



General Terms and Conditions

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GENERAL

1. DEFINITIONS AND INTERPRETATION

In these Conditions, the Rate Schedule and every Proposal, Quote, Order, Plan, Contract, or other arrangements in connection with the supply of Goods or Services by **Ally Communications, LLC** the following words have the following meanings:

“Agreement” means any arrangement between Us and You (whether alone or in conjunction with any other person) for Services and/or the provision of Goods provided by Us under an arrangement in connection with work agreed to be done or progressed for or on behalf of You or any other person at Your request, including as set out in this Agreement and any corresponding Proposal.

“After Hours” means from 5:01 pm to 7:59 am Monday to Friday, and all day Saturday and Sunday, including “Our Recognized Holidays”.

“Authorized Account Manager” are individuals within your organization with the same ability as the Authorized Contacts, which also have the authority to add or remove Authorized Contacts and Authorized Account Managers.

“Authorized Contacts” are individuals within your organization with the authority to make decisions pertaining to active and future additional agreements, new quotes/proposals between your company and ours. This authority to represent your organization includes but is not limited to requesting services, reporting issues that require services, directing us to contact third parties for services and approve actions that may result in financial impacts associated with our agreement(s).

“Business Hours” means 8:00 am to 5:00 pm Monday to Thursday, 8:00 am to 12:00 pm Friday, excluding “Our Recognized Holidays”.

“Client”, “You” or “Your” means a person who seeks or obtains a quote for, or who orders, Goods or Services from Us, and includes both a person whose name is on the Order or on an email attached to which is an order, a person who places an order, and a person on whose behalf an Order is placed or on whose behalf it appears and order is placed, and in any case each of their heirs, successors and assigns;

“Conditions” means these terms and conditions;

“Customer Goods” or “Your Goods” means Goods owned by the customer that is utilized with the services provided by Us.

“Device(s) and Goods” means any type of physical products that are required Goods. You understand and agree that the Services require certain Goods provided by You are known as the “Your Goods”, as well as certain Goods provided by Us such as the Software, Hardware, and other products are known as “Our Goods”. You attest that you own the Customer Goods or otherwise have the right to use such Goods in connection with the service(s).

“Goods” means any goods (commonly referred to as equipment or products) and/or services sourced by Us or provided by Us in connection with any such goods and/or services including computer hardware and Software and any goods or services provided in connection with any of those things;

“Manual Payment fee” means a fee that is charged on recurring billing, when Our finance department physically processes a manual payment of a bill.

“Order” means any order requested by You to Us for Goods or Services in any form;

“Quote” means an offer provided to You by Us, and is used interchangeably with the term proposal;

“Our Recognized Holidays” means any day which We close in response to the recognized U.S. National Holidays. New Year’s Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Day.

“Period” means a particular period of time. Time can be measured in half-days, days, weeks, months, or any other period, as may be agreed between Us and the You as the period during which some Services will be provided;

“Plan” means any arrangement between Us and You (whether alone or in conjunction with any other person) for Services (including unlimited support) and/or the provision of Goods provided by Us under an arrangement in connection with Work agreed to be done or progressed for or on behalf of You or any other person at Your request, including as set out in a Plan Schedule;

“Plan Schedule” means the key terms applicable to Plans, and as may be varied by Us, from time to time in its absolute discretion without notice to You;

“Proposal” means an offer provided to You by Us, and used interchangeably with the term quote;

“Rates” means the hourly rates and other charges for Services (including additional Fees) set out in the Rates Schedule, a Plan, Plan Schedule, Quote, contract or arrangement entered into by Us and You or in these Conditions, and includes any monies payable to Us on a quantum meruit basis for any work it has done;

“Rate Schedule” means the schedule of rates, charges and conditions for the services of Ours, and as may be varied, by Us from time to time in its absolute discretion without notice to You;

“Reasonable Assistance Limits” has the meaning set out in clause 17.2;

“Return/Cancellation Fee” means a fee charged pursuant to clause 12.7 as set by Us from time to time;

“Service Level Agreement” means a guarantee of uptime, availability, response, acknowledgment, and throughput of connections and services by Us;

“Service request” means a request for services such as adds, moves, changes and technical assistance;

“Services” means the provision of any services by Us including Work, advice, and recommendations;

“Software” includes software and any installation, update, associated software and any services provided in connection with any of these things;

“Us”, “Our” or “We” means **Ally Communications, LLC** and its heirs, successors and assigns; and

“Work” means anything We may do, provide, customize, produce or acquire, whether or not in connection with, or for the purposes of, You or Your use or benefit, and includes testing,

troubleshooting, installation and configuration of new Goods or software, consulting, scoping, planning, documenting and quoting for complex items.

In these Conditions, the Rate Schedule and every Quote, Order, Plan, Contract, or other arrangements in connection with the supply of Goods or Services by Us, unless the contrary intention appears:

Words denoting the **singular** number only **shall include the plural** number and vice versa;

Reference to **any gender shall include every other gender**;

Reference to **any Act of Government, Statute or Regulation shall include any amendment** currently in force at the relevant time and any Act of Government, Statute or Regulation enacted or passed in substitution, therefore;

Headings and words put in **bold** are for convenience of reference only and **do not affect the interpretation or construction** of these Conditions;

All references to dollars (\$) are to US Dollars;

A reference to time is to Central Time Zone;

A reference to an **individual or person includes a corporation**, partnership, joint venture, association, authority, trust, state or government, and vice versa;

A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;

A recital, schedule, annexure or description of Us and You forms part of these Conditions;

A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;

Where an expression is defined, **another part of speech or grammatical form of that expression has a corresponding meaning**;

A reference to **“includes”** means **includes without limitation**;

A reference to **“will”** imports a condition not a warranty; and

A reference to **bankruptcy or winding up** includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances, and events which constitute any of those conditions or matters.

2. APPLICATIONS OF THESE CONDITIONS

Unless otherwise agreed by Us in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the terms of every Quote, Proposal, Order, Plan, contract, or other arrangement in connection with the supply of Goods and/or Services by Us to You.

The invalidity or enforceability of any one or more of the provisions of this Agreement will not invalidate, or render unenforceable, the remaining provisions of this Agreement.

3. COMMITMENT TERM

- 3.1** The minimum term that You acquire the service for is outlined in Our Quote to You, includes an additional period between the time the approved quote and service agreement(s) are signed by Us and You and continues to be extended until the service period of services is implemented, then the initial term of service begins when the agreed-upon service is made available to You. (example: If a client approves a quote and the service agreement(s) for three years of service for Fiber and We sign the documents to finalize and accept the order. If the Fiber order takes 5 months to get installed and turned on by the service provider, the minimum term for this order is 3 years and 5 months.)
- 3.2** **Automatic Renewal:** After the expiry of the Committed Term, an extension of the Term will automatically commence for a twelve (12) month period, unless You provide a written notice to Us at least sixty (60) days prior to the expiry of the Committed Term indicating Your desire to transition to a month-to-month term as specified in the Termination clause.

4. TERMINATION

- 4.1** This Agreement may be terminated by You upon ninety (90) days' written notice if We:
- 4.1.1** Fail to fulfill in any material respect Our obligations under this Agreement and do not cure such failure within thirty (30) days of receipt of such written notice.
 - 4.1.2** Breach any material term or condition of this Agreement and fail to remedy such breach within thirty (30) days of receipt of such written notice.
 - 4.1.3** Terminate or suspend our business operations, unless it is succeeded by a permitted assignee under this Agreement.
- 4.2** This Agreement may be terminated by Us upon ninety (90) days' written notice to you.
- 4.3** Our Termination can be implemented to discontinue services or cancel an application for services, without incurring any liability, for any of the following reasons:
- 4.3.1** Your Non-payment of any sum payable to and due Us for service. Accounts that are thirty (30) days past due may be deactivated and sent to collections, and consequently, the Customer shall forfeit all telephone numbers associated with the account;
 - 4.3.2** You violate of any law, rule, or regulation of any governing authority having jurisdiction over the service;
 - 4.3.3** By order of a court or other governmental or quasi-governmental authority having such jurisdiction;
 - 4.3.4** In the event service charges exceed the amount of any deposit which We may have required or any established credit limit;
 - 4.3.5** If You provide false or misleading credit information;
 - 4.3.6** If in the sole discretion of Us, Your financial condition has deteriorated or if You are involved in any bankruptcy or similar proceeding;

4.3.7 In the event of any violation giving rise to a right of termination as set forth in Our AUP or Terms of Service. This paragraph shall not operate to limit or waive any other rights We may have.

4.4 If either party terminates this Agreement, We will assist you in the orderly termination of services, including the timely transfer of the services to another designated provider. You agree to pay us for rendering such assistance at our normal rates as outlined in our current Rate Schedule, along with the sum due through the commitment term.

4.5 Early Termination: Should You wish to terminate this Agreement before the end of the commitment term, You agree to pay all of the remaining payments up until the end of the commitment term, along with the sum due. You are responsible for all applicable usage fees, prorated access charges, taxes, surcharges, or other charges through the termination date of the contract period. If you cancel your service within 30 days of the activation date but do not return any associated Goods within thirty (30) days of the activation/service date, or if the Goods are not returned in like-new condition, you will be charged full price for the Goods. Contract terms and the these General Terms and Conditions outline repayment and penalties for early termination. See Section 16 (“Returns and Claims for Goods and Services”) for additional information.

5. REPRESENTATIONS

5.1 You acknowledge that no employee or agent of Ours has any right to make any representation, warranty or promise in relation to the supply of Goods and/or Services other than subject to and as may be contained in the Conditions.

6. NOTICES

6.1 Any notices given under the Conditions shall be in writing and sent by e-mail to the last notified e-mail address of Yours.

7. GOVERNING LAW

7.1 The Conditions shall be governed by and construed in accordance with the laws of the United States and by the laws of the State of Alabama and Us and You submit to the exclusive jurisdiction of the State and Federal courts of Alabama.

8. ASSIGNMENT

8.1 You may not assign this agreement or resell, sublicense, or transfer any interest in the service without prior written consent from Us, which may be withheld in its sole discretion. We may assign sub-contract, transfer or otherwise dispose of, in whole or in part, any of its interest, rights or obligations under this Condition including without limitation, Our obligation to provide Maintenance Services or other services hereunder will be subject to the same terms and conditions as are set forth herein.

9. VARIATION OF THESE TERMS AND CONDITIONS

We may at any time vary these Terms and Conditions by publishing the varied Terms and Conditions on Our website. You accept that by doing this, We have provided You with sufficient notice of the variation. We are under no other obligation to notify You of any variation to these terms and conditions. Additional legal documents are located at <https://allyadvantage.com/resources/forms/>.

GOODS AND SERVICES

10. QUOTES

- 10.1 Term and effect:** Quotes will only be valid for 7 days unless otherwise specified in the Quote. A Quote is merely an invitation to You to place an Order with Us and the acceptance of a Quote by You will not create a binding contract between You and Us.
- 10.2** Expiry dates on quotes are set to be able to inform Us when the quote is still active or to be discarded. Once discarded the quote will need to be requested again.
- 10.3** Once a quote has been confirmed by Us, then the prices in the quote will be confirmed as the final agreed price. A quote is confirmed as 'final' as soon as Us and You agree with the final price after any last changes requested by You.
- 10.4** The price in the final quote may vary from the original request if there is any price or product changes requested by You. We reserve the right to alter product and prices in the quote, as long as the quote has not been confirmed with You.
- 10.5** Quotes and estimates shall be deemed to correctly interpret the original specifications and are based on the cost at the time the quote or estimate is given. If You later require any changes to the quotes, and We agree to the changes, these changes will be charged at Our prevailing rate.
- 10.6** Once the Quote has been confirmed and converted to an Order, the Order will be subjected to these Terms and Condition of Sale.
- 10.7** The general minimum turnaround time for a quote request to be actioned is usually 24 hours. In the event that a quote is required urgently please let us know so that we can respond to it accordingly.
- 10.8** When a special price or discount offer has been applied to a Quote, no other special promotion, discount or bonus offer will be applicable.
- 10.9** In the event that products in the Quote are subjected to any price and supply fluctuations that are outside of Our control, We reserve the right to update the price and product in the Quote accordingly. If a product has undergone a price drop or a price increase, the Quote will then be adjusted accordingly. If there is a product that is no longer available, the product will then be replaced or substituted based on Your request and is subject to Your final approval.
- 10.10** Price on non-stocked products are subjected to Price and stock fluctuations and can only be confirmed once the Quote is turned into an Order. While We endeavor to honor every price quoted, if there is a price increase that is beyond our control, We reserve the right to increase the price as necessary.
- 10.11** Once a Quote has already passed the expired date, We may cancel the quote or estimate without having to notify or receive approval from You.
- 10.12** ETA information is based on an estimate given by our vendors and cannot be held as the actual promised date.
- 10.13** Freight charges will be added to the Order unless otherwise stated. Any included delivery charges are estimates only.

- 10.14** We only keep a limited amount of inventory and as such order most items once we receive a completed order from a client. If You would like to return an item or cancel an order, a restocking fee up to 25% may apply. Returns within 30 days from the date the Goods was received or activated may be available to You by speaking with Us at (256) 740-3900. Goods warranties may apply. Refunds are applied using the original payment method within 10 business days. We will need to get approval from the distributor that the stock is returnable before being able to issue a refund as not all products can be returned. Exceptions for returns are outlined in the customer approved quote and/or within the agreement.
- 10.15** Prices are based upon total Quote Purchase.
- 10.16** Unless specified, all items on the quote are covered by a manufacturer's warranty covering parts and labor for hardware only on a return to a depot basis.
- 10.17 Varying or withdrawing Quotes:** We may vary or withdraw a Quote at any time in Our absolute discretion and without prior notice to You. We may do so for any reason We consider fit, including, e.g. where the Goods and/or Services become unavailable or the cost price of Goods and/or Services increases after the date of the Quote.

11. ORDERS

- 11.1 Order forms:** You may place an Order for Goods and/or Services with Us. Normally, We will require that You provide either a completed Order form or You approve the quote electronically via either an email or a web-based system with the date and Your details, including **Your full legal name or description and any applicable ABN or ACN number (including the full name or description of any person on whose behalf the order is placed), Your address together with any relevant Quote number and date.**
- 11.2 Approval of Orders:** You will need to sign the Order or have it duly executed on Your behalf unless the Order is sent by email or via the web-based ordering system, in which case the Order will be treated or deemed as if signed by or on behalf of You by the person whose name appears as the sender of the email or submitter of the form.
- 11.3 Reliance on the appearance of validity:** Absent actual knowledge to the contrary, We may rely upon the apparent validity of an Order. If an Order is signed or sent by email or approved through the web-based ordering system by a named person, that person warrants that the Order is, and it is acknowledged the Order is deemed in favor of Us to be:
- 11.3.1** signed by, and duly authorized by, both the person who signed the Order and the person who sent the email; and
- 11.3.2** duly authorized by the person on whose behalf the Order is placed or apparently placed.
- 11.4 Acceptance and Orders:** An Order has no effect unless or until it is accepted by You in writing and, until We have received from You payment in clear funds for the Order and any related freight, delivery and (where applicable) in-transit insurance costs in clear funds.
- 11.5 No obligation to deliver:** We are not obliged to deliver any Order until we have received the deposit payment in clear funds from You for the Order or where We are unwilling or unable to complete the Order for any reason. If not delivering an order, We will refund any deposit payment made by You in respect of the Order.

Credit checks: For the purposes of ascertaining the credit standing or history of a prospective customer to whom We are considering extending credit or payment terms, You hereby consents to Us undertaking a credit reference check with respect to You. You agree to provide Us with credit information to make inquiries and to receive information about Your credit from others, enter this information in Your file, and disclose such information concerning You to appropriate third parties for reasonable business purposes; allowing Us to determine if service will be provided, will not be provided, or will be provided with or without a Security Deposit.

- 11.6 Cancellation of Orders:** You will not cancel an Order unless We agree to do so in writing in Our absolute discretion. You acknowledge that, amongst other things, We cannot cancel an Order once the manufacturer or supplier provides the relevant Goods and services, for which often occurs the same day as the order is placed by Us.
- 11.7 Processes and Procedures:** We have processes and procedures that We follow in the course of the provision of Our Services and the supply of Goods and/or Services. We do not offer an online order fulfillment option. You agree to co-operate with Us and to comply with such processes and procedures as advised to You from time to time.

12. PRICING AND RATES

- 12.1 Rates exclude Tax:** All rates and amounts charged or quoted for Goods and/or Services by Us are exclusive of Tax and any other applicable taxes or government charges (unless otherwise stated in writing by Us).
- 12.2 Rates Schedule:** You must pay for Goods and/or Services at the Rates set out in any applicable Plan and the Rate Schedule as applicable from time to time during the provision of the Goods and/or Services.
- 12.3 Vary Rates:** We reserve the right vary any Rate and/or the Rate Schedule from time to time (subject to any fixed pricing for specific periods in any Plan), in its absolute discretion and without notice to You.
- 12.4 Late Payment Fee:** A fee charged per the details outlined in section 29.5.
- 12.5 Installation Charge:** The charge for Installation shall be as stated in the Quote and shall be due and payable prior to installation. Charges for advanced installation are detailed in the Quote.
- 12.6 Call-out fees:** You acknowledge that call-out fees may be charged in addition to the Rates at Our absolute discretion and that the amount of the call-out fee will depend upon where the Services are provided.
- 12.7 Return/Cancellation Fee:** A fee charged per the details outlined in Section 29.6.
- 12.8 Fixed Monthly Usage Fees:** The cost for Services requiring a fixed monthly fee shall be as stated in the Quote and shall be payable monthly, in advance, plus all applicable taxes, tariffs, governmental assessments, surcharges and fees (collectively, the "Fixed Service Fee(s)"). The Fixed Service Fee for the first month of Service shall be due and payable prior to installation of Service and if the commencement of Service occurs on other than the first calendar day of the month then the Fixed Service Fee will be prorated by the number of calendar days remaining in the month. Thereafter, the Fixed Service Fee is due and payable

in advance on the first day of each month and shall be considered late if not received by Ally Communications by the tenth calendar day of each month

12.9 Variable Monthly Usage Fees: The cost for Services computed based on the usage by You and other variable factors shall be computed at the rates stated in the Quote and shall be payable monthly, using a cut-off date selected by Us, in arrears, plus all applicable taxes, tariffs, governmental assessments, surcharges and fees (collectively, the "Usage Fee(s)"). The rates for voice services set forth in the Quote shall be valid for the initial term, provided, however, all rates for International Services are subject to change. Upon 10 days' notice, We can adjust the rates for voice services to include the cost, if any, of tariffs, taxes or assessments imposed upon Us by any governmental agency. The Usage Fees are due and payable on the first day of the month billed and shall be considered late if not received by Us by the tenth calendar day of such month

12.10 Price Changes: We may revise the rates for service from time to time, with a 30-day notice, to reflect changes in the cost to provide services. We reserve the right to move You to a different service or rate plan if usage or other criteria are not met for the plan to which You have subscribed or in which You are currently enrolled. If You are notified of an increase in rates or change in service, excluding Managed Services, taxes, surcharges & fees, You may provide notice of termination of this agreement within the 30 days' notice period for any services with rate increases. You agree that you will not seek legal or equitable remedies, including, but not limited to, injunctive relief, which would require Us to continue providing service to You. We have the right to change our Service Fee at any time and upon 30 days' advance notice unless otherwise stated in the Quote.

12.10.1 Pricing for Managed Services are based on the number of workstations, servers, Microsoft 365 licencing, data backup, and overall IT Infrastructure. IT infrastructure includes, but is not limited to, lines of business, software, network hardware, network infrastructure, and network configuration. Price adjustments will be made any time there are changes to the number of workstations, servers, users or the complexity of the network infrastructure.

12.11 Additional Charges: Services provided by Us may allow You to access the Internet, provide access to on-line services, subscriptions, and offerings. You acknowledge that You may incur charges while using the Services provided by Us in addition to those billed by Us. For example, You may incur charges as a result of accessing certain on-line services, purchasing or subscribing to certain other offerings. You agree that all such charges, including all applicable taxes, are Your sole responsibility.

12.12 Expenses: You must pay any out of pocket expenses incurred by Us in providing the Services to You in addition to the Rates, charges and call-out fees, upon written demand. Such expenses will include travel costs, flights, car hire, petrol, insurance, taxi fares, accommodation, and related meal allowance, tolls, and car parking expenses. Where appropriate, We will obtain prior written authorization from You before such expenses are incurred.

12.13 Separate charges for Goods and Services: We may in Our absolute discretion charge for Goods separately from Services or may charge for Goods and Services together.

- 12.14 Calculation of increments:** Where a charge is calculated based on increments of time, e.g. 1 hour or 30 minutes, We will charge the applicable rate for the whole increment of time even if work is done during part of, but not for the whole of, that increment of time.
- 12.15 Change in underlying costs:** Without prejudice to any other rights of Ours under these Conditions, where there is any increase in the underlying costs incurred by Us in connection with the supply of Goods and/or Services to You, We may, in our absolute discretion, vary any of Our Rates.
- 12.16 Pre-Paid Blocks of Service:** Where You agree to buy Pre Paid Blocks of Service during a 36 month period, payment **must be made in advance** for the Pre-Paid Blocks of Service at the rate applicable pursuant to the Rates Schedule for all Services. Auto-renewal will be implemented upon the complete usage or expiration of the purchased **Pre-Paid Blocks of Service**. Each such rate being less any discount agreed in writing between Us and You in respect of the Pre-Paid Blocks of Service. **Services included in a Pre-Paid Block of Service rate** during the Period:
- 12.16.1** are calculated in accordance with the applicable minimum time periods and **increments** set out in the Rates Schedule, and **are only provided by Us during the applicable Period**. Where Services are provided for a specified Period:
- 12.16.1.1** the Services remaining unused for that Period cannot be rolled over into any subsequent Period; and
- 12.16.1.2** We are not liable to refund, reimburse, pay damages or otherwise compensate or indemnify You in respect of those unused Services.

13. SERVICES AND PLANS

- 13.1 Service and Plan Variations:** Currently, We offer the Services and Plans referred to in the Rates Schedule and any Plan Schedule. We may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services without notice to You, from time to time in Our absolute discretion.
- 13.2 Copies on Request:** We will provide You with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to Clients participating in the Plan.
- 13.3 Service Level Agreement:** Not all services have an SLA (Service Level Agreement). An example of a product that may come with an SLA would be an MIS (Managed Internet Service) circuit in reference to an all service types, including but not limited to Fiber, DSL Cellular, Cable Broadband, Ally Broadband, and Ally Cellular connections among others do not come with an SLA and therefore are Best Effort products. Speed and connectivity are based on network availability and can be influenced by weather and/or network congestion. Ally Communications is not liable for the consistency or availability of Best Effort products that do not have an SLA.
- 13.4 Local Number Portability (LNP):** The process of porting numbers must be scheduled in advance in order to provide continuity of service when switching between providers. We will coordinate with You on the timing of the port based on circuit and Goods availability. Additional charges and fees will be incurred if porting is canceled or reversed. Please be sure

to email billing@AllyAdvantage.com or fax (855) 740-3900 a copy of your current phone bill. Please be sure that your bill copy includes: Phone Number, Customer Name, Billing Address, Current Phone Service Provider, and Account Number. If you are porting multiple numbers, please be sure to include the summary page of your bill copy which displays each number on your account. Once your port request has been submitted, it will take between fourteen (14) and forty-five (45) days to complete the process. For questions about porting, please contact us at (256) 740-3900 or email billing@AllyAdvantage.com

14. CONTRACTING

- 14.1** We may subcontract any or all of the Services to be performed but shall retain prime responsibility for the Services under these terms.

15. DELIVERY, TITLE, AND RISK

- 15.1 Delivery liability:** We will use all reasonable endeavors to despatch Goods and/or Services by the due date, but do not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond the reasonable control of Ours, including, for example, due to failures in supply to Us or delays caused by third parties, such as delivery companies or manufacturers.
- 15.2 Availability to accept delivery:** You must be available to accept the Goods and/or Services at Your nominated delivery address during Business Hours unless otherwise arranged.
- 15.3 Passing of Risk:** Delivery is deemed to take place when the Goods are delivered to Your service address, whereupon risks of loss, breakage and all damage and all other risks pass to You. Nothing in this clause 15.3 will affect title to the Goods.
- 15.4 Obligation to Insure:** You will ensure that Goods are adequately insured from the time of delivery under clause 15.3.
- 15.5 Retention of Title:** Until We receive full payment in cleared funds for any sums of money due to Us by You on any account or for any reason:
- 15.5.1** title to, and property in, Goods supplied to You remain vested in Us and does not pass to You;
 - 15.5.2** You must hold those Goods as fiduciary bailee and agent for Us and must not sell them;
 - 15.5.3** You must keep those Goods separate from other goods and maintain the Goods and their labeling and packaging intact;
 - 15.5.4** Where You sell the goods in breach of these Conditions, You are required to hold the proceeds of any sale of those Goods on trust for Us in a separate account (however any failure to do so will not affect Your obligation to deal with the proceeds as trustee and remit them to Us);
 - 15.5.5** We may, without prior notice, enter into any premises where We suspect those Goods (example: Goods that was utilized or installed with the service or prior completed work) may be to take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of Ours) and for this purpose, You hereby irrevocably authorize and direct Us (and Our employees and agents) to enter into such premises as its duly authorized agent and You

hereby indemnify and hold harmless Us from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal.

- 15.5.6** You irrevocably appoint Us as Your attorney to do anything We consider necessary in order to enter such premises and repossess the Goods as contemplated by this clause 15.5.

16. RETURNS AND CLAIMS FOR GOODS AND SERVICES

- 16.1 General Returns Policy:** Notwithstanding anything in these Conditions, You acknowledge that We supply Goods subject to all applicable conditions, including returns and claims policies, of any relevant manufacturer or supplier. You will accept Goods subject always to these Conditions and the terms of such conditions and will indemnify and hold Us harmless in respect of any further or other obligation or any failure or default on the part of that manufacturer or supplier.
- 16.2 Customized Goods Not Returnable:** Where Goods have some element of customization for You, are supplied pursuant to an Order for Goods that is in the opinion of Ours special or unusual, the Goods are obtained from overseas, the Goods are obtained from a supplier who is no longer trading, or the Goods are otherwise not readily returnable by Us to the manufacturer or supplier or any related services may not be canceled, You may not return the Goods to Us or cancel the related services.
- 16.3 Duty to Inspect:** You will inspect all Goods immediately upon their delivery. Within 7 days of such delivery, You may give written notice to Us of any matter or thing, by reason of which You might wish to return the Goods, ask for a refund, or make a claim. If no such notice is given on time, You will accept the Goods without any such return, refund or claim.
- 16.4 Return Condition:** You are entitled to return Goods under these Conditions; You must return the Goods in their original condition and unopened, provided always that where upon opening the packaging it becomes apparent that the Goods are different to what is described on the packaging or that the Goods are faulty, the Goods may be returned to Us.
- 16.5 Return Costs:** You will pay all costs and expenses incurred by Us in arranging the return of the Goods to a manufacturer or supplier and/or the cancellation of any related services unless that manufacturer or supplier pays such costs.
- 16.6 Consequences of Use, Installation, Customization or Sale:** You will indemnify and hold Us harmless in respect of all allegations and claims in respect of Goods once such Goods have been used, installed, customized or re-sold by You (without prejudice to the recourse of such a customer to the manufacturer of the Goods).
- 16.7 Cancellation of New Orders or New Installations:** To cancel new orders/installations for your service before installation, contact Us (256) 740-3900. Contract terms and the these General Terms and Conditions outline repayment and penalties for early termination.

17. COMPUTER UTILITY, FUNCTIONALITY AND FITNESS FOR PURPOSE

- 17.1 Service limitations given the science of computing:** You acknowledge that a reasonable incident of the Services may involve trial and error and that it is science applied often in a novel or unknown circumstances and involving experiment. In particular, You acknowledge

that the Services may involve tests, troubleshooting, advice, and recommendations that may prove incorrect or inappropriate, particularly in an attempt to cure a problem You are having. While We will make what We consider (in Our absolute discretion) to be all reasonable endeavors to provide appropriate tests, troubleshooting, sound advice, and good recommendations in order to assist You, You will always indemnify and hold Us harmless in the provision of our Services to You.

17.2 Reasonable Assistance Limits: We are only obliged to provide what We consider, in Our absolute discretion, to be reasonable assistance in the circumstances (including with the installation and customization of new software or hardware for You or any other Work) under any Plan and You will pay for additional work at the Rates unless otherwise agreed. Without limiting the discretion of Us to determine what reasonable assistance is, normally, reasonable assistance is limited to work done during Business Hours over a period of time not exceeding any period that We have allowed or allows for the Work or has estimated or estimates the Work will take, whether or not notice of the time allowed or estimated is given by Us to You.

17.3 Recommendations, suitability, functionality, and fitness for purpose: Us and You acknowledge that:

17.3.1 We may recommend that You purchase Goods provided by third parties from time to time;

17.3.2 Recommendations may be made in situations where You have made known to Us the purpose for which the Goods will be used or some function sought to be fulfilled;

17.3.3 You acknowledge that We have no control over many factors involved with the suitability, function or fitness for purpose of Goods in an existing or new computer environment, e.g.

17.3.3.1 the compatibility or ability of the Goods to fit into or perform to expectations in the receiving computer/internet environment; or

17.3.3.2 the behavior of third-party supplier, e.g. in relation to support;

17.3.4 You acknowledge that for a whole number of reasons outside of Our control, the Goods may fail to meet Your expectations, may not turn out to be fit for all or any of the purposes sought, may not be suitable or may not function properly in all or any respects;

17.3.5 You acknowledge that the Services provided by Us may involve the very task of seeking to customize Goods so they may be fit for particular purposes and that customization may be a very substantial project in itself;

17.3.6 Accordingly, You will accept the sole responsibility for, and indemnify and hold Us harmless in respect of:

17.3.6.1 decisions as to whether or not to follow recommendations by Us;

17.3.6.2 decisions as to whether or not to purchase or customize Goods or obtain Services for that or any other purpose; and

- 17.3.6.3** any failure or defect in suitability, function or fitness for purpose of any Goods and/or Services, including a responsibility to obtain Your own independent advice or a second opinion from a suitably qualified person;
- 17.3.6.4** any liability by Us for any damage resulting from computer or file modification;
- 17.3.6.5** any liability for any damage to or loss of destruction of software, files or data resulting from any virus or other harmful feature;

17.3.7 Where We provide Services with a view to achieving Your purposes, suitability, function or fitness for purpose (whether expressed, agreed or otherwise), You must pay for those services on time without any set-off or counter-claim, whether or not We are able to achieve any of such purposes, suitability, function or fitness for purpose, provided always that We have acted in good faith and have made what We consider, in Our absolute discretion, to have made all reasonable endeavors to achieve those outcomes.

17.4 Content: There may be some content on the Internet or otherwise available through the Service which may be offensive to some individuals or which may not be in compliance with all local, state, or federal laws, regulations, and other rules. We assume no responsibility for the content contained on the Internet or otherwise available through the Service. All content accessed by You through the Service is access and used by the You at Your own risk and We and each of its representatives, affiliates, subcontractors, employees, and agents; shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise relating to access to such content by You or Your employees, affiliates, agents, or representatives. We specifically disclaim any responsibility for the accuracy, quality, and confidentiality of information obtained through the Service.

17.5 Users: You acknowledge that You are executing the Agreement on behalf of all persons who use the Service and/or Our Goods through Your computer(s), phone systems, PBXs, and other telecommunications Goods. You shall have sole responsibility for ensuring that all such other users understand and comply with the General Terms and Conditions and agreement(s). You agree that you are solely responsible and liable for any and all breaches of the terms and conditions of this Agreement whether such breach is the result of the use of the Service and/or Our Goods by You or any other user of Your computer(s), phone systems, PBXs, and other telecommunications Goods. You agree to indemnify, defend and hold harmless Us against all claims and expenses (including reasonable attorneys' fees) arising out of the use of the Service and/or Our Goods by any other user of Your computer(s), phone systems, PBXs, and other telecommunications Goods.

17.6 Recommended Configurations: With the implementation of a Managed Service Agreement, we have informed You of the recommended minimum computer hardware requirements, if any, (the "Minimum Requirements") for efficiently operating the Service. If You allows the installation of the Services utilizing hardware that does not meet the Minimum Requirements (a "Non-recommended Configuration"), You agree that (i) You shall not be entitled to Our Customer Support relating to any issues other than the quality of the signal delivered to Your IP phone or SIP gateway, and (ii) the following limitations of liability shall apply: WE DO NOT REPRESENT OR WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY ACCESS, OPERATE OR USE THE SERVICE(S), NOT THAT ANY SUCH

INSTALLATION WILL NOT CAUSE DAMAGE TO YOUR GOODS, PERIPHERALS, SOFTWARE OR DATA. WE DO NOT ASSUME ANY LIABILITY WHATSOEVER FOR ANY DAMAGE OR FAILURE TO INSTALL, ACCESS OR USE THE SERVICE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

- 17.7 Minimum Testing Procedures:** You will follow the instructions of Ours with regard to testing or troubleshooting any problems and that if those do not resolve the outstanding problems, We will, subject to these Conditions, allocate such resources as We consider reasonable in the circumstances towards their resolution.

18. FORCE MAJEURE

- 18.1 Force Majeure:** If We are unable to supply any Goods or Services due to circumstances beyond Our reasonable control, We may cancel the Order (even if the Order has already been accepted) or cease to provide the Services by written notice to You, in which case You will hold Us harmless.
- 18.2** We will not be liable for any breach of contract due to any matter or thing beyond Our control, including failures by third parties to supply goods, services or transport, stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

19. PRODUCT SPECIFICATIONS

- 19.1 Alterations to Specifications:** We make every effort to supply the Goods in accordance with the Order however We may supply alternate Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer of the Goods after the Order date and before delivery.
- 19.2 Substitute Goods:** If We cannot supply the Goods ordered by You, We may supply alternative Goods of equal or superior quality provided however that You will not pay a higher price than the price Quoted or otherwise agreed for the Goods ordered.

20. WARRANTIES

- 20.1 Reliance on Manufacturer's Warranty:** You will rely on the warranties provided by the manufacturer of Goods supplied by Us (where applicable) and will deal directly with such manufacturer rather than Us for all claims covered by such warranties.
- 20.2 No claim for manufacturer's default:** You indemnify and hold Us harmless in respect of the performance or otherwise, by any manufacturer of Goods supplied to You by Us, of any of the obligations of such manufacturer in respect of such Goods. This includes any damages or sums of money due to You arising under, or in connection with, any breach by the manufacturer of any the manufacturer's warranties in respect of the Goods.

21. LIABILITY

- 21.1 Exclusion:** Except as specifically set out herein and so far as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

- 21.2 No liability for program or data loss:** You indemnify and hold Us harmless in respect of any allegation, claim, loss or expense of Yours or any third party for any program or data loss or damage suffered by You or that third party arising directly or indirectly from the supply of the Goods or Services by Us to You. You acknowledge You are solely responsible for backing up Your programs and data in order to mitigate Your own potential loss of programs and data.
- 21.3 Limit on consequential damage:** You indemnify and hold Us harmless in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by You or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to You or any third party.
- 21.4 Limit on damage from a failure in supply:** You indemnify and hold Us harmless for any allegation or claim for loss or damage by You or a third party where We have failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- 21.5 General limit on liability:** Except as otherwise expressly stated in these terms and conditions, We are not liable for any loss or damage of any kind however caused (including, but not limited to, by the negligence of Us) which is suffered or incurred by You in connection with:
- 21.5.1** Goods or Services provided to You or any Work;
 - 21.5.2** these Terms and Conditions;
 - 21.5.3** Your use of Our website (including the use of a credit card or other debit device) or any linked website;
 - 21.5.4** the non-availability of Goods or Our Services for any reason;
 - 21.5.5** any act or omission of Ours or the provision of inaccurate, incomplete or incorrect information by You, or
 - 21.5.6** for any other reason whatsoever.
- 21.6 On-Going Support Limitation of Liability:** You agree that neither We nor our Sub-Contractors shall be liable for any loss or damage to the Goods or other property or injury or death to Your agents, employees, or other customers arising in the connection with maintenance Services provided by Us or Our subcontractors under this agreement unless such loss, injury, death or damage results solely from the negligence or willful misconduct of Our owner, officer, employees or agents or those of Us and the Sub-Contractors. You agree that IN NO EVENT SHALL WE OR OUR SUB-CONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS BY CUSTOMER OF BUSINESS, REVENUES OR GOODWILL), ARISING IN CONNECTION WITH THIS AGREEMENT OR THE GOODS.
- 21.7 Limitation options:** To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, clause 21.5 does not apply to that liability and Our liability for any breach of that condition or warranty is limited to Our doing any one or more of the following (at its election):
- 21.7.1** replacing the Goods or supplying equivalent Goods, Services or Work;
 - 21.7.2** repairing the Goods or the Work;

21.7.3 paying the cost of replacing the Goods or the Work or acquiring equivalent Goods, Services or Work; or

21.7.4 paying the cost of having the Goods or the repair Work.

21.8 Laws still apply: Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.

21.9 Ownership of Goods: You agree that any and all goods or software owned or rented/leased from Us will remain the property of Us. You agree to not permit others to rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Goods without the prior written consent of Us. The Goods shall not be used for any purpose other than that for which We provide it. You agree to allow Us full and complete access to remove all rented, or otherwise included in the monthly services, Goods from the property. We may arrange to ship Goods (for example: products or equipment) to You. Title and risk of loss pass to You when We designate a shipper to deliver products to the address You specify. You must notify Us communications of damaged or missing items from Your order within three (3) business days after you receive products. We are not responsible for Your owned and/or managed Goods that are breached and in turn initiates and incurs international or other toll charges from its own network or from an outside compromise. You are responsible for securing your own, self-managed Goods including, but not limited to, phone systems, routers, and firewalls. You may not sell, transfer, lease, encumber or assign all or part of Our Goods or Software, nor shall You relocate Our Goods outside the premises. You agree to pay to Us the full manufacturer's suggested retail price for the replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Goods belonging to Us or part thereof, together with any incidental costs incurred by Us relating to the replacement of the Our Goods. You authorize Us to charge Your Visa, MasterCard or other credit card and/or to electronically debit Your bank account for any such charges. We may, at its option, install new or reconditioned Goods.

21.10 Fraudulent Calls: In the event You connect the Services to the public switched network, it is Your sole responsibility for the selection, implementation, and maintenance of security features for protection against unauthorized calling, and therefore We shall have no liability. You agree that you are solely responsible for payment of long-distance, toll and other telecommunications charges incurred through the use of the Services being provided hereunder. You will indemnify and hold Us harmless from all costs, expenses, claims or actions arising from fraudulent calls of any nature carried by means of the Services. You will not be excused from paying Us for Services provided to You or any portion thereof on the basis that fraudulent calls comprised a corresponding portion of the Services. In the event, We discover fraudulent calls being made, nothing contained herein shall prohibit Us from taking immediate action, without notice to You that is reasonably necessary to prevent such calls from taking place. Notwithstanding, it is understood that We are under no obligation to investigate the authenticity of calls charged to Your account and shall not be liable for any fraudulent calls processed by Us and billed to Your account.

22. ERRORS AND OMISSIONS

22.1 We make every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, We may rescind the affected contract by written notice to You, notwithstanding that We have already accepted Your Order and/or received payment from You. Our liability in that event will be limited to the return of any money You have paid in respect of the Order.

OUR RESPONSIBILITIES

23. PRIVACY STATEMENTS AND YOUR RIGHTS

- 23.1** We are collecting Your personal information for the fulfillment of Quotes, Orders and the provision of Goods or Services to you and it may retain and use it for any such purposes (“Authorised Purposes”).
- 23.2** You are required to provide your personal information to Us for Authorised Purposes.
- 23.3** We may disclose Your personal information to other persons for the purposes of the fulfillment of Quotes, Orders and Work for you or in order to provide Goods or Services to You, to verify the information You provide, for inquiries about Goods or Services that may be suitable for your purposes, or to confirm Your requirements, to anyone proposing to supply Goods or Services to You, or to acquire Goods or Services on Your behalf, or in respect of inquiries relating to any of the foregoing.
- 23.4** Otherwise, We will not disclose Your personal information without Your consent unless authorized by law. We do not sell or rent your personally identifiable information to any third parties.
- 23.5** Your personal information will be held by Us at Our Principal Place of Business and You can contact Us to request to access or correct it.
- 23.6** We rely on You to submit correct information and details where requested. You accept that You may incur additional expenses if you submit incorrect information.
- 23.7** If you no longer wish to receive our newsletter and promotional communications, you may opt-out of receiving them by clicking on the unsubscribe link in the footer included in each newsletter or communication or by emailing us at the reply address of the email or you may contact us by phone **at our main telephone number**.
- 23.8** Our privacy policy only addresses Our activities from Our servers. Other sites (including those that we link to within an advertisement, article or otherwise, and third party sites or services with which we offer or co-brand) may have their own policies, which We do not control, and thus are not addressed by this policy.
- 23.9 Review and Removal of Your Personally Identifiable Data:** If You provide Us with personally identifiable information to have Us perform ongoing services to You, We will provide You with a way to review the information We have on file and either change or remove such data. To do so, please notify Us via post or email at the address above and We will provide You with your contact information for review. To make changes, send Us the changes and we will respond to your request for access within thirty (30) days of the request. Unfortunately, to the extent that such information is also stored in other databases, We cannot always ensure that such corrections or deletions will reach the other databases. If you wish to have the information you provided to us online removed from our records, please provide us with written notice of the information. We will use all reasonable efforts to ensure that your information is removed from our records.
- 23.10 Cookies and Other Tracking Methods:** When you view our website, we might store some information on your computer. This information will be in the form of a “cookie” or similar file.

Cookies are small pieces of information stored on your hard drive, not on our site. Cookies, which are tied to personal information, do not spy on you or otherwise invade your privacy, and they cannot invade your hard drive and steal information. Rather, they help you navigate a website as easily as possible. Cookies can help us provide information that is targeted to your interests and they allow us to better understand how users use our site, which in turn helps us focus our resources on features that are most popular with our users. You are always free to decline our cookies if your browser permits, but some parts of our site, including our registered customer account web sites, may not work properly in that case.

24. OUR WEBSITE

24.1 We make no representations or warranties in relation to information available on Our website, including without limitation:

24.1.1 that the information on Our website is complete or correct;

24.1.2 that Our website will be continuously available or free from any delay in operation or transmission, virus, communications failure, internet access difficulties or malfunction in hardware or software; and that We endorse any internet site linked to Our website or any third party products or services referred to on Our website.

25. INSURANCE COVERAGE

25.1 We will maintain at Our own expense, commercial general liability insurance for personal injury and property damage for a general aggregate of \$2,000,000. At Your request, We will provide You with certificates, including renewal certificates evidencing such coverage within thirty (30) days of commencing this Agreement, at every renewal and at other times as may be reasonably requested by You.

YOUR RESPONSIBILITIES

26. LODGING OF SERVICE REQUESTS

- 26.1** In order for Us to provide You with the agreed Service, You agree to follow Our process for lodging of Service Requests as outlined in Appendix A.

27. ACCESS TO SYSTEMS, SITES, AND PEOPLE

- 27.1** In order to provide You with the agreed Service, You agree to give Us access to various items of Yours including but not limited to, Goods, people and sites as and when required.
- 27.2** You agree to allow Us to install software on Your Goods that allows Our technicians to access Your systems at any time. This software allows Us to view system statuses, send monitoring information, see users' desktops and control Your PC's. This may require that devices are left on overnight or weekends.

28. THIRD-PARTY AUTHORIZATIONS

- 28.1** At times We may need to contact Your third party providers on Your behalf, such as Your internet provider. Some of these providers may require Your authorization for Us to deal on Your behalf. It is Your responsibility to ensure that We are able to deal freely with these providers.

29. PAYMENT, LATE PAYMENT, AND DEFAULT

- 29.1 Agreement to Payment:** You agree to pay your invoice payment by the date set forth on the invoices as the due date. If no such date is identified, then the payment is to be received by Us no later than fourteen (14) days from the date of the invoice. All Payments due to Ally Communications may be charged to Your Visa, MasterCard, American Express or other accepted credit cards, and/or electronically debited to Your bank account. You agree to pay all monthly Service Fees, Usage Fees, the Installation Charge, and Goods Deposit. Customer hereby authorizes Ally Communications to charge Customer's Visa, MasterCard or other credit card and/or to electronically debit Customer's bank account for all such fees, charges, taxes, and payment transaction processing costs
- 29.2 Up-Front Payment Security Deposit:** Ally Communications may require Customer to make a deposit at any time as a condition to the acceptance of any Service Order submitted by Customer or as a condition to the continuation of service. Any set-up, installation or Goods charges shall be paid in advance at the time of, or delivery of, Goods or service. An Equipment deposit for Goods provided by Us to be used in Your Premises shall be as stated in the Quote and shall be due prior to installation and shall be refunded to You upon the termination of service, provided said the Goods provided by Us is returned in good working condition. Such deposit shall be held by Us as security for payment of charges, and We may draw upon such deposit without any notice to You immediately when Your account becomes past due. We shall have the right to offset against the security deposit, in part or in full, for any amounts due to Us.
- 29.3 Payment due date:** All invoices issued to You are due and payable to Us within the terms stated on the invoice (unless otherwise agreed in writing). by cash, check, credit card, or direct deposit in accordance with these Terms and Conditions and in the way set out in the Invoice.

- 29.4 Manual and Automatic Payments:** If automatic payments are not set-up for monthly recurring payments, a \$10 manual processing fee will be applied.
- 29.5 NSF Fees:** An NSF fee of \$25 will be applied when a client's payment fails due to insufficient funds in their account. The fee will be applied to the outstanding balance immediately after the failed payment. We will promptly notify you via email or other preferred method once it has been determined that a payment has in fact failed. The fee will be assessed as a one-time charge for each failed payment due to insufficient funds. We reserve the right to waive the NSF fee at our discretion if the failure is due to extenuating circumstances beyond your control. Client's experiencing financial difficulties are encouraged to contact us to discuss possible alternative payment arrangements. Any disputes regarding the NSF fee should be submitted to our billing department within thirty (30) days after receipt of notification of a failed payment.
- 29.6 30 days late:** Accounts that are thirty (30) days past due are subject to being deactivated and sent to collections. If the Service is deactivated, you forfeit all phone numbers and IP addresses associated with your services. Before Service is restored or reconnected, You will be required to pay a reconnect fee of at least \$150.00, all past due amounts, and a deposit equal to at least one month of service. These charges are intended to be a reasonable advance estimate of Ally Communications' costs resulting from Your late payments and non-payments and are set in advance due to the difficulty inherent in determining the costs associated with any late payment or non-payment. We do not extend credit to customers, and the charges are not interest, a credit service charge, nor a finance charge. In the event We elect to use the services of a third-party collection agency, the costs of such a third-party collection agent shall be paid by You.
- 29.7 Late Payment Fee:** Where You fail to pay an invoice within fourteen (14) days of the invoice due date, You shall incur a late fee at a rate equal to 3% of the balance or the highest rate permitted by law. An additional 3% late payment penalty will be assessed monthly until the account is brought current.
- 29.8 Return/Cancellation Fee:** Where We arrange a return or refund on behalf of You, or where an Order is canceled by You after acceptance by Us, We may charge You a Return/Cancellation fee to cover the administration costs to Us in processing the return or refund, or in processing the Order, the cancellation and any refund. We may deduct the Return/Cancellation fee from out of any sums of money otherwise due to be refunded to You by Us.
- 29.9 Credit Hold:** Clients on Credit Hold must pay in advance for all Goods, Services, Software, and Work. We may apply a Credit Hold if a Client is consistently late in making payments, is identified as a risk, or does not have sufficient credit history. We may, at our sole discretion, restrict services that could result in additional charges such as data used on metered cellular plans. Credit Holds will last a minimum of six (6) months. Clients may request a credit review after six (6) months of on-time payments.
- 29.10 Recoveries:** All legal and other costs and expenses incurred in connection with the recovery of late payments will be added to the amount due by You to Us and will be recoverable from You, in addition to the original invoice cost. If You default in payment of any invoice on time, sums of money which would have become due by You at a later date shall be immediately due and payable without any further notice to You. Collectively, all of these sums of money are referred to in these Conditions as a "Sum Due".

- 29.11 Application of funds:** All payments of the Sum Due made by You to Us will be applied as follows:
- 29.11.1** first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Us in relation to any dishonored check fees, collection costs or any other action taken by Us for the recovery of any amounts owing by You to Us;
 - 29.11.2** secondly, in or towards payment of any interest due or payable hereunder, and
 - 29.11.3** thirdly, in or towards payment of Your debts to Us in order from the longest standing due to the most recently incurred.
- 29.12 Security:** We may require You to provide security over Your property (including the Goods or any other property of Yours) as collateral to be held as security for any Sum Due or as a condition precedent to the continuation of supply of Goods or Services by Us to You.
- 29.13 Billing Cycle:** Our billing cycle starts on the first of the month and ends on the last day of the month.
- 29.14 Payment arrangements:** In the event that a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a repayment due under that arrangement is not made on time, We may, in Our absolute discretion and without prior notice, again suspend or discontinue the supply of Goods or Services to You.
- 29.15 Power of Attorney:** You hereby irrevocably appoint Us as Your attorney to do anything We consider fit for the recovery of the Sum Due or the creation, perfection or enforcement of any collateral held or to be held as security for any Sum Due.
- 29.16 Other remedies:** We may exercise any of Our rights and remedies including taking legal action against You for the recovery of any sums of money due to Us, notwithstanding it may have exercised other rights under these Conditions.

30. NON SOLICITATION OF CLIENTS AND EMPLOYEES

- 30.1** You agree that employees are one of Our most valuable assets, policy and professional ethics require that Our employees not seek employment with, or be offered employment by You during the course of engagement and for a period of two (2) years thereafter (or the maximum amount permissible by a Court).
- 30.2** You agree that Our damages resulting from the breach of this clause 30.1 would be impracticable and that it would be extremely difficult for Us to ascertain the actual amount of damages. Therefore in the event, You violate this provision, You agree to immediately pay Us 200% of the employee's total annual salary, as liquidated damages and We shall have the option to terminate this Agreement without further notice or liability to You. The amount of liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs We would incur to identify, recruit, hire and train suitable replacements for such personnel.

31. SOFTWARE

- 31.1** All Software licenses are the responsibility of You and not that of Us. It is the duty of Yours to store all licenses for all Software used, so that that they can be reproduced if and when required. This includes all Software installed by Us.

- 31.2** You indemnify and hold Us harmless against any claim, allegation, loss, damage or expense arising directly or indirectly from:
- 31.2.1** any unauthorized Software use by You;
 - 31.2.2** any breach of any Software license in respect of Software provided to Us by You to be installed on one of Your computers;
 - 31.2.3** otherwise as a result of Us installing Software at Your where You are not authorized to use the Software; and
 - 31.2.4** any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.
- 31.3** **Copyright:** All copyright in custom software remains the sole property of Ours unless alternate arrangements are made as part of a separate software agreement.
- 31.4** **Non-exclusive License:** If Software is provided by Us, We grant to You a limited, non-exclusive license to use the Software, in object code form only, solely for the purpose of connecting Your computer(s) or device(s) to the service(s). This license will permit such use by You and any person authorized by You to use the Service, provided that You shall be responsible for all use of the Service as provided in this Agreement. This license will commence upon Our acceptance of Your subscription for the Service and will terminate immediately upon the expiration or termination of this Agreement for any reason. You agree to destroy all Software and any related written material, together with any copies, promptly upon the expiration or termination of this Agreement for any reason.
- 31.5** **Digital Copies:** You may make a single copy of the Software solely for back-up purposes, provided that such copy contains the same copyright notices and proprietary markings as the original Software. You cannot engage in, nor permit, any other copying, or any translation, reverse engineering or reverse compiling, disassembly or modification of or preparation of any derivative works based on the Software, all of which are prohibited.
- 31.6** **End-User License:** You agree to comply with the terms and conditions of all end user license agreements accompanying any software or plug-ins to such software distributed in connection with the Service. All end-user licenses shall immediately terminate on the date that the Service expires or is otherwise terminated.

32. COPYRIGHT AND CONFIDENTIALITY

- 32.1** **Warranty and breach:** You warrant that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by You to Us belongs to You. In the event of any breach of this warranty, You will pay all sums due to Us as if such warranty had not been breached (and regardless of any non-performance of any obligation by Us on account of or in connection with the breach of such warranty). You indemnify and hold Us harmless in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by You.
- 32.2** **Retention of title:** All copyright and other intellectual property rights in any Work created, commissioned or acquired by Us in the course of the supply of Services by Us to You will be the exclusive property of Ours unless otherwise agreed in writing by Us and You.

32.3 Confidential Information: We acknowledge that in the course of providing Services to You, We may learn from You certain non-public personal and otherwise confidential information relating to You, including Your customers, consumers or employees. We shall regard any and all information We receive which in any way relates or pertains to You, including Your customers, consumers or employees as confidential.

32.4 You also acknowledge that all information and services, consulting techniques, proposals, and documents disclosed by Us or which comes to Our attention during the course of business and provided under this agreement constitute valuable assets of, and confidential and/or proprietary information to Us.

As such, both Us and You shall take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose except unless permitted in writing by the disclosing party or as required by applicable law.

33. DISPUTE REMEDIATION

33.1 Dispute: In the event of any dispute regarding a billing invoice, You shall provide Us with written notice within ten (10) business days of the invoice date. Thereafter, said invoice shall be deemed to be correct and binding. You are responsible for paying the entire amount billed on the invoice, including reasonable disputed charges, whether or not documented in writing to Us. Any dispute resolved in Your favor shall be credited on Your next invoice.

33.1.1 Arbitration: After a dispute arises, Us and You agree to attempt to resolve the dispute through binding arbitration by a sole mediator selected by the Us and You or, at any time at the option of either Us and You, to mediation in accordance with the then-current Commercial Arbitration Rules of organizations such as the American Arbitration Association ("AAA"), Judicial Arbitration and Mediation Services ("JAMS"), or National Arbitration Forum in effect at the time, in the City of Florence, State of Alabama. Us and You, their representatives, other participants and the mediator shall hold the existence, content, and result of the mediation in confidence. Any award shall be final and binding and judgment thereon may be entered in any court of competent jurisdiction. Subject to other provisions, if a dispute is not resolved by mediation, Us and You shall have the right to resort to any remedies permitted by law. All defenses based on the passage of time shall be tolled pending the termination of mediation. Nothing in this paragraph will be construed to preclude either Party from seeking injunctive relief in order to protect its rights pending an outcome in arbitration. A request by a party to a court for such injunctive relief shall not be deemed a waiver of the obligation to mediate.

33.1.2 Choice of Law / Disputes: This agreement shall be governed by and construed in accordance with the substantive and procedural laws and practices of the State of Alabama, without giving effect to conflicts of law. Any action commenced hereunder or relating to any relationship between Us and You, shall be brought exclusively in a court of competent jurisdiction in the State of Alabama. If a dispute arises and We refer this agreement to an attorney for collection, You shall pay all costs of investigation, enforcement, and collection, including interest, court costs, fees, and attorney's fees. Notwithstanding the cancellation or natural expiration of the term of this agreement,

and to the fullest extent permitted by law, if You have accumulated unpaid charges, We may refuse any request for release or other transfer of Local and Toll-Free numbers to a third-party and may reject any request for change in Toll-Free service to another carrier, including a change request from a Responsible Organization, without liability to Us, until such charges are paid in full to the date of termination of service. We reserve the right to re-assign any terminated local or Toll-Free number(s).

33.1.3 Waiver of Trial by Jury: Us and You hereto hereby knowingly, irrevocably, voluntarily, and intentionally waive any rights to a trial by jury in respect of any action, proceeding, or counterclaim based on this Agreement or arising out of, under, or in connection with this agreement or any document or instrument executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written), or action of any Party hereto. This provision is a material inducement for Us and You entering into the subject transaction.

34. 911 & E911

34.1 911/E911: The Federal Communications Commission (“FCC”) requires that We provide E911 Service to all customers who use Our Communications services within the United States.

34.1.1 You acknowledge that Our communications’ goods and services do not support 911 emergency dialing or other emergency functions in the same way that traditional landline 911 services work. The differences are detailed in this section and You hereby agree to notify any potential user of the services, who may place calls using Your services, of the 911 limitations described herein. We will provide You with warning labels regarding the limitations or unavailability of 911 emergency dialing. You agree to place a label on and/or near each telephone or other goods belonging to You on which the services may be utilized. If additional labels are required, you may request them from us. We will provide you with advisory notices regarding 911 emergency dialing and request acknowledgments from You. You agree to respond and affirmatively acknowledge that we have advised You of the circumstances under which e911 service may not be available or may be limited in comparison to traditional 911 emergency dialing. We advise You to maintain an alternative means of accessing traditional 911 services.

34.1.2 You acknowledge that services will not function in the absence of electrical power.

34.1.3 You acknowledge that services will not function properly if there is an interruption or a lack of bandwidth of your broadband or high-speed internet access service.

34.1.4 You acknowledge that services are not set-up to function without dialing systems including home security systems, medical monitoring goods, TTY goods, and entertainment or satellite television systems. You hereby waive all claims against us for interruption or disruption of such systems by the services.

34.1.5 Our e911 service is a mandatory component of all inbound/outbound fax and voice service plans. E911 service is not offered on international numbers, toll-free numbers or similar service accessories or add-on plans. E911 service is only available in selected areas. If You subscribe to Our e911 service will be required to register the physical location of their goods (ATA or IP phone) with Us, either on Our communications user

portal, initial order forms or by calling customer service, and agree to update the location whenever the physical location of service changes. You acknowledge that Our only mechanism for routing 911 calls to the correct emergency call taker is the physical location currently registered for the account. You acknowledge and understand that any enhanced location information passed to an emergency operator by us will be based upon the physical location provided to Us by You. In the event that the physical location has not been updated or is not complete, Wwe may attempt to route a 911 call based upon the bill-to or ship-to addresses associated with Your account or initial order.

- 34.1.6** You also acknowledge that Our e911 service has certain characteristics that distinguish it from traditional, legacy, circuit-switched 911 service. These characteristics may make Our e911 services unsuitable for You. Because Your circumstances may vary widely from others, You should carefully evaluate Your own circumstances when deciding whether to rely solely upon Our e911 service. You acknowledge that it is Your responsibility to determine if the technology or combination of technologies is best suited to meet Your emergency calling need and to make the necessary provisions for access to emergency calling services (such as maintaining a conventional landline phone or wireless phone as a backup means of completing emergency calls). The following characteristics distinguish our e911 service from traditional, legacy, circuit-switched 911 service:
- 34.1.7** Our e911 service will not function if Your ATA or IP phone fails or is not configured correctly or if Our service is not functioning for any reason, including, but not limited to, electrical power outage, broadband service outage, Or suspension or disconnection of service because of billing or other issues. If there is a power outage, You may be required to reset or reconfigure the goods before being able to use our service, including for e911 purposes.
- 34.1.8** After initial activation of the e911 service, and following any change of and update to Your physical location, there may be some delay before the automatic number and location information is passed to the local emergency service operator. This information is typically populated into Ally Communications' nomadic e911 databases prior to service activation, but no guarantee can be made that the automatic number and location information will be activated within this schedule.
- 34.1.9** The local Emergency Service Operator receiving Our e911 emergency service calls may not have a system configured for e911 services or be able to capture and/or retain automatic number or location information. This means that the operator may not know the phone number or physical location of the person who is making an e911 call. Due to technical factors in network design, and in the event of network congestion on the ally communications network, there is a possibility that an e911 call will produce a busy signal or will experience unexpected answering wait times and/or take longer to answer than 911 calls placed via traditional, legacy, circuit-switched telephone networks.
- 34.1.10** If You do not correctly identify the actual location where our goods will be located at the time of activation of the service, our e911 communications may not be directed to the correct local emergency operator.
- 34.1.11** You acknowledge and understand that We will not be liable for any service outage and/or inability to dial 911 or any other emergency telephone number using Our

communications or to access an emergency service operator due to the 911 dialing characteristics and limitations set forth in this agreement. You agree to defend, indemnify, and hold harmless ally communications, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to customer in connection with the services, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorney fees) by, or on behalf of, customer or any third party or user of the service relating to the failure or outage of the service, including those related to 911 dialing.

35. ACCEPTABLE USE POLICY

- 35.1** The intent of Our Acceptable Use Policy (AUP) is to improve the use of Our services by proactively preventing unacceptable use by You. All of Our customers and Your Customers or any downstream user of the services We provide must comply with this AUP. Violating any terms listed in this AUP may result in suspension or cancellation of your account without notice. We reserve the right to refuse service to anyone.
- 35.2 Violations of Acceptable Use Policy:** The following are violations of Ally Communication AUP.
- 35.2.1 Lawful Purpose Only:** As a user of Ally Communication, you agree not to use the service in a manner that violates any local, state or federal law.
- 35.2.2 Harm To Others:** Using the services to harm others, including but not limited to minors.
- 35.2.3 Threats & Harassment:** You agree not to use the service for abusive, profane, libelous, slanderous, threatening or otherwise harassing calls.
- 35.2.4 Fraudulent Activity:** Using the service to make or participate in fraudulent activity including financial scams.
- 35.2.5 Copyright or Trademark Infringement:** Using the service to transmit any material that infringes any copyright, trademark, patent, trade secret or other propriety rights of a third party.
- 35.2.6 Collection of Personal Data:** Using the Service(s) to collect, or attempt to collect, personal information about third parties without their knowledge or consent.
- 35.2.7 No Transfer of Service:** You may not resell or transfer your service or device or provide service to anyone else by using your Ally Communications service without first obtaining prior written consent.
- 35.2.8 No Alterations or Tampering:** If you copy or alter or have someone else copy or alter the firmware or software of the devices in any way that facilitates a compromise of your service, you are responsible for any charges that result. You may not attempt to hack or otherwise disrupt our services or may any use our service that is inconsistent with its intended purpose.
- 35.2.9 Theft of Service:** You may not use or obtain our Service in any manner that avoids Ally Communications' policies and procedures, including an illegal or improper manner. You will notify us immediately in writing if a device(s) is stolen or if you believe that your service(s) is being stolen, fraudulently used, or otherwise being used in an unauthorized manner. When you notify us of one of these events, you must provide your account

number and a detailed description of the circumstances of the theft, fraudulent use, or unauthorized use of service. If you fail to notify us in writing in a timely manner, we may disconnect your service and levy additional charges on you. Until you notify us in writing, you will remain liable for all use of our service using a service stolen from you and any and all stolen, fraudulent or unauthorized use of the service up through the date notice is received by Ally Communications.

35.2.10 Monitoring: We may monitor the use of our Services for violations of this agreement. We may, without liability, remove or block all communications if we suspect a violation of this agreement, or if we think it necessary in order to protect our services, Ally Communications, affiliates, directors, officers, agents, and employees from harm.

35.2.11 Providing Information to Authorities and Third Parties: If we believe you have used our Service(s) or your/our Device(s) or Goods for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities. In addition, we may disclose any and all information and communications we possess, in response to law enforcement or other governmental agency requests: as required by law, regulation, rule, subpoena, search warrant or court order; as necessary to identify, contact, or bring legal action against someone who may be misusing the services, devices or both; to protect Ally Communications rights and property; or in emergency situations where disclosure of such information is necessary to protect Ally Communications customers or third parties from imminent harm.

36. MISCELLANEOUS

- 36.1 Non-Waiver, Waiver, Amendment, Modification:** No term or provision hereof will be considered waived by You or Us, and no breach excused by You or Us, unless a waiver or consent is in writing signed by the party against whom such waiver or consent is asserted. The waiver by either party of, or consent of either party to, a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of, consent to, or excuse of any other or subsequent breach by the other party. These Conditions may be amended or modified only by mutual agreement of authorized representatives of Us and You in writing.
- 36.2 Authority:** Each party represents that it has the full right, power, and authority to enter into this agreement and to perform all of the obligations on its part contemplated herein.
- 36.3 Variances:** These Terms and Conditions shall prevail notwithstanding any variance with any order submitted by You or the terms of any other agreement between You and Us.
- 36.4 Severability:** If any provision of this agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.
- 36.5 Assistance:** If necessary, and if requested by You, We will provide commercially reasonable assistance to You in obtaining necessary facilities from the local telephone company through which You may use Our services. You are responsible for such activity and are liable for any and all charges incurred, therefore. You agree to execute any additional documents necessary for the enforcement or operation of this Agreement.
- 36.6 Construction:** Us and You acknowledge that they have reviewed, and/or had the opportunity to review, the Agreement with counsel, and have had all of its terms explained to them to their full

and complete understanding and satisfaction. They further acknowledge that this agreement is the joint work product of Us and You. Accordingly, in the event of ambiguities in this agreement, no inferences shall be drawn against either party on the basis of the authorship of this Agreement.

36.7 Headings: The headings in this agreement are for convenience of reference and shall not affect its construction or interpretation.

36.8 Notices: All notices permitted or required under this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally, (ii) by commercially established courier service upon delivery or, if the courier attempted delivery on a normal business day and delivery was not accepted, upon attempted delivery, (iii) by facsimile transmission when confirmed by facsimile transmission, or (iv) by certified or registered mail, return receipt requested, ten (10) calendar days after deposit in the mail. Such notices shall be sent to the address set in the Services Quote or such other address as a party hereto shall notify the other party of in writing.

To:

Ally Communications
2222 Chisholm Rd, Suite 4
Florence, AL 35630

Attention: Billing Dept.
Telephone: (256) 740-3900
Facsimile: (855) 648-4010
Email: billing@allyadvantage.com

36.9 Entire Agreement: The quote, proposals, agreement(a), general terms, authorized use policy, ryders, and attachments hereto, constitutes the entire agreement between Us and You regarding its subject matter. These Terms supersedes all prior quotes, proposals, agreements or other communications between Us and You, oral or written, regarding such subject matter. No other representation, warranty, term or condition, other than as expressly set forth in the Terms, shall be binding for You and Us.

SERVICE REQUEST SUBMISSION PROCESS

When you contact us to lodge a service request only the methods below must be used:

Phone: (256) 740-3900

SMS: SMS submission is available at the phone above, however SLA response times are not guaranteed.

Email: helpdesk@allyadvantage.com

Web Portal: helpdesk.allyadvantage.com

Website: www.allyadvantage.com

Ticket Form and Chat is available via the website above

WHAT TO INCLUDE

Include a short description of the problem and any screenshots of errors to assist in the resolution of the issue.

If the issue is being lodged by either phone or external email you must include your name, company and return contact details.

Service requests must not be lodged directly with technicians, as this detracts them from resolving the current issue.

SERVICE REQUESTS OUTSIDE OF OUR BUSINESS HOURS

Service Requests that must be addressed outside of business hours must be lodged by phone by and selecting the option to request after-hours support (charges apply for after-hours work). If not, the Service Request will be viewed on Our next Business Day.