



TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service (“T&Cs”) are incorporated into the Master Services Agreement (the “MSA” and together with these T&Cs, Attachments and Service Orders the “Agreement”) between Customer and EM3 Networks. EM3 Networks and Customer will each individually be referred to as a “Party” and together constitute the “Parties.” Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the MSA.

1. **Affiliates.** EM3 Networks may provide any Services using an EM3 Networks affiliate (“EM3 Affiliate”) identified on the applicable Service Order, and in such case EM3 Networks acts as the agent for the EM3 Affiliate in the relevant jurisdiction. If the EM3 Affiliate accepts the Service Order, the EM3 Affiliate will be solely liable for that Service Order and references in this Agreement or any applicable Service Schedules will be read as references to that EM3 Affiliate. References in this Agreement or any applicable Service Schedules will be read as references to that EM3 Affiliate with respect to that Service Order.
2. **Subcontractors.** EM3 Networks may subcontract the performance of Services. EM3 Networks will be and remain responsible for the work and activities of any subcontractor, including compliance with the terms of this Agreement, as if EM3 Networks had conducted the subcontracted work itself.
3. **Assignment.** Neither the Agreement nor any of Customer’s rights or obligations hereunder may be sold, assigned, encumbered or transferred by operation of law or otherwise by Customer without the prior written approval of EM3 Networks, which consent shall not be unreasonably withheld. EM3 Networks may freely sell assign, transfer, or otherwise encumber the Agreement and its rights and obligations hereunder.
4. **Rate Changes.** All rates and charges shall be set forth in the MSA or Service Order. EM3 Networks may change the prices for the Services and toll charges from time to time. EM3 Networks may change prices, plans, taxes or fees without any advance notice, except as otherwise described in this Section. In the event of a change in prices or toll charges, EM3 Networks will post such changed rates to its web site currently located at <http://em3networks.com/>. International toll calling rates are updated monthly on the web site on the first of each month, and no other notice shall be provided for changes to international toll calling rates.
 - 4.1. EM3 Networks may increase rates and prices to reflect any rate or price increases imposed on EM3 Networks by any of its underlying service providers. In such instances EM3 Networks shall notify Customer of the relevant price information thirty (30) days prior to such rates going into effect.
 - 4.2. The rates and prices set forth in the Agreement are subject to change upon the imposition of new regulations, modifications of existing regulations, new interpretation, application or enforcement of, or exercise of authority related to, any regulation or finding of any federal, state and/or local regulatory agency, legislative body, or court of competent jurisdiction, including, without limitation, the imposition of any charges, surcharges, and/or taxes in reliance on or as a result of the same (“Regulatory Change”). EM3 Networks reserves the right, at any time and without liability, to: (i) pass through to Customer all, or a portion of, any charges, or surcharges directly or indirectly related to such Regulatory Change, (ii) modify the Service(s), rates (including any rate guarantees), promotions, terms and/or conditions of this Agreement in order to conform to such action; or (iii) if such Regulatory Change materially and adversely impairs the provision of any or all Services under the Agreement, as determined by EM3 Networks in its sole discretion, terminate the Agreement and/or any affected Service and related Service Order. In such instances EM3 Networks shall notify Customer of the relevant price information within thirty (30) days of learning of the Regulatory Change.

- 5. Billing Disputes.** Only disputes made in good faith, in a timely manner and properly documented as required herein, as determined by EM3 Networks in its sole discretion, will be considered by EM3 Networks. To meet these requirements, Customer must provide EM3 Networks with written notice of any disputed charge(s) within thirty (30) days of the original Due Date for such charges. Along with such notice, Customer shall set forth in detail all grounds for disputing each charge and provide all documents supporting each dispute. EM3 Networks and Customer shall attempt in good faith promptly to resolve any dispute within thirty (30) days of EM3 Networks' receipt of notice of that dispute. If a dispute is not resolved, EM3 Networks shall have the right to determine in good faith the merit of each dispute and Customer's associated payment obligation. In no event shall Customer withhold payment during pendency of a dispute. If EM3 Networks determines that any disputed amount is not owed, EM3 Networks shall issue a credit for that amount on the first invoice issued by EM3 Networks for a full billing cycle after EM3 Networks' determination is made. Customer's exclusive remedy for issues relating, whether directly or indirectly, to any disputes shall be in the forum and pursuant to the laws as set forth in Section 30 hereof.
- 6. Reinstatement.** Service that has been suspended due to non-payment or otherwise due to the actions or inactions of Customer will only be reinstated at EM3 Network's discretion, and there will be no reinstatement until all outstanding bills have been paid in full and any other cause for suspension or disconnection has been remedied in full. A reinstatement fee equal to the charges for three (3) months of service will be charged to reestablish Service that has been suspended or disconnected due to actions or omissions of Customer. Notwithstanding the foregoing, Customer understands and agrees with respect to Service that has been suspended or disconnected that: (a) Customer is responsible for payment of all applicable Early Termination Charges for such Service; (b) EM3 Networks may, in its sole discretion, impose new deposit requirements, connection fees and minimum term commitments for the reinstatement of the Service; and (c) reinstatement may take approximately forty-five (45) days to occur.
- 7. Service Interruption.** In the event Customer experiences any interruption in its Service that it believes to be material, Customer shall immediately notify EM3 Networks' Network Operations Center, available 24/7, at (855) 949-9273 and request that EM3 Networks open a trouble ticket to investigate. Before notifying EM3 Networks, Customer shall ascertain that the interruption is not within Customer's control (e.g., Customer equipment, wiring, networking, etc.) and Customer shall be liable to reimburse EM3 Networks for all costs incurred by EM3 Networks in connection with an interruption that was within Customer's control. Customer shall retain each trouble ticket number opened on its behalf. Notwithstanding the reporting of an interruption in its Service, Customer shall only be entitled to a credit where EM3 Networks determines that each of the following conditions exist: (i) such outage is not pursuant to maintenance provided by EM3 Networks; (ii) the interruption or "outage" exists for a period of time of not less than two (2) continuous hours and renders the Service unavailable during that entire time period (and which is not a scheduled outage); (iii) a trouble ticket is opened by the Customer with EM3 Networks within two (2) days of the commencement of the outage; and (iv) a request for credit is made in writing to EM3 Networks within thirty (30) days of the date the trouble ticket was opened. Customer acknowledges that it is reasonable to base Customer's entitlement to credits on each of the conditions identified above and it is reasonable to limit Customer's recovery to the outage credit described below ("**Outage Credit**"). Customer waives all rights to damages or to other relief in the event of an interruption or outage in its Services.

An Outage Credit shall apply to the charges for the total mileage between end terminals of any Facility affected by an Outage: provided, however, that if any portion of the affected Facility remains beneficially used or useable by Customer between any intermediate terminals (where Customer has installed drop and insert capability) or end terminals, the Outage Credit shall not apply to that pro-rata portion of the mileage. The length of each Outage shall be calculated in hours and shall include fractional portions thereof. An Outage shall be deemed to have commenced upon verifiable notification thereof by Customer to EM3 Networks, or when indicated by network



control information actually known to EM3 Networks network personnel, whichever is earlier.

Outage Credits shall be determined by the following formula in the event of an outage: $\text{Outage} = [(\text{Hours of Outage} - 2 \text{ hours}) / 720 \text{ Hours}] \times \text{Monthly charge of Affected Facility}$

Each Outage shall be deemed to have been resolved upon restoration of the affected service as evidenced by appropriate network tests conducted by EM3 Networks. Outage Credits shall be granted only for Outages resulting from the unavailability of the Facilities provided by EM3 Networks to Customer and shall not be granted if the malfunction of any end-to-end circuit is due to an outage or other defect occurring in the Interconnection Facilities not provided by EM3 Networks or any outage due to Customer's end equipment or by maintenance provided by EM3 Networks. All Outage Credits shall be credited on the next monthly invoice for the affected Facility, and the total of all Outage Credits applicable to or accruing in a given month shall not exceed the amount payable by Customer to EM3 Networks for that same month for such Facility. The Outage Credits described in this Section shall be the sole and exclusive remedy of Customer in the event of any Outage. Notwithstanding any other provision of the Agreement to the contrary, no Outage Credits shall be issued unless Customer requests same in writing no later than thirty (30) days following the Outage.

- 8. Credit Approval.** Customer's execution of the Agreement signifies Customer's acceptance of EM3 Networks' initial and continuing credit approval procedures and policies as a condition of EM3 Networks providing Services. EM3 Networks reserves the right to withhold initiation or full implementation of Services under the Agreement pending initial satisfactory credit review and approval thereof, which may be conditioned upon terms specified by EM3 Networks including, but not limited to, security for payments due hereunder in the form of a cash deposit via wire transfer, guarantee, irrevocable letter of credit from a financial institution, or other forms of security acceptable to EM3 Networks, in its sole discretion. In instances where Customer is required to provide EM3 Networks with security in the form of a cash deposit, the cash deposit shall bear interest at the rate for telephone security deposits set by the Public Utility/Service Commission in the state where Customer is headquartered. In certain situations, EM3 Networks shall require Customer to pre-pay for all Services provided by EM3 Networks in cash, via wire transfer. Initial prepayment amount for service is one and one-half (1.5) months' estimated usage. Regardless of initial prepayment amount, it shall be the responsibility of Customer to always maintain sufficient prepayment credit balance to cover weekends and holidays. If Customer expects usage of Service to increase, it must make appropriate adjustments to amount of prepayment. EM3 Networks retains the right to suspend service to Customer without notice or liability if at any time Customer does not have sufficient prepayment credit balance to cover estimated usage at any time. Upon request by EM3 Networks at any time, Customer agrees to provide financial statements or other indications of financial circumstances. As may be determined by EM3 Networks, in its sole discretion at any time, if the financial circumstances or payment history of Customer is, or becomes, unacceptable, EM3 Networks may require a new or increased deposit, prepayment, guarantee, or irrevocable letter of credit at EM3 Networks' discretion, to secure Customer's payments for the remainder of the Term, and such deposit, pre-payment, guarantee or irrevocable letter of credit shall be provided within five (5) days of written request. Failure of Customer to provide the requested security pursuant to the Agreement shall constitute a breach of the Agreement and EM3 Networks may suspend or terminate Services until such time as the required security is received.
- 9. Broadband/Internet Access Service.** If EM3 Networks supplies broadband access services to Customer in conjunction with other communications services offered, Customer will be responsible to EM3 Networks for all charges from the underlying broadband access service supplier including any setup charges incurred prior to activation and termination charges incurred after this Agreement has ended. In the event that EM3 Networks is supplying broadband access services, Customer hereby authorizes EM3 Networks to begin the process of activating service including providing the broadband access circuit to Customer's location(s). Customer confirms that Customer will be responsible for broadband access service charges even if: (a)



Customer delays activation of Customer's services; (b) Customer terminates this Agreement; (c) Customer is unable to lease or obtain Customer Equipment; or (d) if Customer takes any other action that would cause EM3 Networks to incur broadband access service charges as a result of this order. Any and all network hardware installed for operation of the broadband circuit, excluding all Equipment not purchased by Customer, shall remain the property of EM3 Networks during the Term of this Agreement and after termination of Services.

10. 911 & Service Limitations. The Federal Communications Commission ("FCC") requires that EM3 Networks provide enhanced 911 ("E911") Service to all customers who use certain EM3 Networks services within the United States.

10.1. CUSTOMER ACKNOWLEDGES THAT EM3 NETWORKS EQUIPMENT AND SERVICES DO NOT SUPPORT 911 EMERGENCY DIALING OR OTHER EMERGENCY FUNCTIONS IN THE SAME WAY THAT TRADITIONAL LAND LINE 911 SERVICES DO. CUSTOMER HEREBY AGREES TO NOTIFY ANY POTENTIAL USER OF THE SERVICES WHO MAY PLACE CALLS USING CUSTOMER'S SERVICES OF THE 911 LIMITATIONS DESCRIBED HEREIN. EM3 NETWORKS WILL PROVIDE CUSTOMER WITH WARNING LABELS REGARDING THE LIMITATIONS OR UNAVAILABILITY OF 911 EMERGENCY DIALING. CUSTOMER AGREES TO PLACE A LABEL ON AND/OR NEAR EACH TELEPHONE OR OTHER CUSTOMER PREMISE EQUIPMENT ON WHICH THE SERVICES MAY BE UTILIZED. IF ADDITIONAL LABELS ARE REQUIRED, CUSTOMER MAY REQUEST THEM FROM EM3 NETWORKS. EM3 NETWORKS WILL PROVIDE CUSTOMER WITH ADVISORY NOTICES REGARDING 911 EMERGENCY DIALING AND REQUEST ACKNOWLEDGMENTS FROM CUSTOMER. CUSTOMER AGREES TO RESPOND AND AFFIRMATIVELY ACKNOWLEDGE THAT EM3 NETWORKS HAS ADVISED CUSTOMER OF THE CIRCUMSTANCES UNDER WHICH EM3 NETWORKS E911 SERVICE MAY NOT BE AVAILABLE OR MAY BE LIMITED IN COMPARISON TO TRADITIONAL 911 EMERGENCY DIALING. EM3 NETWORKS ADVISES CUSTOMER TO MAINTAIN AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES.

10.2. CUSTOMER ACKNOWLEDGES THAT THE SERVICES WILL NOT FUNCTION PROPERLY IF THERE IS AN INTERRUPTION OR A LACK OF BANDWIDTH OF CUSTOMER'S BROADBAND OR HIGH-SPEED INTERNET ACCESS SERVICE.

10.3. CUSTOMER ACKNOWLEDGES THAT THE SERVICES WILL NOT FUNCTION IN THE ABSENCE OF ELECTRICAL POWER.

10.4. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT SET UP TO FUNCTION WITH OUTDIALING SYSTEMS INCLUDING HOME SECURITY SYSTEMS, MEDICAL MONITORING EQUIPMENT, TTY EQUIPMENT, AND ENTERTAINMENT OR SATELLITE TELEVISION SYSTEMS. CUSTOMER HEREBY WAIVES ALL CLAIMS AGAINST EM3 NETWORKS FOR INTERRUPTION OR DISRUPTION OF SUCH SYSTEMS BY THE SERVICES.

10.5. EM3 NETWORKS' E911 SERVICE IS A MANDATORY COMPONENT OF ALL INBOUND/OUTBOUND FAX AND VOICE SERVICE PLANS. E911 SERVICE IS NOT OFFERED ON VIRTUAL NUMBERS, TOLL FREE NUMBERS, OR SIMILAR SERVICE ACCESSORIES OR ADD-ON PLANS. E911 SERVICE IS ONLY AVAILABLE IN SELECTED AREAS. CUSTOMERS WHO SUBSCRIBE TO EM3 NETWORKS E911 SERVICE WILL BE REQUIRED TO REGISTER THE PHYSICAL LOCATION OF THEIR EQUIPMENT (ATA or IP PHONE) WITH EM3



NETWORKS, EITHER ON THE INITIAL ORDER FORMS OR BY CALLING CUSTOMER SERVICE, AND AGREE TO UPDATE THE LOCATION WHENEVER THE PHYSICAL LOCATION OF SERVICE CHANGES. CUSTOMER ACKNOWLEDGES THAT EM3 NETWORKS' ONLY MECHANISM FOR ROUTING 911 CALLS TO THE CORRECT EMERGENCY CALL TAKER IS THE PHYSICAL LOCATION CURRENTLY REGISTERED FOR THE ACCOUNT. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT ANY ENHANCED LOCATION INFORMATION PASSED TO AN EMERGENCY OPERATOR BY EM3 NETWORKS WILL BE BASED UPON THE PHYSICAL LOCATION PROVIDED TO EM3 NETWORKS BY CUSTOMER. IN THE EVENT THAT THE PHYSICAL LOCATION HAS NOT BEEN UPDATED OR IS NOT COMPLETE, EM3 NETWORKS MAY ATTEMPT TO ROUTE A 911 CALL BASED UPON THE BILL-TO OR SHIP-TO ADDRESSES ASSOCIATED WITH THE CUSTOMER'S ACCOUNT OR INITIALORDER.

10.6. CUSTOMER ALSO ACKNOWLEDGES THAT EM3 NETWORKS E911 SERVICE HAS CERTAIN CHARACTERISTICS THAT DISTINGUISH IT FROM TRADITIONAL, LEGACY, AND CIRCUIT-SWITCHED 911 SERVICE. THESE CHARACTERISTICS MAY MAKE EM3 NETWORKS E911 SERVICES UNSUITABLE FOR SOME CUSTOMERS. BECAUSE EACH CUSTOMER'S CIRCUMSTANCES MAY VARY WIDELY, CUSTOMERS SHOULD CAREFULLY EVALUATE THEIR OWN CIRCUMSTANCES WHEN DECIDING WHETHER TO RELY SOLELY UPON EM3 NETWORKS E911 SERVICE.

10.7. CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S RESPONSIBILITY TO DETERMINE THE TECHNOLOGY OR COMBINATION OF TECHNOLOGIES BEST SUITED TO MEET CUSTOMER'S EMERGENCY CALLING NEEDS, AND TO MAKE THE NECESSARY PROVISIONS FOR ACCESS TO EMERGENCY CALLING SERVICES (SUCH AS MAINTAINING A CONVENTIONAL LANDLINE PHONE OR WIRELESS PHONE AS A BACKUP MEANS OF COMPLETING EMERGENCY CALLS). THE FOLLOWING CHARACTERISTICS DISTINGUISH EM3 NETWORKS E911 SERVICE FROM TRADITIONAL, LEGACY, CIRCUIT-SWITCHED 911 SERVICE:

** EM3 NETWORKS E911 SERVICE WILL NOT FUNCTION IF CUSTOMER'S ATA or IP PHONE FAILS OR IS NOT CONFIGURED CORRECTLY OR IF CUSTOMER'S EM3 NETWORKS SERVICE IS NOT FUNCTIONING FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, ELECTRICAL POWER OUTAGE, BROADBAND SERVICE OUTAGE, OR SUSPENSION OR DISCONNECTION OF SERVICE BECAUSE OF BILLING OR OTHER ISSUES. IF THERE IS A POWER OUTAGE, CUSTOMER MAY BE REQUIRED TO RESET OR RECONFIGURE THE EQUIPMENT BEFORE BEING ABLE TO USE THE EM3 NETWORKS SERVICE, INCLUDING FOR E911 PURPOSES.

** AFTER INITIAL ACTIVATION OF THE E911 SERVICE, AND FOLLOWING ANY CHANGE TO CUSTOMER'S PHYSICAL LOCATION, THERE MAY BE SOME DELAY BEFORE THE AUTOMATIC NUMBER AND LOCATION INFORMATION IS PASSED TO THE LOCAL EMERGENCY SERVICE OPERATOR. THIS INFORMATION IS TYPICALLY POPULATED INTO EM3 NETWORKS NOMADIC E911 DATABASES PRIOR TO SERVICE ACTIVATION, BUT NO GUARANTEE CAN BE MADE THAT THE AUTOMATIC NUMBER AND LOCATION INFORMATION WILL BE ACTIVATED WITHIN THIS SCHEDULE.

** THE LOCAL EMERGENCY SERVICE OPERATOR RECEIVING EM3 NETWORKS E911



EMERGENCY SERVICE CALLS MAY NOT HAVE A SYSTEM CONFIGURED FOR E911 SERVICES OR MAY NOT BE ABLE TO CAPTURE AND/OR RETAIN AUTOMATIC NUMBER OR LOCATION INFORMATION. AS A CONSEQUENCE THE OPERATOR MAY NOT BE PROVIDED THE PHONE NUMBER OR PHYSICAL LOCATION OF THE USER THAT IS MAKING THE EM3 NETWORKS E911 CALL. DUE TO TECHNICAL FACTORS IN NETWORK DESIGN, AND IN THE EVENT OF NETWORK CONGESTION ON THE EM3 NETWORKS NETWORK, THERE IS A POSSIBILITY THAT A EM3 NETWORKS E911 CALL WILL PRODUCE A BUSY SIGNAL OR WILL EXPERIENCE UNEXPECTED ANSWERING WAIT TIMES AND/OR TAKE LONGER TO ANSWER THAN 911 CALLS PLACED VIA TRADITIONAL, LEGACY, CIRCUIT-SWITCHED TELEPHONE NETWORKS.

** IF A CUSTOMER DOES NOT CORRECTLY IDENTIFY THE ACTUAL LOCATION WHERE THE EM3 NETWORKS EQUIPMENT WILL BE LOCATED AT THE TIME OF ACTIVATION OF THE SERVICE, EM3 NETWORKS E911 COMMUNICATIONS MAY NOT BE DIRECTED TO THE CORRECT LOCAL EMERGENCY OPERATOR.

- 9.8** CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT EM3 NETWORKS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO DIAL 911 OR ANY OTHER EMERGENCY TELEPHONE NUMBER USING EM3 NETWORKS OR TO ACCESS AN EMERGENCY SERVICE OPERATOR DUE TO THE 911 TECHNICAL CHARACTERISTICS AND LIMITATIONS SET FORTH IN THIS AGREEMENT. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS EM3 NETWORKS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO CUSTOMER IN CONNECTION WITH THE SERVICES, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICE RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO 911 DIALING.

11. Prohibited Uses/Fraud Policy – Any use of the Services or any other action that causes a disruption in the network integrity of EM3 Networks or its vendors, whether directly or indirectly, is strictly prohibited and could result in termination of the Services at the sole discretion of EM3 Networks. Customer understands that neither EM3 Networks nor its vendors are responsible for the content of the transmissions that may pass through the Internet and/or the Services. Customer agrees that it will NOT use the Services in any ways that:

- (i) violate any applicable law (including all applicable anti-bribery and anti-corruption laws, as well as any laws surrounding the prohibition of transmission of unsolicited fax advertisements), regulation, treaty or tariff, provided that EM3 Networks may suspend or terminate the Service if has any reasonable grounds to believe that Customer is in breach of this provision;
- (ii) infringe on the intellectual property rights of others, provided that EM3 Networks reserves the right to take down or disable the contents or suspend the Service or any part thereof immediately without notice and without liability if EM3 Networks receives any written complaint from any third party alleging infringement by Customer through the Service;
- (iv) are fraudulent, deceptive, or misleading, or involve illegal or unauthorized access, exploitation, interruptions or monitoring; or
- (v) result in network interruptions or service degradation of any kind.

11.1 Customer agrees and represents that it is purchasing the Services and/or the Equipment for its own internal use only, and shall not resell, transfer or make a charge for the Services or the Equipment without the advance express written permission of EM3 Networks.

11.2 EM3 Networks Service Plans for business Customers that offer unlimited minutes of PSTN calls (“**Unlimited PSTN Plans**“) are for reasonable business use of Customer only. EM3 Networks defines the reasonable business use by Customer as 2,000 minutes per month per trunk. Such use shall not include certain activities including, but not limited to, any autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcast, fax blasting, telemarketing (including without limitation charitable or political solicitation or polling), call center operations, junk faxing, fax spamming, calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage. Customer shall not transmit through the Service any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature. Customer further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law or regulation. Any use found to be inconsistent with this restriction will result in termination of the Service. EM3 Networks reserves the right to immediately terminate or modify the pricing of Services of any Customer using Unlimited PSTN Plans if EM3 Networks determines, in its sole discretion, that Customer is not using the Unlimited PSTN Plans for Customer’s reasonable business use. **Customer is solely responsible for fraudulent calls or data transmitted utilizing the Services.**

12. Changes To The Agreement, Services, Or Plan. EM3 Networks reserves the right to make changes to the terms and conditions of the Agreement. Any changes to the T&Cs EM3 Networks deems material will be provided to the Customer on at least thirty (30) days’ notice prior to the effective date of such changes with respect to Customer. A change in international toll rates does not represent a change in terms to the Agreement. Customer may request a Service change at any time, subject to any applicable change of service fee and additional terms and conditions. The Service change will take effect in the first month after the plan

is changed.

- 13. Privacy.** EM3 Networks utilizes the public Internet and third party networks to provide fax, voice, and video communication services. Accordingly, EM3 Networks cannot guarantee the security of fax, voice, and video communications of Customer. EM3 Networks is committed to respecting a Customer's privacy. Once the Customer chooses to provide personally identifiable information to EM3 Networks, such information will only be used for the provisions of services to Customer. EM3 Networks will not sell, rent, or lease Customer's personally identifiable information to others. Unless required by law or subpoena or if Customer's prior permission is obtained, EM3 Networks will share the personal data Customer provides only with other EM3 Networks entities and/or business partners that are acting on EM3 Networks' behalf to complete the activities described herein. Such EM3 Networks entities and/or national or international business partners are governed by EM3 Networks' privacy policies with respect to the use of this data. EM3 Networks is required to file numerous reports with different administrative bodies. As such, EM3 Networks may provide aggregate, non-personally identifiable statistics about customers, sales, and traffic patterns. None of these reports or statistics will include personally identifiable information. However, EM3 Networks reserves the right to use personally identifiable information to investigate and help prevent potentially unlawful activity that threatens either EM3 Networks or any company affiliated with EM3 Networks. Moreover, upon the appropriate request of a government agency, law enforcement agency, court, or as otherwise required by law, EM3 Networks may disclose personally identifiable information. See www.em3networks.com/privacy for more information.
- 14. Training And Technical Support.** EM3 Networks may provide online or telephone training and system operation instruction immediately after installation and commencement of Services. Training will be provided by EM3 Networks customer support staff and will be customized for the Customer's business requirements. Additional personalized onsite training is available at an extra cost to Customer.
- 15. Equipment.** Any equipment provided to Customer by EM3 Networks for use in conjunction with a Facility ("Equipment") will be subject to the terms and conditions set forth in the Agreement. EM3 Networks will "drop ship" the Equipment to Customer via certified carrier with tracking technology. Customer is responsible to be present for receipt of delivery. Customer must unpack and place the Equipment in a secure and environmentally controlled space that is within 50 feet of the LEC demarc. Customer also agrees to provide the analog POTS line that will at all times remain plugged into the provided Equipment. The number for the analog line shall be provided to EM3 Networks' provisioning staff prior to turn up, and the line shall be in good working order on the date and time of the turn up. The cost and maintenance of the analog line is the Customer's responsibility. If at any time during the Term a unit of Equipment fails and is in need of replacing, EM3 Networks will provide replacement Equipment. The Equipment failure shall be determined by the EM3 Networks' NOC working with the Customer in conjunction of EM3 Networks' technical staff. Once determined by EM3 Networks, in its sole discretion, that the Equipment is need of replacing, if the need for replacement is determined by noon CST on the next business day, EM3 Networks will ship overnight replacement Equipment to Customer's site,. Additionally, Customer acknowledges that it will have no right, title, or interest in any Equipment that EM3 Networks installs. EM3 Networks and Customer agree that the Equipment will not become a fixture, and Customer shall keep the Equipment free from all liens, charges and encumbrances. Customer agrees: (1) to use the Equipment only for the purpose of receiving Services ordered from EM3 NETWORKS and no other purpose; (2) to prevent any connections to the Equipment that are not expressly authorized by EM3 Networks; (3) to prevent tampering, altering, or repair of the Equipment, or inside wiring, by any person other than EM3 Networks' authorized personnel; (4) to assume complete responsibility for improper use, damage, or loss of such Equipment regardless of cause (including damage or loss caused by force majeure events), except to the extent caused by EM3 Networks or its suppliers; and (5) to return the Equipment in good condition, ordinary wear and tear resulting from proper use excepted, immediately upon discontinuance of Service. In the event the Equipment is not returned in good condition,

Customer agrees to pay EM3 Networks the amount set forth in the Agreement for each Equipment device.

- 16. Returns and Adjustments.** Customer may not return Equipment for any reason without prior approval of EM3 Networks. All returns shall be in original packaging or equivalent. Customer shall be responsible for all costs related to shipping to EM3 Networks any Equipment that is being returned. Any Equipment returned to EM3 Networks without prior authorization for its return or proper packaging may be refused. In order to obtain an appropriate refund, upon cancellation Customer must immediately obtain a return material authorization number from EM3 Networks, return to EM3 Networks any Equipment provided or leased hereunder, undamaged and in good working condition, in its original packaging and with its original content or otherwise will be immediately responsible for paying to EM3 Networks an amount equal to the fair retail price of the Equipment minus any payments Customer had previously paid specifically for such Equipment.
- 17. IP Addresses.** Customer may request that EM3 Networks obtain IP addresses and assign Internet access space for the benefit of Customer during the Term (subject to availability). EM3 Networks will route IP addresses on EM3 Networks Network. Customer hereby agrees and acknowledges that Customer does not have rights and ownership interest in any EM3 Networks obtained IP Addresses, and upon termination of the Agreement, Customer agrees that all rights to access and right to use such IP Addresses shall terminate immediately.
- 18. No Right to Intellectual Property.** The Agreement confers no right to use the name, service marks, trademarks, copyrights, or patents of either Party except as expressly provided herein. Neither Party shall take any action, which would compromise the registered copyrights or service marks of the other.
- 19. Compliance with Law.** In conjunction with the Agreement, each Party shall at all times comply with all applicable federal, state, and local statutes, ordinances, regulations, and orders of any commission or other government body.
- 20. No Third Party Beneficiaries.** The Agreement is being executed for the sole and exclusive benefit of the Parties hereto and is not for the benefit of any third parties. The execution hereof shall not create any obligations or confer any rights on any person or entity other than the Parties hereto.
- 21. Obligations of Customer.** Customer acknowledges that it is Customer's sole responsibility to supply immediate notice to EM3 Networks if Customer changes any of its contact information. If at any time Customer's name or billing information changes from that which is set forth below, Customer shall have five (5) days to inform EM3 Networks of such changes in accordance with the Notice provisions set forth in the Agreement.
- 22. Network Abuse.** Customer is prohibited from abusing the networks of EM3 Networks and its underlying carriers. For a complete description of EM3 Networks' network abuse policy, the terms and conditions of which are incorporated by this reference as if copied herein, please refer to our website at www.em3networks.com/abuse.
- 23. Termination of Services; Moves.** Customer may terminate the Agreement or Service Order before expiration of the Term by providing EM3 Networks with written notice at least sixty (60) days in advance. In such event, Customer shall pay EM3 Networks a mandatory early termination charge (the "**Early Termination Charge**") equal to the monthly recurring charge and all associated fees and charges of the terminated Service provided multiplied by the number of months remaining in the Term. Customer hereby agrees that an Early Termination Charge is reasonable and fairly represents the amount of damages that EM3 Networks will sustain as a result of such early termination. Payment of an Early Termination Charge shall not relieve the Customer of its obligation to pay any charges incurred hereunder prior to the effective date of



such termination. Any written notice of termination by Customer pursuant to this Section 23 must be sent by an authorized representative of Customer in the manner outlined in these T&Cs and must specifically describe the Service to be terminated and the reasons therefor. Customer must also reasonably cooperate with EM3 Networks to identify the specific circuit(s) or Service(s) being terminated, and Customer agrees to email its disconnect notice to “Provisioning@em3networks.com”. Customer understands and agrees that billing will only cease when all information reasonably required by EM3 Networks has been provided. Customer will be permitted to move a Service within the same serving wire center. In such event, Customer shall pay a one-time fee equal to the specified amount shown on the applicable modified Service Order or Attachment, plus all direct and administrative costs incurred by EM3 Networks in connection with the move. Customer understands and agrees that EM3 Networks may modify the rates and fees charged to Customer even if Service is moved within the same serving wire center. EM3 Networks cannot guarantee that Customer may move a Service to a location outside the same serving wire center. Any request by a Customer to move a Service outside the same serving wire center will be handled on an individual case basis. EM3 Networks’ inability to honor a move will not relieve Customer from any of its obligations under the Agreement.

- 24. Event of Default.** An “Event of Default” shall occur if: (1) Customer fails to make any payment required to be made by it under the Agreement and any such failure remains uncorrected for two (2) calendar days after the date such payment was due; (2) either Party fails to perform or observe any other term or obligation contained in the Agreement or commits any breach hereof, and any such failure or breach remains uncorrected for thirty (30) calendar days (or any lesser number of days if specified elsewhere herein) after receipt of a notice from the non-defaulting Party informing the defaulting Party of such failure; (3) a voluntary or involuntary proceeding shall be commenced by or against either Party in any jurisdiction seeking liquidation, reorganization, or other relief under any bankruptcy or similar law which is not dismissed within thirty (30) calendar days of filing; (4) either Party shall make an assignment for the benefit of creditors; or (5) either Party shall generally not be able to pay its debts as they become due. The Parties expressly agree that the failure of any particular circuit or any number of circuits to meet the Specifications shall not constitute a breach of the Agreement but shall only obligate EM3 Networks to provide Outage Credits as set forth herein. The Agreement may be immediately suspended by EM3 Networks, without notice, if EM3 Networks in its sole discretion determines that its network integrity is in jeopardy, or that any Service is being used, or planned to be used, in an unlawful manner, or otherwise in violation of any term hereof.
- 25. Remedies.** Upon the happening of any Event of Default, the non-defaulting Party, in addition to any other rights it has at law or equity, may: (1) suspend its performance under the Agreement until such default is remedied but only after providing written notice of such suspension to the defaulting Party; or (2) terminate the Agreement for so long as such default remains uncorrected but only after providing written notice of termination to the defaulting Party. If Customer is the defaulting Party, EM3 Networks may collect the total of all charges under the Service Order and otherwise specified herein throughout the remainder of each Facility’s Minimum Service Term as a single amount, which shall become due and payable upon written notification to the Customer of this election by EM3 Networks. Additionally, if Customer is the defaulting Party EM3 Networks shall have the right to enter Customer’s premises to remove any and all equipment provided to Customer by EM3 Networks.
- 26. Export Compliance.** Customer agrees to comply with U.S. export laws concerning the transmission of technical data and other regulated materials via the Services. Customer agrees to comply with applicable local, state and federal regulations governing the locality in which the Equipment and Services are used.
- 27. Telephone Numbers.** Any telephone number provided by EM3 Networks (“Number”) to the Customer shall be considered leased and not sold. Customer shall not use the Number with and device other than the Equipment without the express written permission of EM3 NETWORKS. EM3 Networks reserves the right to change, cancel or move the Number at its sole discretion. At EM3 Networks discretion, EM3



Networks may release the Number to Customer at the end of the Term.

28. Phone Numbers and Web Portal Discontinuance. Upon expiration, cancellation or termination of the Services, Customer shall relinquish and discontinue use of any telephone numbers, voice mail or conference bridge access numbers and/or web portals assigned to Customer by EM3 Networks or its vendors.

29. Software Copyright. Any software used by EM3 Networks to provide the Services and any software provided to Customer in conjunction with providing the Services is protected by copyright law and international treaty provisions. Customer may not copy the software or any portion of it.

30. Governing Law/Resolution of Disputes.

30.1 Mandatory Arbitration. EXCEPT AS NOTED BELOW, AT EM3 NETWORKS' SOLE ELECTION AND DISCRETION, CUSTOMER AND EM3 NETWORKS WILL ARBITRATE ANY DISPUTES OR CLAIMS IN ANY WAY RELATED TO OR CONCERNING THE AGREEMENT, OR THE PROVISION OF SERVICES OR PRODUCTS TO CUSTOMER, INCLUDING ANY BILLING DISPUTES ("CLAIMS"). CLAIMS SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). CUSTOMER IS REQUIRED TO ARBITRATE CLAIMS AGAINST OTHER PARTIES RELATING TO SERVICES OR PRODUCTS PROVIDED, INCLUDING THE EQUIPMENT, OR BILLED TO CUSTOMER IF CLAIMS ARE ASSERTED AGAINST EM3 NETWORKS IN THE SAME PROCEEDING. ARBITRATION WILL BE CONDUCTED UNDER THE AAA'S PUBLISHED COMMERCIAL ARBITRATION RULES, WHICH MAY INCLUDE THE SUPPLEMENTAL PROCEDURES FOR CONSUMER-RELATED DISPUTES, AND ARE AVAILABLE BY CALLING THE AAA AT 800-778-7879 OR VISITING ITS WEB SITE AT WWW.ADR.ORG. CUSTOMER AND EM3 NETWORKS AGREE TO BEAR THEIR OWN FEES, COSTS, AND EXPENSES, INCLUDING THOSE FOR ANY ATTORNEYS, EXPERTS, AND WITNESSES. THE AAA SUPPLEMENTAL PROCEDURES FOR CONSUMER-RELATED DISPUTES PROVIDE THAT UNLESS A HEARING IS REQUESTED, DISPUTES WILL BE RESOLVED BASED ON WRITTEN SUBMISSIONS AND NO PERSONAL APPEARANCE IS REQUIRED. IF CUSTOMER REQUESTS AN ARBITRATION HEARING, THAT HEARING WILL TAKE PLACE EITHER TELEPHONICALLY OR IN LAWRENCE, KANSAS.

30.2 Exception to Arbitration. As a limited exception to the agreement to arbitrate, Customer and EM3 Networks agree that: (a) Customer may file Claims in small claims court in Douglas County, Kansas, if the Claims qualify for hearing by such court; (b) if Customer fails to timely pay amounts due, EM3 Networks may assign the account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or this Agreement; and (c) any Claim filed as a class action is not subject to arbitration but instead must be filed in the Kansas Superior Court.

30.3 Pre-filing Notice Of Claim. Before instituting Arbitrator or other Claims suit, Customer agree to provide EM3 Networks with an opportunity to resolve the Claim by sending a written description of the claim to EM3 Networks at Billing@em3networks.com. If EM3 Networks is unable to resolve the claim within 30 (thirty) days after receipt of such notice, then Customer or EM3 Networks may initiate arbitration or suit as described above. All claim notices should be sent to: Director of Customer Service, EM3 Networks, Director of Customer Service, 4000 West 6th Suite B 188, Lawrence, KS 66049.

30.4 Governing Law. The Agreement and the relationship between Customer and EM3 Networks shall be governed by the laws of the State of Kansas without regard to its conflict of law provisions. To the extent



court action is initiated to enforce an arbitration award or for any other reason, Customer and EM3 Networks agree to submit to the personal and exclusive jurisdiction of the courts within the state of Kansas, to the extent possible in Douglas County, and waive any objection as to venue or inconvenient forum. The failure of EM3 Networks to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. Customer agrees that any Claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within the shorter period of: (1) the applicable statute of limitations; or (2) one (1) year from the date such Claim or cause of action arose. If Customer fails to file a Claim within this period, it is barred from seeking remedies for that Claim.

- 31. Non-Disclosure and Publicity.** Neither Party shall disclose to any third party the terms and conditions of the Agreement without the prior written consent of the other Party.
- 32. Survival.** The provisions of the Agreement that by their use, nature, and context are required to survive termination shall survive any termination of the Agreement.
- 33. No Modification.** No changes or modification to the Agreement shall be effective unless agreed to by an authorized officer of EM3 Networks either by initials or signature.
- 34. No Waiver.** No failure or delay on the part of either Party in exercising any right hereunder and no course of dealing between the Parties shall operate as a waiver of any provision hereof.
- 35. Headings.** Headings contained herein are provided for convenience and reference only. Headings do not affect or limit the interpretation, contents, or terms of the Agreement.
- 36. Severability.** In the event any provision of the Agreement other than the provisions associated with the obligation to make payment for Services hereunder, as applied to either Party or to any circumstance, conflicts with the law under which the Agreement is to be construed or if any such provision is held invalid, illegal, or unenforceable by a court with jurisdiction over the Parties to the Agreement, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the Parties in accordance with the applicable law, and the remainder of the Agreement shall remain in full force and effect. The illegality or unenforceability of any provision of the Agreement does not affect the legality or enforceability of any other provision or portion of the Agreement.
- 37. Entire Agreement.** The MSA, along with these T&Cs, Attachments, and any Service Order, constitutes the entire Agreement between EM3 Networks and Customer for the Services provided pursuant to the Agreement and supersedes all previous statements, representations, and agreements concerning the subject matter hereof, whether written or oral. No statement, representation, or warranty made by any agent or representative of EM3 Networks regarding the Services pursuant to the Agreement or the rates therefor shall be binding upon EM3 Networks unless expressly included therein or in these T&Cs.