



## POPP.com, Inc. (dba POPP Communications) GENERAL TERMS AND CONDITIONS

The Agreement between POPP.com, Inc. ("POPP" or "Company") and Client sets forth the legal rights and obligations governing the Company's offer, provisioning and delivery of Services and Client's receipt and use thereof. Client shall contract for, and order, Service on a Company-designed Service Agreement ("SA").

The Agreement in its entirety shall consist of the terms and conditions in each SA, these General Terms and Conditions, POPP's Acceptable Use Policy ("AUP") and any applicable tariffs. In the event of an inconsistency between a term or condition contained in any component document(s) comprising the Agreement (but only to the extent of the inconsistency), including any incorporated attachments, appendices, exhibits or other documents, the order of precedence, from the most to the least controlling, shall be:

1. Applicable filed and effective tariff(s);
2. Any mutually agreed upon written Addenda to the Terms and Conditions properly executed by authorized representatives of both POPP and Client;
3. General Terms and Conditions and AUP

The offer, provisioning and delivery of Services are subject at all times to the receipt by Company of all required approvals or authorizations from regulatory agencies having jurisdiction over the Services or the Company. Client shall be deemed to have accepted, and therefore will be bound by, all the applicable terms and conditions relating to the Services received and used.

**THESE GENERAL TERMS AND CONDITIONS, AND POPP'S AUP WILL BE LOCATED ON POPP'S WEBSITE ([www.popp.com](http://www.popp.com)) AND TOGETHER WITH POPP'S TARIFFS, MAY BE MODIFIED BY POPP AT ANY TIME AS PERMITTED OR REQUIRED BY LAW. FOR OTHER THAN POPP TARIFFS GOVERNED BY NOTICE REQUIREMENTS IMPOSED BY REGULATORY AUTHORITIES, THE COMPANY SHALL PROVIDE CLIENT WITH AT LEAST THIRTY (30) DAYS PRIOR NOTICE OF ANY CHANGES THAT WOULD MATERIALLY AND ADVERSELY AFFECT CLIENT SO THAT CLIENT MAY ELECT TO DISCONTINUE SERVICE AND AVOID THE EFFECTS OF THE CHANGES. COMPANY NOTICE MAY BE FURNISHED BY: (1) A MESSAGE INCLUDED WITH THE INVOICE; (2) A POSTCARD OR LETTER; (3) CALLING AND SPEAKING TO CLIENT OR LEAVING A MESSAGE; OR (4) E-MAIL. FOR OTHER THAN POPP TARIFFS GOVERNED BY NOTICE REQUIREMENTS IMPOSED BY REGULATORY AUTHORITIES, THE COMPANY WILL PUBLISH CHANGES ON RELEVANT COMPANY WEBSITES AT LEAST FIFTEEN (15) DAYS IN ADVANCE OF THEIR TAKING EFFECT. CLIENT SHALL BE BOUND BY CHANGES AFTER THEY BECOME EFFECTIVE. IN NO EVENT WILL ANY CHANGE BE DEEMED TO AFFECT ANY EXISTING SERVICE LEVEL AGREEMENT. CLIENT ACCEPTS THE INCORPORATION INTO THE AGREEMENT OF APPLICABLE TARIFFS, THESE GENERAL TERMS AND CONDITIONS AND THE AUP, AND ALL MODIFICATIONS MADE THERETO. CLIENT MAY OBTAIN A HARD COPY OF THE AGREEMENT (OR ANY OF ITS COMPONENTS) AT ANY TIME BY CONTACTING POPP AND REQUESTING IT.**

### 1.0 DEFINITIONS

(Terms with initial caps not otherwise defined herein shall have the meanings ascribed in the Agreement.)

- 1.1 **Affiliate:** Affiliate means, with respect to either Company or Client, any other entity which controls, is controlled by, or is under common control with the Company or Client. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of Company or Client management and policies, whether through the ownership of voting securities, by contract, or otherwise.
- 1.2 **Automatic Number Identification (ANI):** Digits transmitted by the calling party's carrier that indicate the calling party's telephone number.
- 1.3 **Central Office Line:** Loop-start or ground-start analog telephone lines delivered from the central office to Client's business on copper circuits, also commonly referred to as POTS lines. Because COLs are powered by the equipment in the central office, they may not be susceptible to power interruptions in Client's place of business.
- 1.4 **Communications Facilities:** Facilities the Company leases, constructs or otherwise acquires in order to provide Service(s) to Client.
- 1.5 **Company:** POPP.com, Inc. dba POPP Communications.
- 1.6 **Client:** The individual, partnership, association or corporation which contracts for Service and is responsible for the payment of charges and compliance with the rules and regulations of Company.
- 1.7 **Client Premise Equipment (CPE):** POPP owned Client Premise Equipment.
- 1.8 **Domain Name:** An address on the Internet that is comprised of a hierarchical sequence of names (labels) separated by periods (dots), e.g. POPP.com, in computer networks using the Transfer Control Protocol/Internet Protocol (TCP/IP).

- 1.9 End User or User: Any person or entity that receives or uses POPP Service, irrespective of whether such person or entity is authorized by Client to receive or use Service.
- 1.10 FCC: Federal Communications Commission.
- 1.11 Metro Optical Ethernet (MOE): A connectivity product that offers symmetrical bandwidth from 10Mbps to 300Mbps
- 1.12 Monthly Recurring Charges: Monthly charges for Services and/or equipment.
- 1.13 Network: The Company's facilities, equipment, and services provided under this tariff.
- 1.14 Network Number: The part of an Internet address that designates the network to which the addressed node belongs.
- 1.15 Non-Recurring Charges: A one-time charge associated with certain installations, change or transfer of services, either in lieu of or in addition to monthly recurring charges.
- 1.16 Private Branch Exchange (PBX): A telephone system that handles the internal and external telephone calls.
- 1.17 Safety System: A system that monitors safety conditions in order to protect life and property (e.g., fire alarm, door entry, burglar alarm, security system, sprinkler system, elevator).
- 1.18 Service or Services: All telecommunications services and other services related thereto provided by the Company to Clients or End Users.
- 1.19 Start of Service Date: The date the Company notifies a Client that Service is available for use by Client.

## **2.0 LIMITATIONS ON SERVICE**

- 2.1. Availability of Facilities: Service is offered subject to the availability of all necessary facilities, including those acquired by the Company from other entities. POPP may decline to accept a request for Service if it determines that, based on its existing facilities at the time of the request and its current and forecasted need to provide other Services; it requires the available facilities for other Service needs. POPP therefore may limit its provisioning of Service, if necessary, in order to manage its network and operations in an efficient manner and to meet the reasonable service expectations of its existing and future Clients based on current and projected available facilities capacity. In addition, the Company may restrict or allocate Service among Clients, when necessary, due either to facilities shortages or causes beyond the Company's control.
- 2.2. Right to Alter Service: In its sole discretion and without liability to Client, Company may: (a) alter the methods, processes or suppliers by or through which it provides Service; (b) change the facilities used to provide Service; or (c) substitute comparable Service for that being provided to Client. If necessary due to the potential impact on affected Clients, the Company will furnish prior notice of any alterations, changes or substitutions.
- 2.3. *Company's Right to Block or Discontinue Service Without Notice to Client*
  - 2.3.1 Network Blockage or Degradation: The Company may discontinue furnishing Service if Client uses or misuses Service in a manner that results, or could result, in network blockage or other degradations that adversely affect the Service furnished to Client or to other existing or prospective Clients of the Company.
  - 2.3.2 Client Violation of Agreement or Law: The Company may discontinue the furnishing of Service if Client uses, or threatens to use Service for any unlawful purpose or otherwise violates the terms of the Agreement.
  - 2.3.3 Unlawful or Unauthorized Use: The Company may discontinue the furnishing of Service, when it deems it necessary to take such action to prevent the unlawful or unauthorized use of Service, by blocking traffic to or from certain countries, cities, NXX exchanges, or individual telephones; by blocking call origination; or by blocking calls using certain Client authorization or access codes. The Company also may suspend the origination of domestic or international traffic associated with any or all Services if the Company deems such action necessary to prevent the unlawful or unauthorized use of the Service due to the failure, in whole or in part, of any fraud detection system utilized by the Company to provide or support Service.

### 3.0 WARRANTIES AND STANDARDS FOR SERVICES

- 3.1 The Company represents and warrants that it is duly licensed and authorized to provide Services and will remain so licensed and authorized by complying with all applicable federal, state and local laws and requirements, and the Client represents and warrants that it is authorized to receive and use Services and will remain so authorized by complying with all applicable federal, state and local laws and requirements. Company and Client represent and warrant that each is authorized to enter into the Agreement and perform its obligations thereunder. Company makes no representations or warranties, whether express, implied or statutory, regarding the Services, system equipment or Company owned or provided equipment used by Client, including any equipment with respect to which title may transfer to Client (except to the extent set forth in any separate POPP sale transfer document). This exclusion includes, but is not limited to, any implied warranties of merchantability, fitness of services or equipment for a particular purpose, or non-infringement of any third party rights. In performing their obligations under the Agreement, the parties will comply with all applicable Rules, specifically including, but not limited to, the Rules governing 911/E-911 and any other emergency services. Information relating to Client's account will only be given to the Decision Maker and/or Contact Person shown on the application authorizing POPP Services. It is Client's responsibility to notify POPP of changes to the authorized individuals on the account.
- 3.2 *Limitations on Liability*
- 3.2.1 Direct Damages: Even if advised of the possibility of losses or damages, Company shall not be liable, except as set forth herein, for any losses or damages resulting from: (a) its provisioning of Service to Client; (b) any act or omission of Client, those using Client's Service or third party entities furnishing products or services used in connection with Service; or (c) the loss or destruction of Client data resulting from the use of Service. Company shall be liable to Client for any property damage to Client premises caused by its gross negligence or willful misconduct but in no event shall Company's liability be greater than an amount equal to the sum of two times the Client's monthly Recurring Charges. By entering into the Agreement and remaining a Client, Client manifests its acceptance of this limitation on direct damages as fair and reasonable.
- 3.2.2 Indirect or Consequential Damages: Neither Company nor Client shall be liable to the other for any indirect, incidental, exemplary, punitive or other consequential damages, whether or not foreseeable, including, but not limited to, damages from the loss of data, business goodwill or profits, savings or revenue, harm to business, whether under contract, tort (including negligence), strict liability or any other theory of liability. A party's out-of-pocket costs for damages recovered by a third party shall be deemed to be indirect damages suffered by such party, except to the extent such damages are part of a claim for which indemnification is due under Section 4. Company shall not be held liable for Consequential Damage arising from interruption, delay, error, defects in transmission, or the like, occurring in the course of furnishing Services nor for the costs incurred by Clients for calls not placed over Company's Communication Network.
- 3.2.3 Service Interruptions: The Company's liability for Service interruptions, if any, shall be limited to credit outage allowances expressly provided for in the Agreement, including any applicable tariffs incorporated therein.
- 3.2.4 Delays: The Company shall not be liable to Client for losses or damages resulting from its inability to provide Service or from any delay in meeting a scheduled Start of Service Date.
- 3.2.5 Force Majeure Events: In no event shall Client have any claim or right against Company for any failure of performance due to causes beyond the Company's control, including, but not limited to: acts of God, fire, explosion, vandalism, cable cut, storm, flood or other similar occurrences; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over Company or of any department, agency, commission, bureau, corporation, or other instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; acts of terrorism; riots; wars; strikes; lock-outs, work stoppages or other labor difficulties; or supplier failures, shortages, breaches or delays.
- 3.2.6 Facilities, Services, Equipment or Systems of Others: The Company shall not be liable for the unavailability, or deficient performance, of any facilities, services, equipment or systems used in connection with the provision of Services that are under the control of Client or any third party, even if the Company has acted as the Client's agent in procuring such facilities, services, equipment or systems from third parties. Client's rights with regard to the unavailability or deficient performance of such facilities, services, equipment or systems not provided by the Company shall be strictly as established by the supplying entity.
- 3.2.7 "On-Line" Services: All "On-line" Services are provided "as is." Client acknowledges and agrees that communications and transactions conducted "on-line" may not be secure; that system failures may limit Client's access to and use of "on-line" Services; and that "on-line" Services are not guaranteed to be error free. By subscribing to and using "on-line" Services, Client manifests its acceptance of all the risks associated with the use of "on-line" Services, specifically, and the Internet, generally.
- 3.2.8 Client's Failure to Fulfill Obligations: The Company shall not be liable to Client or any third party for Client's failure to fulfill its obligations, including, without limitation:
- 3.2.8.1 Obtaining, installing and maintaining all necessary equipment, materials, and supplies for interconnecting Client or third-party facilities, services, equipment or systems to Services;

- 3.2.8.2 Securing all licenses, permits, approvals, rights-of-way, access rights, including ingress and egress from buildings, and other arrangements necessary to install, receive and use Services; and
- 3.2.8.3 Ensuring that Client or third-party facilities, services, equipment or systems interface properly with Services; that the signals delivered to the Company's Service are fully compliant with industry standards; and that such signals do not damage Company property or personnel, or degrade Service to other Clients of the Company.
- 3.2.9 Misuse of Client Service: The Company shall neither provide credit allowances nor otherwise be liable for the use, misuse or abuse of Client's Service by Client, its agents, employees or any third parties including, without limitation, members of the public. If Company cooperates with Client by recommending potential solutions to reduce or eliminate the unauthorized use of Client's Service, Company undertakings shall not be deemed to be promises or guarantees by Company that the unauthorized use of Client's Service will be reduced or eliminated, and in no event shall Company incur any liability in connection with those undertakings to Client or any third party. In all instances, Client shall be responsible for its facilities, services, equipment or systems interconnected with the Company's Service.
- 3.2.10 Billing Errors: The Company's obligation with respect to any errors resulting in Client overpayments for Service is limited to granting invoice credits equal to the dollar amounts erroneously billed in the most recent prior monthly billing period statement. Client must provide Company written notice of any such erroneous billings and/or overpayments within 30 days after the applicable monthly billing period statement is issued to Client; Company shall have no obligation to grant invoice credit requests submitted by Client after such 30 day period. Under no circumstance will any billing error affect the Client's obligation to pay for Services rendered and used.
- 3.2.11 911 Service: Subject to Company's 911/E-911, and unless otherwise specifically agreed, (a) Company will provide Client with the network connection for each circuit, billing telephone number (BTN) or trunk group that comprise the Services, and (b) Company will provide the appropriate Public Safety Answering Point (PSAP) with the automatic location identification (ALI), including the same emergency response location, for all BTNs of the circuit or trunk group regardless of the number of lines, trunks, or unique telephone numbers on that circuit or trunk group. Company is not responsible for and will not make any changes or submit updates to 911/E-911 databases for any services other than the one emergency response location as set forth above. It is the responsibility of the Client to inform Company in writing of any address change to keep the 911 database accurate. Client must also inform Company in writing when an IP telephone or telephone system (PBX) is moved to a new 911 address.

Client agrees to fully indemnify, defend, and hold harmless Company, its officers, directors, parent, and affiliated companies, employees, agents and subcontractors from all liabilities, claims, fees, expenses, costs or damages of any kind arising out of personal injury or death or damage to property related to Client's failure to meet any 911/E911 requirements or agreements. The Company shall not be liable for the misrouting of any calls made to PSAPs or to municipal emergency service providers.

- 3.2.12 Client-Provided Equipment/Repair and Maintenance: Company shall not be responsible or liable to Client or any third party for the installation, operation, repair or maintenance of any Client-provided equipment, including without limitation, for any damages or liabilities arising from any installation, repair or maintenance of any Client-provided equipment, performed by the Company at its discretion at the request of Client. Where Client-provided equipment is connected to the facilities furnished under the Agreement, the responsibility of the Company will be limited to the furnishing of facilities offered pursuant to the Agreement.

#### **4.0 INDEMNIFICATION**

- 4.1. Company's Indemnification of Client: Company will defend and indemnify Client, its employees, directors, officers and agents, from and against any suit, proceeding or other claim brought by an entity (not a party to or an Affiliate of a party to this Agreement) that is caused by, arises from, or relates to damage to real or tangible personal property or personal injuries (including death) arising out of the gross negligence or willful act or omission of the Company in the provision of Service by the Company.
- 4.2. Client's Indemnification of Company: Client will defend and indemnify the Company, its employees, directors, officers and agents, from and against any suit, proceeding or other claim brought by an entity that is caused by, arises from, or relates to: (a) damage to real or tangible personal property, personal injuries (including death) arising out of the gross negligence or willful act or omission of Client in the use of the Service; (b) representations regarding the nature of Client's traffic and any use, operation or resale of Service by Client in contravention of this Agreement, including without limitation, claims of libel, slander, unauthorized use of copyright or trademark by Client or the business activities and practices of Client arising from Client's use of the Service; and (c) any damages or liabilities arising from any installation, repair or maintenance of any Client-provided equipment, performed by the Company at its discretion at the request of Client.

- 4.3. Intellectual Property: If a Service provided by the Company becomes, or if the Company reasonably believes a Service it is providing may become, the subject of a suit, proceeding or other claim by an entity (not a party to or an Affiliate of a party to this Agreement) that the Service directly infringes the U.S. patent, trademark or copyright rights ("Intellectual Property") of such entity, the Company shall, at its own expense and option: (a) procure the right for the Company to continue to provide the Service; or (b) modify or replace the Service with a different service that has substantially similar functionality; or (c) discontinue providing or direct the cessation of any use of the Service and refund to Client a pro-rated portion of any charges paid for the affected Service through the date of Service discontinuation or cessation. Notwithstanding the foregoing, the Company will have no obligation to defend or indemnify Client, and Client will defend, indemnify and hold harmless the Company for any suit, proceeding or claim arising out of: Client's: (a) designs, specifications, modifications, or configurations; (b) combination of Client hardware or software, or other materials, services or methods with the Service; or (c) use, operation or resale of the Service in breach of its obligations and responsibilities.
- 4.4. These Client and Company indemnifications will survive this Agreement.

## 5.0 CLIENT OBLIGATIONS

- 5.1. Commencement of Relationship and Service Provisioning: The execution of the Agreement by Client and acceptance thereof by Company establishes the respective rights and obligations of the parties. If there is no executed Agreement but Client nevertheless uses Services, Client is deemed to have consented to all terms of the Agreement, including documents and publications incorporated therein by reference, e.g., these General Terms and Conditions. Client shall allow Company, its agents or contractors reasonable access to Client's premises to facilitate Service installation, maintenance, testing, repair and termination of Service, including the retrieval of Company property used to provide Service.
- 5.2. Use and Maintenance of Client-Provided Facilities, Services, Equipment and Systems: If Client, its agent or contractor fails to operate and maintain Client-provided facilities, services, equipment and systems interconnected with a Service, with the result that there is harm or imminent harm to Company, its Services, personnel or other clients, Company may require Client, at its expense, to acquire, install and use protective equipment designed to eliminate such harm. If the protective equipment fails to eliminate the harm, Company, following the delivery of written notice to Client, may suspend or terminate Client's Service, without any liability or further obligation to Client.
- 5.3. SIP Trunk with Client-provided Firewall Appliance Disclaimer: If client orders SIP Trunks and chooses not to purchase an Internet Gateway Firewall Appliance from POPP, client acknowledges that configuration of their pre-existing firewall appliance is their responsibility. Furthermore, if it is determined that the pre-existing firewall appliance cannot be configured to support SIP Trunks, Client acknowledges that ordering a Dell/SonicWALL Internet Gateway Firewall Appliance requires at least 3 business days for ordering, processing, and configuration and may delay the overall turn-up or cutover to the new SIP Trunk.
- 5.4. Client's Use of Company Service Marks and Trademarks: Without the prior written consent of the Company, Client may not: (a) use any service mark or trademark of the Company or its Affiliates, including those licensed to the Company or its Affiliates, or (b) refer to the Company or any of its Affiliates in connection with any service or product, promotional offering, or publication of Client.
- 5.5. Client's Consent to the Use of Electronic Records: Client consents to the use by Company of electronic records in a form or forms chosen by the Company.
- 5.6. Notice of Claims and Problems: Client immediately shall notify Company upon its receipt of any information that might adversely affect the Company, including, but not limited to, notices of any claims or proceedings that involve Service, and Client promptly shall notify Company of any problem relating to Service or Service performance and reasonably cooperate with Company in repairing the Service problem.
- 5.7. Additional Services: Client may request additional Service(s) from Company, which Company, in its sole discretion, may agree to, provide pursuant to an additional Agreement including, if applicable, any incorporated tariff(s).
- 5.8. Cooperation on Audits: If another carrier or regulatory agency seeks to audit traffic involving Services furnished under the Agreement, Client will cooperate in any such audit investigation. In addition, to the extent any third party attempts to recover access fees, reciprocal compensation or other charges, surcharges or taxes from Company as a result of such audit investigation, Client will indemnify and hold harmless Company for any and all costs and charges resulting from such third party action.

## 6.0 REGULATORY/LEGAL COMPLIANCE

- 6.1. Additional Charges Resulting from Regulatory Activity: Service rates and charges applicable to Client under the Agreement are subject to the imposition of additional charges, surcharges or taxes that result from actions taken by federal, state, or local regulatory authorities, legislative bodies or courts of competent jurisdiction (collectively, "Regulatory Activity"). The Company may: (i) pass through to Client, in whole or in part, any such charges, surcharges or taxes directly or indirectly relating to Regulatory Activity; or (ii) modify the rates, charges or other terms and conditions of the Agreement to accommodate the impact of Regulatory Activity, including, without limitation, actions taken by third parties in response to Regulatory Activity.

- 6.2. **Jurisdictional Nature of Traffic:** All traffic delivered by Client, its agents or authorized users to the Company for local termination, and all traffic Company delivers to Client, its agents or authorized users that originates in the same local calling area in which Client's NPA-NXX is assigned or in which such traffic terminates with Client, its agents or authorized users must either be local traffic or traffic entitled to be treated as local traffic under applicable federal, state and local laws, administrative and regulatory requirements, and any other authorities having jurisdiction over such traffic. With respect to such traffic, Company will assign local telephone numbers to Client or route Client's traffic for termination as local calling. Neither Client nor any of its agents or authorized users may remove or in any way alter Automatic Number Identification ("ANI") or Calling Party Number ("CPN") information associated with any traffic delivered pursuant to this Agreement. Client will cooperate or, as necessary, assure the cooperation of others within its control to obtain or verify any regulatory certifications or other information needed regarding the jurisdictional nature of the Client's traffic.
- 6.3. **Payment of Additional Charges:** Client shall promptly pay Company all surcharges or taxes that, in accordance with FCC regulations or decisions, or those of any applicable state regulatory authority, or industry practices, are associated with Client traffic delivered, or facilities utilized, pursuant to the Agreement, including, but not limited to, any retroactive charges (collectively, "Additional Charges") not already reflected in the rates charged by the Company for Service.

## **7.0 BILLING AND PAYMENT ARRANGEMENTS**

- 7.1 **Client Responsibility for Payment:** Client shall pay Company for Services at the applicable recurring, nonrecurring and usage rates and charges established by the Company. Service requested by Client shall identify the type and quantities of Service desired, the location(s) at which Service is to be provided, the requested term of Service and such other information required by the Company to provision and invoice Service.
- 7.1.1 **Applicable Rates and Charges:** The rates and charges for Service shall be effective during the initial term of Service. The Company may modify the applicable rates and charges on not less than thirty (30) days prior notice to Client. Client acknowledges that the termination of international long distance wireless calls may be billed at higher rates, as set forth elsewhere in the Agreement.
- 7.2 **Invoicing and Payment Deadline:** Client's obligation to pay for Service shall begin on the Start of Service Date. Service invoicing will occur on a monthly basis. All invoices are due and payable within twenty (20) days of invoice date ("Payment Deadline").
- 7.3 **Non-recurring Charges:** Non-recurring Charges are due and payable as billed by the Company.
- 7.4 **Monthly Recurring Charges:** Monthly Recurring Charges are fixed in amount, not dependent on usage, and billed in advance. When Service commences other than on the first day of a monthly billing period or terminates on other than the last day of a monthly billing period, the charge for Service will be determined by prorating the monthly recurring charge by the number of days that Service was furnished during the monthly billing period.
- 7.5 **Usage Charges:** Usage Charges are billed in arrears, based upon Client's actual usage during the prior monthly billing period.
- 7.6 **Other Charges Not Included in Service Rates or Charges:**
- 7.6.1 **Surcharges and Other Service Related Fees:**
- 7.6.1.1 **Federal Universal Service Fund Surcharge (USF):** The USF changes quarterly. It helps make telephone service affordable and available to consumers in high-cost areas, low-income households, schools, libraries and rural health care providers. The USF applies to interstate and international long distance calls and DSL bandwidth, Federal Access, and PICC surcharges. The USF charge appears on POPP's inventory and some detail report pages as a single line item. To learn more, including how funds are collected and disbursed, visit [www.universalservice.org](http://www.universalservice.org).
- 7.6.1.2 **Primary Interexchange Carrier Charge (PICC):** PICC is a per line/circuit charge reflective of costs incurred to provide long distance service.
- 7.6.1.3 **Extended Area Service (EAS):** Extended Area Service makes the local calling area larger. Instead of paying a charge for each Intralata long distance call to a certain area, Clients pay for these calls as part of their local service.
- 7.6.1.4 **Federal Cost Recovery Charge (FCRC):** This surcharge funds a state program that provides telecommunication services to residents with communications disabilities, i.e., hearing or speech. A statewide Telephone Dual Relay System permits full and simultaneous communication between communications disabled persons using a teletypewriter device (TTY) and persons using conventional telephone equipment. The FCRC applies to long distance calls (including international), interstate teleconferencing, Federal Access, and PICC surcharges.
- 7.6.1.5 **Federal Excise Tax (FET):** A tax imposed directly on the Client for certain communications services and is intended to tax services that allow the Client the ability to communicate with all subscribers to the telecommunications network. Congress determines the tax rate and the services to which it applies.

- 7.6.1.6 State Sales Tax: A tax imposed on the sale, lease, or rental of products and services defined as taxable by the state of Minnesota.
- 7.6.1.7 County, City, and Other Local Municipalities Sales Tax: In some instances, a county, city, or other municipality will impose a tax on the sale, lease, or rental of products and services defined as taxable by the state of Minnesota.
- 7.6.1.8 Transit Improvement Tax: Administered by the Minnesota Department of Revenue, this tax is used to fund improvements to the transit system, including light rail, commuter rail, and bus rapid transit.
- 7.6.1.9 Federal Access: The Federal Access charge is authorized by the Federal Communications Commission (FCC) to help cover the costs of providing access.
- 7.6.1.10 TAM/TAP/911: Combines the following three surcharges:
1. Telecommunications Access Minnesota (TAM): Formerly Telephone Access for Communication Impaired Persons (TACIP). This surcharge provides telephone service accessibility to communications disabled persons. It is mandated by the state legislature and applies to all Clients physically located in the state. The Minnesota Public Utilities Commission (PUC) annually reviews the surcharge amount.
  2. Telecommunications Assistance Plan (TAP): The TAP surcharge funds state programs that provide telecommunications services to low-income, elderly, or disabled Clients at a reduced monthly rate or as a monthly credit. The Minnesota Public Utilities Commission (PUC) annually reviews the surcharge amount.
  3. 911: CenturyLink collects 911 surcharges each month for states, counties, and/or cities and uses the money to fund their emergency services communications systems (E911 or 911). The surcharge is imposed on each access line within a jurisdiction's 911 service area.
- 7.6.1.11 Other Service-Related Fees: Monthly surcharges to recover other costs the Company incurs in furnishing Service including, but not limited to, those relating to special access and payphone charges, will be assessed and charged to Clients.
- 7.6.2 Taxes: Service rates and charges are exclusive of all taxes, fees, tax-related surcharges and tax-like surcharges, including, but not limited to, the Federal Access Charge and those charges set forth in Section 7.6.1. Client shall be responsible for, and must pay, all taxes, including, without limitation, sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, consumption and other taxes, fees, duties, charges or surcharges, however designated, and imposed directly on the Company based on the provision, sale or use of Service. If Client believes it, or the Services it receives and uses, are exempt from any tax, Client will provide Company with a properly executed exemption certificate in a form acceptable to the Company that evidences the exemption claimed. In no event will Client be responsible for any income taxes levied on Company or any underlying carrier's net income. Client's obligation to pay applicable taxes (and all other charges due and owing for Service) shall survive the expiration of the Agreement.
- 7.6.3 Setup, Installation and Disconnect Fees: Client shall pay all applicable setup, installation and disconnect fees, which will be invoiced on a Non-Recurring Charge basis and are non-refundable.
- 7.7 Finance Charges on Past Due Amounts: Invoices not paid in full within twenty (20) days of the invoice date will be past due and subject to an additional charge equal to the lesser of eighteen (18) percent per year computed on a daily basis or the statutory maximum.
- 7.8 Treatment of Credit Balances: If a Client whose account for Service has been closed has a credit balance showing, POPP will confirm there are no outstanding charges, such as those related to equipment or contractual obligations. Once POPP determines that the Client's obligations have been met, POPP will transfer the credit to another POPP account balance (if applicable), mail a check to the Client's last known address, or refund the credit to the Client's credit card on file within 90 days of the last activity on the account.
- 7.9 Recovery of Collection Costs: Unless otherwise prohibited by law, Client shall reimburse Company for any costs incurred by the Company in undertaking any collection activity, including, but not limited to, the reimbursement of reasonable attorneys' fees.
- 7.10 Invoicing De Minimis Amounts: The Company may invoice Client on other than a monthly basis or, alternatively, excuse Client from its monthly payment obligation if only a de minimis amount is due and owing. In such instances, the Company may bill Client every other month or, alternatively, not invoice Client until the amount due and owing reaches a level the Company deems sufficient to justify invoicing costs.
- 7.11 Handling/Printing/Mailing Fee: A \$2 Handling/Printing/Mailing Fee (to receive paper invoice by mail) will be assessed each month if Client is not enrolled in paperless billing.
- 7.12 Dishonored Checks: When a check which has been presented to the Company by a Client in payment for charges is returned by the bank, Client shall be responsible for the payment of a returned check charge of \$30.00.
- 7.13 Payments: All payments will be in U.S. currency.

- 7.14 Rate Protection Plan: When a new rate program is introduced as a result of a network supplier reducing prices to POPP, Client may choose the new rate program as long as at least 12 months remain on Client's existing contract.
- 7.15 Phone Payments: Each credit card or electronic check payment made over the phone will be assessed a \$5 fee.
- 7.16 Transfer of Ownership: A transfer of ownership fee of \$50 will be applied to each transfer of ownership, provided that such transfer of the Agreement is permitted in accordance with Section 25.1.
- 7.17 Clients will be billed for Connectivity Product(s) installed by POPP, but not actually turned up due to the Client pushing back the turnup date. Billing will start on the 30<sup>th</sup> day following the completion of CenturyLink Outside Wiring installation and POPP will notify the Client.
- 7.18 Right of Offset: If Client defaults on any payment obligation owed the Company under any agreement for more than thirty (30) days and Company has funds that are owed the defaulting Client, Company, upon notification to the defaulting Client, may offset that which it is owed by first applying such funds to the full balance due by the defaulting Client. Any amount remaining following the offset shall be remitted to Client in the normal course of business.

**8.0 WIRING**

8.1 There are three types of Wiring necessary to install a connectivity product: Outside Wiring, Inside Wiring and Voice and Data Wiring

8.2 Outside Wiring (POPP On-Net and CenturyLink Resold connectivity products)

8.2.1 POPP On-Net or CenturyLink Resold connectivity product:  
 Outside Wiring extends from the CenturyLink central office to the Client's building Demarcation Point (DMARC).

Installation charges for Outside Wiring are listed on each Connectivity Product Description and may be credited if the Client signs a minimum 12 month contract or has a minimum of 12 months remaining on their contract. If Client is moving to a new location, Outside Wiring may be credited as long as Client has a minimum of 12 months remaining on their contract.

8.3 Inside Wiring (POPP On-Net and CenturyLink Resold connectivity products only)  
 There is no charge to the Client if POPP is able to reuse existing Inside Wiring. If POPP is required to install Inside Wiring, there are two types of chargeable Inside Wiring: Non-Complex and Complex:

8.3.1 Non-Complex Inside Wiring: Non-Complex Inside Wiring extends from the DMARC directly to a jack that connects to an analog device without going through any POPP Owned CPE or Client Owned PBX / Ethernet Switch. Examples include:

- Wiring to voice jacks when the Client does not have a phone system/PBX
- Wiring to a Safety System (fire alarm, door entry, burglar alarm, security system, sprinkler system, elevator line)<sup>1</sup>

Labor, materials and travel charges are billable at the following rates:

Wiring to the First Jack                      \$110

Wiring to Each Additional Jack        \$ 70 per jack

8.3.2 Complex Inside Wiring: Complex Inside Wiring extends from the DMARC to the Client Premise Equipment (CPE) such as PBX, router/modem, etc. If DMARC is located outside, Complex Inside Wiring includes installation of conduit through an exterior wall in order to connect wiring from the DMARC to the CPE.

Labor, materials and travel charges are billable at the following rates:

COL, DSL, Broadband Internet        \$ 99 per installation

T-1, DADSL, EoC                            \$199 per installation

8.3.3 Inside Wiring may be credited if the Client signs a minimum 12 month contract or has a minimum of 12 months remaining on their contract. If Client is moving to a new location, Inside Wiring may be credited as long as Client has a minimum of 12 months remaining on their contract.

8.4 Voice and Data Wiring (POPP On-Net and CenturyLink Resold connectivity products)



Voice and Data Wiring extends from the CPE to telephone station, computer and data jacks wired throughout the Client's business space. POPP can also provide industry standard Ethernet or telephone patch cables to connect the jack to the telephone or computer equipment.

- 8.4.1 Labor, materials and travel charges to install/connect Voice and Data Wiring are billable at Time and Material rates of \$65 per half-hour + \$50 travel charge. For voice and data wiring jobs that exceed 4 hours, a formal quote will be provided.
- 8.5 Warranty: POPP warrants all Inside and Voice and Data Wiring work (materials and labor) 90 days from the date of installation. Repairs made to Wiring work within the warranty period shall be made free of charge. After 90 days, the Client is responsible for all labor, materials, and travel charges necessary to repair the Wiring and restore service, billable at Time and Material rates. This warranty will be void if the wiring has been altered/tampered with in any way.
- 8.6 Exclusions/Limitations:
  - 8.6.1 Outside and Inside Wiring charges may not be credited for Metro Optical Ethernet (MOE) service when it is delivered via fiber optic cable.
  - 8.6.2 Inside Wiring charges and credits only apply when Client is installing a new connectivity product.
  - 8.6.3 Credits only apply when Client is purchasing Network Services.
  - 8.6.4 POPP technicians cannot terminate voice jacks to digital telephone station phones connecting to Client-owned telephone systems.
  - 8.6.5 Additional charges apply if an aerial lift is required.
  - 8.6.6 Refer to POPP's Reconfiguration Charges for charges related to Client's reconfiguration/change of an existing connectivity product.
  - 8.6.7 Site Survey & advance scheduling may be required for Voice and Data Wiring depending on the scope of the Wiring.
  - 8.6.8 When Client is changing from DSL to DADSL, EoC, MOE, or T-1, POPP will install Voice and Data Wiring from CPE to Client's firewall or switch at no charge.
  - 8.6.9 POPP technicians are not allowed to complete Inside or Voice and Data Wiring in certain buildings, including but not limited to, Mall of America, Rosedale Center, IDS Center, and the 511 Building (downtown Mpls). These building owners require their own employees/vendors to perform Wiring. In these instances, POPP will only install the CPE required for the connectivity product.
  - 8.6.10 <sup>1</sup>POPP will not terminate Wiring to Safety Systems. POPP will provide, coil and tag Inside Wiring for Safety Systems at the DMARC or will extend the Wiring from the DMARC to an area near the Safety System. The termination of the Wiring to the Safety System is to be performed by a qualified vendor and is the responsibility of the Client.

## 9.0 CALLER ID

### 9.1 Outgoing Caller ID:

- 9.1.1 There is a 15 character maximum limit for Outbound Caller ID (including spaces). The following are valid characters for Outbound Caller ID on On-Net phone numbers:
  - letters of the alphabet
  - numbers
  - -
  - +
  - \*
  - !
  - &
- 9.1.2 On-Net connectivity products may pass any phone number for outbound Caller ID as long as the number is Client-owned, hosted on the POPP network, and located at the same 911 service@address (includes toll free numbers).
- 9.1.3 If a Client would like the outgoing Caller ID number to be a number not hosted by POPP prior approval is needed from the Chief Technology Officer or Network Order Processing Department Manager.
- 9.2 Caller Identification Blocking:
  - 9.2.1 Caller Identification Blocking – Per Call is allowed on all business and residential lines as requested by a Client.

9.2.2 Caller Identification Blocking – Per Line is provided at no monthly charge to the following types of Clients without demonstration of need:

- Law enforcement agencies
- Shelters for battered persons
- Government agencies engaged in undercover purposes
- All residential users

9.2.2 It is not acceptable to mask the Client's Caller ID Name with "Unknown Name", "Private", "Unavailable", or with the Client's phone number. Per the FCC's Truth in Caller ID Act, the Outbound Caller ID Name must be the company name unless the client meets the specifications for Caller ID Blocking. Go to [www.federalregister.gov](http://www.federalregister.gov) for more information about the Implementation of the Truth in Caller ID Act.

## **10.0 AGREEMENT AND SERVICE TERM, TERM RENEWAL, AND TERMINATION/DEFAULT**

10.1 Agreement Term: The initial term of Service shall begin on the Start of Service Date. Client will receive rates discounts from the month to month rates as detailed on the product rate sheets upon execution of a Service Agreement with at least a 12 month Service Term.

Subject to the early termination provisions set forth herein, at the end of the Services Term, the Agreement will automatically continue on a month to month basis at Company's month to month rates published in its tariff. At the end of the Services Term, either party may terminate the Agreement (and Service) by providing the other party with written notice of termination at least thirty (30) days prior to the intended termination date.

10.2 Client Default/Cancellation/Change After Start of Service Date: Early termination charges ("Early Termination Charges") are equal to 100% of monthly recurring charge and amortized construction costs for MOE and forty percent (40%) of all other Monthly Recurring Charges, usage charges and surcharges due for Service during the remainder of the initial term or any renewal term then in effect (based on the average Monthly Recurring Charges and usage charges during the months prior to termination, multiplied by the number of months remaining in the initial term or any renewal term then in effect), plus any Non-Recurring Charges previously credited or credits received from Company, and apply in the following situations (in addition to any and all other amounts due and owing):

- If, after the Start of Service Date, Client fails to comply with any other material term of an Agreement, and such failure continues for thirty (30) days after written notice thereof from Company to Client, Company will terminate Service(s) and the underlying Agreement(s).
- If Client is committed to subscribe to Service for a minimum term and Client terminates the Agreement (and Service) by requesting disconnection of such Service(s) before the end of the Initial term or any renewal.
- If the Agreement and/or Service(s) are terminated for cause by Company, for any reason(s) not otherwise set forth above.
- If Client terminates the Agreement and/or Service(s), in whole or in part, for its convenience, for any reason(s) not otherwise set forth above.

10.2.1 Client will not be liable for the Early Termination Charges set forth above if Company materially breaches the Agreement.

10.2.2 Early Termination Charges shall be immediately due and payable upon Client's receipt of Company invoices containing such charges. The Company may institute immediate action to enforce the payment of charges due and owing it, including the pursuit of all remedies available in law or equity. Client will be responsible for paying any collection and attorney fees reasonably incurred by the Company in seeking payments owed by Client.

10.3 Construction or Acquisition of Communications Facilities: If Company specially constructs or acquires Communications Facilities in order to provide Service(s) to Client, and Client cancels or breaches the Agreement after its execution but prior to the Start of Service Date, Client shall reimburse Company or any third party, as appropriate, for all costs incurred in undertaking to specially construct or acquire such Communications Facilities. If Company specially constructs or acquires Communications Facilities in order to provide Service(s) to Client, and Client terminates or breaches the Agreement after the Start of Service Date, Client shall pay Company all remaining unpaid charges owed for the specially constructed facilities. In addition to these remedies, Client will not be eligible for any "Company Satisfaction Guarantee" or any other early termination waiver program or promotion.

10.4 Network Service to a Construction Trailer: The construction company must already have network services at their main office location. The contractor must be awarded the construction project before POPP will issue orders to install service to a construction trailer. Orders for service to a construction trailer do not qualify for the 90 day guarantee or false start guidelines. Therefore if a client places an order for service to a construction trailer and cancels at any time, the Client is responsible for Termination Penalties.

- 10.5 Installation Delays: If there is a delay in Service installation, Client may cancel Service without liability only if the delay is due solely to the Company and lasts more than ninety (90) days beyond the scheduled Start of Service Date; provided, however, that in no event may Client cancel Service without liability if the Company has incurred costs in specially constructing or acquiring Communications Facilities to provide Service to Client.
- 10.6 Client Default/Nonpayment: Company may discontinue service on five (5) days notice, excluding Saturdays, Sundays, and Holidays, according to the following conditions, in accordance with the Minnesota Public Utilities Commission Rules Part 7810.1900, Disconnection of Service with Notice; Permissible Reasons and Part 7810.2300, Notice Requirements:
- 10.6.1 For failure of the Client to pay a bill for the Company's Service, including FCC approved user charges, when due;
- 10.6.2 For failure of the Client to meet the Company's deposit and credit requirements;
- 10.6.3 For failure of the Client to make proper application for service;
- 10.6.4 For Client's violation of any of the Company's rules/tariff on file with the Commission;
- 10.6.5 For failure of the Client to provide the Company reasonable access to its equipment and property;
- 10.6.6 For Client's breach of the contract for Service between the Company and the Client;
- 10.6.7 For a failure of the Client to furnish such service, equipment, and/or rights-of-way necessary to serve said Client as shall have been specified by the Company as a condition of obtaining service; or
- 10.6.8 When necessary for the Company to comply with any order or request of any governmental authority having jurisdiction.
- 10.7 Termination Not Exclusive Remedy: Any remedy provided to the Company shall not be construed to be an exclusive remedy and shall not deprive the Company of its ability to pursue other available remedies. The parties agree that the Company's damages in the event of Service cancellation or termination would be difficult or impossible to ascertain and, therefore, the Early Termination Charges in the Agreement are intended to serve as liquidated damages rather than penalties.

#### **11.0 CLIENT CREDIT HISTORY; SECURITY DEPOSITS; OTHER ASSURANCES OF PAYMENT**

- 11.1 Client Credit History: Company may seek and acquire credit and related Client information from reporting agencies furnishing such information for the purpose of ascertaining Client's credit and payment history, and Client consents to same. Company will use the information acquired to make a determination of the financial conditions pursuant to which it will provide Service to Client.
- 11.2 Deposits and Other Assurances of Payment: Applicants for Service or existing Clients whose financial condition is neither known nor acceptable to the Company may be required at any time to provide the Company with a deposit as a condition of the initial or continued receipt of Service. A deposit may be in cash or equivalent, up to an amount equal to the applicable installation charges, if any, or up to two (2) month's actual or estimated monthly recurring and usage charges for the Service(s) requested or provided. The Company will pay simple interest at the rate set annually by the Commissioner of the Minnesota Department of Commerce for the period during which it holds a Client's cash deposit, unless a different rate of interest is established and applicable in the jurisdiction in which service is provided. The Company may refund a deposit at any time to Client by crediting it, with accrued interest, against the Client's account. The Company may refuse to accept a request for Service, cease processing a Service request, or suspend or terminate Service if Client refuses or fails to comply with any Company request for a security deposit or other assurance of payment.

#### **12.0 BILLING DISPUTES**

In the event that the Client disputes any charges billed by the Company prior to disconnection, the Company shall withhold disconnection and promptly investigate the dispute. Client must submit to Company an itemized statement in writing identifying the disputed charges and reasonably explaining the basis of the dispute prior to the next billing cycle.

Company shall promptly investigate the dispute and advise Client of the investigation and its results within thirty (30) days of the Company's receipt of Client's dispute. In concluding its investigation, the Company will consider all relevant and credible information provided by Client as well as by other information reasonably available to Company. If a dispute is not resolved within that period, either Company or Client may seek alternative dispute resolution in accordance with the Dispute Resolution Process set forth in Section 13.

Upon completion of its investigation and advising Client of its findings, the Company may proceed with disconnection of service as provided in Section 7810 of the Minnesota Administrative Code. Upon being advised of the Company's investigation and findings, Client shall remit payment in full for any outstanding bill that was subject to dispute, even if Client is not satisfied with the results of the Company's investigation. Company may assess a Finance Charge of eighteen (18) percent per year calculated on a daily

basis or the statutory maximum on any undisputed balances not paid when due or any disputed balances later found to be correct. Finance charges may be assessed, as of the original Due By Date, against any disputed amount denied by Company.

### **13.0 DISPUTE RESOLUTION PROCESS**

- 13.1 The parties agree to use the dispute resolution procedures set forth in this section with respect to any controversy or claim arising out of or relating to the Agreement or its breach, except that either party may elect to litigate, or bring before the applicable agency in the case of subsection (iii), the following types of controversies or claims: (i) action seeking a temporary restraining order or injunction, (ii) a suit to compel compliance with this dispute resolution process, (iii) disputes relating to the lawfulness of rates, terms, conditions or practices concerning Services that are subject to the Communications Act of 1934, as amended, or the rules and regulations of the FCC, a state public utility commission or other administrative agency, (iv) Client's non-compliance with publicity provisions, or (v) billing or payment disputes or collections matters.
- 13.2 Either party may submit a dispute to binding arbitration for resolution by a single arbitrator with a professional arbitration service mutually agreeable to the parties after furnishing the other party ten (10) days prior written notice. If the parties cannot agree on an arbitration service, the arbitration will take place pursuant to the American Arbitration Association ("AAA") Commercial Arbitration Rules and Mediation Procedures. The parties shall bear equally the costs of arbitration, including the fees and expenses of the arbitrator. Each party shall bear the cost of preparing and presenting its case, which will be heard at a mutually agreeable site in Hennepin County, Minnesota.
- 13.3 This section and the arbitrator's authority to grant relief shall be subject to the Federal Arbitration Act, 9 U.S.C. §§ 1-16, et seq. ("FAA"), the provisions of the Agreement, and the AAA Code of Ethics for Arbitrators in Commercial Disputes. The arbitrator shall have no power or authority to make any award that provides for punitive or exemplary damages or damages otherwise limited or excluded in the Agreement. The arbitrator's decision shall be final, binding and non-appealable. The award may be confirmed and enforced in any court of competent jurisdiction. The FAA shall govern all post-award proceedings.

### **14.0 DISCONTINUANCE FOR CAUSE BY COMPANY**

- 14.1 **Fraud, Telephone Numbers and Directory Listings:** Client is responsible for payment of any charges incurred due to fraud, abuse, or misuse of the Services, whether known or unknown, to Client. It is Client's obligation to take all measures to ensure against such occurrences. POPP shall take all reasonable measures to provide Client with continuation of existing telephone numbers. However, if Client is changing location at the time of conversion or taking service for the first time at a location, POPP makes no warranties regarding assignment of particular telephone numbers to Client. POPP shall not be responsible for telephone numbers published by Client prior to confirmation that the number is installed and terminating properly. POPP shall not be liable to Client for any change in telephone numbers due to actions of any vendor or supplier of services to POPP or regulatory changes. Client's reliance upon and/or use of any Service numbering information prior to installation and acceptance of Service is at Client's sole risk. POPP provides listing information to Local Exchange Carrier ("LEC") for inclusion in LEC directories. POPP is not responsible for publication of any directories. POPP is not liable for damages arising from errors and/or omissions, whether arising through negligence or otherwise, of directory listings of any publisher/database (i.e. white pages, 411), or listings obtained from the directory assistance operator. It is the Client's responsibility to inform POPP in writing of any White Pages directory listing changes (listing name, address, telephone number, etc.) at least 90 days prior to the White Pages directory close date.

Yellow Pages Advertising is Client's Responsibility. Popp strongly recommends that Client contact its Yellow Pages Advertising Vendor promptly after execution of the Agreement in order to ensure continuity of Yellow Pages Advertising.

- 14.2 **Condemnation or Loss of Facilities:** The Company, with notice to Client, may suspend or terminate Service following the condemnation of any material portion of the facilities used to provide Service or if a casualty renders all or a material portion of such facilities inoperable and beyond feasible repair.
- 14.3 **Client's Obligation To Pay:** The discontinuance of Service pursuant to this section does not relieve the Client of its obligation to pay the Company for Service furnished up to the time of discontinuance. If Service is discontinued by the Company for cause before the Client has fulfilled its Initial or any Renewal Term, or during any Service plan to which special charges apply, Client will be obligated to pay the Company as if it had terminated Service for its convenience.

### **15.0 TELECOMMUNICATIONS SERVICE PRIORITY PROVISIONING AND RESTORATION OF SERVICE**

- 15.1 **Telecommunications Service Priority Provisioning and Restoration of Service:** The provisioning and restoration of Service in emergencies shall be undertaken in accordance with Section 64.401 of the FCC's Rules and Regulations, 47 CFR Sec. 64.401, which establishes a prioritization for such undertakings.

## **16.0 SERVICE INSPECTION, TESTING AND ADJUSTMENT**

- 16.1 Inspection: Upon reasonable notice, Company may conduct inspections of Service to determine whether Client is satisfying its obligations under the Agreement. Company may interrupt Service at any time, without liability or penalty, if it determines the Client is non-compliant with any Agreement requirement. No outage allowance credit will be given for any Service interruption occurring during an inspection.
- 16.2 Testing and Adjustment: Upon reasonable notice, Client shall make Service available to Company for such testing and adjustment as the Company deems necessary to maintain the furnishing of Service at satisfactory levels.

## **17.0 COMPANY FACILITIES AND EQUIPMENT FURNISHED TO CLIENT**

- 17.1 Company Facilities and Equipment: The Company will use reasonable efforts to maintain facilities and equipment furnished to Client as part of Service. Without the prior written consent of the Company, Client may not rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company in the course of provisioning Service, nor may it permit others to do so. Unauthorized use of Company Equipment voids the warranty on the Equipment. Company labor to correct or re-establish configurations in Company Equipment as a result of unauthorized use by Client is chargeable at time and material rates.
- 17.2 Equipment Purchased from POPP: Client acknowledges that any return of equipment purchased from POPP is subject to a 20% restocking fee. Equipment has a one-year standard warranty; Client is responsible for registering and maintaining the warranty directly through manufacturer.
- 17.3 Lend/Lease and Leased Client Premise Equipment: POPP will provide CPE necessary to provision services ordered by the Client for the period of time the Client is receiving service from POPP as follows.
- a. Title to Lend/Lease Facilities and Equipment: Company facilities and equipment used to provide Service shall remain the sole and exclusive property of Company or its assignee(s). Said facilities and equipment at all times shall be and remain personal property notwithstanding any attachment or embedding in realty. Company will endeavor to affix identifying plates, tags or labels on its facilities and equipment disclosing Company's ownership thereof. Client shall not tamper with, remove, or conceal such identifying plates, tags or labels. Upon reasonable notice, Company may access its facilities and equipment on Client's premises and replace or remove said facilities or equipment at any time.
  - b. Installation: Client authorizes POPP to connect to Client Owned Equipment and agrees to provide a secure, air-conditioned space to house the CPE and sufficient electricity to operate the CPE. Client agrees to comply with all instructions and manufacturer's requirements regarding the use and/or care of POPP provided CPE, and to take reasonable measures to protect the CPE. Client agrees to pay POPP the retail price of any lost, stolen or damaged CPE. Client agrees that the Client is not authorized to change the configuration of the CPE and understands that doing so may result in a service outage and chargeable repair. Client's telephone system vendor may need to be present during installation of CPE. If Lend/Lease CPE connected to the Client's telephone system is reconfigured or moved, the Client's telephone system vendor must be present. It is the Client's responsibility to ensure that the telephone system vendor is present. Client is responsible to pay for charges from the telephone system vendor.
  - c. Repair/Replacement: POPP will replace or repair Lend/Lease CPE that does not perform as specified, at no charge, unless we determine that the Client is directly or indirectly responsible for the CPE failure.
  - d. Change of Address/Client Moves: Any move of the CPE must be completed by POPP on a time and material basis and is chargeable to the Client. Client agrees that the Client is not authorized to move the CPE and understands that doing so may result in a service outage and chargeable repair.
  - e. Return:
    - i. Leased Modem/Router and Lend/Lease Analog Telephone Adapter (ATA): CPE must be returned within 30 days of termination of services from POPP. Client is responsible for disconnecting CPE at the Client's site and may return or ship CPE to POPP's business office at the Client's expense. If the CPE is not returned within 30 days or is returned in non-working condition, Client agrees to pay the retail price of the CPE.
    - ii. All other Lend/Lease or Leased CPE: CPE must be returned within 30 days of termination of services from POPP. POPP will be responsible for removing the CPE from the Client's site at no charge to the Client. The Client agrees to grant POPP access to the equipment room within 30 days of termination of services to retrieve the CPE. If the CPE is not returned within 30 days or is returned in non-working condition, Client agrees to pay the retail price of the CPE.

- f. **Battery Backup:** Battery backup is not included with CPE. If a battery backup is required by the Client, it must be purchased separately by the Client. If power fails, Client must also have battery backup on telephone and LAN equipment/computers in order for voice and internet networks to work.

17.4 **Costs Incurred to Provision Services:** Client will be responsible for all costs incurred in accommodating the provisioning of Service at its premises, including, without limitation, those pertaining to electricity, HVAC, and security. If any of Client's equipment requires reprogramming to make it compatible with Company provided Service, Company shall not be liable for any applicable costs associated with reprogramming charges.

17.5 **Travel Charge:** If a POPP technician is dispatched to install CPE during a scheduled time and Client is unavailable, Client will be charged Travel Charge and time spent at Client location.

17.6 **Internet Gateway Firewall Appliance Monitored Services Terms and Conditions:**

- a. **Performance:** POPP agrees to keep all standard parts in stock and to supply properly trained technicians to service the Client's Internet Gateway/Firewall Appliance. POPP agrees to maintain in effect Property/Liability Insurance on employees, vehicles, etc. Further, all employees are covered by appropriate workers compensation and disability insurance. POPP is fully insured and bonded.
- b. **Client Assistance:** Client agrees to furnish the POPP personnel with all pertinent information related to the reported malfunction, and to afford them access to the equipment as required for the performance of this agreement.
- c. **Unauthorized Maintenance:** If any vendor other than a POPP authorized representative performs service or repairs on the equipment while the equipment is under this Service Level Agreement, POPP will terminate this agreement.
- d. **Limitation of Liability:** POPP shall be excused from performance of its obligations under this contract to the extent that it is prevented, hindered, delayed, or otherwise made impracticable by reason of acts of God, acts of government, acts of omissions of third parties, flood, storm, riot, vandalism, fire, lightning, strike, non-availability of parts, explosion, war, civil strife, or any other cause beyond the reasonable control of POPP. During the term of the contract, POPP will maintain any part supplied under this contract on the same terms and conditions as the equipment. POPP disclaims all other warranties and conditions, expressed, implied, statutory of any nature whatsoever, concerning the services and materials provided in connection with this Service Level Agreement. This Service Level Agreement is non-transferable in the event that ownership of the system is changed to another party.
- e. **Database Loss Disclaimer:** POPP disclaims any expressed or implied warranty that the Software and any enabling Firmware are technically immune from or prevent the loss of data and/or Client's database. The Client hereby assumes all risk associated with the loss of data.
- f. **Modifications:** No person other than an officer of POPP may extend or modify this Service Level Agreement. Since the laws of the State of Minnesota govern this service contract, all amendments must be in writing, and signed by both parties.
- g. **Manufacturers Terms and Conditions:** See [sonicwall.com](http://sonicwall.com) for firewall appliance Terms and Conditions.

## **18.0 ALLOWANCES FOR SERVICE FAILURES**

18.1 When the use of Service or facilities furnished by the Company is interrupted due to any cause other than negligence or willful act of Client, or the operation or failure of the facilities or equipment provided by the Client, a pro rata adjustment of the monthly Recurring Charges subject to interruption will be allowed for the Service and facilities rendered useless and inoperative by reason of interruption, whenever said interruption continues for a period of twenty-four (24) hours or more from the time the interruption is reported to or known to exist by the Company, except as otherwise specified in the Company's Tariff.

18.2 It shall be the obligation of Client to notify Company of any interruptions of service. Before giving such notice, Client shall ascertain that the trouble is not being caused by any action or omission of Client, not within Client's control.

18.3 An interruption period begins when Client reports a service facility or circuit to be inoperative and releases it for testing and repair. An interruption period ends when the service, facility, or circuit is operational. If Client reports a service, facility, or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired but not interrupted. No credit allowances will be made for a Service, facility, or circuit considered by the Company to be impaired.

18.4 No credit allowances will be made for any interruption in Service due to the negligence of or willful act of Client.

18.5 A credit allowance for disruption of Service will only be given if the disruption in Service exceeds twenty-four (24) hours.

- 18.6 The credit allowance will be based upon the ratio of the duration of the Service interruption (measured from the time the interruption is reported to or detected by Company, whichever occurs first) to the total time in a thirty (30) day month. That ratio, multiplied by the monthly rate for the Service affected shall determine the amount of the credit allowance.
- 18.7 Credits for interruptions of service shall in no event exceed an amount equivalent to the Monthly Recurring Charges for the month of service during which the event that gave rise to the claim for a credit occurred. Only those facilities on the interrupted portion of the circuit will receive a credit.
- 18.8 No other liability shall attach to Company with respect to interruption of Service.
- 18.9 Limitations on Credit Allowances: No credit allowances shall be made for Service impairments:
- 18.9.1 Due to the negligence or willful misconduct of Client or Client's agents or contractors, or for noncompliance with any provision of the Agreement, including applicable tariffs, by Client or any other entity providing services, facilities or equipment interconnected with Service;
- 18.9.2 Due to the negligence or willful misconduct of a third party;
- 18.9.3 Due to the failure or malfunction of non-Company provided equipment, systems or services;
- 18.9.4 During any period in which the Company is not given access to Service or Service components for the purpose of repairing and restoring Service;
- 18.9.5 During any period in which Client has released Service to the Company either for maintenance or for the implementation of a Client request to change Service.
- 18.10 Use of Alternative Service Provided by Company: If Client uses an alternative Service provided by the Company or another provider during a Service failure, Client must pay all applicable charges for the alternative Service.

## **19.0 NON-ROUTINE INSTALLATION/MAINTENANCE; FALSE CALLOUT/NTF CHARGES**

- 19.1 Non-routine Installation/Maintenance: At Client request, Company will install or maintain Service outside the Company's regular business hours. In such cases, charges based on actual labor and other costs incurred will apply. If installation or maintenance extends beyond the Company's regular business hours, additional charges may apply. If hazardous conditions are present where installation or maintenance is requested by Client, and Company chooses to perform the installation or maintenance, additional charges will apply.
- 19.2 False Callout/No Trouble Found (NTF) Charges: Client may be charged when a reported Service interruption results in the dispatch of a technician and: (a) the technician is denied access to the Client's premises; (b) No trouble is found by the technician; or (c) the cause of the interruption was not due to Company facilities, equipment or systems used to provide Service.

## **20.0 PHONE NUMBERS/NETWORK NUMBERS/DOMAIN NAME POLICY**

- 20.1 Network Number and Domain Name Policy: If Client acquires Service that utilizes Network Numbers or Domain Names, Client will comply with Network Number and Domain Name policies established by the Company.
- 20.2 Use of Domain Names: Upon termination of Service, use by Client of all Company Domain Names and TCP/IP Addresses belonging to Company will end. IP assignments are not guaranteed and may be modified by Company or the American Registry for Internet Numbers (ARIN). Company has sole discretion with respect to the Internet routing of Company provided IP addresses. Unless otherwise agreed in writing, Client shall be responsible for maintaining its own Domain Name when purchasing Company Internet Services and for paying all charges associated with its Domain Name, including charges billed to Client by third parties for Domain Name registration.

## **21.0 ANSWER SUPERVISION/CALL ACCEPTANCE**

- 21.1 Answer Supervision: Client must provide Answer Supervision when Service is connected to switching equipment or Client-provided communications systems. Client's equipment or systems must allow for the measurement of chargeable time beginning with the delivery of Client's call to the switching equipment or to the equipment connected to the communications system and ending with the termination of the call by the calling party. If Client's communications system fails to promptly return to Company an idle (on-hook) state upon completion of the call, Client will be held responsible for all charges that result up until the time Client's communication system signals the Company's network that the call has been terminated or until such time as the Company's own system terminates the call. If Client or its communications system rejects, fails to answer, or fails to signal calls

routed via the Company's network, Client shall be liable for any and all charges imposed on Company by third parties as a result of such Client act or omission.

## **22.0 CLIENT PROPRIETARY NETWORK INFORMATION**

- 22.1 Client Proprietary Network Information: To inform Client of Company or Affiliate products that may be of interest to Client, the Company may wish to use information derived from its provision of Service to Client, particularly information referred to as Client Proprietary Network Information ("CPNI") under Part 64, Subpart U, of the Commission's Rules and Regulations, 47 CFR Sec. 64.2001 et seq. CPNI includes, among other things, the identity and quantity of Services to which Client subscribes, information on how the Services are used, and billing information pertaining to the Services. Federal law restricts the use of CPNI for purposes other than providing the Service to which Client subscribes, without Client approval.
- 22.2 Client Approval of CPNI Use by Company: Client may signify approval or denial of the use of its CPNI by Company or an Affiliate of Company. A Client's approval will remain in effect until Client contacts Company and states it no longer wants the Company to use its CPNI to market other Company or Affiliate products to Client. To revoke its approval, Client may contact Company at any time and at no cost to Client by dialing 1-800-234-7677 or by locating information about contacting Company <http://www.popp.com/cpni.cfm>.

## **23.0 SAFETY (ALARM) SYSTEM CONNECTIVITY**

Because safety systems protect life and property, for the following reasons POPP recommends that any phone lines connecting to safety systems are dedicated Central Office Lines (COLs.). If Client requests another line type is used, battery backup may be required.

- 23.1 If a COL is dedicated (meaning it is not shared with any other devices, such as: credit card machines, fax machines, DSL modems, postage machines, employee telephones, etc.) the risk of other equipment sharing the line and possibly interfering with the safety systems' ability to dial out to report an alarm will be mitigated.
- 23.2 Laws and ordinances vary by city and by safety system. POPP recommends that Clients consult with their safety system vendor for specifics regarding those requirements. POPP technicians will perform cross connects on existing safety system lines, but will not physically terminate telephone lines directly to safety systems. This connection must be made by an authorized vendor for the safety system. Client is responsible for charges incurred for work completed by safety system vendors.
- 23.3 With any safety system (but particularly with Fire Alarm systems) Clients are strongly encouraged to contact their monitoring Company on the day of the cutover to POPP to notify them of a brief interruption in phone connectivity to the safety system. The monitoring Company may advise placing the system into "test mode" to temporarily suppress any alarms while work is being performed on the telephone lines. Failure to do so may result in monetary penalties by police and/or fire departments for a false dispatch.

## **24.0 ASSIGNMENT**

- 24.1 Assignment: Client may not sell, transfer or assign the Agreement or the Service(s) thereunder, in whole or in part, without the prior written consent of the Company, which consent may be granted or denied in the Company's sole and exclusive discretion. Any such assignment without Company's prior written consent shall be void, and in such event Company shall have the option of terminating the Agreement and Service(s) thereunder, and requiring Client to pay the applicable Early Termination Charges. In the event the Agreement is assigned by Client in accordance with the foregoing to any other party which, prior to the assignment, has an agreement (the "Prior Agreement") with the Company for the provision of Service, the Service being provided under the transferred Agreement shall continue to be governed by the transferred Agreement, and the other/prior Service provided shall continue to be governed by the Prior Agreement, each without reference to the other except that the Company may require a deposit as provided in the Agreement.

## **25.0 NOTICES**

- 25.1 Notice: Notice required of Client under the Agreement shall be in writing and delivered by certified mail; return receipt requested, to POPP Communications, 620 Mendelssohn Avenue North, Golden Valley, MN 55427-4300 Attn: VP of Operations & Finance. A notice shall be effective on the date of its receipt by the Company.
- 25.2 Telecom & Internet Networks, Signaling, Switching & Application Server Upgrades/Updates: From time to time, Company is required by our supplier(s) to perform server upgrades/updates that will result in your local (including 911 emergency services), long distance, voice mail, and/or Internet products to be out of service for a short period of time. Company will perform planned scheduled maintenance and upgrades/updates during our maintenance windows. If Client would like to be contacted prior to or after server upgrades/updates, please contact your Account Manager at 763-797-7900. Client must provide the fax number and/or e-mail address to which POPP should send notification.



## **26.0 MISCELLANEOUS PROVISIONS**

- 26.1 Relationship Among the Company, Client and Third Parties: The Agreement does not render the Company or Client the agent or legal representative of the other, nor does it create a partnership or joint venture between the Company and Client. Neither Company nor Client shall have any right or authority to bind the other in any manner whatsoever. The Agreement confers no rights or authority of any kind on third parties.
- 26.2 Severability: Any provision found unlawful by a court or regulator having jurisdiction shall be deemed to be severed from the Agreement, but such severance shall have no effect on the enforceability of the remaining provisions of the Agreement.
- 26.3 Choice of Law and Venue: The Agreement is made pursuant to, and shall be construed and enforced in accordance with the laws of the State of Minnesota, without reference to its principles of conflicts of laws, and Client explicitly consents to the exclusive jurisdiction and venue of the federal and state courts located in Hennepin County, Minnesota.
- 26.4 Non-exclusive Dealing: The Agreement is non-exclusive. Nothing shall prevent Client or Company from entering into similar arrangements with, or otherwise providing Services to, any other person or entity.
- 26.5 No Publicity: Client may not issue a news release, public announcement, advertisement or other form of publicity concerning the existence of the Agreement or the Service provided without the prior written consent of the Company. Failure to comply with this obligation shall allow the Company to immediately terminate the Agreement, in addition to seeking any and all other remedies available in law or equity.
- 26.6 Survivability: The terms and conditions contained in the Agreement that, by their sense and context, are intended to survive the performances of the parties shall survive the completion of those performances and the Agreement's termination. These include, without limitation, the making of payments due under the Agreement.
- 26.7 No Waiver: No waiver of any of the provisions of the Agreement shall be binding unless made in writing and signed by the waiving party. The failure of either party to insist on the strict enforcement of any provision of this Agreement shall not be deemed to constitute a waiver of the provision, and all terms and conditions shall remain in full force and effect.
- 26.8 Complete Agreement: The Agreement, incorporating all the applicable documents referenced herein, represents the entire agreement between the parties with respect to Service, and supersedes all other prior agreements between the parties, whether written or oral. The Agreement may be modified only by writings executed by authorized representatives of the parties, Company changes made to referenced URL sites, Company changes to applicable tariffs, or as otherwise specifically provided for between the parties. In no event shall the Agreement or any component thereof be modified, amended or affected in any way by e-mail correspondence between or among the parties' employees, agents or representatives.

**Rev. 8/16/17**