



600 Ash Ave., McAllen, Texas 78501 Phone: (956) 213-4237

FTTX SERVICE AGREEMENT

BASIC TERMS AND CONDITIONS OF SERVICE REGARDING SERVICE

Except where otherwise stated, "we," "us", or "our" means SmartCom Telephone, LLC DBA Austin Fiber Optics or its authorized agents (collectively "Austin Fiber Optics" or "Seller") and "you" or "your" means the "Customer" or "Buyer" specifically named on this order or on the Service Order (the "named Customer" or the "named Buyer"), including Buyer's "User". Buyer's "User" includes the named Buyer and any others who use the Equipment or Services on the Premises. "Premises" means the overall location where the Customer's Service is intended by Seller to be installed and may, at Seller's sole discretion, including common areas of such location. "Installed" means either installed or activated. "Equipment" means one or more of the following: digital receiver, broadband modem, network terminal, or any other device installed by Seller in or around the Premises, or provided by Seller, necessary or convenient for Buyer to receive and utilize Service from Seller. "Service" or "Services" means the Internet access or data services, or any other service that Seller provides to Customer. "Third party" includes, without limitation, invitees or guests of the named Buyer or Buyer's Users, as well as other third parties. "Content" means the substantive content of any communication or message, information, data, software, programs, operating systems, or other content of any kind that Buyer may have or store on Buyer's computer or other equipment or elsewhere, or that Buyer transmits on Seller's system. "Content transmitted by Buyer on Seller's system" (or similar phrases) means any and all Content accessed, obtained, downloaded or uploaded, sent or received, distributed, disseminated, published, transmitted or re-transmitted over, on, through or by use, in whole or part, of Seller's system, by Buyer, to Buyer, or for Buyer by another, or that you otherwise cause to be transmitted on Seller's system. "Intellectual Property" means, without limitation, ownership of or rights in or to: copyright, patent, trademark or service mark, trade dress, trade secret, confidentiality, rights of commercial exploitation, artists' "moral rights", or other intellectual property or proprietary rights of any person or entity.

Austin Fiber Optics provides telecommunications services. Failure on your part to observe contractual regulations may give Seller the right to cancel the Agreement and discontinue the furnishing of service without notice. The service is furnished subject to the condition that it will not be used for an unlawful purpose. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advises that such service is being used or will be used in violation of the law. Customer abandonment of equipment or service is regarded as a voluntary termination of the Agreement.

Buyer agrees that the base installation fee includes Seller's installation and routing of telecommunication services through the Buyer's Minimum Point of Entry and that any extension and/or replacement of any existing wiring, additional wiring requirements, and/or relocation of any equipment to accommodate Buyer's use of any Service will result in additional fees based upon Seller's then prevailing applicable rates.

TERM OF AGREEMENT

The term of this Agreement shall be for a period of one year and shall automatically renew for like terms thereafter under the same terms and conditions, unless either party gives written notice to the other of their intention not to renew the agreement at least 30 days prior to the expiration of any term. After the expiration of one year from the date hereof, unless Buyer has selected and enrolled in Seller's "Price Lock Promotion", Seller shall be permitted from time to time to increase all charges by an amount not to exceed nine percent each year and Buyer agrees to pay such increase. The Term begins when Buyer accepts this Agreement and/or when Buyer executes a Service Order and Seller installs/activates Service and ends when Buyer or Seller terminates this Agreement as permitted herein.

If Buyer changes Service plans, Buyer's term and monthly rate may change (depending on the selected plan), but all other provisions of this Agreement remain in effect unless otherwise noted.

AVAILABILITY OF FACILITIES

Seller will use reasonable efforts to make service available to Buyer on or before a particular date, but does not guarantee availability by any such date and will not be liable for any delays in commencing service to any Buyer. Seller reserves the right to limit or to allocate the use of existing facilities, or of additional facilities, when necessary, because of lack of facilities, or due to some other cause beyond the Seller's control. The furnishing of telecommunications services is subject to the availability on a continuing basis of all the necessary rights and facilities and is limited to the capacity of Seller's facilities as well as facilities Seller may obtain from other carriers to furnish service from time to time as required at its sole discretion.

SPECIAL CONSTRUCTION

Subject to Seller's agreement, special construction of facilities may be undertaken on a reasonable basis at Buyer's request. Special construction is construction undertaken: (1) where facilities are not presently available, and where there is no other requirement for the facilities so constructed; (2) of a type other than that which the Seller would normally utilize in the furnishing of services; (3) over a route other than that which the Buyer would normally utilize in the furnishing of services; (4) in a quantity greater than that which the Seller would normally construct; (5) on an expedited basis; (6) on a temporary basis until permanent facilities are available; (7) involving abnormal costs; or (8) in advance of normal construction. Seller will contact Buyer within 10 business days of receipt of Buyer's request for service and give Buyer an estimated completion date and an estimated cost for all charges to be incurred and an explanation of any construction cost options, if any.

EQUIPMENT LEASED

The equipment installed by Seller belongs to Seller unless Buyer has purchased it and has paid the purchase price in full. Buyer may not sell, rent, lease, loan or give away the Equipment without Seller's prior written consent, and Buyer may not use any of the Equipment at any location other than the Premises at which the Equipment was installed by Seller or for which it was provided by Seller. Buyer may not use Seller's Equipment for anything but Seller's Service. Buyer agrees not to attempt to make repairs to, or to alter, disturb or tamper with the Equipment and that Buyer will not permit anyone other than Seller or Seller's agent to perform any work on the Equipment. Buyer acknowledges that this Equipment has an actual value greater than its purchase price because it also is a means to receive Service not otherwise available to persons who are not Seller's customers, and Buyer agrees to pay Seller actual replacement cost for any Equipment not returned to Seller in good condition upon termination of the Service for which it was provided by Seller. If Buyer ceases to be Seller's customer for any reason, Buyer will be responsible for promptly returning the Equipment to Seller. The Equipment must be returned in working order, normal wear and tear accepted, or you will be charged the higher of (i) the retail cost to replace each such piece of Equipment with new Equipment, or (ii) any other amount specifically stated in this Agreement. Buyer is responsible for preventing any tampering with or the loss of or damage to the Equipment within Buyer's Premises. Seller reserves the right to disconnect Buyer's Service(s) and remove the Equipment if it is determined by Seller in its sole judgment that the Equipment could be causing a problem with the Seller's network.

Buyer will not relocate Seller's Equipment. At Buyer's request, Seller may relocate Seller's Equipment within the Premises for an additional charge, at a time agreeable to Buyer and Seller. If Buyer changes service location, Buyer must contact Seller for information on whether the Seller's Equipment and services can be transferred to Buyer's new location and what the relocation cost will be. If Buyer wishes to disconnect service, Buyer must contact Seller for information on the necessary procedures. If Buyer violates this Agreement by moving the Seller's Equipment utilized to provide Phone Service from the physical location where it was originally installed, emergency 911/E911 communications may be misdirected to an incorrect emergency services responder or the emergency responder may be directed to the wrong address (see Emergency 911 and E911 Section, below).

ACCESS TO BUYER'S PREMISES

Buyer authorizes Seller, and its employees, agents, contractors, and representatives to enter the Premises in order to install, maintain, inspect, repair or remove Seller Equipment and/or the Service. If Buyer is not the owner of the Premises, Buyer expressly represents that Buyer has authority to permit Seller onto the Premises as required to install, maintain, inspect, repair or remove any Equipment or Service; and Buyer may be required to supply Seller with the owner's name and address, evidence that Buyer is authorized to grant access to the Premises on the owner's behalf, and (if needed) written consent from the owner of the Premises. Buyer grants Seller permission to enter the Premises at any time following the termination of any Services on the Premises to remove any Seller owned Equipment or Service at Seller's sole discretion.

RELOCATING OR REMOVING EQUIPMENT

This Agreement is for the particular Premises and for the particular Customer identified herein. Buyer agrees that Buyer will not remove the Equipment from the Premises or connect the Equipment to any outlet other than the outlet to which the Equipment was initially connected by the Seller's installer, nor let anyone do so who is not authorized by Seller. Seller may relocate the Equipment for Buyer within the Premises at Buyer's request, and at Buyer's cost at Seller's then prevailing applicable rates. If Buyer relocates to a new address, this Agreement shall automatically terminate and Buyer will promptly notify Seller as provided within this Agreement if Buyer relocates or leaves the Premises for any other reason. Buyer acknowledges that Buyer may incur additional charges for any Equipment relocation. Buyer agrees that Buyer will not connect any other device to the dedicated Seller's Equipment outlet. Buyer understands that doing so may cause damage to the Seller's network and subject the Buyer to liability for damages.

DAMAGE TO AND ENCUMBRANCES ON EQUIPMENT

All Equipment, except for Equipment purchased and paid for in full by the Buyer, will at all times be and remain the sole property of Seller. Buyer may not sell, transfer, lease, encumber, lend or assign all or any part of the Equipment to any third party, or permit its removal from the Premises without the express written consent of Seller. Buyer agrees that Buyer will pay the costs specified in this Agreement for the repair or replacement of any lost, stolen, unreturned, or damaged Equipment or part thereof, together with any costs incurred by Seller in obtaining or attempting to obtain possession of any such Equipment or otherwise to enforce its rights under this Agreement. Buyer hereby authorizes Seller to charge Buyer's Visa, MasterCard, other credit card, or other payment method that has been authorized by Buyer for any such outstanding Service and Equipment charges. In the event such a replacement or repair is necessary, Seller may, at its sole option, install or substitute new or reconditioned Equipment, including swapping existing Buyer equipment for compliant Equipment, for which Buyer may incur an installation and rental fee at Seller's then-applicable rates.

CERTAIN CUSTOMER OBLIGATIONS

By accepting Service from Seller, you agree to the terms and conditions of use regarding Seller's Services that are stated in this Agreement and any changes Seller may make from time to time, and you agree to pay each monthly bill from Seller on or before the date specified in the bill. An administrative late charge will be assessed if the bill is not paid by the due date, and Service will be terminated if payment is not received by the stated due date of the next month's bill (or as otherwise provided by law). All equipment of any kind provided by Seller remains the sole property of Seller, unless sold to you. You agree to notify Seller when moving from the Premises and you are responsible for monthly Service until you notify Seller in writing of desire to terminate Service and have returned any Seller Equipment in good condition. Failure to return Seller Equipment within ten (10) days after receiving notice in writing from Seller is a violation of Section 31.04 of the Texas Penal Code. Internet Services provided by Seller are subject to the terms and conditions of use stated in this Agreement, the Internet Acceptable Use Policy (which may be found at www.austinfiberoptics.com/aup), as well as the Basic Conditions of Service Regarding Internet Service (which may be found at www.austinfiberoptics.com/terms), as they may be changed from time to time by Seller with or without notice to you, to any applicable software license and to applicable local, state and federal law and

regulations. Please read the foregoing terms and conditions applicable to Buyer as well as any additional policies and other information made available to you by visiting www.austinfiberoptics.com/terms, as they provide useful information about your rights and responsibilities related to your use of our Services, including, without limitation, your commitment to resolve any controversy or dispute between us respecting your use of the Services or any equipment associated therewith through binding arbitration.

MULTIPLE USERS

Buyer acknowledges and agrees that Buyer is executing this Agreement on behalf of all Buyer's Users or who otherwise use the Equipment and/or Service on the Premises, and that you are responsible in all respects (including all payment obligations) for all use of the Equipment and/or Service. **BUYER UNDERSTANDS AND AGREES THAT BUYER IS SOLELY RESPONSIBLE FOR MAKING SURE THAT ALL USERS UNDERSTAND AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT (INCLUDING THE ACCEPTABLE USE POLICY). BUYER FURTHER ACKNOWLEDGES AND AGREES THAT BUYER IS SOLELY RESPONSIBLE AND LIABLE FOR ANY AND ALL BREACHES OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHETHER SUCH BREACH IS THE RESULT OF USE OF THE SERVICE AND/OR EQUIPMENT BY BUYER OR BY ANY OTHER USER.**

PRIVACY STATEMENT

Seller created this privacy statement outlining your privacy rights in order to demonstrate our firm commitment to privacy. The following discloses our information gathering and dissemination practices for the websites operated by Seller which can be found at www.austinfiberoptics.com/terms (collectively, the "Site"). Seller is the sole owner of the information collected on the Site. Seller will not sell, share, or rent this information to others in ways different from what is disclosed in this statement. Seller collects information from our users at several different points on our Site as further described in this Agreement.

HOW AND WHEN WE COLLECT INFORMATION

Seller collects "personal" information from Buyer when Buyer provides it to us. When Buyer accesses Seller's Site, Seller automatically collects access log information about our visit, including information such as the Internet Protocol (IP) addresses assigned (numbers assigned to Buyer's computer while online), bandwidth used, system and connection performance, browsers used, dates and times of access, and Internet resource requests, including requests to access web pages. If Buyer purchases any Service ("Services") from Seller, Seller may collect Buyer's name, mailing address, driver's license number, social security number, telephone number, credit card number and email address, certain additional information as provided in any other of Seller's Agreements, and online traffic, actions and anonymous surfing data (in general "click-stream data") and date which can be used to provide a better online experience.

HOW SELLER COLLECTS BUYER'S INFORMATION

Seller collects, stores, and processes your personal information on servers located in the United States. Seller uses the information Seller collects about Buyer in order (1) to provide or services and process Buyer's transactions, (2) to provide customer service, (3) to determine Buyer's eligibility to receive offers for special features or products, (4) to improve Seller's products and services, (5) to comply with governmental regulations and requests, (6) to deal with fraud and unauthorized use of Seller's Services. Additionally, Seller shares your information with Seller's parent company, subsidiaries, and joint ventures to help coordinate the services Seller provides to Buyer, enforce Seller's appropriate use policy, and promote trust and safety. Unless addressed to the Seller, Seller does not read email messages, instant messages, online chats, or the content of other online communications that reside on or pass through our Services. Seller may, however, retain and provide such communications if Seller is legally required to do so or for one of the purposes set forth above. As with any other business, it is possible that Seller in the future could merge with another company or Seller or its assets or one or more of its business lines could be acquired by another company. If such an acquisition occurs, the successor company would have access to the information maintained by Seller, including customer account information, but would continue to be bound by this Privacy

Statement unless and until it is amended as described below. Seller will not sell or rent any of Buyer's personally identifiable information to third parties. Seller will share your personally identifiable information with third parties that are its suppliers, affiliates or business partners of Seller in order to provide Seller's services to Buyer or to provide Buyer with notification of those services. These third parties are limited by law or by contract from using the information for secondary purposes beyond the purposes for which the information is shared. Seller will not share any of Buyer's personally identifiable information with third parties other than its suppliers, affiliates, or business partners except with Buyer's express permission.

FCC NETWORK MANAGEMENT DISCLOSURE

Seller is committed to providing our Internet services as an open platform for innovation, investment, job creation, economic growth, competition, and free expression. We do not block any lawful contact, applications, services, or your use of non-harmful devices, or discriminate in transmitting lawful network traffic except as reasonably necessary to manage our network effectively for the benefit of our customers as described below. The purpose of this disclosure is to make available information regarding our network management practices and the performance and commercial terms of our broadband Internet access services to enable you to make informed choices regarding the purchase and use of our services, in accordance with Part 8 of the Rules of the Federal Communications Commission (FCC). This summary disclosure is provided for your convenience and does not replace or alter the legal terms and conditions of service.

RESOLVING COMPLAINTS AND QUESTIONS

If you have any questions or concerns about your Internet services, please contact Seller at (956) 213-4237.

INTERNET SERVICE OPTIONS

Seller's services are described as offering "up to" certain speeds. While we engineer our network to achieve the speeds for each of the service tiers we offer, we cannot guarantee that customer will always experience those speeds. Advertised speeds may vary.

PERFORMANCE CHARACTERISTICS

Your service may vary based on a number of performance characteristics, including:

1. Performance of your computer, including its age, processing capability, its operating system, the number of applications running simultaneously, and the presence of any adware or viruses.
2. Type of connection between your computer and modem. For example, wireless connections may be slower than direct connections into a router or modem. Customers are responsible for determining whether particular wireless devices or other customer equipment are suitable for use with their Internet services.
3. The distance packets travel (round trip time of packets) between your computer and its final destination on the Internet, including the number and quality of the networks of various operators in the transmission path. A customer's connection may traverse the networks of multiple providers before reaching its destination, and the limitations of those networks will most likely affect the overall speed of that Internet connection.
4. Congestion. If a large number of visitors are accessing a site or particular destination at the same time, your connection will be affected if the site or destination does not have sufficient capacity to serve all of the visitors efficiently.
5. Speed. Gating of speeds or access by the website or destination. In order to control traffic or performance, many websites limit the speeds at which a visitor can download from their site. Those limitations will carry through to a customer's connection. Although speed and network performance are roughly uniform throughout Seller's

network, customer speed may vary depending on geographical location. All of Seller's services with the exception of dial-up are suitable for real-time applications.

Customer may test service speeds using commercial speed tests available online, such as <http://www.speedtest.net>. However, speed tests have biases and flaws, and should be considered only as informational and not a reflection of actual performance. While we do not believe these third-party tests reliably measure the speed of your service, if you are consistently testing substantially below your package speed, please contact us for assistance.

6. The performance of the modem you have installed. Modem performance may degrade over time, and certain modems are not capable of handling higher speeds.

7. Packet Loss. Our network was designed to have zero packet loss. Accordingly, customers should experience minimal, if any, packet loss at any given time, subject to network congestion.

8. Latency. Subject to the factors above, the typical performance of our Internet services will approximate or exceed the national wireless broadband Internet speed and latency levels reported by the FCC.

COMMERCIAL TERMS OF SERVICE AND PRIVACY POLICIES

Your service is subject to our terms of service, privacy policy, and acceptable use policy, and other policies and disclaimers, all of which are posted at www.austinfiberoptics.com/terms or www.austinfiberoptics.com/aup. Subject to the terms of service, at this time we do not impose any fees for incremental usage of our services. We do not store usage data, provide any information about customer's usage to any third party, or engage in deep packet inspection or any other inspection of content or usage data for non-network purposes, except to the extent required by applicable law. We do retain anonymized, aggregated data about the quantity of usage in order to monitor the capacity of our network.

Other Fees. You may be subject to additional, one-time or recurring fees.

PROTECTING OUR NETWORK

Seller reserves the right to manage its network and Services in any manner it deems appropriate. Any action or email from any user that causes what Seller determines is an undue burden on the network or personnel of Seller is prohibited and may subject the user to termination of Seller's Service without notice, recourse or refund.

PAYMENT OF CHARGES AND ADVANCE PAYMENTS

You agree to pay all monthly fees for the Service(s) to which you subscribe and all related installation or other applicable charges. Such charges include, but are not limited to, applicable franchise fees, regulatory fees, taxes, customer service fees, interest, late fees and door collection fees, telecommunication services originated and/or charges accepted at your telephone. Monthly fees will be billed one month in advance. Other charges, such as Equipment rental (if any) may be charged in advance. If payment is not received by the due date stated on the bill, interest shall accrue on unpaid amounts at a rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, from the due date until paid in full, and/or late fees and/or door collection charges may be assessed and the Service may be disconnected. You may be required to pay a reconnection fee in addition to paying all past due amounts in full before the Service(s) are reconnected. You acknowledge that Seller also may require a security deposit before reconnecting the Service(s). You agree to pay an administrative fee for returned checks and failed bank drafts or electronic transfers. You understand that early termination by Buyer of an agreement with a stated duration (also called the contract "term") may result in early cancellation penalties. Credit for Service may be offered at Seller's sole discretion, but only in accordance with applicable law. In addition, where special construction is involved, advance payment of the quoted construction charges may be required at the time of application. Service may be denied or discontinued for failure to furnish advance payment. If any overcharge

or undercharge shall at any time be found and the invoice therefore has been paid, Seller shall refund the amount of any overcharge received by Seller and Buyer shall pay the amount of any undercharge within thirty (30) days after final determination thereof; provided, there shall be no retroactive adjustment of any such overcharge or undercharge if the matter is not brought to the attention of the Seller in writing within one hundred twenty (120) days following the date the Services were provided under this Agreement regarding which the overcharge or undercharge applies; provided that such adjustment period shall be adjusted to coincide with the period in which adjustments are permitted under a third party's contract or tariff, whichever is applicable, with respect to Services provided on Third Party Facilities to the extent that such contract or tariff provides for different adjustment periods than those set forth above.

ADMINISTRATIVE FEES

Seller reserves the right to impose on its customers reasonable administrative fees in order to safeguard interests in providing service to the general public, and as a result of failure to make prompt payment on bills by customers.

DEPOSITS

Seller may request a deposit for all other services provided by the company when serving a Buyer with low creditworthiness or bad payment history. The deposit will be based on two months estimated usage of the subscribed service.

LATE PAYMENT FEE

If the whole or a portion of your payment is received after the payment due date, Seller will impose a late payment fee of \$15.00.

RETURNED CHECK CHARGE

Buyer will be assessed a charge of \$30.00 for each check, bank draft, or electronic funds transfer which a financial institution refuses to honor.

COLLECTION FEES

Seller may use various means to collect delinquent accounts including but not limited to appropriate legal actions and/or collection agencies. In the event Seller incurs fees or expenses, including collection agency and/or attorney's fees and courts costs, due to the collection of a delinquent debt, Buyer agrees to reimburse Seller for all such fees and expenses that are reasonably incurred, up to the maximum permitted by applicable law.

CUSTOMER OBLIGATIONS UPON TERMINATION

Unless otherwise provided under separate written agreement signed by Seller, upon termination of this Agreement: Buyer agrees to pay Seller in full for Buyer's use of any Seller-owned Equipment and Service up to the later of (i) the effective date of termination of this Agreement and (ii) the date on which the Service and any Seller-owned Equipment has been properly disconnected and returned in good condition to Seller. Buyer agrees to pay Seller for Buyer's use of any Seller-owned Equipment and Services and any part of a month less than an entire month on a pro-rated basis at the applicable rate. Buyer agrees Buyer will permit Seller access to the Premises at an agreed time to remove any Seller-owned Equipment and other material provided by Seller, and that Buyer will not unreasonably refuse to agree to a suitable time for Seller to do so. Buyer agrees Buyer will immediately return or arrange for the return of any Seller-owned Equipment to Seller. Buyer also agrees Buyer will promptly return all copies of any software provided to Buyer by Seller in providing Buyer's Services; or if Seller instead requests destruction of such copies, that Buyer will promptly do so and certify in writing that such destruction has in fact occurred, or a form to be provided by Seller.

REGULATORY FEES AND TAXES

Buyer is responsible for the payment of line items on Buyer's bill associated with regulatory and non-regulatory assessments and surcharges, franchise fees, privilege and license fees, and local, state and federal taxes assessed upon Seller by governmental jurisdictions, all of which are separately designated on Buyer's bill. Any taxes imposed by a local jurisdiction (i.e. county and municipality) are recovered only from those customers residing in the affected jurisdictions.

STATE SALES TAX AND LOCAL SALES AND USE TAXES

According to state law, state and local taxes are levied on tangible personal property and taxable services, including amusement services, cable television services, personal services, repair and remodeling services, aircraft services, telecommunications services, real property services, and data processing services. These taxes are considered a part of the total sales prices of the telecommunications services provided by Seller. State sales taxes, and local sales and use taxes are collected by Seller on a monthly basis and the proceeds are passed on to the appropriate state or local governmental entity. Eligible tax-exempt entities are entitled to a waiver of state sales taxes, and local sales and use taxes.

CANCELLATION OF SERVICE BY BUYER

If Buyer cancels service for any reason other than service interruption, you are obligated to pay the unpaid balance of charges owed to Seller. Such charges will become due and owing as of the effective date of the cancellation.

Computer Proprietary Network Information (CPNI) Notice

CPNI is information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed by a customer. It is information made available to Seller by virtue of the customer-carrier relationship. CPNI does not include public directory listing information for subscribers.

COLLECTION AND USE OF CPNI

In order for Seller to provide service and operate efficiently, we collect the following types of information about you that may constitute CPNI: your name, home and work address, telephone numbers, social security number, and credit information. Depending on the services to which Buyer subscribes, Seller's records may also include information on billing, payment, security deposits, maintenance and repairs, and the service options Buyer has selected. Seller may also keep records of research concerning subscriber satisfaction with the service, which are obtained from subscriber interviews and questionnaires. Additionally, Seller may have a record of whether Buyer rents or owns Buyer's home in the event that landlord permission is required prior to installing our facilities. Seller also maintains subscriber correspondence (via email or otherwise). Under state and federal regulations, Buyer has the right, and Austin Fiber Optics has the duty, to protect your CPNI.

CPNI will be used by Seller to make sure Buyers are billed properly for services, to send Buyer pertinent information about Seller's services, to improve quality of service, to answer questions that may involve troubleshooting to ensure compliance with relevant contractual and legal obligations, and for tax and accounting purposes. More generally, applicable regulations allow Seller to use, disclose, or permit access to CPNI for the following purposes without customer approval: (1) to provide market service offerings, or alternate versions of existing service, which may include additional or related offerings, within the category of service (i.e. local, interexchange) to which the customer already subscribes; (2) to provide optional extended area calling plans; (3) to market services formally known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller ID, call forwarding, and certain Centrex features; (4) to provide inside wiring installation, maintenance, or repair services; (5) to initiate, render, bill for, or collect for customer-authorized telecommunications services; (6) to protect the rights or property of Seller; (7) to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or (8) to market services other than those to which a customer already subscribes, or

alternate versions of existing service, which may include additional or related offerings, if such customer contacts Seller to inquire about such service offerings.

BUYER RIGHT TO RESTRICT CPNI

Under state and federal regulations, Buyer has the right to affirmatively restrict Seller from using Buyer's CPNI for the purposes identified in items (1) to (3) described in the preceding paragraph. However, Buyer cannot prohibit Seller from using CPNI for the purposes identified in items (4) to (8). In order to restrict Seller's use of Buyer's CPNI, Buyer must send a notice to Seller in writing (See contact information section). Seller will not assess a fee for any election to restrict the use of Buyer CPNI.

BUYER REQUIRED APPROVAL

Seller may not use, disclose, or permit access to customer CPNI without approval in order to market customer service offerings that are within a category of service other than that to which the customer already subscribes. Seller may obtain such approval through written, oral, or electronic method, and such approval may enhance Seller's ability to offer products and services tailored to the customer's needs. Buyer denial of approval will not affect the provision of any telecommunications services to which the Buyer subscribes. Any approval or denial of approval will be valid until the Buyer affirmatively revokes or limits such approval or denial. In addition, through an affirmative written request, Buyer may direct Seller to disclose CPNI to a specific person or for a specific purpose. In this notice, Seller is not requesting Buyer's approval for use of CPNI for any purpose.

LIMITED WARRANTY

ANY SELLER EQUIPMENT AND SERVICES ARE PROVIDED BY SELLER "AS IS" WITHOUT WARRANTY OF ANY KIND. SELLER DISCLAIMS ANY AND ALL WARRANTIES OF UNINTERRUPTED USE OF THE EQUIPMENT OR THE SERVICE. BUYER DISCLAIMS ANY AND ALL WARRANTIES THAT ANY DATA, VOICE, VIDEO, OR OTHER INFORMATION OR CONTENT SENT BY OR TO CUSTOMER WILL BE TRANSMITTED, WHETHER IN UNCORRUPTED FORM OR OTHERWISE, OR THAT SUCH TRANSMISSION WILL OCCUR WITHIN ANY PARTICULAR PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

LIMITATION OF LIABILITY

BUYER IS ENTIRELY AND SOLELY RESPONSIBLE FOR ANY AND ALL CONSEQUENCES OF BUYER'S USE OF THE SELLER'S SERVICES AND ANY AND ALL OF THE CONTENT BUYER TRANSMITS ON SELLER'S NETWORK, REGARDLESS OF THE FORESEEABILITY OF THOSE CONSEQUENCES.

UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, SELLER SHALL NOT BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR:

A. ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, AND PERSONAL INJURIES (INCLUDING DEATH), RESULTING DIRECTLY OR INDIRECTLY FROM, OR OTHERWISE ARISING IN CONNECTION WITH:

1. PROVIDING SERVICES TO BUYER, OR BUYER'S USE OF THE SERVICES OR EQUIPMENT, INCLUDING WITHOUT LIMITATION ANY DAMAGE RESULTING FROM OR RELATED TO BUYER'S OR ANY THIRD PARTY'S USE OF THE EQUIPMENT OR SERVICE, OR THE MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, NON-DELIVERIES, MIS-DELIVERIES, TRANSMISSION OR NON-TRANSMISSION, OR ANY FAILURE OR PERFORMANCE OF THE EQUIPMENT OR SERVICE, EVEN IF SELLER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

2. THE INSTALLATION OF EQUIPMENT OR MODEM, INCLUDING DAMAGE TO BUYER'S COMPUTER.
3. THE TERMINATION OR RECLASSIFICATION OF BUYER'S ACCOUNT BY SELLER IS PURSUANT TO THIS AGREEMENT.

B. ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, ANY ALLEGATION, CLAIM OR SUIT OR OTHER PROCEEDING, BASED UPON A CONTENTION THAT BUYER'S USE OF THE EQUIPMENT OR SERVICES, OR THAT ANY CONTENT TRANSMITTED BY BUYER ON SELLER'S NETWORK:

1. INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS;
2. CONSTITUTES A LIBEL OR A SLANDER OR OTHER DEFAMATION UPON ANOTHER OR THE BUSINESS OF ANOTHER, OR IMPERMISSIBLY INVADES OR COMPROMISES THE PRIVACY OF ANOTHER; OR
3. COMPROMISES OR VIOLATES THE CONTRACTUAL, PROPERTY OR OTHER LEGAL OR EQUITABLE RIGHTS OR INTERESTS OF ANOTHER; OR

C. ANY DAMAGES OF ANY KIND RESULTING IN ANY WAY FROM ANY OTHER PERSON ACCESSING, COMPROMISING, OR DESTROYING OR DAMAGING THE INTEGRITY OF BUYER'S COMPUTER OR OTHER EQUIPMENT, OR ACCESSING, COMPROMISING, COPYING, DISSEMINATING OR DESTROYING BUYER'S CONTENT, THROUGH OR BY MEANS OF THE SELLER'S SERVICES. THESE LIMITATIONS ALSO APPLY TO THE ACTS AND OMISSIONS OF SELLER, INCLUDING WITHOUT LIMITATION ANY NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL ACTS, WHICH BUT FOR THIS PROVISION, OTHERWISE WOULD GIVE RISE TO A CAUSE OF ACTION IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL DOCTRINE. FOR THE PURPOSES OF THIS LIMITATION OF LIABILITY SECTION, "SELLER" INCLUDES SELLER AND ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS OR OTHER PRINCIPALS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS. BUYER'S SOLE AND EXCLUSIVE REMEDIES UNDER THIS AGREEMENT ARE EXPRESSLY SET OUT IN THIS AGREEMENT.

INDEMNIFICATION

BUYER AGREES TO INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY LIABILITY WHATSOEVER FOR ANY CLAIMS RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATING TO:

A. BUYER'S USE OF THE SERVICE AND ANY CONTENT TRANSMITTED BY BUYER ON SELLER'S NETWORK, INCLUDING WITHOUT LIMITATION USE OF THE EQUIPMENT OR THE SERVICE IN ANY MANNER PROHIBITED UNDER THIS AGREEMENT.

B. THIRD PARTY CONTENTIONS THAT BUYER'S USE OF SELLER'S SERVICES:

1. INFRINGED THE THIRD PARTY'S INTELLECTUAL PROPERTY;
2. CONSTITUTED DEFAMATION, LIBEL OR SLANDER OF THE THIRD PARTY OR THE THIRD PARTY'S BUSINESS;
3. CONSTITUTED A VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION;
4. CONSTITUTED AN INVASION OF ANOTHER'S PRIVACY OR A VIOLATION OF SUCH PERSON'S OTHER LEGAL, EQUITABLE OR MORAL RIGHTS; OR
5. CONSTITUTED UNAUTHORIZED ACCESS TO OR MANIPULATION, COMPROMISE OR DESTRUCTION OF THE PROPERTY, EQUIPMENT, OR CONTENT OF ANOTHER.

FOR THE PURPOSES OF THIS INDEMNITY PROVISION, "SELLER" INCLUDES SELLER AND ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS OR OTHER PRINCIPALS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS.

ARBITRATION

BUYER AGREES THAT ANY CONTROVERSARY OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION BY SELLER OF ANY EQUIPMENT OR SERVICE, OR THE PERFORMANCE OF ANY EQUIPMENT OR SERVICE, SHALL BE RESOLVED BY BINDING ARBITRATION IN HIDALGO COUNTY, TEXAS COMMENCED NO MORE THAN ONE (1) YEAR AFTER THE DATE THE CAUSE OF ACTION AROSE, AND UNDER AND ACCORDING TO THE RULES

OF THE AMERICAN ARBITRATION ASSOCIATION. THE PARTIES EXPRESSLY WAIVE ANY ENTITLEMENT TO ATTORNEY'S FEES OR PUNITIVE DAMAGES TO THE FULLEST EXTENT PERMITTED BY LAW. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED.

CUSTOMER SERVICE

Seller expressly reserves the right to institute fees for providing certain customer support services if, at its sole discretion, it determines such fees are warranted. Buyer acknowledges and agrees that Seller will not be liable for any damage to Buyer's computer or other equipment or software resulting from or arising in connection with our provision of technical service and support for the Services, even if such damage results from the negligence, gross negligence or intentional acts or omissions of the Seller's installer, technician, customer service representative, or other Seller agent or representative. Buyer may contact customer service at (956) 213-4237.

CONTACT INFORMATION

For any inquires or notices required in connection with this Agreement, Buyer should contact Seller in writing at Austin Fiber Optics, 600 Ash Ave, McAllen, TX 78501, Attn: President. Buyer may additionally contact customer service at (956) 213-4237.

GOVERNING LAW

This Agreement shall be exclusively governed by, and construed, applied and enforced in accordance with the laws of the State of Texas. Venue for all claims or actions arising under or concerning this Agreement or the Services provided by Seller shall be and lie exclusively in Hidalgo County, Texas.

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between Buyer and Seller with respect to the subject matter of this Agreement and that it supersedes and replaces any and all prior written or verbal agreements between Buyer and Seller. Nothing contained within this Agreement shall be construed to limit Seller's rights and remedies available at law or in equity, which shall be cumulative with respect to any rights or privileges specified herein. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. Seller's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right with respect to any other event or default by Buyer. No course of conduct, dealing or performance between Buyer and Seller, nor any trade practice or standard, shall act to modify any provision of this Agreement, except as may be required by law. Seller reserves the right to terminate and refuse Service as deemed necessary by Seller in its sole discretion. This Agreement may not be assigned or transferred by Buyer. This Agreement is freely assignable by Seller to third parties without any notice to Buyer and without Buyer's approval. This Agreement is solely for the mutual benefit of Buyer and Seller. No third-party beneficiaries are created by, or shall exist with regard to, this Agreement.