



## **SERVICE AGREEMENT**

September 22, 2014

This Service Agreement ("Agreement") is between Qubit Networks, LLC ("Qubit") and the entity shown at the end of this Agreement ("Customer"), and includes any attachments referred to herein.

### **Terms of Agreement**

Terms and conditions of an attached proposal will supersede any conflicting terms listed here.

### **Products and Services**

Qubit shall provide the products and services (the "Services") shown in Attachment 1. Customer's acceptance of this Agreement indicates Customer's acceptance of Attachment 1.

### **Term**

1. The initial term shall begin on the date Qubit signs this Agreement and shall continue for the term shown on Attachment 1.
2. Customer understands and agrees that Qubit shall not provide the Services until it is satisfied with Customer's credit.
3. Renewal for additional one-year terms ("Renewal Term") shall be automatic unless either party notifies the other party in writing that it wishes to terminate not less than 30 days prior to the end of the Initial or the then current Renewal Term.

### **Third-Party Services**

1. Customer understands that parties other than Qubit may provide services ("Third-Party Services").
2. Customer shall be liable for the cancellation charges shown in Attachment 2 if Customer terminates such Third-Party Services for any reason. Customer shall also be liable for any cancellation charges Qubit may incur if Customer terminates Third-Party Services prior to the activation of such services.
3. Qubit shall use reasonable commercial efforts to deliver the Third-Party Services in accordance with schedules agreed to by Customer and Qubit. If a Third-Party Service has been delivered but Customer is not ready to accept such service, Qubit shall begin billing for such service.

### **Customer Termination**

Customer may terminate this Agreement at any time with 30 days' written notice, but shall owe:

1. Monthly charges that Customer would have paid Qubit over the remaining term, based on the last invoice prior to termination, and
2. Any third-party cancellation charges.

### **Qubit Termination**

If Customer defaults in the payment of any amount due and does not cure such default within five business days after written notice by Qubit, Qubit may, without further notice to Customer, suspend the Services until such time as Qubit receives payment from Customer. If Customer does not cure within 10 additional business days, Qubit may terminate this Agreement and Customer shall be liable for the charges set forth above.

### **Termination in the Event of Breach**

Except as provided under "Qubit Termination," if either party breaches this Agreement, the other party shall provide written notice that identifies the breach. If the breaching party has breached and fails to cure within 30 days of receipt of notice, the non-breaching party may terminate this Agreement and, if the non-breaching party is Customer, shall not be liable for the cancellation charges shown under "Customer Termination" above, provided that Customer shall be liable for any charges incurred up to the date of the notice of breach.

\_\_\_\_\_ Customer initials

### **Payment Terms**

1. Qubit shall invoice in advance for the Services and in arrears for charges incurred during the month, including, without limitation, usage, adds, changes, and the like, whether charged by Qubit or a third-party.
2. Except as noted for Third-Party services, Qubit shall begin billing for the Services on the date on which the Services have been activated.
3. All charges shall be computed on a calendar-month basis, pro-rated for any partial month; for the purpose of computing such amount, a month is considered to have thirty (30) days. In the event Qubit is unable to activate the Services for reasons outside Qubit's control, including but not limited to delays caused directly or indirectly by Customer or Customer's agents, such Services shall be deemed to have been activated and Qubit shall begin billing.
4. Customer shall pay Qubit's invoices within 30 days of the invoice date. Any payment not made when due is subject to a late charge of 1.5 percent per month (18 percent annum) or the highest amount allowed under applicable law, whichever is less.
5. Qubit shall continue to bill for the Services until Customer advises Qubit with at least 30 days' written notice that it wishes to cancel a Service. Customer understands and agrees that cancellation charges, including but not limited to third-party cancellation charges, may apply.
6. If Qubit is required to purchase items on Customer's behalf, Customer shall pay 50 percent of the price of such items in advance and the balance within 10 days of delivery. After Customer has paid such balance, Customer shall have full title to the items, free and clear of any liens held by Qubit.
7. Customer shall pay any tax, surcharge or other government-imposed charges unless Customer has provided Qubit with proof of exemption acceptable to the applicable authorities.
8. All payments must be made by Customer to Qubit at the address set forth on the invoice in United States of America dollars.
9. Payments made by credit card are subject to a 3.25 percent surcharge added to the invoice total.
10. Any checks of customer returned to Qubit on account of insufficient funds will result in a charge of \$30 to customer.

### **Disputes**

1. Should Customer dispute any charge on a Qubit invoice, Customer shall pay all of the non-disputed charges in accordance with Qubit's payment terms. Customer shall not withhold more than 25 percent of the invoice total, regardless of the amount of the dispute, it being understood that Customer's payment does not indicate Customer's acceptance of disputed charges.
2. Customer shall advise Qubit in writing of the reasons for its dispute within 45 days of the invoice date. Customer's decision not to so advise Qubit shall constitute irrevocable proof of Customer's acceptance of the invoice.
3. Qubit shall decide on Customer's dispute in a timely manner. Should Customer not accept Qubit's decision, the parties shall make timely and good faith efforts to resolve the matter.

### **Pricing**

1. The prices for the Services are set forth in Attachment 1. Customer understands and agrees that the quantities shown in Attachment 1 may change during implementation, even though the prices will remain the same. All prices are shown in and shall be paid in U.S. dollars and are F.O.B. Qubit or its vendors.
2. Qubit's charges for the Services are not subject to change during the Initial Term except as the result of mandates by state or federal regulatory or taxing authorities; changes in the charges for services provided by third parties, including, without limitation, charges for circuits and usage.
3. Qubit reserves the right to change prices for any Renewal Term, provided that Qubit has given Customer 30 days' written notice prior to the end of the then-current term.
4. Changes to or relocation of the Services may result in additional charges.
5. Required permits are not included in proposals and will be invoiced in addition to the proposal amount.

\_\_\_\_\_ Customer initials

**Installation**

Installation and one-time charges set forth on the service order are due upon order. Installation charges are nonrefundable. Customer shall provide all necessary preparations to permit installation, maintenance and operation of Services provided unless otherwise specified in this Agreement and shall provide Qubit and its supplier's reasonable access to Customers' premises including the point at which leased Telco services are provided to Customer. Customer is also responsible for any and all additional Telco charges arising as a result of necessity to reschedule Telco suppliers, as well as all Telco maintenance and diagnostics charges that may be needed.

**Equipment Lease/Rental Terms**

The equipment provided by Qubit remains the property of Qubit, except for any equipment that is purchased and paid for by the Customer as listed in Attachment 1, which is not returnable or refundable. The Customer is responsible to ensure that the equipment is protected from defacing, tampering or damage. The Customer is responsible for any Qubit equipment that is provided to run their service and agrees to reimburse Qubit for the full cost of the repair or replacement should the equipment be lost, stolen, unreturned, destroyed or damaged, including without limitation damage caused by lightning or any other type of electrical surge. It is the responsibility of the Customer to arrange and return all equipment, including power supply and cables, within 72 hours of their disconnection date or within 15 days after a demand for its return has been made. The Customer irrevocably authorizes Qubit to charge them for the full replacement cost of the equipment, which amount shall be at the sole discretion of Qubit.

**Authorizations**

Customer hereby authorizes Qubit to act as its agent in dealing with long-distance and toll free carriers, Internet providers and local exchange carriers ("LECs") on all matters pertaining to the services, including, without limitation, placing orders for and making changes to Services, having maintenance performed, and adding to, removing or rearranging services. Qubit reserves the right to select appropriate carriers. Customer further authorizes Qubit to obtain credit data concerning Customer.

**Acceptable Use**

Customer may not share or resell any services provided by Qubit without prior expressed permission from Qubit.

**Applicable Tariff Regulations**

Customer acknowledges that all or a portion of the services and/or goods to be provided hereunder are subject to regulatory authority of local, state and federal agencies. Customer agrees that Qubit may take whatever actions are required to comply with any rulings of such agencies, including price increases or decreases and modification or cancellation of any service offerings.

**Limitations of Liability**

1. The liability of Qubit for damages arising out of omissions, interruptions, delays, errors or defects in transmission occurring in the course of furnishing services or other facilities and not caused by the negligence of Customer, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the period during which such omissions, interruptions, delays, errors or defects in transmission materially impair services. For the purpose of computing such amount, a month is considered to have thirty (30) days.
2. Qubit shall not be liable for any act or omission of any other company or companies furnishing all or a portion of services. No agents or employees of other carriers shall be deemed to be agents or employees of Qubit.
3. The warranties contained herein are exclusive and (i) are given and accepted in lieu of any and all other warranties, express or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose and (ii) any obligation, liability, right, claim or remedy in contract, tort, product or strict liability, whether or not arising from Qubit's negligence, actual or imputed.
4. Qubit shall not be liable, under any circumstance, for any loss of or damage to data.

\_\_\_\_\_ Customer initials

5. In no event shall Qubit be liable for damages, including, but not limited to, incidental, consequential (including lost profits), indirect or special damages.

**Assignment**

Either party may assign this agreement with the prior written consent of the other, such consent not to be unreasonably withheld. Qubit reserves the right to assign this agreement, without consent, to an affiliate, subsidiary, or any entity that assumes the prospective obligations of Qubit hereunder.

**Notices**

All notices shall be in writing and addressed to the office identified herein. Notices shall be deemed given: (i) when delivered in person, (ii) one (1) business day after deposit with an overnight delivery service for next day delivery, or (iii) three (3) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed to the recipient Party at the address set forth on the signature page hereof. Either party may change its notice address by notifying the other in writing.

**E911 Notice**

Voice over IP (VOIP) may have the 911/E911 limitations listed below.

1. In order for Customer's 911 calls to be properly directed to emergency services, Qubit must have Customer's correct service address. Customer agrees to notify Qubit of any change to Customer's address at least 5 business days prior to the new address taking effect.
2. VOIP uses the electrical power in Customer's building. If there is an electrical power outage at Customer's location, calls, including calls to 911, may not be completed if the associated VOIP equipment's battery back-up is not installed, fails or is exhausted after several hours.
3. Calls, including calls to 911, may not be completed if there is a problem with the network facilities, including network congestion, network/equipment/power failure, or another technical problem.
4. By signing this Agreement, Customer acknowledges that the 911 services provided by VOIP are limited by comparison with traditional 911 telephone services. Such limitations include, without limitation, connection failures, degradation of bandwidth, denial of service attacks, worms, hackers, viruses, and any other known or unknown conditions that interfere with the speed or capacity of the Internet or Internet service, loss of electrical power at the registered location, delays that may occur in making a registered location available in the 911 database, or if Customer devices are damaged or defective.

**Fraudulent Calls**

Customer is solely responsible for selection, implementation, and maintenance of security features for protection against unauthorized calling, and Qubit shall have no liability therefore. Customer is solely responsible for payment of long distance, toll, and other charges incurred through the use of the Services. Customer shall defend, indemnify and hold harmless Qubit from all claims and losses arising from fraudulent calls of any nature carried by means of the Services. Customer shall not be excused under any circumstance from paying Qubit for Services provided to Customer or any portion thereof on the basis that fraudulent calls comprised a corresponding portion of the Services. In the event Qubit discovers fraudulent calls being made, nothing contained herein shall prohibit Qubit from taking immediate action, without prior notice to Customer that is reasonably necessary to prevent such calls from taking place. Notwithstanding the foregoing, it is understood that Qubit is under no obligation to investigate the authenticity of calls charged to Customer's account and shall not be liable for any fraudulent calls processed by Qubit and billed to Customer's account.

**International Calls**

By default, and to protect Customers from fraudulent call charges, Qubit does not permit international calling. Customers may request that this restriction be removed, in whole or in part, at any time in writing. A request to remove the international calling restriction also constitutes Customer's continuing agreement that Customer is responsible for the costs of any calls that may be made, including any associated charges.

\_\_\_\_\_ Customer initials

**Internet**

Qubit installs and supports Voice-over-IP (VOIP) telephony services. These services require connectivity. This connectivity can be provided through dedicated (non-Internet) or Internet based connectivity including Digital Subscriber Line (DSL) and Comcast Broadband Cable style connections that connect VOIP through the Internet. Internet connections carry an inherent risk of service interruption. They are all "Best Effort" connections and carry NO SERVICE GUARANTEES. This means that they can, and do, sometimes fail to provide continuous service without any degree of predictability nor any guarantee of repair times or even repair priority over other customers. This means that phone services may be interrupted without warning and without any certainty of repair timeframes. The Internet has a history of intermittent interruption and this is a KNOWN RISK to using the Internet for connectivity to VOIP services. While Qubit has Customers using these services through Internet connectivity with general success and reasonable satisfaction, Qubit cannot guarantee or even assure Customers that such services are or will remain adequate to the Customer's business needs. Accordingly, Customer hereby acknowledges that it may have chosen one or more of these services with full knowledge and understanding of the risks inherent in the services and has made such choice solely on its own with no inducement from Qubit and is willing to assume such service risks as may exist. Further, Customer acknowledges that Qubit is not responsible for the quality or reliability of such services and cannot affect such quality or reliability. The services are provided by and covered by the service commitments of the carriers that sell those services. Qubit only assists in connecting to the services, they do not provide them.

**Excuse of Performance**

If Qubit's performance of this agreement or of any of its obligations hereunder is prevented or restricted by reason of fire, explosion or other casualty, acts of God, acts of public enemies, embargo, delays of suppliers, acts of city, state, local or federal government in their sovereign, regulatory or contractual capacity, labor difficulties, strikes, or any circumstances beyond the reasonable control of Qubit, then Qubit, upon giving reasonable notice to Customer, shall be excused from such performance to the extent of such prevention or restriction, provided Qubit shall resume performance if such causes are removed or cease within a reasonable time.

**Intellectual Property**

1. Nothing contained in this Agreement shall be deemed to grant 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. No party shall acquire any patent rights, copyright interest or other right, claim or interest in the computer programs, forms, schedules, manuals or other proprietary items utilized or provided another party in connection with the services rendered under this Agreement.
2. Customer acknowledges that Qubit has expended substantial time, effort and funds to compile Qubit's products and service formulas and that all information related thereto is and will continue to be the exclusive business property of Qubit. Nothing contained in this Agreement conveys to Customer any right, title or interest in or to Qubit's products or service formulas.

**Use and Protection of Proprietary Property.**

Customer acknowledges and agrees that the equipment and all related technology, programs, ideas, operator's manuals and designs constitute confidential and proprietary information and/or trade secrets of Qubit Networks or its vendors and licensors. In order to protect the confidential nature of such information and trade secrets, customer hereby represents, warrants and agrees that it shall, at all times after the date of this agreement, take all action as may be reasonably necessary to (i) preserve the confidentiality of the equipment, its internal workings and components and all information related to its use and operation, and ensure that access thereto is restricted to authorized and trained employees of customer; (ii) keep confidential any proprietary, confidential or trade secret information owned by, or licensed to, Qubit Networks, except for disclosure to such employees or agents of customer as are necessary and authorized to properly operate the equipment; (iii) prohibit the use, copying or reproduction in any manner of any such information; and (iv) protect the display of any copyright notice or trademark on the equipment. Customer's representations herein shall survive the termination of this agreement.

\_\_\_\_\_ Customer initials

**General**

1. If any term or terms of this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining terms shall not in any way be affected or impaired thereby.
2. Any modification must be in writing and signed by authorized representatives of both parties.
3. Waivers, to be binding, must be in writing and signed by the party whose right is waived.
4. Each party represents that it has full power and authority to enter into and perform this agreement, that it knows of no impediment to its predominance and that the person signing this agreement on its behalf has been properly authorized and empowered to enter into this agreement.
5. Customer shall be liable to Qubit for all expenses, including reasonable attorneys' fees and costs, incurred by Qubit in the enforcement of its rights hereunder.
6. The parties agree that this agreement, and all attachments hereto, is the complete and exclusive statement of the agreement between the parties. Customer acknowledges that it neither has been induced to enter into this agreement by, nor in any way relies upon, any statement or representation not specifically set forth herein. This agreement supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this agreement.
7. Any legal action resulting from this agreement shall be filed in the Superior Court of LaPorte County, Indiana. The prevailing party shall be entitled to its attorneys' fees.

**ACCEPTED AND AGREED:**

**Qubit Networks Signature**

**Customer Signature**

\_\_\_\_\_  
By (Sign)

\_\_\_\_\_  
By (Sign)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Qubit Networks  
1600 Lake St, Suite D  
La Porte, IN 46350

\_\_\_\_\_  
Customer Company Name

\_\_\_\_\_  
Customer Company Address

\_\_\_\_\_  
City, State, ZIP Code

\_\_\_\_\_ Customer initials