



## BLACKFOOT TELEPHONE COOPERATIVE, INC. MASTER SERVICE AGREEMENT GENERAL TERMS & CONDITIONS

These Master Service Agreement General Terms and Conditions ("Terms") set forth below apply to each of the Services. As used herein, "Provider" means Blackfoot Telephone Cooperative, Inc. dba Blackfoot.

**1. Term.** 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 the existing rates until such time as either Party provides sixty (60) days prior written notice of termination to the other Party.

**2. Scope of Agreement; Services; Change of Law or Tariff; Membership in Blackfoot Telephone Cooperative, Inc.**

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 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 the Services may be provided by Provider's 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. Additional Services, change in speeds, change in locations, and other changes may require the Customer pay additional installation, construction, recurring and non-recurring charges.

2.4 By purchasing Services Provider, Customer understands and agrees that it shall become a cooperative member of Blackfoot Telephone Cooperative, Inc. and hereby agrees to be bound by the terms and conditions of cooperative membership as set forth in Provider's Bylaws, which are available at [www.blackfoot.com](http://www.blackfoot.com).

**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, 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, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges, Federal or State universal service surcharges or 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 which 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 which 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. Provider may immediately terminate Services without any further notice for any unpaid balance that remains outstanding 30 days from the Payment Due Date.

3.3 Provider may request a security deposit or additional prepayment for services at any time should it determine that Customer has not established satisfactory credit with Provider or Customer is repeatedly delinquent in making its payments, 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 term of the Agreement or the establishment of satisfactory credit with Provider.

**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 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 disconnects all or part of the Services after installation to a level that is below the Service quantities established in this Agreement, Customer must give sixty (60) days prior notice of such termination and early termination charges as described below in this section 4.2 shall apply to the 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 termination charge that is equal to seventy five percent (75%) of the monthly rate for the Services terminated/disconnected multiplied by the number of months, or portion thereof, remaining in the 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. Voice Services.**

5.1 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 911/E-911 calls to be properly directed to emergency services, Provider must have Customer's correct service location address. If Customer moves all or a portion of the Service to a different service location address without prior notice or approval from Provider, Customer's 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 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 back-up installed, it fails, or is exhausted. CUSTOMER ACKNOWLEDGES AND AGREES 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.

5.2 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/month/ per telephone line or per trunk or non-compliance is indicated. Provider reserves the right to charge customer for toll usage in excess of 1500 per month, per telephone line.

**6. Data Networking & Telecommunications Equipment.** Provider shall endeavor to deliver and install any data networking or telecommunications equipment ("Provider Equipment") in a timely manner. The Customer shall provide all necessary premises for installation of the Provider Equipment, including necessary electrical service and any Customer-owned equipment, and hereby grants Provider and its personnel access to, over, and through such premises for installation/removal of equipment, and continuing maintenance if provided under this Agreement. Customer's acceptance shall be deemed to occur upon installation and testing of equipment, with certification by Provider that the Provider Equipment is functioning substantially as intended ("Acceptance"). Risk of loss of the Provider Equipment shall pass to Customer upon delivery of the Provider Equipment to the installation site provided by Customer, or other location specified by Customer and agreed to by Provider. Until such time, the Customer acknowledges that Provider shall retain, and Customer hereby grants to Provider, a Purchase Money Security Interest in the equipment Customer purchases from Provider ("Customer Equipment"), and Customer shall execute all documents necessary to perfect such a security interest. If Customer fails to make any payment required hereunder;

Provider may, at its option, and without limitation on any other remedy it may have at law or in equity, terminate this Agreement and retain possession and title to all Provider Equipment and Customer Equipment, or may suspend all further performance and pursue all remedies available under the Uniform Commercial Code or other applicable law. In the event suit is brought to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to cost of suit and any appeal there from, including reasonable attorney fees.

#### **7. ISP, Transport, and Hosted Server Services.**

7.1 Some of the Services provided are subject to the Acceptable Use Policy and Terms and Conditions for Internet, Managed WAN, and Hosted Server services set forth on Provider's website at [www.blackfoot.com](http://www.blackfoot.com), which are incorporated herein by this reference. Customer is responsible for all usage originating from its location and shall inform users that the Service is provided subject to the Acceptable Use Policy and applicable terms and conditions. Provider reserves the right to amend the Acceptable Use Policy and any of the terms and conditions available on Provider's website from time to time by posting those amendments to Provider's website.

7.2 Provider strongly recommends use of a commercial anti-virus and firewall software. Customer is responsible for management and security of its data, including without limitation, backing up and restoring data, managing file and print sharing, encrypting data, procedure for accuracy of data transmission and implementing security such as anti-virus and firewalls. Customer agrees Provider is not responsible or liable for managing or backing up any Customer data.

#### **8. Network Protection Service and Security Center.**

8.1 Network Protection Service ("NPS") and Blackfoot Security Center ("BSC") are Services whereby Customer can download anti-virus software from Provider. As part of the service, Provider may provide updates to anti-virus software as well as critical Microsoft Windows updates. More details of the service are available at [www.blackfoot.com](http://www.blackfoot.com).

8.2 To the maximum extent permitted by law Provider shall not be liable for any loss, including without limitation, computer hardware and software damage or destruction, loss of profits, loss of use, loss of business, incidental, consequential, indirect or special damages as a result of any failure or malfunction of the NPS and BSC Service, regardless of whether such failure or malfunction was caused by the negligence, direct act or omission of Provider or agents or vendors that provide such Services on Provider's behalf.

#### **9. Remote Data Backup.**

9.1 Remote Data Backup ("RDB") Service is a product whereby Provider backs-up data from Customer's computers and servers and stores that information on Provider's network. More information on RDB is available at [www.blackfoot.com](http://www.blackfoot.com).

9.2 To the maximum extent permitted by law Provider shall not be liable for any loss, including without limitation, Customer's data, computer hardware and software damage or destruction, loss of profits, loss of use, loss of business, incidental, consequential, indirect or special damages as a result of any failure or malfunction of the RDB Service, regardless of whether such failure or malfunction was caused by the negligence, direct act or omission of Provider or agents or vendors that provide such Services on Provider's behalf.

**10. Managed Firewall Services.** Managed Firewall Services—whether Basic, Advanced, and/or optional add-on services—are subject to the Managed Firewall Terms and Conditions found at <http://www.blackfoot.com/service-agreements/> and the Agreement.

**11. Service Level Agreement.** Some services may be subject to certain service level agreements ("SLAs"). SLAs can be found at [www.blackfoot.com/service-agreements](http://www.blackfoot.com/service-agreements).

**12. Wide Area Network ("WAN") Services.** WAN products and services shall be governed by additional terms and conditions which can be found at [www.blackfoot.com/service-agreements](http://www.blackfoot.com/service-agreements).

**13. Hosted Server Services.** Hosted Server products and services shall be governed by additional terms and conditions which can be found at [www.blackfoot.com/service-agreements](http://www.blackfoot.com/service-agreements).

**14. Limitation of Liability and Warranties.** Except as otherwise provided herein, each Party shall be responsible for any actual physical damages it directly and solely causes in the course of its performance under this Agreement, limited to damages resulting from personal injuries, death, or property damage arising from negligent acts or omissions; provided however, that neither party shall be liable for any incidental, consequential, indirect, special, or punitive damages of any kind, including but not limited to any loss of use, loss of business or loss of profit. Remedies under this Agreement are exclusive and limited to those expressly described in this Agreement. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY SERVICE ORDER OR ANY OTHER DOCUMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW PROVIDER'S LIABILITY TO CUSTOMER RELATING TO OR ARISING FROM THIS AGREEMENT SHALL NOT EXCEED IN TOTAL THE AMOUNT PROVIDER HAS BEEN PAID, FOR THE IMPACTED SERVICE, BY

CUSTOMER FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE ACCRUAL OF THE CLAIM OR EVENT(S) 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 OTHER BASIS IN LAW OR EQUITY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER. PROVIDER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES; INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

**15. Amendment.** Except as otherwise provided herein or as required by law or application regulation, a change to this Agreement and/or to the Services may only be made in a writing signed by the Parties.

**16. Assignment.** 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.

**17. Waiver.** Except as otherwise provided herein, neither Party's failure to enforce any right or remedy available to it under this Agreement will be construed as a waiver of such right or a waiver of any other provision hereunder.

**18. Notices.** 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.

**19. Force Majeure.** 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, communication facility cuts not caused by Provider, outages occurring in relation to facilities not owned by Provider, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a "Force Majeure Event"). Inability to secure products or services of third parties at reasonable costs or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events. 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.

**20. Governing Law.** To the extent the Services are provided in the state of Montana, Montana state law, without regard to choice-of-law principles, shall govern all matters arising out of, or relating to, this Agreement. To the extent the Services are provided in the state of Idaho, Idaho state law, without regard to choice-of-law principles, shall govern all matters arising out of, or relating to, this Agreement. In the event Services are provided outside of Montana and Idaho or in both Montana and Idaho, than Montana state law shall apply.

**21. Severability.** If any provision of this Agreement is found to be invalid, illegal or unenforceable it will be modified to reflect the Parties' intentions and the validity, legality and enforceability of the remaining provisions shall not be affected.

**22. Entire Agreement.** This Agreement (as defined in the applicable Service Order) 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 subjects of this Agreement.