



C-17-314-03-26

MASTER SERVICES AGREEMENT

This *Master Services Agreement* (hereinafter the “Agreement”) by and between FOREMOST TELECOMMUNICATIONS, a Texas corporation (hereinafter referred to as “FOREMOST”), with its principal place of business in Collin County, Texas, and Hidalgo County, a Texas County (hereinafter referred to as the “Customer”), shall govern all services that Customer may desire to order from FOREMOST through a subsequent *Service Order*, all as is more particularly agreed as follows:

1. The terms of this Agreement are intended for the benefit of FOREMOST and Customer only, and do not extend to any other person or entity except for wholly-owned affiliates of Customer, members of Customer’s staff and consultants in the course of performing work for Customer, and persons in the course of receiving services from Customer.

Term and Termination

2. This Agreement shall begin as of the later of the dates accompanying the signatures below (hereinafter the “Effective Date”) and shall end upon the expiration of one (1) year, provided that either party first provides 30 days’ notice of termination to the other party. If no term is specified or if the above term expires, this Agreement shall continue to be in force on a month-to-month basis until 30 days elapse from the receipt of a notice of termination.
3. As this Agreement sets forth terms and conditions for any *Service Order* between Customer and FOREMOST, no such *Service Order* may be placed until and unless this Agreement is executed. If this Agreement is terminated during the term of any *Service Order*, then the parties agree to abide by the terms of this Agreement with respect to such *Service Order* until the parties negotiate and execute a new governing agreement.
4. The term of each *Service Order* shall begin upon the delivery of the corresponding service and shall end upon the expiration of the term specified in each such *Service Order*, provided that either party first provides at least 30 days’ notice of such termination to the other party. If the term of the *Service Order* is not specified or expires, then the *Service Order* shall continue to be in force on a month-to-month basis until 30 days have elapsed from the receipt of a notice of termination. FOREMOST reserves the right to adjust any recurring fees or charges for any *Service Order* continuing on a month-to-month basis upon 30 days’ notice to the Customer.
5. If a material obligation in this Agreement or an applicable *Service Order* is breached, other than a breach for non-payment, service deficiency, or any other breach provided for elsewhere in this Agreement, then the complaining party must deliver a written notice setting forth the details of the breach to the alleged breaching party. The complaining party may not terminate this Agreement or any applicable *Service Order* until and unless such breach has not been cured within 30 days following the receipt of such written notice.

Provisioning and Equipment

6. FOREMOST services are contingent upon the availability of (a) functioning copper facilities at Customer’s location, (b) appropriate space in a climate-controlled environment with access to electrical power, ground lines, and surge protection, and (c) a backboard, rack, or other mounting device to accommodate the installation of equipment. FOREMOST services are further contingent upon the Customer providing FOREMOST with cabling paths, including spaces, chases, and conduit, together with any rights of entry or other permissions, all of which may be needed in order to connect Customer to the public right-of-way and the FOREMOST network.
7. FOREMOST shall terminate its wiring, cabling, circuits, equipment, and any other supporting items necessary for the delivery of service (hereinafter “Foremost Facilities”) at a demarcation point where FOREMOST Facilities will end and the Customer’s private facilities (hereinafter “Customer Facilities”) will begin. If an alternate carrier is used by FOREMOST as part of delivering its services to Customer, then Customer shall further be responsible for extending that carrier’s facilities to the FOREMOST demarcation point. FOREMOST shall not provide, repair, nor be responsible for any Facilities past the FOREMOST demarcation point, such as Customer’s inside wiring, unless otherwise provided for in an applicable *Service Order*.
8. FOREMOST shall retain ownership of all FOREMOST Facilities unless otherwise stated in an applicable *Service Order*, *Bill of Sale*, or other document transferring ownership. Customer accepts responsibility for any damages to FOREMOST equipment at Customer’s location, and agrees to return all FOREMOST equipment upon termination of any service requiring such equipment. Customer agrees to assist and not otherwise impede FOREMOST and its agents

from recovering FOREMOST equipment upon termination of this Agreement. FOREMOST reserves the right to bill Customer for any unreturned property.

9. Customer accepts sole responsibility for its own network and telephone equipment. In particular, Customer accepts responsibility for the installation, testing, ordering, provisioning, support, maintenance, operation, security, and integrity of its own facilities, computers, services, systems, networks, and equipment, including, but not limited to, Customer's Private Branch Exchange, other than those goods or services for which FOREMOST expressly assumes responsibility in an applicable *Service Order*. Customer accepts sole responsibility for the cost and expense of any administrative, technical, emergency, or support personnel who work at Customer's location or at Customer's request, regardless of whether such personnel work, interact, or communicate with FOREMOST in the course of their work. In no event will the untimely installation or non-operation of Customer Facilities relieve Customer of its obligation to pay charges for FOREMOST services during the term of this Agreement.
10. Customer acknowledges that FOREMOST Facilities are dependent upon electricity, and that if FOREMOST services are desired in the event of a general power failure, then Customer is solely responsible for acquiring alternate power sources, such as battery backup, on-site generators, or such other equipment as the Customer elects.
11. Customer acknowledges that FOREMOST provides no security for FOREMOST services, and that if such security is desired by Customer, then Customer must obtain its own or obtain same through a third-party service. FOREMOST may elect to assist in security investigations, but shall not be liable for any inability, failure, or mistake in doing so.
12. Customer acknowledges that the internet consists of multiple third-party networks that are not subject to the control of FOREMOST, and Customer agrees that FOREMOST shall not be responsible for the performance or non-performance of any such networks, nor shall FOREMOST be responsible for any billing or services provided to and from Customer using any such networks. If Customer provides or receives services through third-party networks, Customer shall be solely responsible its use of such networks, any quality of service, including voice, which utilizes such networks, any notifications or approvals required by such networks, and any compliance with any policies of such networks.
13. FOREMOST provides internet service for use with FOREMOST Internet Protocol ("IP") addresses, which are assigned to FOREMOST. No other IP addresses may be used with this service unless approved by FOREMOST. If Customer leaves FOREMOST as their service provider, then Customer will lose use of all FOREMOST IP addresses. FOREMOST has sole discretion over internet routing of these IP addresses and may re-assign these addresses from time to time.

Customer Responsibilities

14. Customer agrees to not supply or use false or misleading caller identification information when using FOREMOST services. In addition, Customer shall not use FOREMOST services in a manner which will result in a high number of incomplete, unanswered, or short duration telephone calls, such as may result from automatic, sequential, or machine dialing services.
15. Customer further agrees to not use FOREMOST services in a manner which violates local, state, national, or international law, regulation, or treaty. FOREMOST may suspend service, or terminate or restrict any transmission over its network if, in its judgment, such actions are reasonably appropriate to avoid violation of applicable law, or if there is a reasonable risk that criminal, civil, or administrative proceedings or investigations based upon the transmission contents will be instituted against FOREMOST, its affiliated providers, operators, or maintenance or repair contractors (hereinafter the "Providers"). Customer shall defend, indemnify, and hold Providers harmless from any damages resulting from any court, administrative, or agency action, suit, or similar proceeding, whether administrative, civil, or criminal, and whether public or private, which may be brought against Providers for any claims, actual or alleged, arising from Customer's violation of this paragraph.
16. Customer further agrees to not use FOREMOST internet services in any manner which would violate the *Acceptable Use Policy* of FOREMOST, such as spamming, hacking, distributing malicious software, and the unauthorized use of copyrighted material. The *Acceptable Use Policy* is posted online at <http://www.foremosttelecom.com/> and may be modified at any time. Any use in violation of the *Acceptable Use Policy* may be grounds for suspension or termination of FOREMOST service. If the Customer's webpage is hosted on FOREMOST servers and is deemed to be obscene, inappropriate, or disruptive by FOREMOST, then FOREMOST may suspend access to such page until Customer removes or changes the page.

basis to the extent of such delay, prevention, restriction, or interference. The affected party shall use commercially reasonable efforts under the circumstances to avoid and remove such causes of non-performance and shall proceed to perform with reasonable dispatch when such causes cease.

Warranty

26. FOREMOST warrants that its services shall be provided to Customer substantially in accord with industry standards and any technical specifications set forth individually for each *Service Order*. Further, FOREMOST warrants that it shall use commercially reasonable efforts under the circumstances to remedy any delays, interruptions, omissions, mistakes, accidents, or errors in its services. The foregoing warranty is the sole and exclusive warranty of services under this Agreement.

ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ORAL OR WRITTEN, ARE HEREBY EXPRESSLY WAIVED, DISCLAIMED, AND DISAVOWED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

27. Customer acknowledges that any representations regarding technical specifications as indicated on an appropriate *Service Order* are approximate and subject to slight variation. Customer further acknowledges that FOREMOST services are subject to interference from components outside of the FOREMOST network, and that FOREMOST can only warrant those specifications as measured on components solely within the FOREMOST network.
28. Customer certifies that no promises, rates, services, or conditions have been represented by FOREMOST other than those specifically described in this Agreement and in any applicable *Service Orders*. Customer further certifies that it has not relied upon FOREMOST to assess Customer's needs and desired results when ordering FOREMOST services.

Indemnity

29. To the extent permitted under the Constitution and laws of the State of Texas, Customer agrees to defend, indemnify, and hold FOREMOST, along with its officers, directors, employees, agents, and contractors, harmless from and against any loss, debt, liability, damage, obligation, judgment, or settlement of any kind or nature, known or unknown, liquidated or unliquidated, including without limitation, all reasonable costs and expenses incurred, including attorneys' fees, expert witness fees, forensic accounting fees, and any and all other costs arising out of, resulting from, or based upon any complaint, demand, claim, action, proceeding, or suit, whether actual, pending, or threatened, which alleges an act or omission by the Customer in connection with, related to, or incidental to Customer's use of FOREMOST goods and services or Customer's performance under this Agreement. Customer shall promptly notify FOREMOST in writing when it becomes aware of any circumstances which invoke or may invoke the indemnity obligations set forth herein.

Confidential Information

30. FOREMOST and Customer agree that this Agreement and all documents referenced herein, any invoices for services provided hereunder, and any other materials which are identified as proprietary, confidential, a trade secret, or otherwise subject to limited distribution (hereinafter "Confidential Information") are confidential as between Customer, FOREMOST, and its affiliates, and shall not be disclosed to any other party. However, Customer and FOREMOST agree that Confidential Information may be disclosed as required under applicable law including, without limitation, the payment of taxes, compliance with the TEXAS PUBLIC INFORMATION ACT, and regulatory filings. The parties further agree that this prohibition of the disclosure of Confidential Information shall survive the termination of this Agreement.
31. The Parties agree that publication of information regarding the parties' relationship may occur through press releases, articles, interviews, marketing materials, online materials, and speeches, provided that both parties agree to same prior to any such publication.

Interpretation, Modification, and Assignment of Agreement

32. This Agreement and any *Service Orders* incorporating this Agreement constitute the complete and exclusive statement of the understanding between the parties and supersede all prior proposals and agreements between the parties, whether oral or written. Should any conflict arise between the terms of this Agreement and any *Service Order*, the terms of this Agreement shall control.
33. The parties intend that words having well-known technical or trade meanings shall be accorded such meaning, unless expressly defined otherwise.
34. In the event any provision of this Agreement conflicts with any statute, rule, tariff, or order of any governmental unit or regulatory body, then, if required by law, such statute, rule, tariff, or order shall control.
35. If one or more provisions contained within this Agreement are determined by a court of law to be invalid, waived, void, or otherwise unenforceable, then the remainder of the Agreement shall not be affected thereby, and shall continue in full force and effect.
36. The failure of either party to enforce any breach of this Agreement shall not constitute a pattern, course of conduct, ratification, or other waiver of such breach, regardless of its duration. Any ratification or waiver of such a breach must be in a writing signed by both the parties.
37. Any addition, deletion, or modification to this Agreement or any *Service Order* shall not be binding on either party unless in writing and signed by both parties.
38. Customer shall not assign or otherwise effect a transfer of control of its rights or obligations under this Agreement without the prior written consent of FOREMOST. Any such assignment or transfer of Customer's rights or obligations without such consent shall entitle FOREMOST to suspend or terminate the services provided hereunder. A transfer of control includes any assignment, merger, or sale of a controlling ownership interest. FOREMOST reserves the right to assign this Agreement at any time.
39. This Agreement shall inure to the benefit of, and shall bind, the heirs and successors of each executing party.

Governing Law and Resolution of Controversies

40. This Agreement is executed in Hidalgo County, Texas, where it shall be governed by the laws of the State of Texas without regard to choice of law principles. The parties agree that any disputes regarding this Agreement that are not otherwise to be resolved per the terms of this Agreement shall be resolved in the Courts of Hidalgo County, Texas.
41. If a proceeding is brought for the enforcement of this Agreement or for any resolution of any alleged or actual dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, then the prevailing party shall recover its reasonable attorneys' fees and any other reasonable costs and expenses incurred, including, but not limited to, filing fees, court costs, and expert witness fees, in addition to any other relief to which such party may be entitled.

Contact Information and Notices

42. Customer shall notify FOREMOST in writing of any changes to its name, address, or contact information.
43. All notices or correspondence to be sent to a party pursuant to this Agreement shall be in writing and deemed to be effective upon (i) actual delivery, (ii) three business days after mailing by registered or certified mail, or (iii) on the day when the notice has been sent by email or facsimile if such email or facsimile transmission is confirmed, though any such email or facsimile transmitted after 5:00 PM shall be deemed to have been received on the following business day. The contact information, addresses, telephone numbers, facsimile numbers, and email addresses for the respective parties to give any notice to the other party per the terms of this Agreement shall be:

FOREMOST TELECOMMUNICATIONS
5757 Alpha Road
Suite 110
Dallas, TX 75240
Telephone: (469) 554-4014
Facsimile: (469) 554-4015
Email: contracts@foremosttelecom.com
Attention: Contracts Manager

Telephone: _____
Facsimile: _____
Email: _____
Attention: _____

- 44. The signatories below represent and warrant that they are authorized by their respective organizations, as applicable, to enter into this Agreement.
- 45. This Agreement may be executed in counterparts. The parties agree that a copy of this Agreement with separate counterpart original, facsimile, or electronic signatures for each party shall have the same force and effect as an original Agreement containing original signatures for each party.

Certain services described herein are provided under authority granted to FOREMOST TELECOMMUNICATIONS by the Texas Public Utility Commission.

IN WITNESS WHEREOF, the parties hereto have closely read this Agreement, agree to all of its terms, and have executed this Agreement as of the day and year indicated below:

FOREMOST TELECOMMUNICATIONS:

Customer:

Signature of Authorized Representative

Printed Name

Title

Date

Signature of Authorized Representative

Printed Name

Title

Date