



Terms of Service.

BalsamWest Fibernet, LLC Terms Of Service Revised 5/1/2011

These Terms of Service (“Terms”) establish the terms and conditions which govern the provision and use of all Services purchased by Customer from BalsamWest FiberNET, LLC (“CARRIER”). The word “Customer” refers to the entity that has purchased a Service from CARRIER.

1. Introduction

CARRIER will provide Customer with services (the “Service(s)”) as described in various Service Order Agreements, service orders, service tickets, work orders and other contracts and agreements (each a “Service Order”). These terms apply to all Service Orders to the extent these Terms are incorporated in a Master Services Agreement or other contract instrument (the “MSA” or “Agreement”) that governs the Service Orders and is signed by CARRIER and Customer. In the event of a conflict or inconsistency between the provisions of these Terms and those of such Agreement or a Service Order (including applicable Service Order addendum(s)), precedence will be given to the documents in the following order (1) the Service Order, including any Service Order addendum(s), (2) the Agreement and (3) these Terms.

2. Provision of Service by CARRIER.

(A) CARRIER will provide Services, including enhancements or modifications thereto, where technically feasible and subject to availability of network capacity or other required resources. A Service Order shall be deemed accepted by CARRIER at the time CARRIER begins provisioning of the Services pursuant to the Service Order. Whether or not CARRIER enters into a Service Order to provide Services to Customer is in CARRIER’s sole discretion. In addition to the terms of any Service Order, the Agreement and these Terms, the Services will be provided in accordance with all applicable federal, state, local laws, rules, regulations and orders of any applicable governing authority (collectively, the “Law” or “Laws” as context requires) and to the extent of any conflict, the Law shall control.

3. Customer Use of Service.

(A) Customer shall use the Services for lawful purposes only and in accordance with these Terms and any other agreement signed by the parties. Customer represents and warrants that it will (i) comply with all Laws that are applicable to the Customer’s use of the Services; (ii) recognize and agree that the Services provided to Customer are

specifically for the internal use of Customer and its specified affiliates, if any, and (iii) not resell the Services or sublease any of the CARRIER Equipment. Customer agrees that it will (1) upon request, take any and all actions necessary in order to install and activate the Services; (2) provide adequate facilities at no cost to CARRIER to house and operate CARRIER's Equipment; (3) be solely responsible to establish and maintain security measures (including, without limitation, codes, passwords or other features) necessary to restrict access to its computers, servers or other equipment through the Services; (4) be solely responsible for all fraudulent, unauthorized, illegal or improper use of the Services by persons accessing those Services through Customer's facilities, equipment or Service Address; (5) not permit any unauthorized use of the Services; (6) comply with CARRIER's Acceptable Use Policy ("AUP") as described in Section 18 below; (7) comply with any written instructions for use provided by CARRIER; (8) notify CARRIER immediately of any loss of Service or any other problems with any of the Services; and (9) maintain and identify to CARRIER in writing Customer contacts who are authorized to represent Customer on any aspect of the Services and the account (including escalations, maintenance and all requests for moves, additions, deletions or changes to the Services).

(B) CARRIER reserves the right to terminate or suspend Services, in whole or in part, and/or remove Customer's content from the Services, if CARRIER believes, in its sole discretion, the Services are being used in violation of the AUP; are being used in an unlawful, abusive or fraudulent manner or are being used in any manner that causes harm or interferes with CARRIER's ability to provide Services to Customer or others. Further, if CARRIER, in its sole discretion, believes that Customer has violated the Version 1 – May 1, 2011 2 above restrictions with regard to content, CARRIER may forward the objectionable material, as well as Customer's communications with CARRIER and Customer's personally identifiable information to the appropriate authorities in accordance with applicable Law. Customer hereby consents to such forwarding. CARRIER's actions or inaction under this Section shall not constitute review or approval of Customer's use or content. Customer will indemnify and hold CARRIER harmless against any and all liability arising from the content transmitted by or to Customer or to any other users using the Services and from any use prohibited under these Terms. A "user" means any person, whether authorized or unauthorized, using the Service and/or CARRIER Equipment provided to Customer.

(C) A violation of the restrictions and obligations as outlined above in this Section 2 will be considered a material breach and in the event that CARRIER terminates the Services, Customer remains responsible for any charges provided for in the Service Order, all of which will immediately become due and payable pursuant to Section 7(D) below. In the event CARRIER elects to suspend any Services, Customer must pay all resumption and other charges, including but not limited to, past due charges, late payment fees and a resumption charge.

4. Credit Approval and Security Deposit.

CARRIER may withhold implementation of Service pending credit approval of Customer, and Customer does hereby authorize CARRIER to take such steps as

CARRIER deems necessary to review Customer's credit history. Customer agrees to provide a deposit as a guarantee of payments under the Agreement or to increase a prior deposit should CARRIER find the Customer credit standing, financial circumstances or payment history unsatisfactory at any time or if Customer's account incurs excessive usage charges as determined by CARRIER in its sole discretion. The amount of the deposit will be in CARRIER's sole discretion. CARRIER reserves the right to apply a deposit amount to any past due charges under the Agreement, with or without notice to Customer. Customer also agrees to re-deposit the amount so applied, promptly at CARRIER's request, or CARRIER may terminate Services without notice to Customer as described in Section 7(B) below.

5. Taxes and Fees.

Any applicable foreign, federal, state or local use, excise, gross receipts, sales, value added or privilege taxes; duties, surcharges to recover universal service contributions, regulatory assessment fees or other taxes, fees, charges, surcharges or similar liabilities imposed on or based upon the provision, sale or use of the Service furnished by CARRIER (collectively, "Taxes and Additional Charges") shall be paid by Customer in addition to the recurring and non-recurring rates and charges set forth in each Service Order, excluding taxes based upon CARRIER's net income or real property. Applicable Taxes and Additional Charges shall include those, if any that are imposed after the execution of this Agreement and shall also include all interest, penalties, fees and other charges for late payment. In the event Customer believes it is exempt from any Taxes and Additional Charges, Customer shall provide CARRIER with a valid exemption certificate from the appropriate taxing authority evidencing such claimed exemption. Customer shall be liable to CARRIER for any and all costs, expenses and liabilities of any kind incurred by CARRIER (including, without limitation, the time value of money related to tax refunds for payments made by CARRIER based upon Customer's Service that are subsequently exempt from taxation) in connection with an otherwise valid exemption certificate not provided by Customer to CARRIER within one (1) month of the Service Date.

6. Service Charges and Payment.

(A) CARRIER's billing for any Service begins when Services are available for use. "Available for use" shall mean: (i) when the Services are available to Customer if self-provisioned or (ii) when the Services are available to Customer when provisioned by CARRIER but no earlier than the agreed upon Service delivery date (whether or not activated by Customer).

(B) Except as may be provided otherwise in the Agreement or a Service Order, CARRIER will send a single monthly invoice for the Services to one location designated by the Customer, with usage-based Services invoiced in arrears, and all other Services invoiced in advance. One-time installation and set-up fees are due upon completion of the installation. Customer is liable for all amounts owed under each Service Order. Payment in U.S. currency is due within twenty-five (25) days after the invoice date (the "Due Date"), except as otherwise provided in Section 6(C) below with respect to billing

disputes. Unless otherwise agreed by the parties, Customer shall send its payment to the address, which may be an electronic or a physical address, specified on the invoice. In addition to charges for Services as specified Version 1 – May 1, 2011 3 in the Agreement or Service Order, Customer is also liable to pay CARRIER for all excise, sales, use or other taxes; all fees or charges applicable to CARRIER's provision of Service to Customer (including but not limited to Universal Service Fund ("USF"), Telecommunications Relay Service ("TRS") and number porting fees); and any such surcharges as may be identified in an applicable Service Order. Such taxes, fees, charges and surcharges will be separately stated in the applicable monthly invoice. CARRIER may assess a late charge of the lower of 1.5% per month or the maximum rate allowed by Law for Customer's failure to pay in full by the Due Date. Customer shall reimburse CARRIER for reasonable attorneys' fees and any other costs associated with collecting delinquent or dishonored payments. Late charges and any collection fees will be invoiced on the next regular monthly invoice. Restrictive endorsements or other statements on payment checks accepted by CARRIER will not apply.

(C) If Customer disputes any charges billed pursuant to these Terms or any Service Order, Customer must notify CARRIER in writing no later than the invoice Due Date detailing the disputed charges. Such billing disputes must be submitted to billingdisputes@balsamwest.net and must include details of the amount disputed, the reason for the dispute and any other relevant information. Unless otherwise agreed in writing, CARRIER will issue credits only for charges disputed and submitted in writing as provided in this Section 6(C). Customer must pay all undisputed charges by the Due Date. All claims regarding disputed charges not submitted in such manner as described herein are hereby waived. If, after investigation, CARRIER determines that a refund is due, it will be credited on a subsequent invoice. Upon receipt of notice from CARRIER that the disputed charges are correct and payable, all past due amounts must be paid, in addition to any late payment charges described above in Section 6(B). Payment disputes under this Section 6 shall not be subject to those dispute resolution provisions under Section 18.

7. Default and Termination.

(A) In the event of a material breach of these Terms, the Agreement or any Service Order by CARRIER that CARRIER fails to cure within thirty (30) days of receipt of notice from Customer, Customer, as its sole and exclusive remedy, may terminate the adversely affected Service Order upon providing thirty (30) days prior written notice to CARRIER; provided, however, that if CARRIER begins to cure such material breach within such thirty (30)-day period but is unable to reasonably complete the cure, CARRIER shall be entitled to an extension of time to cure the material breach not to exceed sixty (60) days from receipt of Customer's initial notice thereof, unless otherwise agreed by the parties. In the case of termination pursuant to this Section 7(A), Customer shall immediately pay to CARRIER: (i) any unpaid or waived nonrecurring or installation charges for Services performed or provided prior to termination, and (ii) prorated monthly recurring charges based on the number of days for which Service was provided prior to the effective date of termination; provided, however, CARRIER shall credit any amounts prepaid for Services beyond the effective date of termination.

(B) CARRIER may terminate any Service or Service Order, in whole or in part, or

suspend the Service at any time upon written notice to Customer, in the event of: (i) any failure of Customer to pay any undisputed amounts due hereunder pursuant to the terms in Section 6 above; (ii) any material breach by Customer of any provision of these Terms, including without limitation obligations in Section 3) above, the Agreement or any Service Order; or (iii) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Customer.

(C) If (i) Customer cancels or terminates any Service provided under any applicable Service Order prior to the end of the term of such Service Order (other than as permitted in Section 7(A) above), or (ii) if any Service or Service Order is terminated by CARRIER prior to the end of the term of the applicable Service Order pursuant to Section 7(B) above, then in each case Customer agrees to pay CARRIER a termination charge as follows: (a) the charges described in Section 7(A)(i)-(ii) above, plus (b) an amount equal to the number of months remaining in the term of the terminated Service Order(s) multiplied by the amount of the Customer's billed monthly recurring charge, said sum being not a penalty but being CARRIER's actual damages incurred arising out of said termination. All termination charges shall be due and payable within thirty (30) days of the effective date of termination.

(D) Customer's obligations to make payments under Section 6, this Section 7, or otherwise under these Terms, the Agreement and/or any Service Order shall survive the termination or other cancellation or expiration of these Terms, the Agreement and/or any Service Order. Version 1 – May 1, 2011 4

8. Service Standards; Support.

CARRIER will exercise its reasonable best efforts to provide the Services in accordance with these Terms, the Agreement and the applicable Service Order. In the event of an interruption of Service ("Outage"), Customer must report the Outage, together with the Customer number to CARRIER at the following number: 1-800-693-4217. If Customer fails to adhere to such reporting process, CARRIER shall have no obligation to restore the Service. Notwithstanding the foregoing, Customer may not terminate the applicable Service or Service Order in accordance with the preceding sentence if the Outage was the result of or caused by (a) the fault or negligence of Customer or Customer's equipment or (b) other circumstances beyond the control of CARRIER, including but not limited to any Excusable Delay or Failure (defined below).

9. Customer Proprietary Network Information ("CPNI"); Privacy Policy.

CPNI means information about the quantity, technical configuration, type, destination, and amount of use of the telecommunications services that CARRIER or any CARRIER Parties may provide to Customer, including without limitation information contained in the invoices prepared by CARRIER for Customer. Under federal regulations, telecommunications providers such as CARRIER have an obligation to protect the confidentiality of CPNI. By executing a Service Order, Customer grants permission to CARRIER and CARRIER Parties: (i) to use Customer's CPNI to evaluate CARRIER's

existing Services and new opportunities to serve Customer better, and (ii) to use Customer's CPNI to identify additional communications related services or products that Customer may desire that would complement the Services already provided by CARRIER to Customer. Customer has the right to impose additional restrictions on CARRIER's use of Customer's CPNI by "opting out". If Customer opts out, CARRIER cannot use Customer's CPNI to market additional services to Customer. Opting out will not affect the provision of any Service to which Customer subscribes, but it may prevent Customer from receiving certain information about additional Services from CARRIER. Customer can choose to opt out at any time and Customer's decision whether or not to opt out will remain in effect until changed by Customer. To opt out, Customer must notify CARRIER in writing at the notice address provided in the Agreement, and provide the following information: (1) Customer name, (2) Service billing address, (3) telephone number including area code, and (4) Service account number. Customer has read, understands and agrees to be bound by the terms and conditions of CARRIER's Privacy Policy which is posted at [www.balsamwest.net/privacy /index.asp](http://www.balsamwest.net/privacy/index.asp).

10. Local Number Portability ("LNP").

In the event that Customer seeks to port out its line number(s) to another telecommunications carrier, CARRIER shall reasonably cooperate, at no cost or expense to CARRIER, with Customer's efforts to transfer its telephone numbers at the initiation of Services with CARRIER and after the expiration or termination of the relevant Service Order. Notwithstanding the foregoing, CARRIER makes no warranty or representation of any kind regarding local number portability, including without limitation whether Customer will have the right or ability to transfer such number(s) to another carrier or whether such number(s) will be active or useful for Customer's intended purposes. During any Service Order Term, should local number portability not be technically feasible due to the facilities deployed by the underlying carrier, Customer's numbers may have to be remote call forwarded, for which Customer will incur charges in addition to those set forth in the applicable Service Order. Notwithstanding CARRIER's commitment to reasonably cooperate with Customer's efforts to port out its telephone numbers at the expiration or termination of the relevant Service Order, Customer shall remain obligated to pay all outstanding charges or other amounts owed by Customer to CARRIER under any and all Services Orders then in effect, including but not limited to any early termination fees. In the event that Customer seeks to have a number or set of numbers "remote call forwarded" to a new number, CARRIER may require Customer to pay in advance for such services via credit card or otherwise to ensure prompt payment for such remote call forwarding services.

11. LIMITATION OF LIABILITY.

CUSTOMER ACKNOWLEDGES THAT USE OF THE SERVICES, USE OF CARRIER'S EQUIPMENT (DEFINED BELOW) AND CUSTOMER'S OWN NETWORK EQUIPMENT, AND CUSTOMER'S PROVISION OF BACK UP POWER IN THE EVENT OF POWER OUTAGES ARE AT ITS OWN RISK. CARRIER AND ITS SUPPLIERS, VENDORS, AND UNDERLYING CARRIERS WILL NOT BE LIABLE (INCLUDING FOR ANY THIRD PARTY CLAIMS) FOR THE USE BY CUSTOMER OF THE

SERVICES, OR FOR ANY LOST REVENUE, LOST PROFITS, DIRECT, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CARRIER WILL NOT BE LIABLE FOR ANY FAILURE OR DELAY IN PROVIDING THE SERVICES CAUSED BY OR ATTRIBUTABLE TO ACTS OR OMISSIONS OF ANY UNDERLYING CARRIERS, POWER OUTAGES, EQUIPMENT, NETWORK OR FACILITY FAILURE, FAILURE OF INCOMING OR OUTGOING CALLS, INCLUDING 9-1-1 EMERGENCY CALLS, DEGRADATION OF VOICE OR QUALITY, OR FOR ANY OTHER CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF CARRIER, INCLUDING, WITHOUT LIMITATION ANY ACTS OF GOD SUCH AS ADVERSE WEATHER CONDITION, FIRE, FLOOD, RIOT, STRIKE, ACCIDENT, WAR, GOVERNMENTAL REQUIREMENT, INABILITY TO SECURE MATERIALS, LABOR OR TRANSPORTATION, CABLE CUT OR OTHER SIMILAR CAUSE (ANY SUCH EVENT, AN "EXCUSABLE DELAY OR FAILURE"). CUSTOMER HEREBY ACKNOWLEDGES THAT CARRIER WILL ROUTE 9-1-1 EMERGENCY CALLS ACCORDING TO INDUSTRY STANDARDS USING THE ADDRESS AS REFLECTED ON THE SERVICE ORDER, AND THAT IN THE EVENT OF FAILURE OF THE SERVICES FOR ANY REASON 9-1-1 EMERGENCY CALLS MAY NOT BE COMPLETED SUCCESSFULLY.

12. NO WARRANTIES.

CUSTOMER HEREBY ACKNOWLEDGES THAT THE SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THESE TERMS AND THE APPLICABLE SERVICE ORDER, CARRIER MAKES NO WARRANTIES, REPRESENTATIONS OR OTHER AGREEMENTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE OR THE CARRIER EQUIPMENT, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CARRIER'S ENTIRE LIABILITY FOR ANY CLAIM, LOSS, EXPENSE OR DAMAGE UNDER THESE TERMS WILL NOT EXCEED SUMS ACTUALLY PAID BY CUSTOMER TO CARRIER FOR THE SERVICE WHICH GIVES RISE TO THE CLAIM.

13. Indemnification.

Customer agrees to indemnify, defend and hold CARRIER harmless from and against all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and the expense of litigation, administrative proceedings or arbitral proceedings) arising out of the following: (a) the negligent or willful misconduct, act or omission of Customer or any of its agents, servants, employees, officers, directors, contractors, subcontractors, invitees or representatives; (b) Customer's use of the Services, (c) the breach of these Terms, the AUP, any Service Order, any violation of Law, or infringement upon third party rights by Customer or any of its agents, servants, employees, contractors, representatives, officers, directors, subcontractors or invitees, (d) any loss or damage to the CARRIER Equipment; or (e) proceedings to recover taxes, fines or penalties for failure of Customer to obtain or to maintain in effect all permits, licenses, certificates, and other approvals required by applicable Law to acquire and use

the Services. This provision shall survive the termination or expiration of these Terms, the Agreement and/or any Service Order for any reason.

14. Equipment; Access.

(A) CARRIER Equipment: Customer will not allow or cause any facility or equipment CARRIER provides to Customer in connection with the provision of Services (collectively, the "CARRIER Equipment") to be rearranged, moved, modified, repaired or relocated without CARRIER's consent. The CARRIER Equipment shall at all times remain the personal property of CARRIER, regardless of where located or how it is attached to Customer's premises. Customer will not create or allow any liens or other encumbrances to be placed on any CARRIER Equipment and will be responsible for all loss or damage to such CARRIER Equipment during the term of any applicable Service Order. If Customer relocates or changes the place of the Service provided under the applicable Service Order, Customer will pay all removal costs and expenses and any additional installation and related costs and expenses associated with such relocation. All CARRIER Equipment shall be returned to CARRIER within fourteen (14) days of termination of the applicable Service Order in the same condition as when received, except for reasonable wear and tear. In the event Customer fails to return the CARRIER Equipment within such time period, Customer will be charged the replacement value of the CARRIER Equipment. CARRIER may change, replace or remove the CARRIER Equipment as it deems necessary to provide the Services, and these Terms constitute Customer's consent to such change, replacement or removal. If Customer received CARRIER Equipment new from CARRIER and the CARRIER Equipment included a manufacturer's limited warranty at the time of receipt, Customer must refer to the separate manufacturer's limited warranty document provided with the CARRIER Equipment for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation. If the CARRIER Equipment did not include a manufacturer's limited warranty from CARRIER at the time of receipt, Customer agrees that it accepts the CARRIER Equipment "AS IS" and that Customer is not entitled to replacement or refund in the event of any defect. OTHER THAN WARRANTIES AS TO THE CARRIER EQUIPMENT EXPRESSLY SET FORTH IN DOCUMENTATION PROVIDED WITH THE CARRIER EQUIPMENT, CARRIER MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE CARRIER EQUIPMENT FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE CARRIER EQUIPMENT OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE CARRIER EQUIPMENT.

(B) Customer Equipment: Customer is responsible for (i) obtaining and maintaining any equipment (other than the CARRIER Equipment) necessary to access or otherwise receive the Services (including software) and for ensuring that such equipment is compatible with the Services and (ii) ensuring that there is sufficient power and other applicable utilities or environmental conditions for the provision of Services. CARRIER has no obligation to install, maintain or repair any equipment owned or provided by Customer and shall not be liable for same. For purposes of this Section 14(B) Customer acknowledges that to ensure Customer equipment is compatible with the Service, Customer shall send a request to techservices@balsamwest.net, which request must include technical specifications (manufacturer, make and model of equipment Customer desires to connect) and, if further requested by CARRIER, other equipment information. CARRIER approval of Customer equipment shall not unreasonably be denied. Notwithstanding use of Customer equipment, CARRIER responsibility for delivery of service, including but not limited to maintenance and testing, shall end at Customer connection point to CARRIER's equipment or facility. Customer and its end users shall not operate hardware or software that CARRIER, in its sole discretion, deems harmful, hazardous or capable of causing interference, congestion or interruptions to the Network, CARRIER Equipment or Service. Upon written or verbal notice from CARRIER, Customer and/or end user(s) shall immediately remove the offending hardware or software. If Customer and/or end user(s) fail to do so, CARRIER may suspend Service Order without further notice as provided in Section 7(B) above; provided, however, that CARRIER shall afford Customer a reasonable opportunity for cure before terminating the Service Order.

(C) Access: CARRIER may require access to Customer's premises to install and maintain the Services and CARRIER Equipment necessary for the provision of Services. Customer agrees to provide reasonable access including conduit if required, space, power and environmental conditioning to CARRIER or its agents as applicable to install and maintain the Services or CARRIER Equipment, as the case may be.

(D) Theft: Customer agrees to notify CARRIER immediately, in writing or by calling the CARRIER customer support line, referencing Customer's Circuit or Port ID or primary telephone billing number, if CARRIER Equipment is stolen or if Customer becomes aware at any time that a Service is being stolen or fraudulently used. Failure to do so in a timely manner may result in the termination of the Service and additional charges to Customer. Until such time as CARRIER receives notice of the theft or fraudulent use, Customer will be liable for all use of the Service using CARRIER Equipment stolen from Customer and any and all stolen Service or fraudulent use of the Service.

15. Special Provisions in Connection with Local and Long Distance Telephone Voice Service.

(A) Customer Authorization for Provision of Local and Long Distance Telephone Service: In the event Customer elects to purchase local and long distance telephone services as set forth in any applicable Service Order, Customer agrees to expressly authorize CARRIER to act as agent for Customer as necessary for CARRIER to: (a) transfer Customer's local telephone service from its existing provider to CARRIER; (b)

transfer Customer's intraLATA long distance telephone service from its existing provider to CARRIER; and (c) transfer Customer's interLATA long distance telephone service from its existing provider to CARRIER. CARRIER is not responsible for any fees or charges assessed against Customer by its existing provider in connection with the transfer of such services.

(B) Service Limitations: In the event Customer elects to purchase local and long distance telephone services as set forth in any applicable Service Order, Customer acknowledges that voice services may not be compatible with all non-voice communications equipment, including but not limited to security systems, security systems set up to make automatic phone calls, fax machines, satellite television systems and computer modems. Customer waives any claim against CARRIER for interference with or disruption of such services and equipment due to the Services.

(C) Loss of Service Due to Power Failure or Internet Service Outage (As Applicable to Voice Services): In the event Customer elects to purchase local and long distance telephone services as set forth in any applicable Service Order, Customer acknowledges that voice service does not function in the event of a power failure. Customer further acknowledges that voice service requires a functional broadband connection and that in the event of an outage or termination of broadband services, voice services will not function.

16. Special Provisions in Connection with Voice Over Internet Protocol ("VOIP").

(A) Distinctions, Requirements and Limitations of Service: Customer acknowledges that the VOIP Service is dependent on a broadband connection, adequate power, and correct configuration of an IP phone, IP office, Terminal Adapter ("TA") or other device used to convert the voice signal to an Internet Protocol ("IP") signal. CARRIER does not guarantee that the Service will be continuous or error-free. In addition, Service may, from time to time, be interrupted for equipment, network, or facility upgrades or modifications and/or other service interruptions/outages, which may or may not be within our control or may be considered "Acts of God".

(B) Service Limitations: Customer acknowledges that VOIP Service may not be compatible with all nonvoice communications equipment, including but not limited to home security systems, home security systems set up to make automatic phone calls, medical monitoring equipment, fax machines, satellite television systems and computer modems, and waives any claim against CARRIER for interference or disruption of such services and equipment.

(C) Loss of Service Due to Power Failure or Internet Service Outage: Customer acknowledges that VOIP service does not function in the event of power failure. Customer further acknowledges that VOIP Service requires a fully functional broadband connection to the Internet and that, accordingly, in the event of an outage of, or termination of service with or by, Customer's Internet Service Provider ("ISP") and/or broadband provider, the VOIP service will not function. Customer will continue to be billed for the VOIP service unless and until Customer or CARRIER terminate the VOIP service. Should there be an interruption in the power supply or an ISP outage, the VOIP

service will not function until power is restored or the ISP outage is cured. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to utilizing the VOIP Service. POWER DISRUPTIONS OR FAILURES OR ISP OUTAGES WILL ALSO PREVENT DIALING TO EMERGENCY SERVICE NUMBERS INCLUDING 911 CALLING. Should CARRIER suspend or terminate Customer's VOIP service, the VOIP service will not function until such time as CARRIER restores the VOIP service.

17. Customer Acknowledgement of E911 Service Limitations (As Applicable to Voice Services).

IN THE EVENT CUSTOMER ELECTS TO PURCHASE LOCAL AND LONG DISTANCE TELEPHONE SERVICES AS SET FORTH IN ANY APPLICABLE SERVICE ORDER USING VOIP, CUSTOMER HEREBY ACKNOWLEDGES THE FOLLOWING: (A) CARRIER'S E911 SERVICE WILL NOT FUNCTION IN THE EVENT OF A BROADBAND OR POWER OUTAGE, TELEPHONE EQUIPMENT FAILURE, OR IF THE BROADBAND OR CARRIER SERVICE IS SUSPENDED OR TERMINATED; (B) IF CUSTOMER MOVES ITS TELEPHONE TO A DIFFERENT PHYSICAL LOCATION OTHER THAN THE ADDRESS CARRIER HAS ON FILE FOR CUSTOMER, EMERGENCY PERSONNEL WILL NOT AUTOMATICALLY KNOW CUSTOMER'S LOCATION AND MAY BE PROVIDED WITH INCORRECT LOCATION AND OR CALLBACK INFORMATION; (C) THE USE OF CARRIER FEATURES BY CUSTOMER MAY CAUSE INCORRECT ADDRESS OR CALLBACK NUMBERS IN THE EVENT OF AN E911 CALL, INCLUDING, BUT NOT LIMITED TO, SHARED CALL APPEARANCES, MULTI-LOCATION GROUPS, FOREIGN EXCHANGE LINES, AND REMOTE EXTENSIONS. IT IS THE RESPONSIBILITY OF CUSTOMER TO REGISTER THE PHYSICAL LOCATION OF ITS TELEPHONE WITH CARRIER AND NOTIFY CARRIER OF ANY CHANGES IN LOCATION. CARRIER WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR ABILITY TO DIAL 911 DUE TO THE CHARACTERISTICS OR LIMITATIONS OF THE SERVICE SET FORTH IN THESE TERMS.

18. General:

(A) Acceptable Use Policy ("AUP"): Customer and any other user of the Services or CARRIER Equipment will comply with CARRIER's AUP as amended from time to time by CARRIER and posted on CARRIER's website at www.balsamwest.net. It is Customer's responsibility to be aware of the AUP, as it may be amended from time to time.

(B) Assignment: Customer may not assign the Agreement or any Service Order without the prior written consent of CARRIER, which may be granted or withheld in CARRIER's sole and absolute discretion. Any attempted assignment in violation of this Section shall be null and void and of no effect.

(C) Governing Law: These Terms, the Agreement and all Service Orders are made in and governed by the laws of the State of North Carolina, without regard to choice of law provisions.

(D) **Dispute Resolution:** Except as may be otherwise provided in these Terms, the Agreement or a Service Order, in the event of any unresolved dispute or controversy between the parties arising out of or relating to these Terms, the Agreement or any Service Order, the party asserting a dispute or claim shall notify the other party in writing of the specific nature of such dispute or claim after which the parties shall work in good faith and in their reasonable best efforts to resolve such dispute or claim within thirty (30) days of the date of such written notice of claim or dispute. If the claim or dispute remains unresolved after such thirty (30) days, the claim or dispute shall then be submitted to arbitration as provided hereunder, or by other means as agreed in writing by CARRIER.

(E) **Mandatory Arbitration:** If the dispute resolution process set forth in Section 17(E) above fails to resolve any dispute or controversy arising out of or relating to these Terms or any Service Order, such dispute or controversy shall be resolved by binding arbitration under the commercial arbitration rules of the American Arbitration Association (the “AAA Rules”) to the extent such AAA Rules are not inconsistent with these Terms. The arbitration proceeding shall be conducted before a neutral arbitrator selected by the parties. Judgment upon the award of the arbitrator may be entered in any court having jurisdiction thereof or such court may be asked to judicially confirm the award and order its enforcement, as the case may be. The demand for arbitration shall be made by any party hereto within a reasonable time after the claim, dispute or other matter in question has arisen, and in any event shall not be made after the date when institution of legal proceedings, based on such claim, dispute or other matter in question, would be barred by the applicable statute of limitations. The place of arbitration shall be Jackson County, North Carolina. In the event of arbitration between the parties to enforce any provisions or rights under these Terms or any Service Order, the unsuccessful party to the arbitration shall pay to the successful party therein all costs and expenses expressly including, but not limited to, reasonable attorneys’ fees and court costs incurred herein by such successful party, which costs, expense and attorneys’ fees shall be included in and as a part of any award rendered in such arbitration.

(F) **Notice:** Any notice given pursuant to these Terms or any Service Order will be effective only if in writing and delivered by email as provided herein, in person, by messenger, by overnight delivery service, or by certified mail, return receipt requested, and delivered at the address provided in the applicable Service Order or Agreement, or such other address as may hereafter be furnished by either Party to the other.

(G) **Severability:** The provisions of these Terms are hereby deemed to be severable, and the invalidity or unenforceability of any one or more provisions of these Terms shall not affect the validity or enforceability of the remaining provisions thereof.

(H) **Electronic Transactions:** Unless otherwise stated above, Customer and CARRIER agree that they may conduct all transactions relating to these Terms, including, without limitation, invoices, invoice payments and the issuance and acceptance of Service

Orders, by electronic means. Any such record relating to these Terms, including, without limitation, any Service Orders, shall be deemed to be signed by a party if that party inserts “/signed/” in the signature block of the record or transmits the record to the other party along with a statement in the record or in an e-mail transmitting or referring to the record similar to the following: “The attached record [or this record] [or title of record] has been signed by [name of party].” Customer and CARRIER may also conduct these transactions by non-electronic means and may also use other forms of electronic signatures mutually agreed upon in writing by the Customer and CARRIER.

(I) Copyright and Trademark and Unauthorized Use of Devices or Software: Any devices, equipment, firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, and all information, documents and materials on CARRIER’s website are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively “Marks”) of CARRIER are and shall remain the exclusive property of CARRIER. Nothing in these Terms shall grant Customer the right or license to use any of such Marks. Customer acknowledges that Customer has only been granted a nontransferable, revocable license to use the firmware or software (without making any modification thereto) in accordance with these Terms. Customer agrees and acknowledges that that any device or equipment provided to Customer by CARRIER in conjunction with a Service is exclusively for use in connection with the Service. Customer shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

(J) Changes to these Terms: CARRIER may change the provisions of these Terms from time to time. Changes will be considered effective as of the Effective Date reflected on page 1 of these Terms. Such changes will become binding on Customer, and no further notice by CARRIER is required. These Terms as posted supersede all Terms previously posted by CARRIER.

(K) No Third Party Beneficiaries: No provision of these Terms provides any person or entity not a party with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

(L) No Waiver: The failure of CARRIER to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision.

(M) Suspension of Service: Suspension of Service by Customer is not permitted for the Services covered by these Terms and Conditions.