

# USAC Schools & Libraries

## Online Item 21 Attachment

The Billed Entity Number and Application Number you have entered are associated with the following Funding Request Number(s) (FRN). To begin the process please select "create attachment" from the status column below.

You must be a person authorized by the applicant shown to use this system.

To begin the process, please select from the status below.

### SCHOOL DISTRICT OF THE CITY OF ST. CHARLES

BEN: 136937

Application Number: 928601

Funding Request

No.:

FRN	Attachment #	Service Provider	Funding Category	Online Item 21 status
2536087	Int 1GIG for all loc..	Charter Communicatio..	Internet Access	<u>submitted online</u>

**Note:** Item 21 status shown on this screen refers to online submissions only. Manually filed submissions are not included. If you have received a Funding Commitment Decision Letter (FCDL) for the Form 471 shown above, you may not create, edit, or submit an online Item 21 Attachment. Select "submitted online" to view an Item 21 Attachment that has already been submitted.

Cancel

[SLD Home](#) | Phone: 1-888-203-8100 | [Submit a Question](#)

**FCC Form 471**

Services Ordered and Certification Form



Applicant's Form Identifier: StCharSDMO13-add-on

Entity Number: 136937

Contact Person: Richard Senturia

Phone Number: (314) 282-3676

**Block 6: Certifications and Signature**

Do not write in this area

471 Application Number: 928601

24. ☒ I certify that the entities listed in Block 4 of this application are eligible for support because they are:  
(Check one or both.)

a. ☒ schools under the statutory definitions of elementary and secondary schools found in the **No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38)**, that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or

b. ☐ libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any schools including, but not limited to, elementary, secondary schools, colleges, or universities.

25. ☒ I certify that the entity I represent or the entities listed on this application have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that the entities I represent or the entities listed in this application have secured access to all of the resources to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. I certify that the Billed Entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

a.	Total funding year pre-discount amount on this Form 471 (Add the entries from Item 23i on all Block 5 Discount Funding Requests.)	\$110,656.00
b.	Total funding commitment request amount on this Form 471 (Add the entries from Items 23k on all Block 5 Discount Funding Requests.)	\$70,819.84
c.	Total applicant non-discount share (Subtract Item 25b from Item 25a.)	\$39,836.16
d.	Total budgeted amount allocated to resources not eligible for E-rate support	\$40,200.00
e.	Total amount necessary for the applicant to pay the non-discount share of the services requested on this application AND to secure access to the resources necessary to make effective use of the discounts. (Add Items 25c and 25d.)	\$80,036.16
f.	<input type="checkbox"/> Check this box if you are receiving any of the funds in Item 25e directly from a service provider listed on any Forms 471 filed by this Billed Entity for this funding year, or if a service provider listed on any of the Forms 471 filed by this Billed Entity for this funding year assisted you in locating funds in Item 25e.	

26. ☐ I certify that, if required by Commission rules, all of the individual schools and libraries receiving services under this form are covered by technology plans that do or will cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body or an SLD-certified technology plan approver prior to the commencement of service.

HOME CANCEL SAVE &amp; EXIT HELP

**FCC Form 471**

Block 1

Block 2 &amp; 3

Block 4

Block 5

Block 6

Applicant's Form Identifier: **StCharSDMO13-add-on**Entity Number: **136937**Contact Person: **Richard Senturia**Phone Number: **(314) 282-3676****IMPORTANT**

Please record your Form 471 application number and security code. You will need this information if you wish to exit and return later to this online Form 471 application or if you wish to file your Item 21 Attachment Online.

471 Application Number: **928601**Billed Entity Number: **136937**Security Code Number: **83459**

Continue &gt;&gt; Print Now

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update #9,138<sup>2</sup> month  
+ \$1,000 one time install



## E-Rate Discount Election

I (authorized representative), Charles W. Brazeele, certify that (School/Library name) St. Charles R-6 School District elects the following option for E-Rate discounts and agree that this E-Rate Discount Election form is part of a legally binding Service Order between my organization and Charter:

(Please only check one)

☐

**BEAR (Billed Entity Applicant Reimbursement, Form 472)**

☐

**SPI\* (Service Provider Invoice, Form 474)**

*\*In the event that funding is rejected by USAC, SPI discounts will be charged back to customer who will be responsible for reimbursing Charter for such amounts. Please refer to the Terms and Conditions in your Service Agreement for further information regarding funding rejections.*

This form is due to Charter no later than the May 15<sup>th</sup> prior to the given funding year which starts July 1<sup>st</sup>. If no election is made by May 15<sup>th</sup>, Applicant will be deemed to have chosen BEAR for the applicable funding year.

Once SPI or BEAR has been chosen, this election will apply to all Services provided to customer for the duration of the service agreement unless the applicant notifies Charter otherwise, in writing. Such notifications must be completed by May 15<sup>th</sup> prior to the given funding year to be effective.

(All Fields Required)

School/Library Name: \_\_\_\_\_

BEN: \_\_\_\_\_

Funding Year: \_\_\_\_\_

FRN(s): \_\_\_\_\_

Printed Name: Charles W. Brazeele

Signature: [Signature]

Title: Asst. Superintendent For Business Technology

Date: 3/14/13

You may return this form with your signed service agreement or by one of the following methods:

Email: [DLE-RateAccountSpecialistTeam@chartercom.com](mailto:DLE-RateAccountSpecialistTeam@chartercom.com)

Mail: Charter Business, Attn: E-Rate Account Specialist Team, 12405 Powerscourt Drive, St Louis, MO 63131

(Do not write below this line)

Internal Use Only

Date Received: \_\_\_\_\_

Processed By: \_\_\_\_\_



201210192352755

**DATA TRANSPORT SERVICE AGREEMENT**

This Service Agreement ("Agreement") is executed and effective upon the latest date of the signatures set forth in the signature block below ("Effective Date") by and between Charter Fiberlink-Missouri, LLC, ("Charter Business" or "Charter") with local offices at 12405 Powerscourt Drive, St. Louis MO 63131 and St Charles City School District, ("Customer") with offices located at 400 N 6<sup>th</sup> St, Saint Charles, MO 63301.

Both parties desire to enter into this Agreement in order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. **This Agreement and each Service Order will be effective only after both parties have signed each document.**

**SERVICE ORDER****Under the Data Transport Service Agreement****CUSTOMER INFORMATION:**

Account Name: St Charles City School District  
Invoicing Address: 400 N 6<sup>th</sup> St, Saint Charles, MO 63301  
Invoicing Special Instructions: Control account # 8345786800000078

**1. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 400 N 6<sup>th</sup> St, Saint Charles, MO 63301  
Service Location Name (for purposes of identification): Administration Building  
Service Location Special Instructions: 1GIG WAN

**2. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 725 N Kingshighway St, Saint Charles, MO 63301  
Service Location Name (for purposes of identification): St. Charles High School  
Service Location Special Instructions: 1GIG WAN

**3. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 3601 Droste Rd, Saint Charles, MO 63301  
Service Location Name (for purposes of identification): St. Charles West High School  
Service Location Special Instructions: 1GIG WAN

**4. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 2400 Zumbahl Rd, Saint Charles, MO 63301

Service Location Name (for purposes of identification): Lewis and Clark Career Center

Service Location Special Instructions: 1GIG WAN

**5. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 1950 West Elm St, Saint Charles, MO 63301

Service Location Name (for purposes of identification): Hardin Middle School

Service Location Special Instructions: 1GIG WAN

**6. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 2660 Zumbahl Rd, Saint Charles, MO 63301

Service Location Name (for purposes of identification): Jefferson Intermediate School

Service Location Special Instructions: 1GIG WAN

**7. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 2000 Elm St, Saint Charles, MO 63301

Service Location Name (for purposes of identification): Blackhurst Elementary School

Service Location Special Instructions: 1GIG WAN

**8. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 2475 West Randolph St, St. Charles, MO 63301

Service Location Name (for purposes of identification): Coverdell Elementary School

Service Location Special Instructions: 1GIG WAN

**9. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 2800 Old Muegge Rd, St. Charles, MO 63301

Service Location Name (for purposes of identification): Harris Elementary School

Service Location Special Instructions: 1GIG WAN

**10. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 625 South Sixth Street, St. Charles, MO 63301

Service Location Name (for purposes of identification): Lincoln Elementary School

Service Location Special Instructions: 1GIG WAN

**11. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 2670 Zumbahl Road, St. Charles, MO 63301

Service Location Name (for purposes of identification): Monroe Elementary School

Service Location Special Instructions: 1GIG WAN

**12. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 435 Yale Blvd, St. Charles, MO 63301

Service Location Name (for purposes of identification): Null Elementary School

Service Location Special Instructions: 1GIG WAN

**13. SITE-SPECIFIC INFORMATION:**

☐ New ☒ Renew ☐ Change: Order Type: Renewal: No change  
Proposed Installation Date: 7/1/2013

Service Location (Address): 3061 Mercantile Industrial Drive, St. Charles, MO 63301

Service Location Name (for purposes of identification): Transportation Facility

Service Location Special Instructions: 1GIG WAN

**Customer Contact Information.** To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name		Charles Brazeale	Kevin Richmiller
Phone		636.443.4028	636.443.4084
Fax		636.443.4001	
Cell		636.627.9642	
Email		cbrazeale@stcharlessd.org	krichmiller@stcharlessd.org

**TOTAL MONTHLY SERVICE FEES:****Data Services:**

1 Gbps (Down/Up) each for 12 sites at **\$699.00**

1Gbps(Down/Up) each for 1 site at **\$750.00**

**\$9,138.00**

\* If Customer has selected the Charter Business Special Offers, the Section 3(i) of the Standard Terms of Service (for Charter Business Bundle) shall apply.

**ONE-TIME CHARGES:****ONE-TIME CHARGES \$1,000.00****2. TOTAL FEES.**

Total Monthly Service Fees of \$9,138.00 are due upon receipt of the monthly invoice.

Total One-Time Charges of \$1,000.00 are included in the first monthly invoice.

3. **SERVICE PERIOD.** The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 60 months. Upon expiration of the initial term, this Service Order shall automatically renew for successive one-month terms and Charter may then apply Charter's then-current Monthly Service Fees unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term.

4. **RELOCATION SPECIAL PROVISION.** a. In the event Customer relocates its business from the Service Location identified above prior to the end of the initial Service Period to a Charter serviceable location the Customer will execute a new Service Order to provision same level or greater of Charter Services for a Service Period no less than the remainder of the initial Service Period set forth herein to the new location. Then, in such case Customer may be subject to a reasonable relocation charge and any applicable One-Time Charges (e.g. installation) but shall not be charged Termination Charges for the termination of this Service Order. b. In the event Customer relocates its business from the Service Location identified above prior to the end of the initial Service Period to a location that is not serviceable by Charter, then, Customer shall have the right to terminate but shall then be liable for the Termination Charges equal to one hundred percent (100%) of (1) the outstanding balance of any and all One-Time Charges plus (2) any and all previously waived One-Time Charges (which may include but is not limited to construction, administrative, equipment and other operating costs).

5. **TROUBLE REPORTS.** Charter Business Network Operations Center: 866.603.3199

Charter operates and maintains the Charter Business Network Operations Center ("CB NOC"), which is staffed 24 hours a day, 7 days a week, 365 days a year. To report suspected problems with your fiber-based Service(s) call the CB NOC for support @ 866.603.3199. Charter shall provide a telephone response to such calls within one (1) hour, and, if necessary, initiate a physical response within four (4) hours of receiving Customer's call reporting the problem. Once the CB NOC representative has received the necessary information, a Customer Trouble Ticket will be assigned and investigation of Trouble Ticket will begin. After the status of the Trouble Ticket has been determined, the CB NOC will contact Customer's designated contact individual at the appropriate number to discuss the findings.

6. **SERVICE CREDITS.** Customer shall be entitled to one (1) hour of service credit per Site per affected fiber optic-based Service (i.e. circuit) for each hour of Service Interruption if the interruption: (a) exceeds four (4) consecutive hours, (b) is not caused by Customer, or its agents, employees, licensees, or contractors, or a Force Majeure Event, (c) is not caused by Customer-provided equipment or facilities beyond the demarcation point, (d) is not caused by scheduled maintenance, and (e) a Trouble Ticket has been opened within 24 hours of the commencement of the interruption. Service Credits shall not apply to any period of time for which Charter is not granted access, if necessary, to the applicable Customer Site. A "Service Interruption" is the continuous period of time during which a respective Service is not provided substantially as ordered to one or more Customer Sites. A Service Interruption commences when Charter becomes aware of such Service Interruption of a Service and ends when the Service is operational and the Trouble Ticket is closed.

A Service Credit is calculated as follows:

\* Service Credit = Per Hour Rate X (# of consecutive hours during Service interruption)

\* Per Hour Rate = Per Day Rate/twenty-four (24)

\* Per Day Rate = Monthly Service Charge/thirty (30) days

(30 = average days in one [1] month)

Any Service Interruption that exceeds a consecutive period of twelve (12) hours shall be considered an outage for one (1) day.

Example:

If Customer is paying a \$10,000 Monthly Service Fee and a Service interruption of one (1) day (or 24 hours) occurs, the Service Credit shall be equal to \$333.33 and shall be applied on the billing cycle following the date Charter makes its credit determination:



Per Day Rate = \$10,000/30 days = \$333.33  
Per Hour Rate = \$333.33/24 hours = \$13.89

Service Credit = 1 day X \$333.33 = \$333.33  
OR  
24 hours X \$13.89 = \$333.33

Service credits will be based on the Customer's Monthly Service Fee for those Sites and specific Services affected by the Service Interruption. Non-recurring, equipment and usage-based charges are excluded. The sum of all Service Credits shall not exceed the Customer's total Monthly Service Fees for the month in which the Service Interruption occurred. The Customer must contact Charter Business at 866.603.3199 (or successor applicable toll-free number) to request a Service Credit for a specific Service Interruption. Charter Business will exercise commercially reasonable efforts to respond to such Service Credit requests within fifteen (15) business days of receipt thereof. The approved Service Credit will be applied on the billing cycle following the date Charter makes its credit determination. Service Credits shall be Customer's sole and exclusive remedy for Charter's failure to provide Services as warranted.

7. **NO UNTRUE STATEMENTS.** Customer further represents and warrants to Charter that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to Charter contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.
8. **CONFIDENTIALITY.** Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law. If any unauthorized disclosure is made by Customer and/or its agent or representative, Charter shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Charter shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement.
9. **E-RATE CONTINGENCY.** This Service Order under the Agreement will, collectively, serve as a binding contract between Charter and Customer and, in the event Customer seeks federal E-rate subsidy for Services, Customer may submit this Service Order and the Agreement for submission to either (a) the Schools and Libraries Division of the Universal Service Administration Company, the entity appointed by the Federal Communications Commission ("FCC") to administer the Universal Service Program with respect to E-Rate funding under 47 C.F.R. § 54.504 or (b) some other entity appointed in the future by the FCC or otherwise designated under applicable law to perform such function. The requirement of performance of respective obligations hereunder by the parties, however, shall be contingent upon notification of (i) acceptance/approval of this Service Order and Agreement by the Schools and Libraries Division and (ii) an award of E-rate funding therefore by the Schools and Libraries Division as specifically provided below.

In the event of rejection of an application for award or an award which is less than the Customer requested E-rate funding, the Customer shall have the option of either (A) terminating this Service Order, in which case the Customer must negotiate in good faith with Charter the terms of a new Service Order under which services might be procured/provided or (B) paying Charter directly for any shortfall in amounts necessary to pay for any services already rendered and all Services going forward including the Installation Fee, Monthly Service Fees, any other amounts required hereunder. Customer must provide Charter with written notice of its election ((A) or (B)) hereunder within twenty (20) days of receiving notification from the Schools and Libraries Division regarding the award or rejection of an application for award of E-rate funding. In the event Customer's election notice is not received by Charter within twenty (20) days of the date of the award or rejection notification by the Schools and Libraries Division, option (B) above shall be deemed to have been chosen by the Customer and the Customer shall remain responsible for fulfillment of the obligations set forth in this Service Order under the Agreement thereafter. If Customer voluntarily withdraws or is involuntarily removed from the E-rate program regarding Services under this Service Order, Customer's obligations under this Service Order and the Agreement shall remain in full force and effect and the options related to E-rate above become null and void.

10. **FACSIMILE.** A copy sent via fax machine or scanned and e-mailed of a duly executed Agreement and Service Order signed by both authorized parties shall be considered evidence of a valid order, and Charter may rely on such copy of the Agreement and Service Order as if it were the original.

**NOW THEREFORE,** Charter and Customer agree to the terms and conditions included within this Service Agreement, including the Commercial Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

Charter Fiberlink-Missouri, LLC

St Charles City School District

By: Charter Communications, Inc., its Manager

Signature: \_\_\_\_\_

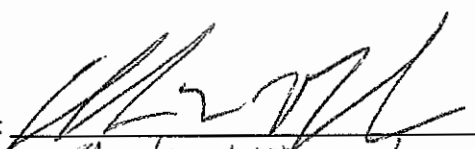
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Charter Business Account Executive:**

Name: Linda Moreland

Signature:  \_\_\_\_\_

Printed Name: Charles W. Brazzale

Title: Asst. Supt. for Business / Tech.

Date: 3/14/13

## COMMERCIAL TERMS OF SERVICE

1. **AGREEMENT TERM.** This Agreement shall terminate upon the lawful termination of the final existing Service Order entered into under this Agreement.
2. **SERVICE.** Charter shall provide the Services during the Service Period to Customer at the site(s) identified in the Service Order(s). "Service Period" is the time period starting on the date the Services are functional in all material respects and available for use (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).
3. **STANDARD PAYMENT TERMS.** Customer shall pay fees and charges for the Services in the amount specified on the Service Order in accordance with this Agreement. A one-time charge ("OTC") is a nonrecurring fee for construction, Service installation charge(s), repair, replacement, or any other nonrecurring costs or charges. "Equipment" means the components (e.g., any gateway or edge electronic device, node, router, switch, communications lines/cables, etc.) that make up the Network. "Network" means all of the physical elements necessary to provide the Services.
  - (a) **Charges.** Customer shall pay all associated charges associated with the Service(s), as set forth or referenced in the applicable Service Order(s) or invoiced by Charter. These charges may include, but are not limited to a monthly service fee ("MSF"), nonrecurring fees for construction, installation, repair, replacement or other one-time charges ("OTC"), usage charges such as, pay-per-view charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated), MSFs shall be subject to increases attributable to programming, license, copyright, retransmission and/or other similar costs imposed upon Charter, Charter shall provide not less than thirty (30) days prior notice to Customer of any MSF change.
  - (b) **Taxes, Surcharges, and Fees and Fees.** Customer shall pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. A copy of Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees. Charter reserves the right from time to time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on Charter which Charter is permitted or required under applicable law to pass through to Customer (e.g., universal service fund ("USF") charges, franchise fees etc.).
  - (c) **Change Requests.** Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Order for the applicable site are the sole financial responsibility of Customer. Charter shall notify Customer, in writing, of any additional OTCs and/or adjustments to MSFs associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to accept such additional charges within three days of receiving such notice shall be deemed a rejection by Customer, and Charter shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed such additional OTCs and/or adjustments of the MSFs either (i) in advance of implementation of the change request or (ii) beginning on Customer's next and/or subsequent invoice(s).
  - (d) **Site Visits and Repairs.** If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to the Customer site for inspection, correction or repair, Charter may charge Customer a site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may be necessary.
  - (e) **Invoicing Errors.** Customer must provide written notice to Charter of any invoice errors or disputed charges within 30 days of the Invoice date on which the errors and/or disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged.
  - (f) **Late Fees.** Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month or the maximum amount permitted by law.
  - (g) **Non-payment.** If Services are suspended due to late payment, Charter may require that Customer pay all past due charges, a reconnect fee, and one or more MSFs in advance before reconnecting Services.
  - (h) **Collection Fees.** Charter may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement.
  - (i) **Bundled Pricing.** If Customer has selected a Charter Business Bundle ("CBB") specifically, the following conditions shall apply:
    - i. In consideration for Customer's purchase of all Services in the CBB and only with respect to that period of time during which Customer continues to purchase such CBB, Charter shall apply a discount to the Services ordered under the applicable Service Order(s). Such discount has been applied to the Services included in Charter's bundled pricing offer and is reflected in the MSF for such Services.

- ii. Upon discontinuation or termination by Customer of any component of a Service of the applicable CBB, the pricing for the remaining Services shall revert to Charter's a la carte pricing for such Services in effect at the time. Termination liability applicable to the Services under this Agreement shall otherwise remain unchanged.

#### 4. SERVICE LOCATION ACCESS AND INSTALLATION.

- (a) Access. Charter will require reasonable access to each service location listed on a Service Order ("Service Location") as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns or controls the Service Location(s), Customer grants Charter permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with Charter's assistance, appropriate right of access. If such right of access for Charter is not obtained by either party, then Charter's obligations with respect to such Service Location shall be considered null and void.

- (b) Installation Review: Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services. Upon request, Customer shall provide Charter with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review. If Charter determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

If during a Service Period, or any renewal thereof, (i) proper operation of Equipment or provision of a Service is no longer unhindered or possible as a result of interference or obstruction due to any cause other than Charter or (ii) such interference/obstruction or its cause may endanger, hinder, harm or injure Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.

- (c) Site Preparation. Customer shall be responsible for necessary preparations at its location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or maps prior to installation or maintenance work to be undertaken by Charter.
- (d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. If

during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any additional OTCs. If Customer does not agree to pay such OTCs by executing a revised Service Order within five business days of receiving the same, Customer and Charter shall each have the right to terminate the applicable Service Order. Customer shall connect Customer's computer or network to applicable Charter-provided Equipment to enable access to the Services. Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation.

- (e) Ongoing Visits. Charter will need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, Charter will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

#### 5. EQUIPMENT AND MATERIALS.

- (a) Responsibilities and Safeguards. Except as otherwise provided in this Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party; provided, however, that subject to the indemnification limitations set forth in this Agreement, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage—causing party's negligence or willful misconduct. Customer shall:

- i. Safeguard Equipment against others;
- ii. Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- iii. Not hire nor permit anyone other than personnel authorized by Charter acting in their official capacity to perform any work on Equipment; and
- iv. Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including reasonable attorney fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services, Charter shall not be obligated to distribute a signal to the Premises

better than the highest quality which can be furnished without additional cost to Charter as a result of such interference, until such time as the interference is eliminated.

- (b) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service and/or Equipment. Charter may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.
  - (c) Ownership. Notwithstanding any other provision contained in this Agreement to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Agreement.
  - (d) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of this Agreement and/or Service Order(s) ("Termination"), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer. Failure of Customer to return, or allow Charter to retrieve, Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the retail cost of replacement of the unreturned Equipment. Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by Charter in obtaining or attempting to regain possession of such Equipment, including reasonable attorney fees.
6. ADMINISTRATIVE WEB SITE. Charter may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). Charter may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Charter if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and Charter shall only be entitled to rely on all Customer uses of and submission to the Administrative Web Site as authorized by Customer.

Charter shall not be liable for any loss, cost, expense of other liability arising out of any Customer use of the Administrative Web Site, Charter may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

7. VIDEO, MUSIC AND CONTENT SERVICE. This Video, Music and Content Service Section shall only apply if Video, Music and Content Services are included in a Service Order under this Agreement; however, continued use or reception of the Video Services is subject to the provisions of this Agreement..
- (a) Music Rights Fees. Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate relating to Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.
  - (b) Premium and Pay-Per-View. Customer may not: (i) exhibit any premium Services such as HBO or Showtime in any public or common area; (ii) order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment; or (iii) exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to Charter's prior written consent.
  - (c) HD Formatted Programming. If Customer has selected High Definition ("HD") formatted programming, Customer is responsible for provision, installation and maintenance of the receiving equipment and/or facilities necessary for its reception and display. Any failure of Customer to fulfill the foregoing obligation shall not relieve Customer of its obligation to pay the applicable MSFs or OTCs for the HD formatted programming.
  - (d) Provision of Service. Without notice, Charter may preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming comprising, packaging of, line-up applicable to, and/or distribution of its Video Services.
  - (e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); or (ii) transmit the Services by any television or radio broadcast or by any other means or use the Services outside the Service Location. Customer acknowledges that such duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. With respect to the music programming comprising a portion of the Services, Customer shall not, and shall not

authorize or permit any other person to, do any of the following unless Customer has obtained a then-current music license permitting such activity: (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements.

**8. INTERNET ACCESS SERVICE.** This Internet Access Service Section shall only apply if Internet Access Services are included in a Service Order under this Agreement; however, continued use of the Internet Service shall be subject to the provisions of this Agreement.

- (a) Customer shall (i) maintain certain minimum equipment and software to receive the Service (see [www.charterbusiness.com](http://www.charterbusiness.com) (or the applicable successor URL) for the current specifications); (ii) ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement, (iii) be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.
- (b) Internet Service Speeds. Charter shall use commercially reasonable efforts to achieve the Internet speed selected by Customer on the Service Order, however, actual Internet speeds may vary. Many factors affect speed including, without limitation, the number of workstations using a single connection.
- (c) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by Charter are the property of Charter. [Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses]
- (d) Changes of Address. Charter may change addressing schemes, including e-mail and IP addresses.
- (e) No Liability for Risks of Internet Use. The Service, Charter's network and the Internet are not secure, and others may access or monitor traffic.
- (f) No Liability for Purchases. Customer shall be solely liable and responsible for all fees or charges for online services, products or information. Charter shall have no responsibility to resolve disputes with other vendors.
- (g) Blocking and Filtering. Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Except to the extent set forth in the Supplemental Charter Business Security Service Section, Charter shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. Charter does not warrant that others

will be unable to gain access to Customer's computer(s) and/or data even if Customer utilizes blocking and filtering technologies, nor does Charter warrant that the data or files will be free from computer viruses or other harmful components. Charter has no responsibility and assumes no liability for such acts or occurrences.

- (h) Acceptable Use Policy. Customer shall comply with the terms of Charter's Acceptable Use Policy ("AUP") found at [www.charterbusiness.com](http://www.charterbusiness.com) (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by Charter with or without notice to Customer. Charter may suspend Service immediately for any violation of the Charter AUP.

**9. SUPPLEMENTAL SERVICES.** The following Subsections shall only apply in the event the referenced supplemental service has been selected by and are being delivered to Customer. The supplemental services (also "Services") may be made up of software and hardware components. Charter shall ensure the supplemental services are operational and updated from time-to-time based on manufacturer-sent updates. Except to the limited extent described in the foregoing sentence, Charter makes no warranties of any kind (express or implied) regarding the supplemental services and hereby disclaims any and all warranties pertaining thereto (including implied warranties of title, noninfringement, merchantability, and fitness for a particular purpose). Charter does not have title to and is not the manufacturer of any software or hardware components of the supplemental services nor is Charter the supplier of any components of such software or hardware. Customer shall return or destroy all software components provided to Customer upon the termination of the applicable Service Order, and in the case of the destruction thereof, shall, upon request, provide Charter with certification that such components have been destroyed. **IN NO EVENT SHALL CHARTER BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY SUPPLEMENTAL SERVICES.**

- (a) Hosting. This Hosting Service subsection shall only apply if one of Charter's Hosting Services ("Hosting") is included as part of the Service in a Service Order under this Agreement. Charter will provide to Customer Hosting Service in accordance with the specifications associated with the plan Customer has selected on the Service Order.
  - i. Hosting Software. The Hosting Service will permit access to a variety of resources available from selected third parties, including developer tools, communication forums and product information (collectively, "Hosting Software"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may be subject to and Customer shall comply with applicable product use rights/end user



license agreements between such third parties and Customer. Without abrogating or limiting anything set forth in the Sections: Internet Access Service, this Section, No Third-Party Support, Customer Use or Performance, Charter (not the manufacturer) shall provide technical support for Hosting Service, but version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility. Customer hereby consents to the disclosure to the provider of Third Party Software, of Customer's name and any other necessary information for the limited purpose of licensing rights. Customer shall not use Hosting Service for or in connection with any high risk use or activity such as aircraft or other modes of human mass transportation, nuclear, or chemical facilities, or Class III medical devices under the Federal Food, Drug, and Cosmetic Act. **COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS APPROVED IN WRITING BY CHARTER.**

- ii. Domain Names. Customer shall be solely responsible for registering for or renewing a desired domain name. Charter does not guarantee that Customer will be able to register or renew a desired domain name.
  - iii. Specification Limitations. Individual websites may not at any time exceed the Hosting specifications identified on the applicable Service Order. If Customer's Hosting account exceeds the applicable specifications or is adversely impacting Charter's network or server(s), Charter may (i) contact Customer to resolve the issues; or (ii) if Customer has exceeded the then-applicable specifications in any given month, upgrade account on the next available billing cycle to the next service level tier or suspend or terminate the Hosting Service.
- Notwithstanding anything to the contrary, if Customer's use of the Hosting Service is causing an adverse impact on Charter's network or servers, Charter may suspend or terminate the Hosting Service without notice.
- iv. Limitation of Charter-provided Services. Certain services are not provided by Charter as part of the Hosting Service (e.g., Charter does not provide nor offer webpage creation, development, design or content services).
  - v. Hosting Fees. The applicable Service Order sets forth the MSFs for the Hosting Service. Customer is responsible for payment whether or not the hosting platform is used and whether or not it functions properly, unless such failure is caused by Charter.
  - vi. Content Liability and Use Restrictions. Charter exercises no control over the content of the information passing through Customer's site(s) and it is

Customer's sole responsibility to ensure that Customer and Customer's users use of the Hosting Service complies at all times with all applicable laws and regulations and the AUP. Charter shall have the right to disclose any and all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes IP addresses, account history, and files stored on servers used to provide the Hosting Service. If Customer engages in any of the following prohibited activities, Charter shall have the right to suspend or terminate the Hosting Services and/or this Agreement:

- 1. The hosting of unlicensed software.
  - 2. Use of software or files that contain computer viruses or files that may harm user's computers;
  - 3. Any attempt or actual unauthorized access by Customer or through Customer's equipment to any Charter website or the website of any Charter customer;
  - 4. The collection or any attempt to collect personally identifiable information of any person or entity without his, her or its express written consent. Customer shall maintain records of any such written consent throughout the term of this Agreement and for three years thereafter;
  - 5. Any action or inaction which is harmful or potentially harmful to the Charter server structure;
  - 6. Running a banner exchange, free adult thumbnail gallery post and/or free adult image galleries on your website; ] or
  - 7. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites, users or providers.
- vii. Impositions on Customer's End Users. Customer is responsible for charging and collecting from its end users any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users then, as between Charter and Customer, Customer shall be liable for such uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax. Customer shall indemnify and hold the Charter Indemnified Parties (defined below) harmless for any costs incurred or taxes or fees paid due to actions taken by the applicable taxing authority to collect any such tax from Charter due to Customer's failure to comply with this Section.
- (b) CB Security Service – Desktop and Managed. Charter's managed security service, CB Managed Security, and desktop security service, CB Desktop Security (collectively, "CB Security Service") are each made up of software and hardware components. Charter shall ensure that the selected CB Security Service(s) is/are operational and updated from time-to-time based on manufacturer-

sent updates. Charter is not the manufacturer of any software or hardware components of either Charter Business Security Service nor is Charter the supplier of any components of such software or hardware.

- (c) **CB Back-Up Service.** For Charter's data storage service ("CB Back-up"), Customer shall be assessed applicable OTCs and MSFs which shall be based upon Customer's selection of version retention quantity and storage tier (e.g., five gigabits). The version retention quantity selected specifies the maximum number of separate versions of a document that will be retained (running in sequential order based on the last version created). For example, if Customer has selected "seven" as the version retention quantity, Customer will be able to access the last seven versions of a particular document. In addition to OTCs and MSFs, monthly storage overage fees shall apply each month Customer exceeds the respective subscribed storage level. Additional OTCs and MSFs also apply to Customer-requested media and/or professional services.

Charter is not the manufacturer or supplier of any CB Back-Up software components. Customer shall be responsible for updating CB Back-Up from time-to-time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve Charter from any responsibility to ensure that CB Back-Up remains operational.

If the functionality of CB Back-Up cannot be maintained by Charter, Charter shall have the right to discontinue providing the Service immediately and Charter shall credit Customer's account for any pre-paid MSFs attributable to the Service, except where such lack of functionality is caused by Customer or any end user gaining access to the Service through Customer's facilities, equipment, or point of access. Customer shall not be relieved of its responsibility to continue to pay for CB Back-Up in the event CB Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT (1) IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE CB BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE CB BACK-UP SERVICE AND (2) CHARTER HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S CB BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS OF ACCESSABILITY TO DATA STORED VIA CB BACK-UP.

- 10. DATA NETWORKING (aka "DATA TRANSPORT").** Charter will provide Data Networking Services for Customer locations connected over coaxial and/or fiber-optic cable. Connectivity is established between two or more customer end-points under a unique customer topology. Charter will install the coaxial or fiber-optic cable into each Customer site as listed in the Service Order(s). Charter will also supply an edge device at each site that

will be capable of receiving the Service as specified in the Service Order(s).

- i. Charter will terminate fiber-optic cable on a patch panel or provide a coaxial outlet at an agreed upon minimum point of penetration (MPOP) up to 50 feet within each facility (unless otherwise specified in the Service Order). If the hand-off point of the Data Networking Service at Customer's premise exceeds this distance, Customer may be responsible for any additional costs for internal wiring.
- ii. Customer will make available to Charter a building ground connection at each location that meets current electrical codes for the placement of a fiber-optic patch panel and/or coaxial outlet. Unless otherwise specified in the applicable Service Order, it is recommended that Customer provide a separate 20 Amp 110V AC circuit for the edge electronics, which is powered by a UPS system. Customer-supplied routing will be necessary for communication between each Service Location.
- iii. If Customer has selected "Monitoring" for a Service, Charter shall monitor the Services 24 hours a day, seven days a week. Customer shall contact the Charter Business Network Operations Center at 1-866-603-3199 or subsequent number to report Data Networking Service problems. Additional fees may apply for Monitoring over coaxial cable.

- 11. NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT.** Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. For purposes of this Agreement the Hosting Software shall be considered third party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

- 12. CUSTOMER USE.** Customer shall not re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer shall not use or permit third parties to use the Service(s), including the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall not interfere with other customers' use of the Equipment or Services or



disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate Termination of this Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have.

13. **PERFORMANCE.** Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.
14. **DEFAULT; SUSPENSION OF SERVICE; TERMINATION.** No express or implied waiver by Charter of any event of default shall in any way be a waiver of any further subsequent event of default. Nothing herein, including Termination, shall relieve Customer of its obligation to pay Charter all amounts due.
- (a) **Default by Customer.** Customer shall be in default under this Agreement if Customer does one or more of the following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice:
- i. Customer is more than 30 days past due with respect to any payment required hereunder;
  - ii. Customer otherwise has failed to comply with the terms of this Agreement or any other Service Order(s) incorporated herein.
- (b) **Termination for Convenience.** Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order, or this Agreement in whole or part, at any time during the Service Period upon thirty (30) days prior written notice to Charter, and subject to payment of all outstanding amounts due, any applicable Termination Charges, and the return of any Charter Equipment.
- (c) **Charter's Right to Terminate and Termination Charge.** If Customer is in default, Charter shall have the right, at its option, without prior notice, and in addition to any other rights of Charter expressly set forth in this Agreement and any other remedies it may have under applicable law to:
- i. Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this

Agreement (e.g., the MSFs) as if such suspension of Services had not taken place;

- ii. Terminate the Services, this Agreement or the applicable Service Order(s).

If Termination is due to noncompliance by Customer or is elected/done by Customer for convenience, Customer must pay Charter a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to 50% of the unpaid balance of the MSFs that would have been due throughout the remainder of the applicable Service Period plus 100% of (1) the outstanding balance of any and all OTCs plus (2) any and all previously waived OTCs.

- (d) **Default by Charter.** Charter shall be in default under this Agreement if Charter fails to comply with the terms of this Agreement and/or any or all of the applicable Service Order(s), and Charter fails to remedy each such noncompliance or occurrence within 30 days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance.

(e) **Customer's Right to Terminate and Termination Charge.**

- i. In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the same Termination Charges as described above.
- ii. Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of default and/or noncompliance by Charter is limited to Services provided under the applicable Service Order(s) or this Agreement, if such noncompliance is not so limited, provided that Charter's diligent efforts to correct such breach are not commenced and pursued within 30 days after Charter's receipt of a written notice from Customer describing in reasonable detail the nature, scope and extent of the event of default/noncompliance.
- iii. If Termination is due to noncompliance by Charter, Charter shall reimburse Customer for any pre-paid, unused MSFs attributable to such terminated Service Order(s). In addition, if Termination is due to noncompliance by Charter within one year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any OTC that has already been paid by Customer to Charter relative to Service at the sites covered by the terminated Service Order. This Termination Charge shall be equal to the product of a) the number of months (including partial months) remaining in the initial 12 months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of OTCs paid to date and the denominator is 12.

15. LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- (a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer. Charter does not warrant that Services will be error free.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCS, PAID OR PAYABLE BY CUSTOMER TO CHARTER FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within 30 days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse

any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.

- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.
- (d) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold harmless and indemnify the Charter Indemnified Parties from and against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing Customer's computers, its internal network and/or the Network through Customer's equipment.
- (e) Force Majeure Event. Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond such party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive condition shall not be considered a Force Majeure Event.

16. INDEMNIFICATION. In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Customer at its own expense, shall indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits,

damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including reasonable attorney fees and court costs incurred by Charter Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Charter Indemnified Parties in such case.

17. **TITLE.** Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer premises free and clear of all liens, encumbrances and security interests. Upon termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within 60 days after such termination.
18. **COMPLIANCE WITH LAWS.** Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.
19. **PRIVACY.** Charter treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy may be found on Charter's website at [www.CharterBusiness.com](http://www.CharterBusiness.com). The Privacy Policy may be updated or modified from time-to-time by Charter, with or without notice to Customer.
20. **GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to Charter (a) that Customer has the authority to execute, deliver and carry out the terms of this Agreement and associated Service Orders and (b) that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Agreement. Customer is responsible for ensuring its users of the Service comply with the terms of this Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use.

Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until informs Charter of any breach of security.

21. **NOTICES.** Any notices to be given under this Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:  
Charter Communications  
ATTN: Charter Business  
12405 Powerscourt Drive  
St. Louis, MO 63131

with copies to:  
Charter Communications  
ATTN: CB Corporate – Contracts Management  
Dept: Corporate Operations  
12405 Powerscourt Drive  
St. Louis, MO 63131

Notices to Customer shall be sent to the Customer billing address.

Each party may change its respective address(es) for legal notice by providing notice to the other party.

## 22. MISCELLANEOUS.

- (a) Entire Agreement; Signatures. This Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.
- (b) No Amendments, Supplements or Changes. Except for pricing terms as set forth in this Agreement, this Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both parties' prior written consent.
- (c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld; provided, however, that without Customer's consent, Charter may assign this Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Charter, or to its successor-in-interest if Charter sells some or all of the underlying communications system.

- (d) Severability. If any term, covenant, condition or portion of this Agreement or any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any related, executed Service Order(s) shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- (f) Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Service Order(s) and, accordingly, no court construing this Agreement and any Service Order(s) shall construe it more stringently against one party than against the other.
- (g) No Third Party Beneficiaries. The terms of this Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Agreement, and the consideration provided by each party hereunder only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto

Waiver. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.