

## **CIMCO SERVICE TERMS TERMS AND CONDITIONS**

The CIMCO Service Terms shall govern communications and data services provided by First Communications, LLC (“First Communications”) only to former Comcast Phone, LLC (and affiliates) dba CIMCO commercial end-users under the Agreements.

### **ARTICLE 1. DEFINITIONS**

**Affiliate:** Any entity that controls, is controlled by or is under common control with First Communications.

**Agreement:** Consists of one or more of the following Agreements executed by CIMCO and the commercial end- user for the provisioning of communications and data services, as the same may be amended at any time and from time to time by First Communications:

CIMCO Circuit Services Agreement  
CIMCO Data Center Services Agreement  
CIMCO IP Talk Master Services Agreement  
CIMCO Named Host Services Agreement  
CIMCO Services Agreement

**CIMCO:** References hereinafter to CIMCO shall mean First Communications as the service provider, and in the Limitation of Liability, Disclaimer of Warranties and Indemnification Articles shall also include its parent companies, directors, officers, employees, agents, Affiliates, suppliers, licensors, successors, and assigns, as the case may be.

**CIMCO Website or Website:** The CIMCO website where the Tariffs, Service Terms and other security and privacy policies applicable to the Agreement(s) will be posted. The current URL for the Website is <https://www.firstcomm.com/company/legal/business-service-terms-and-conditions/>. CIMCO may update the Website documents and/or URL at any time and from time to time.

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

**Customer:** The company, corporation, or other entity named on the Agreement.

**Customer-Provided Equipment (CE):** Any and all facilities, equipment or devices supplied by Customer for use in connection with the Services.

**Demarcation Point:** The point of interconnection between the Network and Customer-provided equipment located at a Service Location. In some cases the Demarcation Point shall be the User to Network Interface (UNI) port on CIMCO Equipment at a Service Location.

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

**Network:** Consists of the CIMCO Equipment, facilities (owned or leased), fiber optic cable associated with electronics and other equipment and to provide the Services.

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

**Sales Order or Quote:** A request for CIMCO to provide the Services to a Service Location(s) submitted by Customer to CIMCO (i) on a then-current CIMCO form designated for that purpose or (ii) if available, through a CIMCO electronic order processing system designated for that purpose. The terms “Sales Order” and “Quote” are identical in meaning throughout the Agreement and these CIMCO Service Terms.

**Service(s):** A service provided by CIMCO pursuant to a Sales Order and the Agreement. All Services provided under the Agreement are for commercial, retail use only. Services include but are not limited to Voice Services, Trunk Services, Internet Services and EDI Services.

**Service Commencement Date:** The date on which CIMCO first makes Service available for use by Customer. A single Sales Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.

**Service Terms:** These CIMCO Service Terms is a document of general applicability that applies to all Services offered by CIMCO under the Agreement including Services that are not subject to federal and/or state utility commission regulation.

**Service Location(s):** The Customer location(s) where CIMCO provides the Services, to the extent the Customer owns, leases, or otherwise controls such location(s).

**Tariff:** A federal or state CIMCO tariff and the successor.

**Termination Charges:** Charges that may be imposed by CIMCO if, prior to the end of the applicable Service Term (i) CIMCO terminates Services for cause or (ii) Customer terminates Services without cause. Termination Charges are

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set forth in the applicable Agreement and Sales Order and are in addition to any other rights and remedies under the Agreement.

### **ARTICLE 2. DELIVERY OF SERVICE**

**2.1 Sales Orders.** Customer shall execute an Agreement and submit to CIMCO a properly completed Sales Order to initiate Service to a Service Location(s). A Sales Order shall become binding on the Parties when (i) it is specifically accepted by CIMCO either electronically or in writing, (ii) CIMCO begins providing the Service described in the Sales Order or (iii) CIMCO begins Customer Installation (as defined in Article 2.7) for delivery of the Services described in the Sales Order, whichever is earlier. Customer will also be required to execute any other documents as may be reasonably requested by CIMCO.

**2.2 Access.** In order to deliver certain Services to Customer, CIMCO may require access, right-of-way, conduit, and/or common room space ("Access"), both within and/or outside each Service Location. Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the CIMCO Equipment use to provide the Services within the Service Location(s), Customer shall be responsible for securing and maintaining on an initial and ongoing basis during the applicable Service Term and/or Renewal Term, such Access within each Service Location unless CIMCO has secured such Access prior to the Agreement. In the event that Customer fails to secure or maintain such Access within a particular Service Location, CIMCO may cancel or terminate Service at such particular Service Location, without further liability, upon written notice to Customer. In such event, if CIMCO has incurred any costs or expense in installing or preparing to install the Service that it otherwise would not have incurred, a charge equal to those costs and expenses shall apply to Customer's final invoice for that particular Service Location. If CIMCO is unable to secure or maintain Access outside a particular Service Location, which Access is needed to provide Services to such Service Location, Customer or CIMCO may cancel or terminate Servicer as such particular Service Location, without further liability beyond the termination date, upon a minimum thirty (30) days prior written notice to the other party. Any other failure on the part of Customer to receive Service, shall not relieve Customer of its obligation to pay charges for any Service that is otherwise available for use.

**2.3 Hazardous Materials.** If the presence of asbestos or other hazardous materials exists or is detected at a Service Location or within the building where the Service Location is located, CIMCO may immediately stop providing Services until such a time as such materials are removed in compliance with law. Alternatively Customer may notify CIMCO to

install the applicable portion of the Service in areas of any such Service Location not containing such hazardous material. Any additional expense incurred by CIMCO as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer. Customer shall use reasonable efforts to maintain its property and Service Location(s) in a manner that preserves the integrity of the Services.

**2.4 CIMCO Equipment.** At any time CIMCO may remove or change CIMCO Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any CIMCO Equipment or permit others to do so, and shall not use the CIMCO Equipment for any purpose other than that authorized by the Agreement. CIMCO shall maintain CIMCO Equipment in good operating condition during the term of the Agreement; provided, however, that such maintenance shall be at CIMCO's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the CIMCO Equipment. Customer is responsible for damage to, or loss of, CIMCO Equipment caused by its acts or omissions, and its noncompliance with this Article, or by fire, theft or other casualty at the Service Location(s), unless caused by the gross negligence or willful misconduct of CIMCO.

**2.5 Ownership, Impairment and Removal of Network.** The Network is and shall remain the property of CIMCO regardless of whether installed within or upon the Service Location(s) and whether installed overhead, above, or underground and shall not be considered a fixture or an addition to the land or the Service Location(s) located thereon. Customer agrees that it shall take no action that directly or indirectly impairs CIMCO's title to the Network, or any portion thereof, or exposes CIMCO to any claim, lien, encumbrance, or legal process. Nothing in the Agreement shall preclude CIMCO from using the Network for services provided to other CIMCO customers. For a period of twelve

(12) months following CIMCO's discontinuance of Service to the Service Location(s), CIMCO retains the right to remove the Network including, but not limited to, that portion of the Network that is located in the Service Location. To the extent CIMCO removes such portion of the Network it shall be responsible for returning the Service Location(s) to its prior condition, reasonable wear and tear excepted.

**2.6 Customer Provided Equipment ("CE").** CIMCO shall have no obligation to install, operate, or maintain CE. Customer shall have sole responsibility for providing maintenance, repair, operation and replacement of all CE, inside telephone wiring and other Customer equipment and facilities on the Customer's side of the Demarcation Point. Neither CIMCO nor its employees, Affiliates, agents or contractors will be liable for any damage, loss, or destruction

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to CE, unless caused by the gross negligence or willful misconduct of CIMCO. CE shall at all times be compatible with the Network as determined by CIMCO in its sole discretion. In addition to any other service charges that may be imposed from time to time, Customer shall be responsible for the payment of service charges for visits by CIMCO's employees or agents to a Service Location when the service difficulty or trouble report results from the use of CE or facilities provided by any party other than CIMCO.

**2.7 Engineering Review.** Each Sales Order submitted by Customer may be subject to an engineering review. The engineering review will determine whether and to what extent the Network must be extended, built or upgraded ("Customer Installation") in order to provide the ordered Services at the requested Service Location(s). CIMCO will provide Customer written notification in the event Service installation at any Service Location will require an additional nonrecurring installation fee ("Customer Installation Fee"). Customer Installation Fees may also be referred to as Construction Charges on a Sales Order or Invoice. Customer will have five (5) days from receipt of such notice to reject the Customer Installation Fee and terminate, without further liability, the Sales Order with respect to the affected Service Location(s). For certain Services, the Engineering Review will be conducted prior to Sales Order submission. In such case, Customer will have accepted the designated Custom Installation Fee upon submission of the applicable Sales Order.

**2.8 Service Acceptance.** Except as may otherwise be identified in the Agreement, the Service Commencement Date shall be the date CIMCO completes installation and connection of the necessary facilities and equipment to provide the Service at a Service Location.

**2.9 Administrative Website.** CIMCO may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Website. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify CIMCO if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Website. Customer shall be solely responsible for all use of the Administrative Website as authorized by Customer. CIMCO shall not be liable for any loss, cost, expense or other liability arising out of any Customer use of the Administrative Website or any information on the Administrative Website. CIMCO may change or discontinue the Administrative Website, or Customer's right to use the Administrative Website, at any time. Additional terms and policies may apply to Customer's

use of the Administrative Website. These terms and policies will be posted on the site.

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

**3.1 Charges.** Except as otherwise provided in these Service Terms, Customer shall pay CIMCO one hundred percent (100%) of the Custom Installation Fee as identified on the invoice presented by CIMCO following the installation of Service. Customer further agrees to pay all charges associated with the Services, as set forth or referenced herein or in the applicable Sales Order(s) or invoice from CIMCO. These charges may include but are not limited to standard and custom non-recurring installation charges, monthly recurring service charges, usage charges including without limitation charges for the use of CIMCO Equipment, per-call charges, charges for service calls, maintenance and repair charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). Some Services such as measured and per-call charges, may be invoiced after the Service has been provided to Customer. Except as otherwise indicated herein or in the applicable Agreement, monthly recurring charges for Services that are identified on a Sales Order shall not increase during the initial Service Term. Except as otherwise indicated on the Agreement and/or Sales Order, Service pricing, charges and fees will be invoiced at CIMCO's then current rates.

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

**3.3 Payment of Bills.** Except as otherwise indicated herein, CIMCO will invoice Customer in advance on a monthly basis for all monthly recurring charges and fees arising under the Agreement. All other charges will be billed monthly in arrears, including without limitation certain usage based charges and third party pass through fees. By executing the Agreement, Customer acknowledges and agrees to receive invoice summaries via U.S. mail, and billing invoice details via the CIMCO Website identified in the invoice summary. Payment is due upon receipt. Payment will be considered timely made to CIMCO if received within thirty (30) days after the invoice date. Any charges not paid to CIMCO within such period will be considered past due. If a Service Commencement Date is not the first day of a billing period,

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Customer's first monthly invoice shall include any pro-rated charges for the Services, from the date of installation to the start of the next billing period. In certain cases, CIMCO may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third party charges shall be payable pursuant to any contract or other arrangement between the third party and Customer and/or CIMCO. CIMCO shall not be responsible for any dispute regarding these charges between Customer and such third party. Customer must address all such disputes directly with the third party.

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

**3.5 Credit Approval and Deposits.** Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide CIMCO with credit information requested by CIMCO. Customer authorizes CIMCO to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's records. Customer represents and warrants that all credit information it provides to CIMCO will be true and correct. CIMCO, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Additionally, subject to applicable regulations, CIMCO may require Customer to make a deposit (in an amount not to exceed an estimated two months charge for the Services) as a condition to CIMCO's provision of the Services, or as a condition to CIMCO's continuation of the Services. The deposit will not, unless explicitly required by law, bear interest and shall be held by CIMCO as security for payment of Customer's charges. CIMCO may apply the deposit to any delinquent Customer charges upon written notice to Customer. If CIMCO uses any or all of the deposit to pay an account delinquency, Customer shall replenish the deposit by that amount within five (5) days of its receipt of written notice from CIMCO. If the provision of Service to Customer is terminated, or if CIMCO determines in its sole discretion that such deposit is no longer necessary, then the amount of the deposit (plus any required deposit interest) will be credited to Customer's account or will be refunded to Customer, as determined by CIMCO.

**3.6 Taxes and Fees.** Except to the extent Customer provides a valid tax exemption certificate prior to the delivery of Service, Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes or fees (however designated). Customer also will be responsible to pay any Service fees, payment obligations and taxes that become applicable retroactively.

**3.7 Other Government-Related Costs and Fees.** CIMCO reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees, right of way fees and universal service fund charges (if any), regardless of whether CIMCO or its Affiliates pay the fees directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. Taxes and other government-related fees and surcharges may be changed with or without notice. In the event that any newly adopted law, rule, regulation or judgment increases CIMCO's costs of providing Services, Customer shall pay CIMCO's additional costs of providing Services under the new law, rule, regulation or judgment.

**3.8 Disputed Invoice.** If Customer disputes any portion of an invoice by the due date, Customer must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Customer's claim, to CIMCO for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve any billing dispute. CIMCO will refund/credit all valid disputes resolved in Customer's favor as of the date the disputed charges first appeared on the Customer's invoice.

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

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

**3.11 Fraudulent Use of Services.** Customer is responsible for all charges attributable to Customer with respect to the Service(s), even if incurred as the result of fraudulent or unauthorized use of the Services. CIMCO may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. CIMCO reserves the right to restrict, suspend or discontinue providing any Service

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in the event of fraudulent use of Customer's Service or non-payment by Customer of charges attributable to fraudulent or unauthorized use of the Service.

### **ARTICLE 4. TERMS; REVENUE COMMITMENT**

**4.1 Agreement Term/Renewal.** The applicable term of service Customer agrees to take Services from CIMCO shall be set forth on the Agreement or the Sales Order ("Service Term"). If neither the Agreement nor Sales Order specifies a term of service, the Service Term shall be one (1) year from the Service Commencement Date. After the expiration of the initial Service Term, the Agreement shall automatically renew for successive periods of one (1) year each ("Renewal Term(s)"), unless otherwise stated in the Agreement or prior notice of non-renewal is delivered by either Party to the other at least sixty (60) days before the expiration of the Service Term or the then current Renewal Term.

**4.2 Price Increase.** Effective at any time after the end of the initial Service Term and from time to time thereafter, CIMCO may modify the charges for Services subject to thirty (30) days prior notice to Customer (written or electronic). For any material increase, Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing.

### **ARTICLE 5. TERMINATION WITHOUT FAULT; DEFAULT**

**5.1 Termination for Convenience.** Customer shall have the right, in its sole discretion, to terminate any or all Sales Order(s) at any time during the Service Term(s), upon sixty (60) days prior written notice to CIMCO and subject to payment to CIMCO of all outstanding amounts due for the Services, any and all applicable Termination Charges, and the return of all applicable CIMCO Equipment.

**5.2 Termination for Cause.** If either Party breaches any material term of the Agreement, other than a payment term, and the breach continues un-remedied for thirty (30) days after written notice of default, the other Party may terminate for cause any Sales Order materially affected by the breach. If Customer is in breach of a payment obligation (including failure to pay a required deposit) and fails to make payment in full within ten (10) days after receipt of written notice of default, CIMCO may, at its option, terminate the Agreement, terminate the affected Sales Order(s), suspend Service under the affected Sales Order(s), and/or require a deposit, advance payment, or other satisfactory assurances in connection with any or all Sales Order(s) as a condition of continuing to provide Service; except that CIMCO will not take any such action as a result of Customer's non-payment of a charge

subject to a timely billing dispute, unless CIMCO has reviewed the dispute and determined in good faith that the charge is correct. A Sales Order may be terminated by either Party immediately upon written notice if the other Party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors. Termination by either Party of a Sales Order does not waive any other rights or remedies that it may have under the Agreement. The non-defaulting Party shall be entitled to all available legal and equitable remedies for such breach.

**5.3 Effect of Expiration/Termination of a Sales Order.** Upon the expiration or termination of a Sales Order for any reason:

- A. CIMCO shall disconnect the applicable Service;
- B. CIMCO may delete all applicable data, files, electronic messages, or other information stored on CIMCO's servers or systems;
- C. If Customer has terminated the Sales Order prior to the expiration of the Service Term for convenience, or if CIMCO has terminated the Sales Order prior to the expiration of the Service Term as a result of material breach by Customer, CIMCO may assess and collect from Customer applicable Termination Charges (if any);
- D. Customer shall permit CIMCO to retrieve from the applicable Service Location any and all CIMCO Equipment. If Customer fails to permit such retrieval or if the retrieved CIMCO Equipment has been damaged and/or destroyed other than by CIMCO or its agents, normal wear and tear excepted, CIMCO may invoice Customer for the manufacturer's list price of the relevant CIMCO Equipment, or in the event of minor damage to the retrieved CIMCO Equipment, the cost of repair, which amounts shall be immediately due and payable; and,
- E. Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return all Licensed Software to CIMCO.

**5.4 Resumption of Service.** If a Service has been discontinued by CIMCO for cause and Customer requests that the Service be restored, CIMCO shall have the sole and absolute discretion to restore such Service. At CIMCO's option, deposits, advanced payments, nonrecurring charges, and/or an extended Service Term may apply to restoration of Service.

**5.5 Regulatory and Legal Changes.** The Parties acknowledge that the respective rights and obligations of each Party as set forth in the Agreement upon its execution are

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based on applicable law and regulations as they exist on the date of execution of the Agreement. The Parties agree that in the event of any subsequent decision by a legislative, regulatory or judicial body, including any regulatory or judicial order, rule, regulation, decision in any arbitration or other dispute resolution or other legal or regulatory action that materially affects the provisions or ability to provide Services on economic terms of the Agreement, CIMCO may, by providing written notice to the Customer, require that the affected provisions of the Agreement be renegotiated in good faith. If Customer refuses to enter such renegotiations, or the Parties can't reach resolution on new Agreement terms, CIMCO may, in its sole discretion, terminate the Agreement, in whole or in part, upon sixty (60) days written notice to Customer.

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

**6.1 Limitation of Liability.**

A. THE AGGREGATE LIABILITY OF CIMCO AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS OR CONTRACTORS ("ASSOCIATED PARTIES") FOR ANY AND ALL LOSSES, DAMAGES AND CAUSES ARISING OUT OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE, AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO CIMCO DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED. THIS LIMITATION SHALL NOT APPLY TO CIMCO'S INDEMNIFICATION OBLIGATIONS AND CLAIMS FOR DAMAGE TO PROPERTY AND/OR PERSONAL INJURIES (INCLUDING DEATH) ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CIMCO WHILE ON THE CUSTOMER SERVICE LOCATION.

B. NEITHER PARTY SHALL BE LAIBLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY CIMCO OR FOR EARLY TERMINATION CHARGES.

**6.2 Disclaimer of Warranties.**

A. Services shall be provided pursuant to these terms and conditions and are in lieu of all other warranties, express, implied or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. To the maximum extent allowed by law, CIMCO expressly disclaims all such express, implied and statutory warranties.

B. CIMCO does not warrant that the Services, CIMCO Equipment, or Licensed Software will be uninterrupted, error-free, or free of latency or delay, or that the Services, CIMCO Equipment, or Licensed Software will meet Customer's requirements, or that the Services, CIMCO Equipment, or Licensed Software will prevent unauthorized access by third parties.

C. In no event shall CIMCO be liable for any loss, damage or claim arising out of or related to: (i) stored, transmitted, or recorded data, files, or software; (ii) any act or omission of Customer, its users or third parties; (iii) interoperability, interaction or interconnection of the Services with applications, equipment, services or networks provided by Customer or third parties; or (iv) loss or destruction of any Customer hardware, software, files or data result from any virus or other harmful feature or from any attempt to remove it. Customer is advised to back up all data, files and software prior to the installation of Service and at regular intervals thereafter.

**6.3 Disruption of Service.** Notwithstanding the performance standards identified in the Agreement, the Services are not fail-safe performance or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required.

**6.4** Customer's sole and exclusive remedies are expressly set forth in the Agreement. Certain of the above exclusions may not apply if the state in which a Service provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of CIMCO is limited to the maximum extent permitted by law.

**ARTICLE 7. INDEMNIFICATION**

**7.1 CIMCO's Indemnification Obligations.** CIMCO shall indemnify, defend, and hold harmless Customer and its parent company, affiliates, employees, directors, officers, and

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agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) ("Claims") incurred as a result of: infringement of U.S. patent or copyright relating to the CIMCO Equipment or CIMCO Licensed Software hereunder; damage to tangible personal property or real property, and personal injuries (including death) arising out of the gross negligence or willful misconduct of CIMCO while working on the Customer Service Location.

### **7.2 Customer's Indemnification Obligations.**

Customer shall indemnify, defend, and hold harmless CIMCO from any and all Claims arising on account of or in connection with Customer's use or sharing of the Service provided under the Agreement, including with respect to: libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the Service; for patent infringement arising from Customer's combining or connection of CE to use the Service; for damage arising out of the gross negligence or willful misconduct of Customer with respect to users of the Service.

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

## **ARTICLE 8. SOFTWARE AND SERVICES**

**8.1 License.** If and to the extent that Customer requires the use of Licensed Software in order to use the Service supplied under any Sales Order, Customer shall have a personal, nonexclusive, nontransferable, and limited license to use such Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. All License Software provided to Customer, and each revised version thereof, is licensed (not sold) to Customer by CIMCO only for use in conjunction with the Service. Customer may not claim title to, or an ownership interest in, any License Software (or any derivations or

improvements thereto), and Customer shall execute any documentation reasonably required by CIMCO, including, without limitation, end-user license agreements for the Licensed Software. CIMCO and its suppliers shall retain ownership of the Licensed Software, and no rights are granted to Customer other than a license to use the Licensed Software under the terms expressly set forth in the Agreement.

**8.2 Restrictions.** Customer agrees that it shall not: (i) copy of the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of CIMCO; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

**8.3 Updates.** Customer acknowledges that the use of Service may periodically require updates and/or changes to certain Licensed Software resident in the CIMCO equipment or CE. If CIMCO has agreed to provide updates and changes, such updates and changes may be performed remotely or on-site by CIMCO, at CIMCO's sole option. Customer hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by CIMCO. If Customer fails to agree to such updates, CIMCO will be excused from the applicable Service Level Agreement and other performance credits, and any and all liability and indemnification obligations regarding the applicable Service.

**8.4 Export Law and Regulation.** Customer acknowledges that any products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations. Customer agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by CIMCO, Customer also agrees to sign written assurances and other export-related documents as may be required for CIMCO to comply with U.S. export regulations.

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

**8.6 Intellectual Property Rights in the Services.** Title and intellectual property rights to the Services are owned by CIMCO, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. The copying,

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redistribution, bundling or publication of the Services, in whole or in part, without express prior written consent from CIMCO or other owner of such material, is prohibited.

### **ARTICLE 9. CONFIDENTIAL INFORMATION AND PRIVACY**

**9.1 Disclosure and Use.** All Confidential Information disclosed by either Party shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing the Agreement, using the Services, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by the Agreement. Each Party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

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

**9.3 Publicity.** The Agreement provides no right to use any Party's or its affiliates' trademarks, service marks, or trade names, or to otherwise refer to the other Party in any marketing, promotional, or advertising materials or activities. Neither Party shall issue any publication or press release relating to, or otherwise disclose the existence of, the terms and conditions of any contractual relationship between CIMCO and Customer, except as permitted by the Agreement or otherwise consented to in writing by the other Party. Notwithstanding the foregoing, CIMCO may include Customer's name on CIMCO's customer lists together with a description of Services purchased. If Customer wishes to remove Customer's name from such list or to limit the foregoing use of Customer's name, Customer may contact CIMCO as set forth in Article 11.3 of these General Terms and Conditions and CIMCO will effect such removal.

**9.4 Remedies.** Notwithstanding any other Article of the Agreement, the non-breaching Party shall be entitled to seek

equitable relief to protect its interests pursuant to this Article 9, including, but not limited to, injunctive relief.

**9.5 Monitoring of Services.** Except as otherwise expressly set forth herein, CIMCO assumes no obligation to pre-screen or monitor Customer's use of the Service, including without limitation postings and/or transmission. However, Customer acknowledges and agrees that CIMCO and its agents shall have the right to pre-screen and monitor such use from time to time and to use and disclose such results to the extent necessary to operate the Service properly, to ensure compliance with applicable use policies, to protect the rights and/or property of CIMCO, or in emergencies when physical safety is at issue, and that CIMCO may disclose the same to the extent necessary to satisfy any law, regulation, or governmental request. CIMCO shall have no liability or responsibility for content received or distributed by Customer or its users through the Service, and Customer shall indemnify, defend, and hold CIMCO and its directors, officers, employees, agents, subsidiaries, affiliates, successors, and assigns harmless from any and all claims, damages, and expenses whatsoever (including reasonable attorneys' fees) arising from such content attributable to Customer or its users.

**9.6 Survival of Confidentiality Obligations.** The obligations of confidentiality and limitation of use described in this Article 9 shall survive the expiration and termination of the Agreement for a period of two (2) years (or such longer period as may be required by law).

### **ARTICLE 10. USE OF SERVICE; USE AND PRIVACY POLICIES**

**10.1 Prohibited Uses and CIMCO Use Policies.** Customer is prohibited from using, or permitting the use of, any Service: (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of any Use Policy (as defined below); (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, and permits; or (iv) to interfere unreasonably with the use of CIMCO service by other or the operation of the Network. Customer is responsible for assuring that any and all of its users comply with the provisions of the Agreement. CIMCO reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if CIMCO determines that such use is prohibited as identified herein, or information does not conform with the requirements set or CIMCO reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. Any Acceptable Use Policy and/or other security policies concerning the Services, that are not contained herein, are posted on the Website, if any, and are incorporated into the Agreement by reference.



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CIMCO may update these policies from time to time, and such updates shall be deemed effective immediately upon posting, with or without actual notice to Customer. CIMCO's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other users' use or information.

**10.2 Privacy Policy.** In addition to the provisions of Article 9, CIMCO's commercial privacy policy applies to CIMCO's handling of Customer confidential information. CIMCO's privacy policy is available on the Website.

**10.3 Privacy Note Regarding Information Provided to Third Parties.** CIMCO is not responsible for any information provided by Customer to third parties. Such information is not subject to the privacy provisions of the Agreement. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

**10.4 Prohibition on Resale.** Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof.

**10.5 Violation.** Any breach of this Article 10 shall be deemed a material breach of the Agreement. In the event of such material breach, CIMCO shall have the right to restrict, suspend, or terminate immediately any or all Sales Orders, Services and/or the Agreement, without liability on the part of CIMCO, and then to notify Customer of the action that CIMCO has taken the reason for such action, in addition to any and all other rights and remedies under the Agreement.

### **ARTICLE 11. MISCELLANEOUS TERMS**

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

**11.2 Assignment or Transfer.** Customer shall not assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of CIMCO. All obligations and duties of either Party under the Agreement shall be binding on all successors in interest and assigns of such Party. Nothing herein is intended to limit

CIMCO's use of third party consultants and contractors to perform Services under a Sales Order.

**11.3 Notices.** To Customer: Any notice sent pursuant to the Agreement shall be deemed delivered three days after the notice was deposited in the U.S. Mail, on day after receipt via overnight courier, or immediately if delivered electronically such as email, facsimile, text or shortmessaging service, unless otherwise allowed by law. If we change our address or toll-free Customer Service telephone number, we will notify you on your bill or by other means as specified in Changes to the Agreement. To Company: All notices (including notice of disconnect or cancellation), requests or other communications shall be in writing and delivered as follows: (i) All matters, except notice of disconnect or cancellation, may be submitted via electronic mail to [business@firstcomm.com](mailto:business@firstcomm.com); or (ii) For disconnects and cancellations, send via electronic mail to [businesscustomercancellations@firstcomm.com](mailto:businesscustomercancellations@firstcomm.com), with confirmed receipt and subject line beginning with "NOTICE OF DISCONNECT/CANCELLATION/TERMINATION-LEGAL" or via overnight courier, certified or registered mail, postage prepaid and return receipt requested to First Communications, LLC, 3340 W. Market Street, Akron, OH 44333, Attn: Notices-Legal. Customer is responsible to notify CIMCO of any change in Customer's address or other account contact information via telephone to Customer Care at 800-860-1261.

**11.4 Entire Understanding.** The Agreement, including without limitation the Sales Order and this Service Terms, constitutes the entire understanding of the Parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the Parties' rights or obligations relating to Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not embodied in the Agreement are of no effect. No subsequent agreement among the Parties concerning Service shall be effective or binding unless it is made in writing by authorized representatives of the Parties. Terms or conditions contained in any Sales Order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect.

**11.5 Tariffs.** Notwithstanding anything to the contrary in the Agreement, CIMCO may elect or be required to file with regulatory agencies tariffs for certain Services. In such event, the terms set forth in the Agreement may, under applicable law, be superseded by the terms and conditions of the Tariffs. Without limiting the generality of the foregoing, in the event of any inconsistency with respect to rates, the rates and other terms set forth in the applicable Sales Order shall be treated as individual case based arrangements to the maximum extent permitted by law, and CIMCO shall take such steps as are required by law to make the rates and other terms enforceable.

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If CIMCO voluntarily or involuntarily cancels or withdraws a Tariff under which a Service provided to Customer, the Service will thereafter be provided pursuant to the Agreement (including any Sales Orders) and these Service Terms.

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

**11.7 Survival.** The rights and obligations of either Party that by their nature would continue beyond the expiration or termination of a Sales Order shall survive termination or expiration of the Sales Order.

**11.8 Choice of Law.** The domestic law of the state in which the Service is provided shall govern the construction, interpretation, and performance of the Agreement, except to the extent superseded by federal law.

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

**11.10 No Waiver, Etc.** No failure by either Party to enforce any rights hereunder shall constitute a waiver of such right(s). The Agreement may be executed in counterpart copies.

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

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

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

**ADDITIONAL TERMS APPLICABLE TO ANY INTERNET PROTOCOL (IP) ENABLED VOICE**

**SERVICES OFFERED BY CIMCO UNDER AN AGREEMENT (“VOICE SERVICES”)**

**In addition to Article 1 THROUGH 11 above, the following Articles 12 through 17 are specifically applicable to Voice Services.**

**ARTICLE 12. USE POLICY**

**12.1 Additional Use Restrictions.** Voice Service may only be used at Service Location(s) where Voice Service is installed by CIMCO. Customer understands and acknowledges that if Customer attempts to install or use the CIMCO Equipment or Voice Service at another location, Voice Service, including but not limited to 911/E9011, may fail to function or may function improperly. It will be considered a material violation of the Agreement if Customer moves Voice Service to another location without first notifying CIMCO. Customer expressly agrees not to use Voice Service for auto-dialing, continuous or extensive call forwarding, telemarketing, fax, broadcasting or fax blasting, or for any other use that results in excessive usage inconsistent with standard commercial calling patterns. If CIMCO determines, in its sole discretion, that Customer’s use of Voice Service is excessive or in violation of the Agreement, CIMCO reserves the right, among other things, to terminate or modify Voice Service immediately and without notice.

**ARTICLE 13. SERVICE LIMITATION**

**13.1 Disruption of Service.** Customer acknowledges and understands that certain Voice Service will not be available for use under certain circumstances, including without limitation, when the network or facilities are not operating or if normal electrical power to any CIMCO-provided internet access device (IAD) is interrupted and the IAD does not have a functioning backup. Customer also understands and acknowledges that the performance of any battery backup provided by CIMCO is not guaranteed. If the battery backup does not provide power, the applicable Voice Services will not function until normal power is restored.

**13.2 Provision of Service.** Subject to the terms and conditions herein, Voice Services are intended for commercial use only.

**ARTICLE 14. LIMITATIONS OF 911/E911**

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

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**14.2 Correct Address.** In order for Customer’s 911/E911 calls to be properly directed to emergency services, CIMCO must have Customer’s correct Service Location address. If Customer moves Voice Service to a different Service Location without CIMCO’s approval, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong Service Location address, and/or Voice Service (including 911/E911) may fail altogether. Therefore, Customer must contact CIMCO at least five (5) days before moving Voice Service to a new Service Location. All changes in Service Location require CIMCO’s prior written approval.

**14.3 Service Interruptions.** Customer acknowledges and understands that Voice Service uses the electrical power in Customer’s Service Location. If there is an electrical power outage, 911 calling may be interrupted if the battery backup in any CIMCO-provided IAD is not installed, fails, or is exhausted after several hours. Furthermore, calls, including calls to 911/E911, may not be completed if Customer exceeds its Voice Service and equipment configuration calling capacity or if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

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

**14.5 LIMITATION OF LIABILITY AND INDEMNIFICATION.**

CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER CIMCO NOR ITS ASSOCIATED PARTIES WILL BE LAIBLE FO RANY VOICE SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS CIMCO AND ITS ASSOCIATED PARTIES FROM ANY AND ALL CLAIMS, LOSSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE VOICE SERVICES RELATING OT THE FAILUR EOR OUTAGE OF THE SERVICES, INCLUDING RELATED TO 911/E911.

**ARTICLE 15. VOICE EQUIPMENT REQUIREMENTS**

**15.1 Incompatible Equipment and Services.** Customer acknowledges and understands Voice Service may not support or be compatible with:

- A. Non-recommended configurations including, but not limited to, IADs not currently certified by CIMCO as compatible with Voice Service;
- B. Certain non-voice communications equipment, including certain makes or models of alarm and security systems, certain medical monitoring devices, certain fax machines, and certain “dial-up” modems;
- C. Rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units;
- D. Casual/dial around (10-10) calling: 976, 900, 700, or 500 number calling;
- E. 311, 511, or other x11 calling (other than 411, 611, 711, and 911); and,
- F. Other call types not expressly set forth in CIMCO’s product literature (e.g., outbound short-to-ship calling).

**ARTICLE 16. ADDITIONAL LIMITATION ON CIMCO’S LIABILITY FOR VOICE SERVICE**

**16.1 Limitations on CIMCO’s Liability for Directories and Directory Assistance for Voice Service Customers.** THESE LIMITATIONS SHALL APPLY WHERE CIMCO MAKES AVAILABLE AN OPTION TO LIST CUSTOMER’S NAME, ADDRESS, AND/OR TELEPHONE NUMBER IN A PUBLISHED DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, AND ONE OR MORE OF THE FOLLOWING CONDITIONS OCCURS: (i) CUSTOMER REQUESTS THAT CUSTOMER’S NAME, ADDRESS AND/OR PHONE NUMBER BE OMITTED FROM A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS INCLUDED IN EITHER OR BOTH; (ii) CUSTOMER REQUESTS THAT CUSTOMER’S NAME, ADDRESS AND/OR PHONE NUMBER BE INCLUDED IN A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS OMITTED FROM EITHER OR BOTH; OR (iii) THE PUBLISHED OR LISTED INFORMATION FOR CUSTOMER’S ACCOUNT CONTAINS MATERIAL ERRORS OR OMISSIONS. IF ANY OF THESE CONDITIONS PERTAIN, THEN THE AGGREGATE LIABILITY OF CIMCO AND ITS ASSOCIATED PARTIES SHALL NOT EXCEED THE MONTHLY CHARGES, IF ANY, WHICH CUSTOMER HAS ACTUALLY PAID TO CIMCO TO LIST, PUBLISH, NOT LIST, OR NOT PUBLISH THE INFORMATION FOR THE AFFECTED PERIOD. CUSTOMER SHALL HOLD HARMLESS CIMCO AND ITS ASSOCIATED PARTIES AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR

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CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS REFERENCED ABOVE. FURTHERMORE, IF CIMCO MAKES AVAILABLE DIRECTORY ADVERTISING SERVICES, NEITHER CIMCO NOR ANY OF ITS ASSOCIATED PARTIES WILL BE LIABLE FOR ANY ACTS, ERRORS, OR OMISSIONS RELATED TO SUCH DIRECTORY ADVERTISING.

**16.2 Customer Information.** CIMCO and its suppliers reserve the right both during the term of the Agreement and upon its termination to delete Customer's voicemail, call detail, data, files, or other information are stored on CIMCO's or its suppliers' servers or systems, in accordance with our storage policies. Customer understands and acknowledges that CIMCO shall have no liability whatsoever as a result of the loss or removal of any such voicemail, call detail, data, files, or other information.

**ARTICLE 17. ADDITIONAL TERMS FOR CIMCO CALLING CARDS**

**17.1** At Customer's request, CIMCO may furnish CIMCO calling cards in a quantity and at the fee specified in a Sales Order. Customer shall be solely responsible for distributing and authorizing use of CIMCO Calling Cards within its organization. Without liability, CIMCO reserves the right to immediately restrict, suspend, or deactivate any CIMCO Calling Card issues to Customer in the event of suspected fraud or unauthorized use. Customer shall be responsible for all unauthorized charges attributable to CIMCO Calling Cards, except to the extent that such unauthorized charges result to the gross negligence or willful misconduct of CIMCO or its agents.

**ARTICLE 18. ADDITIONAL TERMS APPLICABLE TO TOLL FREE SERVICES**

**In addition to provisions 1 THROUGH 17 above, the following Article 18 is specifically applicable to Toll Free Services delivered over any Internet Protocol (IP) enable Voice Service offered by CIMCO:**

**18.1 Limitation.** Subject to service availability, Customer may order Toll Free Services. Toll Free Services are not intended for residential use. In order to purchase and retain Toll Free Service with CIMCO, Customer must have Voice Services, and must map each Toll Free telephone number ("TFN") to a Voice Service telephone number ("Associated TN"). If Customer terminates an Associated TN at any time during the Toll Free Services term, Customer must immediately: (i) map the applicable TFN to another Digital Voice telephone number on Customer's CIMCO account; (ii)

purchase a new Digital Voice telephone to map to the TFN; (iii) port out the TFN to another toll free carrier; or (iv) disconnect the TFN. If Customer fails to take immediate action as indicated above, CIMCO will disconnect the TFN. CIMCO shall have no liability for loss of Toll Free Services, which results from Customer failing to take immediate action as indicated above.

**18.2 Authorization.** When ordering Toll Free Service, as set forth or referenced in each applicable Sales Order, Customer authorized CIMCO to act as its agent in initiating and provisioning such Toll Free Service.

**18.3 Toll Free Charges.**

A. **Prices.** Toll Free Service is subject to the toll free pricing identified in the applicable Sales Order, or if none stated, subject to the then current CIMCO pricing lists and fees.

B. **Billing Increments.** Subject to CIMCO's then current billing increments.

C. **Rounding of Charges.** CIMCO reserves the right to round up any and all invoice amounts to the nearest one (1) cent.

**ARTICLE 19. ADDITIONAL TERMS APPLICABLE TO TRUNK SERVICES**

**In addition to provisions 1 THROUGH 18 above, the following Article 19 is specifically applicable to Trunk Services offered by CIMCO:**

**19.1 Limitation.** Subject to service availability, Customer may order Trunk Services. Trunk Services are not intended for residential use.

**19.2 Customer Responsibility for Telephone Equipment.**

A. Customer is solely responsible for providing and maintaining working PBX equipment and handsets (Customer-Provided Equipment), notifying and training its users regarding proper use of the system in accordance with applicable, including regulatory, requirements, and for any programming to its telephone system that may be necessary to enable direct dialing of N11 numbers such as 911 or 711 and to enable calls to be connect to new area codes. Customer also acknowledges and accepts that CIMCO may not support seven-digit local calling even in areas of the country that still permit that option, and Customer will program its system as necessary to support ten-digit dialing to local calls.

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B. CIMCO shall not be responsible to the Customer if changes in any of the facilities, operations or procedures of CIMCO utilized in the provision of Trunk Service render any Customer-Provided Equipment or other equipment provided by a Customer obsolete or require modification or alteration of such equipment or system or otherwise affect its use or performance.

C. Customer must arrange its Customer-Provided Equipment to provide for the interception of assigned but unused station numbers. A call intercepted by the attendant will be considered to be completed and subject to a charge for the call.

**19.3 Trunk Service Charges.**

A. **Prices.** Trunk Service is subject to the trunk service pricing identified in the applicable Sales Order, and subject to then current pricing lists and fees.

B. **Billing Increments.** Subject to CIMCO’s then current billing increments.

**ADDITIONAL TERMS APPLICABLE TO INTERNET SERVICES OFFERED BY CIMCO UNDER AN AGREEMENT (“INTERNET SERVICES”)**

**In addition to Articles 1 through 19 above, Articles 20 thru 26 are specifically applicable to Internet Services**

**ARTICLE 20. WEB HOSTING**

**If Customer submits a Sales Order for web hosting services, the following terms shall also apply:**

**20.1 Authorization.** By using the Services to publish, transmit or distribute material or content, Customer: (i) warrants that the material or content complies with the provisions of the Agreement; (ii) authorizes CIMCO, its agents and affiliates to reproduce, publish, distribute, and display such content worldwide; and (iii) warrants that Customer has the right to provide such authorization. Customer acknowledges that material posted or transmitted using the Services may be copied, republished or distributed by third parties, and agrees to indemnify, defend and hold harmless CIMCO, its agents and affiliates for any harm resulting from such actions.

**20.2 Website Content.** If applicable, CIMCO will host Customer’s website in a data center in accordance with CIMCO’s then-current published specifications, including without limitation, storage levels (“Customer Website”). Ownership of all graphics, text, or other information or content materials supplied or furnished by Customer for incorporation into or delivery through a Customer Website

shall remain with Customer (or the party that supplied such materials to Customer). Ownership of any software developed or modified by CIMCO and all graphics, text, or other information or content materials supplied or furnished by CIMCO for incorporation into a Customer Website shall remain with CIMCO (or the party that supplied such materials to CIMCO). Customer agrees that CIMCO has no proprietary, financial, or other interest in Customer’s goods or services that may be described in or offered through a Customer Website, and that Customer is solely responsible for content quality, performance, and all other aspects of its goods or services and the information or other content contained in or provided through a Customer Website. Customer assumes all responsibility for use by others of the Customer Website (including commercial transactions, whether completed or not).

**20.3 Website Backup and Restoration.** Customer acknowledges and agrees that: (i) it is responsible for developing and maintaining procedures (apart from the Services) to protect the Customer content, including, without limitation, making appropriate backup copies of the Customer content as may be necessary for reconstruction of any data, files, informational materials, or electronic messages; and (ii) CIMCO is not responsible for backup and restoration of Customer Content.

**ARTICLE 21. ADDITIONAL LIMITATIONS**

**21.1 Transfer Protocols.** Customer understands that there may be certain transfer protocols such as FTP (File Transfer Protocol) and HTTP (Hyper Text Transfer Protocol) that may allow other service users and Internet users to gain access to Customer’s network. If Customer chooses to run such transfer protocols, then Customer acknowledges and agrees that it does so at Customer’s own risk.

**21.2 File and Print Sharing.** Customer is aware that Internet Service may function as a local area network in that each customer is a node on the network. As such, users outside a Service Location may be able to access Customer’s systems. Additionally, some software may permit other users to gain access to Customer’s systems and to the software, files, and data stored on Customer’s systems. If Customer chooses to enable capabilities such as file sharing, print sharing, or other capabilities that allow users to gain access to Customer’s systems, then Customer acknowledges and agrees that it does so at Customer’s own risk.

**ARTICLE 22. DOMAIN NAME REGISTRATION**

If Customer submits a Sales Order(s) for domain name registration services, the following terms shall also apply:

**22.1 Registration.** At the request of Customer, CIMCO will use commercially reasonable efforts to facilitate the

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registration of the Customer internet domain name (“Customer Domain Name”) with a domain name registration service of CIMCO’s choosing, but only to the extent that Customer provides CIMCO with all necessary information relevant to such registration. The domain name registration service will invoice Customer directly for all applicable registration fees, maintenance fees, and other applicable fees related thereto. Customer hereby acknowledges that Customer is entirely responsible for the payment of any and all such fees. CIMCO does not represent that the Customer Domain Name will be available on an initial or ongoing basis. Further, Customer acknowledges that Customer, not CIMCO, has ownership, control, and use of the Customer Domain Name. Further, Customer hereby agrees now and forever to release and to hold harmless CIMCO and its Associated Parties, from any and all losses, damages, rights, claims, and actions with respect to, or in any way arising from, the domain name registration service’s removal of allocation or support for the Customer Domain Name. Should Customer require modification of the Customer Domain Name or additional related services, additional charges may apply from the relevant registration service and from CIMCO for setup of the modification or addition.

**22.2 Sub-Domain Name.** Should Customer be unable to register a unique domain name, CIMCO may grant upon Customer request and only for the term of the Sales Order providing for such service, the limited, personal, and non-transferable right to specify and append a sub-domain name to CIMCO’s prescribed domain name, for the sole purpose uniquely identifying Customer’s e-mail address. CIMCO does not represent that Customer’s selected sub-domain name will be available. Customer receives no right to CIMCO’s domain name other than as specifically stated in this Article 22. Upon the termination of the applicable Sales Order, Customer shall surrender all rights, privileges and interest in and to the sub-domain name and CIMCO’s domain name.

**ARTICLE 23: STATE-SPECIFIC PROVISIONS APPLICABLE TO INTERNET SERVICE**

**Service Interruption.** Montgomery County, MD Customers. Under its franchise with Montgomery County, MD, CIMCO has the following rebate policy: In the event of an Internet Service Interruption (loss of cable modem service) CIMCO shall repair the Service Interruption as soon as possible. This obligation is satisfied if CIMCO offers Customer the next available repair appointment within the 24-hour period following the Service Interruption, or at Customer’s request, to a mutually convenient later time for the repair call, and successfully repairs the Service Interruption during the agreed upon appointment. If the Service Interruption is not repaired at the time of the schedule appointment, Customer will receive a prorated credit for each 24-hour period, or segment thereof,

that the Service Interruption continues beyond the scheduled repair call. Customer may contact CIMCO at 1-800-92-CIMCO. This service credit shall be Customer’s sole and exclusive remedy with respect to applicable Internet Service.

**ARTICLE 24: ADDITIONAL TERMS FOR SERVICE DELIVERED VIA DSL**

**24.1** Service delivered via DSL may be furnished over the infrastructure of an unaffiliated local telephone service provider or another DSL provider. Customer acknowledges that CIMCO or its subcontractors may require inside wiring to complete installation of Service delivered via DSL, at an additional hourly or other charge. Customer further acknowledges this charge will occur at the sole discretion of the installation representative.

**24.2** The charges for Service delivered via DSL cover the CIMCO Services only, and they in no way change or supersede Customer’s relationship with unaffiliated provider(s) of local or long-distance telephone services. Customer maintains responsibility for payment of bills for such telephone service to the appropriate provider(s) of local or long-distance telephone services. Customer acknowledges that disconnection of local telephone services (i.e., voice services) may render such Service non-functional. Customer shall remain responsible for charges for the Service regardless of the state of the local telephone service.

**24.3** In the event that Customer’s DSL Service line cannot accommodate at least eighty percent (80%) of Customer’s requested circuit speed, then, as authorized on the Sales Order, CIMCO shall either provision Customer’s line with the best speed available or cancel the Sales Order. Adjustments to billing will be made dependent on the circuit speed and equipment finally provisioned by CIMCO.

**ARTICLE 25: ANTIVIRUS AND ANTISPAM SERVICES FOR EMAIL**

CIMCO represents that its AntiVirus and AntiSpam services will be provided in a businesslike manner. Except as expressly set forth in the preceding sentences, such AntiVirus and AntiSpam services will be provided without warranty. In other words, all warranties with respect to CIMCO’s AntiVirus and AntiSpam services, including, but not limited to, implied warranties of merchantability and implied warranties of fitness for a particular purpose are disclaimed.

CIMCO assumes no responsibility for errors or omissions in the information or software or other documents which are referenced.

## **CIMCO SERVICE TERMS TERMS AND CONDITIONS**

In the event that it is determined that any such AntiVirus and AntiSpam services have not been provided in a businesslike manner, then CIMCO's liability to you shall be limited to a refund of fees received for any such AntiVirus and AntiSpam services. In no event shall CIMCO otherwise be liable to you or to anyone else for any loss suffered by you or by anyone else in connection with CIMCO's provision of such AntiVirus and AntiSpam services, and neither you nor anyone else may recover from CIMCO any damages connected with or resulting from any such loss, including special, incidental, indirect or consequential damages, those resulting from loss of use, data or profits, and those resulting from delay or business interruption.

### **ARTICLE 26: INSTALLATION SERVICES ("Services") RELATED TO DATA SERVICES AGREEMENT ("Agreement")**

The following additional terms and conditions are applicable to sales orders for installation and maintenance services ("Services") ordered by Customers as part of their Data Services Agreement ("Agreement") with CIMCO.

**26.1 Introduction.** Customer is eligible to order Services by executing the Agreement. In the event Customer does not request Services in the Quote, CIMCO shall provide such Services on an as-available basis in accordance with CIMCO's policies and per travel and hourly labor rates in effect at the time Service is provided. Charges for such Services shall also include a charge for any parts needed to perform the Service.

**26.2 Installation.** CIMCO shall install the Equipment described on each executed Quote that requests Services, which shall be performed in accordance with an agreed upon installation schedule. At its expense, Customer shall prepare the installation site to comply with CIMCO's site specifications and with any applicable local regulations. Customer shall be responsible for unpacking and placing the Equipment and for obtaining any permits required for the installation or operation of the Equipment.

**26.3 Installation Charges.** Customer shall pay to CIMCO the installation charges set forth on each executed Quote. CIMCO will install the Equipment between 8:00 a.m. and 5:00 p.m. Central time, Monday through Friday, excluding national and local holidays. To the extent that, at Customer's request, CIMCO performs such Services outside of such times, Customer shall pay, in addition to the installation charges set forth on the Quote, an installation surcharge determined in accordance with CIMCO's then published hourly labor rates for such services. Installation charges will be invoiced to Customer after such Services have been performed.