

# Standard Terms and Conditions Agreement

## (Implemented by Signature on Proposal)

This STANDARD TERMS AND CONDITIONS AGREEMENT ("Agreement") made and entered into and effective on the date indicated on the Proposal by and between the Customer, whose name and place of business is indicated on the Proposal ("Customer"), and Absolute Voice LLC, having a principal place of business at 152 Windy Meadows Dr., Schertz, Texas 78154 ("Company").

### Article 1

#### PRODUCTS AND SERVICES

- 1.1 Products.** Tangible property, equipment, cabling, material and software installed by the Company and sold to the Customer for use or consumption by the Customer ("Products").
- 1.2 Services.** Duty or labor and/or communications services performed or provided by the Company for the Customer ("Services").

### Article 2

#### SERVICES TERM AND TERMINATION

- 2.1 Services Term.** This Agreement will commence on the date the Services, as defined in the Proposal, are installed and will remain in full force for a period identified in the Proposal from the date of installation until the end of the Term or until terminated as provided herein. The Initial Term, and any Renewal Term(s), may be referred to collectively as the ("Term").
- 2.2 Services Renewal.**
- 2.2.1 Automatic Extension.** The Term of this Agreement is automatically extended for one year unless either party provides written notice of termination to the other party at least forty five (45) days prior to such termination.
- 2.2.2 Agreement Extension.** The Term of this Agreement can be extended ("Renewal Term") if mutually agreeable to the parties upon signature of a revised Proposal which provides for the Renewal Term length. The Renewal Term will commence at the end of any previous term or as otherwise defined in the Proposal.
- 2.3 Termination of this Agreement for Cause.**
- 2.3.1 By the Company.** The Company may terminate this Agreement during the term of this agreement, if Customer fails to substantially comply with the terms of this Agreement. The Company may terminate this Agreement by providing Customer with thirty (30) days prior written notice that describes the reason for termination. In the event that Customer commences to cure and diligently pursues cure, any attempted termination by The Company shall be void and of no force and effect. In the event the Customer shall fail to perform its obligations of this Agreement and such failure is not cured within Thirty (30) days after notice from the Company, then the Company shall have the right to terminate this Agreement. The Company reserves the right to terminate this Agreement for Customer non-payment by the stated invoice due date, if payment from Customer for all outstanding balances is not received within five (5) days of written notice.
- 2.3.2 By the Customer.** The Customer may terminate this agreement during the term of this agreement, if the Company fails to substantially provide the services as warranted. The Customer may terminate this Agreement by providing Company with sixty (60) days prior written notice that describes the reason for termination. In the event that the Company commences to cure and diligently pursues cure, any

attempted termination by Customer shall be void and of no force and effect. In the event the Company shall fail to perform the services as warranted in this Agreement and such failure is not cured within sixty (60) days after notice from the Customer, then the Customer shall as its sole and exclusive remedy have the right to terminate this Agreement. To initiate the full or partial disconnection of Services, Customer must send a disconnect request to the Company via email at [Service@CallAbsolute.com](mailto:Service@CallAbsolute.com). Customer will then be required to complete a Disconnect Request Form, which will be provided to Customer by the Company. Upon Customer's completion of the Disconnect Request Form and Company's acceptance of same, Company will begin the process of disconnecting Services. The disconnection of Services is subject to forty-five (45) days written notice. Disconnection of Services may also result in Customer being invoiced for and responsible for the payment of early termination charges, as further described in Section 2.4 below.

- 2.4 Early Termination.** In the event that, prior to the end of Term, the Company terminates the agreement pursuant to Sections 2.3 above, or the Customer terminates the Agreement without cause, Customer shall pay those reasonable expenses incurred by the Company prior to termination. Furthermore, if termination is after installation of the services, the Customer shall pay an early termination charge equal to the number of months remaining on the Term, multiplied by the Monthly Recurring Charges, plus any third party termination charges incurred by the Company.
- 2.5 Effects of Termination.** Upon any termination, The Company, in its sole discretion, has the following options; (1) The Company is expressly authorized to enter the premises of the Customer where Company Equipment, as defined in Section 4.2, is located, and take immediate possession of and remove any Company Equipment, (2) The Company may leave Company Equipment at the Customer's location so that the Company may continue to provide services to others, (3) The Company may abandon its property, (4) The Company may ask the Customer to return any requested Company Equipment reasonably accessible by the Customer within ten (10) business days to the Company. The Customer agrees to pay the Company the replacement value of any Equipment that is not timely returned in accordance with Section 2.5.
- 2.6 Survival.** In the event of any termination of this Agreement, Articles 7, 8, 9, 10, and 11 hereof shall survive and continue in effect.

### Article 3

#### FEES AND PAYMENT TERMS

- 3.1 Payments.** All payments are in U.S. Dollars. The charges for the Products and/or Services under the Agreement are categorized as "Product Charges", "Recurring Charges" or "Non-Recurring Charges". The Company will invoice Customer monthly for Recurring Charges. The Company will invoice Customer for Non-Recurring Charges as they are incurred. Customer's first and last invoices may include prorated charges. For Services, the Company will invoice the Customer in advance of Services being provided, with the exception of certain usage based Services which will be billed in arrears. Promotional pricing and terms, or other pricing commitments contained in the Proposal will expire in accordance with the terms applicable to each promotion or commitment, without further notice to Customer. Upon the expiration of any

such promotion or commitment, prices may be revised in accordance with the Company's then-current standard pricing. For Products, Customer agrees to pay an upfront amount, if any, as stated in the Proposal and any remaining amounts as invoiced by the Company. Customer agrees to pay the total amount of each invoice, so that the Company receives such payment within 10 days of the invoice date unless alternative payment terms are specified in the Proposal.

- 3.2 Late Payment Fees.** Any overdue payments will bear a "Late Payment Fee" of one and a half percent (1.5%) per month or the maximum rate allowed by law, whichever is lower, from the original payment due date until paid in full. Customer is also responsible for all other costs and legal fees in collecting all unpaid amounts owed by Customer, unless otherwise ordered by a court in any action to collect those unpaid amounts. The Company reserves the right to assess a fee for any check returned for insufficient funds, which fee shall be the lesser of \$30 or the maximum rate allowed by law.
- 3.3 Invoice Dispute.** To dispute the amount or accuracy of any invoice, Customer must notify the Company in writing no later than the due date of the invoice detailing the disputed charges. The Company will not issue a credit for any charges that are not disputed in writing prior to the invoice due date. Notwithstanding any provision to the contrary herein contained, no payment due under the Agreement, whether disputed or undisputed, is subject to withholding, reduction, set-off or adjustment by any nature by the Customer.
- 3.4 Taxes and Fees.** The pricing terms set forth in the Proposal may not include and are not limited to applicable federal, state and local taxes or regulatory fees, assessments and surcharges ("Taxes and Fees"). All "Taxes and Fees" are subject to change without notice during the Term of the Agreement. Customer is also responsible for any charges from third parties that arise when Customer uses Customer's phone number as a billing mechanism for third-party services (such as 900 or other information charges). Should Customer request any third-party services, Customer agrees that the Company may release Customer's name and billing information directly to that third party so that it can bill Customer directly for those services. Customer is responsible for the payment of all Taxes and Fees. If Customer fails to pay any such Taxes and Fees when due, the Company reserves the right to make such payments or like charges, together with all penalties and interest which may have been added because of Customer's delinquency or default, and Customer will promptly reimburse the Company for any amounts so paid pursuant to Section 3.1 and 3.2.
- 3.5 Additional Customer Responsibilities.** In addition to Customer's other responsibilities under the Agreement, Customer agrees that Customer and anyone using the Services will: (i) not resell the Services to any third party; (ii) comply with all federal, state, and local laws, rules, regulations, tariffs, and orders of courts of competent jurisdiction that apply to the Products, Services or the Agreement ("Applicable Laws"), and if any conflict should arise between the terms of the Agreement and any Applicable Laws, you acknowledge and agree that the terms of the Applicable Laws shall control; (iii) be solely responsible to establish and maintain security measures (including, without limitation, codes, passwords or other features) necessary to restrict access to Customer's computers, services or other equipment through the Services; (iv) be solely responsible for all fraudulent, unauthorized, illegal or improper use of the Services by persons accessing those Services through Customer's facilities, equipment or Service Address; (v) authorize and identify to Company in writing at least one individual who is authorized to represent Customer on any aspect of the Services and Customer's account (including, all requests for moves, additions, deletions or changes to the Services); and (vi) notify Company immediately of any loss of service or other problems with any of the Services.

- 3.6 Lawful Payments.** It is understood and agreed that the payments to be made during the Term hereof are payable only out of current designated and lawfully appropriated funds of Customer.

#### Article 4

##### SERVICES TO BE PERFORMED BY THE COMPANY

- 4.1 Service Period.** The Company will provide to Customer the Services identified in the Proposal for the period beginning upon installation for the entire Term, unless the Agreement is terminated early in accordance with the termination provisions contained herein.
- 4.2 Equipment.**
- 4.2.1 Equipment.** "Company Equipment" means all of the equipment, structures, enclosures, cabling, hardware and software owned by the Company to enable the provision of Services to the Customer.
- 4.2.2 Technology.** To provide the Services, the Company reserves the right to choose at its option and in its sole discretion the Company Equipment required to deliver the Services. The Company also may change the manner in which the Services are provisioned at any time without notice, provided such change does not adversely affect the quality and/or functionality of the Services. The Company will replace at no charge to Customer any Company Equipment that does not perform to the specifications herein, unless the Company determines, in its sole discretion, that the Company Equipment failure was a direct or indirect result from the Customer's acts or omissions.
- 4.2.3 Use and Care.** Customer agrees to comply with all instructions and requirements regarding the use and/or care of the Company Equipment, and take reasonable measures to protect the Company Equipment at all times. Customer further agrees to pay the Company the replacement value of the Company Equipment that is lost, stolen or damaged as a result of the Customer's act or omission.
- 4.3 License Grant.** Customer grants to the Company an exclusive, non-revocable license ("License") to use those parcels of real property at the Customer locations that the Company deems necessary to install, operate, and maintain Company Equipment in order to provide the Services. Notwithstanding any other provision of this Agreement, it is expressly understood that all rights granted to the Company under this License are continuous, ongoing, and irrevocable after the expiration or earlier termination of this Agreement, any Amendment thereto, or the provision of the Services, for so long as Customer owns or leases such real property, but only to the extent permitted by law. In addition, Customer grants to The Company a non-exclusive right to install its Company Equipment on and between the Customer locations in connection with the Company's use, maintenance, and operation of the Company Equipment. The Company is authorized to use the Company Equipment and real property for any activity in connection with the provision of Services as the Company determines may be necessary or compatible with the conduct of Company business.
- 4.4 Equipment Installation.** The Company may be required to install Company Equipment at Customer location, which Company Equipment will remain the Company's sole property at all times and will not be considered Customer premises equipment unless otherwise agreed in writing between the parties. In the event any Company Equipment (or any portion thereof) is or becomes physically affixed or attached in any manner to real estate at the Customer location, in no event will the Company Equipment be deemed to be affixed to or a part of such real estate. Rather, the Company Equipment is and will remain the Company's sole property at all times. At the request of the Company, Customer will furnish a landlord or mortgage waiver with respect to the Company Equipment from any person claiming an interest in any personal or real property where the Company Equipment is located.

- 4.5 Service Installation Date.** The “Service Installation Date” is the date that the Company first provides the Services to the Customer.
- 4.6 Customer Acceptance.** The Customer acceptance date will be the Service Installation Date of the Services.
- 4.7 Method of Performing Services.** The Company, in conjunction with its personnel, will determine the method, details, and means of performing the work to be carried out for the Customer. The Customer shall have no right to, and shall not, control the manner or determine the method of accomplishing such work. Customer may, however, require Company personnel to observe at all times the security and safety policies of Customer.
- 4.8 Use of Subcontractors.** Customer acknowledges that The Company may provide the Services using subcontractors, and that the Company reserves the right to substitute such subcontractors, in its sole discretion, to provide Services herein.
- 4.9 Change Orders.** To initiate a change order, a revised Proposal shall be signed by the Customer in order to modify, reduce, or increase the Products and/or Services to be provided. The Customer will be responsible for the cost of moving any Company Equipment if the Company determines that such move is necessitated by change order. All necessary and reasonable expenses related the change order will be the responsibility of the Customer as provided in the Proposal.
- 4.10 Scheduling.** The Company will try to accommodate schedule requests of Customer to the extent possible. Should any personnel of the Company be unable to perform scheduled services because of illness, resignation, or other causes beyond the Company's reasonable control, the Company will attempt to replace such personnel within a reasonable time, but the Company shall not be liable for failure if it is unable to do so, giving due regard to its other commitments and priorities.

#### Article 5

##### SERVICES CUSTOMER OBLIGATIONS

- 5.1 Access to the Services.** Customer agrees to monitor the use of the Services to prevent inappropriate use, and to maintain and prevent unauthorized access to confidential information, including the confidentiality of any passwords and account information required for access to services. Customer will promptly notify the Company of any unauthorized or inappropriate use of the Services or Company Equipment including breach of security, or other damage, loss or theft.
- 5.2 Information Access.** Customer agrees to provide all information, access and support reasonably required for timely installation and proper use of the Services. Customer further agrees to help and/or secure all necessary licenses, permits, and consents for installation of equipment as necessary to provide the Services. Customer is responsible for locating pre-existing facilities of other providers, such as utilities and underground facilities, including the cost for such locating, in addition to those listed in the Proposal.
- 5.3 Lawful Use.** Customer agrees: (1) that Services may be used solely by those entities listed in the Proposal as being eligible to participate with Customer in obtaining the Services; (2) not to provide the Services to non-eligible third parties whether by lease, rental, transfer, assignment, sale, sublicense, or any other means, including commercial time-sharing, rental, or service bureau use; (3) not to use the Services for any purpose that is unlawful, not contemplated or prohibited by this Agreement; and (4) to abide by all applicable local, state, laws and regulations, tariffs and orders of courts of competent jurisdiction that apply to the services.
- 5.4 Alterations, Additions or Improvements.** Customer will not make any alterations, additions, or improvements to the Company Equipment, or remove Company Equipment from a service location without the Company's prior written consent. Customer shall not engage in any activity or construct any new structure, which may interfere mechanically, electrically, or operationally with Company Equipment.

#### Article 6

##### PRODUCT DELIVERY

- 6.1 Product Delivery.** For Products sold to the Customer, the Company will deliver to Customer the Products and quantities as listed in the signed Proposal. Upon delivery of the described Products to the Customer's location(s), Customer will bear solely the risk of loss regardless of any breach by the Company of any provisions hereof.
- 6.2 Product Installation.** As provided in the Proposal, the Company may provide for the installation of Products as required and will determine the method, details, and means of performing the work to be carried out for Customer. Customer shall have no right to, and shall not, control the manner or determine the method of accomplishing such work. Customer may, however, require the Company's personnel to observe at all times the security and safety policies of Customer. The Company will coordinate with the Customer to establish a reasonable installation plan. Installations done outside normal company hours may result in additional costs for the Customer.
- 6.3 Use of Subcontractors.** Customer acknowledges that the Company may install the Products using subcontractors, and that the Company reserves the right to substitute such subcontractors with others, in its sole discretion.
- 6.4 Product Installation Customer Obligations.** For indoor installations, the Customer agrees to provide, at no cost to the Company, a clean, dry, and temperature controlled place for installing the Product, all-electrical outlets and power hookups, and any related facilities as specified by the Company. The Customer also agrees to pay for all extra or additional work performed and additional materials furnished in accordance with a change order. Customer agrees to provide the conduit in all ceilings that are used as a return air plenum in compliance with codes except when additional compensation is made for plenum type cable.
- 6.5 Return of Products Sold.** Return of Products sold to Customer is only allowable in accordance with the Product manufacturer's warranty provisions.
- 6.6 Removal of Products.** If the Customer has failed to pay the agreed purchased price after said payment has been past due for 15 days and the Company has served written notice to Customer of the same, Customer will grant full access to the Company to remove Products and take possession of all or part of the Products, and Customer will hold the Company harmless for taking such actions. Customer will be liable for the all cost associated with removal of the Products. Removal of the Products does not relieve Customer of the obligations of this agreement.

#### Article 7

##### WARRANTIES

- 7.1 Product Warranties.** The Company represents and warrants Products solely in accordance with the Product manufacturer's warranty.
- 7.2 Services Warranties.** The Company represents and warrants that its Products are engineered and installed, and the Company's operations procedures are designed and implemented, to provide the Services in accordance with prevailing industry standards for similar services, and that the Company will make commercially reasonable efforts to provide the Services in conformance with such standards. This warranty will apply solely to access to the Services, and will not apply to anything (1) caused by factors outside of The Company's reasonable control; (2) that resulted from any action or omission of Customer or any third party; (3) that resulted from scheduled maintenance or required repairs; or (4) that resulted from equipment, or any other item not provided by the Company. All consequences for a breach of this warranty by The Company are strictly limited to those defined in Section 2.3.2.
- 7.3 Warranties Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN THIS SECTION, THE

COMPANY PROVIDES PRODUCTS AND/OR SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND CUSTOMER'S USE OF THE PRODUCTS AND SERVICES IS AT ITS OWN RISK. THE COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE COMPANY DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCT AND/OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE, OR THAT DEFECTS IN THE OPERATION OF THE PRODUCT AND/OR SERVICES WILL BE CORRECTED. THE PARTIES AGREE THAT ALL CONSEQUENCES FOR A BREACH OF WARRANTY BY THE COMPANY ARE STRICTLY LIMITED TO THOSE DESCRIBED IN THE PRODUCT MANUFACTURERS WARRANTY. THE COMPANY DOES NOT REPRESENT THAT PRODUCTS AND/OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO CUSTOMER'S COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES THESE CONTAIN.

**7.4 Customer Warranties.** Customer represents, covenants and warrants that (1) Customer is a fully constituted entity, agency, political subdivision, or public corporation of the state in which it is located; (2) this Agreement has been executed on behalf of Customer by persons who are duly authorized officers thereof; (3) this Agreement constitutes the legal, valid, and binding obligation of Customer enforceable in accordance with its terms; (4) Customer has complied with all public bidding, notice and hearing requirements where applicable, and by due notification presented this Agreement for approval and adoption as a valid obligation on its part; (5) Customer reasonably believes that funds can be obtained sufficient to make all payments during the Term. (6) The officer of Customer responsible for budget preparation will do all things lawfully within his/her power to obtain, maintain and properly request and pursue funds from which the payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using his/her bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved.

#### Article 8

##### INTELLECTUAL PROPERTY RIGHTS

**8.1 Confidentiality.** Each party shall maintain in strict confidence, and shall use and disclose only as authorized by each party, all information of a competitively sensitive or proprietary nature that it receives in connection with the Agreement. Each party shall require its personnel to agree to do likewise. Each party shall take reasonable steps to identify any information of a competitively sensitive or proprietary nature, including by using confidentiality notices in written material where appropriate. These restrictions shall not be construed to apply to (1) information generally available to the public; (2) information released generally without restriction; (3) information independently developed or acquired; or (4) information approved for the use and disclosure without restriction. Notwithstanding the foregoing restrictions, Each party and its personnel may use and disclose any information (1) to the extent required by an order of any court or other governmental authority or (2) as necessary for it or them to protect their interest in this Agreement, but in each case only after the other party has been so notified and has had the opportunity, if possible, to obtain

reasonable protection for such information in connection with such disclosure.

- 8.2 The Company Prior Developed Materials.** Customer acknowledges that the Products, Services, and operations procedures may, in whole, or in part, be created using the Company prior acquired knowledge and expertise. This may include, but not be limited to, prior developed intellectual property including copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship developed or created by the Company of which the Company will continue to own and have unrestricted right to continue to use.
- 8.3 Ownership of Work Product.** All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship developed or created by The Company or its personnel during the course of delivering Products and/or performing Services (collectively, the "Work Product") shall belong exclusively to The Company.
- 8.4 Residual Rights of Personnel.** Notwithstanding anything to the contrary herein, The Company and its personnel shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any confidential or proprietary information of Customer and without any unauthorized use or disclosure of Work Product.

#### Article 9

##### HIRING OF THE COMPANY'S PERSONNEL

- 9.1 Additional Value From Hiring.** Customer acknowledges that the Company provides a valuable service by identifying and assigning personnel for Customer's work. Customer further acknowledges that Customer would receive substantial additional value, and the Company would be deprived of the benefits of its work force, if Customer were to hire, directly or through an agent, the Company's personnel.
- 9.2 No Hiring Without Prior Consent.** Without the prior written consent of the Company, Customer shall not recruit or hire any personnel of the Company who are or have been assigned to perform work on behalf of the Customer.
- 9.3 Hiring Fee.** In the event that Customer hires any personnel of the Company who are or have been assigned to perform work for Customer, subject to the written consent of the Company, Customer shall pay the Company an amount equal to thirty-three percent (33%) of the total targeted first-year compensation for such personnel as a fee for the additional benefit obtained by Customer. Payment is in accordance with all terms of this Agreement.

#### Article 10

##### LIMITATIONS

- 10.1 Limitations.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE UNDER ANY THEORY, INCLUDING CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) FOR ANY INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, DAMAGES FOR LOSS OF DATA, LOSS OF USE OF COMPUTER HARDWARE, DOWNTIME, LOSS OF GOODWILL, LOSS OF BUSINESS, OR COMPUTER HARDWARE MALFUNCTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE COMPANY'S LIABILITY TO CUSTOMER UNDER ANY PROVISION OF

THIS AGREEMENT EXCEED AN AMOUNT EQUIVALENT TO THE PROPORTIONAT CHARGE TO CUSTOMER FOR THE AFFECTED SERVICES OR EQUIPMENT FOR THE PERIOD DURING WHICH THE ERROR, OMISSION, INTERRUPTION OR DEFECT OCCURED. THE PARTIES ACKNOWLEDGE THAT THE OTHER PARTS OF THIS AGREEMENT RELY UPON INCLUSION OF THIS SECTION. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages. Accordingly, the limitations listed in this Section fully apply only to the extent permitted by law.

**10.2 Indemnification.** Customer shall indemnify, defend, and hold harmless the Company, its parent, subsidiaries and affiliates, and the foregoing entities' respective officers, directors, employees, heirs, successors and assigns (collectively, the "Indemnified Party") from and against all claims, actions, liabilities, losses, damages, costs, and expenses to the extent caused by or arising out of (1) Customer's violation or infringement of the intellectual rights (including, but not limited to, patents, copyrights, trademarks, and trade secrets) of any third party; (2) Customer's breach or violation of any Applicable Laws in connection with the performance or non-performance of its obligations under the Agreement; and/or (3) the negligence, gross negligence, or willful or intentional misconduct of Customer (including, but not limited to, its employees, subcontractors, agents, and representatives) in the performance or non-performance of its obligations under the Agreement.

**10.3 Binding Arbitration.** All controversies, disputes, or claims between the parties or any of their respective officers, directors, agents, employees and attorneys, arising from or relating to this Agreement shall on demand of either party be submitted for arbitration to the American Arbitration Association ("AAA"). The arbitration shall be governed exclusively by the United States Arbitration Act (9 U.S.C. § 1, et seq.), without reference to any state arbitration statutes. The parties agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedures) within the same proceeding as the claim to which it relates. Any such claim, which is not submitted or filed in such proceeding, shall be barred. The arbitration proceedings shall be conducted in Austin, Texas and conducted in accordance with the commercial arbitration rules of the AAA in effect on the date of this Agreement, except as modified by this Agreement. Three arbitrators shall be used. Each party shall have the right to select one arbitrator from a panel provided by the AAA and those two arbitrators will then select a third arbitrator, also from the AAA panel. The parties shall be entitled to limited discovery at the discretion of the arbitrators who may, but are not required to, allow depositions. The parties acknowledge that the arbitrators' subpoena power is not subject to geographic limitations. The arbitration proceedings shall be conducted on an individual basis and not on a multi-plaintiff, consolidated, or class-wide basis. The arbitrators shall have the right to award the relief, as they deem proper, consistent with this Agreement, including compensatory damages (with interest on unpaid amounts from date due), specific performance, injunctive relief, legal fees and costs. The award and decision of the arbitrators shall be conclusive and binding on all parties, and judgment upon the award may be entered in any court of competent jurisdiction. Any right to contest the validity or enforceability of the award shall be governed exclusively by the United States Arbitration Act. The provisions of this Section 10.3 shall continue in full force and effect subsequent to and notwithstanding expiration or termination of this Agreement.

## Article 11

### GENERAL PROVISIONS

**11.1 Notices.** Any notices or other communications required or permitted under this Agreement shall be in writing and deemed to have been duly given and delivered when delivered in person, by electronic communication as long as this communication provides the required documentation with written signature, two (2) days after being mailed postage prepaid by certified or registered mail with return receipt requested, or when delivered by overnight delivery service or by facsimile to the recipient at the following address or facsimile number, or to such other address or facsimile number as to which the other party subsequently shall have been notified in writing by such recipient:

If to the Company:

Absolute Communications and Network Solutions, Inc.  
152 Windy Meadows,  
Schertz, Texas 78154

If to the Customer:

Customer Name and Address As Provided on Proposal

**11.2 No Discrimination.** The Company agrees that in the performance of this Agreement it will not discriminate or permit discrimination against any person or group of persons on the grounds of sex, race, color, religion, or natural origin in any manner prohibited by the laws of the United States.

**11.3 Insurance.** To the extent that Company personnel install Company Equipment at the Customer's premises, Customer shall maintain "all risk" property insurance, to include, Fire, Theft, Vandalism, Windstorm, Hurricane and Hail, as well as comprehensive general liability insurance, including broad form property damage. Property limits should be equivalent to the value of the Company Equipment, or as otherwise requested.

**11.4 Entire Agreement of the Parties.** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by the Company for Customer and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding. Any modification of this agreement will be effective only if it is in writing signed by the party to be charged.

**11.5 Severable Provisions.** The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially enforceable provision to the extent enforceable in any jurisdiction, shall nevertheless be binding and enforceable.

**11.6 Binding Agreement.** The rights and obligations of the Customer under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Customer. The rights, obligations and duties of the Company hereunder may not be assigned or delegated without the Customer's prior written consent.

**11.7 Waiver.** Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to future violations thereof, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted the parties herein are cumulative and the waiver by a party of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to him or it under the circumstances.

**11.8 Assignment.** Except as provided herein, this Agreement may not be assigned by the Customer except under the written agreement by the Company, which cannot be unreasonably withheld. The

Company may assign this agreement to its successors without notice.

**11.9 Conflicting Terms.** If there is a conflict among the terms in this Agreement and any subsequent amendment, the terms of the subsequent amendment shall control.

**11.10 Force Majeure.** The Company shall not be liable to Customer for any failure or delay caused by events beyond the Company's control, including, without limitation, Customer's failure to furnish necessary information, acts of God, sabotage, failures or delays in transportation or communication, failures or substitutions of Products, labor disputes, accidents, shortages of labor, fuel, raw materials, or Products, or technical failures.

**11.11 Assumptions and Contingencies.** The Company is relieved of its obligation to provide the Product and/or Services if certain preconditions to installation which are outside the control of the Company do not occur. Examples of such preconditions include the issuance of all applicable permits and other regulatory approvals under terms and conditions acceptable to the Company, and the execution of any necessary contracts with third parties under terms and conditions acceptable to the Company. If such preconditions do not occur, the Company will either renegotiate in good faith with the Customer or offer to terminate this Agreement with no termination penalties for either party.

**11.12** The Company's obligation to perform under this Agreement are based and contingent on the following pre-conditions list including, but not limited to:

- Obtaining the necessary permits and licenses.
- Acquiring the necessary ground rights and land contracts.
- Obtaining required third party contracts.
- Signing of all required consents of all governmental entities

**11.13 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

**11.14 Use of Customers Name.** Upon receipt of Customer's written approval, the Company may use Customer's name as a customer, including a general description of the services provided, in its proposals, quotes, client lists, case studies, and in other promotional information including, but not limited to, press releases, white papers, brochures, reports, letters, and any electronic media including, but not limited to, e-mail or Web pages.

**11.15 Captions and Section Headings.** The various captions and section headings contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of any of the provisions of this Agreement.