in Section 9.3 below; (b) the use of the Service by the Customer; (c) any act or omission of: Customer, those using the Customer's Service or third party entities furnishing products or services used in connection with Service; (d) the loss or destruction of Customer data resulting from the use of Service; or (e) any delay in meeting a scheduled Start of Service Date.
- 9.2** Neither Company nor Customer shall be liable to the other for any indirect, incidental, exemplary, punitive, special, reliance, or other consequential damages of any kind or nature, whether or not foreseeable, including, but not limited to, damages from the loss of data, business goodwill or profits, savings or revenue, harm to business, cost of alternative services or downtime costs, whether under contract, tort (including negligence), strict liability or any other theory of liability. A Party's out-of-pocket costs for damages recovered by a third party shall be deemed to be indirect damages suffered by such Party, except to the extent such damages are part of a claim for which indemnification is due under Section 10. This Section 9.2 does not limit in any form or fashion Customer's payment obligations in Sections 3 and

4 of this Agreement.

- 9.3 The Company's sole liability to Customer for any and all claims arising under this Agreement, including without limitation, breach of contract, breach of warranty, strict liability, negligence, misrepresentation or tort, shall be limited to the credit allowances for Service disruptions expressly provided in this Section 9.3 or in an applicable service level agreement, if any.** Notwithstanding anything to the contrary in this Agreement: (a) all credits are exclusive of any applicable usage charges, taxes or fees for the Services; and (b) a Service disruption is not a default or breach under this Agreement. **In no event shall Company's liability for losses or damages under this Agreement be greater than an amount equal to the sum of the payments, up to twelve (12) months, made by Customer to Company for the disrupted Services provided at each affected location at which losses or damages are claimed.**
- 9.4** The Company shall not be liable to Customer or any third party for Customer's failure to fulfill its obligations, including, without limitation: perform any actions necessary to interconnect Customer or third-party facilities, services, equipment or systems to Services; complete all arrangements necessary to access the service location, install, receive and use Services; timely provide correct information necessary to provision Services; and ensure that Customer or third-party operated/provided facilities, services, equipment or systems interface properly with Services.
- 9.5 Internet Access and Wireless Services.**
- (a) Customer acknowledges and agrees that communications and transactions conducted utilizing Internet Access Services and/or wireless Services may not be secure; that system failures may limit Customer's access to and use of Internet Access Services and/or wireless Services; and that Internet Access Services and/or wireless Services are not guaranteed to be error free. By subscribing to and using Internet Access Services and/or wireless Services, Customer shall hold Company harmless and assumes all risks associated with the use of Internet Access Services and wireless Services.
- (b) Customer acknowledges and agrees that: (1) certain Internet Access Services and wireless Services, including, but not limited to internet based services, such as VoIP, may not function in the same fashion as traditional hardline phone services leading to certain emergency and/or other services, such as 911 or E-911, not operating properly, and (2) Customer may not be routed to the correct emergency services if Customer: (a) has a telephone number that does not match its geographic location, (b) fails to properly register a valid address for the Equipment and/or Services, and/or (c) moves its Equipment and/or Internet Access Services and/or wireless Services, including, but not limited to a telephone, to a different location. Customer is obligated to inform: (a) Company in writing of the physical location of its Equipment and provide written notice of any changes thereto; and (b) all relevant third parties, including, but not limited to, Customer's employees, guests and other third parties who may utilize the Services that emergency services, such as 911 or E-911, may not function properly. Customer is obligated to maintain alternative means of calling or otherwise reaching emergency services. Customer assumes all risks associated with using the Services to reach emergency services, including, but not limited, to 911 and E-911.
- 9.6 Misuse or Unauthorized Use of Service.** The Company shall neither provide credit allowances nor otherwise be liable for the authorized or unauthorized use, misuse or abuse of Customer's Service, including, but not limited to, fraud, by Customer, its agents, employees or any third parties including, without limitation, members of the public. If Company assists the Customer by recommending potential solutions to reduce or eliminate the authorized or unauthorized use of Customer's Service, Company undertakings shall not be deemed to be promises or guarantees by Company that the authorized or unauthorized use of Customer's Service will be reduced or eliminated, and in no event shall Company incur any liability in connection with those undertakings to Customer or any third party. In all instances, Customer shall be responsible for payment of all use of the Service, its facilities, services, Equipment, or systems interconnected with the Company's Service.
- 9.7 Force Majeure Events.** In no event shall either Party have any claim or right against the other Party for any failure of performance due to causes beyond a Party's reasonable control, including, but not limited to: an underlying network provider's inability to deliver the underlying Service, pandemic, epidemic, acts of God, fire, explosion, vandalism, cable cut, storm, flood or other similar occurrences; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over a Party or of any department, agency, commission, bureau, corporation, or other instrumentality of any Regulatory Authorities, or of any civil or military authority; national emergencies; unavailability of materials or

rights-of-way; insurrections; acts of terrorism; riots; wars; strikes; lock-outs, work stoppages or other labor difficulties; or supplier failures, shortages, breaches or delays. Nothing herein shall relieve Customer from its past, current or future payment obligations within the Payment Deadlines to Company, including, but not limited to, payment obligations to Company for Services provided during the force majeure event.

10. INDEMNIFICATION

Except as otherwise expressly provided for in this Agreement:

- 10.1 Company's Indemnification of Customer.** Company will defend and indemnify Customer, its members, employees, directors, officers, partners, contractors, and agents, and their each of their respective successors and assigns, from and against any claim(s), demand(s), lawsuit(s), proceeding(s), judgment(s), damage(s), liabilities and reasonable expenses or other claim brought by an entity (not a Party to or an Affiliate of a Party to this Agreement) that is caused by, arises from, or relates to damage to real or tangible personal property and/or personal injuries (including death) arising out of the gross negligence or willful act or omission of the Company in the provision of Service by the Company.
- 10.2 Customer's Indemnification of Company.** Customer will defend and indemnify the Company, its parent(s), subsidiaries and affiliates, and its and their respective members, employees, directors, officers, partners, contractors, and agents, and their each of their respective successors and assigns, from and against any claim(s), demand(s), lawsuit(s), proceeding(s), judgment(s), damage(s), liabilities and reasonable expenses or other claim(s) brought by an entity (not a Party to or an Affiliate of a Party to this Agreement) that is caused by, arises from, or relates to: (a) damage to real or tangible personal property and/or personal injuries (including death) arising out of the gross negligence or willful act or omission of Customer in the use of the Service; (b) representations by the Customer regarding the nature of Customer's use of Service; (c) use, operation or resale of Service by Customer in contravention of this Agreement, the Subscription Agreements and/or the AUP, including without limitation, claims of unauthorized use of copyright or trademark by Customer; and (d) all types of emergency services, including, but not limited to, 911 or E-911, regardless of whether claims are based in tort, contract, product liability and/or any other theory.
- 10.3 Intellectual Property.** If a Service provided by the Company becomes, or if the Company reasonably believes a Service it is providing may become, the subject of a suit, proceeding or other claim by a third party (not a Party to or an Affiliate of a Party to this Agreement) that the Service directly infringes intellectual property of such third party, the Company shall, at its own expense and option: (a) procure the right for the Company to continue to provide the Service; or (b) modify or replace the Service with a different service that has substantially similar functionality; or (c) discontinue providing or direct the cessation of any use of the Service and refund to Customer a pro-rated portion of any charges paid for the affected Service through the date of Service discontinuation or cessation. Company will defend and indemnify Customer, its employees, directors, officers, partners, contractors, and agents, and each of their respective successors and assigns against claim(s), demand(s), lawsuit(s), proceeding(s), judgment(s), damage(s), liabilities and reasonable expenses or other claim(s) by a third-party (not a Party to or an Affiliate of a Party to this Agreement) that the Service, by itself, infringes any intellectual property. Notwithstanding the foregoing, the Company will have no obligation to defend or indemnify Customer, its parents, members, employees, directors, officers, partners, contractors, and agents, and their each of their respective successors and assigns, and Customer will defend, indemnify and hold harmless the Company, its parents, members, employees, directors, officers, partners, contractors, and agents, and their each of their respective successors and assign for any claim(s), demand(s), lawsuit(s), proceeding(s), judgment(s), damage(s), liabilities and reasonable expenses arising out of: Customer's: (a) designs, specifications, modifications, or configurations of the Service (provided that such infringement would not have occurred otherwise); (b) combination of Customer hardware or software, or other materials, services or methods with the Service (provided that such infringement would not have occurred otherwise); or (c) use or operation of the Service in contravention of its obligations and responsibilities hereunder.
- 10.4 Procedure.** If a third party (not a Party to or an Affiliate of a Party to this Agreement) makes a claim against Company or Customer covered in Sections(s) 10.1, 10.2 and/or 10.3 herein, the Party in receipt of such claim ("Indemnified Party") will promptly notify the other Party ("Indemnifying Party") in writing no later than sixty (60) days after receipt of such notification of a potential claim. The Indemnifying Party may assume sole control of the defense of such claim and all related settlement negotiations. The Indemnified Party will provide the assistance, information and authority necessary to assist the Indemnifying Party in its obligations. Neither Company nor Customer may settle any such matter without the consent of the other as to any settlement that imposes an obligation on, or requires any

admission by, the other Party. Failure of the Indemnified Party to promptly notify the other will not relieve the Indemnifying Party of its obligations except to the limited extent such delay prejudices the Indemnifying Party.

10.5 This Section 10 shall survive the termination of this Agreement.

11. CONFIDENTIALITY

11.1 Customer Proprietary Network Information. The Company shall use commercially reasonable efforts to protect all Customer information, but may share Customer information with Network and facilities partners, vendors, and agents, in order to offer and provide Services and/or for administrative, order provisioning, customer service and billing purposes. The Federal Communications Commission, and various states, requires the Company to protect Customer Proprietary Network Information (“CPNI”). CPNI includes information identifying the quantity, technical configuration, type, destination, location, and amount of use of a customer’s telecommunications services purchased from a provider, and related local and toll billing information. The Company shall comply with the Customers’ rights to the protections afforded by these laws. By entering into this Agreement for Service, Customer grants the Company permission to use, give access to, and share, Customer’s CPNI between and among the Company, its employees, attorneys, agents, contractors, vendors, Network and facilities partners, solely to allow the Company to provide Customer with Services; and to disclose any of Customer’s current and future Affiliates’ CPNI to Customer upon Customer’s request.

11.2 Confidentiality. Each Party agrees not to use any Confidential Information (as defined herein) of the other Party except in performance of its obligations under this Agreement, and not to disclose such information to third parties (other than, as determined by the receiving Party in good faith, those contractors, agents, advisors, and attorneys with a “need to know” and subject to obligations similarly limiting the use and disclosure of the information). Each Party further agrees to use the same means to protect Confidential Information of the other Party as it uses for its own confidential information, provided that in no event shall a Party use less than reasonable care. “Confidential Information” includes proprietary or confidential information marked or otherwise identified as such, and information the Parties should reasonably be expected to be considered confidential or proprietary by the disclosing Party regardless of marking or identification. Confidential Information shall not include any information that: (i) is now or becomes available in the public domain through no breach of this Agreement; (ii) can be shown through documented evidence to have been in the possession of the receiving Party as of the date of execution hereof or prior to the date of disclosure by the disclosing Party; (iii) can be shown through documented evidence to have been independently learned by the receiving Party from a third party without breach of this Agreement; (iv) can be shown through documented evidence to have been independently developed by the receiving Party; or (v) is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving Party. Confidential Information is and shall remain the sole and exclusive property (or, where applicable, valid license) of the disclosing Party. The Parties acknowledge that unauthorized disclosure or use of any Confidential Information may cause irreparable harm and significant injury to the disclosing Party, the extent and consequences of which may be difficult to assess. Therefore, if a Party believes its Confidential Information may be, or has been, disclosed contrary to the terms of this Section 11.2, that Party shall be entitled to seek specific performance, injunctive and/or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any exercise by the non-breaching Party of its right to equitable relief or specific performance shall not constitute a waiver by the non-breaching Party of any other rights which it may have to monetary damages or other relief. Except for Section 11.1 above, this Section 11.2 supersedes and replaces any and all prior agreements between the Parties, if any, relating to confidentiality.

12 LOCAL NUMBER PORTABILITY/ LETTER OF AUTHORIZATION

Prior to placing any Service Requests with the Company to facilitate the provisioning of Services to Customer, Customer shall execute an LOA authorizing Company to act on Customer’s behalf for the purpose of ordering, changing and/or maintaining such Customer’s Services. For the purposes of local number portability performed by the Company hereunder, the Company is designated as Customer’s agent to act on Customer’s behalf. Customer’s LOA is intended to satisfy all laws, rules and regulations or actions from Regulatory Authorities pertaining to such authorizations and is required prior to the Company providing any Service. Consequently, the Company shall have no obligation to provide Services until such LOA has been duly executed and provided to the Company.

13 NOTICES

All notices required of Company or Customer under this Agreement shall be in writing and delivered as follows:

Notices for non-payment of invoices shall be sent by Company to Customer in Company's sole and absolute discretion via (a) designation on invoices, (b) e-mail, or (c) any other written format.

Notice for day-to-day operational use of Services shall be communicated via e-mail and if to Company to customerservice@bcntele.com.

All other notices shall be sent by certified mail or overnight delivery service, return receipt requested, and shall be effective on the date it is delivered to the applicable party.

If to Company:

BCN Telecom, Inc.
1200 Mount Kemble Avenue
Morristown, NJ 07960
Attn: Legal and Regulatory Department

If to Customer:

To the Customer's address or e-mail address, as applicable, as set forth on the Subscription Agreements, Service Requests or as otherwise provided by Customer.

14 INSURANCE

During the term of this Agreement, Company shall maintain in full force and effect, with a carrier or carriers selected by Company, primary policies of insurance providing for, at a minimum, all of the following:

- (a) Worker Compensation and Employers Liability Limit:
 - \$1,000,000 Bodily injury by accident.
 - \$1,000,000 Bodily injury by disease - policy limit.
 - \$1,000,000 Bodily injury by disease - each employee.
- (b) Commercial General Liability:
 - \$1,000,000 Combined single limit per occurrence for injury, death or property damage.
 - \$5,000,000 Umbrella liability.
- (c) Automobile Liability Insurance: \$1,000,000 combined single limit for bodily injury and property damage.
- (d) Professional Liability (Errors & Omissions): \$1,000,000.

15 ETHICAL CONDUCT

The Parties shall conduct themselves ethically, absent bribery and corruption, consistent with the following:

15.1 Neither Party shall offer, promise, give or agree to give bribes to induce the other Party to enter into this Agreement and shall not during the term of this Agreement offer, promise, give or agree to give to any person any bribe on behalf of the other Party or otherwise with the object of obtaining a business advantage for such Party or otherwise.

15.2 Neither Party will engage in any activity or practice which constitutes an offence under any applicable Anti-bribery and corruption laws, including but not limited to the United States Foreign Corrupt Practices Act of 1977.

16 MISCELLANEOUS PROVISIONS

16.1 Relationship Among the Company, Customer and Third Parties. This Agreement does not render the Company or the Customer the agent or legal representative of the other, nor does it create a partnership or joint venture between the Company and the Customer. Neither the Company nor the Customer shall have any right or authority to bind the other in any manner whatsoever. This Agreement confers no rights or authority of any kind on third

parties.

16.2 Choice of Law, Venue, Waiver of Jury Trial and Waiver of Class Action. This Agreement is made pursuant to, and shall be construed and enforced in accordance with, the substantive law of the State of New Jersey, without reference to its principles of conflicts of laws, and any and all claims, causes of action and/or disputes, arising out of or relating to the Agreement, Subscription Agreements and/or AUP between the Parties or their successors or assigns shall be resolved only by final and binding arbitration conducted by a single neutral arbitrator from JAMS and administered by JAMS in its Boca Raton, Florida office pursuant to JAM's streamlined arbitration rules and procedures then in effect (the "Rules"). The Parties waive a trial by jury. The entire dispute, including the scope and enforceability of this arbitration provision shall be determined by the arbitrator. The arbitrator's award shall be final and judgment may be entered upon it in any court having jurisdiction. The Parties shall share equally in JAM's costs but each Party will otherwise pay its own costs and attorneys' fees, if any. If any Party prevails on a statutory or contractual claim that affords the prevailing Party attorney's fees, the arbitrator may award attorney's fees to the prevailing Party to the extent permitted by law. This clause shall not preclude a Party from seeking provisional remedies to compel arbitration or to enforce an award or judgment of an arbitrator with the courts having jurisdiction in the County of Morris, New Jersey or the U.S. District Court located in Newark, New Jersey. Company may elect to litigate collection matters and Customer agrees to jurisdiction of said actions in the courts having jurisdiction in the County of Morris, New Jersey or the U.S. District Court located in Newark, New Jersey. Any arbitration under this Agreement, Subscription Agreements and/or AUP will take place on an individual basis; class arbitrations and class/representative/collective actions are not permitted. THE PARTIES AGREE THAT A PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN EACH'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PUTATIVE CLASS, COLLECTIVE AND/OR REPRESENTATIVE PROCEEDING. Further, unless both Parties agree otherwise in writing, the arbitrator may not consolidate more than one person or one entity's claims and may not otherwise preside over any form of a representative or class proceeding.

16.3 Assignment.

16.3.1 Assignment by Customer. Customer may not sell, transfer or assign this Agreement, in whole or in part, without the prior written consent of the Company, which Company may not unreasonably withhold. Any such assignment without Company's prior written consent shall be void.

16.3.2 Assignment by Company. Company may sell, transfer or assign this Agreement, in whole or in part, upon notice to Customer.

16.4 Non-exclusive Dealing. This Agreement is non-exclusive. Nothing shall prevent Customer or Company from entering into similar arrangements with any other person or entity.

16.5 Publicity. Neither Party may use the name, logos, trademarks, service marks or other identifying symbols of the other Party in connection with a news release, public announcement, advertisement or other form of publicity in any medium concerning the existence of this Agreement or the Service provided without the prior written consent of the other Party.

16.6 Survivability. The terms and conditions contained in this Agreement that, by their sense and context, are intended to survive the performances of the parties shall survive the completion of those performances and the Agreement's termination. These include, without limitation, the payment of all amounts due under this Agreement.

16.7 No Waiver. No waiver of any of the provisions of this Agreement shall be binding unless made in writing and signed by the waiving Party. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not be deemed to constitute a waiver of the provision, and all terms and conditions shall remain in full force and effect.

16.8 Severability. If any court of competent jurisdiction determines that any provision of this Agreement and/or Subscription Agreements is invalid or unenforceable, then such validity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in force and effect. If any court of competent jurisdiction determinates that any provision of this Agreement and/or Subscription

Agreements is invalid or unenforceable, then the Parties agree that such invalid and unenforceable provision shall be construed by a court in a manner so as to provide the maximum valid and enforceable effect to the intent of the Parties expressed hereunder. In the event of ambiguities in the Agreement and/or Subscription Agreements, no inferences shall be drawn against either Party. The Parties agree to abide by the court's construction as if set forth herein.

16.9 Headers. Except for the definitions in Section 1, the section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

16.10 Complete Agreement. This Agreement, incorporating all the applicable documents referenced herein, represents the entire agreement between the Parties with respect to Service, and supersedes all other prior agreements between the parties, whether written or oral. Unless otherwise provided by law, this Agreement may only be modified by Company in its sole and absolute discretion with said modifications being effective and binding on Customer on the date that the modifications are posted on Company's website. Electronic signatures, such as DocuSign, shall be deemed as original signatures for purposes of this Agreement and the Subscription Agreements, where applicable. In no event shall the Agreement, Subscription Agreements or any component(s) thereof be modified, amended or affected in any way by correspondence, including but not limited to e-mails, text messages or other electronic communications, between or among the Parties' agents, consultants or other third-party representatives.