

# SIMPLII MASTER SERVICE AGREEMENT

Simplii, LLC, (hereinafter referred to as "SIMPLII") and \_\_\_\_\_ ("the Customer"), hereby agree to the following terms and conditions for SIMPLII contracted services with the Customer.

**1. EFFECTIVE DATE, SERVICES, AND SERVICES TERM.** This Master Service Agreement ("MSA"), in conjunction with the contracted order for services, and any attached adjustments, comprise the Agreement for contracted communication services. This Agreement will supersede any oral, written, or electronically delivered communication between the parties. SIMPLII reserves the right, reject any Service Agreement. This Agreement is enforceable as of the date the Agreement(s) is signed by both parties (signifying the "Effective Date"). SIMPLII agrees to provide to Customer (subject to availability and the quality of the available services) and Customer agrees to purchase from SIMPLII the communication services described in this Agreement ("Services"), at the locations set forth, for the number of months set forth ("Contract Term"), all as detailed on the Service Agreement(s) incorporated as part of this Agreement. The Contract Term commences upon installation of the Services by SIMPLII ("Installation Date"). Installation of services occurs at the delivery of operating communication services ("Installation of Service"). SIMPLII will use reasonable efforts to install the services on the date agreed upon by the parties. SIMPLII does not guarantee that Services will be installed and provisioned on Customer's desired due date. Subject to the early termination provisions set forth herein, at the end of the Contract Term, this Agreement will automatically continue on a month to month basis ("Renewal Contract Term") until terminated by either party with at least (30) days advance written notice to the other party. Unless otherwise provided by law, Customer shall, upon providing SIMPLII notice of termination of Services, be responsible for payment from the Contract End Date (date of disconnection) to the end of the 30 day notice period. In the event of early termination, the early termination fee shall be calculated from the end of the 30 day notice period until the expiration date of the Service Agreement term.

**2. RATES, CHARGES, BILLING AND PAYMENT.** Rates and charges are described in this Agreement. Customer agrees to convert its telecommunications services and must commit to a specific date to transfer service. Customer further agrees that billing will commence with SIMPLII's first regular billing cycle after Installation of Service. Monthly recurring charges ("MRC") will be billed in advance each month. Non-recurring charges ("NRC") will be billed on the Installation Date, or if the NRC are incurred after the Installation Date, or are usage based, such charges will be billed at the time services are provided. Customer is responsible for payment of all originating and terminating calls to Customer's number(s). Payments are due on the Payment Due By date set forth on the SIMPLII invoice. Customer must provide payment in full on Payment Due By Date. If Customer believes it has been billed in error or otherwise disputes a charge, Customer must notify SIMPLII within 45 days of the date of the invoice containing the disputed charge. SIMPLII will promptly investigate and notify Customer of the results of its investigation. Customer's notice must specifically detail the dispute and provide supporting documentation for the amount in dispute. SIMPLII will investigate all disputes and if appropriate, credit Customer's account or notify Customer of denial of the dispute. SIMPLII may assess a late fee of 1.5% per month (not to exceed the maximum rate allowed under state law) on any undisputed balances not paid when due or any disputed balances later found to be correct. Late fees may be assessed, as of the original Due By Date, against any disputed amount denied by SIMPLII. SIMPLII has the option to suspend Services and/or to pursue any and all other legal remedies until payment is made. Termination of Services may follow. Customer will pay any and all costs incurred in collection of rates and charges due and payable, including reasonable attorney's fees and all collection agency costs, whether or not a suit is instituted. All payments hereunder will be in U.S. currency. If Services are terminated after suspension, Customer may also be responsible for early termination fees outlined in this agreement.

Customer authorizes SIMPLII to conduct a credit search and agrees to provide SIMPLII with information regarding payment history for communications services, number of years in business, financial statement analysis and commercial credit bureau rating. This Agreement is subject to credit approval. SIMPLII may require Customer to tender a deposit up to the maximum permitted by law to guarantee payment hereunder. Such deposit may have, as an additional component, deposit for any SIMPLII-provided Customer Premise Equipment ("CPE"). When Customer establishes acceptable credit history or upon termination of this Agreement, SIMPLII will return the balance of the deposit, if any, to Customer along with interest as required by law. Customer will return all SIMPLII-provided CPE.

SIMPLII shall not be liable for any third party charges arising from or related to the termination of any previous agreement for communications services or the failure of Customer to terminate any previous agreement for communications services. If any property owner, under which Customer is a tenant, assess a fee against SIMPLII in order to, or as a result of, the provisioning of any Services to Customer, SIMPLII will pass through these charges to Customer.

SIMPLII will assess a one-time Late Payment Penalty of \$30.00 for each late invoice and monthly interest of 1.5% on all invoice amounts not received by Payment Due By date indicated on the invoice. The Late Payment Penalty will be applied against each invoice individually. SIMPLII will assess a Disconnect Fee upon Customer request for Early Termination of the Contract or for Early Termination due to Customer non-payment. See Section 14 for Disconnect Fee calculation.

**3. CHANGES IN RATES, TERMS AND CONDITIONS.** SIMPLII may change its rates, terms and/or conditions upon 30 days' notice to Customer. Use of SIMPLII services after the thirty (30) day notice period shall be deemed consent to the changed rates, terms and conditions.

**4. TAXES, SURCHARGES AND ASSESSMENTS.** Customer is responsible for payment of all federal, state, local taxes, and or surcharges (excluding SIMPLII income taxes). SIMPLII will collect all such taxes, charges, and surcharges unless Customer provides SIMPLII with proof of exemption. Customer will indemnify SIMPLII for any and all costs, claims, taxes, charges, and surcharges levied against SIMPLII relative to such exempt status. Surcharges and assessments, which are not required by regulatory agencies, but which SIMPLII is permitted to charge to recover expenses, may be applied. All such charges will be set forth on a detailed invoice. SIMPLII reserves the right make necessary changes to tax rates based on the current published tax rates.

**5. FRAUD, TELEPHONE NUMBERS AND DIRECTORY LISTINGS.** Customer is responsible for payment of any charges incurred due to fraud, abuse, or misuse of the Services, whether known or unknown, to Customer. It is the Customer's responsibility to take all measures to ensure against such occurrences.

SIMPLII shall take all reasonable measures to provide Customer with continuation of existing telephone numbers. However, if Customer is changing location at the time of conversion or taking service for the first time at a location, SIMPLII can make no guarantee regarding assignment of particular telephone numbers to Customer. SIMPLII shall not be liable to Customer for any change in telephone numbers due to actions of any vendor or supplier of services to SIMPLII. Customer's reliance upon and/or use of any Service numbering information prior to installation and acceptance of Service is at the Customer's sole risk.

SIMPLII shall not be liable for any inaccurate or dropped listings of any publisher/directory database. SIMPLII shall not be liable for any errors or omissions, whether arising through negligence or otherwise, in the information furnished to a publisher or to a directory database(s). Additional costs may be assessed for publisher/directory database listing charges.

**6. COMPLIANCE WITHIN THE LAW.** This Agreement is subject to all applicable federal, state, local laws, regulations, rulings, orders and other actions of governmental agencies ("Rules"), and the securing of and continuance of any required approvals, authorizations, or price lists filed with the FCC or any other governmental agency. SIMPLII will use good faith reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any such Rule adversely affects the Services or requires SIMPLII to provide Services other than in accordance with the terms of this Agreement, either party may, without liability to the other party, terminate the affected Services upon 30 days prior written notice to the other party. In performing their obligations under this Agreement, the parties will comply with all applicable Rules, specifically including, but not limited to, the Rules governing 911/E-911 and any other emergency services.

Subject to SIMPLII's 911/E-911, and unless otherwise specifically agreed, (a) SIMPLII will provide Customer with the network connection for each billing telephone number (BTN) or trunk group that comprise the Services, and (b) SIMPLII will provide the appropriate Public Safety Answering Point (PSAP) with the automatic location identification (ALI), including the same emergency response location, for all BTNs of the circuit or trunk group regardless of the number of lines, trunks, or unique telephone numbers on that circuit or trunk group. Customer will be responsible for providing all other 911/E-911 services as required by the Rules, including, but not limited to agreements with, and network or other connection to, the local PSAPs. Customer will maintain the necessary databases and update and transfer the ALI to the appropriate PSAPs. SIMPLII is not responsible for and will not make any changes or submit updates to 911/E-911 databases for any services other than the one emergency response location as set forth above. Customer agrees to fully indemnify, defend, and hold harmless SIMPLII, its officers, directors, employees, agents and subcontractors from all liabilities, claims, fees, expenses, costs or damages of any kind arising out of personal injury or death or damage to property related to Customer's failure to meet any 911/E911 requirements or agreements.

If any provision under this agreement violates any applicable federal, state, and local laws, regulations, rulings, orders and other actions of governmental agencies ("Rules"), the Rules shall supersede and the remainder of the agreement shall remain intact.

**7. SERVICES, MAINTENANCE AND UPGRADE OF FACILITIES.** Services will meet all industry standards. SIMPLII will maintain its facilities and equipment used to provide the Services in conformance with industry standards, at no additional charge to Customer, except where work or service calls result from failure or malfunction in, or improper operation of, Customer's facilities and/or equipment. In such event, Customer will reimburse SIMPLII for the cost of the required maintenance and equipment at SIMPLII's standard time and material rate plus any taxes imposed upon SIMPLII related to such maintenance. SIMPLII reserves the right to suspend Service for scheduled maintenance or planned enhancements or upgrades or emergencies repairs to SIMPLII's network without notice to Customer. SIMPLII will work to provide Customer with notice of such upgrades and maintenance where at all possible. SIMPLII equipment will remain the sole and exclusive property of SIMPLII or SIMPLII's assignee. Customer will not tamper with, remove or conceal any SIMPLII identifying plates, tags or labels. Customer will indemnify, hold harmless and defend SIMPLII against any liens placed on SIMPLII equipment due to Customer's action or inaction. Any lien will be discharged by Customer within then (10) days of notice of filing. Failure to discharge any such lien is a material breach of this Agreement, and may result in immediate termination.

Customer will provide equipment compatible with the Services and SIMPLII's network and facilities. Customer will bear the costs of any additional equipment reasonably required to be installed because of the use of SIMPLII's network or facilities.

Only Authorized Contact for Customer may make Service change (addition or deletion of Services) request. Designated Authorized Contact must have the ability to make any service related decision with SIMPLII, and be the main contact on the contract.

Upon termination of the Service, Customer grants SIMPLII the right to recover SIMPLII provided equipment from customer's premises upon the termination of this agreement. In the event Customer fails to return the equipment, SIMPLII may invoice Customer for the then fair market value of such equipment.

SIMPLII reserves the right to substitute, change or rearrange any equipment used in delivering Services that does not affect the quality, cost or type of Services. SIMPLII will manage its network in SIMPLII's sole discretion. Customer will provide all reasonable information, authorizations, and access required by SIMPLII for the purpose of installing Services, performing routine network grooming, maintenance, upgrades, and addressing emergencies.

**8. SERVICE INTERRUPTION CREDITS.** Credits are subject to the limitation of liability set forth in Section 9, and shall only be given for disruption of Services in accordance with this Section. Upon request, Customer shall be entitled to a Credit for any disruption that exceeds twenty-four (24) hours and for which SIMPLII is the sole cause of such disruption and such disruption is not the result of (i) scheduled maintenance that occurs between the hours of 11:00 pm (MT) and 6:00 am (MT); (ii) planned enhancements, or (iii) upgrades. Such credit shall be based upon the ratio of the duration of the service interruption (measured from the time the interruption is reported to or detected by Company, whichever occurs first) to the total time in a 30 day month. That ratio, multiplied by the monthly rate for the service affected shall determine the amount of the credit allowance. No Credit shall be owing for any disruption resulting from a Force Majeure event. SIMPLII will not be liable for 3<sup>rd</sup> Party Provider of network (internet) service interruption. SIMPLII will not be liable for interruptions due to viruses in Customer network. SIMPLII can work on these issues, Customer will be charged at SIMPLII normal service rates.

**9. LIMITED LIABILITY. SIMPLII'S LIABILITY AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES AND/OR THIS AGREEMENT, WILL BE SOLELY LIMITED TO AN AMOUNT NO GREATER THAN THE AMOUNTS PAID BY CUSTOMER TO SIMPLII DURING THE MONTH OF THE OCCURRENCE OF ANY CLAIM. IN NO EVENT WILL SIMPLII BE LIABLE TO THE CUSTOMER FOR LOSS OF USE, INCOME OR PROFITS, LOSS OF REVENUES, LOSS OF SAVINGS OR HARM TO BUSINESS OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES, REGARDLESS OF THE FORSEEABILITY THEREOF.**

**10. DISCLAIMER/LIMITED WARRANTY. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SIMPLII MAKES NO WARRANTIES, (EXPRESSED OR IMPLIED), UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SIMPLII DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.**

11. **CUSTOMER WARRANTIES.** (a) The Customer represents and warrants that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms; (b) Customer represents and warrants that neither its equipment nor facilities will pose a hazard to SIMPLII's equipment or facilities or create a hazard to SIMPLII's personnel or customers or the public in general; (c) Customer represents and warrants that its use of the Service will comply and conform with all applicable federal, state, local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and it will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities; (d) Customer represents and warrants that it will not resell all or a portion of the Service(s) provided by SIMPLII under this Agreement. Customer will indemnify and hold SIMPLII harmless from any and all loss, liability, claim, demand, and expense (including reasonable attorneys' fees) related to Customer's violation of this Section.

12. **CONFIDENTIAL INFORMATION.** The parties may have access to certain information, the ownership and confidential status of which is highly important to the other party and is treated or designated by one of the parties as confidential (herein referred to as "Confidential Information"). Neither party will disclose the other party's Confidential Information, directly or indirectly under any circumstances, to any third person without the express written consent of the other party, and neither party will copy, transmit, reproduce, summarize, quote, or make commercial or other use whatsoever of the other party's Confidential Information, except as may be necessary to perform its duties hereunder or as required by the Rules. Each party will exercise the highest degree of care in safeguarding the other party's Confidential Information against loss, theft, or other inadvertent disclosure and take all steps necessary to maintain such confidentiality.

13. **INDEMNIFICATION.** Customer will indemnify, hold harmless, and defend SIMPLII, its officers, directors, parent and/or affiliated companies, employees, agents and subcontractors from liabilities, claims or damages and expenses whatsoever (including reasonable attorney's fees) arising out of or in connection with Customer's negligence and/or damages to SIMPLII's tangible personal property. Customer's indemnification obligations do not apply to claims for damages to real or tangible personal property or for bodily injury or death which is solely caused by SIMPLII due to SIMPLII's gross negligence or willful misconduct.

14. **DEFAULT/TERMINATION.** Customer's use of the Services provided herein and any equipment associated therewith will not: (a) interfere with or impair service over SIMPLII's network; (b) impair privacy of any communications over such network; (c) cause damage of any nature to SIMPLII's assets or customers; or (d) be used to frighten, abuse, torment or harass, or create hazards to SIMPLII or its network. SIMPLII may immediately suspend or terminate, without liability, the Services for any violation of these provisions.

Except as set forth above, if either party violates any provision of this Agreement the non-defaulting party may send the defaulting party written notice detailing the default. The defaulting party will have: (a) 10 days from the date of the written notice to cure a payment default, or (b) 30 days from the date of the written notice to cure a non-payment default. If the defaulting party fails to cure, the non-defaulting party may terminate this Agreement and any Services hereunder upon notice or pursue any and all other legal remedies. If Customer terminates this Agreement or all or any part of the Services at any time after the Effective Date, or if SIMPLII terminates this Agreement as a result of Customer's breach, SIMPLII may charge Customer an early termination fee equal to and including any or all of the following: 75% of the total MRC, surcharges and taxes for the Services Term then remaining, plus any unpaid activation, installation and/or special construction charges, and all other fees or costs, whether previously waived or not, less amounts already paid.

Customer will not be liable for the early termination fees set forth above if SIMPLII breaches the Agreement or if Customer orders from SIMPLII services of equal or greater MRC than the Services terminated and the new services are approved by SIMPLII. Customer acknowledges that SIMPLII's damages for early termination would be difficult to determine and the termination charge(s) constitutes liquidated damages and are not intended as a penalty. All such amounts will become immediately due and payable by Customer to SIMPLII.

If Customer down turn in business occurs, Customer is still responsible for any payments owed to SIMPLII. Contract shall be terminated between Customer and SIMPLII upon Customer providing payments for balance owed.

15. **FORCE MAJEURE.** In the event that either party's performance is delayed, prevented, or inhibited because of any Act of God, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut-down of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer network or any cause beyond such party's reasonable control, the party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of default by either party hereunder.

16. **GENERAL.** Any amendment must be in writing and signed by the parties hereto. Facsimile copies of this Agreement and any amendments or modification hereto, including facsimile signatures, will be accepted by the parties as originals. The failure of either party to insist upon the performance of any provision or to exercise any right granted hereunder, will not be construed as a waiver of such provision(s), and the same will continue in full force. If any provision hereof is held to be invalid, void, or unenforceable, the remainder of the provisions will nevertheless remain unimpaired and in effect. All notices under this Agreement will be in writing and will be made by personal delivery, overnight delivery, certified mail or by facsimile transmission with receipt verification. Notices will be sent to the addresses listed on the front this Agreement and in the case of a notice to SIMPLII, a copy to the SIMPLII Legal Department at 1234 W South Jordan Pkwy., Suite B, South Jordan, UT 84095 FAX NO. 801-449-9801. The various rights and remedies given to or reserved by either party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered a cancellation of any continuing or subsequent breach of the same provision. Customer may not assign its obligations hereunder without the prior written consent of SIMPLII, which will not be unreasonably withheld. This Agreement will be governed by and interpreted in accordance with the laws for the state where the Services are to be provided. Nothing in this Agreement is intended to, or shall be construed, as creating a partnership or any 3<sup>rd</sup> party beneficiaries. The provisions of 5, 6, 8, 10, 11, 12, and 13, shall survive termination.