

COUNTY OF BALDWIN
STATE OF ALABAMA

Commercial Service Agreement Terms and Conditions

(Internet)

signed copy of the attached agreement is required prior to the installation of services.

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Commercial Service Agreement (“Agreement”) entered into by and between Customer and The Utilities Board of the City of Foley d/b/a Riviera Utilities (“Provider”) incorporates and includes by reference these Commercial Service Agreement Terms and Conditions (“Terms and Conditions”).

WHEREAS, the Customer agrees to purchase from Provider, and Provider agrees to sell to Customer, certain internet services, products, features, and items as specifically identified in the Agreement (the “Services”); and

WHEREAS, Customer agrees that the Services are being provided subject to these Terms and Conditions in addition to Provider’s Acceptable Use Policy for Internet Services and Provider’s Privacy Policy.

Service Period. The Term commences on the Service Commencement Date for the applicable Service and continues for the number of months specified in this Agreement for such Service following the Service Commencement Date. Upon the expiration of any Term, this Agreement shall continue in effect with respect to the Service on a month-to-month basis until canceled by either party on 30 days written notice; provided, however, that the charges for the Service during any renewal period shall be at the then-current monthly rate charged by Provider for such Service.

Billing. Compensation to be paid by Customer to Provider (or to any of its designated affiliates) for Services provided under this Agreement shall be established at the rate and terms provided in this Agreement. The Customer agrees to pay the contract amount committed to under this Agreement, as well as all applicable taxes and fees. Customer may be required to remit payment for certain Services to an affiliate of Provider. All invoices are due within 20 days from date of invoice. A late charge of 6% per month, or the highest permissible amount chargeable by law, whichever is less, may be charged on any unpaid balance owed to Provider or any of its affiliates which remains unpaid for 20 days or more after the date of the invoice. Bundled prices represented on this Agreement may be billed separately on Customer’s bill. The separate pricing may not be used with any other product or bundled products. It is the Customer’s responsibility to review the monthly invoices for accurate representation of charges. Disputes concerning the accuracy of any invoice that has been paid must be brought in writing within three (3) months of the due date of the invoice.

Subsequent Additions/Deletions. For each new product or service added to this Agreement after a 60-day grace period, installation charges will apply. Installation charges for advanced business products will be quoted at the time of request on an individual case basis. Subsequent feature deletions, after a 60-day grace period, will be assessed a service order charge per account. Any preferred customer discounts, volume discounts or promotional discounts are subject to change if Customer deletes Services from the original service agreement. Any adjustments in special discounts will be quoted at the time of the request on an individual case basis.

Special Construction. Where facilities are not available or if equipment, new facilities or changes to existing facilities are required for the provision of additional Services, a special construction charge will apply in addition to the monthly service charges. Customer may be required to pay additional charges or to contract for Services beyond the normal service term, or both.

Service Installation / Equipment; Customer Requirements and Responsibilities. Provider shall only be responsible for bringing the lines ordered by Customer to the Customer designated demarcation point at Customer's premises where Provider equipment terminates. In no event shall Provider be responsible for connecting, installing or wiring past the demarcation point. Customer agrees and acknowledges that it shall be Customer's sole responsibility to provide and arrange for all necessary wiring and equipment, and any other related wiring or work required to implement the Services. At the time of service installation and during maintenance and repair, Customer agrees to provide at no charge, access to any equipment, right to make use of all existing poles, conduits, wiring and other facilities on the premises which Customer owns or controls (the "Premises"), a safe working environment and adequate storage space for a reasonable quantity of replacement parts, electrical power to operate the Services and adequate space in Customer's Premises to house any equipment used in connection with provision of the Services, and shall take all other actions reasonably required for the performance of Services by Provider under this Agreement. Neither Customer nor the owner or any resident of the Premises shall have any right, title or interest in the equipment. The equipment shall always be owned by Provider and shall not be a fixture of the Premises. Upon the expiration or termination of this Agreement, or the expiration of Provider's legal right to provide Service to the Premises, at Provider's option, Provider may remove reasonably accessible equipment from the Premises within a reasonable time or require Customer to return all Provider-owned equipment to Provider. If Provider installs wiring on the Premises, the following clause applies: Upon the expiration or termination of this Agreement, or the expiration of Provider's legal right to provide Service to the Premises, at Provider's option upon notice to Customer: (i) Provider may remove the wiring from the Premises within a reasonable time; (ii) Customer shall purchase from Provider the wiring on the Premises at the fair market value for the full replacement of such wiring, including labor; or (iii) Provider may abandon the wiring in place. Customer is responsible for the security of all passwords, equipment or systems that allow access to the Services provided by Provider. Customer

acknowledges that they are responsible for actions on their account performed by others who have acquired Customer's passwords or access to Customer's equipment or systems with or without Customer's knowledge and Customer agrees to pay any charges that are incurred regardless of any claim the Customer may have against third parties based on unauthorized access to Customer's passwords, equipment or systems. Customer is responsible for ensuring internet-based phone systems operate in accordance with phone system provider.

Insecurity of the Internet. Connection to the internet creates insecurity. Security and disruption problems are inherent in the Internet. The very openness of the Internet creates risks that the Internet is insecure, and vulnerable to both intentional and unintentional disruption. Security breaches can occur for technical and other reasons, and, despite the implementation of security measures, we cannot guarantee that our networks are not vulnerable to unauthorized and illegal access, computer viruses and other disruptive problems. Our ability to provide our services depends in part on the reliability of the Internet and the networks of our partners, and our services can also be negatively affected by limitations inherent in the technology infrastructure supporting the Internet and the internal networks of Internet users. Customer must provide adequate information security for their own networks by using appropriately complex passwords, firewalls, and updated anti-virus and anti-spyware software. Availability of Internet service varies, and speeds advertised may not be available at all service addresses. Actual speeds experienced by customers vary and are not guaranteed. Speed ranges advertised are expressed as "up to" to represent network capabilities between customer location and the Provider network. Speeds vary due to factors, including but not limited to: distance from switching locations, network equipment, delivery technology, external/internal network conditions and video stream utilization.

Term and Termination. Provider will provide Customer with the Services pursuant to the rates, terms and conditions specified in this Agreement, commencing on the latter of the requested service date or the day following the date in which Provider notifies Customer that the Service is ready for use (the "Service Commencement Date"). Upon any termination of the Services herein, unless otherwise directed by Provider in writing, Customer shall return all Provider-owned equipment in good working condition to Provider, or Customer will be responsible for the full cost of the equipment. Customer is responsible for any damage to equipment provided by Provider. Customers who terminate Service prior to the expiration of the applicable Term shall be liable for the repayment of any promotional credits, discounts or fee waivers including but not limited to installation fee waivers, and for reimbursement of any special construction or non-recurring charges for Services or related facilities requested by Customer. If Customer terminates this Agreement or any Service prior to the expiration of the committed Term, Customer shall also pay Provider an early termination charge equal to: (a) fifty percent (50%) of the unpaid balance of the monthly service charges that would have been due throughout the remainder of the Term, plus one hundred percent (100%) of the outstanding balance for Services

provided up to the date of termination; plus (b) the full purchase price of any equipment, minus the amounts already paid on a per month basis up to the date of termination. Customer agrees that the forgoing early termination charges are fair and reasonable, and Provider's provision of the Services would not be commercially viable but for these Customer commitments. If there is a partial cancellation, any volume discounts going forward will be applied based only on the remaining volume. Either party may cancel this Agreement without liability in the event Provider is prohibited from providing Service or if any material rate or term contained herein is substantially changed by final order of a court, administrative agency, or other body of competent jurisdiction. Each Service designation is deemed a separate service and cancellation of any single service shall not affect the other Services ordered by Customer in this Agreement. This Agreement shall remain effective until terminated in accordance with the provisions set forth herein.

Customer's Representations. Customer represents to Provider that Customer is the legal owner or tenant of the Premises, and that no other person has any rights in the Premises that conflict with Provider's rights under this Agreement. Customer shall not attach to or use, and Customer shall not allow anyone else to attach to or use, the equipment for any purpose without Provider's prior written consent. Customer shall use its best efforts to comply with all applicable theft of service laws. At Provider's request, Customer, or a representative designated by Customer, shall accompany Provider's employees or agents into any part of the Premises for the purpose of installing the Provider equipment. If Customer is not the owner of the Premises, Customer represents that he/she has obtained all necessary permissions from the owner to enter into this Agreement. Customer represents that the person signing the Agreement on behalf of the Customer is a duly authorized representative of the Customer and has the authority to execute this Agreement on the Customer's behalf.

Warranty and Warranty Disclaimer. Provider warrants that the services shall be performed in a good and workmanlike manner. Except with respect to the foregoing warranty, provider is providing all services to the customer "as is" and provider makes no warranty as to the continuous operation of the services or any specific feature of the services. All warranties, express or implied including, without limitation, the implied warranty of merchantability and the implied warranty of fitness for a particular purpose and any warranties arising by statute, operation of law, course of dealing or performance, or usage of trade are hereby expressly disclaimed. Provider does not warrant that the services or related products will meet your requirements or prevent unauthorized access to your computers, network, servers and other equipment or to any data, information or files on any of them. Connections (sync-rates) are rate-adaptive and may be lower due to the length and condition of the line. Actual throughput may be lower due to internet congestion, network utilization, protocol overheads or other factors, which cannot be controlled by provider. In the event of a power outage at customer's location or if customer's broadband service is down, services may not operate and customer may not have access to emergency services such as 911.

Limitation of Liability. Provider shall not be liable in contract, tort, or otherwise, including, without limitation, under a negligence, wantonness, or other theory of liability, for any special, indirect, incidental or consequential damages whatsoever including, but not limited to, lost profits, lost customers, lost revenues, lost opportunity, loss of the use of the services, loss of data, customer's inability to use the services, or interruptions or claims by third parties. The parties agree that to the fullest extent permitted by applicable law, for disputes related to the accuracy of invoices, the maximum credit or refund a customer may receive shall not exceed the amounts actually paid to provider over the most recent three (3) month period for the specific services in dispute; for all other claims provider limits liability related to the provision of services to the amount paid by customer in the previous twelve (12) months for services giving rise to, or which are the subject of, the claim whether such claim alleges breach of contract, or tortious conduct including, but not limited to, negligence or any other theory. Provider shall have no liability or responsibility to customer for any omission or no action, regardless of form, arising out of the provision of services or its performance may be brought by customer more than six (6) months after the cause of action has accrued.

Default. An event of default ("Event of Default") shall occur upon the occurrence of all or any one of the following events: (a) the Customer does not pay when due any invoice; (b) the Customer ceases doing business as a going concern; (c) the Customer makes an assignment for the benefit of its creditors or admits in writing to its inability to pay its debts as they become due; (d) the Customer files, or has filed against it, a petition in bankruptcy or for its reorganization, arrangement, composition or readjustment under any state insolvency law or the Customer liquidates all or a substantial part of its assets not in the ordinary course of its business, dissolves or takes other similar action; or (e) the Customer shall default in the performance of any of its obligations to Provider or any assignee arising under this Agreement, or any other agreement between the Customer and Provider, and such default is not cured within 30 days of Provider providing notice of same, unless prohibited by relevant federal, state or local law.

Remedies. Upon the occurrence of an Event of Default, unless prohibited by relevant federal, state or local law, Provider may, at its option and without notice or demand, exercise all or any one or more of the following remedies: (a) declare immediately due and payable all invoices and all other sums due, including termination charges, or to become due hereunder or under any other agreement between the Customer and Provider; (b) terminate all of its obligations arising under this Agreement, and any other agreement between Customer and Provider; (c) enter the premises where any of Provider's equipment is located and repossess all or any part of the equipment; (d) offset any amounts due Provider under this Agreement against any amounts Provider or any of its affiliates owes the Customer (or the Customer's affiliates) under any other agreement; or (e) exercise all other legal and equitable remedies which Provider may have. The foregoing remedies shall be deemed cumulative and may be exercised successively or concurrently as permitted by law.

Interruption of Services. For any interruption of Service that is the fault or responsibility of Provider or its affiliates, including but not limited to any interruption that is due to negligence or non-compliance with any term or condition of this Agreement by Customer or the failure of operation or malfunction of facilities, power or equipment provided by the Provider, Customer will be entitled to a credit against the monthly service charge for such Service. Service will be deemed to be interrupted from the time Provider receives notice from Customer that the Service is not working until the time the Service is working. Unless provided otherwise by law, credits shall be calculated on the basis of a 30-day month and shall be credited upon Customer request against the monthly service charge for such Service as follows:

- First 30 minutes: none
- 30 minutes to 3 hours: 1/10 day
- Each additional 3 hour period (or fraction thereof): 1/5 day

If the duration of the outage is more than 24 hours, then the credit shall be the daily prorated amount of the Customer's monthly service charge for the applicable Service for each day thereafter, in an aggregate amount not to exceed the monthly service charge for such Service. Credits under this provision shall be the Customer's sole remedy and Provider's sole liability for any Service outage.

Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State where the Services are performed (without giving effect to conflicts of law).

Attorney's Fees and Costs: In any action by a party to enforce its rights hereunder, the non-prevailing party shall pay the prevailing party's cost and expenses (including reasonable attorney's fees).

Extraordinary Circumstances: Provider shall not be liable for any failure to perform its obligations under this Agreement to the extent such failure is due to "Force Majeure". Force Majeure includes, but is not limited to, acts of God, strike, lockout or other interference with work, war, declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, network or other telecommunications failures, including suppliers, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses and any other cause whether of the kind specified above or otherwise which is not reasonably within the control of Provider.

Entire Agreement: This Agreement, and any executed Amendments, Addenda, and Statements of Work shall constitute the entire Agreement between Customer and Provider notwithstanding inconsistent or additional terms and conditions in Customer's purchase orders or other documents submitted to Provider. Any and all representations, promises, warranties or statements by Provider's agent(s) that differ in any way from the terms and conditions of this Agreement shall have no force or effect. This Agreement shall at all times be subject to such modifications as the FCC may, from time to time, require under

its jurisdiction and otherwise, this Agreement may be amended only by a written instrument executed by both parties.

Severability and Survival of Terms: Any term or condition of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating any of the remaining terms or conditions of the Agreement. The following provisions shall survive any termination or expiration of this Agreement: Disclaimer of Warranties (in Section 10), Limitation of Liability (Section 11) and the Miscellaneous provisions (Section 17).

Assignment. Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, and any such attempted assignment shall be void, except that Provider may assign this Agreement, or any of its rights or obligations hereunder in the event of any corporate reorganization, or to any subsidiary or affiliate, any purchaser of all or substantially all of the assets of Provider, or any entity with which or into which Provider may merge or consolidate, without the consent of Customer upon written notice to Customer.

Taxes: In addition to the payments required hereunder, Customer shall pay all sales, use, transfer and other taxes whether federal, state or local, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement excluding, however, any income taxes on fees paid to Provider by Customer.

Waiver: A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder.

Electronic Documents: Provider hereby gives notice of its right to convert this Agreement to electronic format and retain this Agreement solely in an electronic format. Provider may provide this Agreement in electronic form or may provide a reproduction of this Agreement from its electronic copy in the event of any dispute regarding the rights and obligations of the parties under this Agreement. The parties agree that any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability and shall meet any requirement to provide an original or hard copy.

Notices: Any notice to be given by Customer to Provider under this Agreement shall be in writing and shall be delivered personally, sent postage prepaid by U.S. certified mail, or by facsimile with electronic confirmation to the local Provider office or to such other address as Provider may designate in writing. Notice is considered received on the earlier of the day it was actually received or the day its delivery was refused.

Name: _____

Signature: _____

Title: _____

