



Service Agreement

1. GENERAL APPLICATION.

This Service Agreement (“*Agreement*”) constitutes your agreement with **Tele-Media Solutions** for any Services, as defined by this *Agreement*, you subscribe to or receive from us, to the extent not governed by any governmentally-regulated tariffs or other written agreement between us, which tariffs or other agreement will supersede this agreement only concerning provisions that are not consistent with this *Agreement*. This *Agreement* is effective now for customers already subscribing to Services, or the date customers subscribe to Services on or after 7/1/2009.

This *Agreement* incorporates by reference our rates, charges, terms and conditions for Services (*Features and Services*) as posted and amended from time to time, and appear on our Internet website <http://www.tele-mediasolutions.coop>. If you do not have Internet access to our website, you may request a written copy of these *Features and Services* by calling 812-967-3171 or writing to us at P.O. Box 9, 105 E Railroad Street, Pekin, IN.

Your subscription to, use of, or payment for Services constitutes your acceptance of this *Agreement* and our *Features and Services*. Contact us toll-free at 877-967-3171 immediately to cancel Services if you do not agree to any part of this Agreement. If you cancel Services, you will be responsible for all usage charges and the pro-rata portion of all monthly recurring charges incurred prior to cancellation.

- **Changes to this Agreement.** We reserve the right to change the terms and prices of the Services at any time, including this *Agreement* and the *Features and Services* incorporated in this Agreement. You will be provided written notice of changes in pricing and other terms and conditions relative to this Agreement in accordance with Section 9. The change will become effective on the date described in the notice. We will not provide notice to you regarding price decreases or the expiration of promotional pricing, offers, and terms. We will not provide notice of changes to applicable taxes or surcharges, unless required by law or regulation, but we may post such changes to the *Features and Services* page on our website.

Your continued use of the Services after any change constitutes your acceptance of any such changes in the *Features and Services*. Your sole remedy for any changes made by us is your right to cancel the affected Service or terminate this Agreement.

THIS AGREEMENT REQUIRES THE USE OF ARBITRATION AND WAIVES ANY RIGHT TO TRIAL BY JURY TO RESOLVE CERTAIN DISPUTES AND OTHERWISE LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE. You should carefully read all terms in this Agreement, including a Mandatory Arbitration of disputes provision.

2. DEFINITIONS.

- “Company,” “we,” and “us” means **Tele-Media Solutions** any successor to or affiliate of the **Tele-Media Solutions** to the extent such successor or affiliate provides Services to you under this Agreement.

- “*Features and Services*” means the rates and descriptions, charges, or other terms and conditions applicable to Services in addition to the terms described here, incorporated by reference into this *Agreement* as posted to the Website or by requesting a copy from us by calling toll free at 877-967-3171 or listed at <http://www.tele-mediasolutions.coop>. In the event of conflict between the terms and conditions of this document and the *Features and Services*, the terms and conditions of this *Agreement* govern. **You agree that it is impractical to list in this document all of the Service descriptions, charges, and other terms applicable to all Services governed by this Agreement and that providing this information on our website is a reasonable method of providing you with notice of the Prices and Rules.**
- “Service” or “Services” means all telecommunications and ancillary services we provide to you.
- “Customer”, “you”, or “your” means any person or entity that requests or uses Services.

3. SERVICE PROVISION AND USE

- **Provision of Services.** In our sole discretion, we may accept or reject your request for Services for any lawful reason. Before activation of any Service, we may check your credit; verify your identity; require a deposit, prepayment or other fee to establish or maintain Services; or require that you execute any authorizations and verifications we believe necessary. You must have and maintain satisfactory credit to receive and continue to receive Services.
- **Installation.** If required, you will provide reasonable cooperation to enable us or our agents to install or repair the Services. You are responsible for damage to our equipment and Services located on your premises, excluding reasonable wear and tear or damage caused by us.
- **Use of Services.** You agree to: (A) ensure compliance with this *Agreement* by anyone you authorize to use the Services; (B) pay all charges for Services provided or used under this *Agreement* including, but not limited to, unauthorized charges incurred on calls placed from your premises; (C) ensure that your actions and equipment do not directly or indirectly interfere with our ability to provide Services to others, or the quality of such Services; (D) comply with all applicable laws and regulations when using our Services and not use our Services in an unlawful, fraudulent, destructive, or abusive manner, or allow others to do so, (E) not use Services in such a manner that causes interference with our or another users of our network, and (F) allow us, **in our sole discretion and without liability to you, to place restrictions on use of your Services, and immediately (even during a call) disrupt, suspend, or terminate your Services without notice for violations, suspected violations, or to prevent violations of the terms of this Agreement.**
- **Monitoring.** You understand that it may be possible for unauthorized third parties to monitor data traffic. If you wish to secure your usage in connection with any Services, you have the obligation to obtain, at your own cost, encryption software or other transmission security protections. You assume full responsibility for the establishment of appropriate security measures to control or limit access to your information.
- **Internet Access Agreement / Acceptable Use Policy.** If you purchase Services that connect to or flow over the Internet, you must conform to our Internet Access Agreement / Acceptable Use Policy posted on our Website.
- **Failure to Comply.** If you fail to comply with any provision of this Section 3, you release us from all liabilities or obligations in connection with the affected Service, and you will indemnify us for all costs or damages that we incur as a result of your non-compliance as described in Section 7 of this *Agreement*.

4. CHARGES AND PAYMENT

- **Charges.** We will bill you for Services on a monthly basis based on the current *Features and Services* posted on the website and listed in any written information we send you. You agree to pay these charges, including all applicable connection charges, usage charges, monthly fees, monthly minimums, other fees, surcharges, taxes and federal, state and local government or quasi-government imposed or permitted charges, including, but not limited to, charges related to E-911, state and federal Universal Service, Telephone Relay Service, payphone providers, interexchange carrier charges and federal Subscriber Line Charge. Taxes and government surcharges will be in the amounts that federal, state, and local authorities require or permit us to bill you. You agree to pay all taxes, surcharges, assessments, and other fees that are related to the Services and included on your bill or bill, unless you are exempt from these payments and provide us documentary evidence of the exemption.
- **Billing.** Any recurring charges for your Service listed in the *Features and Services* begin accruing when the Service to which the recurring charges are applicable is available for your use. You may be billed a prorated portion of any recurring charges in the initial month of service. Recurring charges may be billed in arrears or in advance, depending on the Service, while monthly usage charges are generally billed in arrears. If your monthly charges net to \$0, you may not be billed. Current billing information may be available in your account information accessible from our website and will be available by calling our customer service number 812-967-3171, and an additional fee may be charged for bill reprints.
- **Payment.** You must pay all charges applicable to your Services, including all applicable taxes, fees, and surcharges, in U.S. currency within 17 days of the bill date. We may charge you late payment fees at the rate of 10% of the first \$3.00 plus 3% of the remaining unpaid balance or the maximum rate allowed by law for all late payments. Suspension of your account will be made after 30 days of past due balances. If we don't receive your payment after 120 days following suspension, you agree to pay any costs and expenses associated with our collections efforts, including attorneys' fees. We may charge you an insufficient funds or returned check fee, up to the maximum rate allowed by law, if your check, bank draft, electronic funds transfer, or other order for payment is dishonored or returned for insufficient funds or any other reason. Our acceptance of late or partial payment (even those marked "PAID IN FULL") and late payment charges will not constitute waiver of any of our rights to collect the full amount due under this *Agreement*.

Any mathematical error made by us or any of our representatives does not constitute an offer and may be corrected by us.

You are responsible for preventing any unauthorized use of the Services, and you are solely responsible for paying us for any charges resulting from unauthorized use of our Services.

- **Disputed Charges.** Except as otherwise provided by applicable law, you must notify us of any disputes concerning any billed charges within 90 days of the date of the bill. You accept all charges not disputed within 90 days. We mutually waive all rights of subrogation against each other in connection with Services. To dispute a charge on your bill, you must follow the procedures in Section 8 of this Agreement.
- **Credit Check; Deposits; Credit Limits.** Our provision of Service to you is subject to our approval of your credit. You give us permission to check and verify your credit as needed in our sole discretion. If we determine you are a credit risk at any time during your Service period with us, we may require you to submit a deposit or make an advance payment to us in a reasonable amount that we determine. If you fail to pay for Services when due, we may, without providing notice to you, apply your deposit or advance payment to the amount owed. If you refuse to make a deposit or advance payment or otherwise establish credit, we reserve the right to refuse to provide you Service subject only to applicable federal or state law. As we determine in our sole discretion and to the extent permitted by applicable law, we may set a credit limit on your account at any time. We may restrict the Services to which you have access if you exceed this credit limit.

5. TERMINATION OF SERVICE

- **Termination of Service by You.** You may cancel Services at any time by calling toll-free 877-967-3171; however, your continued subscription to, use of, or payment for Services after the cancellation date you give us will continue this *Agreement* for those Services. If you cancel a Service prior to the completed installation of that Service, you agree to pay all reasonable costs incurred by us in implementation of the Service before cancellation notice was received, as if the implementation of the order had been completed.
- **Termination or Suspension of Service by us.** To the extent permitted by the *Features and Services* and applicable law or regulation, we may terminate or suspend your Service with or without notice, depending on the circumstances, for any reason including for nonpayment of any amount owed to us, including late payment fees or disputed amounts that we determine was validly billed, and your violation of any limitation listed in Section 3 of this Agreement.
- **Termination and Payment.** It may take up to the next business day to disconnect your Services. Regardless of the reason for disconnection, you must pay all charges incurred before our disconnection of your Service. You will be charged the full Recurring Charges for your Services for the month in which those Services terminate. Promotional credits or discounts may not be applied to your final bill. If you reinstate Services following cancellation or termination, we may require you to pay a deposit.
- **Force Majeure.** We will not be responsible for any delay, interruption, or other failure to perform under this *Agreement* due to acts beyond our control. Force majeure events include, but are not limited to natural disasters (e.g. lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; inability to obtain parts or equipment from third party suppliers; cable cuts or other facilities damage by third parties, and acts of third parties; explosions and fires; embargoes, strikes, and labor disputes; governmental decrees; and any other cause beyond our reasonable control.

6. DISCLAIMER OF WARRANTIES.

THE COMPANY PROVIDES ALL SERVICES 'AS IS' AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES RELATED TO THE SERVICES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE AND YOU AGREE TO HOLD US HARMLESS FOR ALL SUCH PROBLEMS. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU AGREE THAT YOU WILL NOT RELY ON ANY SUCH STATEMENT.

7. LIMITATION OF LIABILITY

- a. **Direct Damages.** The Company is not liable for any damages arising out of or in connection with any: (A) act or omission by you, or another person or company; (B) provision or failure to provide Services, including deficiencies or problems with any equipment used in connection with the Services (for example, blocked calls, transmission failures, interruptions in Service, etc.); (C) content or information accessed while using our Services, such as through the Internet; (D) interruption or failure in accessing or attempting to access emergency services, including through 911 or otherwise, or (E) errors or omissions in any directory or database listings, including listings we provide to public safety answering points. IF, FOR ANY REASON, WE ARE FOUND TO BE RESPONSIBLE TO YOU FOR MONETARY DAMAGES RELATING TO ANY SERVICES OBTAINED THROUGH US AND IF THIS LIMITATION IS FOUND TO BE UNENFORCEABLE FOR

ANY REASON, YOU AGREE THAT ANY SUCH DAMAGES WILL NOT EXCEED THE PRO-RATED MONTHLY RECURRING CHARGES PAID BY OR OTHERWISE OWED BY YOU FOR THE AFFECTED SERVICES DURING THE AFFECTED PERIOD.

- b. **NO CONSEQUENTIAL OR OTHER DAMAGES.** UNDER NO CIRCUMSTANCES IS THE COMPANY LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE SERVICES OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICES, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OF OPPORTUNITY, OR COST OF REPLACEMENT SERVICES.
- c. **Indemnification.** You will indemnify and defend the Company, its directors, officers, employees, affiliates, subsidiaries, agents, and their successors and assigns from and against all claims, damages, losses, or liabilities, including reasonable attorneys' fees, arising from or relating to any Service, or any act or omission by you related to any Service or any person you authorize or permit to use any Service, including incorrect or misleading information, libel, slander, invasion of privacy, identity theft, intellectual property infringement, and any defective Service.
- d. **Survival.** All provisions of this Section 7 will survive and continue to apply after this *Agreement* is canceled or terminates.

8. DISPUTE RESOLUTION

- e. **Dispute Process.** If you have a dispute with the Company relating to any matter, you agree to first notify us at the 812-967-3171 in an attempt to resolve your dispute. You must describe your dispute with specificity and provide us with any supporting documentation. If we have a dispute with you, we will notify you in writing in an attempt to resolve the dispute. If after following this process, either party is unable to resolve its dispute within 90 days of notifying the other party, either party may take the dispute to small claims court, if appropriate under applicable state or local rules or laws. Alternatively, either party may pursue the dispute only as set forth below.
- f. **MANDATORY ARBITRATION OF DISPUTES.** INSTEAD OF SUING IN COURT, YOU AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES OF ANY KIND ("CLAIMS") AGAINST US. THIS INCLUDES BUT IS NOT LIMITED TO CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AS WELL AS CLAIMS ARISING OUT OF OR RELATING TO OUR SERVICES, BILLING OR ADVERTISING, OR ARISING OUT OF OR RELATING TO EQUIPMENT YOU OR WE MAY USE IN CONNECTION WITH SERVICES. THIS REQUIREMENT TO ARBITRATE APPLIES EVEN IF A CLAIM ARISES AFTER YOUR SERVICES HAVE TERMINATED; AND APPLIES TO ALL CLAIMS YOU MAY BRING AGAINST OUR EMPLOYEES, AGENTS, AFFILIATES OR OTHER REPRESENTATIVES;

THE FEDERAL ARBITRATION ACT, NOT STATE LAW, APPLIES TO THIS AGREEMENT AND ITS PROVISIONS AND, GOVERNS ALL QUESTIONS OF WHETHER A CLAIM IS SUBJECT TO ARBITRATION. THIS PROVISION DOES NOT PREVENT EITHER YOU OR US FROM BRINGING APPROPRIATE CLAIMS IN A SMALL CLAIMS COURT HAVING VALID JURISDICTION, OR THE FEDERAL COMMUNICATIONS COMMISSION OR A STATE PUBLIC UTILITIES COMMISSION.

WE FURTHER AGREE THAT YOU WILL NOT JOIN ANY CLAIM WITH A CLAIM OR CLAIMS OF ANY OTHER PERSON(S) OR ENTITY(IES), WHETHER IN A LAWSUIT, ARBITRATION, OR ANY OTHER PROCEEDING. YOU AGREE THAT YOU WILL NOT ASSERT ANY CLAIMS AGAINST US IN ANY REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE, THAT NO CLAIMS

WILL BE MADE OR RESOLVED ON A CLASS-WIDE OR COLLECTIVE BASIS, THAT NO ARBITRATOR OR ARBITRATION FORUM WILL HAVE AUTHORITY TO ACCEPT OR DETERMINE ANY CLAIMS ON A CLASS-WIDE OR COLLECTIVE BASIS, AND THAT NO RULES FOR CLASSWIDE OR COLLECTIVE ARBITRATION WILL APPLY. THIS PARAGRAPH AND EACH OF ITS PROVISIONS ARE INTEGRAL TO, AND NOT SEVERABLE FROM, THIS SECTION ON MANDATORY ARBITRATION OF DISPUTES.

A single arbitrator engaged in the practice of law will conduct the arbitration. The arbitration will be filed with and the arbitrator will be selected according to the rules of the National Arbitration Forum (“NAF”), or, alternatively, as we may mutually agree.

Except as expressly provided in the preceding paragraph, the arbitration will be conducted by and under the then-applicable rules of NAF unless the parties agree otherwise. NAF rules can be found at <http://www.adrforum.com>. All expedited procedures prescribed by the applicable rules will apply. We agree to share the arbitration cost equally unless the arbitrator orders otherwise. NOTWITHSTANDING ANY NAF RULE TO THE CONTRARY, AN ARBITRATION AWARD IS FINAL AND BINDING AND MAY ONLY BE REVIEWED IN ACCORDANCE WITH THE TERMS OF THE FEDERAL ARBITRATION ACT. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT WITH JURISDICTION. IF FOR ANY REASON, THE ABOVE PROVISIONS ON ARBITRATION ARE HELD UNENFORCEABLE OR ARE FOUND NOT TO APPLY TO A CLAIM, YOU AGREE TO WAIVE TRIAL BY JURY. If you file a judicial or administrative action asserting a claim that is subject to arbitration and the Company successfully stays such action or compels arbitration, you agree to pay us costs and expenses incurred in seeking such stay or compelling arbitration, including attorneys’ fees.

Except as expressly provided above, if any portion of this Mandatory Arbitration of Disputes section is determined to be invalid or unenforceable, the remainder of the section remains in full force and effect.

9. MISCELLANEOUS

- g. **No Waiver of Rights.** If either you or we fail to enforce or waives any requirement under this *Agreement* that does not waive that party’s right to later enforce that requirement in the future.
- h. **Limitation on Third Party Beneficiaries.** This *Agreement* does not give any third party a remedy, claim, or right of reimbursement.
- i. **Severability.** If any provision of the *Agreement* is found to be unenforceable, the *Agreement’s* unaffected provisions will remain in effect and the parties will negotiate a mutually acceptable replacement provision consistent with the parties’ original intent.
- j. **Assignment.** You may not assign this *Agreement* to any other person or entity without our prior written approval. We reserve the right to assign or transfer all or part of our rights or duties under this *Agreement* without notifying you.
- k. **Notices.** You must provide notices to us as described in the applicable sections of this *Agreement*. When we receive notice from you via telephone, such notice will be effective on the date we received your call, as shown by our records. We may provide you notice as required under this *Agreement* in at least one of the following ways, postcard or letter mailed to the most recent address on your account, bill messages, bill inserts, email notification to an address provided by you, posting on the website, call to your billed telephone number and speaking to you or leaving a message, or any other reasonable method of notice.

- l. **Governing Law.** This *Agreement* will be governed by the laws of the state of Indiana except that the arbitration provisions in Section 8 will be governed by the Federal Arbitration Act to the extent applicable.
- m. **Survivability.** The terms and conditions of this *Agreement* that by their sense and context are intended to survive the expiration of this *Agreement* will survive.
- n. **Conflicts.** If a conflict exists between or among provisions within this *Agreement*, including all referenced documents and the Prices and Rules at the website, specific terms will control over general provisions.
- o. **Entire Agreement.** This *Agreement*, including the *Features and Services* on our website, the *Internet Access Agreement / Acceptable Use Policy* on our website, and all other referenced documents, constitutes the entire *Agreement* and understanding between you and the Company. No written or oral statement, advertisement, or Service description not expressly contained or referenced and incorporated into this *Agreement* will be allowed to contradict, vary, explain, or supplement this *Agreement*.