



## THE CHILLICOTHE TELEPHONE COMPANY (“HORIZON”)

### TERMS AND CONDITIONS

**Customer Responsibility:** Customer shall obtain and maintain throughout the term of this Agreement such consents (including, without limitation, landlord and land owner consents) as are necessary to timely permit, and shall timely permit, Horizon personnel to install, deliver, operate and maintain the Services and any necessary equipment, as contemplated herein, at Customer's facilities. Customer shall permit Horizon to access the Customer or Customer's end user facilities at reasonable times as needed to install, configure, operate, upgrade, maintain or remove its equipment and other service components located at Customer's facilities. Customer shall make and maintain throughout the term all site preparations necessary to permit the installation, maintenance, and operation of the Services and any equipment as specified by Horizon. Provided Customer properly performs all necessary site preparation and provides Horizon with all required consents, Horizon shall use commercially reasonable efforts to install the Services in accordance with a mutually agreed upon schedule. Customer shall have three (3) days after receipt of a Completion Notice (“Acceptance Period”) to test and provide Horizon notice accepting or rejecting the Service. If Customer determines during the Acceptance Period that the Service is not operating in conformity with Horizon's service specifications, Customer shall immediately notify Horizon (specifying in reasonable detail the defect or failure of the Service). In the event that Customer notifies Horizon in writing that the Service is unacceptable, Horizon shall, within thirty (30) days following receipt of such notice, remedy the Service and re-deliver such Service to Customer. The foregoing process shall continue until the Service shall have been accepted in writing by Customer or three attempts have been made by Horizon without the Service complying with Horizon's service specifications. If Customer fails to notify Horizon of its acceptance or rejection of the Completion Notice within any applicable Acceptance Period, Customer shall be deemed to have accepted such Service. Customer's sole and exclusive remedy for Horizon's failure to provide Service as set forth above shall be to terminate the failed Service without liability to either party.

**Installation Fee:** The installation fee provided to Customer in any applicable order(s) (the “Estimate”) pursuant to the Agreement is preliminary and tentative, rendered on less than all necessary information, and, as such, it is subject to change based on Horizon's determination that its costs may exceed the Estimate. Should Horizon make such a determination, it shall provide written notice to Customer that includes a revised installation fee (a “Fee Change Notice”). Customer shall pay to Horizon the difference between the amount of the revised installation fee set forth in the Fee Change Notice and the amount of the Estimate. Customer shall make such payment no more than thirty (30) days after receiving the Fee Change Notice. If Horizon issues a Fee Change Notice to Customer, either Customer or Horizon may, at their respective options, terminate the Agreement without penalty by delivering written notice to the non-terminating party no later than, with respect to Customer, fifteen (15) days following its receipt of the Fee Change Notice and, with respect to Horizon, thirty (30) days following its issuance of the same.

**Obligation to Pay:** All invoices are due and payable upon receipt. Customer shall pay invoices in full, including any applicable tax or surcharges, within twenty-five (25) days of receipt. After 25 days, any remaining balance on the account is deemed overdue, and Horizon may charge a late fee for all overdue amounts. The late fee will be the lower of one and one-half percent (1½%) per month assessed in full in the first month of the billing period or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. In



addition to the foregoing, and all other available remedies, following ten (10) business days' notice, Horizon may discontinue Customer's access to the Service in whole or in part, until such overdue amounts, together with interest, are paid. Horizon may require a security deposit, letter of credit, advance payment for Service or other reasonable assurances of payment from Customer. Failure to remit payment for any invoice within sixty (60) days of invoice shall constitute a default of a material term of this Agreement, and Horizon may terminate this Agreement, and Customer shall be liable for any past due charges, interest, late fees, termination fees and Horizon's attorney's fees.

**Termination:** In the event that Customer fails to comply with any applicable laws or regulations or the terms of this Agreement, Horizon may suspend or discontinue Customer's Services in whole or in part without advance notice. In addition, Horizon may immediately suspend Customer's use of the Service if such use is determined by Horizon, at its sole discretion, to be resulting in a material degradation of Horizon's network, until such time as such degradation has been remedied. In the event of a suspension, Horizon may require a reconnect charge to restart the suspended Service. Upon the termination or expiration of this Agreement: (a) Horizon's obligations hereunder shall cease; (b) Customer promptly shall pay all amounts due and owing to Horizon for Services delivered prior to the date of termination or expiration and any applicable de-installation fee or termination fees, if any; (c) Customer promptly shall cease all use of any software provided by Horizon hereunder, and shall return such software to Horizon; and (d) Customer shall return to Horizon or permit Horizon to remove, in Horizon's sole discretion, the equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing Horizon for the repair or replacement, at Horizon's discretion, of any equipment not returned in accordance with this section. In addition, notwithstanding anything to the contrary herein, upon early termination of an order by Customer for any reason, Customer shall pay Horizon any unpaid portion of the installation fee set forth in the applicable order(s), and at Horizon's option, (1) promptly pay Horizon a termination fee equal to all of the Services charges that would have been due for the remainder of the initial term or the then-current renewal term (exclusive of any discount previously received by Customer) or (2) reimburse Horizon for all volume, term or other discounts and credits provided in anticipation of full performance of Customer's obligations, as applicable. Upon any termination, Customer shall pay the greater of the installation fee or the costs for Horizon to complete any construction associated with an order for Service. Customer acknowledges that such fees represent a reasonable determination of the direct and liquidated damages caused by Customer's default. The foregoing shall be in addition to any other rights and remedies that Horizon may have under this Agreement or at law or equity relating to Customer's breach.

**Service Credits:** In the event of a complete failure of the Service or material breach of the attached **Addendum B - Product Quality Commitment for High Availability Business Services** due to technical malfunction of the telecommunications network operated by Horizon, Customer may be entitled to and therefore may request a credit per the guidelines listed in **Addendum B**. **EXCEPT TO THE EXTENT OF THE SERVICE CREDITS, HORIZON MAKES NO EXPRESS OR IMPLIED WARRANTIES TO CUSTOMER WITH RESPECT TO THE SERVICES OR THE EQUIPMENT USED TO PROVIDE THE SERVICES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR THE USE INTENDED AND NON-INFRINGEMENT WITH THE RIGHTS OF OTHERS.**

**Billing:** All billing inquiries should be directed to 740-772-8588 or via mail to the attention of Business Account Manager, PO BOX 480, Chillicothe OH 45601.



**Term:** If your Agreement requires you to keep service for a minimum Term, the Term begins on the date service is online. Unless earlier terminated pursuant to the “Termination” section of this Agreement, this Agreement shall be in effect for the “Contract Term” set forth on page 1 and shall thereafter move to month to month at the then-current rate for the Services unless either party notifies the other party in writing at least thirty (30) days before the expiration of the then-current period of such party’s intent not to renew. In the event that Customer commits to a longer term commitment at the end of the initial term, Horizon will negotiate in good faith with Customer.

**Renewal:** Customer has the option to renew this Agreement for a new Term at Horizon’s then current offers and rates. If you are renewing your Agreement the Term begins the first day after the current term expires. If your Agreement has expired before you sign a Renewal Agreement the Term begins the date the Renewal Agreement is signed.

**Right of Renewal:** Customer agrees that should it determine to accept a proposal from a new service provider upon the scheduled expiration of this Agreement, it will first provide written notice to Horizon together with a copy of the new service provider’s proposed term and pricing, and Horizon shall have five (5) business days from receipt of such notice to provide Customer with written notice that it agrees to match the new service provider’s proposed term and pricing. If Horizon provides such notice, this Agreement shall be extended for the term and at the same pricing as proposed by the new service provider. Customer further agrees that, for the duration of this Agreement and any extension hereof, Horizon shall have the same right to match offers from other service providers that Customer determines to accept with respect to any and all telecommunication and broadband services agreements, whether new or renewals, except where an agreement existing prior to the date of this Agreement provides the other service provider with a right of renewal or a right to match competitive offers with respect to renewal of its existing agreement.

**Liens and Encumbrances:** Customer shall not, directly or indirectly, create or impose, or purport to create or impose, any lien on: (i) any asset or property interest of Horizon, or (ii) this Agreement or any interest herein. Customer, at its own expense, shall take such action as may be necessary to discharge any such lien.

**Compliance with Laws:** Each party shall perform its respective rights and obligations hereunder in material compliance with all applicable laws, rules, and regulations imposed by any governmental authority of competent jurisdiction.

**Force Majeure Events:** Neither party shall be liable to the other party for any failure of performance under this Agreement to the extent that such arises from causes beyond its reasonable control, including but not limited to the following events: severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, cable cuts, shortages or delays caused by third-party vendors, accidents, fire, flood, or other acts of God, and unavailability of materials and/or qualified labor to perform the work necessary.

**Indemnification:** Customer agrees to defend, indemnify and hold harmless Horizon, Horizon Telcom Inc. and their respective officers, directors, employees and agents, from and against all claims, liabilities, damages and expenses, including attorneys’ and other professionals’ fees, arising out of or relating to (i) the use of the Service; (ii) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents or (iii) any breach or default by Customer of its representations and covenants contained in this Agreement. Horizon agrees to defend, indemnify and hold harmless Customer from and against all claims, liabilities, damages and expenses, including



attorneys' and other professionals' fees, arising out of or relating to personal injury or property damage caused by the negligence or willful misconduct of Horizon or its employees or agents.

**Confidentiality:** All information relating to Customer that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Horizon and will not be disclosed or used by Horizon except to the extent that such disclosure or use is reasonably necessary to the performance of Horizon's work. All information relating to Horizon that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Customer and will not be disclosed or used by Customer except to the extent that such disclosure or use is reasonably necessary to the performance of Customer's duties and obligations under this Agreement. These obligations of confidentiality will extend for a period of one year after the termination or expiration of this Agreement, but will not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

**Disclaimer of Warranty:** Customer assumes total responsibility for use of the Services, and Customer agrees to access the Internet at its own risk. Horizon exercises no control over and has no responsibility whatsoever for the content transmitted or accessible through the Service or the Internet or actions taken on the Internet, and Horizon expressly disclaims any responsibility for such content or actions. Except as specifically set forth herein, the Services and related equipment and other materials used in connection with the Services, if any, are provided without warranties of any kind, either express or implied, including but not limited to warranties of title, non-infringement, system integration, data accuracy, quiet enjoyment, merchantability or fitness for a particular purpose. No advice or information given by Horizon, its affiliates or its contractors or their respective employees shall create any warranty. Horizon does not represent or warrant that the Services will meet Customer's requirements, will prevent unauthorized access by third parties, will be uninterrupted, secure or error free or that any minimum transmission speed is guaranteed at any time. In addition, Customer acknowledges and agrees that transmissions over the Internet may not be secure. Customer further acknowledges and agrees that any material and data uploaded, downloaded, or otherwise obtained through the use of the Services is done at Customer's own discretion and risk and that Customer will be solely responsible for any damage to Customer's computer system or loss of data that results from the uploading, downloading or other transmission of such materials or data. In addition, Customer acknowledges and agrees that Horizon's third party service providers do not make any warranties to Customer under this Agreement, and Horizon does not make any warranties on behalf of such service providers under this Agreement, express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, non-infringement, system integration, data accuracy or quiet enjoyment.

**Limitation of Liability:** IN NO EVENT SHALL HORIZON BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS, REVENUE OR DATA, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER OR NOT HORIZON HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF HORIZON TO CUSTOMER FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES.

**Waiver of Jury Trial:** EACH PARTY WAIVES ITS RIGHT TO A TRIAL BY JURY FOR ALL CLAIMS AGAINST THE OTHER PARTY ARISING OUT OF THIS AGREEMENT, INCLUDING COUNTERCLAIMS.



**Risk of Loss:** Customer shall be responsible for replacing or repairing any and all equipment installed under this Agreement if the same is damaged due to acts of God, vandalism, or other casualty, or force majeure unless and to the extent that such damage or loss is caused or contributed to by the negligence, recklessness or intentional misconduct of Horizon or Horizon's subcontractors.

**Excuse from Performance of Certain Obligations:** To the extent that Horizon's performance under this Agreement is materially hindered or rendered impossible by Customer's interference with Horizon's equipment or by Customer's refusal to allow reasonable access to such equipment, such non-performance shall be excused.

**Modification:** Horizon shall have the right, but not the obligation, to upgrade, modify and enhance the Horizon equipment and the Services and take any action that Horizon deems appropriate to protect and enhance the Services and its facilities. Horizon also shall have the right to add to, modify or delete any provision of this Agreement. Horizon will notify Customer of any material adverse change in this Agreement or Service descriptions by posting notice of such change on the Horizon's web site or by email. In any event, if Horizon modifies this Agreement and such modification has a material adverse impact on Customer's ability to use the Services, Customer may, within the thirty (30) day period following the date of such modification, terminate without penalty the order relating to the affected Service. Otherwise, this Agreement may not be amended or modified without the written consent of both parties.

**Relation of Parties:** The performance by Horizon of its duties and obligations under this Agreement will be that of an independent contractor, and nothing herein will create or imply an agency relationship between Horizon and Customer, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

**Employee Solicitation/Hiring:** During the term of this Agreement and for twelve (12) months after the termination or expiration of this Agreement, neither party will directly or indirectly solicit or offer employment to or hire any employee, former employee, subcontractor, or former subcontractor of the other without written consent of the other party. The terms "former employee" and "former subcontractor" will include only those employees or subcontractors of either party who were employed or utilized by that party on the Effective Date of this Agreement.

**Governing Law:** This Agreement shall be governed and enforced in accordance with the laws of the State of Ohio, without regard to conflicts of laws principles.

**Severability:** If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then (i) both parties shall be relieved of all obligations arising under such provision and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent, and (ii) the remainder of this Agreement shall be valid and enforceable.