

# **ImOn Communications**

## **Business Terms of Service**

ImOn Communications, LLC and its affiliates or designees (collectively “We” or “ImOn”) will provide the service(s) (“Service”) that you (“You” or “Customer”) purchase from ImOn. By using the Service, you agree to be bound by all applicable terms, including without limitation, these terms and conditions, the Acceptable Use Policy (“AUP”), and any other applicable ImOn policy as each may be amended from time to time. Any new ImOn terms posted on its website shall be effective upon posting and incorporated into all ImOn contracts.

1. **SERVICE.** ImOn agrees to provide the Services during any applicable Service period, if any, agreed to with the Customer at the site(s) identified in the Agreement and Service Order(s).

2. **PAYMENT TERMS.** Customer agrees to pay all applicable charges, including without limitation, the Monthly Service fees and any “One-Time Charges” that include, but are not limited to, Build-out and construction, Service installation charge(s), repair, replacement, or any non-recurring charges. “Service Installation Charge” is the amount specified as the fee for installation of any applicable and necessary equipment and network facilities.

(a) **Monthly Service fees.** Customer agrees to pay the Monthly Service fees in advance of the provision of the Services. Monthly Service fees are due upon the ‘Due Date’ marked on the Customer’s monthly invoice.

(b) **One-Time Charges.** Customer agrees to pay the One-Time Charges as described on the applicable Service Order(s) and in the Agreement.

(c) **Taxes, Fees, and Government Charges.** Customer agrees to pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes), arising under this Agreement, including, without limitation, applicable state property taxes. A copy of the Customer's tax exemption document, if applicable, must be provided to ImOn to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees.

(d) **Charges for Change Requests.** Any charges associated with Service and Equipment installations, additions, modifications, substitutions, upgrades, reconfigurations, rebuilds or relocations at a site and requested by Customer subsequent to executing a Service Order for that site, are the sole financial responsibility of Customer. ImOn shall notify Customer, orally or in writing, of any additional One-Time Charges and/or adjustments to Monthly Service fees associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to object to such additional charges within three (3) days of receiving such notice shall be deemed an acceptance by Customer of such charges. Customer shall be assessed such additional One-Time Charges and/or adjusted Monthly Service fees, either (i) in advance of implementation of the change request or (ii) beginning on the Customer's next and/or subsequent invoice(s).

(e) **Site Visits and Repairs.** If Customer's misuse, abuse or modification of the Services, Equipment or Network facilities supplied by ImOn necessitates a visit to the Customer site for inspection, correction or repair, Customer agrees that ImOn may charge a site visit fee as well as charges for any Equipment or Network repair or replacement necessary to restore Service.

(f) **Invoicing Errors.** Customer must provide notice to ImOn of any invoice errors or disputed charges within thirty (30) days of the invoice date on which the errors and/or disputed charges appear in order for Customer to be eligible to possibly receive any credit that may be due. Failure to timely dispute shall constitute a waiver of such right by Customer.

(g) Late Fees. If Customer fails to timely pay an invoice on the Due Date marked on the Customer Invoice, Customer agrees that ImOn may charge Customer a late fee totaling one and one-half percent (1.5%) interest per month on the outstanding, past-due balance. Failure to timely dispute within 30 days of the invoice date shall constitute a waiver of such right by Customer.

(h) Non-Payment. If Services are disconnected for any reason, including without limitation, because Customer does not timely pay the invoice, ImOn may, in its sole discretion, require that Customer pay all past due charges, a reconnect fee, and a minimum of one month's Monthly Service fees in advance before ImOn will reconnect Services. In addition, Customer acknowledges that any monthly discounts offered on a promotional basis or recurring basis may be forfeited in the event of untimely payment.

(i) Returned Checks, Bankcard or Credit Card Charge-Backs. ImOn may charge a reasonable service fee as permitted by law for all returned checks and bankcard, credit card or other charge card charge-backs.

(j) Attorney's Fees and Costs. Customer shall be responsible for all expenses, including reasonable attorney's fees and costs, incurred by ImOn in enforcing this Agreement and/or collecting any unpaid amounts due.

(k) In the event that ImOn costs increase due to factors outside of ImOn's control, including without limitation, increased retransmission and programming costs, Customer acknowledges and agrees that ImOn shall pass through and Customer shall pay such increased costs regardless of whether Customer is currently receiving any promotional pricing for ImOn Services.

(l) Early Termination Charge and Build-Out costs, if applicable, as defined in the Agreement.

### 3. SERVICE LOCATION ACCESS, INSTALLATION and SERVICE HOURS.

(a) Access. Customer shall provide ImOn with reasonable access to each Service Location listed on a Service Order as necessary for ImOn to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns and/or controls the Service Location(s), Customer grants to ImOn permission to enter the site(s) for the exercise of such right. If a site is not owned and/or controlled by Customer then Customer will obtain, with ImOn's assistance, appropriate right of access. If Customer is not able to gain right of access for a site from owner and/or controlling party, ImOn's obligations under this Agreement and the appropriate Service Order for such site may be terminated, null and void, without any liability.

(b) Installation Review; Subsequent Interference. ImOn may perform an installation review of each Service Location prior to installation of the Services at that Service Location. Customer may be required to provide ImOn with accurate site and/or physical network diagrams or maps of a Service Location prior to the installation review. ImOn may directly or through its agents inspect the Customer Premises before beginning installation, and shall satisfy itself that safe installation and proper operation of its Equipment and the Services are possible in the location(s) provided by Customer. If ImOn, in its sole discretion, determines that safe installation and/or activation of one or more of the Services will have negative consequences to ImOn's personnel or Network and/or cause technical difficulties to ImOn or its customers, ImOn may terminate the Service Order effective upon prior written notice to Customer or may require the Customer to correct the situation before proceeding with installation or activation of the Services. In the event during the initial or any renewal Service Period, (i) proper operation of ImOn's Equipment and/or unhindered provision of the Services is no longer possible as a result of interference or obstruction caused by the acts or omissions of Customer, a third party or any Force Majeure Event, or (ii) such interference/obstruction or the cause thereof will have negative consequences to ImOn's personnel or Network and/or cause technical difficulties to ImOn or its customers, as ImOn may determine in its sole discretion, ImOn may terminate the affected Service Order(s) without liability upon written notice to Customer.

(c) Site Preparation. Customer shall be responsible, at its own expense, for all site preparation activities necessary for delivery and installation of the Equipment and the installation and ongoing provision of Services, including, but not limited to, the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment and/or Services. To ensure proper installation of the Equipment and the Services, Customer may be required to provide electrical or other utility service, and/or accurate physical network diagrams and/or maps prior to installation.

(d) Installation. ImOn will schedule one or more installation visits with Customer. Customer or Customer's authorized representative who is at least 18 years of age must be present during installation. During installation, ImOn shall test to confirm that the Services can be accessed from the Service Location. In the event that during the course of installation ImOn determines additional work is necessary to enable ImOn to deliver the Services to the Service Location, ImOn will notify Customer of any new or additional One-Time Charges that may be necessary. In the event the Customer does not agree to pay such One-Time Charges by executing a revised Service Order reflecting such new charges (and superseding the underlying applicable Service Order) within five (5) business days of receiving the revised Service Order, Customer and/or ImOn shall have the right to terminate the applicable Service Order. Customer shall be responsible for, without limitation, access paths, moving or relocating furniture, furnishings, or equipment, or other preparation activities necessary for ImOn to install the Services. Customer shall connect any Equipment provided by ImOn to Customer's computer or network to enable access to the Services. With respect to any excavation, ImOn shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from such excavation.

(e) Ongoing Visits. ImOn will need access to the Customer Premises from time to time for inspecting, constructing, installing, operating and maintaining ImOn's Network facilities, Equipment or materials and/or any related facilities. Except in emergency situations, ImOn will obtain approval from the Customer (not to be unreasonably withheld or delayed) before entering the Customer Premises. At ImOn's request, Customer, or a representative designated by Customer, will accompany ImOn's employees or agents into any unoccupied unit for the purpose of installing, repairing, maintaining, upgrading, and/or removing the Equipment.

(f) Normal field service hours for ImOn are 8:00 a.m. to 7:00 p.m. Monday through Friday. If service personnel are dispatched outside of normal service hours at the request of the customer for reasons other than complete service outage caused by ImOn, then service fees and charges may apply, and Customer shall be responsible to pay all such additional costs.

#### 4. EQUIPMENT AND MATERIALS.

(a) Responsibilities and Safeguards. Except as otherwise noted, , 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 below, 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.

Without limiting the foregoing, Customer will not be liable for loss of or damage to cable, electronics, structures or Equipment owned by ImOn and located on Customer Premises which occurred as a result of the occurrence of any Force Majeure Event, natural disaster or other casualty loss over which Customer has no control. Notwithstanding anything to the contrary, Customer shall:

- i. Safeguard ImOn-provided 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 ImOn acting in their official capacity to perform any work on the 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 ImOn.

Any unauthorized connection or other tampering with the Services, Equipment, any system or its components shall be cause for immediate disconnection of Services, termination of this Agreement and/or legal action taken by ImOn in its sole discretion, and ImOn shall be entitled to recover all damages, including, but not limited to, the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable costs including, but not limited to, reasonable attorneys' fees to collect upon and enforce this Agreement. 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 provided by ImOn hereunder, Customer acknowledges and agrees that ImOn shall not be obligated to distribute a quality signal to the Premises better than the highest quality which can be furnished as a result of such interference, until such time as the interference is eliminated or corrected by Customer or a third party.

(b) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security procedures and standards with respect to use of and access to the Service and/or Equipment. ImOn may temporarily discontinue or disconnect the Services upon learning of a breach of security and will attempt to contact Customer in advance, if possible. The temporary discontinuation or disconnection of the Services shall not constitute a breach of this Agreement by ImOn.

(c) Ownership. Customer understands and agrees that notwithstanding any other provision contained herein to the contrary, all Equipment and materials installed or provided by ImOn are and shall always remain the property of ImOn, shall not become a fixture to the Premises, and must be returned to ImOn 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.

(d) Equipment Return, Retrieval, Repair and Replacement. Upon termination of Services ("Termination" shall mean the termination of any Service Agreement and/or Service Order(s)), at the discretion of ImOn, Customer shall return, or allow ImOn to retrieve, all Equipment supplied by ImOn to Customer, in good condition, normal wear and tear excepted. If such Equipment is tampered with lost, stolen, damaged beyond reasonable wear and tear as determined by ImOn in its sole discretion, or not returned by Customer, or if Customer does not allow ImOn to retrieve the Customer's account, ImOn reserves the right to charge a fee for unreturned or damaged equipment at the current ImOn rates as of the time of termination. In addition, Customer agrees to pay any costs incurred by ImOn in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorneys' fees.

5. VIDEO AND CONTENT SERVICE. ImOn may, in its sole discretion, preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming, packaging, and distribution of its Video Services or of any of ImOn's Video Services packages.

(a) Payment Terms. Increases in any and all programming, license, copyright, retransmission and/or other costs, charges, fees or amounts including, without limitation, taxes and any and all other governmental fees, charges and/or other amounts, shall not be deemed to be included in the Monthly Service fees or limited by any provision in this Agreement, and may be passed on to Customer at any time when such costs are incurred by, assessed or required of ImOn. Customer agrees to then pay such additional costs.

(b) Premium, Video on Demand and Pay-Per-View. Customer may not exhibit any premium Services such as HBO or Showtime in any public or common viewing area. Customer may not order or request Video on Demand (VOD) or Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment. Customer may not exhibit nor assist in the exhibition of VOD or PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to ImOn's prior written consent. If Customer fails to abide by these restrictions, in addition to all other liability and not by way of limitation, Customer accepts liability for any and all claims made against Customer and/or ImOn of any unauthorized commercial exhibition, and Customer agrees to indemnify and hold ImOn harmless from any loss, cost, liability, or expense, including reasonable attorney's fees, arising from a breach of this provision.

(c) Provision of Service. ImOn may, in its sole discretion, from time to time, rearrange, delete, add or otherwise change packaging and programming of Services contained in ImOn's Services provided pursuant to this Agreement. Customer acknowledges that ImOn has the right at any time to preempt without notice specific advertised programming and to substitute programming that ImOn deems to be comparable. Such action by ImOn does not constitute a breach of the Agreement by ImOn and will not relieve the Customer of its contractual obligations.

(d) 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); (ii) transmit the Services (or any part thereof) by any television or radio broadcast or by any other means or use the Services (or any part thereof) 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. Customer shall not, and shall not authorize or permit any other person to insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements. If Customer fails to abide by these restrictions, Customer accepts liability for any and all claims made against Customer or ImOn due to any unauthorized commercial exhibition and Customer agrees to indemnify and hold ImOn harmless from any damages, loss, cost, liability, or expense, including reasonable attorneys' fees, arising from a breach of these restrictions.

6. INTERNET ACCESS SERVICE. Continued use of the Internet Service is subject to these additional terms.

(a) Equipment and Software Requirements. Customer shall maintain certain minimum Equipment and software to receive the Service. Please consult with ImOn for the current specifications.

(b) Internet Service Speeds. ImOn shall use commercially reasonable efforts to achieve the Internet speed selected by the Customer on the Service Order. However, Customer understands and agrees that such speeds may vary, and ImOn is not liable if such speeds are not achieved

(c) Access and Use. Customer agrees to ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with all applicable ImOn terms. Customer shall 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.

(d) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by ImOn are and shall remain the property of ImOn. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.

(e) No Liability for Changes of Address. Due to growth, acquisitions and changes in technology, ImOn reserves the right to change addressing schemes, including e-mail and IP addresses.

(f) No Liability for Risks of Internet Use. The Internet is a shared network and ImOn does not warrant that Service will be error free. The Service, ImOn's network and the Internet are not entirely secure, and others may access or monitor the Customer's traffic. ImOn does not warrant that data or files sent or received by the Customer over the Network will not be subject to unauthorized access by others, that other users will not gain access to the Customer's data, nor that the data or files will be free from computer viruses or other harmful components. ImOn has no responsibility and assumes no liability for such acts or occurrences.

(g) No Liability for Purchases. Through use of the Service, the Customer may access certain information, products and services of others, for which there is a charge. The Customer shall be solely liable and responsible for all fees or charges for these online services, products or information. ImOn shall have no responsibility to resolve disputes with other vendors.

(h) Blocking and Filtering. While the computer industry may provide blocking and filtering software that empowers Customer to monitor and restrict access to Customer's computer and its data, ImOn is not the publisher of this software. ImOn strongly recommends that the Customer employ a "firewall" or other security software. The Customer assumes all responsibility for providing and configuring any

"firewall" or security measures for use with the Service. ImOn shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. ImOn does not warrant that other users will be unable to gain access to Customer's computer(s) and/or data even if the Customer utilizes blocking and filtering technologies.

(i) Legal Policies. Customer agrees to comply with the terms of ImOn's applicable Legal policies, found at [www.ImOn.net](http://www.ImOn.net) and such policies are incorporated by reference into this Agreement. Customer represents and warrants that Customer has read such Legal policies and agrees to be bound by its terms as they may from time to time be amended, revised, replaced, supplemented or otherwise changed. Customer expressly understands and agrees that such policies may be updated or modified from time to time by ImOn, with or without notice to Customer, and such changes shall be effective upon posting. ImOn may discontinue or disconnect Services immediately for any violation of the ImOn Legal policies with or without notice to Customer.

(j) Supplemental Services. The following subsections shall only apply in the event such referenced supplemental services have been selected by and are being delivered to Customer. The supplemental Services may be made up of software and hardware components purchased from a third party. ImOn 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, ImOn makes no warranties of any kind (express or implied) regarding the supplemental services and hereby disclaims any and all warranties pertaining thereto (including but not limited to implied warranties of title, non-infringement, merchantability, or fitness for a particular purpose). Customer understands and acknowledges that ImOn is not the manufacturer of any third party software or hardware components of the supplemental services nor is ImOn the supplier of any components of such software or hardware. **IN ADDITION TO BUT WITHOUT ABROGATING THE TERMS SET FORTH UNDER THESE TERMS OF SERVICE REGARDING LIMITATIONS OF LIABILITY, IMON SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY SUPPLEMENTAL SERVICES (INCLUDING BUT NOT LIMITED TO THAT ATTRIBUTABLE TO BLOCKED CONTENT OR EMAIL). REGARDLESS OF CAUSE OR ELECTRONIC COMMUNICATIONS PRIVACY ACT (ECPA) NOTICE FAULT, IMON'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO CUSTOMER'S PURCHASE OR USE OF THE SUPPLEMENTAL SERVICE(S), SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO IMON FOR THE APPLICABLE SUPPLEMENTAL SERVICE FOR ONE MONTH.**

(k) In accordance with ECPA, Customer is hereby notified that ImOn does NOT offer the same kind of privacy for e-mail or files that exists for regular paper mail.

**7. 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 any Hosting Software shall be considered third party software. ImOn does not support Customer-supplied third-party hardware or software supplied by Customer. Any questions concerning Customer-supplied third-party hardware or software should be directed to the provider of that product. ImOn assumes no liability or responsibility for the installation, maintenance, compatibility or performance of Customer-supplied third party software with the Services. If such Customer-supplied 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. ImOn has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, ImOn should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at ImOn's discretion and at then-current commercial rates and terms.

8. CUSTOMER USE. Customer agrees not to 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 ImOn. Customer agrees not to use or permit third parties to use the Service(s), including but not limited to the Equipment and software provided by ImOn, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer agrees not to interfere with other customers' use of the Equipment or Services or disrupt the ImOn Network, backbone, nodes or other Services. Violation of any part of this section is grounds for immediate Termination of the Service without liability in addition to any other rights or remedies ImOn may have hereunder.

9. PERFORMANCE. ImOn will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions of Service. Specifically, Customer understands and agrees that the Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond ImOn's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by the Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by ImOn to perform its obligations, and Customer will not hold ImOn at fault for loss of Customer revenue or lost employee productivity due to Service outages.

10. DEFAULT; SUSPENSION OF SERVICE; TERMINATION. No express or implied waiver by ImOn of any event of default shall in any way be a waiver of any further subsequent event of default. Nothing herein, including, but not limited to Termination, shall relieve Customer of its obligation to pay ImOn all amounts due.

(a) Default by Customer. Customer shall be in default under these terms and conditions in the event that the Customer does one (1) or more of the following (each individually to be considered a separate event of default) and the Customer fails to correct each such noncompliance within thirty (30) days of receipt of written notice in cases involving non-payment or other noncompliance:

- i. Customer is more than thirty (30) days past due with respect to any payment required hereunder;
- ii. Customer otherwise has failed to comply with these terms or any other Service Order(s) incorporated herein by execution thereof by the parties.

(b) ImOn's Right to Terminate and Termination Charge. In the event Customer is in default, ImOn shall have the right, at its option, and in addition to any other legal rights and any other remedies it may have under applicable law, to:

- i. Immediately suspend Services to the Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay ImOn any amounts due under this Agreement (e.g., the Monthly Service fees), as if such suspension of Services had not taken place; or
- ii. Terminate the Services and charge an early termination charge (defined below); or
- iii. After the occurrence of two (2) such events of Customer default in any twelve (12) month period of time, terminate the Service and/or any or all of the applicable Service Order(s).

If Termination for cause is due to noncompliance by the Customer or if Customer terminates this Agreement without cause prior to expiration of the then current term, Customer agrees to pay any applicable Early Termination Charge ("ETC") plus any applicable Build-Out costs and Vendor assistance credits. ETC is determined by multiplying the monthly recurring charge listed on your invoice or the Agreement times the number of months remaining in your then current term. Build-Out costs relates to the capital investment incurred by ImOn to extend its fiber optic network to the Customer's business, and ImOn's deferment or forgiveness of such Build-Out costs is contingent on the Customer fulfilling the entire initial term of the Agreement. If Customer terminates this Agreement without cause prior to expiration of the initial term, Customer agrees to pay ImOn a portion of the Build-Out costs based on the following formula:

If the initial term of the Agreement is one year or less, Customer shall pay the entire Build-Out expense. If the initial term is greater than one year, Customer shall pay a portion of the Build-Out expense calculated by multiplying the total Build-Out costs times a fraction in which the numerator is the total months remaining in the initial term of this Agreement and the denominator is the total months of the initial term of this Agreement.

(c) Default by ImOn. ImOn shall be in default in the event that ImOn fails to comply with the terms of these terms and conditions and/or any or all of the applicable Service Order(s), and ImOn fails to remedy each such noncompliance or occurrence within thirty (30) days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance. In such an event, Customer may terminate the Agreement for cause without liability.

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

i. 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 ImOn is limited to Services provided under the applicable Service Order(s) or this Service Agreement, and if ImOn's diligent efforts to correct such breach are not commenced and pursued within thirty (30) days after ImOn's receipt of a written notice from the Customer describing in reasonable detail the nature, scope and extent of the event of default/noncompliance.

ii. If Termination is due to noncompliance by ImOn, ImOn shall reimburse Customer for any pre-paid, unused Monthly Service Fees attributable to such terminated Service Order(s).

#### 11. 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, ImOn warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to the Customer. THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER. EXCEPT AS OTHERWISE STATED IN THIS SERVICE AGREEMENT, IMON MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. WITHOUT LIMITING ANY EXPRESS PROVISIONS PROVIDED FOR ELSEWHERE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (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. THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. Any warranty claim by Customer must be made within thirty (30) days after the applicable Services have been performed. ImOn'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. Customer acknowledges that any content that Customer may access or transmit through any Service is provided by independent content providers, over which ImOn does not exercise and disclaims any control. ImOn neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. ImOn specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include, without limitation, programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and their authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and ImOn 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 agrees that Customer uses the Services and Equipment supplied by ImOn at its sole risk. ImOn does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. ImOn 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. ImOn 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 ImOn without liability for ImOn. ImOn is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold ImOn harmless from and indemnify ImOn against any claims, losses, or damages arising from such use. ImOn is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing the Customer's computers, its internal network and/or the Network through Customer's equipment, and Customer shall hold ImOn harmless from and indemnify ImOn against any such claims, losses, or damages to the full extent arising from such access.

(e) Force Majeure Event. Customer agrees that ImOn shall not be liable for any inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond ImOn'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. In addition, if performance by ImOn of any obligation under this Agreement is prevented, restricted or interfered with by causes including without limitation failure or malfunction of Customer-supplied equipment, acts of God, explosions, terrorism, vandalism, cable cut, storms, fires, Floods, derechos or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppage or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then ImOn shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. ImOn will use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch. Customer agrees to indemnify and hold harmless ImOn for damages, whether direct and/or consequential, resulting from any malfunction or failure of the equipment or for any delay in replacing malfunctioning or damaged equipment.

12. INDEMNIFICATION. In addition to its specific indemnification responsibilities set forth elsewhere in the Agreement and as permissible under applicable law, Customer agrees, at its own expense, to indemnify, defend and hold harmless ImOn 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 ImOn Indemnified Parties, including but not limited to, reasonable attorneys' fees and court costs incurred by ImOn Indemnified Parties provided under these terms and conditions, to the full extent that such arise from Customer's misrepresentation

with regard to or noncompliance with the terms of the Service and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. ImOn Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer agrees to cooperate with ImOn Indemnified Parties in such case.

13. TITLE. Title to the Equipment shall remain at all times with ImOn. 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, ImOn 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 the Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. ImOn shall have the right to remove the Equipment and all components immediately after any such Termination.

14. COMPLIANCE WITH LAWS. Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes ImOn to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.

15. PRIVACY. ImOn 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.

16. GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS. Customer represents to ImOn that Customer has the authority to execute, deliver and carry out the terms of the Service. Customer also represents 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 these terms. Customer shall be responsible for ensuring that all such users understand the Service and comply with its terms. The Customer shall be responsible for all access to and use of the Service by means of the Customer's equipment, whether or not the Customer has knowledge of or authorizes such access or use. The Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until the Customer informs ImOn of any breach of security. ImOn expressly prohibits using the Service for the posting or transferring of sexually explicit images, material inappropriate for minors, or other offensive materials. By using ImOn Service, Customer expressly acknowledges that Customer will not post or transfer or permit others to post or transfer such materials using the Service.

17. NOTICES. Any notices to be given 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 ImOn:

ImOn Communications  
ATTN: Customer Care Manager  
101 3rd Avenue SW, Suite 400  
Cedar Rapids, IA 52404

If to Customer:

See Customer's Service Order.

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

## 18.MISCELLANEOUS.

(a) Entire Agreement. The Agreement, these terms and conditions and all other executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. These terms and conditions 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 Service Agreement.

(b) No Amendments, Supplements or Changes. These terms and conditions and the associated executed Service Order(s) may not be amended, supplemented or changed by Customer.

(c) No Assignment or Transfer. The Customer may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) the Service Agreement, if any, and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from ImOn, which consent shall not be unreasonably withheld, provided, however, that ImOn may assign any Service Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with ImOn, or to its successor-in-interest in the event ImOn sells the underlying communications system.

(d) Severability. If any term, covenant, condition or portion of these Terms and Conditions shall, to any extent, be invalid or unenforceable, the remainder of these Terms and Conditions shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.

(e) Section Headings. The section headings are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of these terms.

(f) Governing Law. These terms and conditions and all matters arising out of or related to Services provided shall be governed by the laws of the State of Iowa, without regard to conflicts of law provisions. Customer agrees that the federal and state courts of Iowa located in Cedar Rapids alone have jurisdiction over all disputes arising under this Agreement, and Customer consents to personal jurisdiction of those courts with respect to any disputes arising under this Agreement. **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 IMON EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.**

(g) Both parties hereby acknowledge that no court in construing these terms and conditions shall construe it more stringently against one party than against the other.

(h) No Third Party Beneficiaries. The parties agree that the terms of the Service and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to the Service, and that the consideration provided by each party under the Service only runs to the respective parties hereto, and that no person or entity not a party to these terms and conditions shall have any rights under these terms and conditions or the right to require the performance of obligations by either of the parties.

(i) Waiver. Except as otherwise provided herein, the failure of ImOn to enforce any provision of these terms and conditions shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

(j) Electronic Signatures. When applicable, Customer and ImOn consent to use electronic signatures and agree that such signatures are valid and binding. Any applicable digital transaction platform utilized by ImOn, like DocuSign, shall allow for the accurate reproduction and retention of such fully executed contract, thereby proving it was executed with electronic signatures.

(k) If the terms of the Agreement executed by the Customer conflict with any of these additional terms posted at [www.ImOn.net](http://www.ImOn.net), the Agreement shall control.

19. CABLE MODEM STANDARD ACCOUNT USAGE. The Cable Modem account is an unlimited usage account. However, there are some restrictions that apply. Due to the high bandwidth nature of the cable Modem Standard Account, it is important that certain specific issues are addressed. Customer's Cable Modem Standard Account is a dynamic IP, non-commercial account defined as follows:

(a) Dynamic IP – a single IP number dynamically assigned to the subscriber's Ethernet card. (Should Customer wish to provide access to more than one computer in Customer's household with the Cable Modem Standard Account, additional dynamic IP's can be purchased from ImOn for this purpose for an additional monthly fee. Alternately, by adding an Ethernet hub Customer can provide access for more than one computer. However, each computer must still comply with the non-server and noncommercial definitions above).

(b) Non-commercial – services provided via ImOn may not be resold or redistributed. There are other accounts that will allow commercial or server access. These options should be explored should Customer's needs be other than the Cable Modem Standard Account.

20. ASSET OR STOCK SALE. In the event that Customer enters into an asset sale or a stock sale that involves an existing Customer location served by ImOn, Customer agrees to remain liable for any applicable early termination charge ("ETC"), unless the buyer assumes the existing ImOn contract in its entirety in writing and ImOn consents in writing to any such assumption by the buyer. Unless Customer can prove to ImOn, at its sole discretion, that a buyer has either assumed the Customer's existing ImOn contract or that a buyer has executed a new ImOn contract and that ImOn has released the Customer in writing from all remaining ImOn obligations at the closing of the asset sale or stock sale, Customer agrees to remain liable to ImOn for any applicable ETC.

21. DISTRIBUTED DENIAL OF SERVICE (DDoS). ImOn DDoS services are designed to promptly mitigate and remedy attacks on your network to minimize interruptions to your continued access to the Internet, your network and your customers. Future DDoS attacks will occur on your network. No Company is immune from such attacks. ImOn DDoS services will improve your company's chance that, upon such attack, any interruption to your Internet service or access to your customers will be avoided or minimized. Disclaimer: ImOn DDoS services are capable of implementing countermeasures on attacks involving up to 10G of data; if attacks involve more than 10G of data, ImOn may "blackhole" such higher attack volumes of data.

NOTE: Customers choosing digital, interactive or high-speed data products must use coaxial cable equal to or greater than quad-shielded RG-6. ImOn will not provide these services to Customers where wiring does not meet this standard. At the Customer's option, ImOn may rewire the Customer's location with new quad-shield RG-6 (or similar) interior wiring to all existing cable TV outlets for a commercially reasonable fee. Customer agrees that ImOn may, in order to improve service and/or adhere to FCC leakage requirements, remove, replace, modify, or otherwise alter any and all existing coaxial cable found on the premises at the discretion of ImOn. Any user of the ImOn Internet system that violates ANY of the above rules will be subject to account cancellations at the sole discretion of ImOn without recourse or refund.