

# **BUSINESS SERVICES CUSTOMER TERMS AND CONDITIONS**

(Effective as of February 16, 2024)

## **1. GENERAL TERMS AND CONDITIONS**

## **2. DELIVERY OF SERVICES**

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

## **4. TERM**

## **5. TERMINATION**

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

## **7. INDEMNIFICATION**

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

## **9. PROHIBITED USES**

## **10. SERVICE CREDITS**

## **11. MISCELLANEOUS**

## **12. LIMITATIONS OF 911/E911**

The Customer named on the Master Service Agreement and/or the Service Order Agreement (collectively "Service Order") and Clear Rate Communications, LLC ("Clear Rate"), (individually "Party", together "Parties") agree that the terms and conditions for the Service Order and these Business Services Customer Terms and Conditions ("Terms") constitute the entire agreement (the "Agreement") between the Parties that will govern the provision of the Services selected by Customer and designated on the Service Order. In the event any of the terms in the aforementioned documents conflict, these Terms shall take precedent.

### **GENERAL TERMS AND CONDITIONS**

#### **ARTICLE 1. DEFINITIONS**

**Agreement:** Consists of the Service Order executed by Customer and accepted by Clear Rate, these Terms, 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 must formally accept the Service Order and Credit Application by counter-signing the Service Order. **Clear Rate:** The operating company of Clear Rate Communications, LLC and its subsidiaries engaged as a telecommunications 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 Terms, 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 at its sole discretion and without requirement to provide notice.

**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 each of the Party's communications regarding such items.

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

**Early Termination Charge 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. In the event Customer cancels or otherwise terminates Services without cause or for convenience, prior to the end of the Initial Term or any Renewal Term, Customer agrees to pay Clear Rate an early termination charge (“Early Termination Charge”) as liquidated damages and a reasonable approximation of Clear Rate’s loss from early termination (not a penalty), in an amount equal to: in addition to all amounts payable by Customer in accordance with Section 5, 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. In addition to an Early Termination Charge, Customer shall pay other Termination Charges, including but not limited to, one hundred percent (100%) of any amount paid (actual costs) by Clear Rate in connection with Custom Installation, disconnection fees and any other fee or charge identified in Section 3, and for any and all Services provided by Clear Rate under the 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.

**Notice of Termination:** A notice of intent to terminate Services, made in writing on Customer letter head and signed by an officer or otherwise authorized agent of Customer.

**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. **Accordingly, a single Service Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.** If services, however, 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. 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 de-tariffing.

**Unlimited Service Plan:** The limited duration of time and usage (commencing on the Service Commencement Date) for which Services are ordered, as specified in these Terms or the Service Order.

## ARTICLE 2. DELIVERY OF SERVICES

**2.1 Service 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 in writing or (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 Service Term.** The term commitment for the Service (“Service Term”) will be reflected on the Service Order. Service may be provided for month-to-month terms or for longer, fixed time periods, depending on Customer’s plan. The Service term may automatically renew for successive terms, unless Customer provides Clear Rate written notice, as provided herein, of the Customer’s intent not to renew. The renewal begins on the day after the last day of the Service term. If Customer terminates Service before the end of Customer fixed term (or any renewal term), or we terminate following Customer default, Customer will be in material breach of the Service Order and/or the Terms and will be subject to Early Termination Charges as defined herein.

In addition, upon the conclusion of Customer’s term commitment period, Clear Rate will automatically begin charging the applicable charges for the renewal period, including charging the credit card Customer previously authorized to pay for the Services, unless Customer cancel the Service by providing written notice of its intent not

to renew Services prior to the end of the current term, as specified herein. If Customer wrongfully cancels the Service, Termination Charges may apply and Clear Rate may charge Customer's credit card for as a prepayment to cover the renewal term. Clear Rate does not refund any prepaid fees for unused service.

Rates and charges in effect on the last business day of the Initial Term or Renewal Term, as applicable, shall be the rates and charges in effect for such Renewal Term until changed in accordance with these Terms. If during the Service Term, Customer submits a change order that requires Clear Rate to activate additional circuits and there is less than twelve (12) months remaining in the Service Term at the time such circuits are activated, then Customer expressly agrees that the Service Term shall be automatically extended to the first (1st) anniversary of the date the last circuit related to such change order is activated. **Customer understands and agrees it is responsible for an Early Termination Charge and other Termination Charges (defined herein) if the Agreement is terminated prior to the expiration of the then current Service Term.**

**2.3 Porting.** In the event Customer is transferring (or "porting") an existing phone number from another provider for use with Customer Clear Rate Service, Customer hereby authorize Clear Rate to process Customer order for Clear Rate Service and to notify Customer's existing provider of Customer's decision to switch Customer's local, local toll, and long-distance services to Clear Rate Service, and Customer represent that Customer is authorized to take this action. Clear Rate will continue to bill Customer's account until (a) Customer's Service or telephone number is successfully transferred to an alternate carrier or provider and (b) Customer contacts Clear Rate to cancel Customer's Clear Rate Service. It is Customer's responsibility to make the necessary arrangements with Customer's new provider to transfer Customer's service. If Clear Rate is Customer's local provider or preferred long distance carrier, Customer is solely responsible to contact Customer's new local exchange carrier to transfer such Services to stop further billing by Clear Rate. The new service provider will transfer the services; Clear Rate cannot initiate or effectuate the transfer. However, Customer must also contact Clear Rate to cancel the Clear Rate Services. Until the transfer of Service is successful and confirmed, Customer will remain responsible for charges applicable to Customer's Clear Rate Service.

**2.4 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. All internet speed offerings will be based on best efforts and network congestion and de-prioritization can occur and adversely impact the stated internet speed.

**2.5 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 the Service Order. 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.

**2.6 Service Commencement Date.** Upon installation and connection of the necessary facilities and equipment to provide the Services, or in the case of Voice, the earlier of the date any of the services are first utilized by Customer (as determined by Clear Rate's records), or the 180th day after the Effective Date, which date shall be deemed "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. In order for Customer to receive Service, Customer must cooperate in good faith with Clear Rate as may be reasonably necessary for Clear Rate to commence and continue to provide Services. Clear Rate will use commercially reasonable efforts to commence Service within one hundred eighty (180) days of the Effective Date, but in no event will Clear Rate incur any liability whatsoever to Customer for any inability to commence services by such date.

**2.7 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 the Service Order; 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. Customer acknowledges that Clear Rate, or its assignees, have the right to file a Uniform Commercial Code Form 1 (UCC-1) to protect Clear Rate's interest in the Clear Rate Equipment or any other type of filing to effectuate Clear Rate or its assignee's rights to title of the Clear Rate Equipment. Neither the Customer nor its creditors, landlord(s), or any other third-parties have any property, security or other interest in the Clear Rate Equipment. The Customer is responsible for maintaining all-risk property damage insurance covering the Clear Rate Equipment in an amount not less than the retail value of the Clear Rate Equipment at the date of delivery. The Customer is responsible for providing adequate facilities and space to house, maintain and operate the Clear Rate Equipment in accordance with the manufacturer's requirements. Customer hereby agrees to comply with all instructions and requirements regarding the use and/or care of the Clear Rate Equipment, and to take reasonable measures to protect the Clear Rate Equipment at all times. Customer must not change the serial number, electronic serial number or equipment identifier, encryption keys, other authentication, or technical data or perform a factory reset of the Clear Rate Equipment, without express permission from Clear Rate. Clear Rate reserves the right to terminate the Service should Customer tamper with the Clear Rate Equipment. Any tampering with the Clear Rate Equipment, including, for example, opening and attempting to modify the Clear Rate Equipment, or attempting to connect it to unauthorized hardware, will be treated as damage due to Customer's intentional acts or negligence. Customer shall be responsible for all property and business taxes associated with the Clear Rate Equipment.

**2.8 Customer-Provided Equipment.** Clear Rate shall have no obligation to install, operate, or maintain Customer-Provided Equipment. Customer alone, at its sole cost and expense, 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 does not warrant any Customer Equipment and shall not be responsible for any failure, degradation, or other defects in the Service due to Customer Equipment or the lack thereof. 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, backboards, or any other equipment and tools necessary for Clear Rate to install any of its hardware. Customer understands the installation, operation, maintenance, repair or removal of any software, program, or other hardware related to the Services, on Customer's-Provided-Equipment (computer(s), network(s) or other hardware) may result in service outage, loss or damage to that Customer-Provided Equipment or any data, information or files on Customer's Equipment. Customer shall be solely responsible for all data and software back up, and customer is solely responsible for protecting its computer and network data, information and files. Customer assumes all responsibility for Clear Rate's loss or damage to its computer or network hardware, data, information, files, peripherals, or other equipment associated with installing, operating or removing any Customer-Provided Equipment, software or other hardware. Any warranty covering Customer's computer, network or other equipment may become void when customer opens that computer or equipment to install and use such equipment with the Services. Clear Rate does not commit or warrant that Customer's installation or use of any computer, equipment, software or other hardware will permit customer to access, operate, or use any Service.

**2.9 Engineering and technician Review/Inspection.** Within 60 days of the execution of the Service Order, Clear Rate shall have the right to conduct a comprehensive inspection and full site survey walk-through from the Clear Rate fiber network to the Customer service location ("Premises"). The purpose of this inspection is to allow Clear Rate to assess the financial viability and suitability of the Premises for the provision of the contracted services. At

the sole discretion of Clear Rate, based on the findings of the inspection, Clear Rate reserves the right to propose a more suitable solution for the Customer or terminate the Service Order. The decision to terminate shall be communicated in writing to the Customer within 90 days of the date of execution of the Service Order. It is understood that Clear Rate's decision to terminate the Agreement shall be final and binding, and no further claims, liabilities, or obligations shall arise for either party as a result of such termination. If Clear Rate does not exercise the right to terminate within the specified 90-day period, it shall be deemed that the inspection was satisfactory to Clear Rate, and both parties shall proceed with the performance of the Service Order, as originally agreed upon.

**2.10 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.

**2.11 Network Maintenance and 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, False Callout/NTF charges, maintenance and repair charges, fees for disconnection of services, Local Exchange Carrier Charges, a paper bill fee (where permitted by law), 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. Unlimited Plan Services included in Clear Rate Home Connect, Business Connect, wireless and traditional landline phone service (POTS) for any 30-day or 31-day Service period is limited to 4000 minutes. Any usage exceeding 4000 minutes will be charged at a rate of \$.049 per minute. Unlimited Plan Services for 4G LTE includes a total of 300 GB of data. Any usage exceeding 300 GB will be charged \$15 for every 5GB of usage.

**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, including but not limited to, Early Termination Charges, Clear Rate Equipment charges, fees, and taxes, in the amounts and proportions as solely determined by Clear Rate and the provisions herein. No acceptance of partial payment(s) by Clear Rate shall constitute accord and satisfaction and/or a waiver of any rights to collect the full balance owed under the Agreement.

**3.5 Payment by Credit Card.** Customer may be asked to provide Clear Rate with a valid email address and a credit card number from a card issuer that we accept in order to activate Customer's Services as well as other information to enable us to bill Customer's credit card account. Customer authorizes the issuer of the credit card to pay any amounts incurred by Customer as described in these Terms without requiring a signed receipt, and Customer agrees that these Terms are to be accepted as authorization to the issuer of the credit card to pay all such amounts. Customer authorizes Clear Rate and/or any other company who bills products or services, or acts as billing agent for Clear Rate to continue to attempt to charge and/or place holds with respect to all sums described herein, or any portion thereof, to Customer's credit card until such amounts are paid in full. In addition, Customer hereby authorizes Clear Rate to charge and/or place a hold on Customer's credit card with respect to any unpaid charges related to the Services, including but not limited to, an Early Termination Fee. Customer agrees to provide Clear Rate with updated credit card information upon Clear Rate's request. If, at any time the information Customer previously provided is no longer valid, Customer is solely responsible for maintaining and updating the credit card information we have for Customer on file. Customer will remain responsible for all Clear Rate charges, fees, taxes and surcharges even if these cannot be paid through Customer's authorized credit card account for any reason. Customer acknowledges and agrees that Clear Rate will have no liability for any non-sufficient funds or other charges incurred by Customer as a result of such attempts to charge, and/or place holds, on Customer's credit card. If Customer mistakenly provides a different credit card number, instead of the number Customer intended to provide, Customer authorizes all charges described herein to be applied to the credit card number Customer has provided to us. In the event Customer is enrolled, or later enrolls, in an automatic payment or electronic funds transfer plan, Customer agrees that all sums described herein may be charged, at Clear Rate's option, to the account number provided for such automatic payment or electronic funds transfer plan. Clear Rate reserves the right to charge credit card handling fees of up to three percent (3%) of the bill or any higher industry standard rate as may become applicable. All charges owed at the time of cancellation or termination will be immediately payable. We will immediately charge the credit card you have provided to us for payment, or initiate an electronic funds transfer if that is your payment method, for all amounts due at that time. We will pursue collection for unpaid amounts and may report these unpaid charges to credit bureaus.

**3.6 Credit Approval and Deposits.** Customer must have and maintain credit satisfactory to Clear Rate to receive and continue to receive Services and therefore, initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide Clear Rate with credit information requested by Clear Rate. As permitted under applicable laws and without limitation to other rights provided in these Terms or other applicable policies, Customer authorizes Clear Rate to (a) disclose Customer's account information, including Customer's payment history and

confidential information, to credit reporting agencies or private credit reporting associations, and (b) periodically obtain and use Customer's credit report and other credit information from any source in connection with Clear Rate's offering of the Services. Customer understands that if Customer fails to fulfill the terms of Customer's obligations under these Terms, Clear Rate may report Customer's failure to a credit reporting agency. 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. Based on Customer's creditworthiness, Clear Rate may require Customer to enroll, and remain enrolled, in an automatic payment or electronic funds transfer plan.

**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. If Customer does not report a dispute with respect to an invoice by the invoice due date, Customer is deemed to have waived its dispute rights for that invoice and to have agreed to pay that invoice in full. If Customer has provided sufficient detail for investigation of a timely good faith dispute, Clear Rate will use reasonable, good faith efforts to resolve and communicate its resolution of the dispute within sixty (60) days of its receipt of the dispute notice. If the dispute is resolved in Clear Rate's favor, any amounts to be paid by Customer are subject to the late payment charges retroactive to the due date of the disputed invoice. Notwithstanding the foregoing, Customer shall not withhold any disputed amounts while its Clear Rate account is delinquent, and claims of fraudulent usage shall not constitute a valid basis for a dispute. If a dispute is resolved in Customer's favor, Clear Rate will apply a credit for the amount determined by Clear Rate on Customer's future invoices. Customer's sole remedy for any disputed invoice shall be as provided in this Section, and Customer shall not be eligible to receive the cash value of any dispute resolved in Customer's favor. Customer must be current on all payments (i.e., no balance older than thirty (30) days) in order to receive any credits.

**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, even if Clear Rate accepts late or partial payments (including those marked "Paid in Full" or similar text intended to give notice of Accord and Satisfaction), it will not waive any Clear Rate rights to collect the full amount due for the Services. Customer agrees to reimburse Clear Rate for all reasonable costs and legal expenses incurred to recover sums due, including the fees of any collection agency or attorney. Customer expressly authorizes, and specifically consents to allowing Clear Rate and/or its outside collection agencies, outside counsel, or other agents to contact Customer in connection with any and all matters relating to unpaid past due charges billed by

Clear Rate to Customer. Customer agrees that, for attempts to collect unpaid past due charges, such contact may be made to any mailing address, telephone number, cellular phone number, email address, or any other electronic address that Customer has provided, or may in the future provide, to Clear Rate. 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.

**3.13 False Callout/No Trouble Found (NTF) Charges.** Customer may be assessed a service charge calculated at Clear Rate's standard hourly rates when a reported Service interruption results in the use of the Clear Rate's technical support staff or the dispatch of Clear Rate technician and: (a) the technician is denied access to the Customer's premises; (b) no trouble is found by the technician; or (c) the cause of the interruption was not due to Clear Rate facilities, Equipment or systems used to provide Service.

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

**4.1 Agreement Term.** The Service Order shall terminate upon the expiration or other termination of the final existing Service Order. 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, 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.** Unless otherwise agreed upon by the Parties, upon the expiration of the initial Service Term, each applicable Service Order shall automatically renew for successive periods ("Renewal Term(s)") as specified in the Service Order (collectively referred to as "Service Term(s)"). Either Party may terminate the agreement as specifically described in these Terms. 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 later.

**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. Clear Rate may modify the monthly recurring charges for Services. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service. 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 the Service Order and/or the Terms, Customer shall have the right to terminate a Service Order, in whole or part, by providing written notice on Customer's business letterhead and signed by an officer of Customer, at least (30) days prior to the expiration of the then current term, but not more than (90) days prior to the expiration of the then current term. Such termination shall be effective thirty (30) days after Clear Rate's receipt of the termination notice. Upon termination as provided herein, Customer shall continue to be obligated by the terms of the Service Order and shall remit all outstanding amounts then due to Clear Rate and at its own expense, immediately return any and all provided equipment to Clear Rate. Removal, transfer, disconnection or cancellation of any service to move any service to another carrier, contrary to the express terms of this provision, may be deemed a material breach of contract in Clear Rate's sole and absolute discretion and fees 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 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. If either Party breaches any material term of the Service Order (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.

(b) If Clear Rate is ordered or requested to terminate Service by a governmental entity or upon state PUC or FCC approval, and Commission required customer notice, should Clear Rate file to withdraw its authority to provide Services.

(c) If the Service(s) are no longer made available to Clear Rate by the underlying carrier or the underlying facilities are no longer available.

(d) If Clear Rate, in its sole and absolute discretion, detects fraudulent or illegal use of the Services, or Clear Rate, in its sole and absolute discretion, believes that Customer has materially violated Clear Rate's service policies or determines that Customer's use of the Services is prohibited (including without limitation, with respect to web hosting services, if Customer's web site or content violates any Clear Rate web hosting acceptable use policy or these Terms).

(e) 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.

(f) Termination by either Party of a Service Order does not waive any other rights or remedies that it may have under the Service Order and/or the Terms.

(iv) **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, including, but not limited to an Early Termination Charge; 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 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.

**5.3 Clear Rate Equipment Return Upon Termination.** Upon termination of the Services, for whatever reason, Customer must return the rented Clear Rate Equipment, undamaged, within twenty-one (21) calendar days to Clear Rate. All components must be included and Equipment must be in good condition, as determined by Clear Rate. Clear Rate will provide a return label for shipping of the Equipment and Customer will not be responsible for paying for the applicable return shipping and handling fees. If the Equipment is not returned within twenty-one (21) calendar days, or is returned damaged, Customer will be charged the full replacement cost for the Equipment, calculated at the current retail value, except as provided herein. Clear Rate may retain any advance payment or deposit, or portion thereof that previously had not been refunded if Customer fails to return the Equipment within the twenty-one (21) day time period. If the Equipment is returned within twenty-one (21) days of termination, any unused advance payment or deposit will be refunded. No refunds will be made for any Equipment returned more than twenty-one (21) days after termination. If the Clear Rate Equipment is returned during the Initial Term or any Renewal Term, Customer shall be responsible for applicable restocking fees and shipping and handling charges for the returned items.

**5.4 Regulatory and Legal Changes.** The Parties acknowledge that the respective rights and obligations of each Party as set forth in the Service Order and/or the Terms upon its execution are based on law and the regulatory environment as it exists on the date of execution of the Service Order. Clear Rate may, in its sole discretion, immediately terminate the Service Order, 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 AN EARLY TERMINATION CHARGE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE SERVICE ORDER AND/OR THE TERMS, 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 THE SERVICE ORDER ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THESE TERMS.**

**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 CUSTOMER REQUIREMENTS, OR THAT THE SERVICES, CLEAR RATE EQUIPMENT, OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. CUSTOMER USE OF THE SERVICES IS AT CUSTOMER SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.**

**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. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM CLEAR RATE OR THROUGH OR FROM THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS**

**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, lightening, 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 the Service Order are as expressly set forth in these Terms. 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 the Service Order, 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 the Service Order, 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 the Service Order. 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 these Terms, 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 these Terms, 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 the Service Order and/or the Terms.

## **ARTICLE 9. PROHIBITED USES**

**9.1 Resale.** Except as otherwise provided in the Terms, 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 these Terms, (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 the Service Order and/or the Terms. 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 the Service Order and/or the Terms.

## **ARTICLE 10. SERVICE CREDITS**

**10.1 Credit Allowances.** The Service Level Agreement ("SLA") applies to all Customer 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. The SLA specifically excludes force majeure events, scheduled maintenance, emergency interruptions, terrorist acts, and on-site equipment failures.

**10.2. Exclusive Remedy.** Clear Rate will provide Customer with the rights and remedies set forth in its SLA and Customer understands and agrees that Customer's exclusive remedy for recovery for any loss of Service or network outages shall be as provided therein. Damages and credits arising out of or related to the Services shall not exceed the amount of the credit described in the SLA. All network outage credit requests are subject to Clear Rate's review

and verification. Customer must be current on all payments in order to receive credit under the service level guidelines. Credits will appear within two (2) billing cycles after credit approval. 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 the Service Order and/or the Terms.

**10.3. Limited Liability.** 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: **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. **NOT WITHSTANDING THE FOREGOING** (1) CUSTOMER UNDERSTANDS AND AGREES THAT, UNLESS PROHIBITED BY LAW, CLEAR RATE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF REVENUE OR PROFITS, BUSINESS OR GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF CLEAR RATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) USE OF THE SERVICES (WHICH INCLUDES EQUIPMENT, SOFTWARE, AND INSIDE OR OUTSIDE WIRING), (b) THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, (c) THE INSTALLATION, MAINTENANCE, REMOVAL, OR TECHNICAL SUPPORT OF THE SERVICES, EVEN IF SUCH DAMAGE RESULTS FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF A CLEAR RATE INSTALLER, TECHNICIAN, OR OTHER REPRESENTATIVE, AND/OR (d) ANY INABILITY TO REACH 911 EMERGENCY SERVICES, ANY ALLEGED INTERFERENCE WITH ALARM OR MEDICAL MONITORING SIGNALS, OR ANY FAILURE OF ALARM OR MEDICAL MONITORING SIGNALS TO REACH THEIR INTENDED MONITORING STATIONS ALLEGEDLY AS A RESULT OF THE SERVICES. (SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES AND THEREFORE, SOME OF THE ABOVE LIMITATIONS IN THIS SECTION MAY NOT APPLY TO CUSTOMER.) (2) IN ADDITION, CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH CLEAR RATE IN CONNECTION WITH THE SERVICE, INCLUDING ANY DIRECT DAMAGES ARISING FROM OR RESULTING FROM ANY OF THE CAUSES LISTED IN SECTIONS B(1) (a) THROUGH (d) IN THE PRECEDING PARAGRAPH, IS A REFUND NOT TO EXCEED THE TOTAL AMOUNT OF THE SERVICE FEES PAID DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD.

**Outage Credits.** Credits 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 designated 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. 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 with 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.

## ARTICLE 11.

### MISCELLANEOUS TERMS

**11.1 Toll-Free Directory Assistance.** Upon Customer request and to the extent available to Clear Rate, Toll-Free Directory Assistance (“TFDA”) listing is available for those toll-free numbers provided to Customer by Clear Rate. Since TFDA is provided either via Clear Rate’s underlying network provider or via a third-party, provisioning is subject to the applicable Terms and/or policies and procedures of such other parties. Customer understands that

toll-free numbers listed with TFDA are only available either on a call-in basis or online, and not via a directory publication. Charges for the monthly listing fee for the TFDA service are set forth in Clear Rate Service Details and Rates or Clear Rate tariffs. These charges are subject to change without notice to the Customer.

**11.2 Intellectual Property.** All portions of the Services and Equipment and any firmware or software used to provide the Services or provided to Customer in conjunction with providing the Services, or embedded in the Equipment, and all Services, information, documents, and materials on related website(s) are the property of Clear Rate or third-party providers and are protected by trademark, copyright, or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "Marks") of Clear Rate or third-party providers are and shall remain the exclusive property of Clear Rate or third-party providers, and nothing in the Service Order and/or the Terms shall grant Customer the right or license to use such Marks.

**11.3 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, epidemic, 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.

**11.4 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 the Service Order 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 the Service Order shall be binding on all successors in interest and assigns of such Party.

**11.5 Notices.** Any notices or other communications contemplated or required under the Service Order and/or the Terms, 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, LLC., 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.

**11.6 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 the Service Order and/or the Terms 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 the Service Order or the Service Order's form. No modification to the form or the Service Order 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. If any provision of these Terms is found by a court or agency of competent jurisdiction to be unenforceable, Customer and Clear Rate nevertheless agree that the remaining provisions of these Terms shall remain in full force and effect.

**11.7 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.

**11.8 Regulatory Modifications.** If the Federal Communications Commission (“FCC”), a state Public Utility or Service Commission, a court of competent jurisdiction, or other governmental entity issues a rule, regulation, law or order that has the effect of canceling, changing or superseding any material term or provision of the Services (“Regulatory Requirement”), Clear Rate may modify, discontinue or limit the Service, or impose requirements, as necessary to meet changing regulatory rules and standards.

**11.9 Construction.** In the event that any portion of the Service Order and/or the Terms 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 the Service Order and/or the Terms shall remain in full force and effect.

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

**11.11 Choice of Law.** The Service Order and/or the Terms 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.

**11.12 Jurisdiction and Jury Waiver.** Most disputes can be resolved quickly by contacting Customer Service. If we cannot agree on an informal resolution, however, we each agree to resolve the dispute as follows: In the event of a breach of the Service Order and/or the Terms, 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 the Service Order and/or the Terms on a class or consolidated basis or in a representative capacity.**

**11.13 No Third Party Beneficiaries.** The Service Order and/or the Terms 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.

**11.14 Independent Contractors.** The Parties to the Service Order 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. The Service Order and/or the Terms 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.

**11.15 Article Headings.** The article headings used herein are for reference only and shall not limit or control any term or provision of the Service Order and/or the Terms or the interpretation or construction

**11.16 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 the Service Order and/or the Terms.

**11.17 Waivers and Amendments.** Unless otherwise expressly specified in these Terms and Conditions: (a) No failure or delay by either Clear Rate or the Customer in exercising any right, power or remedy will operate as a waiver of that right (i.e., all waivers will be enforceable only if it is in writing and signed by the Party waiving the term or condition); and (b) the Service Order between Clear Rate and Customer may not be modified or amended except by a writing signed by both Clear Rate and Customer (provided, however that the Agreement may be amended by any addendum, attachment or change order executed by Customer and accepted by Clear Rate). Notwithstanding the foregoing, Clear Rate may modify the availability and scope of its Services by giving Customer no less than fifteen (15) days prior written notice of said modifications).

**11.18 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.

**11.19 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.