

# **BUSINESS SERVICES CUSTOMER TERMS AND CONDITIONS**

**As of November 1, 2020**

The Customer named on the Service Order Agreement and Clear Rate agree that the terms and conditions on the Service Order Agreement and these terms and conditions constitute the agreement (the "Agreement") for the provision of the Services selected by Customer and designated on a Service Order. The terms and conditions in the "GENERAL TERMS AND CONDITIONS" section below are applicable to all Services.

## **GENERAL TERMS AND CONDITIONS**

### **ARTICLE 1. DEFINITIONS**

**Agreement:** Consists of the Service Order Agreement executed by Customer and accepted by Clear rate, these Business Services Customer Terms and Conditions, the then current Service Order for each applicable ordered service, and each Service Order accepted by Clear Rate under the Agreement, as well as, any amendments thereto.

**Clear Rate:** The operating company of Clear Rate Communications, Inc. and its subsidiaries that is your service provider.

**Clear Rate Equipment:** Any and all facilities, equipment or devices provided by Clear Rate or its authorized contractors at the Service Location(s) that are used to deliver any of the Services including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks. Notwithstanding the above, inside telephone wiring, whether or not installed by Clear Rate, shall not be considered Clear Rate Equipment.

**Clear Rate Website or Website:** The Clear Rate website where the General Terms and Conditions, PSAs and other Clear Rate security and privacy policies applicable to the Agreement will be posted. The current URL for the Website is <https://www.clearrate.com>. Clear Rate may update the Website documents and/or URL from time to time.

**Confidential Information:** All information regarding either party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential." or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, the Agreement, all Licensed Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the parties' communications regarding such items.

**Customer-Provided Equipment:** Any and all facilities, equipment or devices supplied by a party other than Clear Rate or its subsidiaries for use in connection with the Services.

**Early Termination Charges or Termination Charges:** Except as otherwise provided herein, charges that may be imposed by Clear Rate if, prior to the end of the applicable Service Term (a) Clear Rate terminates Services for cause or (b) Customer terminates any Service for Convenience or without cause. Termination Charges with respect to each Service terminated during the initial Service Term shall equal, in addition to all amounts payable by Customer in accordance with Section 5.3, ninety percent (90%) of the average monthly invoice for the previous twelve (12) months, multiplied by the remaining number of months under the applicable Service Order if the terminated Service(s) had been provided until the end of the initial Service Term, and one hundred percent (100%) of any amount paid by Clear Rate in connection with Custom Installation, as that term is defined in Section 2.7, for the Services provided by Clear Rate under such Service Order.

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

**Party:** A reference to Clear Rate or the Customer; and in the plural, a reference to both companies.

**Service(s):** The Business Internet, Voice services, advanced data services and managed services provided by Clear Rate to Customer described in one or more Service Order(s). All Services are for domestic U.S., commercial, non-residential use only. Services are subject to availability.

**Service Commencement Date:** The date(s) on which Clear Rate first makes Service available for use by Customer.

**A single Service Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.** If services are being provided prior to the signing of an Agreement, or customer renews an existing agreement and services are in use in the previous and newly executed agreement, the Service Commencement Date shall be the day the new Agreement is executed by both parties. If there are services that are being provided as a temporary service, the Service Commencement Date shall be the date that the permanent services are first made available for the Customer's use.

**Service Order:** A request for Clear Rate to provide the Services to Service Location(s) submitted by Customer to Clear Rate (a) on a then-current Clear Rate form designated for that purpose or (b) if available, through a Clear Rate electronic or verbal order processing system designated for that purpose. Customer's first Service Order is included as part of the Service Order Agreement.

**Service Order Agreement:** The agreement under which all Service Orders are submitted to Clear Rate.

**Service Location(s):** The Customer location(s) where Clear Rate provides the Services. For multi-tenant buildings, Service Location shall mean the customer's leased and/or owned business space.

**Service Term:** The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in a Service Order.

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

## **ARTICLE 2. DELIVERY OF SERVICES**

**2.1 Orders.** A Service Order must be completed to initiate Service to a Service Location(s). A Service Order shall become binding on the parties when (i) it is specifically accepted by Clear Rate either electronically or in writing, (ii) Clear Rate begins providing the Services described in the Service Order or (iii) Clear Rate begins installation of the Services described in the Service Order, whichever is earlier. When a Service Order becomes effective it shall be deemed part of, and shall be subject to, the Agreement.

**2.2 Speed.** Clear Rate makes no representation regarding the speed of the Internet Service. Actual speeds may vary and are not guaranteed. Many factors affect speed including, without limitation, the number of workstations using a single connection.

**2.3 Access.** Customer, at no cost to Clear Rate, shall secure and maintain all necessary rights of access, including but not limited to, right of ways, easements, landscaping areas, walkway, parking lots/driveways, equipment/telephone closets and structural components (i.e. interior/exterior walls) to Service Location(s) for Clear Rate to install and provide the Services, unless Clear Rate has secured such access prior to this Agreement. In addition, Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the Clear Rate Equipment used to provide the Services within the Service Location(s). Clear Rate and its employees and authorized contractors will require free ingress and egress into and out of the Service Location(s) in connection with the provision of Services. Upon reasonable notice from Clear Rate, Customer shall provide all required access to Clear Rate and its authorized personnel.

**2.4 Service Commencement Date.** Upon installation and connection of the necessary facilities and equipment to provide the Services, or in the case of Voice, the day Voice Service is activated, Clear Rate shall notify Customer that the Services are available for use, and the date of such notice shall be called the "Service Commencement Date." Any failure or refusal on the part of Customer to be ready to receive the Services on the Service Commencement Date shall not relieve Customer of its obligation to pay applicable Service charges.

**2.5 Clear Rate Equipment.** Clear Rate Equipment is and shall remain the property of Clear Rate regardless of where installed within the Service Location(s), and shall not be considered a fixture or an addition to the land or the Service Location(s). At any time Clear Rate may remove or change Clear Rate Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Clear Rate Equipment or permit others to do so, and shall not use the Clear Rate Equipment for any purpose other than that authorized by the Agreement. Customer shall maintain Clear Rate Equipment in good operating condition during the term of this Agreement; provided, however, that such maintenance shall be at Clear Rate's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the Clear Rate Equipment. Customer is responsible for damage to, or loss of, Clear Rate Equipment caused by its acts or omissions, and its noncompliance with this Section, or by fire, theft or other casualty at the Service Location(s), unless caused by the negligence or willful misconduct of Clear Rate. Customer agrees not to take any action that would directly or indirectly impair Clear Rate's title to the Clear Rate Equipment, or expose Clear Rate to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Following Clear Rate's discontinuance of the Services to the Service Location(s), Clear Rate retains the right to remove the Clear Rate Equipment including, but not limited to, that portion of the Clear Rate Equipment

located within the Service Location(s). To the extent Clear Rate removes such Clear Rate Equipment, it shall be responsible for returning the Service Location(s) to its prior condition, wear and tear excepted.

**2.6 Customer-Provided Equipment.** Clear Rate shall have no obligation to install, operate, or maintain Customer-Provided Equipment. Customer alone shall be responsible for providing maintenance, repair, operation and replacement of all inside telephone wiring and equipment and facilities on the Customer's side of the cable modem, route and/or coaxial input connection. All Customer-Provided Equipment and wiring that Customer uses in connection with the Services must be fully compatible with the Services. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by Clear Rate's employees or authorized contractors when the difficulty or trouble report results from. Clear Rate shall not be responsible to the Customer if changes in any of the facilities, operations or procedures of Clear Rate utilized in the provision of Service render any Customer-Provided Equipment or other equipment provided by a Customer obsolete or require modification or alteration of such equipment or system or otherwise affect its use or performance. Customer further agrees that it will be responsible for supplying the necessary electrical components to power the Services provided by Clear Rate, and Customer solely bears that cost. Customer is also responsible and solely bears any costs associated with providing ancillary services and products including paneling, back boards, or any other equipment and tools necessary for Clear Rate to install any of its hardware.

**2.7 Engineering Review.** Each Service Order submitted by Customer may be subject to an engineering review by Clear Rate. The engineering review will determine whether the cable plant must be extended, built or upgraded in order to provide the ordered Services at the requested Service Location(s), or whether Service installation has to be expedited to meet the Customer's requested Service Commencement Date. Clear Rate will provide Customer written notification in the event Service installation at any Service Location will require an additional one-time installation fee. Customer will have five (5) business days from receipt of such notice to reject the one time Installation Fee and terminate, without further liability, the Service Order with respect to the affected Service Location(s). In the event Customer does terminate pursuant to this section, then Customer shall be responsible for reimbursing Clear Rate for all out of pocket expenses incurred in connection with the anticipated project which were incurred after the effective date of the Agreement.

**2.8 Administrative Web Site.** Clear Rate may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). Clear Rate may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Clear Rate if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and Clear Rate shall be entitled to rely on all Customer uses of and submissions to the Administrative Web Site as authorized by Customer. Clear Rate shall not be liable for any loss, cost, expense or other liability arising out of any Customer use of the Administrative Web Site or any information on the Administrative Web Site. Clear Rate may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

**2.9 Network Modification.** Clear Rate, in its sole and absolute discretion, with or without notice to Customer, may make modifications to its network which may impact Customer's services. Customer may be required to make modifications to its own network in order to continue receiving Services from Clear Rate, and Customer is solely responsible for any expenses or charges it incurs in connection with making its network compatible with Clear Rate's network.

Clear Rate, from time to time, will perform network maintenance and modifications, which may require the network to be out of service for moments at a time. These scheduled maintenance windows will not be eligible for Service Level credits or to be used in the calculation of any other credits to be applied to Customer's account. The aforementioned maintenance and modifications will not take place during normal business hours, unless customer is otherwise notified in advance. Regularly scheduled maintenance periods can occur any day between 12:00 am and 6:00 am.

### **ARTICLE 3. CHARGES, BILLING AND PAYMENT**

**3.1 Charges.** Customer shall pay Clear Rate one hundred percent (100%) of the Custom Installation Fee prior to the installation of Service. Customer further agrees to pay all charges associated with the Services, as set forth or referenced in the applicable Service Order(s) or invoiced by Clear Rate. These charges may include, but are not limited to installation charges, monthly recurring service charges, usage charges including without limitation charges for the use of Clear Rate Equipment, per-call charges, charges for service calls, maintenance and repair charges, fees for disconnection of services, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). Some Services such as measured and per-call charges, may be invoiced after the Service has been provided to Customer. Except as otherwise indicated herein or on the applicable Service Order(s), monthly recurring charges shall not increase during the initial Service Term. Except as otherwise indicated herein or on the applicable Service Order(s), Voice Service pricing lists with information on charges and fees can be found at <https://www.clearrate.com/business/voice/international-rates/>. If customer requests information related to the account which requires administrative review of an account, such as, requests for configurations, diagrams, number lists, or other information requests, Customer agrees to pay Clear Rate for time expended in its review and compilation of the information requested a rate of \$199.00 per hour. Such charges shall be charged on the Customer's next invoice and payable subject to those terms. Clear Rate reserves the right to reject any information requests not required by law.

The unlimited calling plan is for voice services only. Customers may incur additional charges if any unlimited plan is used for the following applications including but not limited to: telemarketing, mass marketing, auto-dialer, mass-faxing, or any other high-usage application deemed excessive.

**3.2 Third-Party Charges.** Customer may incur charges from third party service providers that are separate and apart from the amounts charged by Clear Rate. These may include, without limitation, charges resulting from accessing on-line services, calls to parties who charge for their telephone based services, or purchasing or subscribing to other offerings via the Internet. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility. In addition, Customer is solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

**3.3 Payment of Bills.** Except as otherwise indicated herein or on the Service Order(s), Clear Rate will invoice Customer in advance on a monthly basis for all monthly recurring Service charges and fees arising under the Agreement. All other charges will be billed monthly in arrears. Customer shall make payment to Clear Rate for all invoiced amounts within twenty (20) days after the date of the invoice. Any amounts not paid to Clear Rate within such period will be considered past due. If a Service Commencement Date is not the first day of a billing period, Customer's next monthly invoice shall include a prorated charge for the Services, from the date of installation to the first day of the new billing.

If Customer is a participant in any governmental funding or reimbursement program (such as E-Rate, or similar funding mechanism), Customer is responsible for the payment of services. The failure of any governmental agency to submit payment or reimburse Clear Rate shall cause the Customer to be responsible for any balance that accrues or has accrued for services provided.

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

**3.5 Payment by Credit Card.** Clear Rate will accept certain credit card payments for charges generated under the Agreement. By providing Clear Rate with a credit card number, Customer authorizes Clear Rate to charge the card for all charges generated under this Agreement, until (i) this Agreement is terminated or (ii) Customer provides thirty (30) days prior notice that Clear Rate stop charging the credit card. Customer agrees to provide Clear Rate with updated credit card or alternate payment information on a timely basis prior to the expiration or termination of the credit card on file or in the event that Customer's credit card limit is or will be insufficient to cover payment. If Clear Rate is unable to charge Customer's credit card for any reason, Customer agrees to pay all amounts due, including any late payment charges or bank charges, upon demand by Clear Rate. Clear Rate may limit the option to pay by credit card to specific Services or may discontinue acceptance of credit card payments in whole or in part upon thirty (30) days prior notice to Customer.

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

**3.7 Taxes and Fees.** Prices listed herein are exclusive of any taxes, tariffs, telecommunications surcharges, or other fees that may be imposed from time to time by applicable third parties, law, or due to regulations. Such surcharges or fees include, but are not limited to, cross connect fees for customer provisioned local loops, telecom circuit extension fees, electrical extensions, service calls, fees for disconnection, and fees for jacks and other peripheral equipment provided by a third party and/or not contracted for herein. Circuit extensions shall be defined as the extension from the Minimum Point of Entry ("MPOE") to the Customer's desired demarcation location. In cases where Customer is a lessee of the facilities in which service are to be installed, Customer assumes complete responsibility for all negotiations with lessor regarding access rights and any delays associated therewith.

**3.8 Other Government-Related Costs and Fees.** Clear Rate reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees (if any), regardless of whether Clear Rate or its Affiliates pay the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer.. These obligations may include those imposed on Clear Rate or its affiliates by an order, rule, or regulation of a regulatory body or a court of competent jurisdiction, as well as those that Clear Rate or its affiliates are required to collect from the Customer or to pay to others in support of statutory or regulatory programs. Taxes and other government-related fees and surcharges may be changed with or without notice,

**3.9 Disputed Invoice.** If Customer disputes any portion of an invoice, Customer must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Customer's claim, to Clear Rate for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve the dispute. However, should the parties fail to mutually resolve the dispute within sixty (60) days after the dispute was submitted to Clear Rate, all disputed amounts shall become immediately due and payable to Clear Rate. Under no circumstances may Customer submit a billing dispute to Clear Rate later than thirty (30) days following Customer's receipt of the applicable invoice.

**3.10 Past-Due Amounts.** Any undisputed payment not made when due will be subject to a reasonable late charge and interest of 1.5% per month not to exceed the highest rate allowed by law on the unpaid invoice. If Customer's account is delinquent, Clear Rate may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or any Clear Rate Equipment that Customer fails to return in accordance with the Agreement. If Clear Rate is required to use a collection agency or attorney to collect any amount owed by Customer or any unreturned Clear Rate Equipment, Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Clear Rate under the Agreement or at law or in equity.

**3.11 Rejected Payments.** Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution.

**3.12 Fraudulent Use of Services.** Customer is responsible for all charges attributable to Customer with respect to the Services, even if incurred as the result of fraudulent or unauthorized use of the Services. Clear Rate may, but is

not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. Clear Rate reserves the right to restrict, suspend or discontinue providing any Service in the event fraudulent use is detected.

#### **ARTICLE 4. TERM**

**4.1 Agreement Term.** This Agreement shall terminate upon the expiration or other termination of the final existing Service Order entered into under this Agreement. The term of a Service Order shall commence on the Service Commencement Date and shall terminate at the end of the stated Service Term of such Service. Unless otherwise stated in these terms and conditions, if a Service Order does not specify a term of service, the Service Term shall be twelve (12) months from the Service Commencement Date.

**4.2 Service Order Renewal.** Upon the expiration of the initial Service Term, this Agreement and each applicable Service Order shall automatically renew for successive periods of twenty-four (24) months (“Renewal Term(s)” and unless otherwise distinguished herein, is also referred to as “Service Term(s)”), unless otherwise stated in these terms and conditions or prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days, but no more than ninety (90) days before the expiration of the then current Service Term. Such termination shall be effective thirty (30) days after Clear Rate’s receipt of the termination notice, or the date on which the customer wishes to make the termination effective, whichever date is further away.

**4.3 Changes in Monthly Recurring Service Charges.** Except as otherwise identified in the Agreement, at any time after the initial Service Term and from time to time thereafter, Clear Rate may increase the monthly recurring charges for Voice and/or Internet Services subject to thirty (30) days prior notice to Customer. Effective at any time after the end of the initial Service Term and from time to time thereafter, Clear Rate may modify the monthly recurring charges for Internet Services subject to thirty (30) days prior notice to Customer. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing. Nothing within this Section 4.3 is intended to limit Clear Rate’s ability to increase charges associated with the Services as set forth in Section 3.1.

#### **ARTICLE 5. TERMINATION OF AGREEMENT AND/OR A SALES ORDER**

**5.1 Termination for Convenience.** Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order or this Agreement, in whole or part, at any time during the Service Term upon thirty (30) days prior notice to Clear Rate, and subject to payment to Clear Rate of all outstanding amounts due for the Services, any and all applicable Termination Charges, and the return of any and all Clear Rate Equipment. Such termination shall be effective sixty (30) days after Clear Rate’s receipt of the termination notice. Removal, transfer, disconnection or cancellation of any service to move any service to another carrier may be deemed breach of contract in Clear Rate’s sole and absolute discretion and termination charges may apply.

#### **5.2 Termination for Cause.**

**(a)** If Customer is in breach of a payment obligation (including failure to pay a required deposit), and fails to make payment in full within ten (10) days after receipt of notice of default, or has failed to make payments of all undisputed charges on or before the due date on three (3) or more occasions during any twelve (12) month period, Clear Rate may, at its option, terminate this Agreement, terminate the affected Service Orders, suspend Service under the affected Service Orders, and/or require a deposit, advance payment, or other satisfactory assurances in connection with any or all Service Orders as a condition of continuing to provide the Services. However, Clear Rate will not take any such action as a result of Customer’s non-payment of a charge that is the subject of a timely billing dispute, unless the parties have reviewed the dispute and determined in good faith that the charge is correct.

Removal, transfer, disconnection or cancellation of any service to move any service to another carrier may be deemed breach of contract in Clear Rate’s sole and absolute discretion and termination charges may apply.

**(b)** If either party breaches any material term of this Agreement (except monetary obligations) and the breach continues without remedy for thirty (30) days after notice of default is provided in writing and is sufficiently identified as a notice of default, the non-defaulting party may terminate for cause any Service Order materially affected by the breach.

**(c)** A Service Order may be terminated by either party immediately upon notice if the other party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors.

(d) Termination by either party of a Service Order does not waive any other rights or remedies that it may have under this Agreement.

**5.3 Effect of Expiration or Termination of the Agreement or a Service Order.** Upon the expiration or termination of a Service Order for any reason: (i) Clear Rate may disconnect the applicable Service; (ii) Clear Rate may delete all applicable data, files, electronic messages, voicemail or other information stored on Clear Rate's servers or systems; (iii) if Customer has terminated the Service Order prior to the expiration of the Service Term for convenience, or if Clear Rate has terminated the Service Order prior to the expiration of the Service Term as a result of material breach by Customer, Clear Rate may assess and collect from Customer applicable Termination Charges; (iv) Customer shall, permit Clear Rate access to retrieve from the applicable Service Locations any and all Clear Rate Equipment (however, if Customer fails to permit access, or if the retrieved Clear Rate Equipment has been damaged and/or destroyed other than by Clear Rate or its agents, normal wear and tear excepted, Clear Rate may invoice Customer for the full retail price of the relevant Clear Rate Equipment, or in the event of minor damage to the retrieved Clear Rate Equipment, the cost of repair, which amounts shall be immediately due and payable); and (v) if used in conjunction with the terminated Service, Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return the Licensed Software to Clear Rate.

**5.4 Regulatory and Legal Changes.** The parties acknowledge that the respective rights and obligations of each party as set forth in this Agreement upon its execution are based on law and the regulatory environment as it exists on the date of execution of this Agreement. Clear Rate may, in its sole discretion, immediately terminate this Agreement, in whole or in part, in the event there is a material change in any law, rule, regulation, Force Majeure event, or judgment of any court or government agency, and that change affects Clear Rate's ability to provide the Services herein.

## **ARTICLE 6. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES; WARNINGS**

**6.1 NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT, WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT, PROVIDED, HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY CLEAR RATE OR FOR EARLY TERMINATION CHARGES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ENTIRE LIABILITY OF CLEAR RATE AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS OR CONTRACTORS ("ASSOCIATED PARTIES") FOR LOSS, DAMAGES AND CLAIMS ARISING OUT OF THE DELIVERY OF THE SERVICES INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR THE CLEAR RATE EQUIPMENT SHALL BE LIMITED TO A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.**

**6.2 THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, CLEAR RATE EQUIPMENT, OR LICENSED SOFTWARE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CLEAR RATE DOES NOT WARRANT THAT THE SERVICES, CLEAR RATE EQUIPMENT, OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES, CLEAR RATE EQUIPMENT, OR LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES, CLEAR RATE EQUIPMENT, OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.**

**6.3 CLEAR RATE MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES, CLEAR RATE EQUIPMENT, OR LICENSED SOFTWARE FOR USE BY THIRD PARTIES.**

**6.4 IN NO EVENT SHALL CLEAR RATE, OR ITS ASSOCIATED PARTIES, SUPPLIERS, CONTRACTORS OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO:** (i) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (ii) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (iii) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (iv) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

**6.5 Disruption of Service.** The Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment (“High Risk Activities”). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. Customer expressly assumes the risks of any damages resulting from High Risk Activities. Clear Rate shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances, including, but not limited to, causes attributable to Customer or customer Equipment; inability to obtain access to the Service Locations; failure of any television signal at the transmitter; failure of a communications satellite; loss of use of poles or other utility facilities; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; fire, flood, lightning, earthquake, wind, ice, extreme weather conditions or other acts of God; failure or reduction of power; or any court order, law, act or order of government restricting or prohibiting the operation or delivery of the Services.

**6.6 Customer’s sole and exclusive remedies** under this Agreement are as expressly set forth in this Agreement. Certain of the above exclusions may not apply if the state in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Clear Rate and its affiliates and agents is limited to the maximum extent permitted by law.

## **ARTICLE 7. INDEMNIFICATION**

**7.1 Subject to Article 6,** each Party (“Indemnifying Party”) will indemnify and hold harmless the other Party (“Indemnified Party”), its affiliates, officers, directors, employees, stockholders, partners, providers, independent contractors and agents from and against any and all joint or several costs, damages, losses, liabilities, expenses, judgments, fines, settlements and any other amount of any nature, including reasonable fees and disbursements of attorneys, accountants, and experts, arising from any and all claims, demands, actions, suits, or proceedings whether civil, criminal, administrative, or investigative (collectively, “Claims”) relating to: (i) any Claim of any third party resulting from the negligence or willful act or omission of Indemnifying Party arising out of or related to the Agreement, the obligations hereunder, and uses of Services, Clear Rate Equipment, and Licensed Software; and (ii) any Claim of any third party alleging infringement of a U.S. patent or U.S. copyright arising out of or related to this Agreement, the obligations hereunder, and the use of Services, Clear Rate Equipment, and Licensed Software.

**7.2 The Indemnifying Party agrees** to defend the Indemnified Party for any loss, injury, liability, claim or demand (“Actions”) that is the subject of Article 7 hereof. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The Indemnifying Party shall assume the defense of any Action with counsel of its own choosing, but which is reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ its own counsel in any such case, and shall pay such counsel’s fees and expenses. The Indemnifying Party shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.



## **ARTICLE 8. CONFIDENTIAL INFORMATION AND PRIVACY**

**8.1 Disclosure and Use.** All Confidential Information shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using the Services, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care. Each party is responsible for providing the other updated contact information of authorized representatives. Clear Rate expressly denies any liability as to any delay in services, repairs or other response to customer when there is no prior authorization of Customer's agents or employees in Clear Rate's records.

8.2 Exceptions. Notwithstanding the foregoing, each party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law or regulation.

8.3 Remedies. Notwithstanding any other Article of this Agreement, the non-breaching party shall be entitled to seek equitable relief to protect its interests pursuant to this Article 8, including, but not limited to, injunctive relief.

8.4 Monitoring. Clear Rate shall have no obligation to monitor postings or transmissions made in connection with the Services, however, Customer acknowledges and agrees that Clear Rate and its agents shall have the right to monitor any such postings and transmissions from time to time and to use and disclose them in accordance with this Agreement, and as otherwise required by law or government request. Clear Rate reserves the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in Clear Rate's sole discretion, is unacceptable, undesirable or in violation of this Agreement.

## **ARTICLE 9. PROHIBITED USES**

9.1 Resale. Except as otherwise provided in the General Terms and Conditions, Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof.

9.2 Use Policies. Customer agrees to ensure that all uses of the Clear Rate Equipment and/or the Services installed at its premises ("use") are legal and appropriate. Specifically, Customer agrees to ensure that all uses by Customer or by any other person ("user"), whether authorized by Customer or not, comply with all applicable laws, regulations, and written and electronic instructions for use. Clear Rate reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if Clear Rate (i) determines that such use or information does not conform with the requirements set forth in this Agreement, (ii) determines that such use or information interferes with Clear Rate's ability to provide the Services to Customer or others, (iii) reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use, or (iv) reasonably believes that Customer's use of the Service interferes with or endangers the health and/or safety of Clear Rate personnel or third parties. Clear Rate's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other users' use or information.

The unlimited calling plan is for voice services only. Customers may incur additional charges if any unlimited plan is used for the following applications including but not limited to: telemarketing, mass marketing, auto-dialer, mass-faxing, or any other high-usage application deemed excessive.

**9.3 Violation.** Any breach of this Article 9 shall be deemed a material breach of this Agreement. In the event of such material breach, Clear Rate shall have the right to restrict, suspend, or terminate immediately any or all Service Orders, without liability on the part of Clear Rate, and then to notify Customer of the action that Clear Rate has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

## **ARTICLE 10. SERVICE CREDITS**

**10.1 Credit Allowances.** The following Service Level Agreement (“SLA”) applies to all dedicated facilities with initial term commitments of at least two (2) years. The SLA covers data port(s) and voice port(s) in the POP and, if applicable, the fiber network which connects directly to Customer’s local access circuit, the network backbone interconnecting the POPs and supporting systems within Clear Rate’s control, which provide domain name routing, voice routing and other functions which will enable Customer to logically interact with the network. This SLA specifically excludes force majeure events, scheduled maintenance, emergency interruptions, terrorist acts, and on-site equipment failures.

**10.2. Network Availability of 99.99%** measured on a monthly basis for access ports and backbone network in the contiguous United States. Average monthly round-trip transmission latency of no more than 85 milliseconds within the backbone network in the contiguous United States. Less than 1% packet loss on the IP backbone in the contiguous United States.

**10.3. The entire liability** of Clear Rate for all claims of whatever nature arising out of its failure to meet the SLA or otherwise related to its provision of the service (including its negligence) shall be a credit as follows:

**10.3.1. For service interruptions** or network unavailability greater than 36 continuous minutes (hereafter an “Outage”) Customer will be eligible to receive a credit computed in accordance with the following formula. Outage credit = Outage hours – 1 multiplied by \$5.00 or 1/720th of the circuit MRC, whichever is greater.

**10.4. The outage credit shall apply** to the charges for any circuit affected by an Outage; provided however that if any portion of the affected circuit remains useable by Customer, the outage credit shall not apply to that pro-rata portion of the circuit. The duration of each Outage shall be calculated in hours. An Outage shall be deemed to have commenced upon verifiable notification thereof by Customer to Clear Rate customer service or repair personnel. Each Outage shall be deemed to terminate upon restoration of the affected circuit as evidenced by appropriate network tests. Outage credits shall not be granted if the malfunction of any circuit which causes an Outage is due to a defect occurring in on-site equipment.

**10.5. All Outage credits shall be credited** within two (2) invoice months for the affected circuit after receipt of Customer’s written request for credit, provided Customer reported the service failure in a timely manner. A written request via fax 1-877-877-5225 or email at support@clearrate.com must be received within thirty (30) days of the SLA failure event. The total of all Outage credits applicable or accruing in any given month shall not exceed 75% of the amount payable by Customer to Clear Rate for that same month for such circuit.

**10.6. The Outage credits described** in this section shall be the sole and exclusive remedy of Customer in the event of any failure of Clear Rate to comply with SLA, and under no circumstances shall such a failure be deemed a breach by Clear Rate under this Agreement.

## ARTICLE 11. MISCELLANEOUS TERMS

**11.1 Force Majeure.** Neither party shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way, unavailability of services or materials upon which the Services rely, or other causes beyond the party's reasonable control, except that Customer's obligation to pay for Services provided shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.

**11.2 Assignment and Transfer.** Neither Party shall assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld. The foregoing notwithstanding, Clear Rate may assign this Agreement to any affiliate, related entity, or successor in interest without Customer's consent. In addition, Clear Rate may partially assign its rights and obligations hereunder to any party that acquires from Clear Rate all or substantially all of the assets of a cable franchise(s) in which the Services is deployed to Customer. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party.

**11.3 Notices.** Except as otherwise provided in this Agreement, any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery, overnight courier, or via U.S. Certified Mail, Return Receipt Requested. Notices to Customer shall be sent to the Customer billing address; notices to Clear Rate shall be sent to: Clear Rate Communications, Inc., 2600 W. Big Beaver Rd., Suite 450, Troy, MI 48084 Attn: Sales Support Manager. All such notices shall be deemed given and effective on the day when delivered by overnight delivery service or certified mail.

**11.4 Entire Understanding.** The Agreement constitutes the entire understanding of the parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the parties' rights or obligations relating to the Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not expressly provided for in this Agreement are of no effect. Terms or conditions contained in any purchase order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect. Only specifically authorized representatives of Clear Rate may make modifications to this Agreement or this Agreement's form. No modification to the form or this Agreement made by a representative of Clear Rate who has not been specifically authorized to make such modifications shall be binding upon Clear Rate. No subsequent agreement among the parties concerning the Services shall be effective or binding unless it is executed in writing by authorized representatives of both parties.

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

**11.6 Construction.** In the event that any portion of this Agreement is held to be invalid or unenforceable, the parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the parties, and the remainder of this Agreement shall remain in full force and effect.

**11.7 Survival.** The rights and obligations of either party that by their nature would continue beyond the expiration or termination of this Agreement or any Service Order, including without limitation representations and warranties, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement or any Service Order.

**11.8 Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to the conflict of laws provisions thereof.

**11.9 Jurisdiction and Jury Waiver.** In the event of a breach of this Agreement, or a dispute with respect hereto, which cannot be settled by the parties through negotiation, the parties agree to submit the matter to the court of appropriate jurisdiction in Oakland County, Michigan. **Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury and any right to pursue any claim or action arising out of or relating to this Agreement on a class or consolidated basis or in a representative capacity.**

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

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

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

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

**11.14 Ownership of Telephone Numbers and Addresses.** Customer acknowledges that use of the Services does not give it any ownership or other rights in any telephone number or Internet/on-line addresses provided, including but not limited to Internet Protocol ("IP") addresses, e-mail addresses and web addresses.

**11.15 Clear Rate is only required to provide support** and to cure defects for effected Services that are being provided for under the terms of a Service Order. Clear Rate is under no obligation to provide support or cure defects for goods or services not provided by Clear Rate. In the event Customer incurs costs or charges from a third party or IT vendor in connection with services not provided by Clear Rate, Clear Rate expressly denies any liability for those costs or charges and will not be responsible for reimbursing, providing a statement credit, or otherwise compensate Customer for those expenses.

#### **ARTICLE 12: LIMITATIONS OF 911/E911**

**12.1 Limitations.** Voice Service includes a 911/ Enhanced 911 function ("911/E911") that may differ from the 911 or Enhanced 911 function furnished by other providers. As such, it may have certain limitations. CUSTOMER ACKNOWLEDGES AND ACCEPTS ANY LIMITATIONS OF 911/E911.

**12.2 Correct Address.** MANY STATES REQUIRE BUSINESSES USING MULTI-LINE TELEPHONE SYSTEMS TO PROGRAM THEIR SYSTEMS TO TRANSMIT SPECIFIC LOCATION INFORMATION FOR (E.G., OFFICE NUMBER, ROOM NUMBER, FLOOR LEVEL, OR DIRECTIONAL QUADRANTS WITHIN INDIVIDUAL BUILDINGS, OR STREET ADDRESS FOR MULTI-LINE SYSTEMS THAT SERVE MULTIPLE (DISCRETE BUILDINGS) 911 CALLS. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT IT, AND NOT CLEAR RATE, BEARS SOLE RESPONSIBILITY TO ENSURE THAT IT IDENTIFIES AND COMPLIES WITH ALL SUCH APPLICABLE LAWS, AND ANY FAILURE TO DO SO IS A BREACH OF THE AGREEMENT. In order for 911/E911 calls to be properly directed to emergency services, Clear Rate must have Customer's correct Service Location address. If Customer moves Voice Service to a different Service Location without obtaining Clear Rate's approval and providing the correct information to Clear Rate, 911/E911 calls may be

directed to the wrong emergency authority, may transmit the wrong Service Location address, and/or Voice Service (including 911/E911) may fail altogether. Therefore, Customer must contact Clear Rate before moving Voice Service to a new Service Location, or a new location within a Service Location. Subject to Article 20C.6, Customer acknowledges that 911 calls from nomadic Clear Rate Equipment assigned to the same telephone number will reach the emergency authority associated with the registered Service Location.

Customer taking Enhanced Voice Service and/or Trunk Service is solely responsible for programming its telephone system to map each telephone number and extension to the correct location, and for updating the system as necessary to reflect moves or additions of stations within the Service Location. Updates to Enhanced Voice Service take up to seventy-two (72) hours to complete.

**12.3 Service Interruptions.** Customer acknowledges and understands that Voice Service uses the electrical power in Customer's Service Location. If there is an electrical power outage, 911 calling may be interrupted if the battery backup in the associated Customer-provided Equipment and/or Clear Rate Equipment is not installed, fails, or is exhausted after several hours. Customer is urged to arrange for their own backup power supply. The duration of Voice Service during a power outage will depend, among other things, on Customer's backup power choice and proper configuration of the Customer's disaster recovery features. Clear Rate bears no responsibility for such loss of Voice Service.

**12.4 Network Facilities.** Calls, including calls to 911/E911, may not be completed if Customer exceeds its Voice Service and equipment configuration calling capacity or if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

**12.5 911/E911 Limitations for Nomadic users.** Clear Rate only supports 911/E911 calls in those areas of the U.S. where Clear Rate can direct Customer's 911 calls to the appropriate PSAP in a manner consistent with applicable laws, rules and regulations, including, without limitation, FCC rules and requirements. Customer acknowledges that 911 calls from nomadic Clear Rate Equipment will reach the emergency authority associated with the original registered Service Location unless Customer updates the Service Location address as described in Article 18.2. Clear Rate will be unable to register any Service Location provided in conjunction with the use of nomadic Voice Service and/or Clear Rate Equipment that is outside its 911/E911 Voice Service support area. In such circumstances, Customer will be required to use an alternative means of accessing 911/E911.

**12.6 Customer-initiated 911 Testing.** If Customer chooses to make test calls to 911, it agrees to obtain prior approval from the relevant state and or local emergency communications authority and assumes all responsibility for the placement of such calls.

**12.7 Suspension and Termination by Clear Rate.** Customer understands and acknowledges that Voice Service, including 911/E911, as well as all online features of Voice Service, where Clear Rate make these features available, will be disabled if Customer's account is suspended or terminated.

**12.8 LIMITATION OF LIABILITY AND INDEMNIFICATION.** CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER CLEAR RATE NOR ITS ASSOCIATED PARTIES WILL BE LIABLE FOR ANY VOICE SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS CLEAR RATE AND ITS ASSOCIATED PARTIES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE VOICE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E911.