

## KMTELECOM RESIDENTIAL VOIP TERMS AND CONDITIONS

BY ACCEPTING THESE VOIP COMMUNICATIONS SOLUTIONS TERMS AND CONDITIONS, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS BELOW. ALL SERVICE ORDERS AND SERVICES ARE SUBJECT TO THESE TERMS AND CONDITIONS.

These VoIP Communications Solutions Terms and Conditions (the "Agreement") are entered into by and between KMTELECOM Business, LLC ("Provider"), a Delaware limited liability company, and the customer purchasing products or services from Provider ("Customer").

**1. DEFINITIONS.** The following terms will have the meanings set forth below.

**1.1** "Customer Data" means any data, information or other materials of any nature whatsoever provided to Provider by Customer or a User in the course of implementing or using the Services.

**1.2** "Service Descriptions" means user manuals and other documentation relating to the Services that are made available to Customer by Provider in digital or hardcopy form, as updated from time to time.

**1.3** "Service Fee" or "Service Fees" means the monthly or annual fees set forth in the Service Order to be paid by Customer to Provider as consideration for Provider's provision to Customer of the Services, but does not include usage fees, taxes or regulatory fees or surcharges, which Customer must pay in addition to the Service Fees.

**1.4** "Service Order" means an order for Services or products.

**1.5** "Service Plan" means the monthly or annual subscription plan a Customer agrees to in the Service Order.

**1.6** "Service Order Addendum" means a Service Order agreed to by Customer subsequent to the initial Service Order.

**1.7** "Services" means the products or services that are being provided to Customer as described in the Service Order, including any Additional Services set forth in a Service Order Addendum accepted by Provider.

**1.8** "Software" means any proprietary software owned by, licensed by or which Provider has a right to sublicense that is used in or used to provide the Services. "Software" includes, without limitation, any application that Provider makes available to the Customer for use on a mobile device.

**1.9** "User" means a user of the software, client, mobile application or other web-based application, equipment, feature or functionality provided by Provider in conjunction with the Services.

## **2. SERVICES.**

**2.1 Generally.** Provider will provide the Services set forth in an accepted Service Order subject to the terms and conditions of this Agreement. Provider hereby grants Customer limited, revocable, non-exclusive, non-transferable access to the Services for use by the number of Users set forth in the Service Order, for Customer's own internal business purposes. Provider grants Customer a limited, revocable, non-exclusive, non-transferable right to use the Services Descriptions in connection with its use of the Services. Each Service Order will be subject to Provider's acceptance, which will be deemed given if Provider thereafter provides the Services to Customer.

**2.2 Conditions.** Customer agrees that Provider's obligations to provide the Services are expressly conditioned upon (a) Customer's payment of the fees as and when due, and (b) Customer's satisfaction of the technical requirements set forth in the Services Descriptions for the Services made available to Customer by Provider, as the same may be updated by Provider from time to time.

**2.3 Additional Services.** Customer may request an increase in Users or additional Services at any time during the Term (any such increase, "Additional Services") by submitting a Service Order Addendum setting forth the specific Additional Services desired. Each Service Order Addendum will be subject to Provider's acceptance, which will be deemed given if Provider thereafter provides the Additional Services to Customer. Upon acceptance by Provider, such Service Order Addendum will be deemed an amendment to the Agreement, subject to all of the terms and conditions herein, and the Service Fees will be increased to reflect the Additional Services, subject to the same pricing and payment terms as are set forth in the Service Order or the Service Order Addendum as applicable.

**3. TERM.** This Agreement will commence on the date Provider accepts the Service Order and will continue for the period of time specified in the Service Order (the "Initial Term"). At the end of the Initial Term, the Agreement will automatically renew for an additional one-year period (a "Renewal Term"), and will renew at the end of each Renewal Term for an additional one-year Renewal Term, unless either party provides the other party, at least thirty (30) days prior to the end of the Initial Term or applicable Renewal Term, written notification in accordance with Section 20.1 of its desire to cancel the Services. The Initial Term and any Renewal Terms are collectively the "Term".

## **4. TERMINATION.**

**4.1 Early Termination by Customer.** If Customer terminates the Agreement, or some of the Services provided under the Agreement, before the end of the Initial Term or any Renewal Term (the "Terminated Term"), Provider will charge Customer, and Customer will pay, an early termination charge equal to 100% of the monthly Service Fee for the terminated Services, multiplied by the number of months remaining in the Terminated Term on the date of termination. The early termination charge is in addition to the full monthly Service Fee payable for the month of, and months prior to, termination. Provider will also charge Customer, and Customer will pay, (a) any unpaid recurring or non-recurring charges waived by Provider at the beginning of or during the Terminated Term, and (b) the difference between the MSRP and the price paid by Customer for any

equipment purchased at the beginning of or during the Terminated Term. If Customer or its User transfers or ports its phone number to a service provider other than Provider, Customer must also contact Provider to terminate the Services provided to Customer by Provider.

#### **4.2 Termination by Provider.**

**(a)** Provider is entitled, at its sole discretion, to suspend, terminate or change the Services without advance notice upon any misuse of the Services in any way, Customer's breach of the Agreement, Customer's failure to pay any sum due hereunder, suspected fraud or other activity by Customer or a User that adversely affects the Services, Provider, Provider's network or another customer's use of the Services. Provider will be entitled to determine, at its sole discretion, what constitutes misuse of the Services, and Customer agrees that Provider's determination is final and binding on Customer. Provider may require, and if required, Customer will pay, an activation fee as a condition to changing or resuming a terminated or suspended account.

**(b)** Provider is entitled to terminate any affected portion of the Services if: (i) Provider is prohibited by law from providing such portion of the Services; or (ii) any material rate or term contained herein and relevant to the affected Services is substantially changed by or as a result of any regulation or order issued by any court of competent jurisdiction, the Federal Communications Commission (FCC), any other local, state or federal government authority, or any carrier or Internet service provider.

**(c)** Upon termination of this Agreement under this Section 4.2, Customer will be responsible for the full monthly Service Fee for the month in which termination occurs, in addition to any accrued but unpaid usage and other charges.

#### **5. FEES, BILLING AND TAXES.**

**5.1 Payment of Service Fees.** Customer will pay the Service Fees for Services ordered by Customer, and all other amounts due under the Agreement, pursuant to the terms of this Section 5.

**5.2 Credit.** The provision of Services is contingent upon establishment of and continuing credit approval by Provider. Customer hereby consents to Provider's procurement of a credit score or report regarding Customer. At any time during the Term, Provider is entitled to require a deposit or other acceptable form of security from Customer, as it deems appropriate. In addition, if requested by Provider, Customer agrees to provide, within two (2) business days of request, appropriate financial records to evaluate Customer's continuing ability to pay. Provider may, immediately and without notice, suspend or terminate the Services if Customer fails to comply with these security obligations. Upon a payment default by Customer not cured in a timely manner, Provider will have the right to offset against any security or deposit held any amounts owed to Provider by Customer, and to invoice and collect all other amounts owed.

**5.3 Billing.** Provider will provide Customer with a monthly online billing statement for the Services provided each calendar month and bill all charges invoiced to Customer's

account. Such charges will include monthly service fees, storage charges, activation charges, equipment charges, toll charges, shipping charges, taxes, regulatory recovery fees and any other applicable charges. Monthly Service Fees will be paid in advance of each month's service; any variable charges associated with usage and any other applicable charges associated with such usage shall be billed in arrears. Billing for monthly Service Fees commences upon ordering of the Services, and monthly Services Fees will be billed pro rata in the months in which such Services commence. Customer agrees to provide Provider with complete and accurate contact and payment information, which may include Customer's credit card information, and Customer agrees to advise Provider of any changes thereto. To the extent Customer's payment method is by credit card, Customer authorizes Provider to charge Customer's credit card automatically to pay for Customer's charges. If a charge to Customer's credit card is declined or reversed, or if the account or credit card has expired or been suspended or closed, or if Customer fails to provide Provider with accurate or complete credit card information, Provider may suspend or terminate the Services.

**5.4 Late/Non-payment.** If any charges for the Services are due but unpaid for any reason, Provider may suspend or terminate the Services and all accrued charges will be immediately due, plus a late fee of 1.5% per month. A fee may also be charged to activate a suspended or terminated account. No suspension or termination of the Services or of this Agreement will relieve Customer from paying any amounts due hereunder.

**5.5 Taxes.** All Service Fees and other charges are exclusive of any taxes, surcharges, public utility fees and regulatory fees (including, without limitation, Universal Service Fees and E911 taxes). Such taxes and fees will be billed by Provider and paid by Customer. Taxes and regulatory fees may increase during the Term, and Customer will pay such increased fees commencing with the next monthly bill. Should Customer claim an exemption of any taxes or regulatory fees, Customer must provide official documented and certified proof of such exemption. In no event will Provider be liable for any taxes due by Customer or its User, and Customer will defend, indemnify and hold harmless Provider if any claim for taxes or fees is made. If any amounts paid for the Services are refunded by Provider, applicable taxes and regulatory fees may not be refundable.

**5.6 Regulatory Recovery Fee.** A regulatory recovery fee may be charged monthly to offset costs incurred by Provider in complying with inquiries and obligations imposed by federal, state and municipal regulatory authorities and the related legal and billing expenses. This fee is not a tax or charge required or assessed by any government. The regulatory recovery fee will apply to every phone number assigned, including toll free and virtual numbers. The regulatory recovery fee may increase during the Term, and Customer will pay such increased fee commencing with the next monthly bill.

**5.7 Service Fee Changes.** Provider may change the Service Fees, the types of Service Plans and any additional usage charges without advance notice. Provider will post such changes to its website (<http://www.kmtel.com>). Notwithstanding the foregoing, the Service Fees agreed upon in Customer's Service Order will not be increased during the Initial Term. With respect to any Renewal Term, the Customer will be charged Provider's then-current Service Fees in effect at the commencement of the Renewal Term.

**5.8 Availability.** Customer acknowledges and agrees that the Services may not be available 100% of the time. Additionally, Services will not be available in the event of interruption in Customer's or its User's internet or broadband service. Provider will not credit Customer for any interruptions in Service.

**5.9 Discounts.** From time to time in its sole discretion, Provider may offer promotions or discounts. Any promotion or discount codes must be provided to Provider upon purchase of the Services. Customer will not be entitled to a subsequent credit for such promotions or discounts if not requested at the time of account creation or change of Service. Promotions and/or discounts may not be used cumulatively or be used for Services retroactively.

**5.10 Billing Disputes.** Customer must dispute any charges for the Services in writing to [contactus@kmtel.com](mailto:contactus@kmtel.com) within thirty (30) days of the date of the charge by Provider, or Customer waives any objection and further recourse with regard to such charges. Notwithstanding the foregoing, Customer shall pay all undisputed charges in accordance with this Agreement.

**5.11 Usage Charges.** Every call using the Services that originates or terminates in the Public Switched Telephone Network ("PSTN"), including without limitation other VoIP networks, accrues applicable toll charges. Customer will not be charged for monthly usage within the limits of its then-current Service Plan. Usage which exceeds the limits, if any, of Customer's then-current Service Plan will be charged to Customer in accordance with the Service Descriptions at the rates published at <http://www.kmtel.com>. Calls to phone numbers outside the United States and Canada will also be charged to the Customer in accordance with the Service Descriptions at the rates published at <http://www.kmtel.com>.

**6. TELEPHONE NUMBER.** Any telephone number provided by Provider ("Number") to the Customer will be leased and not sold. Provider reserves the right to change, cancel or move the Number should Provider reasonably determine, in its sole discretion, that it is required to do so as a result of its agreements with its underlying services providers or for other business purposes related to the provision of the Services.

**7. PRIVACY.** The Services use the public Internet and third-party networks to transmit voice communications and data. Provider is not liable for the interception, use or disclosure of Customer's or its User's voice communications or data. Provider does not represent, warrant or covenant that the Services will maintain the privacy or security of Customer's or its Users' voice communications or data. Customer acknowledges and agrees that none of its Customer Data is considered "Customer Proprietary Network Information" under the rules of the Federal Communications Commission. Customer agrees that Provider is entitled to monitor Customer's and Users' use of the Services to protect, maintain, or improve the Services; to prevent fraud or misrepresentation by affirmative acts and/or omissions; to protect Provider, its customers or other third parties affiliated with Provider; or for any other good cause. If required by law, Customer will inform its Users that Provider may monitor the Users' communications and store and use the Users' personally identifiable information as necessary to provide the Services. For Provider's Privacy Policy, please visit <http://www.kmtel.com>.

## **8. LICENSE; PROHIBITED USES; CUSTOMER RESPONSIBILITIES; LIMITATIONS.**

**8.1** Customer hereby grants to Provider a license to copy, store, record, transmit, display, view, print and use Customer Data, solely to the extent necessary to provide the Services to Customer. Except as expressly provided in this Section 8, Customer grants to Provider no right, title, interest, or license in the Customer Data. Customer represents and warrants that it has all necessary consents and rights to provide personally identifiable information about its Users to Provider, and Customer will provide such information upon reasonable request by Provider.

**8.2** Customer represents and warrants that it will not use the Services for any illegal, fraudulent, improper, or abusive purpose or in any way that interferes with Provider's ability to provide high-quality Services to other customers, prevents or restricts other customers from using the Services, or damages any of Provider's or other customers' property. If Provider discovers use of the Services for anything other than the permitted uses in this Agreement or for any of the prohibited uses in this Agreement, Provider may at its sole discretion terminate or suspend all or part of Customer's Services and charge any applicable fees for the Services used plus damages caused by such improper use. Prohibited uses include, but are not limited to: (a) behavior that is illegal, obscene, threatening, harassing, defamatory, libelous, deceptive, fraudulent, malicious, infringing, tortious or invasive of another's privacy; (b) sending unsolicited messages or advertisements, including e-mail, voice-mail, text messages or faxes (commercial or otherwise) ("spamming"), or otherwise sending bulk or junk e-mail, voice-mail, text messages or faxes; (c) harvesting or otherwise collecting information about others, including e-mail addresses, without their consent; (d) negligently, recklessly, knowingly or intentionally transmitting any material that contains viruses, time bombs, Trojan horses, worms, malware, spyware or any other programs that may be harmful or dangerous; (e) creating a false caller identity ("ID spoofing") or forged e-mail/text message address or header, or otherwise attempting to mislead others as to the identity of the sender or the origin of any communication made using the Services; (f) transmitting any material that may infringe, misappropriate, or otherwise violate the foreign or domestic intellectual property rights or other rights of third parties; (g) violating any U.S. or foreign law regarding the transmission of technical data or software exported through the Services; (h) using the Services in excess of what, in Provider's sole discretion, would be expected of normal business use, including without limitation allowing more than one user to use a single VoIP line or using a single VoIP line in excess of what would be expected of a single user; (i) using the Services in any way that interferes with other customers' and third parties' use and enjoyment of the Services; (j) using or employing methods and/or devices that are designed or likely to take advantage of, bypass, exploit or otherwise avoid this use policy.

**8.3** Customer understands and agrees that: (a) it will be solely liable for any transmissions sent through the Services under its account or its User's account, including the content of any transmission sent through the Services under its account or its User's account; (b) it will abide by all applicable Provider policies, procedures and agreements related to the Services; and (c) it will not attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services through password mining or any other means.

**8.4** Some of Provider's plans and other Services are offered on an "unlimited" basis. All unlimited plans: (a) may only be used for normal commercially reasonable business use; (b) are provided only for dialog between two individuals at one time per line; (c) are issued on a "one (1) user per line basis", meaning that only one registered User may be assigned to use the Services for any one line; and (d) are subject to additional usage charges, including but not limited to such charges associated with international calling, in accordance with the then-current rates posted to Provider's website (<http://www.kmtel.com>). Unlimited plans may not be used for any of the following prohibited uses (which are in addition to the other prohibited uses applicable to all Services): (i) trunking or forwarding a Provider Number to another phone number capable of handling multiple simultaneous calls, or to a private branch exchange (PBX) or a key system; (ii) spamming or blasting (e.g., sending bulk or junk voice-mails, e-mails, text messages or faxes simultaneously); (iii) bulk call-in lines (e.g., customer support or sales call centers, "hotlines", 900 numbers, sports-line numbers, etc.); or (iv) auto-dialing or "predictive" dialing (i.e., non-manual dialing or using a software program or other means to continuously dial or place out-bound calls). In addition, unusually high usage of the Services may impair Provider's ability to provide high-quality Services to others and/or indicate unauthorized use of the Services, in which case Provider may suspend or terminate Customer's account or, upon prior notice, convert Customer's account to a metered calling plan that charges significantly higher usage rates.

**8.5** Customer must report any unauthorized use of the Services to Provider immediately after Customer discovers such use. Customer is responsible for all use of the Services, whether authorized or unauthorized. Customer will be responsible if any of its Users use the Services in a manner prohibited by this Agreement. Customer will be responsible for any act or omission of a User that would be a breach of this Agreement if done by Customer.

**8.6** Customer acknowledges and agrees that the right to use any Services is nonexclusive and nontransferable, and Customer will not permit use of the Services other than for its internal business purposes. Nothing in this Agreement will pass to Customer or any User title to any of the Services, any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos and/or any other intellectual property of Provider or its vendors. Customer will not challenge or attempt to register or otherwise protect any of Provider's intellectual property or other rights in the Services.

**8.7** Customer will not: (a) copy or adapt the Services for any purpose, except as specifically permitted under this Agreement; (b) use the Services except in accordance with all applicable laws and regulations, and except as set forth in this Agreement; (c) reverse engineer, translate, decompile, or disassemble the Services; (d) use the Services in any outsourcing, application service provider, time-sharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party other than a User; (e) cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Services; or (f) delete, alter, cover, or distort any copyright or other proprietary notices or trademarks with respect to the Services.

**8.8** Customer understands and accepts that, in order to protect Customer against fraudulent use of the Services, Provider may require Customer to contact Provider in order to enable calling to certain calling destinations.

**8.9** Customer will execute such other documents, provide such other information, and affirmatively cooperate with Provider, all as may be reasonably required by Provider relevant to providing the Services.

**9. USE AND STORAGE.** Provider reserves the right to establish or modify general practices and limits concerning use of the Services and Software, including, without limitation, the maximum number of days that content will be retained by the Service and the maximum disk space or bandwidth capacity that will be allotted on servers owned or operated by Provider on Customer's behalf. Where practical, Provider will provide Customer with prior notice of such new or modified practices; provided, however, that Provider will have the absolute right to implement such new or modified practices without prior notice in its sole discretion and without liability of any kind.

**10. ELECTRONIC RECORDING.** Customer agrees that there are federal and state statutes governing the electronic recording of telephone conversations and that Provider will not be liable for any illegal use of any recording services provided to Customer or its Users. It is Customer's responsibility to determine if the electronic recordings are legal under applicable federal and state laws and to comply with those laws. Customer will defend, indemnify and hold harmless Provider for any claims, damages, fines, penalties or costs (including, without limitation, attorneys' fees) arising out of Customer's or its User's failure to adhere to applicable electronic recording laws.

**11. RESPONSIBILITY FOR REGISTRATION INFORMATION AND CONTENT OF CUSTOMER COMMUNICATIONS.** Customer is solely responsible for maintaining the confidentiality of Customer's account login information (including, without limitation, its Users' account login information), and will not allow a third party to use the Services. Customer is solely responsible for any and all activities that occur under Customer's account or its User's account, including, without limitation, fraudulent use of the account. Customer and its Users must comply with laws regarding online behavior, acceptable content and the transmission of equipment and information under applicable export laws. Customer also agrees to comply with applicable local rules or codes of conduct (including, if applicable, codes of conduct or policies imposed by employers) regarding online behavior and acceptable content. Use of the Services is void where prohibited. Customer will immediately notify Provider of any unauthorized use of Customer's account or its User's account or any other breach of security related to Customer's account, its User's account or the Provider Services. Customer and each User must "log off" at the end of each session. Provider is not liable for any loss or damage arising from Customer's or its User's failure to comply with any of the foregoing obligations. In consideration for using the Provider Services, Customer will: (a) provide certain current, complete and accurate information about Customer and Users when prompted to do so by the Provider Services, and (b) maintain and update this information as required to keep it current, complete and accurate. Customer agrees that Customer is solely responsible for the content of all visual, written or audible communications ("Content") sent, displayed or uploaded by Customer or a User in using the Services. Although Provider is not responsible for any such communications, Provider may reject or remove any Content that violates a law or this Agreement.



Customer or the User retains copyright and any other rights already held in Content that Customer or the User submits, posts or displays on or through, the Services, or any music or ring-tones Customer or a User uses in connection with the Service. Customer understands and agrees that by displaying, exchanging or uploading Content to a Provider website, transmitting Content using the Services or otherwise providing Content to Provider, Customer automatically grants (and warrants and represents that it has a right to grant) to Provider a world-wide, royalty-free, sub-licensable (so Provider affiliates, contractors, resellers and partners can deliver the Services) perpetual, irrevocable license to use, modify, publicly perform, publicly display, reproduce and distribute the Content in the course of offering the Services, including, without limitation, on associated websites ("Sites"). Furthermore, Customer represents and warrants that it has all necessary consents and rights to transmit Content and other communications from its users to Provider.

**12. RESPONSIBILITY FOR CONTENT OF OTHERS.** Customer acknowledges that Users may violate one or more of the above prohibitions, but Provider assumes no responsibility or liability for such violation. If Customer becomes aware of misuse of the Services by any person, entity or organization, Customer agrees to contact Provider Customer Support at 507-634-2511 or [contactus@kmtel.com](mailto:contactus@kmtel.com). Provider may investigate any complaints and violations that come to its attention and may take any action that it believes is appropriate, including, but not limited to, issuing warnings, removing the content or terminating accounts and/or User profiles. Under no circumstances will Provider be liable in any way for any data or other content available on a Site or actions taken while using the Services, including, but not limited to, any errors or omissions in any such data, content or activity or any loss or damage of any kind incurred as a result of the use of, access to or denial of access to any data, content or activities on a Site. Provider does not endorse and has no control over what Users post, submit to or do on a Site. Customer acknowledges that Provider cannot guarantee the accuracy of any information submitted by any User of a Site, nor any personally identifiable information about any User. Provider reserves the right, in its sole discretion, to reject or remove content.

### **13. EMERGENCY 911 SERVICES.**

**13.1 Service Limitations.** The FCC requires that Provider provide E911 Service to all Customers who use Provider Services within the United States. Sections 13.2-13.8 apply to all Customers who use Provider Services within the United States. Section 13.9 applies to all Customers.

**13.2 ACKNOWLEDGEMENT AND WARNING LABELS.** CUSTOMER ACKNOWLEDGES THAT PROVIDER'S EQUIPMENT AND SERVICES DO NOT SUPPORT 911 EMERGENCY DIALING OR OTHER EMERGENCY FUNCTIONS IN THE SAME WAY THAT TRADITIONAL WIRELINE 911 SERVICES WORK. THE DIFFERENCES ARE DETAILED IN THIS SECTION 13, AND CUSTOMER AGREES TO NOTIFY ALL POTENTIAL USERS WHO MAY PLACE CALLS USING CUSTOMER'S SERVICES OF THE 911 LIMITATIONS DESCRIBED HEREIN. PRIOR TO THE INITIATION OF SERVICE, PROVIDER WILL PROVIDE CUSTOMER WITH WARNING LABELS REGARDING THE LIMITATIONS OR UNAVAILABILITY OF 911 EMERGENCY DIALING. CUSTOMER AGREES TO PLACE SUCH LABEL ON OR NEAR EACH TELEPHONE OR OTHER CUSTOMER-PREMISES OR USER-

PREMISES EQUIPMENT ON WHICH THE SERVICES MAY BE USED. IF ADDITIONAL LABELS ARE REQUIRED, CUSTOMER MAY REQUEST THEM FROM PROVIDER, AND PROVIDER WILL PROVIDE ADDITIONAL LABELS. PROVIDER WILL PROVIDE CUSTOMER WITH ADVISORY NOTICES REGARDING 911 EMERGENCY DIALING AND REQUEST ACKNOWLEDGMENTS FROM CUSTOMER. CUSTOMER WILL PROVIDE SUCH ADVISORY NOTICES TO ITS USERS. CUSTOMER AGREES TO RESPOND AND AFFIRMATIVELY ACKNOWLEDGE THAT PROVIDER HAS ADVISED CUSTOMER OF THE CIRCUMSTANCES UNDER WHICH E911 SERVICE MAY NOT BE AVAILABLE OR MAY BE LIMITED IN COMPARISON TO TRADITIONAL 911 EMERGENCY DIALING. CUSTOMER WILL PROVIDE SIMILAR ACKNOWLEDGEMENTS FROM ITS USERS UPON REQUEST BY PROVIDER. PROVIDER ADVISES CUSTOMER AND USERS TO MAINTAIN AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES.

**13.3 ELECTRICAL POWER.** CUSTOMER ACKNOWLEDGES THAT THE SERVICES, INCLUDING WITHOUT LIMITATION E911 SERVICE, WILL NOT FUNCTION IN THE ABSENCE OF ELECTRICAL POWER.

**13.4 INTERNET ACCESS.** CUSTOMER ACKNOWLEDGES THAT THE SERVICES, INCLUDING WITHOUT LIMITATION E911 SERVICE, WILL NOT FUNCTION IF THERE IS AN INTERRUPTION OF CUSTOMER'S BROADBAND OR HIGH-SPEED INTERNET ACCESS SERVICE.

**13.5 NON-VOICE SYSTEMS.** CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT SET UP TO FUNCTION WITH OUTDIALING SYSTEMS SUCH AS HOME SECURITY SYSTEMS, MEDICAL MONITORING EQUIPMENT, TTY EQUIPMENT, OR ENTERTAINMENT OR SATELLITE TELEVISION SYSTEMS. PROVIDER WILL NOT BE LIABLE FOR INTERRUPTION OR DISRUPTION OF SUCH SYSTEMS BY THE SERVICES.

**13.6 E911 SERVICE.** E911 SERVICE IS A MANDATORY COMPONENT OF ALL INBOUND/OUTBOUND TRADITIONAL FAX AND VOICE SERVICE PLANS. E911 SERVICE IS NOT OFFERED ON VIRTUAL NUMBERS, OUTSIDE THE UNITED STATES, ON TOLL-FREE NUMBERS OR ON SIMILAR SERVICE ACCESSORIES OR ADD-ON SERVICE PLANS. E911 SERVICE IS ONLY AVAILABLE IN SELECTED AREAS. E911 SERVICE IS TIED TO THE CUSTOMER'S REGISTERED SERVICE ADDRESS ASSOCIATED WITH THE ASSIGNED PHONE NUMBER; CUSTOMER IS RESPONSIBLE FOR PROVIDING PROVIDER WITH ADDRESS INFORMATION FOR CUSTOMER'S USERS. THE PROVIDER MOBILE APPLICATION USES THE DEVICE'S DIALER AND CELLULAR TELEPHONE SERVICE TO MAKE 911 CALLS. IF A DEVICE DOES NOT HAVE CELLULAR TELEPHONE SERVICE, THEN THE USER WILL NOT BE ABLE TO CALL 911 FROM THE PROVIDER MOBILE APPLICATION. CUSTOMER ACKNOWLEDGES THAT PROVIDER'S ONLY MECHANISM FOR ROUTING 911 CALLS TO THE CORRECT EMERGENCY CALL TAKER IS THE CUSTOMER'S OR USER'S REGISTERED SERVICE ADDRESS ASSOCIATED WITH THE ASSIGNED PHONE NUMBER. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT ANY ENHANCED LOCATION INFORMATION PASSED TO AN EMERGENCY OPERATOR BY PROVIDER WILL BE BASED UPON THE CUSTOMER'S OR USER'S REGISTERED SERVICE ADDRESS PROVIDED TO PROVIDER BY CUSTOMER. IN THE EVENT THAT THE REGISTERED SERVICE

ADDRESS ASSOCIATED WITH THE ASSIGNED PHONE NUMBER IS INCORRECT, IS OUTDATED, OR IS NOT COMPLETE, A 911 CALL MAY BE ROUTED INCORRECTLY.

**13.7 E911 SERVICE CHARGE.** CUSTOMERS THAT ARE REQUIRED TO SUBSCRIBE TO PROVIDER E911 SERVICE WILL BE SUBJECT TO A MONTHLY E911 SERVICE CHARGE. THE MONTHLY E911 SERVICE FEE WILL BE IN ADDITION TO THE APPLICABLE SERVICE FEES FOR THE ASSOCIATED LINE. THE MONTHLY CHARGE FOR PROVIDER E911 SERVICE IS ASSESSED ON A "PER-LINE" (THAT IS, PER PHONE NUMBER BASIS), AND WILL BE SET AT A LEVEL THAT REIMBURSES PROVIDER FOR THE DIRECT COSTS IT INCURS IN PROVIDING PROVIDER E911 SERVICE, INCLUDING EXPENSES PROVIDER INCURS, EITHER DIRECTLY OR INDIRECTLY, IN THE FORM OF STATE, COUNTY OR MUNICIPAL E911 SURCHARGES, E911 AUTOMATIC LOCATION INFORMATION (ALI) DATABASE STORAGE, LINE INFORMATION DATABASE AND CALLER ID (LIDB/CNAM) EXPENSES, AND ANY OTHER TAXES OR SURCHARGES DIRECTLY OR INDIRECTLY ASSOCIATED WITH THE PROVISION OF SERVICES TO CUSTOMERS SUBSCRIBING TO THIS SERVICE. PROVIDER RESERVES THE RIGHT TO ADJUST THE LEVEL OF CHARGES ASSOCIATED WITH THE PROVISION OF E911 SERVICES TO REFLECT INCREASES OR DECREASES IN THE COSTS IT INCURS.

**13.8 E911 CHARACTERISTICS.** CUSTOMER ACKNOWLEDGES THAT PROVIDER E911 SERVICE HAS CERTAIN CHARACTERISTICS THAT DISTINGUISH IT FROM TRADITIONAL, CIRCUIT-SWITCHED 911 SERVICE. THESE CHARACTERISTICS MAY MAKE PROVIDER E911 SERVICES UNSUITABLE FOR SOME CUSTOMERS OR USERS. BECAUSE CUSTOMER AND USER CIRCUMSTANCES VARY WIDELY, CUSTOMER SHOULD CAREFULLY EVALUATE ITS OWN CIRCUMSTANCES WHEN DECIDING WHETHER TO RELY SOLELY UPON PROVIDER E911 SERVICE. CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S RESPONSIBILITY TO DETERMINE THE TECHNOLOGY OR COMBINATION OF TECHNOLOGIES BEST SUITED TO MEET CUSTOMER'S AND ITS USERS' EMERGENCY CALLING NEEDS, AND TO MAKE THE NECESSARY PROVISIONS FOR ACCESS TO EMERGENCY CALLING SERVICES (SUCH AS MAINTAINING A CONVENTIONAL LANDLINE PHONE OR WIRELESS PHONE AS A BACKUP MEANS OF COMPLETING EMERGENCY CALLS). THE FOLLOWING CHARACTERISTICS DISTINGUISH PROVIDER E911 SERVICE FROM TRADITIONAL, CIRCUIT-SWITCHED 911 SERVICE:

- E911 SERVICE WILL NOT FUNCTION IF CUSTOMER'S OR ITS USER'S DTA, PHONE OR VIDEOPHONE FAILS OR IS NOT CONFIGURED CORRECTLY OR IF CUSTOMER'S OR ITS USER'S PROVIDER SERVICE IS NOT FUNCTIONING FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, ELECTRICAL POWER OUTAGE, BROADBAND OR OTHER INTERNET SERVICE OUTAGE, OR SUSPENSION OR DISCONNECTION OF SERVICE BECAUSE OF BILLING OR OTHER ISSUES. IF THERE IS A POWER OUTAGE, CUSTOMER OR THE USER MAY BE REQUIRED TO RESET OR RECONFIGURE THE EQUIPMENT BEFORE BEING ABLE TO USE THE PROVIDER SERVICE, INCLUDING FOR E911 PURPOSES. E911 SERVICE MAY NOT FUNCTION IF CUSTOMER OR A USER

RELOCATES EQUIPMENT OR USES A NON-NATIVE TELEPHONE NUMBER, OR FOR ANY OTHER REASON BEYOND PROVIDER'S CONTROL.

- AFTER INITIAL ACTIVATION OF THE E911 SERVICE, AND FOLLOWING ANY CHANGE OF AND UPDATE TO CUSTOMER'S OR A USER'S PHYSICAL LOCATION, THERE MAY BE SOME DELAY BEFORE THE AUTOMATIC NUMBER AND LOCATION INFORMATION IS PASSED TO THE LOCAL EMERGENCY SERVICE OPERATOR. THIS INFORMATION IS TYPICALLY POPULATED INTO PROVIDER'S NOMADIC E911 DATABASES PRIOR TO SERVICE ACTIVATION, BUT NO GUARANTEE CAN BE MADE THAT THE AUTOMATIC NUMBER AND LOCATION INFORMATION WILL BE ACTIVATED WITHIN THIS SCHEDULE.
- THE LOCAL EMERGENCY SERVICE OPERATOR RECEIVING PROVIDER E911 EMERGENCY SERVICE CALLS MAY NOT HAVE A SYSTEM CONFIGURED FOR E911 SERVICES OR BE ABLE TO CAPTURE AND/OR RETAIN AUTOMATIC NUMBER OR LOCATION INFORMATION. THIS MEANS THAT THE OPERATOR MAY NOT KNOW THE PHONE NUMBER OR PHYSICAL LOCATION OF THE PERSON WHO IS MAKING THE PROVIDER E911 CALL. DUE TO TECHNICAL FACTORS IN NETWORK DESIGN, AND IN THE EVENT OF NETWORK CONGESTION ON THE PROVIDER NETWORK, THERE IS A POSSIBILITY THAT A PROVIDER 911 CALL WILL PRODUCE A BUSY SIGNAL, THE CALLER WILL EXPERIENCE UNEXPECTED ANSWERING WAIT TIMES OR THE LOCAL EMERGENCY SERVICE OPERATOR WILL TAKE LONGER TO ANSWER THE CALL THAN 911 CALLS PLACED VIA TRADITIONAL, CIRCUIT-SWITCHED TELEPHONE NETWORKS.
- IF CUSTOMER OR ITS USER DOES NOT CORRECTLY IDENTIFY THE ACTUAL LOCATION WHERE THE PROVIDER EQUIPMENT WILL BE LOCATED AT THE TIME OF ACTIVATION OF THE SERVICE, PROVIDER E911 COMMUNICATIONS MAY NOT BE DIRECTED TO THE CORRECT LOCAL EMERGENCY OPERATOR.

**13.9 E911 LIMITATION OF LIABILITY AND INDEMNITY.** CUSTOMER AGREES THAT PROVIDER WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE OR INABILITY TO DIAL 911 OR ANY OTHER EMERGENCY TELEPHONE NUMBER USING A PROVIDER SERVICE OR TO ACCESS OR REACH AN EMERGENCY SERVICE OPERATOR DUE TO THE 911 DIALING CHARACTERISTICS AND LIMITATIONS SET FORTH IN THIS AGREEMENT. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS PROVIDER, ITS OWNERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS, AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO CUSTOMER OR A USER IN CONNECTION WITH THE SERVICES, FROM ANY AND ALL CLAIMS, ACTIONS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICE RELATING TO 911 DIALING OR THE INABILITY TO ACCESS OR REACH EMERGENCY 911 SERVICES.

**14. DISCLAIMER AND LIMITATION OF LIABILITY.** PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR CUSTOM, WITH RESPECT TO THE SERVICES, EQUIPMENT, AND ANY OTHER PROVIDER PRODUCTS, SERVICES

OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE IN A WORKMAN-LIKE MANNER, COMPLIANCE WITH LAWS, QUALITY, ACCURACY, COMPLETENESS OR CURRENCY OF INFORMATION, SYSTEM INTEGRABILITY, TITLE, QUIET ENJOYMENT AND NON-INFRINGEMENT. PROVIDER DOES NOT REPRESENT, WARRANT OR COVENANT THAT THE PRODUCTS, SERVICES OR EQUIPMENT PROVIDED WILL OPERATE UNINTERRUPTED, ERROR FREE OR WITHOUT DEGRADATION OR LOSS OF DATA, OR BE SECURE. NEITHER PROVIDER NOR ITS SERVICE PROVIDERS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S OR A USER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION, INCLUDING, WITHOUT LIMITATION, ANY SUCH DATA IN PROVIDER'S POSSESSION, CUSTODY OR CONTROL, THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF PROVIDER'S OR ITS SERVICE PROVIDER'S NEGLIGENCE. IN NO EVENT WILL PROVIDER OR ITS AFFILIATE, SERVICE PROVIDER, FACILITY OPERATOR OR CARRIER, OR THEIR RESPECTIVE OWNERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES OR AGENTS (COLLECTIVELY, "PROVIDER PARTIES") BE LIABLE FOR ANY DIRECT, ACTUAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES, OR FOR ANY COST OF COVER OR LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, ARISING FROM OR RELATED TO THIS AGREEMENT OR A PROVIDER PARTY'S PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS HEREUNDER, A FAILURE OF OR A DEFECT IN THE SERVICES, EQUIPMENT OR ANY PRODUCT, A PROVIDER PARTY'S VIOLATION OF A THIRD PARTY'S RIGHT, OR A PROVIDER PARTY'S ACTS OR OMISSIONS. PROVIDER WILL NOT BE LIABLE FOR THE ACTS OR OMISSIONS OF, A FAILURE OF OR A DEFECT IN ANY PRODUCT OR SERVICE PROVIDED BY, OR VIOLATION OF ANY THIRD PARTY'S RIGHTS BY ANY THIRD-PARTY SERVICE PROVIDER, FACILITY OPERATOR OR CARRIER. THE PROVIDER PARTIES' MAXIMUM TOTAL LIABILITY TO CUSTOMER WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO PROVIDER IN THE THREE (3) MONTHS PRECEDING THE DATE THE CLAIM ACCRUED. THE PROVIDER PARTIES WILL NOT BE LIABLE IN ANY WAY TO ANY USER.

**15. INDEMNIFICATION.** Customer will defend the Provider Parties, at Customer's expense, against any third-party claim or action, and indemnify and hold harmless the Provider Parties from any and all losses, damages, liabilities, penalties, settlement obligations, costs, attorneys' fees and other legal expenses related to such third-party claim or action, arising from or related to: (a) Customer's breach of this Agreement or an agreement between Customer and a third party; (b) Customer's violation, infringement or misappropriation of the third party's intellectual property or other rights in Customer's use of the Services; (c) Customer's violation of the third party's privacy, publicity, personality or other rights; (d) Customer's fraud in use of the Services or fraud or misrepresentation regarding the nature or volume of Customer's traffic; (e) Customer's violation of an applicable law; (f) bodily injury, death or property damage to the extent such claim or action arises from the negligence, gross negligence or willful misconduct of Customer, or in the case where strict liability applies; (g) Customer's business, acts or omissions; or (h) acts or omissions by Users that, if done by Customer, would constitute a breach of this Agreement. Customer will not settle any claim or action without Provider's prior written consent. Provider will have the option, at its expense, to

participate in the defense or settlement of the claim or action with counsel of its own choosing. If a conflict of interests arises or exists between the parties or if Provider has a good faith belief that its rights are being harmed by the counsel selected by Customer, Provider will have the right to retain separate counsel to represent its interests at Customer's sole cost and expense. Customer will not settle any claim without Provider's prior written consent.

## **16. EQUIPMENT.**

**16.1 Equipment Purchase.** If Provider sells any equipment to Customer, the terms of this Section 16 apply. All equipment shipments are Free On Board (FOB) Provider's or Provider's distributor's facility. Provider's liability for delivery will cease, and title (if applicable) and all risk of loss or damage will pass to Customer upon delivery to the common carrier for shipment. Customer shall be wholly responsible for insuring any products purchased from the time risk of loss or damage passes to Customer. Provider will pass through to Customer any warranty provided by the manufacturer of the equipment; PROVIDER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY EQUIPMENT.

**16.2 Equipment Return Policy.** Customer will be required to obtain authorization from Provider to return any equipment. Equipment returned by Customer that is not covered under warranty or that does not bear a return authorization number may be refused. Provider will not replace lost, stolen or modified equipment. Customer must pay all shipping and handling charges related to any equipment returns not covered under warranty. All returned equipment must be unmodified, in good working condition, in the original packaging and include all components, manuals, peripheral devices and all other accessories that were originally shipped with the equipment. Provider may decline Customer's return or charge Customer an additional fee for each missing item or for each item that Provider reasonably determines is modified, damaged or not in good working condition. Customer must delete all data files stored on returned equipment. Customer acknowledges that any data remaining on returned equipment cannot be recovered, and Customer releases Provider of any liability for any lost, damaged or destroyed files, data or other information.

**17. MOBILE APPLICATION.** Provider may make a mobile application for the Services available to Customer. Subject to this Agreement, Provider grants to Customer a limited, personal, revocable, non-exclusive, non-transferable and non-sublicensable license to install and use the mobile application during the Term. Customer has no other rights in or to the mobile application. The mobile application is licensed, not sold. The terms of this Agreement apply to any updated, upgraded or new versions of the mobile application. Use of the mobile application constitutes use of the Services. Provider may require Users to agree to additional terms and conditions governing use of the mobile application, and Customer agrees that its Users will not be permitted to use the mobile application unless they agree to such terms and conditions. Customer agrees that from time to time and without notice Provider may amend, modify, update or upgrade the mobile application or create new versions of the mobile application. Customer agrees that Provider may automatically update the version of the mobile application that a User is using on a mobile device. Customer consents, on behalf of itself and its Users, to such updating on mobile devices. Updates may cause Customer or a User to lose data, and Provider will not be liable for such loss. Customer agrees that Provider has no

obligation to provide support, maintenance or updates for or to the mobile application. To the extent the mobile application contains any third-party software, Customer's and User's rights and obligations with respect to such software will be subject to and governed by the third party's terms and conditions. Provider does not make a representation or warranty that the mobile application will operate on any particular device or operating system. The mobile application is commercial computer software, and to the extent any U.S. government agency uses the mobile application, the U.S. government is only granted the limited rights granted to all other Provider customers. Provider is not a wireless licensee of the FCC, and the mobile application will not be able to provide access to E911 service unless Customer subscribes to wireless service that complies with the FCC's E911 program, as further explained in Section 13.6.

**18. INTELLECTUAL PROPERTY.** The Services and Software, and all intellectual property therein, are and will remain the exclusive property of Provider. Provider reserves all rights not expressly granted under this Agreement. The Software may contain third-party software that is subject to the terms and conditions of third-party licenses. Neither Customer, Users nor any other third party has a right to inspect, possess, use, copy, or attempt to discover the source code of (or any portion of) the Software, except to the extent that Customer, a User or a third party is expressly permitted to decompile the Software under applicable law and Customer, the User or the third party notifies Provider in writing in advance of its intention to decompile the Software and its reason for doing so.

**19. PORTAL UPGRADES; PHONE NUMBERS AND WEB PORTAL**

**DISCONTINUANCE.** Provider may update the Customer and User portals, and Customer agrees that Service may be unavailable during the implementation of such updates. Upon expiration, cancellation or termination of the Services, Customer and Users will relinquish and discontinue use of any accounts, Numbers, voice mail access numbers, and/or web portal Sites assigned to Customer by Provider or its service providers.

**20. MISCELLANEOUS.**

**20.1 NOTICES.** Unless otherwise specified in this Agreement, any notice required or permitted to be given pursuant to this Agreement will be given in writing by overnight delivery service, sent via certified mail, return receipt requested, e-mailed, or delivered by hand, and such notice will be deemed to have been given and received when delivered or when delivery was refused, or with respect to electronic transmissions, at the time of transmission (unless the sender received a notice of transmission failure). Customer consents to receive all notices in electronic form, and Provider may send any notice to Customer at Customer's latest physical address or e-mail address provided by Customer. Provider may, in addition to all other methods of giving notice, send any notice to Customer's mailbox in Customer's account on the Provider Customer Care Portal. Both parties agree that any agreements and notices made or provided by one or both parties in electronic form, and in accordance with this Agreement, are as legally binding as if made in physical written form. Customer must send all notices to Provider via e-mail in accordance with the following:

To report misuse or fraudulent use of Service: [contactus@kmtel.com](mailto:contactus@kmtel.com)

To submit a billing dispute: [contactus@kmtel.com](mailto:contactus@kmtel.com)

To terminate Service: [contactus@kmtel.com](mailto:contactus@kmtel.com)

All other notices: [contactus@kmtel.com](mailto:contactus@kmtel.com)

**20.2 FORCE MAJEURE.** Provider's performance of any part of this Agreement will be excused to the extent that it is hindered by flood, fire, natural disaster, strike, riot, war, terrorism, hostile attack, governmental action, cable cuts, supplier shortages, breaches, or delays, Provider's inability to perform as a result of actions or inactions of third parties, Customer, a User or Provider's vendors, including, without limitation, Customer's failure to provide or maintain a circuit with respect to an order for Service, or any other cause (whether similar or dissimilar to those listed) beyond Provider's reasonable control (a "Force Majeure"). Provider may terminate the Services without liability if a Force Majeure hinders Provider's performance for more than five (5) days.

**20.3 NO CLASS ACTION.** Customer irrevocably waives any right Customer may have to serve as a representative or as a private attorney general, or to participate as a member of a class of claimants, in any lawsuit, arbitration or other proceeding against any Provider Party arising from, related to or connected with this Agreement or any Service Order.

**20.4 BINDING NATURE AND ASSIGNMENT.** Customer's rights and obligations in this Agreement will not be assigned, delegated or otherwise transferred in whole or in part without the prior written consent of Provider. Except as part of the sale of all or substantially of the assets for Provider or the assignment of this Agreement, or any rights or obligations thereunder, to any of Provider's affiliates (which will not require Customer consent), Provider's rights and obligations in this Agreement will not be assigned, delegated or otherwise transferred in whole or in part without the prior written consent of Customer, which will not be unreasonably withheld. For sake of clarity, Provider may assign, delegate and transfer some or all of its rights and obligations under this Agreement to its affiliates. Except as otherwise expressly provided herein, this Agreement will inure to the benefit of, and will bind, the heirs, executors, personal representatives, administrators, successors and permitted assigns of Provider and Customer.

**20.5 GOVERNING LAW.** This Agreement and any related Service Orders will be governed by and construed according to the laws of the State of Illinois, without regard to its conflict of laws provisions. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**20.6 ARBITRATION.** Any dispute or controversy arising out of or in connection with this Agreement or any related Service Order, or otherwise related to the Services, will be resolved by binding arbitration. The Federal Arbitration Act and federal arbitration law applies to this Agreement. The arbitration will be administered by the American Arbitration Association (AAA), conducted by one (1) arbitrator, and conducted in accordance with the AAA's Commercial Arbitration Rules. The arbitration will be conducted in Springfield, Illinois. The language of the arbitration will be English. The parties' briefs and other documents and the arbitrator's findings and decision will be confidential unless required to be disclosed by law. Neither party may use any finding or



decision of the arbitrator in existing or subsequent litigation or arbitration involving any other person, entity or organization. The arbitrator must have sufficient experience in the matter(s) at issue. The arbitrator's decision will follow the plain meaning of the Agreement and will be final and binding. Neither party will have the right to appeal an error of law or fact. Each party will bear the cost of preparing and presenting its case. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. This agreement to arbitrate also requires Customer to arbitrate claims against other parties relating to Services or products provided or billed to Customer if claims are asserted against Provider in the same proceeding. Notwithstanding the foregoing, either party may bring suit in court to enjoin unauthorized access or trespass to its computer networks or any misappropriation, infringement or violation of its intellectual property rights. The arbitrator will have the exclusive power to rule on the formation, interpretation, applicability, validity or enforceability of this Agreement, including without limitation the validity or enforceability of this arbitration agreement. The arbitrator will not have the power to conduct any form of class or collective arbitration nor join or consolidate claims by or for individuals. If any dispute or controversy arising out of or in connection with this Agreement or any related Service Order, or otherwise related to the Services, cannot lawfully be resolved by arbitration, the complainant must bring any claim or action in the state or federal courts for Springfield, Illinois, and the parties waive any objection based on personal jurisdiction, venue or inconvenient forum.

## **20.7 ENTIRE AGREEMENT, AMENDMENTS, CONFLICT, SEVERABILITY, WAIVER, SURVIVAL.**

This Agreement, all documents referred to herein and any related Service Order executed by the parties constitute the entire agreement between the parties and supersede any and all prior agreements and rates between the parties with respect to the subject matter hereof. No additions, deletions or modifications to this Agreement or any Service Order will be binding unless (a) made in a writing signed by duly authorized representatives of both parties or (b) agreed to by the party to be charged by electronic means. In the event of a conflict between any of the terms and conditions of this Agreement and any Service Order, the terms and conditions in the Service Order will prevail. The parties are independent contractors. Nothing contained herein will be construed as creating any agency, partnership, or other form of joint venture or enterprise between the parties. If any provision(s) of this Agreement or any related Service Order is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, and the parties further agree to substitute a valid provision that most closely approximates the economic effect of the invalid provision. The failure of either party to require performance by the other party of any provision hereof will not affect the right to require such performance at any time thereafter, nor will the waiver by either party of a breach of any provision hereof be taken to be a waiver of the provision itself. To the extent permitted by applicable law, the parties agree to and do hereby waive any applicable statutory or common law that may permit a court to construe a contract against its drafter. No claim or cause of action may be asserted against either party more than three (3) months after the time the facts giving rise to the claim or cause of action are discovered or should have been discovered. In the event a suit is brought or an attorney or collection agency is retained by Provider to enforce the terms of this Agreement or any Service Order, or to collect any monies due hereunder, or to collect money damages for breach thereof, Provider will be entitled to recover, in addition to any other remedy available at law or in equity, reimbursement for attorneys' fees, court

costs, collection costs, costs of investigation and other related expenses incurred in connection therewith.

The terms and provisions contained in this Agreement and any related Service Order that, by their sense and context, are intended to survive the performance thereof by the parties hereto will survive the completion of performance and termination of this Agreement, including, without limitation, payment obligations, the limitations on damages and liability, ownership of intellectual property, and defense and indemnity obligations.

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## **KMTELECOM SIP TRUNKING TERMS AND CONDITIONS**

### **SERVICE TERMS AND CONDITIONS**

BY ACCEPTING THESE SERVICE TERMS AND CONDITIONS, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS BELOW. ALL SERVICE ORDERS AND SERVICES ARE SUBJECT TO THESE TERMS AND CONDITIONS.

These Service Terms and Conditions (the “Agreement”) are entered into by and between KMTELECOM Business, LLC (“KMTELECOM”), a Delaware limited liability company, and the customer purchasing products or services from KMTELECOM (“Customer”).

**1. SERVICES AND TERM.** Generally, KMTELECOM offers enterprise voice and optional data session initiation protocol (SIP) trunking services, typically including an integrated access device (IAD). Broadband service is required for such services and may be provided by you or purchased from KMTELECOM. The services ordered by Customer from KMTELECOM pursuant to any KMTELECOM Service Order or addendum thereto (each, a “Service Order”) constitute the “Services.” The Services shall commence on the date on which the Services are first made available to Customer (the “Start Date”) and shall continue for the length of time specified as the Term Commitment on the applicable Service Order (the “Initial Service Term”). After the Initial Service Term and any subsequent term (each, a “Service Term”), this Agreement and the applicable Service Order will renew automatically for an additional twelve (12)-month period, unless either party provides written notice of cancellation at least thirty (30) days before the then-current Service Term ends. Billing for Services and related charges shall commence on the Start Date and shall continue throughout the Service Term. KMTELECOM reserves the right to decline any Service Order.

**2. BROADBAND SERVICE.** To use the Services, Customer must have broadband Internet access service (“Broadband Service”). KMTELECOM may provide Broadband Service as required for the delivery of Services if specified in the applicable Service Order, and in so doing may interact with other telecommunications providers. Monthly charges for such Broadband Service shall begin on the date upon which Customer is notified by KMTELECOM that such Broadband Service is activated and ready for use, and such charges shall be detailed on the Service Order and paid by Customer.

Provision of Broadband Service may require that equipment be installed and that, in some cases, additional wiring be configured at Customer's premises. Installation or wiring charges, if any, are not included in the Service Order and will be billed separately to the Customer. Broadband Service provided by KMTELECOM constitutes a Service.

**3. EQUIPMENT.** To use the Services, an integrated access device (IAD) and/or other KMTELECOM-provided equipment (the "Equipment") may need to be installed at Customer's premises. Customer is responsible for installation of the Equipment, unless otherwise specified in a Service Order. At all times, such Equipment is and shall remain the property of KMTELECOM and shall not be considered Customer's equipment or a fixture. Customer will not allow the Equipment to become subject to a lien, security interest or other encumbrance. Customer bears all risk of loss or damage to the Equipment while it is in Customer's possession, custody or control. If Customer ceases receiving Services from KMTELECOM, Customer must return the Equipment to KMTELECOM undamaged and in its original packaging within thirty (30) days of the termination of Services. Failure to return same will result in an added fee in the amount of the manufacturer's suggested retail price of the non-returned product. To return Equipment, Customer must request a Return Merchandise Authorization (RMA) number from KMTELECOM in accordance with KMTELECOM's Return Merchandise Policy, available on KMTELECOM's web site. Customer is responsible for the cost and risk associated with return shipping of the Equipment. Customer will not attempt to maintain or repair, or permit a third party to maintain or repair, the Equipment. Customer agrees to comply with all instructions and requirements regarding the use and/or care of the Equipment and to take reasonable measures to protect such Equipment at all times. KMTELECOM will repair or replace, in its sole discretion, any Equipment that does not perform as specified, at no charge to Customer, unless it is determined, in KMTELECOM's sole discretion, that Customer was directly or indirectly responsible for the Equipment failure. KMTELECOM may provide updated or new Equipment to Customer from time to time, and KMTELECOM may require that Customer use the updated or new Equipment to continue to receive the Services. In some cases, Customer will be permitted to use Customer's own IAD and other equipment. In such a case, Customer will be fully responsible for such equipment, and KMTELECOM makes no representation or warranty with respect to such equipment or its operation with the Services.

**4. INSTALLATION OF EQUIPMENT.** If Customer has contracted for KMTELECOM to install the Equipment, Customer shall, at its expense, have the site prepared prior to KMTELECOM's arrival and in accordance with KMTELECOM's installation site preparation specifications. Customer shall provide any applicable technical user support during installation at its own expense. If Customer has not contracted for installation from KMTELECOM, Customer shall at its expense diligently perform or have performed all installation requirements for the Equipment. Unless the Service Order specifies that Customer will provide its own hardware, the Services will be deemed to have been made available to Customer at the time KMTELECOM provides the Equipment to the Customer for self-installation.

**5. OWNERSHIP OF INTELLECTUAL PROPERTY.** The Services and Equipment, and all intellectual property therein, are and shall remain the exclusive property of KMTELECOM. KMTELECOM is not providing any software with the Services or

Equipment provided under this Agreement. There is no license granted, implied or constructively given to Customer.

## **6. SERVICE FEES, TARIFFS AND OTHER CHARGES; TAXES.**

**6.1 Services Fees.** The fees for Services will be set forth in the Service Order, and Customer agrees to pay such fees. Service Fees will be billed in advance of delivery of the Services. Monthly Services fees will be billed pro rata in the months in which such Services commence and terminate.

**6.2 Bundles of Minutes.** Customer may purchase long distance and toll free Bundles of Minutes (BOM) from KMTELECOM at a discounted rate from KMTELECOM's prevailing per minute rate. When purchasing a BOM, Customer commits to a fixed monthly recurring charge (MRC) for the term purchased. BOM charges are billed upon purchase. If Customer's usage exceeds the purchased bundle total in a time period, KMTELECOM will charge for excess usage at the per minute rate based on Customer's subscribed package rate. Unused minutes remaining at the end of any Service Term expire and do not carry over to a subsequent term. If Customer declines to purchase a BOM, Customer will be billed monthly in arrears for long distance and toll free usage at KMTELECOM's then-prevailing per minute usage rates.

**6.3 Tariffs.** In addition to the fees for the Services specified in a Service Order, Customer will be charged KMTELECOM's applicable usage, access, storage, feature and other charges included in KMTELECOM's tariffs ("Tariffs") but not included as part of Customer's selected Services plan. This Agreement incorporates by reference all applicable rates, terms and conditions of KMTELECOM's Tariffs, which are available on KMTELECOM's web site. This Agreement may be superseded, in whole or in part, by a new or revised Tariff filed with the jurisdictional regulatory agency or agencies, which may contain such modifications of the provisions of this Agreement, as KMTELECOM deems necessary or appropriate. KMTELECOM may modify its Tariffs from time to time in accordance with applicable Laws and thereby affect Services provided to Customer hereunder, except that the terms and conditions of this Agreement shall supplement any such modified Tariff to the extent they are not inconsistent with the terms and conditions of the Tariff. Customer is responsible for payment of all applicable charges specified in Tariffs and other charges incurred in connection with Services provided to Customer's numbers, network addresses and authorization codes. Tariff charges are rounded up to the nearest tenth of a cent when billed (three (3) decimal places). Charges based on per-minute of use rates for underlying carrier services purchased by KMTELECOM to provide the services will be calculated on the basis of increments specified by the underlying carrier. Such increments may vary from carrier to carrier. Tariff charges are invoiced to Customer in arrears, except access loop charges and certain other charges as indicated on KMTELECOM's Tariffs schedule, which are invoiced to Customer upon purchase. Any service provided by KMTELECOM that is not governed by a Service Order shall be offered solely in accordance with the applicable rates, terms and conditions of the Tariffs as the same may be revised from time to time.

**6.4 Increases to Fees and Tariffs.** The aforementioned notwithstanding and regardless of any fees or Tariffs stated in a Service Order, KMTELECOM may increase the fees for the Services and the Tariffs in the same proportion that KMTELECOM's costs in providing the Services and related features increase due to mandated

regulatory charges, increases in an underlying carrier's charges or other factors beyond KMTELECOM's reasonable control. Any such rate increase will be charged through to Customer by KMTELECOM at a rate equal to the increased cost to KMTELECOM, and KMTELECOM will deliver advance notice of any such rate adjustment (thirty (30) days notice of any such adjustment of domestic rates, seven (7) days notice of any such adjustment of international rates).

**6.5 Additional Charges.** In the event additional charges accrue or are paid by KMTELECOM as a result of direct Customer requests (for example, a request for maintenance services), Customer shall reimburse KMTELECOM for such charges. KMTELECOM is entitled to recover any charges imposed on KMTELECOM by payphone owners or operators.

**6.6 Taxes.** All charges computed by KMTELECOM are exclusive of any taxes, surcharges, public utility fees and regulatory fees (including Universal Service Fees and similar charges). Such taxes and fees shall be invoiced by KMTELECOM and paid by Customer. Should Customer claim an exemption of any taxes or regulatory fees, Customer shall provide official documented/certified proof of such exemption. It is Customer's ongoing responsibility to ensure its exempt status, and the proof thereof, remains current. In no event shall KMTELECOM be liable for any taxes due by Customer, and Customer shall defend and indemnify KMTELECOM if any claim for taxes or fees is made.

**6.7 Termination of Domestic Usage.** The "cost per minute" outlined on any Service Order is based on the assumption that Customer will terminate at least 85% of Customer's total domestic usage in a tandem owned and operated by a Regional Bell Operating Company ("RBOC") and subject to such RBOC's tariffed access charges. KMTELECOM will apply a surcharge of \$0.04 per minute of use to the number of minutes by which Customer's non-RBOC termination (being defined as the sum of outbound minutes that terminate in non-RBOC areas plus inbound (toll-free) minutes that originate in non-RBOC areas) exceeds 15% of Customer's total domestic usage. For purposes of the calculation pursuant to this paragraph, the Operating Company Number ("OCN") of the originating or terminating automatic number identification will be used. OCN numbers of 9000 and above are classified as RBOC and OCN numbers below 9000 are classified as non-RBOC. The surcharge will be invoiced to Customer in arrears.

**7. PAYMENT TERMS.** Payment for KMTELECOM's invoices shall be due thirty (30) days following the date of each invoice. Invoices will be sent by regular mail or e-mail or will be made available on the KMTELECOM Customer Care Portal. If the Customer has agreed to a revenue commitment and does not meet such commitment on a monthly basis, Customer shall be liable for 100% of any shortfall, which shall be due within thirty (30) days of invoice, without set-off or demand. In addition to all other remedies available to KMTELECOM, a late fee shall be assessed in the amount of 1.5% (or the maximum rate permitted by law, whichever is less) of the unpaid balance per month until paid in full for charges not paid within thirty (30) days of the due date. Customer shall notify KMTELECOM in writing of all disputed amounts in its bills within thirty (30) days of the invoice date, identifying in reasonable detail the nature and amount of any such dispute. KMTELECOM shall promptly investigate all timely and appropriately documented disputes and respond to Customer within thirty (30) days. All amounts not

so disputed shall be deemed final and not subject to further dispute. Customer agrees to pay KMTELECOM for all amounts billed and not so disputed, and where a dispute is resolved in favor of KMTELECOM. KMTELECOM will consider fairly any disputes raised in a timely manner, in good faith and appropriately documented. Customer may pay by check or credit card only. Customer agrees to provide KMTELECOM with complete and accurate contact and credit card information, and Customer agrees to advise KMTELECOM of any changes thereto. Customer authorizes KMTELECOM to charge Customer's credit card automatically to pay for Customer's charges. If a charge to Customer's credit card is declined or reversed, or if the account or credit card has expired or been suspended or closed, or if Customer fails to provide KMTELECOM with accurate or complete credit card information, KMTELECOM may suspend or terminate the Services.

**8. CREDIT.** The provision of Services is contingent upon establishment of and continuing credit approval by KMTELECOM. Customer hereby consents to KMTELECOM's procurement of a credit score or report regarding Customer. At any time during the Service Term, KMTELECOM is entitled to require a deposit or other acceptable form of security from Customer, as it deems appropriate. In addition, if requested by KMTELECOM, Customer agrees to provide, within two (2) business days of request, appropriate financial records to evaluate Customer's continuing ability to pay. KMTELECOM may, immediately and without notice, suspend or terminate the Services if Customer fails to comply with these security obligations. Upon a payment default by Customer not cured in a timely manner, KMTELECOM shall have the right to offset against any security or deposit held any amounts owed to KMTELECOM by Customer, and to invoice and collect cancellation charges in accordance with Section 11 below.

## **9. CUSTOMER RESPONSIBILITIES.**

**9.1** Customer represents and warrants that it will comply with (a) KMTELECOM's Acceptable Use Policy, available on KMTELECOM's web site ([www.kmtel.com](http://www.kmtel.com)), and (b) all applicable laws, regulations, rules, court orders and government agency orders ("Laws") in its use of the Services and Equipment.

**9.2** Customer assumes all risks of and full responsibility for the use of the Equipment and any and all other equipment connected or related to the Equipment or Customer's computer and telecommunication systems. Customer agrees not to remove the Equipment from the location at which it was initially installed without KMTELECOM's prior written permission.

**9.3** Customer will execute such other documents, provide such other information, and affirmatively cooperate with KMTELECOM, all as may be reasonably required by KMTELECOM relevant to providing the Services. In particular, Customer accepts the responsibility for providing KMTELECOM with special access surcharge exemption forms and letters of agency as may be required by carriers for Services, if any. In addition, Customer agrees that KMTELECOM has the right to audit Customer's use of the Services and will make Customer's place of business (or other location at which Equipment is located, if requested by KMTELECOM) available for inspection upon reasonable notice and during reasonable business hours.

**9.4** Customer assumes responsibility for the accuracy and completeness of all information provided to KMTELECOM in connection with the providing of Services and will reimburse KMTELECOM for any expenses KMTELECOM reasonably incurs as a result of inaccurate or incomplete information provided by Customer.

**9.5** Customer will not sell, lease or license the Services, Equipment or any part thereof.

**9.6** Customer must report any unauthorized use of the Services or Equipment to KMTELECOM immediately after Customer discovers such use. Customer is responsible for all use of the Services and Equipment provided to Customer, whether authorized or unauthorized.

**9.7** Customer will not remove serial numbers or labels from, disassemble, reverse engineer, decompile, reset or otherwise tamper with the Equipment or any software embedded therein.

**9.8** Customer will not challenge or attempt to register or otherwise protect any of KMTELECOM's intellectual property or other rights in the Services and/or Equipment.

## **10. CONDITIONS AND LIMITATIONS ON SERVICES.**

**10.1** Customer may only use the Services and Equipment in the United States of America.

**10.2** Customer understands and accepts that calls to certain countries may require KMTELECOM's assistance in accordance with KMTELECOM's fraud advisory and policy set forth on KMTELECOM's web site ([www.kmtel.com](http://www.kmtel.com)) as part of KMTELECOM's Acceptable Use Policy.

**10.3** Customer understands and accepts that the Services and Equipment will not function in the case of a power or Internet services failure or outage. Failure or an outage of power or Internet services will not relieve Customer of its payment obligations under this Agreement. During such a failure or outage, Customer will not be able to call for 911 or other emergency services.

## **11. CANCELLATION, SUSPENSION AND TERMINATION.**

**11.1 Cancellation by Customer.** Upon thirty (30) days written notice, Customer may cancel the Services or any portion thereof provided pursuant to a Service Order. Such notice of cancellation must be accompanied by payment in full for all Services to be provided during such thirty (30)-day notice period plus a cancellation charge ("Cancellation Charge") as follows: (a) 100% of the total remaining monthly recurring charges for the remaining balance of a one (1)-year Service Term; (b) 75% of the total remaining monthly recurring charges for the remaining balance of a two (2)-year Service Term; (c) 50% of the total remaining monthly recurring charges for the remaining balance of a three (3)-year Service Term; (d) any discounts of the non-recurring install charge (NRC) that had been applied; and (e) the local number porting cancellation fee, if applicable.

**11.2 Suspension or Termination by KMTELECOM.** KMTELECOM may terminate this Agreement and any and all Service Orders, and the delivery of Services thereunder, at any time upon KMTELECOM giving Customer two (2) business days written notice of such termination, during which time the Customer shall have the opportunity to cure, in the event that KMTELECOM determines, in its sole and absolute discretion, that: (a) Customer has failed to make payments or to perform any other obligation or condition of this Agreement or a Service Order; (b) Customer is using the Services in a manner that interferes with or otherwise disrupts services provided by KMTELECOM to others; (c) Customer has used, attempted to use, intends to use or is using the Services in violation of any applicable Law; (d) Customer is insolvent, has made a general assignment for the benefit of creditors, has filed, or had filed against it, a petition in bankruptcy, or has had a receiver or trustee appointed for it or any of its assets; (e) Customer has made an unauthorized assignment of the Agreement or a Service Order; or (f) in the event that KMTELECOM has required Customer to provide a forecast covering a good faith estimate of the traffic volume and distribution for the ordered Services, Customer's usage exceeds such forecast provided. In the event of termination by KMTELECOM under this Section 11.2, Customer shall pay to KMTELECOM, upon demand, all amounts specified in Section 11.1 hereof, as a cancellation charge and not as a penalty, and KMTELECOM may exercise any and all remedies at law, in equity and/or under this Agreement. KMTELECOM may suspend any or all of the Services being provided to Customer immediately if any of the foregoing grounds for termination exists. If Services are suspended, a restoration charge may apply and a deposit in an amount equal to one (1)-month's recurring charges, or greater, may be required, at KMTELECOM's sole discretion, prior to KMTELECOM restoring the Services. In addition, if KMTELECOM discovers or suspects that Customer has engaged in, attempted to engage in, intends to engage in or is engaging in fraudulent or other unlawful activity, KMTELECOM has the right to provide Customer's contact information to the police and other government authorities. KMTELECOM may also terminate this Agreement, the Services and all related Service Orders at the end of the term stated in the Service Order by providing written notice to Customer prior to expiration of the then-current term; KMTELECOM has no obligation to permit renewal of the Services and/or Service Orders.

**11.3 Additional Cancellation and Termination Charges.** In the event of any cancellation or termination described in this Agreement, Customer shall also pay KMTELECOM an amount equal to any and all Tariffs, termination charges, porting fees, expenses, taxes, fees, costs and additional charges due under any and all applicable Service Orders, and any charges due to any carrier or Broadband Service provider that has provided services to Customer.

**11.4 Cancellation for Legal Compliance.** Notwithstanding the foregoing, and upon thirty (30) days prior written notice, either Customer and KMTELECOM shall have the right, without payment of any cancellation charge or other liability, to cancel any affected portion of the Services if: (a) KMTELECOM is prohibited by Law from providing such portion of the Services; (b) any material rate or term contained herein and relevant to the affected Services is substantially changed by or as a result of any regulation or order issued by any court of competent jurisdiction, the Federal Communications Commission, any other local, state or federal government authority, or any carrier or Broadband Service provider; or (c) any carrier or Broadband Service provider from which KMTELECOM is purchasing and reselling services to Customer is unable to provide its services to KMTELECOM.



## **12. EMERGENCY 911 SERVICES.**

**12.1 Generally.** Emergency 911 services (including without limitation Enhanced 911 (E911) services) that may be provided by KMTELECOM in connection with the Services may differ in certain respects from the emergency calling services provided by a traditional wire-line telecommunications provider. These differences may adversely affect the availability and/or timeliness of the provision of 911 services to Customer or others in the event of an emergency. Customer may have to enable 911 services on its devices or Services account. 911 dialing are not automatic. When a user dials 911 using the Services, the user will be routed to the general telephone number for the public safety answering point (PSAP) or local emergency service provider (which may not be answered outside business hours), and may not be routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls using traditional wire-line telecommunications 911 dialing. KMTELECOM relies on third parties for the forwarding of information underlying the routing of 911 calls, and accordingly KMTELECOM disclaims any and all liability or responsibility in the event such information is incorrect or delayed, or in the event the routing of a 911 call fails. In addition, due to limitations in technology, the location reported by KMTELECOM to the public safety dispatcher for Customer's telephone may not include the Customer's specific office or other location within a business premises. Due to the inherent limitation in KMTELECOM's provision of 911 services, CUSTOMER SHOULD ALWAYS HAVE AN ALTERNATE MEANS OF ACCESSING EMERGENCY 911 SERVICES.

**12.2 Locations of Users.** Customer is responsible for the accurate reporting of the physical location where the Services are to be used and for instructing each employee, agent and contractor that he/she must provide KMTELECOM with the specific location in which he/she is located within the Customer's premises in the event of an emergency. Customer is required to maintain valid E911 addresses for each of Customer's physical locations where the Services are deployed. Should an emergency arise, emergency services may be delayed or may be unable to respond to Customer's needs if Customer's account does not have a valid E911 address on file. Failure to provide and maintain valid and current information as to the physical location of the telephone(s) could result in a charge to the Customer's account. In the event that any equipment used in connection with the Services is moved to another location, Customer is responsible for notifying KMTELECOM and updating Customer's account records to reflect the new address where the Services are to be provided, and for instructing each employee, agent and contractor that he/she must update KMTELECOM promptly when such employee, agent or contractor changes the physical location to which the Services are being provided. Even though Customer will be able to use the Services in the event Customer changes the physical location where the Services are to be provided, failure to update emergency dispatch information promptly could result in the failure to dispatch.

**12.3 Limitations.** As indicated in Sections 12.1 and 12.2, KMTELECOM's provision of Enhanced 911 service has several limitations. Those limitations may prevent Customer from making emergency calls. Additional factors that could result in Enhanced 911 failures include but are not limited to any of the following:

- Loss of electrical power

- Loss of Internet connection for any reason
- Defective customer premises equipment
- Network congestion
- Delays in updating Customer's registered service address
- Unavailability of E911 service for phones or addresses outside the United States or Canada

Customer should inform all employees, agents and contractors who may have access to E911 service about this section of the Agreement and make sure they understand the terms and conditions under which the E911 service is available. Customer is solely responsible for marking its telephones and any other devices regarding the potential non-availability of traditional 911 or E911 dialing. In addition, Customer should inform its employees, agents and contractors of the following guidelines for use of 911 or E911 service in connection with the Services:

- Do not hang up from a 911 or E911 emergency service call unless and until instructed to do so by the 911 operators.
- If the call is disconnected for any reason, immediately dial 911 again.
- The caller must be prepared to provide a physical address and a callback telephone number to the 911 operators.

### **13. DISCLAIMER AND LIMITATION OF LIABILITY.**

**13.1 GENERALLY.** KMTELECOM DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING FROM A COURSE OF DEALING OR PERFORMANCE, WITH RESPECT TO THE SERVICES, EQUIPMENT, AND ANY OTHER KMTELECOM PRODUCTS, SERVICES OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE IN A WORKMAN-LIKE MANNER, COMPLIANCE WITH LAWS, QUALITY, ACCURACY, COMPLETENESS OR CURRENCY OF INFORMATION, SYSTEM INTEGRABILITY, TITLE, QUIET ENJOYMENT AND NON-INFRINGEMENT. KMTELECOM DOES NOT REPRESENT, WARRANT OR COVENANT THAT THE PRODUCTS, SERVICES OR EQUIPMENT PROVIDED WILL OPERATE UNINTERRUPTED, ERROR FREE OR WITHOUT DEGRADATION OR LOSS OF DATA, OR BE SECURE. IN NO EVENT WILL KMTELECOM OR ITS AFFILIATE, THIRD-PARTY SERVICE PROVIDER, FACILITY OPERATOR OR CARRIER, OR THEIR RESPECTIVE OWNERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES OR AGENTS (COLLECTIVELY, "KMTELECOM PARTIES") BE LIABLE FOR ANY DIRECT, ACTUAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY COST OF COVER OR LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, ARISING FROM OR RELATED TO THIS AGREEMENT OR AN KMTELECOM PARTY'S PERFORMANCE OR NONPERFORMANCE OF

OBLIGATIONS HEREUNDER, A FAILURE OF OR A DEFECT IN THE SERVICES, EQUIPMENT OR ANY PRODUCT, AN KMTELECOM PARTY'S VIOLATION OF A THIRD PARTY'S RIGHT, OR AN KMTELECOM PARTY'S ACTS OR OMISSIONS. KMTELECOM WILL NOT BE LIABLE FOR THE ACTS OR OMISSIONS OF, A FAILURE OR A DEFECT IN ANY PRODUCT OR SERVICE PROVIDED BY, OR VIOLATION OF ANY THIRD PARTY'S RIGHTS BY ANY THIRD-PARTY SERVICE PROVIDER, FACILITY OPERATOR OR CARRIER. THE KMTELECOM PARTIES' MAXIMUM TOTAL LIABILITY TO CUSTOMER WILL NOT EXCEED ONE MONTH'S RECURRING CHARGES UNDER THE RELEVANT SERVICE ORDER.

**13.2 EMERGENCY 911 SERVICES.** IN ADDITION TO THE FOREGOING, IN NO EVENT WILL ANY KMTELECOM PARTY BE LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS RELATED TO 911 DIALING OR THE INABILITY TO REACH 911 EMERGENCY SERVICES, AND CUSTOMER HEREBY WAIVES AND RELEASES ALL CLAIMS AND ACTIONS ARISING FROM OR RELATED TO 911 DIALING OR THE INABILITY TO REACH 911 EMERGENCY SERVICES. CUSTOMER AGREES TO DEFEND AND INDEMNIFY THE KMTELECOM PARTIES FROM AND AGAINST ANY CLAIM OR ACTION, AND ANY AND ALL RELATED LOSSES, DAMAGES, LIABILITIES, PENALTIES, SETTLEMENT OBLIGATIONS, COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, RELATED TO 911 DIALING OR THE INABILITY TO REACH 911 EMERGENCY SERVICES.

#### **14. INDEMNIFICATION.**

**14.1 Indemnification by KMTELECOM.** KMTELECOM will defend Customer, at its expense, against any third-party claim or action, and indemnify Customer from any and all losses, damages, liabilities, settlement obligations, costs, attorneys' fees and other legal expenses related to such third-party claim or action, for bodily injury, death or property damage arising from KMTELECOM's gross negligence or willful misconduct. Customer must: (a) promptly notify KMTELECOM in writing of the claim or action; (b) allow KMTELECOM to control, and cooperate with KMTELECOM in, the defense and any related settlement negotiations; and (c) be and remain in compliance with this Agreement.

**14.2 Indemnification by Customer.** Customer will defend the KMTELECOM Parties, at Customer's expense, against any third-party claim or action, and indemnify the KMTELECOM Parties from any and all losses, damages, liabilities, penalties, settlement obligations, costs, attorneys' fees and other legal expenses related to such third-party claim or action, arising from or related to: (a) Customer's breach of this Agreement or an agreement between Customer and a third party; (b) Customer's violation, infringement or misappropriation of the third party's intellectual property or other rights in Customer's use of the Services or Equipment; (c) Customer's violation of the third party's privacy, publicity, personality or other rights; (d) Customer's fraud in use of the Services or Equipment or fraud or misrepresentation regarding the nature or volume of Customer's traffic; (e) Customer's violation of an applicable Law; (f) bodily injury, death or property damage to the extent such claim or action arises from the negligence, gross negligence or willful misconduct of Customer, or if strict liability applies; or (g) Customer's business, acts or omissions. Customer will not settle any claim or action without KMTELECOM's prior written consent. KMTELECOM will have the option, at its expense, to participate in the defense or settlement of the claim or action with counsel of its own choosing. If a

conflict of interests arises or exists between the parties or if KMTELECOM has a good faith belief that its rights are being harmed by the counsel selected by Customer, KMTELECOM will have the right to retain separate counsel to represent its interests at Customer's sole cost and expense.

**15. PRIVACY.** The Services use the public Internet and third-party networks to transmit voice communications and data. KMTELECOM is not liable for the interception, use or disclosure of Customer's voice communications or data. KMTELECOM does not represent, warrant or covenant that the Services or Equipment will maintain the privacy or security of Customer's voice communications or data.

**16. NOTICES.** Any notice required or permitted to be given pursuant to this Agreement shall be given in writing by overnight delivery service, sent via certified mail, return receipt requested, emailed, or delivered by hand, and such notice shall be deemed to have been given and received when delivered or when delivery was refused, or with respect to electronic transmissions, at the time of transmission (unless the sender received a notice of transmission failure). KMTELECOM may send any notice to Customer at Customer's latest physical address or email address provided by Customer. KMTELECOM may, in addition to all other methods of giving notice, send any notice to Customer's mailbox in Customer's account on the KMTELECOM Customer Care Portal. Customer must send all notices to the physical address, or email address stated on KMTELECOM's web site ([www.kmtel.com](http://www.kmtel.com)) as KMTELECOM's current contact information.

**17. FORCE MAJEURE.** KMTELECOM's performance of any part of this Agreement shall be excused to the extent that it is hindered by flood, fire, natural disaster, strike, riot, war, terrorism, hostile attack, governmental action, cable cuts, supplier shortages, breaches, or delays, or any other cause (whether similar or dissimilar to those listed) beyond KMTELECOM's reasonable control ("Force Majeure"). KMTELECOM may terminate the Services without liability in the case a Force Majeure hinders KMTELECOM's performance for more than five (5) days.

**18. ENFORCEMENT.** In the event a suit is brought or an attorney or collection agency is retained by KMTELECOM to enforce the terms of this Agreement or any Service Order, or to collect any monies due hereunder, or to collect money damages for breach thereof, KMTELECOM shall be entitled to recover, in addition to any other remedy available at law or in equity, reimbursement for reasonable attorneys' fees, court costs, collection costs, costs of investigation and other related expenses incurred in connection therewith.

**19. ENTIRE AGREEMENT.** This Agreement, all documents referred to herein and any related Service Order executed by the parties constitute the entire agreement between the parties and supersede any and all prior agreements between the parties with respect to the subject matter hereof. No additions, deletions or modifications to this Agreement or any Service Order shall be binding unless (a) made in a writing signed by both parties or (b) agreed to by the party to be charged by electronic means. In the event of a conflict between any of the terms and conditions of this Agreement and any Service Order, the terms and conditions in the Service Order shall prevail.

**20. NO CLASS ACTION.** Customer irrevocably waives any right Customer may have to serve as a representative or as a private attorney general, or to participate as a member of a class of claimants, in any lawsuit, arbitration or other proceeding against any KMTELECOM Party arising from, related to or connected with this Agreement.

**21. BINDING NATURE AND ASSIGNMENT.** This Agreement and any related Service Orders shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns; provided, however, that Customer shall not assign or transfer its rights or obligations hereunder without the prior written consent of KMTELECOM. KMTELECOM may subcontract all or any part of the Services provided and assign and transfer its rights and obligations under this Agreement.

**22. ELECTRONIC COMMUNICATIONS.** Customer consents to receive all notices in electronic form. Both parties agree that any agreements and notices made, accepted and/or given by one or both parties in electronic form are as legally binding as if made in physical written form.

**23. ONLINE ACCOUNT RESPONSIBILITY.** Customer is solely responsible for protecting the secrecy of its username and password. Customer will be liable for any access and/or use of its account, authorized or unauthorized, using Customer's username and password. Customer must notify KMTELECOM immediately if it suspects unauthorized use of its account.

**24. INDEPENDENT CONTRACTORS.** The parties are independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint venture or enterprise between the parties.

**25. GOVERNING LAW.** This Agreement and any related Service Orders shall be governed by and construed according to the laws of the State of Illinois, without regard to its conflict of laws provisions.

**26. LIMITATION ON CLAIMS.** No cause of action may be asserted against either party more than one (1) year after the time the facts giving rise to the cause of action are discovered or should have been discovered.

**27. ARBITRATION.** Any dispute or controversy arising out of or in connection with this Agreement or any related Service Order, or otherwise related to the Services or Equipment, shall be resolved by binding arbitration. The Federal Arbitration Act and federal arbitration law applies to this Agreement. The arbitration will be administered by the American Arbitration Association (AAA), conducted by one (1) arbitrator, and conducted in accordance with the AAA's Commercial Arbitration Rules. The arbitration shall be conducted in Springfield, Illinois. The parties' briefs and other documents and the arbitrator's findings and decision will be confidential unless required to be disclosed by law. Neither party may use any finding or decision of the arbitrator in existing or subsequent litigation or arbitration involving any other person, entity or organization. The arbitrator must have sufficient experience in the matter(s) at issue. The arbitrator's decision shall follow the plain meaning of the Agreement and shall be final and binding. Neither party shall have the right to appeal an error of law or fact. Each party shall bear the cost of preparing and presenting its case. The fees and expenses of the AAA, including the arbitrator, shall be the responsibility of the non-prevailing party. Any claim

or action to enter or enforce the award shall be initiated in the state or federal courts for Springfield, Illinois. Notwithstanding the foregoing, either party may bring suit in court to enjoin unauthorized access or trespass to its computer networks or any misappropriation, infringement or violation of its intellectual property rights. The arbitrator will have the exclusive power to rule on the formation, interpretation, applicability, validity or enforceability of this Agreement, including without limitation the validity or enforceability of this arbitration agreement. The arbitrator will not have the power to conduct any form of class or collective arbitration nor join or consolidate claims by or for individuals.

**28. FORUM.** If any dispute or controversy arising out of or in connection with this Agreement or any related Service Order, or otherwise related to the Services or Equipment, cannot lawfully be resolved by arbitration as described in Section 27, the complainant must bring any claim or action in the state or federal courts for Springfield, Illinois, and the parties waive any objection based on personal jurisdiction, venue or forum non conveniens.

**29. SEVERABILITY.** If any provision(s) of this Agreement or any related Service Order shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the parties further agree to substitute a valid provision that most closely approximates the economic effect of the invalid provision.

**30. WAIVER.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

**31. CONSTRUCTION.** To the extent permitted by applicable law, the parties agree to and do hereby waive any applicable statutory and common law that may permit a court to construe a contract against its drafter.

**32. SURVIVAL.** The terms and provisions contained in this Agreement and any related Service Order that, by their sense and context, are intended to survive the performance thereof by the parties hereto shall survive the completion of performance and termination or cancellation, including, without limitation, the making of any and all payments due hereunder.

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## **KMTELECOM PRIVACY STATEMENT**

KMTELECOM is committed to protecting your privacy and developing technology that gives you the most powerful and safe online experience. This Statement of Privacy applies to KMTELECOM's website and governs data collection and usage. By using the KMTELECOM website, you consent to the data practices described in this statement.

### **Collection of your Personal Information**

KMTELECOM collects personally identifiable information, such as your email address, name, home or work address or telephone number. KMTELECOM also collects anonymous demographic information, which is not unique to you, such as your ZIP code, age, gender, preferences, interests and favorites.

Information about your computer hardware and software is also automatically collected by KMTELECOM. This information can include: your IP address, browser type, domain names, access times and referring website addresses. This information is used by KMTELECOM for the operation of the service, to maintain quality of the service, and to provide general statistics regarding use of the KMTELECOM website.

Please keep in mind that if you directly disclose personally identifiable information or personally sensitive data through KMTELECOM public message boards, this information may be collected and used by others. Note: KMTELECOM does not read any of your private online communications.

KMTELECOM encourages you to review the privacy statements of websites you choose to link to from KMTELECOM so that you can understand how those websites collect, use and share your information. KMTELECOM is not responsible for the privacy statements or other content on websites outside of the KMTELECOM family of websites.

### **Use of your Personal Information**

KMTELECOM collects and uses your personal information to operate the KMTELECOM website and deliver the services you have requested. KMTELECOM also uses your personally identifiable information to inform you of other products or services available from KMTELECOM and its affiliates. KMTELECOM may also contact you via surveys to conduct research about your opinion of current services or of potential new services that may be offered.

KMTELECOM does not sell, rent or lease its customer lists to third parties. KMTELECOM may, from time to time, contact you on behalf of external business partners about a particular offering that may be of interest to you. In those cases, your unique personally identifiable information (email, name, address, telephone number) is not transferred to the third party. In addition, KMTELECOM may share data with trusted partners to help us perform statistical analysis, send you email or postal mail, provide customer support, or arrange for deliveries. All such third parties are prohibited from

using your personal information except to provide these services to KMTELECOM, and they are required to maintain the confidentiality of your information.

KMTELECOM does not use or disclose sensitive personal information, such as race, religion, or political affiliations, without your explicit consent.

KMTELECOM keeps track of the websites and pages our customers visit within KMTELECOM, in order to determine what KMTELECOM services are the most popular. This data is used to deliver customized content and advertising within KMTELECOM to customers whose behavior indicates that they are interested in a particular subject area.

KMTELECOM websites will disclose your personal information, without notice, only if required to do so by law or in the good faith belief that such action is necessary to: (a) conform to the edicts of the law or comply with legal process served on KMTELECOM or the site; (b) protect and defend the rights or property of KMTELECOM; and, (c) act under exigent circumstances to protect the personal safety of users of KMTELECOM, or the public.

## **Use of Cookies**

The KMTELECOM website uses “cookies” to help you personalize your online experience. A cookie is a text file that is placed on your hard disk by a webpage server. Cookies cannot be used to run programs or deliver viruses to your computer. Cookies are uniquely assigned to you, and can only be read by a web server in the domain that issued the cookie to you.

One of the primary purposes of cookies is to provide a convenience feature to save you time. The purpose of a cookie is to tell the Web server that you have returned to a specific page. For example, if you personalize KMTELECOM pages, or register with KMTELECOM site or services, a cookie helps KMTELECOM to recall your specific information on subsequent visits. This simplifies the process of recording your personal information, such as billing addresses, shipping addresses, and so on. When you return to the same KMTELECOM website, the information you previously provided can be retrieved, so you can easily use the KMTELECOM features that you customized.

You have the ability to accept or decline cookies. Most web browsers automatically accept cookies, but you can usually modify your browser setting to decline cookies if you prefer. If you choose to decline cookies, you may not be able to fully experience the interactive features of the KMTELECOM services or websites you visit.

## **Security of your Personal Information**

KMTELECOM secures your personal information from unauthorized access, use or disclosure. KMTELECOM secures the personally identifiable information you provide on computer servers in a controlled, secure environment, protected from unauthorized access, use or disclosure. When personal information (such as a credit card number) is transmitted to other Web sites, it is protected through the use of encryption, such as the Secure Socket Layer (SSL) protocol.



## **Changes to this Statement**

KMTELECOM will occasionally update this Statement of Privacy to reflect company and customer feedback. KMTELECOM encourages you to periodically review this Statement to be informed of how KMTELECOM is protecting your information.

## **Contact Information**

KMTELECOM welcomes your comments regarding this Statement of Privacy. If you believe that KMTELECOM has not adhered to this Statement, please contact KMTELECOM at [contactus@kmtel.com](mailto:contactus@kmtel.com). We will use commercially reasonable efforts to promptly determine and remedy the problem.