



ICORE NETWORKS, INC. UNIVERSAL TERMS AND CONDITIONS OF SERVICE

The iCore Networks, Inc. Universal Terms and Conditions of Service set forth below (hereinafter referred to as the "Universal Terms and Conditions of Service" or "Agreement") apply to Customer's use of the Service and Equipment (as defined below) provided by iCore Networks, Inc. ("iCore"), as well as Customer's access to the iCore website (the "Website").

CUSTOMER IS ADVISED TO READ SECTION 2(d) CAREFULLY BEFORE USING THE SERVICE. THIS SECTION EXPLAINS THE OPERATION AND LIMITATIONS OF VOIP E911 EMERGENCY CALLS.

1. Definitions. The following definitions apply to this Agreement

"Account" means the account established by Customer for the use of the Service and Equipment.

"Affiliate" means a person or entity, other than iCore, who is engaged by iCore to assist in the sales, marketing, delivery, installation, or operation of iCore's Service and Equipment.

"Customer" or **"you"** or **"your"** means the firm, corporation, or other entity which orders iCore's Service and Equipment, and who is responsible for the payment of charges and for compliance with this Agreement.

"Customer Equipment" refers to Equipment or wiring that Customer acquires from a source other than iCore and use in conjunction with the Service.

"Direct Inward Dialing" or **"DID"** refers to a Service feature that allows callers from the PSTN to directly reach a specific network telephone number or User of the Service.

"E911 Disclosure" means the provisions set forth on the Website at www.iCore.com and/or attached to and incorporated by reference into the Customer Service Order Agreement stating iCore's policies regarding the availability and limitations of E911 Service. In the event of any conflict or inconsistency between the E911 Disclosure provisions set forth on the Website and the E911 Disclosure attached to any Customer Service Order Agreement, the E911 provisions set forth on the Website are the most current provisions and shall apply to govern this Agreement and any Customer Service Order Agreement.

"Equipment" means equipment or wiring at Customer's location(s) that is directly provided or maintained by iCore and used in conjunction with the Service.

"iCore" means iCore Networks, Inc.

"Internet Protocol" or **"IP"** refers to a standard protocol designed for use in interconnected systems of packet-switched computer communication networks.

"Public Switched Telephone Network" or **"PSTN"** refers to the traditional circuit switched local telephone network, which connects telephone users with each other for the purpose of communications. In common usage, the term PSTN may also include local wireless networks.

"Service" refers to the services provided to Customer by iCore, including voice, data, and all other types of communications services. The individual services are listed in the Customer Service Order Agreement executed by Customer and may be described in detail on the Website.

"Service Activation Date" means the date appearing on Customer's services invoice specifying when voice communications service was made available by iCore at any Customer location. In any situation where data services are made available for Customer's use prior to the Service Activation Date, the data services are being provided by

iCore subject to the terms and conditions of this Agreement and Customer shall be financially responsible for paying for all such data services in accordance with the terms of this Agreement but the Service Activation shall still be determined based on the date when voice communications service was first made available by iCore at any Customer location.

"User" means any person or entity that obtains or uses iCore's Service and/or Equipment provided under this Agreement, regardless of whether such person or entity is authorized by Customer.

"Voice over Internet Protocol" or **"VoIP"** refers to a technology that enables people to use the Internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit switched technology.

"Website" means the iCore website identified by the domain name www.iCore.com, along with any content set forth therein, as updated from time to time by iCore in its sole discretion.

2. Terms and Conditions.

(a) Acceptance. By ordering, activating, using, or paying for the Service or Equipment, you agree to be bound by this Agreement. iCore reserves the right, with or without notice, to amend or modify these Terms and Conditions of Service, and Customer agrees to be bound by any amendment or modification. The E911 Disclosure is incorporated into this Agreement by reference. Modifications or amendments to the Terms and Conditions of Service shall be effective at the time they are posted on the Website.

(b) Use. Customer is responsible for all use of the Service and Equipment associated with the Account. Customer accepts full responsibility and liability for such use. The Service and Equipment provided under this Agreement may be used for any lawful purpose for which they are technically suited. Customer agrees not to utilize the Service or Equipment for any unlawful purpose. Customer shall not use Services for transmitting or receiving any communication or material of any kind when the transmission, receipt or possession of such communication or material (i) would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national, or international law, or (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. iCore, in its sole discretion, may terminate Service immediately and without advance notice if Customer violates any of the above restrictions, leaving Customer responsible for the all charges as set forth in Section 3(b).

(c) Fraud. Customer agrees to notify iCore promptly if it becomes aware of any fraudulent or unauthorized use of its Account, Service, or Equipment. iCore shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of Customer's Account, and the payment of all charges to Customer's account shall be and remain the responsibility of Customer.

(d) Limitations of E911 Service. By use of the Service and Equipment, Customer acknowledges the limitations of E911 Service as described in the E911 Disclosure, as well as those set forth below. Customer agrees and acknowledges that while some individual services offer access to E911 Service, others may not. Customer is advised to thoroughly understand the Service and the options available. By accepting these Terms and Conditions of Service, Customer acknowledges that it has received the information regarding the limitations of E911 Services, understands them, and assumes the risks associated with the E911 limitations. iCore may disclose to the FCC that Customer has acknowledged the E911 Disclosure by virtue of Customer having accepted this Agreement.

(e) Availability. The Service and Equipment are offered subject to the availability of the necessary facilities and equipment, and subject to the provisions of this Agreement

(f) Compatibility. The Service and Equipment may not be compatible with Customer Equipment, and iCore is not required to maintain or repair Customer Equipment, or modify the Service to make it compatible with Customer Equipment.

(g) Right to Suspend. iCore reserves the right to suspend, limit or discontinue offering or providing Service, when necessitated by conditions beyond its control, when Customer or any User is using the Service in violation of the provisions of this Agreement, or when Customer or any User is using the Service in violation of the law.

(h) Limitations of Service and Equipment. Customer or any User may not be able to utilize the Service or Equipment, if: (i) the Equipment or Customer Equipment fails; (ii) the power required to operate Customer or any User's computer, router, or modem, if applicable, fails; (iii) Customer's or any User's computer experiences hardware or software problems and/or viruses; (iv) in situations where iCore is not the Internet service provider, Customer's or any User's Internet service provider fails to provide adequate services for any reason; (v) Customer's or any User's hardware or software is improperly installed; or (vi) Customer or any User is blocked or otherwise unable to access the iCore network. By using the Service and Equipment, Customer and its Users acknowledge that the Service and/or Equipment may be limited in certain circumstances and may not be available 100% of the time. iCore will not be liable for errors in transmission or for failure to establish connections. In addition, Customer acknowledges and agrees that the Service and Equipment may not be compatible with certain fax machines or firewalls.

(i) Customer Responsibilities. By using the Service and Equipment, Customer and all of its Users acknowledge that there are certain rules and regulations that may apply to the location from which Customer and its Users are utilizing the Service, and that such rules and regulations may be materially different from jurisdiction to jurisdiction. Customer, on behalf of itself and all Users at Customer's premises agrees to abide by all rules and regulations, including the exportation of data from the U.S. or other applicable jurisdictions. With respect to Customer's use of the Service and/or any Equipment as well as any Customer Equipment, Customer shall be responsible for any claim or damages arising from or related to: libel; slander; invasion of privacy; infringement or unauthorized use of any copyright, trademark, trade name, service mark, or any other intellectual property right; interference with or misappropriation or violation of any proprietary or creative right; and any injury to any person, property, or entity arising out of the material, data, information, or other content used, received, or transmitted by Customer or any User; any act, error, or omission by Customer or any User. Customer shall also be responsible and liable for or any personal injury, property damage, or death of any person caused, directly or indirectly, by Customer, any User, or any Customer employee, agent, or contractor, arising from or related to the installation, maintenance, location, condition, operation, failure, presence, use, or removal of the Service, Equipment, or any Customer Equipment.

(j) Services. Customer acknowledges and agrees that iCore does not have complete management and control nor can iCore prioritize voice traffic over other types of traffic (data, video, etc.) on

any service or circuit which routes traffic through the public internet. Accordingly, iCore shall not be responsible for any service interruption, degradation, delay, transmission error, operational failure, and/or unavailability (individually and collectively referred to as "Service Problem") at any location where Customer orders or uses an unmanaged service. For purposes of this Agreement, an "unmanaged service" means any Customer service or circuit (e.g., T-1, DSL, cable, Ethernet) which, instead of routing voice and data traffic directly to iCore's data center, routes traffic over the public internet before it is sent to an iCore data center. Although iCore agrees to take commercially reasonable efforts to work with Customer to try to identify, address, and resolve any Service Problem on an unmanaged service ordered by Customer, iCore is unable to control the reliability or quality of traffic routed on an unmanaged service. iCore is not responsible for any Service Problem experienced by Customer at any location where Customer orders or uses an unmanaged service. Customer shall not be entitled to any service credits or any other remedy, including, without limitation, a termination right under Section 3(c), for any Service Problem on any unmanaged service.

(k) Information and Installation Responsibilities. Customer acknowledges and agrees that the Service may be comprised of multiple circuits and/or services ordered from iCore for installation at one or more designated Customer locations. The estimated in-service date (EISD) for each Service and circuit ordered by Customer for each Customer designated location will be sent by iCore to Customer after Customer's execution of the Customer Service Order Agreement. Customer agrees and acknowledges that, in order for iCore to install the Service at each designated Customer location as of the EISD, Customer is obligated to provide to iCore requested information (e.g., complete list of telephone numbers to be ported to the iCore network, exact location of circuit installation and designated demarcation point, site survey information, equipment information, etc.) and documentation (e.g., completed and signed Letter of Agency) in a timely manner. Once the EISD for each service and circuit ordered for each designated Customer location has been sent to Customer, if, for any reason, Customer (i) fails to provide any requested information and/or documentation to iCore in a timely manner; and/or (ii) subsequently cancels or requests that the EISD for any service or circuit be moved to a later date, then Customer shall remain responsible and agrees to pay for all applicable monthly recurring charges, non-recurring charges, and any other applicable charges and fees (as described in the Customer Service Order Agreement executed by Customer) as well as applicable taxes for each service and circuit ordered by Customer as if the service and circuit was installed as of the EISD. Customer's financial obligation to pay shall apply irrespective of Customer's reason for failing to provide requested information and/or documentation in a timely manner or reason for cancelling or requesting a delay in any EISD and irrespective of whether the iCore service and/or circuit ordered by Customer is actually installed and used by Customer as of the EISD. The foregoing payment obligation as of the EISD shall not apply if the EISD is missed or delayed as a direct result of any delay in installing a circuit or service caused by iCore or any iCore service or equipment provider. In such situation, Customer's payment obligations shall commence on the date when the service is actually installed by iCore or would have been installed except to the extent any delay is caused by Customer's (a) failure to provide any requested information and/or documentation to iCore in a timely manner as describe above; and/or (b) cancellation or request that the EISD for any service or circuit be moved to a later date.

(l) Required Maintenance. iCore reserves the right to perform maintenance on or upgrade its network, its infrastructure, the Website, the Service and Equipment, and Customer's Account, without prior notice or liability, even if such actions cause a partial or full disruption of the Service; provided, however, and subject to iCore's business needs, iCore will use commercially reasonable efforts to perform maintenance on and upgrades to its network and the Service in a manner so as to avoid unduly interfering with Customer's use of the Service. iCore may, in its sole discretion, add, change or delete features of the Website, features or functionality of the Service and Equipment, or features of Customer's Account.

3. Term and Termination.

(a) Unless otherwise terminated pursuant to this Agreement, the Service is offered for an initial term of service (the "Initial Term") specified in the Customer Service Order Agreement ("Service Order"), which term shall be a minimum of thirty-six (36) months and could be longer depending on the length of term selected by Customer in the Service Order. The Initial Term shall begin on the Service Activation Date and continue until the expiration of the Initial Term. Following the Initial Term, this Agreement shall automatically renew for successive terms that are identical in length to the Initial Term, (each, a "Renewal Term") unless and until either party notifies the other party in writing at least ninety (90) days prior to the end of the Initial Term or any Renewal Term that it does not wish to renew the Service Order. If Customer provides iCore with ninety (90) days prior written notice of its intent not to renew the Initial Term or any Renewal Term in accordance with this Section 3(a), Customer agrees and acknowledges that iCore, upon receipt of such written notice from Customer, shall have the right to: (i) request and receive pre-payment for all amounts that Customer might owe for the remainder of the Initial Term or Renewal Term that is not being renewed; and (ii) charge Customer at iCore's prevailing professional services rates for any services provided by iCore to Customer for discontinuing Customer's use of the Service and assisting with migrating Customer to another vendor. If, during the Initial Term or any Renewal Term, Customer adds any additional services to its use of the Service, the amount of Customer's monthly recurring charges shall, in accord with iCore's prevailing rates at the time, increase the sum set forth in the original Customer Service Order Agreement. And, the term for any such additional services shall be the longer of: (i) a minimum of twelve (12) months from the Service Activation Date for such additional services; or (ii) the remaining length of the unexpired Initial Term or Renewal Term. To the extent that the term for any such additional services extends beyond the Initial Term or any Renewal Term, the terms and conditions of this Agreement shall remain in full force and effect with respect to such additional services until the expiration of the term for such additional services.

(b) **Early Termination.** If this Agreement is terminated by Customer prior to the expiration of the Initial Term or any Renewal Term and such termination is not due to iCore's breach as set forth in Section 3(c) or if iCore terminates this Agreement pursuant to Section 2(b) or 3(c) due to Customer's breach, Customer shall pay to iCore an early termination charge, which Customer agrees is reasonable, equal to all non-recurring and monthly recurring charges set forth in the Customer Service Order Agreement which would otherwise be due through the end of the Initial Term or Renewal Term in effect at the time, including all applicable taxes and fees. The parties agree that the precise damages resulting from an early termination by Customer or termination by iCore due to Customer's breach are difficult to ascertain and the early termination charge set forth in this Section 3(b) is a reasonable estimate of anticipated actual damages and not a penalty. The early termination charge shall be due and payable within ten (10) days of the effective date of termination.

(c) **Termination for Breach.** Either party may terminate this Agreement at any time by giving thirty (30) days written notice of termination to the other party in the event that the other party (a) materially breaches this Agreement and fails to remedy such material breach within thirty (30) days of receiving such written notice, or (b) becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, or if a receiver is appointed over such party's assets. Notwithstanding any other provision of this Agreement, iCore has the right to suspend Service, and terminate this Agreement for Customer's material breach, immediately upon written notice if any amount owed by Customer is delinquent for more than thirty (30) days from the invoice date.

(a) **Government or Regulatory Developments.** iCore has the right to terminate any Customer Service Order Agreement if,

regardless of the cause or reason, iCore cannot legally provide some or all of the Equipment or Services for a period exceeding ten (10) days, including, without limitation, loss of governmental or regulatory authorizations required to provide the Equipment or Services; or, if changes in laws or regulations make the provision of some or all of the Services impracticable or illegal for iCore to install, maintain, or operate any of the Equipment or provide any Service.

4. Limitation of Liability

(a) iCore's liability for damages arising out of mistakes, interruptions, omissions, delays, errors, or defects which occur in the course of installing, furnishing, maintaining, or modifying Service or Equipment or for any other reason, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the period during which the faults occurred. In the event that Customer experiences a loss of service due to iCore's fault, negligence, act, error, or omission, iCore will provide Customer with a credit on a pro-rata basis for the period of time that the Service was unavailable to Customer. In order to receive a credit, Customer will need to provide iCore written notice within ten (10) days of the service interruption and the credit will be applied to a future Customer invoice.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY CUSTOMER SERVICE ORDER AGREEMENT, IN NO EVENT WILL iCORE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR CONTRACTORS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS, EXPENSE, OR DAMAGE DUE TO LOSS OF REVENUES, PROFITS, SAVINGS, BUSINESS, OR GOODWILL, NOR WILL iCORE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR CONTRACTORS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, EXEMPLARY, PROXIMATE, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY, WITHOUT LIMITATION, TO ANY CLAIM, LOSS, EXPENSE, OR DAMAGE, RELATING TO OR ARISING FROM ANY MALFUNCTION OF ANY SERVICE, EQUIPMENT, OR FACILITY PROVIDED BY iCORE OR ANY OTHER SERVICE PROVIDER AS WELL AS THE FAILURE OR INABILITY TO ACCESS E911 SERVICE OR ANY EMERGENCY SERVICE.

(c) NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT OR ANY CUSTOMER SERVICE ORDER AGREEMENT, IN NO EVENT SHALL iCORE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONTRACTORS, BE LIABLE TO CUSTOMER OR ANY USER OF THE SERVICE AND/OR EQUIPMENT DUE TO THE INABILITY OF CUSTOMER, ANY USER, OR ANY OTHER PERSON OR PARTY TO BE ABLE TO DIAL 911 OR ACCESS AND/OR SPEAK TO 911 EMERGENCY PERSONNEL THROUGH SERVICES OR EQUIPMENT PROVIDED BY iCORE; OR iCORE'S SUSPENSION OR TERMINATION OF SERVICES IN ACCORDANCE WITH THESE UNIVERSAL TERMS AND CONDITIONS OF SERVICE. THE LIMITATIONS SET FORTH IN THIS SECTION 4 APPLY TO ALL CLAIMS AND ALLEGATIONS WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY.

(d) Except for iCore's gross negligence or willful misconduct, in no event shall iCore's total aggregate liability to Customer, including, without limitation, liability to any User, person, or persons whose claim or claims are based on or derived from a right or rights claimed by Customer or to any third parties for any and all claims arising from or relating to any Service Order, these Universal Terms and Conditions of Service, or any other claim or cause of action, whether in contract, tort, or otherwise, exceed the aggregate amount of charges paid by Customer to iCore during the six (6) month period immediately preceding the date of the occurrence of the event giving rise to the claim or cause of action. iCore shall have no liability whatsoever for any damage to, or loss of, any equipment or other property under the care, custody or control of Customer or any User unless caused by iCore's gross negligence or willful misconduct, in

which case iCore's maximum liability is set forth above in this Section.

(d) Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the limitations set forth in this Section 4 may not apply to Customer if prohibited by law.

(e) No action against either party arising out of this Agreement may be brought by the other party more than one year after the cause of action has arisen.

5. No Warranty.

THE EQUIPMENT AND SERVICE ARE PROVIDED BY iCORE ON AN "AS IS" BASIS, AND CUSTOMER'S AND ITS USERS' USE OF THE EQUIPMENT AND SERVICE ARE AT CUSTOMER'S OWN RISK. OTHER THAN THE THIRD PARTY MANUFACTURERS' WARRANTIES THAT MAY BE APPLICABLE TO THE EQUIPMENT, iCORE IMPLIED, WITH RESPECT TO THE SERVICE OR EQUIPMENT THAT ARE THE SUBJECT OF THIS AGREEMENT OR ANY SERVICE ORDER. WITHOUT LIMITING THE FOREGOING, iCORE MAKES NO REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FUNCTION, WHETHER EXPRESS OR IMPLIED. iCORE MAKES NO WARRANTY THAT THE SERVICE OR EQUIPMENT WILL OPERATE UNINTERRUPTED OR ERROR FREE. iCORE DOES NOT WARRANT THAT ANY SERVICE WILL BE AVAILABLE ON A SPECIFIED DATE OR TIME OR THAT THE NETWORK WILL HAVE THE CAPACITY TO MEET THE DEMAND OF USERS DURING SPECIFIC HOURS. CUSTOMER MAY BE UNABLE TO ACCESS THE NETWORK AT ANY TIME AND DISCONNECTION FROM THE NETWORK MAY OCCUR FROM TIME TO TIME.

6. Equipment.

Customer is responsible for all costs at its premises, including, without limitation, personnel, wiring, computer equipment, Internet access (in situations where iCore is not the Internet service provider), electrical power, and the like, necessary for the use of the Service and any Equipment.

7. Software.

iCore uses certain software and related components licensed by iCore from third parties. Customer shall not use any such third party software and related components except in conjunction with use of the Service and Equipment.

8. Third Party Networks and Network Monitoring.

(a) iCore utilizes the public Internet and third-party networks in conjunction with its provision of the Service and the Website. iCore makes no representation that the Internet or any third-party network will adequately protect the privacy of Customer's or any User's personal information, and iCore expressly denies any liability associated therewith.

(b) **Monitoring.** iCore may monitor Customer's Account and Customer's and Users' use of the Service to respond to service or technical problems; to monitor compliance with this Agreement or any Service Order; if there has been an actual or suspected violation of this Agreement or any Service Order; to assess or determine that the Service and any Equipment are properly implemented and configured; at Customer's request; or to protect the integrity of the iCore network or Customer's use of the Service, in any emergency situation, or any other situation in which iCore, in its good faith judgment, deems appropriate under the circumstances.

9. Financial Terms.

(a) **Prices and Charges.** In addition to paying for all applicable non-recurring and professional services charges, Customer shall, throughout the Initial Term and any Renewal Term, pay the monthly recurring charges set forth in the Customer Service Order Agreement. All such monthly recurring charges shall apply

irrespective of whether Customer decreases, abandons, and/or cancels the number of services that use the Service during such the Initial Term or any Renewal Term. Customer agrees and acknowledges that iCore may start billing, and Customer is obligated to pay, for data services once the data circuit ordered by Customer has been delivered at the designated Customer premises. iCore may increase, decrease, change, or modify any of its rates for any Service at any time; provided, however, that such changes shall not be effective until at least thirty (30) days after written notice is given to Customer. Notwithstanding Section 3(b), if iCore increases the rate to be paid for any Service, Customer shall be permitted to terminate any or all of the Service(s) provided by iCore, without incurring an early termination charge, if Customer gives iCore written notice of termination within thirty (30) days of receipt of iCore's notification of any rate increase. If Customer elects to terminate Service in accordance with this Section 9(a), Customer shall remain liable for any accrued charges owed prior to the effective date of termination. If Customer fails to give written notice of termination within thirty (30) days of receipt of iCore's written notice of a rate increase, Customer shall be deemed to have accepted the rate increase, waived its right to terminate, and this Agreement and all Service Orders shall remain in full force and effect.

(b) Taxes and Fees.

(i) **Taxes.** Federal, state, local, county, municipal, and other government or regulatory agencies may assess taxes, including, without limitation, excise, franchise, sales, value-added, use, personal and real property taxes, surcharges and/or fees ("Taxes") on Customer's purchase and/or use of the Service and/or Equipment. These Taxes may change from time to time, with or without notice to Customer. Customer is responsible for the payment of all applicable Taxes now in force or enacted in the future. Such amounts are in addition to the charges paid for the Service and Equipment. If Customer is exempt from any or all Taxes, it must provide iCore with an original certificate that satisfies applicable legal requirements attesting to its tax exempt status. Tax exemption shall only apply from and after the date that iCore receives such valid certificate.

(ii) **Fees.** In addition to any Taxes imposed by governments or regulatory agencies, iCore reserves the right to charge or increase various fees ("Fees"), including, without limitation, activation fees, E911 Service fees, universal service fees, and regulatory recovery fees. Any imposition of or increase in Fees that are imposed by a government or regulatory agency or that are intended to recover costs associated with government or regulatory programs may, in iCore's sole discretion, be effective immediately upon posting to the Website. The imposition of or increase in any Fees shall not constitute a rate increase as described in Section 9(a) and shall not give Customer a right to terminate this Agreement or any Service Order pursuant to Section 9(a).

(c) Billing and Payment.

(i) **Payment.** All iCore invoices are due upon receipt and all payments must be made in U.S. currency. Customer shall pay monthly recurring charges for any partial month during the Initial Term or any Renewals Term on a pro rata basis. Customer is solely responsible for any and all charges incurred as the result of the use of the Service associated with its Account, whether or not such charges were authorized or intended. iCore may suspend, restrict, or cancel use of the Service and Equipment, if Customer does not make full payment of all billed charges by the due date. Any amounts not paid to iCore within thirty (30) days of the date of the applicable invoice shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Customer shall also reimburse iCore for all reasonable attorneys' fees and other costs associated with collecting delinquent payments or with Customer's breach of this Agreement. Customer shall be responsible for all sales, use, value added or other tax or duty arising from or related to this Agreement and the provision of Services and Equipment, except for taxes on iCore's net income.

(ii) Invoice and Statement Periods, Format and Delivery.

Billing periods and invoice formats may vary. iCore reserves the right to change the billing period, invoice format, or method of delivery from time to time, with or without notice to Customer. Unless otherwise agreed, all invoices shall be delivered electronically via the email address on file for Customer's Account. Customer is obligated to keep its Account information accurate and current. An incorrect or obsolete email address shall not release Customer from any of its payment obligations.

(iii) Methods of Payment.

In its sole discretion and in limited instances, iCore reserves the right to accept payment by credit card. Customer acknowledges and agrees that each credit card payment is subject to a credit card processing fee of twenty-five dollars (\$25) and an additional charge of 0.04% of the amount due. In situations where iCore agrees to accept payment by credit card, iCore reserves the right to discontinue acceptance of payment by credit card at any time.

(iv) Prepayment.

Unless otherwise specified, all monthly recurring charges for Service and Equipment will be billed and paid one calendar month in advance. iCore has the right to bill and Customer shall pay for all non-recurring and professional services plus applicable taxes prior to the Service Activation Date. All usage and related charges will be billed and paid in arrears as and when they are incurred and remain subject to the payment terms set forth in this Agreement.

(v) Billing Disputes.

If Customer believes that it has been charged in error, or if Customer believes that it is due a credit or refund, Customer must notify iCore in writing within thirty (30) days after delivery of Customer's invoice. Any billing disputes must be in writing, using the iCore Credit Request Form, including a detailed statement describing the nature and amount of the disputed charge(s) and the reason(s) why a credit or refund is being requested, and sent via certified or overnight mail, return receipt requested, to the attention of:

Billing Department
iCore Networks, Inc.
7900 Westpark Drive, Suite A-315
McLean, Virginia 22102

Customer shall cooperate fully with iCore to promptly address and attempt to resolve the disputed charge(s). If Customer fails to provide written notice of dispute within the enumerated thirty (30) day deadline, the charges and invoice will be considered correct and binding on Customer. Irrespective of the foregoing, Customer shall pay the full amount of the invoice, including the disputed amounts, in a timely manner and in accordance with the payment terms set forth in this Agreement.

(d) Service Suspension, Termination and Restoration.

iCore may suspend or terminate Customer's Service, and may terminate this Agreement, if Customer fails to meet any or all of its payment obligations. If Customer's Service has been suspended or terminated, iCore may, at its sole option, choose to restore or re-establish Customer's Service prior to the payment of all charges due. Such restoration or re-establishment shall not be construed as a waiver of iCore's right to receive full payment for all charges due or as a waiver of any rights to suspend or disconnect Service for non-payment of any such charges due and unpaid or for the violation of any provision of this Agreement; nor shall the failure to suspend or disconnect Service for non-payment of any past due amount operate as a waiver or estoppel to suspend or disconnect Service for non-payment of such Account or of any other past due Account. If Service is suspended for non-payment of charges, it will be only restored when all charges are paid in full and at iCore's discretion.

(e) Authorization to Verify Credit Rating.

Customer agrees to supply iCore with the information necessary to verify Customer's credit rating prior to providing Customer with access to any Service or Equipment. iCore may also, during the term of this Agreement, update its information regarding Customer's credit rating without notice to Customer.

(f) Deposit. If iCore determines, prior to providing Customer with access to any Service or Equipment, or during the term of this Agreement or any Service Order, that it requires a deposit to ensure Customer's payment, Customer may be required to provide a deposit. In the event iCore requires a deposit, the deposit will be held and applied as required by law. iCore may apply Customer's deposit to past due obligations as well as to any fees or other assessments to Customer's Account.

10. Trademarks.

Customer shall not to use any of iCore's trade names, trademarks, service marks, or logos without iCore's express written consent.

11. Service Disconnection.

iCore reserves the right to terminate the Service or Customer's use of the Equipment in the event Customer or any User is in violation of this Agreement. iCore may be required by law to interrupt the service in the event it causes interference to the iCore network, any party, or any equipment.

12. Indemnification.

(a) iCore shall protect, indemnify, defend and hold harmless Customer, its officers, directors, employees, agents, and contractors, from and against any and all losses, damages, liabilities, penalties, fines, costs and expenses, including reasonable attorneys' fees, incurred by Customer, arising from or relating to, any gross negligence or willful misconduct of iCore while at Customer's physical location(s) or iCore's material breach of any representations and warranties made in this Agreement.

(b) Customer shall protect, indemnify, defend and hold harmless iCore, its officers, directors, employees, agents, and contractors, from and against any and all losses, damages, claims, allegations, causes of action, liabilities, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees, arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct of Customer or any User of the Service or Equipment; (ii) any breach by Customer of any term or condition of any Service Order or this Agreement or Customer's breach of any warranty, representation or covenant in any Service Order or this Agreement; (iii) any claim by any employee or invitee of Customer or User other than a claim based on the gross negligence or willful misconduct of iCore; (iv) any claim by any customer of Customer, User, or any other third party relating to, or arising from, Customer's use of the Services or Equipment; or (v) violation of any law or regulation by Customer, any User, or any Customer employee, contractor, or agent.

13. Confidentiality.

(a) Each party (a "Receiving Party") acknowledges that it and its employees, contractors, or agents may, in the course of satisfying its obligations hereunder, be exposed to or receive information which is proprietary or confidential to the other party (a "Disclosing Party"). Any and all information in any form obtained by a Receiving Party or its employees, contractors, or agents in the provision or use of the Services or the satisfaction of such party's obligations hereunder, including but not limited to the financial terms of this Agreement or any Service Order, product and business information, financial information, trade secrets, know-how and information regarding processes, shall be deemed to be the confidential and proprietary information ("Confidential Information") of the Disclosing Party. The Receiving Party agrees (a) to hold all Confidential Information in strict confidence; (b) to disclose Confidential Information only to employees and/or contractors of the Receiving Party who have a need to know such Confidential Information and who are obligated to hold such Confidential Information in strict confidence; and (c) not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose such Confidential Information to third parties, or to use such Confidential Information for any purposes whatsoever other than in connection with the Receiving Party's performance under this Agreement.

(b) Confidential Information shall exclude all information, which (a) is at the time of disclosure or thereafter becomes a part of the public domain through no act or omission of the Receiving Party, its employees, contractors, or agents; (b) was in the Receiving Party's possession as shown by written records prior to the disclosure and had not been obtained by Receiving Party either directly or indirectly from the Disclosing Party; (c) is hereafter disclosed to the Receiving Party by a third party who did not acquire the information directly or indirectly from the Disclosing Party hereunder; (d) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information, as evidenced by written records; or (e) was required by law to be disclosed, but only to the extent and for the purposes of such required disclosure.

14. Governing Law and Dispute Resolution.

(a) This Agreement and the terms of any Customer Service Order Agreement(s) and any addendum thereto, shall be governed by and enforced according to the laws of the Commonwealth of Virginia without giving effect to any of its rules of conflicts of laws. The parties hereby agree that any disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges, amounts or fees invoiced to Customer may be brought in the state courts in Fairfax County, Virginia or federal court in Alexandria, Virginia. The parties hereby consent and submit to the exclusive jurisdiction of such courts. Each party hereto waives any objection based on forum non convenes and waives any objection to venue of any action instituted hereunder to the extent that an action is brought in the courts identified above and is not otherwise subject to arbitration.

(b) In the event of any controversy or claim arising from or related to this Agreement, its performance or interpretation, the parties, in good faith, will initially attempt to resolve the dispute between them. Except for disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges, amounts or fees invoiced to Customer, any and all disputes, controversies and claims arising out of or relating to this Agreement or any Customer Service Order Agreement(s), including its/their validity, shall be handled, determined, and resolved by arbitration conducted in Fairfax County, Virginia, before one (1) arbitrator in accordance with the Commercial Arbitration Rules and Mediation Procedures then in effect of the American Arbitration Association. The arbitrator's award shall be final and binding on the parties, and judgment confirming such arbitration award may be entered thereon in any court having jurisdiction over such proceedings. Each party shall bear its own costs and expenses of preparing and presenting its case and shall bear an equal share of the expenses and fees with respect to the arbitration. The arbitrator shall not be empowered to award damages in excess of direct compensatory damages and shall not be authorized to award special, indirect, punitive, incidental, or consequential damages, and each party irrevocably waives any damages in excess of direct compensatory damages.

(c) **Action to Collect Charges.** Notwithstanding the above, the parties hereby agree that any disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges or fees invoiced to Customer may be brought in the state courts in Fairfax County, Virginia or federal court in Alexandria, Virginia. The parties hereby consent and submit to the exclusive jurisdiction of such courts. Each party hereto waives any objection based on forum non convenes and waives any objection to venue of any action instituted hereunder to the extent that an action is brought in the courts identified above and is not otherwise subject to arbitration. Furthermore and notwithstanding the Section above, iCore shall be entitled to receive attorneys' fees and costs in the event it institutes an action to collect any amounts owed for Service and/or Equipment under this Agreement or any Service Order. In the event iCore is required to initiate such an action, it shall not be limited to arbitration but may bring the action in any civil court of competent jurisdiction.

15. Severability.

iCORE NETWORKS, INC. UNIVERSAL TERMS AND CONDITIONS OF SERVICE

This Agreement is made subject to all present and future valid orders and regulations of any regulatory body or court having jurisdiction over the subject matter hereof and to the laws of the United States of America, any of its states, or any foreign governmental agency having jurisdiction. In the event this Agreement, or any of its provisions, shall be found contrary to or in conflict with any such order, rule, regulation, or law, this Agreement shall be deemed modified to the extent necessary to comply with any such order, rule, regulation or law, provided that such modification is consistent with the form, intent and purpose of this Agreement. If any provision of this Agreement or part thereof is stricken in accordance with this section, then the stricken provision shall be replaced, to the extent possible, with the a legal, enforceable, and valid provision that is as similar to the stricken provision as is legally possible.

16. Notice.

(a) **To Customer:** In the event iCore is required to provide Customer with notice under this Agreement, it will provide electronic notice to the e-mail address on file. In the event that Customer changes its e-mail address, Customer shall advise iCore immediately in writing. By Customer's acceptance of these Terms and Conditions of Service, Customer agrees to electronic delivery of all required notifications, unless otherwise provided for herein.

(b) **To iCore:** Unless expressly stated otherwise in this Agreement, in the event Customer is required or desires to provide iCore with notice, all correspondence should be sent to the following address:

Chief Financial Officer
iCore Networks, Inc.
7900 Westpark Drive, Suite A-315
McLean, Virginia 22102

17. Waiver.

The failure of either party to enforce or insist upon compliance with any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment of any other provision of this Agreement.

18. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and any User who uses the Services under Customer's Account.

19. Assignment.

Customer shall not assign any of its rights or obligations under this Agreement, or transfer ownership of the Account or any Service or Equipment, without iCore's prior written consent.

20. Amendment.

iCore reserves the right, with or without notice, to amend or modify these Universal Terms and Conditions of Service, and Customer agrees to be bound by any amendment or modification. Except as stated above in this Section 20 and subject to the terms and conditions of this Agreement, this Agreement may not be amended by Customer except by a written document executed by both parties.

21. Entire Agreement and Merger.

This Agreement, along with the Customer Service Order Agreement(s) and the E911 Disclosure, supersedes and merges all prior agreements, promises, understandings, statements, representations, warranties, indemnities, covenants, and all inducements to the making of this Agreement relied upon by either party, whether written or oral, and embodies the parties' complete and entire agreement with respect to the subject matter hereof. No statement or agreement, oral or written, made before the execution of this Agreement shall vary or modify the written terms hereof in any way whatsoever.

22. Independent Contractors.

iCore and Customer are independent contractors and any Service Order(s) and this Agreement do not establish any relationship of partner-

ship, joint venture, employment, franchise or agency between the parties. Neither party has the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent,

23. Basis of Bargain; Failure of Essential Purpose.

Customer acknowledges and agrees that iCore has established its prices and entered into one or more Customer Service Order Agreements in reliance upon the limitations and exclusions of liability and the warranty disclaimers set forth in these Universal Terms and Conditions of Service are an essential basis of the bargain between the parties and are material terms of this Agreement. The parties agree that the limitations and exclusions of liability and disclaimers specified in these Universal Terms and Conditions of Service will survive and apply even if found to have failed their essential purpose, and Customer hereby waives its right to contest the enforceability of any provision of these Universal Terms and Conditions of Service by reason of such failure.

24. Third Party Beneficiaries.

iCore may use or rely on one or more licensors, service providers, and/or equipment providers or equipment lessors whose products, equipment, and/or services are incorporated into, provided in conjunction with, or licensed with, the Services and/or Equipment provided by iCore, and each such licensor, service provider, equipment provider and equipment lessor is expressly made a third party beneficiary under the applicable Customer Service Order Agreement(s) and this Agreement. Such licensor, service provider, equipment provider, and equipment lessor shall have the right to enforce the terms and conditions of the Customer Service Order(s) and this Agreement respecting any terms affecting such licensor, service provider, equipment provider, or equipment lessor as if such person, company, or entity were a party to the Customer Service Order(s) and/or this Agreement.

25. Facsimile Transmission/Counterparts.

This Agreement including any Service Orders may be executed and delivered by facsimile or email, and upon receipt such transmission shall be deemed delivery of an original. This Agreement including any Service Orders may be executed in several counterparts each of which when executed shall be deemed to be an original, and such counterparts shall each constitute one and the same instrument.

26. Force Majeure.

Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labour difficulties, governmental action or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.