



CARRIER/WHOLESALE MASTER SERVICE AGREEMENT GENERAL TERMS & CONDITIONS

Blackfoot Communications' Carrier/Wholesale Master Service General Agreement Terms & Conditions (the "Service") is provided to the customer ("Customer") by Blackfoot Communications, Inc., DBA Blackfoot Communications ("Blackfoot Communications") (collectively, "Parties") pursuant to the terms and conditions of Customer's signed Service Order for the Service and the Master Service Agreement, which are incorporated herein, and these Carrier/Wholesale Master Service Agreement ("Terms").

1. TERM

1.2 The term of this Agreement begins on the Installation Date for each unique Service at each Service Location and continues for the number of months indicated on the Service Order on the "Term" line. For purposes of this Agreement, the Installation Date shall be the date on which the Service is operational and ready for use by the Customer as determined by Provider. Provider shall provide Customer notification of the Installation Date. After expiration of the initial Term, the Agreement shall automatically renew on a monthly basis at then current month-to-month rates until such time as either Party provides sixty (60) days prior written notice of termination to the other Party, or the Parties enter into a new agreement.

2. SCOPE; SERVICES; CHANGE OF LAW OR TARIFF

2.1 The "Services" (as defined in the Service Order) provided by Provider are as described in the Service Order. Any unlawful or unauthorized use of the Services by Customer shall be considered a material breach of this Agreement, and, in the case thereof, Provider may immediately terminate this Agreement and pursue any remedies available at equity or in law.

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof governing the Services, including but not limited to Federal Communications Commission rules, regulations, and laws ("Existing Rules"). If any Services are governed by a federal or state tariff, the terms of such tariff, including applicable rates, apply to the Services. If a change in a tariff requires a change in the pricing for any of the Services, the Parties agree that such change will become automatically effective as provided in the tariff. Provider will give notice of any such changes to Customer as soon as practical. Some of Provider's Services may be provided by affiliates.

2.3 Customer may make changes in the Services from the original quantities, speeds, and/or installation location(s) if (a) that Customer requests a separate Service Quote covering the change, and (b) the Parties both sign that Service Quote, thereby making it a Service Order. Additional Services, changes in quantities, change in speeds, change in locations, and other changes may require the Customer pay additional installation, construction, third-party, recurring and non-recurring charges.

3. PAYMENT TERMS

3.1 Customer agrees to pay the charges for Services set-forth on the invoice Provider sends to Customer. Unless otherwise agreed to between the Parties in a writing signed by both Parties, Provider shall invoice the Customer monthly for the Services. In addition to paying all charges for the Services, Customer agrees to pay any and all federal, state, and local



sales, use, excise, gross receipts, transaction and similar taxes, fees or surcharges, Federal or State universal service surcharges and fees, and all regulatory surcharges ("Tax" or "Taxes") assessed by Provider on the Services.

- 3.2** Amounts payable under this Agreement are due and payable within twenty (20) days after the date of invoice or as otherwise stated on the invoice ("Payment Due Date"). If the Payment Due Date falls on a Sunday or on a holiday that is observed on a Monday, the payment date will be the first non-holiday day following such Sunday or holiday. If such a payment date falls on a Saturday or on a holiday that is observed on Tuesday, Wednesday, Thursday or Friday, the payment date shall be the last non-holiday day preceding such Saturday or holiday. After the Payment Due Date, late payment charges are applicable and they will be calculated and assessed against the unpaid balance based on the lesser of 1.5% per month and the highest legal interest rate. Subject to sections 3.4 and 4.1 below, Provider may, without limiting its right to pursue other remedies, immediately terminate Services without any further notice to Customer for any unpaid balance that remains outstanding thirty (30) days after the date Provider sends written notice of nonpayment to Customer if Customer fails to cure that nonpayment during the thirty (30) day cure period.
- 3.3** Provider may request a security deposit or additional prepayment for services at any time should it determine that Customer has no established satisfactory credit with Provider or Customer is delinquent in making its payments two or more times in any rolling twelve-month period, or is being reconnected after a disconnection. Cash deposits and accrued interest, if applicable, will be credited to Customer's account or refunded, as appropriate, upon the earlier of the expiration of the then-existing term of the Agreement or the establishment of satisfactory credit with Provider.
- 3.4** Customer shall provide written notice and supporting documentation for any good faith dispute with charges in an invoice (a "Billing Dispute") within thirty (30) days of the invoice date. Customer must pay the amount or portion of the invoice that is not subject to a Billing Dispute in accordance with the payment terms in section 3.2 above. If Customer does not report to Provider a Billing Dispute within the thirty (30) day period, Customer shall have irrevocably waived its right to dispute the invoice and any amounts billed pursuant to the invoice. If a Billing Dispute is not resolved within forty-five (45) days after receipt of such notice, either Party may commence arbitration against the other Party, which shall be submitted to a single arbitrator under the commercial arbitration rules of the American Arbitration Association ("AAA"). The decision of the arbitrator shall be final and binding upon the Parties. No appeal may be taken from the arbitration. The arbitration shall be held in Missoula, Montana at a site selected by AAA. The arbitrator shall be selected pursuant to the rules of AAA. Except in cases where an arbitrator determines that Customer has improperly failed to pay charges in an invoice or invoices and therefore Customer is liable for all Provider's costs and attorney fees associated with the dispute and arbitration, each Party shall bear its own costs of arbitration, including attorney fees, and the Parties will equally split the arbitrator's fees.

4. DEFAULT AND BREACH; TERMINATION

- 4.1** If Customer defaults in the payment of any amount due hereunder, if Customer files bankruptcy or is subject to an involuntary bankruptcy, if a receiver is appointed over Customer or its assets, if Customer makes an assignment for the benefit of creditors, or if either Party violates any other material provision of this Agreement and such default or violation continues for thirty (30) days after written notice thereof, the other Party may, except as provided otherwise in the Agreement, terminate this Agreement and seek relief in accordance with any remedy under this Agreement.



4.2 Customer understands that Provider has a substantial investment in labor, facilities and equipment purchased to provide the Services to the Customer. Therefore, if Provider terminates this Agreement for cause (“cause” means a failure to cure a material default within the thirty day period outlined in above section 4.1), or if Customer terminates this Agreement without cause, Customer shall pay early termination charges described below in this section 4.2. If Customer reduces speeds or disconnects all or part of the Services after installation to a level that is below the Service speeds and quantities established in this Agreement, Customer must give sixty (60) days prior notice of such reduction in speed and/or disconnection and, in either case, early termination charges, as described below in this section 4.2, shall apply to the Services where speeds were reduced and to disconnected Services. Customer shall pay one hundred percent (100%) of the monthly rate for the Services through the sixty (60) day notice period. Upon termination or disconnection as described above in this section 4.2, Customer shall pay a charge that is equal to seventy five percent (75%) of the monthly rate for the Services terminated/disconnected/reduced multiplied by the number of months, or portion thereof, remaining in the then-existing term of the Agreement. In addition, Customer shall be liable for any additional charges and fees assessed by third party providers on Provider for the provision of the Services.

5. EFFECT OF TERMINATION

5.1 Upon termination of this Agreement: (a) Provider will immediately cease providing the Services; (b) any and all payment obligations of Customer under this Agreement will become due immediately; (c) each Party will, within thirty (30) days of receiving a request, return all Confidential Information of the other Party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement; and (d) Customer will permit Provider to remove from Customer’s premises all of Provider’s equipment and property within ten (10) days of Provider’s request.

6. VOICE SERVICES

6.1 Certain IP-based voice services include a 911 and/or an enhanced 911 (“E-911”) function that may differ from the 911/E-911 function offered via traditional telephony service and equipment. As such, it may have certain limitations. CUSTOMER ACKNOWLEDGES AND ACCEPTS ANY LIMITATIONS OF 911/E-911. In order for Customer’s and Customer’s end-users’ 911/E-911 calls to be properly directed to emergency services, Provider must have Customer’s and Customer’s end-users’ correct service location address. If Customer or Customer’s end-user moves all or a portion of the Service to a different service location address without prior notice or approval from Provider, Customer’s and Customer’s end-users’ 911/E-911 calls may be directed to the wrong emergency services authority, may transmit the wrong service location address, and/or fail altogether. Customer further understands and acknowledges that some voice services use electrical power at the Customer’s and Customer’s end-users’ service location. If there is an electrical outage, 911/E-911 calling and all other voice services may be interrupted if there is no battery backup installed, it fails, or is exhausted, CUSTOMER ACKNOWLEDGES AND AGREES, FOR ITSELF AND FOR ITS END-USERS, THAT NEITHER PROVIDER NOR ITS AFFILIATES SHALL BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICE, AND/OR INABILITY TO ACCESS EMERGENCY SERVICES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS PROVIDER, ITS AFFILIATES, SHAREHOLDERS, OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY, OR USER OF THE SERVICES



RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E-911.

- 6.2** Unlimited long distance services may not be used with automatic outbound dialing systems, call distribution systems, telemarketing or call center applications, or for Internet access. Usage may be monitored by Provider and Customer may be required to show compliance if usage exceeds 1500 minutes per month per telephone line or per trunk or per call path or if non-compliance is indicated. Provider reserves the right to charge Customer for toll usage in excess of 1500 per month, per telephone line, trunk or call path.

7. SERVICE LEVEL AGREEMENT AND OTHER TERMS AND CONDITIONS

- 7.1** Some services are subject to certain service level agreements (“SLAs”) and Terms and Conditions, that can be found at <http://www.blackfootcommunications.com/service-agreements/>.

8. CONFIDENTIAL INFORMATION

- 8.1** Each Party acknowledges that it will have access to certain confidential information of the other Party concerning other Party’s business, plans, customers, technology, and products, including the terms and conditions of the Agreement (“Confidential Information”). Confidential Information will include, but not be limited to, each Party’s proprietary software and customer information. Each Party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by the Agreement, nor disclose to any third party (except as required by law or to that Party’s attorneys, accountants and other advisors as reasonably necessary), any of the other Party’s Confidential Information and will take reasonable precautions to protect the confidentiality of such information. If a Party is required by law to produce the other Party’s Confidential Information, the disclosing Party shall provide the other Party prompt notice to enable the other Party to take appropriate measures to prevent or limit such production. Customer agrees to give Provider documentation identifying authorized individuals that may communicate with Provider in execution of this agreement. Customer commits to maintaining that list of authorized individuals as changes occur and will not hold Provider liable where the customer fails to maintain their list of authorized individuals. Confidential Information does not include any information that: (a) is in the public domain without a breach of confidentiality; (b) is obtained from a third party without violation of any obligation of confidentiality; or (c) is independently developed by a party without reference to the Confidential Information of the other party.

9. INDEMNIFICATION

- 9.1** Customer shall defend, indemnify, and hold harmless Provider and Provider’s directors, officers, employees, direct and remote affiliates from and against any and all claims, actions and demands brought against one or more of such parties, as well as all damages, costs, and attorney fees arising therefrom, alleging: (a) with respect to the Customer’s business: (i) infringement or misappropriation of any third party intellectual property rights; (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity of a third party; or (iii) spamming, or any other offensive, harassing or illegal conduct or violation of Provider’s Internet and e-Commerce Terms and Conditions, and/or other policies; (b) any damage or destruction to any Provider property or other property caused by Customer or its representatives or agents; (c) any personal injury or property



damage to any Provider employee or agent or Provider property arising out of Customer or its representative's or agent's conduct, unless such injury or property damage is caused solely by Provider's gross negligence or willful misconduct, and (d) any act or omission that otherwise violates this Agreement.

10. ATTORNEY'S FEES

10.1 If a dispute arises out of this Agreement, the prevailing Party shall be entitled to an award of its costs, expenses, and reasonable attorney's fees.

11. LIMITATION OF LIABILITY AND WARRANTIES

11.1 NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT REGARDLESS OF THE FORM OF PUNITIVE ACTION – WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, EQUITY, TORT OR OTHERWISE. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED. PROVIDER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES; INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND WARRANTIES ARISING FROM COURSE OF DEALING OR TRADE PRACTICE. PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR SECURE. PROVIDER'S LIABILITY TO CUSTOMER FOR ANY LOSS RELATING TO OR ARISING FROM THIS AGREEMENT SHALL NOT EXCEED IN TOTAL THE AMOUNT THAT PROVIDER HAS BEEN PAID, FOR THE IMPACTED SERVICE, BY CUSTOMER FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE ACCRUAL OF THE EVENT OR EVENTS GIVING RISE TO SUCH LIABILITY REGARDLESS OF WHETHER BASED ON BREACH OF CONTRACT, STATUTORY VIOLATION(S), BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE), OR ANY BASIS IN LAW OR EQUITY.

12. EQUIPMENT

12.1 Except as stated otherwise in the Agreement, Customer understands and agrees (a) all the equipment and intellectual property rights related to the Services are owned exclusively by Provider, (b) Provider has not granted Customer any rights or licenses to such equipment or intellectual property except as contained in this Agreement. In exchange for use of such equipment, Customer accepts full responsibility for equipment located on Customer's premises and agree to pay the full replacement cost of for any equipment that is lost, stolen, damaged, sold, transferred or in any way not returned in working order to Provider upon termination of this Agreement.

13. SEVERABILITY

13.1 If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

14. AMENDMENT



14.1 Provider reserves the right to amend its SLAs, Internet and e-Commerce Terms and Conditions, and other terms and conditions found at <http://www.blackfootcommunications.com/service-agreements/>. Except with regard to the immediately preceding sentence, a change to this Agreement may only be made in a writing signed by the Parties.

15. ASSIGNMENT

15.1 Customer may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Provider. Provider may assign this Agreement to an affiliate under common control of Provider at any time and without notice to the Customer. Provider may assign this Agreement to a third party not affiliated with Provider and provide Customer notice of such assignment.

16. WAIVER

16.1 Except as otherwise provided herein, neither Party's failure to enforce any right or remedy available to it under this Agreement in a given situation will be construed as a waiver of such right or remedy, or a waiver of any other provision hereunder in that situation or any future situation.

17. NOTICES

17.1 Any notices required by or concerning this Agreement will be in writing and will be sufficiently given if delivered by any of the following methods to the address(es) identified on the Service Order: personally in writing, by prepaid overnight express service, by facsimile with electronic confirmation, by certified mail with return receipt requested, or by email with proof of receipt and, in the case of notice to Provider, by email to carrierrelations@blackfoot.com.

18. FORCE MAJEURE

18.1 Except for customer's obligation to pay for Services, neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its reasonable control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts and outages, communication facility cuts not caused by Provider, outages occurring in relation to facilities not owned by Provider, volcanic action, environmental disturbances, weather conditions, inability to secure products or services of third parties at reasonable costs or transportation facilities, or acts or omissions of transportation carriers (each is a "Force Majeure Event"). The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day-to-day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike, the Parties agree to provide Service to each other at a level equivalent to the level they provide themselves. In no instance shall a failure to make payments for Services be considered a Force Majeure Event.

19. GOVERNING LAW; VENUE



19.1 Montana state law, without regard to choice-of-law principles, shall govern all matters arising out of, or relating to, this Agreement. The Parties agree venue shall exclusively be in the State and Federal courts in Missoula, Montana.

20. ENTIRE AGREEMENT

20.1 This Agreement (including the Service Order and other documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Agreement and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, including but not limited to, any proposal or term sheet to the extent they relate in any way to the subject matter of this Agreement.