

## **MASTER SERVICE AGREEMENT**

Customer acknowledges that the Services provided by RTC Communications Corp. ("RTC") under this Agreement may have previously been provided under Tariff. Customer understands that, as of the Effective Date of this Agreement, such Services are no longer under Tariff and are provided pursuant to this Agreement and any accompanying Service Orders. ANY TERMS AND CONDITIONS, GUIDEBOOKS, SERVICE GUIDES and PRICE LISTS (COLLECTIVELY, THE "SERVICE MANUALS") PROVIDED ON RTC'S WEBSITE, AS MODIFIED FROM TIME-TO-TIME, ARE INCORPORATED BY REFERENCE HEREIN TO THE EXTENT EACH IS APPLICABLE TO THE SERVICE(S) PROVIDED UNDER THIS AGREEMENT, AS IF THOSE DOCUMENTS ARE SET FORTH ORIGINALLY HERE.

### **1. SERVICES AND FACILITIES**

- 1.1. RTC agrees to provide Customer with a Business Data Service ("BDS") connection, as provided in the accompanying RTC Service Order dated \_\_\_\_\_ during the Term of this Agreement.

### **2. PAYMENT AND CHARGES**

- 2.1. **Rates and Charges.** Customer will pay RTC the rates and charges for the Services set forth in this Agreement and any Order under the Agreement, including all charges associated with establishing Customer's Services or related to RTC's installation or provisioning costs.
- 2.2. **Rate Adjustments.** RTC may impose additional fees, charges or surcharges on Customer to recover amounts that RTC is required or permitted to collect, or pay to others in support of, or to comply with, statutory or regulatory programs, plus a commercially reasonable amount to recover the administrative costs associated with such charges or programs.
- 2.3. **Taxes.** RTC's rates and charges for the Services do not include taxes. Notwithstanding any other provision of this Agreement, if Customer is required by law to make a deduction or withholding from any amount due to RTC, Customer must notify RTC in writing. RTC will then increase the gross amount of Customer's invoice so that, after Customer's deduction or withholding for taxes, the net amount paid to RTC will not be less than the amount RTC would have received without the required deduction or withholding.
- 2.4. **Invoicing.** Unless otherwise set forth in a Service Order, any and all invoicing for Services shall be submitted to Customer for payment within thirty (30) days of the Service being provided. Customer is responsible for all charges, no matter the interval at which they are billed. Any objection to billed charges must be reported to RTC within sixty (60) days of the invoice date.
- 2.5. **Billing.** Unless otherwise set forth in a Service Order, RTC shall invoice Customer in advance at Customer's notice address specified herein (or at such other address of which Customer may advise RTC in writing) for all Services and additional services provided during each calendar month or other mutually agreeable billing cycle. Customer shall pay RTC for all Charges upon receipt of the invoice. Account is/will be considered past due thirty (30) days after invoice date and late fees will be assessed on the last business day of the month at 1.5% per month. Service is subject to interruption if the account remains unpaid for a period of sixty (60) days or more from the date of billing. Customer agrees to reimburse RTC for all reasonable expenses, including reasonable attorney's fees, for collection of past due accounts.
- 2.6. **Disputed Invoice Charges.** If Customer disputes a charge in good faith, Customer may withhold payment of that charge if Customer makes timely payment of all undisputed charges within the payment period, as described in Section 2.5, and provides RTC with a written explanation of the reasons for Customer's dispute of the charge within 90 days of receipt of the invoice. Customer must cooperate with RTC to promptly resolve any disputed charge. If RTC determines, in good faith, that the disputed charge is invalid, RTC will notify Customer and, within five business days of receiving notice, Customer must pay the charge.

### **3. CREDIT APPROVAL**

- 3.1. RTC's provision of Services is subject to the credit approval of Customer. As part of the credit

approval process, RTC may require Customer to provide a deposit or other security. Additionally, during the Agreement Term, if Customer's financial circumstances or payment history becomes reasonably unacceptable to RTC, RTC may require adequate assurances of future payment as a condition of continuing provision of the Services. Customer's failure to provide adequate assurances required by RTC is a material breach of the Agreement. RTC may provide Customer's payment history or other billing information to any credit reporting agency or industry clearinghouse.

#### 4. **ORDERS**

4.1. Orders are binding only upon acceptance in writing by RTC. RTC will notify Customer of rejected orders.

4.2. **Cancellation.** Customer may cancel an Order at any time before RTC delivers the Services listed in the Order or begins its performance, but Customer must pay any actual costs RTC incurs do to Customer's cancellation.

#### 5. **WARRANTIES**

5.1. THE SERVICES PROVIDED BY RTC UNDER THIS AGREEMENT ARE PROVIDED WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, COMPATIBILITY OF SOFTWARE OR EQUIPMENT, OR ANY RESULTS TO BE ACHIEVED THEREFROM. RTC MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE OR PRODUCT WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.

#### 6. **EQUIPMENT AND FACILITIES**

6.1 **Customer-Provided Equipment.** RTC shall not be responsible for the installation, operation, or maintenance of any Customer-provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this Agreement, the responsibility of RTC shall be limited to the furnishing of facilities offered under this Agreement and to the maintenance and operation of such facilities. Notwithstanding the above, RTC shall not be responsible for:

(a) the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission;

(b) the reception of signals by Customer-provided equipment; or

(c) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

#### 7. **INSTALLATION**

7.1. Customer will reasonably cooperate with RTC or its agents to install the Services. Customer is responsible for damage to RTC-owned facilities located on Customer premises, excluding reasonable wear and tear or damage caused by RTC. RTC may refuse to install Services or may discontinue and disconnect Services without notice, if any condition on Customer's premises is unsafe or likely to cause injury to any person using Services.

#### 8. **CUSTOMER RESPONSIBILITIES**

8.1. **Acceptable Use Policy (AUP).** With the purchase of data Services, Customer must conform to RTC's [Acceptable Use Policy](#), as reasonably amended from time to time.

8.2. **Abuse and Fraud.** Customer will not use Services: (1) for fraudulent, abusive, unlawful or destructive purposes, including unauthorized or attempted unauthorized access to, or alteration, abuse or destruction of, information; or (2) in any manner that causes interference with RTC's or another's use of the RTC- provided network. Customer will cooperate promptly with RTC to prevent third parties from gaining unauthorized access to the Services via Customer's facilities.

8.3. **Reseller.** Customer represents that it is not a reseller of any telecommunication services provided under this Agreement as described in the Telecommunications Act of 1996, as amended, or applicable state law and acknowledges it is not entitled to any reseller discounts under any laws.

- 8.4. Security.** RTC has adopted and implemented, and will maintain, a corporate information security program designed to protect Customer information, materials and data accessed and possessed by RTC from loss, misuse and unauthorized access or disclosure. Such program includes formal information security policies and procedures. The RTC information security program is subject to reasonable changes by RTC from time to time. RTC's standard service offerings do not include managed security services such as encryption, intrusion detection, monitoring or managed firewall. Customer is responsible for selecting and using the level of security protection needed for all Customer data stored or transmitted via the Service and using reasonable information security practices, including those relating to the encryption of data.

## **9. PRIVACY AND CONFIDENTIALITY**

- 9.1. Privacy.** RTC's [Privacy Policy](#), as amended from time to time, includes information about RTC's customer information practices and applies to the provisioning of Services.
- 9.1. HIPAA.** By providing Services, RTC does not require or intend to access Customer data, including any confidential health related information of Customer's clients, which may include group health plans, that constitutes Protected Health Information ("PHI"), as defined in 45 C.F.R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules").
- 9.2. Nondisclosure Requirements.** If the parties have not executed a mutual nondisclosure agreement, this provision will govern their exchange of information. Neither Party will disclose any Confidential Information (defined below) received from the other party, or otherwise discovered by the receiving party, to any third party, except as expressly permitted in this Agreement. This obligation will continue until two years after the Agreement expires or terminates. Confidential Information includes, but is not limited to, pricing and terms of the Agreement, and information relating to the disclosing party's technology, business affairs, trade secrets, development and research information, and marketing or sales plans (collectively the "Confidential Information"). The receiving party may disclose Confidential Information to its subsidiaries, Affiliates, agents and consultants with a need to know, if they are not competitors of the disclosing party and are subject to a confidentiality agreement at least as protective of the disclosing party's rights as this provision.
- 9.3** The parties will use Confidential Information only for the purpose of performing under this Agreement or for the provision of other RTC services. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (A) is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (B) is or becomes publicly known, through no wrongful act or omission of the receiving party; (C) is received without restriction from a third party free to disclose it without obligation to the disclosing party; (D) is developed independently by the receiving party without reference to the Confidential Information, or (E) is required to be disclosed by law, regulation, or court or governmental order. The parties acknowledge that the receiving party's unauthorized disclosure or use of Confidential Information may result in irreparable harm. If there is a breach or threatened breach of the Agreement, the disclosing party may seek a temporary restraining order and injunction to protect its Confidential Information. This provision does not limit any other remedies available to either party. The party who breached or threatened to breach its nondisclosure obligation under the Agreement will not raise the defense of an adequate remedy at law. RTC will not be deemed to have accessed, received, or be in the possession of Customer Confidential Information solely by virtue of the fact that Customer transmits, receives, accesses or stores such information through its use of RTC's Services.

## **10. LIABILITY**

- 10.1. Direct Damages.** Each party's maximum liability for damages caused by its failure(s) to perform its obligations under the Agreement is limited to: (A) proven direct damages for claims arising out of personal injury or death, or damage to real or personal property, caused by the party's negligent or willful misconduct; and (B) proven direct damages for all other claims arising out of the Agreement, not to exceed in the aggregate, in any 12-month period, an amount equal to Customer's total net payments for the affected Services purchased in the

month preceding the month in which the injury occurred. Customer's payment obligations, Customer's liability for early termination charges, and the parties' indemnification obligations under the Agreement are excluded from this provision.

**10.2. Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT. CONSEQUENTIAL, INCIDENTAL, AND INDIRECT DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOST PROFITS, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

**10.3. Unauthorized Access and Hacking.** Except for physical damage to Customer's transmission facilities or Customer premise equipment directly caused by RTC's negligence or willful misconduct, RTC is not responsible for unauthorized access to, or alteration, theft, or destruction of, Customer's data, programs or other information through accident, wrongful means or any other cause while such information is stored on or transmitted across RTC-provided network facilities or Customer premise equipment.

## **11. INDEMNIFICATION**

**11.1. Mutual Indemnification for Personal Injury, Death or Damage to Personal Property.** Each party will indemnify and defend the other party, its directors, officers, employees, agents and their successors from and against all third-party claims for damages, losses, liabilities, or expenses, including reasonable attorneys' fees, arising directly from performance of the Agreement and relating to personal injury, death, or damage to tangible personal property that is alleged to have resulted, in whole or in part, from the negligence or willful misconduct of the indemnifying party or its subcontractors, directors, officers, employees or authorized agents.

**11.2. Customer Indemnification.** Customer will indemnify and defend RTC, RTC's officers, directors, agents, and employees and their successors, against all third-party claims for damages, losses, liabilities or expenses, including reasonable attorneys' fees, arising out of:

**A.** Customer's failure to obtain required permits, licenses, or consents necessary to enable RTC to provide the Services (e.g., landlord permissions or local construction licenses). This provision does not include permits, licenses, or consents related to RTC's general qualification to conduct business;

**B.** Customer's transmissions, or transmissions by parties authorized by Customer, of, information, data, or messages over the RTC-provided network leading directly or indirectly to third-party claims: (1) for libel, slander, invasion of privacy, infringement of copyright, and invasion or alteration of private records or data; (2) for infringement of patents arising from the use of equipment, hardware or software not provided by RTC; and (3) based on transmission and uploading of information that contains viruses, worms, other destructive media or other unlawful content;

**C.** RTC's failure to pay any tax to the extent that RTC relied on Customer's claimed legitimate exemption under applicable law;

**11.3. RTC Indemnification.** RTC will indemnify and defend Customer, Customer's officers, directors, agents, and employees and their successors against third-party claims enforceable in the United States alleging that Services as provided infringe any third-party United States patent or copyright or contain misappropriated third-party trade secrets. But RTC's obligations under this Section will not apply if the infringement or violation is caused by Customer's modification to RTC-provided software, equipment or Services; combination of RTC-provided services or products with other services or products; functional or other specifications that were provided by or requested by Customer; or Customer's continued use of infringing Services after RTC provides reasonable notice to Customer of the infringement. For any third-party claim that RTC receives, or to minimize the potential for a claim, RTC may, at its sole option, either:

A. procure the right for Customer to continue using the Services;

B. replace or modify the Services with comparable Services; or

C. terminate the Services.

**11.4. Rights of Indemnified Party.** To be indemnified, the party seeking indemnification must promptly notify the other party in writing of the claim (unless the other party already has notice of the claim); give the indemnifying party full and complete authority, information and assistance for the claim's defense and settlement; and not, by any act, admission, or acknowledgement, materially prejudice the indemnifying party's ability to satisfactorily defend or settle the claim. The indemnifying party will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. The indemnified party will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but the indemnifying party will retain sole control of the claim's settlement or defense.

**11.5. Remedies.** The foregoing provisions of this Section state the entire liability and obligations of the indemnifying party and any of its Affiliates or licensors, and the exclusive remedy of the indemnified party, with respect to the claims described in this Section.

## **12. TERM AND TERMINATION**

**12.1. Agreement Term.** The period set in the Agreement during which RTC provides Services to Customer is defined as the "Agreement Term." This Agreement applies from the Effective Date until the Agreement Term expires or terminates. RTC will not accept Orders for Services after expiration of the Agreement Term, but this Agreement will continue to apply to Orders properly placed during the Agreement Term. If Customer continues to use maintenance or manage Services following the termination or expiration of the Agreement Term or an Order issued during the Agreement Term for such Services, RTC may, at its sole discretion, provide those Services on a time and material basis at RTC's then-current rates without applying any discounts or credits under the Agreement, but this Agreement will govern RTC's provision of such Services.

**12.2. 60 Month Term.** When executed, following the installation of the Service, the term of this Agreement shall continue for a period of sixty (60) months thereafter ("60 Mo. Term"). The 60 Mo. Term will begin on the first day of the first billing month after the Services are installed and made available to the Customer.

**12.3. Service Order Term.** Individual Service Orders may carry their own service Term and/or termination procedures that apply to that specific contracted service, and in such case, such Term and procedures shall govern the service provided under the Service Order only.

**12.4. Termination by Either Party.** Except as otherwise provided herein, either Party may terminate this Agreement, without liability of any kind, in the event of one or more of the following: (i) the occurrence of an Event of Default with reference to the other Party's obligations, as set forth under this Agreement; or (ii) an Adverse Regulatory Determination. Service may be Terminated by Carrier, with or without notice in the event: (i) if acts of Customer, including furnishing false credit information, are such as indicate intent to defraud Carrier; (ii) Non-payment of amounts due; (iii) Violation of regulatory requirements, federal or state law or intentional abuse of the service. Carrier may also terminate for convenience with thirty (30) days written notice.

- 12.5. Early Termination.** In the event Customer terminates service before the expiration of the Service Term commitment listed on the Service Order, Customer shall pay the remaining months to fulfill the Term times the monthly Rate on the Service Order. Customer must give thirty (30) days' notice in writing to terminate service.
- 12.6. Term Expiration.** Upon Term expiration, Customer may continue the Service according to renewal options available at that time. If Customer does not elect an additional service period or does not request discontinuance, then the Service Term will automatically renew for the same service period.
- 13. FORCE MAJEURE**
- 13.1.** Neither Party shall be liable to the other, nor shall any remedy be extended, for any failure of performance under this Agreement proximately due to causes beyond that party's reasonable control, including but not limited to: acts of God, fire, explosion, flood, earthquake, tornado, storms, any law, order, regulation, action or request of any government or regulatory entity or agency, or any civil or military authority; emergencies; civil unrest, insurrections, riots, wars; power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like. Upon the occurrence of any such events, RTC and Customer shall use its reasonable efforts to notify the other Party of the nature and extent of any such condition.
- 14. GOVERNING LAW; ALTERNATE DISPUTE RESOLUTION**
- 14.1. Governing Law.** This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its choice of law provisions.
- 14.2. Waiver of Jury Trial and Class Action.** Each Party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a jury trial and any right to pursue any claim or action relating to this Agreement on a class or consolidated basis or in a representative capacity.
- 14.3 Alternate Dispute Resolution.** Any dispute arising out of or relating to this Agreement, including the alleged breach, termination, validity, interpretation and performance thereof ("Dispute") shall be resolved with the following procedures:
1. Negotiation
    - 14.3.1.1** Upon written notice of any Dispute, the parties shall attempt to resolve it promptly by negotiation between executives who have authority to settle the Dispute and this process must be completed within 30 days (the "Negotiation").
  2. Mediation
    - 14.3.2.1** If the dispute has not been resolved by negotiation in accordance with section 14.3.1, then the parties shall proceed to mediation unless the parties at the time of the dispute agree to a different timeframe. A "Notice of Mediation" shall be served, signifying that the Negotiation was not successful and to commence the mediation process. The parties shall agree within 14 days then a local mediation service provider shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party [or the mediator] states that there is no reason to continue because of an impasse that cannot be overcome and sends a "notice of termination of mediation." All reasonable efforts

will be made to complete the mediation within 30 days of the first mediation session. During the course of the mediation, no party can assert the failure to fully comply with section 14.3.1, as a reason not to proceed or to delay the mediation. The service of the Notice of Mediation shall stay the running of any applicable statute of limitations regarding the Dispute until 30 days after the parties agree that the mediation is concluded or the mediator issues a Notice of Impasse. Each side shall bear an equal share of the mediation costs unless the parties agree otherwise. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

3. Arbitration

**14.3.3.1** Any Dispute not resolved through negotiation or mediation in accordance with sections 14.3.1 and 14.3.2 shall be resolved by arbitration in accordance with the United States Arbitration Act (and other applicable federal law) and/or Arbitration rules of the State of Indiana. The arbitration will be held at a regional location in the State of Indiana using one arbitrator, unless the Dispute exceeds one million dollars (USA) in which case there shall be three neutral arbitrators, as a panel. The arbitrators may award costs and/or attorneys' fees to the prevailing party.

**14.3.3.2** The Parties further agree that the arbitrator shall have no authority to award non-monetary or equitable relief, and any monetary award shall not include punitive damages. Nothing contained in this section will limit either Party's ability to seek injunctive relief in any court. The Parties will mediate and arbitrate disputes in confidence. Each Party shall bear its own costs incurred in connection with the arbitration. Other costs will be allocated as the arbitrator directs. THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY COURT IN ANY ACTION FOR THE ADJUDICATION OF SUCH CLAIM OR DISPUTE.

**15. ASSIGNMENT**

**15.1.** Customer may not assign any rights or obligations under this Agreement or an Order without RTC's prior written consent, except that Customer may assign the Agreement, after 30 days prior written notice, to an Affiliate or an entity that has purchased all or substantially all of Customer's assets. Following written notice to Customer, RTC may assign the Agreement or an Order, in whole or in part, without Customer's prior written consent.

**16. NOTICES**

**16.1.** Notices required under this Agreement must be submitted in writing to the Party's address for notice listed in this Agreement or Order and, in the case of a dispute, notices must also be sent to:

**RTC COMMUNICATIONS CORP.**  
P.O. Box 507  
117 West 8<sup>th</sup> Street  
Rochester, IN 46975

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[CUSTOMER]  
[CUSTOMER'S CONTACT]

**17. DEFINITIONS**

**17.1.** "Effective Date" is the date that the last Party signs the Agreement.

**17.2.** "Order" means a written, electronic or verbal order, or purchase order governed by the terms and conditions of this Agreement, submitted or confirmed by Customer and accepted by RTC, which identifies specific Services; quantity ordered; RTC's Agreement number, title, and execution date; billing address; ship to address; and service/installation address, as applicable. Verbal Orders are deemed confirmed upon Customer's written acknowledgement, or Customer's use, of Service.

**17.3.** "Services" means wireline or wireless business communications services not governed by Tariffs, including basic or telecommunications services, information or other enhanced services, and non-regulated professional services provided by RTC to Customer under this Agreement.

RTC

**[CUSTOMER]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_