



MASTER SERVICE AGREEMENT

RNK, Inc. d/b/a RNK Communications f/k/a RNK Telecom™ Master Service

APPLICATION OF MASTER SERVICE AGREEMENT

The Agreement (as defined below) between Customer and RNK, Inc., d/b/a RNK Communications™ ("RNK") sets forth the legal rights and obligations governing the RNK's provisioning, and delivery of Services by RNK to the Customer and Customer's use of the Services. Some Services offered by Company under the Agreement are offered pursuant to applicable tariffs, which are filed with applicable federal and state regulatory agencies ("Tariffed Services"). All applicable tariffs are fully incorporated herein by reference. For Tariffed Services, in the event of a conflict between the Agreement and a tariff, the tariff shall control. Upon cancellation of any applicable tariff, the Agreement shall control. In the event of an inconsistency between a term or condition contained in any component document(s) comprising the Agreement (but only to the extent of the inconsistency), including any incorporated attachments, appendices, exhibits, Service Orders or other documents, the order of precedence, from the most to the least controlling, shall be:

- (1) Applicable filed and effective tariff(s);
- (2) Service Annex and/or product Terms and Conditions;
- (3) Service Order; and
- (4) Master Service Agreement.

ARTICLE I: DEFINITIONS

Whenever used in the Agreement, as hereinafter defined, the following terms shall have the respective meanings given to them in this Article 1, unless the context requires otherwise. Said terms also have such meanings when used in any exhibit, schedule, attachment or addendum hereto or in any document made or otherwise delivered pursuant to this Agreement, unless the context otherwise requires. Each said term defined in this Article I shall be deemed to refer to the singular, plural, masculine, feminine, or neuter, as the context requires.

1.1 **"Agreement"** means this Master Service Agreement, including Service Annexes and Exhibit(s), Service order(s), and any other documents incorporating this MSA as originally executed and as the same may be amended, modified and supplemented from time to time by exhibits, schedules, attachments or addendums, executed in the accordance herewith. Words such as "herein," "hereafter," "hereof," "hereto," "hereby", and "hereunder," when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

1.2 **"Automatic Number Identification" (ANI):** Digits transmitted by the calling party's carrier that indicate the calling party's telephone number.

1.3 **"Assignment"** (including the verb forms **"Assign"** and **"Assigned"**) means a sale, exchange, transfer or other disposition of all or any portion of a Party's rights hereunder. **"Assignor"** means a person who makes an assignment and **"Assignee"** means a person who receives an Assignment.

1.4 **"Affiliate" or "Affiliated Person"** means, when used with reference to specific person (or when not referring to a specific person shall mean Affiliate of a Party), any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specific Person. This term shall also include any Person who, direct or indirectly, through one or more intermediaries, has the contractual right or option to acquire or vote more than 20% of the voting interest of a specific Person.

1.5 **"Business Days"** means days other than Saturdays, Sundays and legal holidays.

1.6 **"Control"** (or the verb form **"Controlled"**) a Person shall be deemed to control another person when such controlling person has the power, directly or indirectly, to cause the direction of the management or policies of such other Person, whether through the ownership of voting securities, by contract, agency or otherwise.

1.7 **"Customer Proprietary Network Information"** (or **"CPNI"**) is information created by virtue of the relationship between a carrier and a customer, including the quantity, technical configuration, type, destination, location, amount of use of a customer's telecommunications services purchased (including specific calls a customer makes and receives) and certain information included on a customer's bill. A customer's name, address and telephone number are not considered CPNI.

1.8 **"End User"** means an end user solicited by one party, which uses the other Party's Services.

1.9 **"FCC"** refers to the Federal Communications Commission.

1.10 **"Final Order"** means an action by any applicable federal or state agency or court as to which: (i) No request for stay by the federal or state agency or court of the action is pending, no such stay is in effect, and if any deadline for filing any such request is designated by statute or regulation, it has passed; (ii) No petition for rehearing or reconsideration on its own motion and the time for such has passed; and (iii) No appeal to a court, or request for stay by a court, of the federal or state agency's or court's action is pending or in effect, and if any deadline for filing such appeal or request is designated by statute or rule, it has passed. Or (iv) Any action, Order, or Ruling that remains in lawful effect and under which the Parties agree to operate pending any further action described above.

1.11 **"Party"** refers to one or both of the parties to this Agreement, Customer or RNK, as the context indicates.

1.12 **"Person"** means any general partnership, limited partnership, corporation, joint Customer, trust, business trust, governmental agency, cooperative, association, individual or other entity, and the heirs, executors, administrators, legal representative, successor and assigns of such person as the context may require them.

1.13 **"Proprietary Information"** means information relating to the business and operations of either Party hereto or its subsidiaries, affiliates, clients and consultants including, but not limited to, all technical, marketing and financial information relating thereto, any information relating to the pricing, methods, processes, financial data, list, apparatus, statistics, programs, research, development or related information of such party, its subsidiaries, Affiliates, clients or End User concerning past, present or future business activities or operations of said entities including identities of underlying carriers and information relating facilities, invoicing companies or agents, or the result of the provision of services performed under this Agreement.

1.14 **"Services"** or Parties' Services refers to services described in the Agreement and in its Schedules, Service Orders or Exhibit(s) (which, hereafter are referred to as "Service Schedule(s)").

1.15 **"Service Order" ("SO")**: That part of an Agreement that is executed by the RNK and the Customer and, among other things, identifies certain Service to be furnished and the location(s) at which that Service is to be provided.

ARTICLE II: SERVICES / OBLIGATIONS OF PARTIES

2.1 **Service Offered:** The Services are as set forth in this Master Service Agreement, the Service Annex, Service Order(s), Schedules and Exhibit(s). Exhibit(s) and Schedule(s) may be revised in writing from time to time. RNK will inform Customer of any changes in its rates, charges, rules, standard policies or Services in a timely manner. Rates are subject to change with five (5) days notice with respect to rate increases and one (1) day's notice with respect to rate decreases. RNK reserves the right, in its sole discretion, to discontinue the sale of any telecommunications services, including the Services defined herein, without any liability for such discontinuation as long as thirty (30) days written notice (except in extraordinary situations set forth hereunder) is provided.

2.1.1 **Availability of Facilities:** Service is offered and provided subject to the availability of all necessary facilities, including those acquired by RNK from other entities. RNK may restrict or allocate Service among Customers, when necessary, due either to facilities shortages or causes beyond RNK's control. Except as expressly provided otherwise in a SOA or MSA, the facilities used to provide Service will be of RNK's exclusive choosing. In no event will title to any of the facilities used to provide Service vest in the Customer.

2.1.2 **Right to Alter Service:** In its sole discretion and without liability to Customer, RNK, following the furnishing of notice to affected Customers, may change: (a) the methods, processes or suppliers by which it provides Service; or (b) the Service itself

2.1.3 **No Collocation Rights:** No collocation rights are granted by virtue of this Agreement; any collocation rights shall be set forth in a separate agreement, which may be attached as an Exhibit hereto. Each Party reserves the right to require the other Party to enter into a collocation agreement in order to receive Services and to examine and approve of such other Party's insurance coverage if such Party's equipment is collocated on the other Party's premises or if one Party's employees, agents or sub-contractors have occasion to be on the other Party's premises in undertaking such Party's obligations under this Agreement.

2.2 **RNK's Right to Block or Discontinue Service Without Notice to Customer:**

2.2.1 **Network Blockage or Degradation:** RNK may discontinue furnishing Service if the Customer uses or misuses Service in a manner that results, or could result, in network blockage or other degradations that adversely affect the Service furnished to Customer or to other existing or prospective Customers of RNK.

2.2.2 **Customer Violation of Agreement or Law:** RNK may discontinue the furnishing of Service if Customer uses, or threatens to use Service for any unlawful purpose or otherwise violates the terms of the Agreement.

2.2.3 **Unlawful or Unauthorized Use:** RNK may discontinue the furnishing of Service, when it deems it necessary to take such action to prevent the unlawful or unauthorized use of Service, by blocking traffic to or from certain countries, cities, NXX exchanges, or individual telephones; by blocking call origination; or by blocking calls using certain Customer authorization or access codes. RNK also may suspend the origination of domestic or international traffic associated with any or all Services if RNK deems such action necessary to prevent the unlawful or unauthorized use of the Service due to the failure, in whole or in part, of any fraud detection system utilized by RNK to provide or support Service.

2.2.4 **Nonpayment for Services:** RNK may suspend the furnishing of Service if the Customer fails or refuses to pay for Service in accordance with its obligations under the Agreement or any other agreement between RNK and the Customer.

2.3 **Customer Obligations and Representations:** Customer is and shall remain in compliance with all laws, regulations, and tariffs relating to its activities in all jurisdictions. Customer has and will have all requisite power and authority to carry on its business as it is conducted from time to time in the jurisdictions it chooses. Customer shall obtain, provide and pay for all necessary connection facilities for the interconnection of the Customer's Network with the RNK Network as applicable.

2.3.1 **Commencement of Relationship; Service Provisioning:** The execution of an Agreement by Customer and acceptance thereof by RNK establishes the respective rights and obligations of the parties. If there is no executed Agreement but Customer nevertheless uses Services, Customer is deemed to have consented to all terms of the Agreement, including documents and publications incorporated therein by reference.

2.3.2 **Use and Maintenance of Customer-Provided Facilities, Services, Equipment and Systems:** If Customer, its agent or contractor fails to operate and maintain Customer-provided facilities, services, equipment and systems interconnected with a

Service, with the result that there is harm or imminent harm to RNK, its Services, personnel or other customers, RNK may require Customer, at its expense, to acquire, install and use protective equipment designed to eliminate such harm. If the protective equipment fails to eliminate the harm, RNK, following the delivery of written notice to Customer, may suspend or terminate the Customer's Service, without any liability or further obligation to Customer. Notwithstanding the foregoing, should RNK determine, in its sole discretion, that such notice is not required given the circumstances, RNK may suspend Services.

2.3.3 **Customer's Consent to the Use of Electronic Records:** Customer consents to the use by RNK of electronic records in a form or forms chosen by RNK.

2.3.4 **Notice of Claims and Problems:** Customer immediately shall notify RNK upon its receipt of any information that might adversely affect RNK, including, but not limited to, notices of any claims or proceedings that involve Service, and Customer promptly shall notify RNK of any problem relating to Service or Service performance and reasonably cooperate with RNK in repairing the Service problem.

2.3.5 **Additional Services:** Customer may request additional Service(s) from RNK, which RNK, in its sole discretion, may agree to provide pursuant to an additional Agreement including, if applicable, any incorporated tariff(s).

2.3.6 **Co-operation on Audits:** If another carrier or regulatory agency seeks to audit traffic involving Services furnished under the Agreement, Customer will co-operate in any such audit investigation. In addition, to the extent any third party attempts to recover access fees, reciprocal compensation or other charges, surcharges or taxes from RNK as a result of such audit investigation, Customer will indemnify and hold harmless RNK for any and all costs and charges resulting from such third party action related to the Services provided to Customer.

2.3.7 **Compliance with FCC Registration Requirements:** If required, Customer will timely prepare and file FCC Form 499-A and quarterly filings that accurately reflect the Customer's operations.

2.3.8 **Resale of Service:** If Customer resells RNK's Service or incorporates RNK's Service into services sold by Customer to its Carrier Customers or End Users, Customer shall be solely responsible for interfacing with its Carrier Customers or End Users with respect to its service offerings including, without limitation, order provisioning, billing, collection, billing adjustments/credits, tax collections and payments, customer service, and dispute resolution. RNK shall have no responsibility whatsoever to interact with Customer's Carrier Customers or End Users, nor shall RNK incur any liability to Customer's Carrier Customers or End Users for its performance under the Agreement. Customer shall be responsible for: (a) applying and enforcing all applicable provisions in the Agreement to its Carrier Customers and End Users; and (b) any liability arising from a violation of a Customer obligation under the Agreement by Customer's Carrier Customer or End User. If RNK discontinues providing Service to Customer for any reason, Customer shall be solely responsible for furnishing any required notice to its affected Carrier Customers or End Users.

2.3.9 **Traffic Routing Restrictions Related 8XX Calls:** Customer agrees that it shall not cause itself or allow any other carrier to route, request, or permit the routing of any toll free (8YY) calls or traffic using CIC 0110 to or in conjunction with any ports, DID, or POTS numbers assigned to Customer by RNK, or use or permit the use of any other call routing method without prior written consent from an officer of RNK. In the event that Customer causes, allows, or sends calls to RNK that are not approved for toll free forwarding and/or termination to RNK assigned numbers, Customer shall pay to RNK for such traffic a rate of \$0.07 per MOU for such traffic, which amount shall be due to RNK within five (5) business days of the date upon the invoice RNK sends to Customer for such traffic. Customer's intentional or knowingly causing, transmitting, or routing of toll free traffic to any ports, DID, or POTS numbers provided by RNK without complying with the foregoing requirements may also result in RNK's immediate termination of this and any and all contracts with RNK upon twenty-four (24) hours prior notice to Customer, with such termination being free of any related liability upon RNK. Customer further agrees (i) to indemnify, defend and hold harmless RNK and its Affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred as a result of Customer's breach of this Section; and (ii) notwithstanding any other provision of this Agreement, damages for breach of this Section shall not be capped or limited in any way. RNK may also audit Customer's traffic to ensure that Customer is complying with this Section, and Customer shall take any and all reasonable actions to cooperate with RNK in this endeavor, or again give RNK the option to terminate this contract and any other contracts with Customer without incurring any liability.

2.3.10 **Avoidance of Carrier Charges:** Customer may not use Service to originate or terminate voice calls in a manner that bypasses switched access or other applicable charges. If Customer does so, it will constitute a material breach of this Agreement and will entitle RNK to discontinue Service and terminate the Agreement for cause immediately upon the delivery of written

notice to Customer. In addition, Customer shall indemnify, defend and hold harmless RNK and its Affiliates, their employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred as a result of Customer's breach of this obligation. Notwithstanding any other provision of this Agreement, the damages for any breach of this Customer obligation shall not be capped or limited. RNK at any time may audit Customer traffic to assure compliance with its obligation not to bypass switched access or other applicable charges.

2.3.11 **Availability of Facilities:** Service is offered and provided subject to the availability of all necessary facilities, including those acquired by RNK from other entities. RNK may restrict or allocate Service among Customers, when necessary, due either to facilities shortages or causes beyond RNK's control.

2.3.12 **Traffic Forecast** Upon reasonable request, each Party will supply the other with a forecast of traffic to be carried over the other Party's network at the time of interconnection and will provide updated information on a quarterly basis. Neither Party shall have the obligation to route traffic to the other Party nor shall any forecast be binding on the Party providing such forecast.

2.3.13 **Minimum Revenue/Volume Commitments:** Unless otherwise provided in a SOA or MSA, Customer is fully obligated to satisfy the revenue and/or volume commitments upon which its Service rates and charges, discounts or credits are based.

2.4 **Technical Support:** When RNK, at the request of Customer performs any tasks related to Customer's equipment or if RNK staff accompanies Customer employees or agents while they perform maintenance on Customer's equipment, RNK's standard escort or technical support charges shall apply.

2.5 **Title to Software or Equipment:** RNK or its suppliers retain title and property rights to RNK-provided software and equipment. Unless specifically stated in the Agreement, Customer neither owns nor will acquire any right of ownership to any RNK-provided hardware or software, including, but not limited to, copies, and any related, patented or patentable subject matter, copyrights, trademarks, or IP addresses assigned to Customer. Provided, however, where software or hardware is provided with the Service, Customer is granted a non-exclusive and non-transferable license or sublicense to use the software, including any related documentation, solely to enable Customer to use the Services in accordance with RNK's then current applicable licensing requirements. RNK may suspend, block or terminate Customer's use of any software if Customer fails to comply with any applicable licensing requirement. Upon termination or expiration of the Agreement or any Order, Customer will surrender and immediately return the RNK-provided equipment and software, including all copies, to RNK.

2.6 Service Inspection; Testing and Adjustment; Maintenance:

2.6.1 **Inspection:** Upon reasonable notice, RNK may conduct inspections of Service to determine whether Customer is satisfying its obligations under the Agreement. RNK may interrupt Service at any time, without penalty, if it determines the Customer is non-compliant with any Agreement requirement. No outage allowance credit will be given for any Service interruption occurring during an inspection.

2.6.2 **Testing and Adjustment:** Upon reasonable notice, Customer shall make Service available to RNK for such testing and adjustment as RNK deems necessary to maintain the furnishing of Service at satisfactory levels.

2.6.3 **System Maintenance** Each Party will ensure that all systems utilized hereunder will be maintained in accordance with industry standards. In the event that system maintenance requires the interruption of Service, to the extent possible, each Party shall notify the other reasonably in advance of such interruption in Service and each Party shall use commercially reasonable efforts to repair its own system and rectify the problem within a reasonable time period.

ARTICLE III: INVOICING AND COLLECTIONS

3.1 **Invoicing:** Unless otherwise specified in the Service Annex RNK will invoice for Services on a weekly basis on the first business day after, and for, the preceding Monday through Sunday usage, if any, and invoice monthly in advance for recurring Services. Invoices will be sent by email, facsimile or overnight delivery. The invoice shall be deemed received on the date of transmission if by email, or a facsimile confirmation if sent by facsimile or, if sent by overnight delivery, on the date after it is so sent.

3.1.1. **Usage Charges:** Usage sensitive charges for wholesale services, if applicable, are based on the actual usage of Parties' facilities. Such charges are measured in Conversation Minutes as set forth below. Unless otherwise specified in this Agreement, the minimum call duration for invoicing purposes is: (a) for Domestic Service (excluding Network Originating Traffic which are rounded to the next whole minute) six (6) seconds minimum initial period and usage is rounded to the next higher six (6) second increment after the initial period; (b) for International Service EXCEPT Mexico, thirty (30) seconds minimum initial period and usage is rounded to the next higher six (6) second increment after the initial period; (c) for Service to and from Mexico, sixty (60) seconds minimum initial period and usage is rounded to the next higher sixty (60) second increment after the initial period. Usage sensitive charges for retail services, if applicable, will be rounded to the next whole minute (e.g. calling card services and VoIP resold lines).

3.1.2 **Usage Measurement:** When applicable, usage measurement will commence when one Party sends the first supervisory signal, and answer supervision is received by that Party from the terminating end user, indicating that the termination end user has answered. For all usage, measurement will end when Each Party receives disconnect supervision from the terminating end switch (or, where disconnect supervision is not available, when the call is released by automatic timing in the network) and/or when the appropriate call release messages are received or sent by that Party.

3.1.3 **Circuit Utilization:** Commencing on the Effective Date and during each month thereafter, for each inbound or outbound circuit (T1 or equivalent circuit) dedicated to Customer; Customer agrees to maintain measured usage of not less than 200,000 minutes per calendar month ("Monthly Usage"). In the event Customer fails to maintain the required Monthly Usage for a circuit, RNK reserves the right to charge and Customer agrees to pay, an underutilization fee of \$1,250 per underutilized circuit ("Underutilization Fee") each month that Customer fails to maintain the required Monthly Usage for that individual circuit. The Underutilization Fee will apply in addition to any other charges due under the Agreement.

3.2 **Payphone Surcharge:** RNK will charge, and Customer agrees to pay RNK \$0.50 per toll-free or access code call for each call originated from a payphone (hereinafter referred to as the "Payphone Surcharge"). The Payphone Surcharge will cover the compensation owed to payphone service providers ("PSP") as well as RNK's costs associated with compensating PSPs. Customer acknowledges that RNK currently compensated PSPs for the following payphone-identifier digits: 10, 23, 25, 27, 29, 70. If applicable, Customer's invoice will show a Payphone Surcharge amount based on each call originated bearing these info digits and delivered to Customer. For avoidance of all doubt, Customer, and not RNK, shall be solely responsible for compensating Payphone Service Provides charges due on its traffic sent to RNK's Ports. In no event shall RNK be required to pay such compensation. "Payphone Compensation Rules" means the regulations and orders issued by the FCC implementing 47 U.S.C. 276. Customer acknowledges that Pay Phone Service Providers are currently compensated for the following payphone-identifier digits: 10, 23, 25, 27, 29, 70.

3.3 **Payment Responsibility:** It is each Party's responsibility to ensure that all information it transmits to any carrier is accurate. Customer shall not be excused from payment due to claims of calls being fraudulent.

3.4 **Late Payment:** Should payment not be made when due hereunder, RNK may draw on any payment security that may be required hereby to cover any deficiency. Also, simple interest thereon shall accrue at an interest rate of one and a half per cent (1.5%) per month or the maximum amount of interest which may be legally be charged on an open account, whichever is less. Interest charges shall be prorated on a daily basis for partial months, and on thirty (30) day month basis. Alternatively, RNK, at its sole discretion, may terminate, suspend, or interrupt service to Customer without any liability to RNK. If Customer defaults on any payment obligation owed RNK under any agreement for more than thirty (30) days and RNK has funds that are owed the defaulting Customer, RNK, upon notification to the defaulting Customer, may offset that which it is owed by first applying such funds to the full balance due by the defaulting Customer. Any amount remaining following the offset shall be remitted to Customer in the normal course of business.

3.5 **Invoice Dispute:** In the event of a good faith invoice dispute, the disputing Customer may withhold payment of such disputed amounts pending resolution of the dispute, provided that Customer, in instances involving interpretive contractual, procedural or technical disputes, shall not withhold payment of more than 5% of the total invoice amount, i.e., absent manifest factual, clerical or administrative error in said invoice. Once non-disputed payment is received by RNK the Parties will negotiate the invoice dispute provided that the Customer:

a) Presents any invoicing discrepancies in reasonable detail, and in writing, within thirty (30) days after the due date for payments of the disputed amount, with CDR's (or equivalent alternate, as applicable) and supporting documentation; and

b) Negotiates in good faith for the purpose of resolving such disputes within a fifteen (15) day period after receipt of such documentation. In the event such dispute is resolved in favor of the disputing Party, the disputing Party will receive an adjustment and a credit for the applicable late fees. The Parties shall not be obligated to consider any notice of invoicing discrepancies received more than forty-five (45) days following the date the invoice in question is received absent manifest invoice error. If any invoicing dispute cannot be resolved within the fifteen (15) day resolution period, the Parties will proceed pursuant to the processes of Article VII. The Parties may, upon mutual agreement, extend this time period in additional fifteen (15) day increments, not to exceed forty-five (45) days total.

c) If any disputed amount for which payment has not been made by Customer is determined to have been a correct or proper charge, interest, not to exceed the lesser of 1.5% per month or the maximum rate allowed by law, may be charged on the unpaid amount, calculated from the invoice due date.

3.6 **Security; Credit History:**

3.5.1 Prior to the start of Service, the invoiced Party ("Securing Party") may require Customer to provide an irrevocable Letter of Credit or Cash deposit ("Security") payable to the invoicing Party ("Secured Party") in the amount which shall be reasonably based on forecasted usage. The Parties will monitor traffic volume to ensure that the Security provided to cover any non-payment by the Securing Party remains adequate. The Secured Party shall have the right, at its sole option and with written notice to the Securing Party, to draw on the Security (and to concurrently require a replenishment of the initial Security), or, if no initial Security is indicated, request Security in order to meet the Securing Party's actual or estimated payment obligation, and/or require an increase in Security ("Additional Security") in those instances set forth in sections (1) and (2) below. Written notice shall be through email or fax, and Additional Security shall be in the form of a cash deposit (via wire or electronic transfer) in immediately available funds or Letter of Credit unless otherwise specified. If at any time the Securing Party fails to increase Security and/or pay for outstanding charges by 4:00 P.M. ET on the date the Secured Party provides written notice, the Secured Party may, at its option, suspend services until payment is received and/or terminate this Agreement in addition to any other available remedies provided herein. In the event of termination of this Agreement, the Securing Party shall remain obligated to pay for any Services provided up through the date of termination. (1) If it is determined by the Secured Party that the Securing Party's traffic has increased in a manner unanticipated by the traffic forecast, but not exceeding the Security on hand; and. (2) If, at any time, the Security on hand prove insufficient to cover present charges.

3.5.1.1 Notwithstanding the forgoing, if at any time during this Agreement the Secured Party determines, in its sole discretion, that the financial condition or payment history of the Securing Party is unacceptable, then the Secured Party may notify the Securing Party in writing of its intention to increase Security, provided, however, such Security shall not exceed two (2) billing periods estimated or actual traffic. Any such Security requested herein shall be provided in twenty-four (24) hours, in the case of Cash deposits, and four (4) days for a Letter of Credit. If the Security demanded is unacceptable to the Securing Party then the Secured Party may, at its option, terminate this Agreement as provided herein. The Securing Party shall remain liable for any Services provided up through the date of termination of this Agreement.

3.5.2 **Customer Credit History:** RNK may seek and acquire credit and related Customer information from reporting agencies furnishing such information for the purpose of ascertaining Customer's credit and payment history. RNK will use the information acquired to make a determination of the financial conditions pursuant to which it will provide Service to Customer.

3.6 **Taxes:** Customer acknowledges and understands that RNK computes all charges herein exclusive of any applicable value-added, federal, state or local use, universal service fund, excise, gross receipts, sales and privilege taxes, duties, fees or similar liabilities ("Additional Charges"). Unless Customer provides RNK with a properly executed Certificate of Tax Exemption for all foreign, federal, state, country, and local taxes and fees (if any), Customer shall pay such Additional Charges in addition to all other charges provided for herein.

ARTICLE IV: TERM AGREEMENT

4.1 **Effective Date; Renewal:** Unless otherwise stated in the Service Annex, This Agreement shall become effective upon the Effective Date (i.e. the last date of signature indicated on the Service Annex), and shall remain in the effect for period of one (1) year unless otherwise terminated in accordance herewith. This Agreement automatically shall be renewed thereafter on a month-to-month basis or as otherwise agreed upon by the Parties in writing. This Agreement thereupon shall be terminable by either Party upon thirty (30) days prior written notice to the other Party. The Effective Date for any Service Order shall be the date indicated on the Service Order.

4.2 **Insolvency:** Either Party may immediately terminate this Agreement upon five (5) business days notice in the event of an admission by the other Party of an inability to pay its debts, the entering into by the other Party of a composition or other arrangement with its creditors, the appointment of a trustee or receiver, with or without consent, for the other Party of all or any substantial portion of its property or the filing of a petition for relief by or against the other Party under the Bankruptcy Code or any similar federal or state statute (including moratorium laws).

4.3 **Loss of Operating Authority:** Either Party may terminate this Agreement without liability or further obligation on the part of either party to the other if a Party's underlying Agreement(s) with its carrier(s) ceases to be effective or is materially and substantially modified beyond such Party's control, or, if by Final Order, a Party loses its authority to provide the Services as contemplated hereunder, or if such authority is suspended or not renewed.

4.4 **Events of Default:** Aside from any other events of default set forth in this Agreement, the following shall constitute an event of default hereunder;

- a) The violation by either Party hereto of any material term or provision of this Agreement or the failure of either Party hereto to perform any of its material obligations hereunder for a period of two (2) business days from the date of written notice thereof by the other Party or, if such violation is incapable of cure within five (5) business days, the failure of the defaulting Party to take such steps as are necessary to commence the cure within five (5) business days and thereafter to diligently prosecute such steps to completion;
- b) The failure of the Parties to abide by the term of the Master Service Agreement, Exhibit(s), Service Order(s) or Service Annex(s); or
- c) The willful or intentional violation by either Party hereto of any term or provision of this Agreement.
- d) Failure to provide service for 5 consecutive days (120 consecutive hours), or for 5 periods of more than 24 hours in any 30 day period, except pursuant to section 8.1.

4.4.1 Upon the occurrence of an event of default as defined herein, unless specifically provided for elsewhere in the Agreement, the non-defaulting Party shall have the right to immediately terminate this Agreement upon five (5) business days written notice.

4.4.2 If this Agreement is terminated after the Effective Date by RNK for Customer's breach, or by Customer except as permitted under above, Customer shall pay to RNK, immediately upon demand, all sums then due and unpaid. Customer shall also be liable for any early termination charges as set forth in the applicable Service Annex, Service Order(s), or Service Schedule(s).

4.5 **Remedies for Breach:** In the event a Party is in breach of this Agreement, including without limitation, failure by the Party to pay charges not properly in dispute hereunder by the due date, the other Party shall have the right, in addition to any other remedies elsewhere in the Agreement, to:

- a) Immediately suspend all or any portion of the Services until such time as the Party has paid in full all charges then due, including any interest and late fees
- b) Draw on any Letter of Credit and/or deposit and enforce any guaranty or security interest granted herein; or

c) Terminate this Agreement without liability in accordance with Section 4.4 hereof.

4.6 **Alternative Remedies:** The remedies set forth herein are cumulative and in addition to, and not in limitation of, other remedies available at law or on equity. None of the remedies specified in this Article IV for any default or breach of this Agreement shall be exclusive.

4.7 **Installation Delays:** If there is a delay in Service installation, Customer may cancel Service without liability only if the delay is due solely to RNK and lasts more than ninety (90) days beyond the scheduled Start of Service Date; provided, however, that in no event may Customer cancel Service without liability if RNK has incurred costs in specially constructing or acquiring communications facilities to provide Service to Customer.

ARTICLE V : LIABILITY AND INDEMNIFICATION

5.1 **Limitation of Liability:** In no event shall either Party be liable to the other or to that Party's customers or any third party in any respect for any indirect, incidental, consequential, exemplary, punitive, reliance or special damages, or for any loss of revenue, profits, use, data, goodwill or business opportunities of any kind or nature whatsoever, arising in any manner from this Agreement and the performance or non-performance of any obligations hereunder. Regardless of whether any claim is based in contract, tort or other legal theory, each RNK's liability under or in connection with this Agreement shall be limited to the pro-rated amount payable under the terms of this Agreement relating to the affected Services, not to exceed the amount payable for (i) the one month period immediately preceding any claim in respect of any one cause of action or a series of causes of action (connected or unconnected); or (ii) two hundred and fifty thousand (\$250,000) dollars, whichever is less. Neither Party shall be liable for any damages, whether direct or indirect, caused by services or equipment that is not furnished or managed solely by such Party. The Parties acknowledge that the limitations on liability set out in this clause have been negotiated between the Parties and are regarded by the Parties as being reasonable in all circumstances.

5.2 **Indemnification:** Each Party ("**Indemnifying Party**") will indemnify the other Party, their directors, officers, employees, agents and representatives ("**Indemnified Party**"), and save them harmless from and against any and all claims, actions, damages, consequential damages, liabilities and expenses (collectively, "**Losses**") occasioned by any act or omission of the Indemnifying Party, its directors, officers, employees, agents or representatives, relating to the performance of its obligations hereunder. If the Indemnified Party shall, without fault of their part, be made parties to any litigation concerning the Indemnifying Party or the above described parties performance hereof, or commenced by or against the Indemnifying Party, then the Indemnifying Party shall protect and hold the Indemnified Party harmless, and shall pay all costs, losses, expenses, and reasonable attorney's fees incurred or paid by the Indemnified Party in connection with said litigation. Notwithstanding the forgoing, RNK shall not be liable and shall not be obligated to indemnify Customer, and Customer shall defend and indemnify RNK hereunder, for any claims by any third party, including end users, with respect to Services provided by Customer which may incorporate any of RNK's Services.

5.2.1 In the event that the litigation described in this Section 5.2 hereof shall be commenced against an Indemnified Party, the Indemnified Party will give immediate notice thereof to the Indemnifying Party. The Indemnifying Party shall then have the option of participating in said litigation, or, at its election, may assume all responsibilities and liabilities associated with said litigation upon written acceptance of liability hereunder. The Indemnified Party may not settle, discount or otherwise compromise any matter giving rise to a loss and indemnification hereunder without prior written consent of Indemnifying Party.

5.3 **Quality of Service:** EXCEPT FOR ANY EXPRESS WARRANTIES STATED IN THIS AGREEMENT, RNK DISCLAIMS AND CUSTOMER WAIVES ALL WARRANTIES INCLUDING WITHOUT LIMITATION, ALL IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WHETHER SUCH WARRANTIES ARE MADE BEFORE OR AFTER THE EXECUTION HEREOF. THE STATED WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF PARTIES FOR DAMAGES INCLUDING, BUT NOT LIMITED TO, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF EITHER PARTY'S SERVICE. IT IS EXPRESSLY UNDERSTOOD THAT THE SOLE REMEDY OF A PARTY OR THAT PARTY'S END USERS FOR BREACH OF THIS AGREEMENT BY CUSTOMER OR RNK FOR ANY DAMAGE TO THE OTHER PARTY OR OTHER PARTY'S END USERS IS TO SEEK DIRECT DAMAGES, BUT IN NO EVENT SHALL SUCH DIRECT DAMAGES EXCEED THE PRICE CHARGED FOR SUCH SERVICES.

ARTICLE VI: CONFIDENTIALITY

6.1 **Proprietary Information:** During the term of this Agreement and for a period of one (1) year thereafter, each Party shall retain in confidence, and shall require its directors, officers, employees, consultants, representatives and agents to retain in confidence, any and all Proprietary Information belonging to the other Party ("Originating Party"). The Parties agree that the Proprietary Information constitutes trade secrets and that the disclosure thereof in contravention of this Agreement would constitute an unfair trade practice.

6.1.1 Each of the Parties shall take effective precautions, contractual and otherwise, reasonably calculated to prevent unauthorized disclosure or misuse of Proprietary Information by any of its employees or by any other person having access to such information.

6.1.2 Proprietary Information shall not be deemed to include information, which is:

- a) Already known to the other Party ("**Non-Originating Party**");
- b) Publicly known (or becomes publicly known) without the fault or negligence of the Non-Originating Party;
- c) Received by the other Party from a third party without restriction and without breach of this agreement;
- d) Approved for release by written authorization of the Originating Party; or
- e) Required to be disclosed by law; provided, however, that in the event of proposed disclosure pursuant to this Section 6.1.2(e), the Non-Originating Party shall give the Originating Party written notice before such disclosure is made.

6.2 **Delivery of Document:** All documents, manuals and other written information, that constitute Proprietary Information given to or purchased by the Non-Originating Party during the term of this Agreement, shall remain the sole and exclusive property of the Originating Party. Within ten (10) business days after termination of this Agreement, each Party shall return to the other Party as the Originating Party (without retaining copies thereof) any and all Proprietary information obtained from such Originating Party in connection with the transactions contemplated by this Agreement.

6.3 **Disclosure of terms of Agreement:** Neither Party hereto shall disclose the terms and conditions of this Agreement to any person or entity without the prior written consent of the other Party. Notwithstanding the forgoing, RNK may disclose the terms and conditions of this Agreement to any person or entity for the limited purpose of facilitating a corporate reorganization or funding transaction.

6.4 **Specific performance:** RNK and Customer stipulate that any breach of the provisions of this Article VI could result in irreparable harm in an amount not readily ascertainable and that thus legal remedies would be inadequate with regard thereto. Accordingly, either Party hereto shall have the right to enforce the provisions of this Article VI by obtaining an injunction or specific performance from any court of competent jurisdiction. Additionally, if either Party willfully breaches any material term hereof, whether or not the other Party exercises its option to terminate this Agreement pursuant to Section 4.4 hereof, or any other remedies available to it, the non-breaching Party shall be entitled to recover reasonable attorney's fees in redressing said breach. The provisions of this Section 6.4 shall survive the termination of this Agreement.

6.5 **Customer Proprietary Network Information:** In the normal course of providing Services, RNK develops and maintains CPNI relating to a customer's use of Services. Under federal law, the Parties have a duty to protect the confidentiality of CPNI. RNK may disclose, share or permit access to CPNI on a limited, as-needed basis with Customer, trusted agents and contractors that assist RNK in providing Services. Customer, agents and contractors share a concomitant duty to protect CPNI. The Parties will not disclose or sell CPNI to third parties, unless otherwise required to do so by operation of law.

ARTICLE VII: DISPUTE RESOLUTION

7.1 **Dispute Forums:** In the event a dispute arises under this Agreement, both parties agree that each shall discuss and negotiate the issues between the parties' authorized agents, with informal escalation within the parties' organizations as

necessary to pursue and achieve resolution as expeditiously as possible. If a resolution cannot be arrived at between the parties through informal negotiations as described, either party may, within forty five (45) days of written notice of such dispute, serve the other party with a written demand that the dispute be submitted for expedited binding arbitration, provided, however, that RNK may, in its sole discretion, waive this right and provide written notice of initiation of an action in a judicial forum of competent jurisdiction. In the event of a demand for arbitration, said demand shall set forth the nature of the dispute, an approximation of the amount in question, if any, and the nature of the remedy sought. The dispute shall be submitted to expedited arbitration in accordance with the rules and procedures for commercial arbitration of the American Arbitration Association ("AAA") or any successor organization, and judgment upon any award rendered by the arbitrator shall be binding and final and may be entered in any court having jurisdiction thereof. The place of arbitration shall be in Massachusetts, or such other venue to which the Parties may mutually agree.

7.2 **Attorney's Fees:** In connection with a dispute arising out of or relating to this Agreement, or the breach thereof, if an action is brought by either arbitration or Court proceeding, to enforce the terms and provisions of this Agreement, or to recover damages for breach hereof, the Prevailing Party shall be entitled to recover from the other Party all cost, expenses and reasonable attorney's fees incurred in connection with the exercise by the Prevailing Party of its rights and remedies under this Agreement. For the purpose of this Section 7.5, the term "Prevailing Party" shall mean, in the case of the claimant, one who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, one who is successful in denying substantially all of relief sought by the claimant.

7.3 **Limitation:** Any and all disputes required to be submitted to mandatory judgment hereunder shall be so submitted within One (1) year from the date the dispute first arose or shall be forever barred.

7.4 **Judgment:** Judgment upon the award of the arbitrator shall be entered in any court having jurisdiction thereof on the request of any Party.

ARTICLE VIII: MISCELLANEOUS

8.1 **Force Majeure:** Except as to the payment of monies pursuant to the Agreement, neither Party shall be liable to the other for any delay or failure to perform hereunder, which delay or failure is due to causes beyond the control of said Party, including, but not limited to: acts of God, acts of the Public enemy; acts of the United States of America, or any State, territory or political subdivision thereof or of the District of Columbia; fires, floods; epidemics; quarantine restrictions; or strikes or freight embargoes.

8.2 **Trade Names and Trademarks:** All trade names, trademarks and service marks owned or employed by Customer and RNK or any subsidiary or affiliate of Customer and RNK, used or employed in each Party's business operations, shall remain the sole and exclusive property of Customer or RNK, or such subsidiary or affiliate, and such trade names, trademarks and service marks shall not be used by RNK or Customer without the prior written consent of the proprietary Party or such subsidiary or Affiliate. Parties shall immediately discontinue any use of such marks and names upon termination hereof.

8.3 **Succession; Assignment:** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successor in all or substantially all interests and assigns; provided, however, Customer may not assign this Agreement, without prior written consent of RNK, which consent may not be unreasonably withheld or delayed.

8.4 **Notice:** All notices to this Agreement shall be in writing and shall be sent by overnight mail. If to Customer at the address identified in the Service Annex or elsewhere in the Agreement. If to RNK: RNK Telecom 333 Elm Street Dedham, MA 02026 ATTN: General Counsel Phone: 781 613 6000 Fax: 781 297-9836. Notices to Customers with notice addresses outside of the United States may be delivered to Customer via email or facsimile in addition to overnight mail, at RNK's option.

8.5 **Integration:** This Agreement represents the entire agreement and understanding between Customer and RNK as to the subject matter hereof, superseding any prior oral or written communication relative to such subject matter. This Agreement additionally incorporates applicable tariffs by reference, to the extent not modified herein. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together will constitute one and the same instrument. This agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile, shall be considered to have the same binding legal effect as if it were the original signed version delivered in person. No Party shall raise

the use of a facsimile machine to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile as a defense to the formation or enforceability of this Agreement and Customer forever waives any such defense.

8.6 **Savings and Survival Clauses:** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of the Agreement shall be valid and be enforced to the fullest extent permitted by law.

8.6.1 All obligations and duties, which by their nature extend beyond the expiration or termination of this Agreement shall survive and remain in effect beyond any expiration or termination.

8.7 **Applicable Law, Choice of Law Forum; Compliance:** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to that state's laws concerning conflicts of laws. The Parties hereby stipulate to venue in Massachusetts, unless otherwise mutually agreed by the Parties in writing. Customer shall not use the Services in any manner or for any purpose that constitutes a violation of applicable laws in any jurisdiction in which the Services are being provided, and shall indemnify RNK against any such unlawful use of the Services and any related legal or regulatory actions RNK must take to defend itself against claims of such unlawful use. Notwithstanding any other provision of the Agreement to the contrary, should RNK in its sole discretion determine that the Services, or any portion thereof, are being used for unlawful purposes, RNK may suspend or terminate the unlawful use upon twenty-four (24) hours notice to Customer without any liability, regardless of whether such Services are actually determined to be unlawful.

8.8 **Regulatory Approval:** This Agreement shall be subject to and governed by any applicable and federal regulatory agencies having jurisdiction over the subject matter hereof. Should any approval or authority be required for any acts, duties or obligations to be performed hereunder, the Parties will cooperate in securing the same.

8.9 **Contingency:** (a) This Agreement is specifically conditioned on RNK's continuing ability to maintain suitable arrangements with other local exchange carriers for the termination to RNK of calls to the numbers furnished to Customer under this Agreement. In the event that RNK is unable to maintain arrangements with one or more other local exchange or other carriers under terms or conditions, including but not limited to provisions for mutual compensation of interchanged calls that RNK, in its sole discretion, determines are fair and adequate, RNK may not be able to provide, or may elect to not provide, service to or from certain carriers, and RNK may, upon 30 days' written notice to Customer, (or shorter notice if required under the circumstances) terminate this Agreement or raise rates for the impacted service, either in total or as it applies to said Region, at RNK's sole discretion, without incurring any liability. In the event of such notice by RNK, Customer may terminate this Agreement, without liability, upon 30 days' written notice to RNK given no later than 60 days after being so notified by RNK. (b) Notwithstanding any other provision of this Agreement, this Agreement is subject to change, modification, or cancellation as may be required by an order, rule or decision of Public Utilities Commission, Federal Communications Commission or court in the exercise of its lawful jurisdiction. If any legislative, regulatory, judicial or other governmental decision, order, determination or action with jurisdiction over this Agreement, or any change in applicable law, affects any material provision of this Agreement, the provisioning of Services hereunder, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, then RNK shall have the right to amend in writing this Agreement in order to make such revisions to this Agreement as may be required in order to conform the Agreement to applicable law upon thirty (30) days written notice (or shorter notice if required under the circumstances). In the event of such occurrence and notice, Customer shall have the right to terminate this Agreement upon thirty days written notice to RNK.

8.10 **Authority to Contract:** Each Party hereto warrants that it has full authority to enter into this Agreement and that such action has been duly authorized in accordance with such Party's Articles of Incorporation, By-Laws or other instrument and Customer forever waives any such defense.

8.10.1 Each Party hereto warrants that the execution, delivery, and performance of this Agreement will not conflict with, result in breach of, or cause a default under its article of incorporation, by-laws, partnership or joint Customer agreements, or any material agreement or instrument to which it is party or by which it or any of its property is bound, nor will it conflict with or violate any

statute, law, rule, regulation, order, decree or judgment of any court or governmental authority which is binding upon it or its property.

8.10.2 The individuals executing this Agreement further warrant that they have the full power and authority to bind their respective entities to the term hereof and have been duly authorized to do so in accordance with such entities' corporate or other organizational documents and procedures.

8.11 **Captions; Section:** Captions contained herein are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of any provisions hereof. Use of the term "Section" shall include the entire subject Section and all its subsections where the context requires.

8.12 **Independent Business Judgment; Negotiated Agreement:** The Parties hereby acknowledge and agree that they are independent businesses sufficiently sophisticated to exercise and exercising their own business judgment. The Parties hereby further acknowledge and agree that no recommendations or representations regarding any aspect of a Party's business including, but not limited to, any representations with regard to a Party's profits there from have been made by the Parties. The Parties hereby mutually agree and stipulate that this Agreement is the result of negotiations between the Parties and terms hereof are negotiated terms. Accordingly, any rules of interpretation, construction or resolving ambiguity against the drafter that otherwise might apply, shall not apply hereto.

8.13 **Waiver:** Failure or delay on the part of either Party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof. A waiver of one obligation hereunder shall not operate as a waiver of any other obligation. A waiver of breach by a Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by the other Party

8.14 **Law Enforcement:**

8.14.1 Notwithstanding any other provision to the contrary, each Party may cooperate with law enforcement authorities and national security authorities to the full extent required or permitted by Applicable Law in matters related to the Services provided by it under this Agreement, including the production of records, the establishment of new lines or the installation of new Services on an existing line in order to support law enforcement and/or national security operations, and, the installation of wiretaps, trap-and-trace facilities and equipment, and dialed number recording facilities and equipment.

8.14.2 A Party shall not have the obligation to inform the other Party or the End Users of the other Party of actions taken in cooperating with law enforcement or national security authorities, except to the extent required by Applicable Law.

8.15 **Scope of Agreement:** Each Party is a non-exclusive independent contractor for the purposes expressly stated herein. A Party is not a general or special agent of said Parties, and this Agreement does not create a joint Customer or apply to confer any status, power or authority upon either Party other than as expressly set forth herein. The scope of a Party's authority is specially limited to the minimum authority necessary to perform the duties accepted pursuant to this Agreement

8.16 **Parties' Employees:** All persons employed or contracted by the Parties to perform duties under this Agreement are, and will remain, the employees and agents of each Party and Parties shall remain responsible for the acts and omissions of its employees and agents and shall have sole responsibility for their supervision, direction and control. The Parties shall comply with all applicable laws regarding withholding and payment of all income or other state taxes, social security taxes, unemployment insurance, workmen's compensation and disability benefits as well as those regarding equal employment opportunities and safety of the work place insofar as such concerns the subject matter hereof.

8.17 **Right to Conduct Other Business:** Each Party hereto understands and acknowledges that this Agreement is non-exclusive and that the Parties themselves, their Affiliates, their representatives, and other entities with whom they may contract may compete with the other Party hereto in the businesses subject hereto. This Agreement shall not in any way limit Parties' power and right to contract with other Persons concerning the matter hereof on such terms as Parties see fit even though such Persons, as a result compete with said Party. This Agreement also shall not in any way limit Parties' power and right to contract with other Persons concerning the subject matter hereof, either during the term hereof or thereafter, on such terms as Parties see fit even though such persons, as a result, compete with each Party.

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