

Service Agreement

This Service Agreement (“Agreement”) includes the quote provided and Service Terms and Conditions, and is between you and Service Provider Communications, Inc. or BroadRiver Communication Corporation (“Service Provider”).

Term and Termination

The initial term begins on the date the last Service is activated and continues for the term shown on the quote (“Initial Term”). Renewal for additional one-year terms (“Renewal Term” and collectively the “Term”) is automatic unless either party notifies the other otherwise in writing not less than 30 days prior to the end of the Term.

You may terminate this Agreement at any time during the Initial Term with 30 days’ written notice, but if that termination is before the end of the Initial Term, you will owe the following “Termination Charges,” which are due within five days of the invoice date.

1. Cancellation Charges (“Cancellation Charges”) as shown in the quote (if any), and
2. One-half of the monthly charges you would have paid Service Provider over the remaining then-current Term, as calculated as of the date of termination.

If you fail to pay any amount due by the date payment is due, Service Provider may, with five days’ written notice, suspend Services to you until such time as Service Provider receives payment from you. Should Services be suspended, Service Provider may assess a charge equal to 50 percent of the most recent invoice up to a maximum of \$1,000 to restore Services.

Should you still fail to pay, Service Provider may, with an additional 5 days’ written notice, terminate this Agreement and all Services. In that event, you will be liable for the Termination Charges.

Except for default in your payment, if either party breaches this Agreement, the other party will provide written notice that identifies the breach. If the breaching party fails to cure within 30 days of receipt of the notice of breach, the non-breaching party may terminate this Agreement. If you are the non-breaching party, you will not be liable for the Termination Charges shown above; however, you will be liable for any charges incurred as of the date of termination.

Pricing

All prices shown in the quote are in and will be paid in U.S. dollars, F.O.B. Service Provider or its vendors. Service Provider’s prices for the Services are not subject to change during the Initial Term except as the result of:

- Changes to the location of the Services
- Mandates by state or federal regulatory authorities
- Changes in the charges for Services provided by third parties, including, without limitation, charges for circuits and usage.

The prices for services not quoted are at the then-list prices at the time of order. Service Provider reserves the right to change prices for any Renewal Term, provided that Service Provider has given you 45 days’ written notice prior to the end of the then-current Term.

Payment

Service Provider will begin implementation of Services upon payment of one-time charges and the first month’s monthly charges. This payment is not refundable.

Service Provider will begin billing for the Services on the date on which a Service is activated. In the event that any Service has been installed but Service Provider is unable to activate the Services because of delays caused directly or indirectly by you or your agents, such Services will be deemed to have been activated.

All charges will be computed on a calendar-month basis, pro-rated for any partial month. Service Provider invoices in advance for Services and in arrears for charges incurred during the month, including, without limitation, usage, adds, and changes.

You will pay Service Provider’s invoices within 30 days of the invoice date. Any payment that remains outstanding five days after payment is due is subject to a late charge of 1.5 percent per month or \$5.00, whichever is greater.

Service Provider will continue to bill for the Services until you provide at least 30 days' written notice to cancel a Service. Should you cancel a Service prior to the end of its Term, you will be liable for Termination Charges, if any.

You will pay any taxes, surcharges, or other government-imposed charges, unless you have provided Service Provider with proof of exemption acceptable to the applicable authorities.

You agree to accept email invoices in lieu of paper invoices. (Service Provider will provide paper invoices at your request at \$10 per month.)

Disputes and Resolution

Should you dispute any charge on an Service Provider invoice, you will pay all of the non-disputed charges in accordance with Service Provider's payment terms. You will not withhold more than 25 percent of the invoice total, regardless of the amount of the dispute, it being understood that your payment does not indicate your acceptance of disputed charges. You will advise Service Provider in writing of the reasons for any dispute within 60 days of the invoice date. Your decision not to so advise Service Provider will constitute irrevocable proof of your acceptance of the invoice. Service Provider will decide on your dispute in a timely manner.

Any dispute concerning that is not resolved by the parties within 90 days from your written notification to Service Provider will be submitted to and settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). A single arbitrator will be selected in accordance with the rules of the AAA and the location of the arbitration will be Traverse City, Michigan. Each party will be responsible for its legal and other costs. THE DECISION OF THE ARBITRATOR IS FINAL AND BINDING ON THE PARTIES AND MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION.

In the event either party refuses to participate in binding arbitration within 60 days after expiration of the 90 day period described above, the other party may bring an action in the appropriate court in Grand Traverse County, Michigan, provided however that ALL PARTIES HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL. The non-prevailing party will reimburse the prevailing party for all attorney fees and costs incurred by the prevailing party, which fees and costs will be included in the judgment.

Collections

Should your failure to pay amounts due necessitate collection action, you will pay all of Service Provider's costs for collection, including without limitation reasonable attorney fees and costs.

Third-Party Services

It is understood that parties other than Service Provider may provide certain of the services ("Third-Party Services"). Service Provider will use reasonable commercial efforts to deliver the Third-Party Services in accordance with schedules agreed to by you and Service Provider. If a Third-Party Service has been delivered but you are not ready to accept such Service, Service Provider will begin billing for such Service. You will be liable for the Cancellation Charges if you terminate such Third-Party Services. You will also be liable for any cancellation charges Service Provider may incur if you terminate Third-Party Services prior to Third-Party activating such services.

Connectivity

If at any time you connect to the Services using a service provider other than Service Provider (including, without limitation, cable, DSL, dedicated circuit from a third party, or wireless), you agree that you do so at your risk, and that Service Provider is not responsible for either the quality of service or reliability of such connections or for providing support for such connections.

Support for the Services

Service Provider provides remote support for the Services at no cost to you. Should you experience an issue related to the Services, you will advise Service Provider by opening a trouble ticket and Service Provider will diagnose the issue.

The purpose of the diagnosis is to determine the cause of the issue. If the diagnosis indicates that the problem is due to outage or malfunction on Service Provider's part, Service Provider will take the steps necessary to resolve it in a timely manner.

Unless otherwise specifically provided, you agree to arrange for support other than from Service Provider in the event that diagnosis indicates that the issue is not with the Services. If you do not have such support and you desire Service Provider's assistance, Service Provider may provide such support if it has qualified staff who are available to do so, and will charge you on a time-and-materials basis at its then-prevailing rates, it being understood that Service Provider does not provide support at your premises.

Service Provider Financing

Until you have made all of the payments under Service Provider's financing program and have paid \$1.00, financed devices remain Service Provider's property. Should you terminate this Agreement prior to the end of the term shown on the quote, you will pay Service Provider for the balance remaining, as shown on the quote.

Should you wish to exchange a device, you may do so but will owe a restocking fee equal to 25 percent of the list price of the device. However, you may exchange devices only during the first 12 months after purchase. You are responsible for replacing devices that are no longer working at your cost after the warranty period.

No Warranties

SERVICE PROVIDER PROVIDES THE SERVICES "AS IS" WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. SERVICE PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY ARISING OUT OF USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. YOU ARE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE SERVICES, AND SERVICE PROVIDER HAS NO LIABILITY THEREFOR. SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THEY WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS. SERVICE PROVIDER MAKES NO WARRANTIES AND IS NOT RESPONSIBLE FOR THE CONTENT OF WEB SITES, EMAIL, NEWS GROUPS, OR OTHER MATERIALS CREATED (OTHER THAN BY SERVICE PROVIDER) OR ACCESSIBLE OVER THE SERVICES.

Limited Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE TO ANY PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES INCURRED IN CONNECTION WITH SERVICES, THIS AGREEMENT, OR FOR ACTIONS TAKEN OR NOT TAKEN PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR OTHER DATA, OR OTHERWISE, EVEN IF A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY AFFORDED HEREIN ARE IN ADDITION TO ANY LIMITATIONS SET FORTH IN ANY WRITTEN AGREEMENT BETWEEN SERVICE PROVIDER AND YOU, AND WILL APPLY WHETHER THE ACTION IN WHICH RECOVERY IS SOUGHT IS BASED IN CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), OR BASED ON ANY LAWS OR REGULATIONS.

Other Provisions

1. Nothing contained in this Agreement grants either party any license, sublicense, copyright interest, proprietary rights, or other claim against or interest in any intellectual property owned or used by the other party.
2. Notices, demands or consents will be in writing and will be deemed given when delivered by email, personally delivered, sent by facsimile with verification of delivery, mailed by certified mail, return receipt requested, or delivered via recognized overnight courier to the parties at the addresses they have specified. Each party is responsible for keeping the other party apprised of its current address.
3. Should either party breach this Agreement, the non-breaching party will be entitled to recover from the breaching party its reasonable attorney fees and costs incurred as a result of such breach, in addition to all other remedies available at law or in equity.
4. Should this Agreement be assigned by either party, the assignee will assume all obligations of the assignor under this Agreement. Your assignees will meet all of Service Provider's credit criteria as a condition of the assignment of this Agreement by you. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
5. The parties agree that any rights, obligations, and duties that by their nature extend beyond the expiration or termination will survive any expiration or termination.
6. Either party's failure to enforce strict performance by the other party of any provision herein will not constitute a waiver of the right to subsequently enforce such provision or any other provision herein.

7. This Agreement will be governed by and construed in accordance with the laws of the state of Michigan. In the event any provision herein is held invalid or unenforceable by any arbitrator or any court of competent jurisdiction, the remainder will continue in full force and effect.
8. This Agreement, the related documents and any information referenced herein constitute the entire understanding between the parties concerning the Services and supersede all statements, representations, assertions, understandings or agreements, oral or written, which may have been made by either party or their agents or representatives. No modification to this Agreement will be binding on either party unless made in writing and executed by both parties. No agent, employee or representative of Service Provider, other than an officer, has any authority to bind Service Provider to any representation, affirmation or warranty, and no such representation, affirmation, or warranty will be enforceable.
9. Neither party will be liable for any loss or damage due to delays or failure to perform resulting from any cause beyond its reasonable control, such as, but not limited to, compliance with government laws or regulations, acts of God, acts of civil or military authority, judicial action, defaults of vendors, labor disputes, failure or delays in transportation, embargoes, acts of terrorism, wars or riots, inability to secure adequate circuit services, labor or facilities, or the inability of Third Parties to maintain scheduled services.
10. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile or electronic signature, which will be binding and enforceable.
11. Nothing herein will be construed to give to any person or entity, other than the parties hereto, any remedy or claim by reason of this Agreement or any term, covenant or condition hereof, all of which will be for the sole and exclusive benefit of the parties.
12. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then the remaining provisions, or parts thereof, will remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement will be replaced by a valid provision that will implement the purpose of the illegal, invalid or unenforceable provision.