

# E911 Service Limitations and Terms and Conditions

911 & SERVICE LIMITATIONS. The Federal Communications Commission (FCC) requires that InfoWest provide E911 Service to all End Users who use InfoWest services within the United States . Sections 3.1-3.7 apply to all End Users who use InfoWest services within the United States.

- 1.1. 911 ACKNOWLEDGEMENT AND WARNING LABELS. END USER ACKNOWLEDGES THAT INFOWEST'S EQUIPMENT AND SERVICES DO NOT SUPPORT 911 EMERGENCY DIALING OR OTHER EMERGENCY FUNCTIONS IN THE SAME WAY THAT TRADITIONAL WIRELINE 911 SERVICES WORK. THE DIFFERENCES ARE DETAILED IN THIS SECTION 3 AND END USER AGREES TO NOTIFY ANY POTENTIAL USER OF THE SERVICES, WHO MAY PLACE CALLS USING END USER'S SERVICES, OF THE 911 LIMITATIONS DESCRIBED HEREIN. INFOWEST WILL PROVIDE END USER WITH WARNING LABELS REGARDING THE LIMITATIONS OR UNAVAILABILITY OF 911 EMERGENCY DIALING. END USER AGREES TO PLACE A LABEL ON AND/OR NEAR EACH TELEPHONE OR OTHER CUSTOMER PREMISE EQUIPMENT ON WHICH THE SERVICES MAY BE UTILIZED. IF ADDITIONAL LABELS ARE REQUIRED, END USER MAY REQUEST THEM FROM INFOWEST. INFOWEST WILL PROVIDE END USER WITH ADVISORY NOTICES REGARDING 911 EMERGENCY DIALING AND REQUEST ACKNOWLEDGMENTS FROM END USER. END USER AGREES TO RESPOND AND AFFIRMATIVELY ACKNOWLEDGE THAT INFOWEST HAS ADVISED END USER OF THE CIRCUMSTANCES UNDER WHICH INFOWEST'S E911 SERVICE MAY NOT BE AVAILABLE OR MAY BE LIMITED IN COMPARISON TO TRADITIONAL 911 EMERGENCY DIALING. INFOWEST ADVISES END USER TO MAINTAIN AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES.
- 1.2. ELECTRICAL POWER. END USER ACKNOWLEDGES THAT THE SERVICES WILL NOT FUNCTION IN THE ABSENCE OF ELECTRICAL POWER.
- 1.3. INTERNET ACCESS. END USER ACKNOWLEDGES THAT THE SERVICES WILL NOT FUNCTION IF THERE IS AN INTERRUPTION OF END USER'S BROADBAND OR HIGH-SPEED INTERNET ACCESS SERVICE.
- 1.4. NON-VOICE SYSTEMS. END USER ACKNOWLEDGES THAT THE SERVICES ARE NOT SET UP TO FUNCTION WITH OUTDIALING SYSTEMS INCLUDING HOME SECURITY SYSTEMS, MEDICAL MONITORING EQUIPMENT, TTY EQUIPMENT, AND ENTERTAINMENT OR SATELLITE TELEVISION SYSTEMS. END USER HAS NO CLAIM AGAINST INFOWEST FOR INTERRUPTION OR DISRUPTION OF SUCH SYSTEMS BY THE SERVICES.
- 1.5. INFOWEST'S E911 SERVICE IS A MANDATORY COMPONENT OF ALL INBOUND/OUTBOUND VOICE SERVICE PLANS. E911 SERVICE IS NOT OFFERED ON VIRTUAL NUMBERS, TOLL-FREE NUMBERS OR SIMILAR SERVICE ACCESSORIES OR ADD-ON PLANS. E911 SERVICE IS ONLY AVAILABLE IN SELECTED AREAS. END USERS WHO SUBSCRIBE TO INFOWEST'S E911 SERVICE WILL BE REQUIRED TO REGISTER THE PHYSICAL LOCATION OF THEIR EQUIPMENT (DTA OR VIDEOPHONE) WITH INFOWEST, EITHER ON THE [HTTP://WWW.INFOWEST.COM/](http://www.infowest.com/) WEBSITE OR BY CALLING CUSTOMER SERVICE, AND AGREE TO UPDATE THE LOCATION WHENEVER THE PHYSICAL LOCATION OF SERVICE CHANGES. END USER ACKNOWLEDGES THAT INFOWEST'S ONLY MECHANISM FOR ROUTING 911 CALLS TO THE CORRECT EMERGENCY CALL TAKER IS THE PHYSICAL LOCATION CURRENTLY REGISTERED FOR THE ACCOUNT. END USER ACKNOWLEDGES AND UNDERSTANDS THAT ANY ENHANCED LOCATION INFORMATION PASSED TO AN EMERGENCY OPERATOR BY INFOWEST WILL BE BASED UPON THE PHYSICAL LOCATION PROVIDED TO INFOWEST BY END USER. IN THE EVENT THAT THE PHYSICAL LOCATION HAS NOT BEEN UPDATED OR IS NOT COMPLETE, INFOWEST MAY ATTEMPT TO ROUTE A 911 CALL BASED UPON THE BILL-TO OR SHIP-TO ADDRESSES ASSOCIATED WITH THE END USER'S ACCOUNT OR INITIAL ORDER.
- 1.6. END USERS WHO ARE REQUIRED TO SUBSCRIBE TO INFOWEST'S E911 SERVICE WILL BE SUBJECT TO A ONE-TIME PROVISIONING FEE AND TO A MONTHLY E911 SERVICE CHARGE. THE PROVISIONING FEE AND MONTHLY E911 SERVICE FEE SHALL BE IN ADDITION TO THE APPLICABLE RESIDENTIAL OR BUSINESS PLAN CHARGES FOR THE ASSOCIATED LINE. THE MONTHLY CHARGE FOR INFOWEST E911 SERVICE IS ASSESSED ON A "PER-LINE" (THAT IS, PER DID OR PHONE NUMBER BASIS), AND WILL BE SET AT A LEVEL THAT REIMBURSES INFOWEST FOR THE DIRECT COSTS IT INCURS IN PROVIDING INFOWEST'S E911 SERVICE, INCLUDING EXPENSES INFOWEST INCURS, EITHER DIRECTLY OR INDIRECTLY, IN THE FORM OF STATE, COUNTY OR MUNICIPAL E911 SURCHARGES, E911 AUTOMATIC LOCATION INFORMATION (ALI) DATABASE STORAGE, LINE INFORMATION DATABASE AND CALLER ID (LIDB/CNAM) EXPENSES, AND ANY OTHER TAXES OR SURCHARGES DIRECTLY OR INDIRECTLY ASSOCIATED WITH THE PROVISION OF SERVICES TO END USERS SUBSCRIBING TO THIS SERVICE. INFOWEST RESERVES THE RIGHT TO ADJUST THE LEVEL OF CHARGES ASSOCIATED WITH THE PROVISION OF E911 SERVICES TO REFLECT INCREASES OR DECREASES IN THE COSTS IT INCURS.
- 1.7. END USER ALSO ACKNOWLEDGES THAT INFOWEST'S E911 SERVICE HAS CERTAIN CHARACTERISTICS THAT DISTINGUISH IT FROM TRADITIONAL, LEGACY, CIRCUIT-SWITCHED 911 SERVICE. THESE CHARACTERISTICS MAY MAKE INFOWEST'S E911 SERVICES UNSUITABLE FOR SOME END USERS. BECAUSE END USER CIRCUMSTANCES VARY WIDELY, END USERS SHOULD CAREFULLY EVALUATE THEIR OWN CIRCUMSTANCES WHEN DECIDING WHETHER TO RELY SOLELY UPON INFOWEST'S E911 SERVICE. END USER ACKNOWLEDGES THAT IT IS END USER'S RESPONSIBILITY TO DETERMINE THE TECHNOLOGY OR COMBINATION OF TECHNOLOGIES BEST SUITED TO MEET END USER'S EMERGENCY CALLING NEEDS, AND TO MAKE THE NECESSARY PROVISIONS FOR ACCESS TO EMERGENCY CALLING SERVICES (SUCH AS MAINTAINING A CONVENTIONAL LANDLINE PHONE OR WIRELESS/CELLULAR PHONE AS A BACKUP MEANS OF COMPLETING EMERGENCY CALLS). THE FOLLOWING CHARACTERISTICS DISTINGUISH INFOWEST'S E911 SERVICE FROM TRADITIONAL, LEGACY, CIRCUIT-SWITCHED 911 SERVICE:
  - 1.7.1. \*\* INFOWEST'S E911 SERVICE WILL NOT FUNCTION IF END USER'S DATA, PHONE OR VIDEOPHONE FAILS OR IS NOT CONFIGURED CORRECTLY OR IF END USER'S INFOWEST SERVICE IS NOT FUNCTIONING FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, ELECTRICAL POWER OUTAGE, BROADBAND SERVICE OUTAGE, OR SUSPENSION OR DISCONNECTION OF SERVICE BECAUSE OF BILLING OR OTHER ISSUES. IF THERE IS A POWER OUTAGE, END USER MAY BE REQUIRED TO RESET OR RECONFIGURE THE EQUIPMENT BEFORE BEING ABLE TO USE THE INFOWEST'S SERVICE, INCLUDING FOR E911 PURPOSES.
  - 1.7.2. \*\* AFTER INITIAL ACTIVATION OF THE E911 SERVICE, AND FOLLOWING ANY CHANGE OF AND UPDATE TO END USER'S PHYSICAL LOCATION, THERE MAY BE SOME DELAY BEFORE THE AUTOMATIC NUMBER AND LOCATION INFORMATION IS PASSED TO THE LOCAL EMERGENCY SERVICE OPERATOR. THIS INFORMATION IS TYPICALLY POPULATED INTO OUR NOMADIC E911 DATABASES PRIOR TO SERVICE ACTIVATION, BUT NO GUARANTEE CAN BE MADE THAT THE AUTOMATIC NUMBER AND LOCATION INFORMATION WILL BE ACTIVATED WITHIN THIS SCHEDULE.
  - 1.7.3. \*\* THE LOCAL EMERGENCY SERVICE OPERATOR RECEIVING INFOWEST'S E911 EMERGENCY SERVICE CALLS MAY NOT HAVE A SYSTEM CONFIGURED FOR E911 SERVICES OR BE ABLE TO CAPTURE AND/OR RETAIN AUTOMATIC NUMBER OR LOCATION INFORMATION. THIS MEANS THAT THE OPERATOR MAY NOT KNOW THE PHONE NUMBER OR PHYSICAL LOCATION OF THE PERSON WHO IS MAKING THE INFOWEST'S E911 CALL. DUE TO TECHNICAL FACTORS IN NETWORK DESIGN, AND IN THE EVENT OF NETWORK CONGESTION ON THE INFOWEST

NETWORK, THERE IS A POSSIBILITY THAT A INFOWEST 911 CALL WILL PRODUCE A BUSY SIGNAL OR WILL EXPERIENCE UNEXPECTED ANSWERING WAIT TIMES AND/OR TAKE LONGER TO ANSWER THAN 911 CALLS PLACED VIA TRADITIONAL, LEGACY, CIRCUIT-SWITCHED TELEPHONE NETWORKS.

- 1.7.4. \*\* IF END USER DOES NOT CORRECTLY IDENTIFY THE ACTUAL LOCATION WHERE THE INFOWEST EQUIPMENT WILL BE LOCATED AT THE TIME OF ACTIVATION OF THE SERVICE, INFOWEST'S E911 COMMUNICATIONS MAY NOT BE DIRECTED TO THE CORRECT LOCAL EMERGENCY OPERATOR.
- 1.8. END USER ACKNOWLEDGES AND UNDERSTANDS THAT INFOWEST WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO DIAL 911 OR ANY OTHER EMERGENCY TELEPHONE NUMBER USING INFOWEST OR TO ACCESS AN EMERGENCY SERVICE OPERATOR DUE TO THE 911 DIALING CHARACTERISTICS AND LIMITATIONS SET FORTH IN THIS AGREEMENT. END USER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS INFOWEST, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO END USER IN CONNECTION WITH THE SERVICES, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, END USER OR ANY THIRD PARTY OR USER OF THE SERVICE RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO 911 DIALING.

# Master Service Agreement

This Master Service Agreement (this "Agreement") is entered into on the date of customer sign up ("Effective Date") by and between INFOWEST ("InfoWest") and "Customer".

## ARTICLE 1. DEFINITIONS

1.1 "Affiliate" shall mean an entity that now or in the future, directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For purposes of the foregoing, "control" shall mean the ownership of (i) greater than fifty percent (50%) of the voting power to elect the directors of the company, or (ii) greater than fifty percent (50%) of the ownership interest in the company.

1.2 "Connection Notice" shall mean a written notice from InfoWest that the Service ordered has been installed by InfoWest pursuant to the Customer Order, and has been tested and is functioning properly.

1.3 "Customer Commit Date" shall mean the date that Service will be available to Customer, as set forth in the Customer Welcome Letter or such other written notice from InfoWest to Customer. Notwithstanding anything in this Agreement or any Customer Order to the contrary, no Customer requested date for delivery of Service will be effective unless and until confirmed in writing by InfoWest through the delivery to Customer of the Customer Commit Date.

1.4 "Customer Order" shall mean a request for Service submitted by Customer in the form designated by InfoWest.

1.5 "Customer Premises" shall mean the location or locations occupied by Customer or its end users to which Service is delivered.

1.6 "Customer Welcome Letter" shall mean a written communication from InfoWest to Customer informing Customer of InfoWest's acceptance of the Customer Order This is an option that can be subscribed for.

1.7 "Excused Outage" shall mean any outage, unavailability, delay or other degradation of Service related to, associated with or caused by scheduled maintenance (as described in Section 2.7 hereof), actions or inactions of Customer or its end users, Customer provided power or equipment or an event of force majeure as defined in Section 7.1.

1.8 "Facilities" shall mean any property owned, licensed or leased by InfoWest or any of its Affiliates and used to deliver Service, including terminal and other equipment, conduit, fiber optic cable, optronics, wires, lines, ports, routers, switches, channel service units, data service units, cabinets, racks, private rooms and the like.

1.9 "Gateway" shall mean data center space owned or leased by InfoWest or any of its Affiliates for the purpose of, among other things, locating and colocating communications equipment.

1.10 "Local Loop" shall mean the connection between Customer Premises and a InfoWest Gateway or other Facility.

1.11 "Megabit per second" or "Mbps" shall mean a unit of data rate equal to 1 million bits per second.

1.12 "Off-Net" shall mean Service that originates from or terminates to any location that is not on the InfoWest network.

1.13 "On-Net" shall mean Service that originates from and terminates to a location that is on the InfoWest network.

1.14 "Service" shall mean any InfoWest service described in a Service Schedule and identified on a particular line item of a Customer Order.

1.15 "Service Commencement Date" shall mean the first to occur of (i) the date set forth in any Connection Notice, unless Customer notifies InfoWest that the Service is not functioning properly as provided in Section 3.1 (or, if two or more Services are designated as "bundled" or as having a "sibling relationship" in any Customer Order, the date set forth in the Connection Notice for all such Services); and (ii) the date Customer begins using the Service.

1.16 "Service Levels" shall mean the specific remedies InfoWest provides regarding installation and performance of Service as set forth in the particular Service Schedule respecting the applicable Service.

1.17 "Service Schedule" shall mean a schedule attached hereto, or signed between the parties from time to time and expressly incorporated into this Agreement, setting forth terms and conditions specific to a particular Service, Facilities or other tools made available by InfoWest.

1.18 "Service Term" shall mean the duration of time (measured starting on the Service Commencement Date) for which Service is ordered, as specified in the Customer Order. The Service Term shall continue on a month-to-month basis after expiration of the stated Service Term, until terminated by either party upon thirty (30) days' written notice to the other.

## **ARTICLE 2. DELIVERY OF SERVICE**

2.1 Submission of Customer Order(s). To order any Service, Customer may submit to InfoWest a Customer Order requesting Service. The Customer Order and its backup detail must include a description of the Service, the non-recurring charges and monthly recurring charges for Service and the applicable Service Term.

2.2 Credit Approval and Deposits. Customer will provide InfoWest with credit information as requested, and delivery of Service is subject to credit approval. InfoWest may require Customer to make a deposit or deliver another form of security as a condition to (a) InfoWest's acceptance of any Customer Order; (b) InfoWest's continuation of any usage-based Service; and/or (c) InfoWest's continuation of any non usage-based Service only in the event that (i) Customer fails to make payment to InfoWest of any undisputed amount when due, or (ii) Customer has a material, negative change in financial condition (as determined by InfoWest in its reasonable discretion). Any deposit will be limited to two (2) months' estimated charges for Service and will be due upon InfoWest's written request. Any deposit will be held by InfoWest as security for payment of Customer's charges. When Service to Customer is terminated, the amount of the deposit will be credited to Customer's account and any remaining credit balance will be refunded. Any deposit paid by Customer pursuant to this Section 2.2 will be held by InfoWest in accordance with the applicable law governing such deposit.

2.3 Access to Customer Premises. Customer shall allow InfoWest access to the Customer Premises to the extent reasonably determined by InfoWest necessary for the installation, inspection and scheduled or emergency maintenance of Facilities relating to the Service. InfoWest shall notify Customer at least two (2) business days in advance of any regularly scheduled maintenance that will require access to the Customer Premises. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises. In the event Customer fails to do so, Customer shall reimburse InfoWest for the actual and reasonable cost of repairing or replacing any Facilities damaged or destroyed as a result of Customer's failure. Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises.

2.4 InfoWest Facilities. Except as otherwise agreed, title to all Facilities ordered by InfoWest shall remain with it. InfoWest will provide and maintain the Facilities in good working order. Customer shall not, and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Facilities, without the prior written consent of InfoWest. The Facilities shall not be used for any purpose other than that for which InfoWest provides them. Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities. In no event will InfoWest be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused by or related to improper use or maintenance of the Facilities by Customer or any third party gaining access to the Facilities through Customer in violation of this Agreement, and Customer shall reimburse InfoWest for any damages incurred as a result thereof. Customer agrees (which agreement shall survive the expiration, termination or cancellation of any Customer Order) to allow InfoWest to remove the Facilities from the Customer Premises:

(A) after termination, expiration or cancellation of the Service Term of any Service in connection with which the Facilities were used; or

(B) for repair, replacement or otherwise as InfoWest may determine is necessary or desirable, but InfoWest will use reasonable efforts to minimize disruptions to the Service caused thereby.

2.5 Customer-Provided Equipment. InfoWest may install at rates specified on the attached customer order certain Customer-provided communications equipment upon installation of Service. InfoWest shall bear no responsibility for the operation or maintenance of any Customer-provided communication equipment. InfoWest undertakes no obligations and accepts no liability for the configuration, management, performance or any other issue relating to any Customer-provided equipment used for access to or the exchange of traffic in connection with the Service.

2.6 Scheduled Maintenance. Scheduled maintenance of the InfoWest network will not normally result in Service interruption or outage. However, in the event scheduled maintenance should require a Service interruption or outage, InfoWest will exercise commercially reasonable efforts to (i) provide Customer with seven (7) days' prior written notice of such scheduled maintenance, (ii) work with Customer in good faith to attempt to minimize any disruption in Customer's services that may be caused by such scheduled maintenance, and (iii) perform such scheduled maintenance during the non-peak hours of 12:00 a.m. (midnight) until 6:00 a.m. local time.

## **ARTICLE 3. BILLING AND PAYMENT**

3.1 Commencement of Billing. Upon installation and testing of the Service ordered in any Customer Order, InfoWest will deliver to Customer a Connection Notice (Connect Notice). Service Commencement date is established as 72 hours after delivery of Connect Notice, unless customer notifies InfoWest in writing of any improper functioning of any service. Facsimilie (FAX) delivery of

written notices of problems with services will be considered as received on date of confirmed transmission. Billing for services and installation charges begins on Service Commencement date unless InfoWest has received the aforementioned written notice of service delivery failure, outstanding Customer orders to other carriers for services which may operate with the Service provided by InfoWest under this agreement will not delay billing for InfoWest services and equipment delivered under this agreement, regardless of whether Customer is otherwise prepared to accept delivery of ordered Service. In the event that Customer notifies InfoWest within the time period stated above that the Service is not installed and functioning properly, then InfoWest shall correct any deficiencies in the Service and deliver a new Connection Notice via voice or email to Customer, after which the process stated herein shall be repeated.

3.2 Charges. The Customer Order (which is a part of Agreement) will set forth the applicable recurring and non-recurring charges for the Service. Unless otherwise expressly specified in the Customer Order, any non-recurring charges shall be invoiced by InfoWest to Customer upon the Service Commencement Date. In the event such Service requires InfoWest to install or construct additional Facilities in the provision of the Service, such Customer Order may specify non-recurring charges payable by Customer in advance of Service Commencement Date. All such charges will be mutually agreed between the parties and specified in the Customer Order. If Customer requests and InfoWest approves (in its sole discretion) any changes to the Customer Order or Service after acceptance by InfoWest, including, without limitation, the Customer requested date for delivery of Service or Service Commencement Date, additional non-recurring charges and/or monthly recurring charges not otherwise set forth in the Customer Order may apply.

3.3 Payment of Invoices. Invoices are delivered monthly. InfoWest bills in advance for Service, except usage based services, to be provided during the upcoming month. Usage based services are billed in arrears. Billing for partial months is prorated based on a calendar month. Invoices are payable on due date specified on face of the invoice. All payments shall be made in U.S. Dollars. Invoices not paid by the due date will be considered Past Due, and will bear interest at a rate 1.5% per month (or the highest rate allowed by law, whichever is less) beginning from the date first due until paid in full.

3.4 Taxes and Fees. All charges for Service are exclusive of Applicable Taxes (as defined below). Except for taxes based on InfoWest's net income, Customer will be responsible for all applicable taxes imposed upon or incident to the provision, sale or use of Services in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, collectively "Applicable Taxes". Customers entitled to an exemption from any Applicable Taxes for a particular Service, Customer are responsible for presenting InfoWest with a valid exemption certificate (in a form reasonably acceptable to it). InfoWest will cease billing any Applicable Taxes covered by such acceptable exemption certificate on a prospective basis upon receipt of receipt in its Billing Office.

3.5 Regulatory and Legal Changes. In the event that any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Service, InfoWest and Customer will negotiate regarding the rates to be charged to Customer to reflect such increase in cost and, in the event that the parties are unable to reach agreement respecting new rates within thirty (30) days after InfoWest's delivery of written notice requesting renegotiation, then (a) InfoWest may pass such increased costs through to Customer, and (b) if InfoWest elects to pass such increased costs through to Customer, Customer may terminate the affected Service without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase.

3.6 Disputed Invoices. Customer has ninety (90) days to review and reasonably disputes any portion of an InfoWest invoice. In the event disputed items are discovered, Customer must pay the undisputed

portion of the invoice and submit written notice of the claim (with sufficient detail to ascertain the nature of the claim, and the charges and Services in dispute ) for the disputed amount. Customer waives the right to dispute any charges not identified within such ninety (90) day period. In the event that the dispute is resolved against Customer, Customer shall pay disputed amounts plus interest at the rate referenced in Section 3.3.

### 3.7 Termination Charges.

(A) Customer may cancel a Service following InfoWest's acceptance of the applicable Customer Order and prior to the Customer Commit Date upon prior written notice to InfoWest (with sufficient detail necessary to identify the affected Service). In the event that Customer does so, or in the event that the delivery of such Service is terminated by InfoWest as the result of an uncured default by Customer pursuant to Section 4.2 of this Agreement, Customer shall pay InfoWest a cancellation charge equal to the sum of:

- (i) any third party cancellation/termination charges related to the installation and/or cancellation of any Off-Net Service;
- (ii) InfoWest's out of pocket costs (if any) incurred in constructing Facilities in or to the Customer Premises necessary for Service delivery;
- (iii) the non-recurring charges assessed for any canceled Service; and
- (iv) one (1) month's monthly recurring charges for any canceled On-Net Service.

Customer's right to cancel any particular Service under this Section 3.7 (A) shall automatically expire and shall no longer apply upon InfoWest's delivery to Customer of a Connection Notice for such Service.

(B) In addition to Customer's right of cancellation under Section 3.7 (A) above, Customer may terminate Service prior to the end of the Service Term after the original Customer Commit Date but prior to receipt of Connection notice upon thirty (30) days' prior written notice to InfoWest (with sufficient detail necessary to identify the affected Service). InfoWest may terminate services as the result of an uncured default by Customer pursuant to Section 4.2 of this Agreement. Customer shall pay InfoWest a termination charge equal to the sum of:

- (i) all unpaid amounts for Service provided through the date of termination;
- (ii) any third party cancellation/termination charges related to the installation and/or termination of any Off-Net Service;
- (iii) the non-recurring charges assessed to InfoWest by another carrier for any canceled Service, if not already paid;
- (iv) for any On-Net Service, the percentage of the monthly recurring charges for the terminated On-net Service calculated from the effective date of termination as (a) 100% of the remaining monthly recurring charges that would have been incurred for the On-Net Service for months 1-12 of the Service Term, plus (b) 75% of the remaining monthly recurring charges that would have been incurred for the On-Net Service for months 13 through the end of the Service Term.

(C) The parties acknowledge that the cancellation or termination charges set forth in this Section 3.7 are a genuine estimate of the actual damages that InfoWest will suffer and are not a penalty.

3.8 Fraudulent Use of Services. Customer is responsible for all charges attributable to Customer incurred respecting the Service. In the case of usage-based Services, Customer is responsible for all usage charges even if incurred as the result of fraudulent or unauthorized use of Service; except that Customer shall not be responsible for fraudulent or unauthorized use by InfoWest or its employees.

## **ARTICLE 4. TERM AND TERMINATION**

### **4.1 Term.**

(A) This Agreement shall become effective on the date it is signed by the Customer (Effective Date) and shall continue for a period of one (1) years thereafter ("Agreement Term"), unless earlier terminated as provided herein. At the end of the initial Agreement Term, the Agreement Term shall automatically renew for a one year term until terminated by either party upon written notice to the other party thirty (30) days' prior to the anniversary date.

(B) Except as otherwise set forth herein, InfoWest shall deliver the Service for the entire duration of the Service Term, and Customer shall pay all charges for delivery thereof through the end of the Service Term. To the extent that the Service Term for any Service extends beyond the Agreement Term, then this Agreement shall remain in full force and effect for such Service until the expiration or termination of such Service Term.

**4.2 Default By Customer.** A customer will be considered in default if (i) Customer makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy or other insolvency protection against Customer is filed and not dismissed within sixty (60) days; (iii) Customer fails to make any payment required hereunder when due, and such failure continues for a period of five (5) business days after written notice from InfoWest, or (iv) Customer fails to observe and perform any material term of this Agreement (other than payment terms) and such failure continues for a period of thirty (30) days after written notice from InfoWest. InfoWest may take any of the following actions at its discretion upon Customers in default: (A) terminate this Agreement and any Customer Order, in whole or in part, in which event InfoWest shall have no further duties or obligations; (B) request a deposit to continue service; or (C) subject to Section 5.1, pursue any remedies it may have under this Agreement, at law or in equity.

**4.3 Default By InfoWest.** If (i) InfoWest makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy or other insolvency protection against InfoWest is filed and not dismissed within sixty (60) days; or (iii) InfoWest fails to observe and perform any material term of this Agreement (other than as provided in Section 4.4 and Article 6) and such failure continues for a period of thirty (30) days after written notice from Customer; then Customer may: (A) terminate this Agreement and/or any Customer Order, in whole or in part, in which event Customer shall have no further duties or obligations thereunder, and/or (B) subject to Section 5.1, pursue any remedies Customer may have under this Agreement, at law or in equity.

### **4.4 Right of Termination for Installation Delay.**

In lieu of any Service Level credits for installation delays, if InfoWest's installation of Service is delayed for more than thirty (30) business days beyond the Customer Commit Date for reasons other than an Excused Outage, Customer may terminate and discontinue the affected Service upon written notice to InfoWest and without payment of any applicable termination charge; provided such written notice is delivered prior to InfoWest delivering to Customer the Connection Notice for the affected Service. This Section 4.4 shall not apply to any Service where InfoWest (or a third party contractor engaged by InfoWest) is constructing Facilities in or to the Customer Premises necessary for delivery of such Service.

## **ARTICLE 5. LIABILITY AND INDEMNIFICATION**

5.1 No Special Damages. Notwithstanding any other provision hereof, neither party shall be liable for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or any Customer Order.

5.2 Personal Injury and Death. Nothing in this Agreement shall be construed as limiting the liability of either party for personal injury or death resulting from the negligence of a party or its employees.

5.3 Disclaimer of Warranties. INFOWEST MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE.

5.4 Indemnification. Each party shall indemnify the other from any claims by third parties and expenses (including legal fees and court costs) respecting damage to tangible property, personal injury or death caused by such party's negligence or willful misconduct arising in connection with this Agreement.

## **ARTICLE 6. SERVICE LEVELS**

6.1 Service Interruptions and Delivery. To report outages or other issues related to Service performance, Customer may contact InfoWest Customer Service by calling toll free in the U.S. 1-435-674-0165 or outside of the United States use other numbers for InfoWest Customer Service as may be published on <http://www.infowest.com/>. In order for InfoWest to investigate any reported issues, Customer agrees to provide InfoWest with supporting information as reasonably requested by InfoWest, which may include (as applicable), without limitation, circuit ID, circuit end-point(s), IP address(es), originating phone number and terminating phone number. In the event of any damages arising out of InfoWest's furnishing or failure to furnish Services under this Agreement, Customer's sole remedies are contained in the following Sections of this Agreement: (a) Addendum II-Service Levels; (b) the chronic outage provision (if any) set forth in Addendum II Service Schedule applicable to the affected Service, and (c) Section 4.4 above.

6.2 Service Level Credits. In the event InfoWest does not achieve a particular Service Level in a particular month, InfoWest will issue a credit to Customer as set forth in the applicable Service Schedule upon Customer's request. InfoWest's maintenance log and trouble ticketing systems will be used for calculating any Service Level events. To request a credit, Customer must contact InfoWest Customer Service or deliver a written request (with sufficient detail necessary to identify the affected Service) pursuant to Section 7.4 within sixty (60) days of the end of the month for which a credit is requested. InfoWest Customer Service may be contacted by calling toll free in the U.S. 1-435-674-0165 or such other numbers for InfoWest Customer Service in other countries as published on <http://www.infowest.com/>. In no event shall the total amount of credits issued to Customer per month exceed the non-recurring charges and monthly recurring charges invoiced to Customer for the affected Service for that month.

## **ARTICLE 7. GENERAL TERMS**

7.1 Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be

extended, for any failure of performance or equipment due to causes beyond such party's reasonable control ("force majeure event"). In the event InfoWest is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay InfoWest for the affected Service for so long as InfoWest is unable to deliver the affected Service.

7.2 Assignment and Resale. Customer may not assign its rights and obligations under this Agreement or any Customer Order without the express prior written consent of InfoWest, which will not be unreasonably withheld. This Agreement shall apply to any permitted transferees or assignees. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all charges due under each Customer Order.

### 7.3 Affiliates.

(A) Service may be provided to Customer pursuant to this Agreement by an Affiliate of InfoWest, including, without limitation, an Affiliate authorized to provide Service in a country other than the country within which this Agreement has been executed. If a Customer Order requires the delivery of Service in a jurisdiction where, in order for such Customer Order to be enforceable against the parties, additional terms must be added, then the parties shall incorporate such terms into the Customer Order (preserving, to the fullest extent possible, the terms of this Agreement). Notwithstanding any provision of Service to Customer pursuant to this Agreement by an Affiliate of InfoWest, InfoWest shall remain responsible to Customer for the delivery and performance of the Service in accordance with the terms and conditions of this Agreement.

(B) The parties acknowledge and agree that Customer's Affiliates may purchase Service under this Agreement; provided, however, any such Customer Affiliate purchasing Service hereunder agrees that such Service is provided pursuant to and governed by the terms and conditions of this Agreement. Customer shall be jointly and severally liable for all claims and liabilities arising under this Agreement related to Service ordered by any Customer Affiliate, and any event of default under this Agreement by any Customer Affiliate shall also be deemed an event of default by Customer. Any reference to Customer in this Agreement with respect to Service ordered by a Customer Affiliate shall also be deemed a reference to the applicable Customer Affiliate.

(C) Notwithstanding anything in this Agreement to the contrary, either party may provide a copy of this Agreement to its Affiliate or such other party's Affiliate for purposes of this Section 7.3, without notice to, or consent of, the other party.

7.4 Notices. Notices hereunder shall be in writing and sufficient and received if delivered in person, or when sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided below) or sent by U.S. Postal Service (or First Class International Post (as applicable)), addressed as follows:

IF TO INFOWEST:

For billing inquiries/disputes, requests for Service Level credits and/or requests for disconnection of Service (for other than default):

InfoWest  
148 E Tabernacle  
St. George, UT 84770

Attn: Voip Sales Department  
E-mail: [voipsales@infowest.com](mailto:voipsales@infowest.com)

Attn:

IF TO CUSTOMER:

,

Attn:

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices shall be deemed to have been given on (i) the date delivered if delivered personally, (ii) the business day after dispatch if sent by overnight courier, (iii) the third business day after posting if sent by U.S. Postal Service (or other applicable postal delivery service), or (iv) the date of transmission if delivered by facsimile or electronic mail (or the business day after transmission if transmitted on a weekend or legal holiday). Notwithstanding the foregoing, any notices delivered by InfoWest to Customer in the normal course of provisioning of Service hereunder shall be deemed properly given if delivered via any of the methods described above or via electronic mail to the address listed on any Customer Order.

7.5 Acceptable Use Policy. Customer's use of Service shall comply with InfoWest's Acceptable Use Policy and Privacy Policy, as communicated in writing to Customer from time to time and which are also available through InfoWest's web site at <http://www.infowest.com/>. InfoWest will notify Customer of complaints received by InfoWest regarding each incident of alleged violation of InfoWest's Acceptable Use Policy by Customer or third parties that have gained access to the Service through Customer. Customer agrees that it will promptly investigate all such complaints and take all necessary actions to remedy any actual violations of InfoWest's Acceptable Use Policy. InfoWest may identify to the complainant that Customer, or a third party that gained access to the Service through Customer, is investigating the complaint and may provide the complainant with the necessary information to contact Customer directly to resolve the complaint. Customer shall identify a representative for the purposes of receiving such communications.

7.6 Data Protection. During the performance of this Agreement, it may be necessary for InfoWest to transfer, process and store billing and utilization data and other data necessary for InfoWest's operation of its network and for the performance of its obligations under this Agreement. The transfer, processing and storing of such data may be to or from the United States. Customer hereby consents that InfoWest may (i) transfer, store and process such data in the United States; and (ii) use such data for its own internal purposes and as allowed by law. This data will not be disclosed to third parties without prior written consent of customer.

7.7 Contents of Communications. InfoWest shall have no liability or responsibility for the content of any communications transmitted via the Service (except for content solely created by InfoWest), and Customer shall defend, indemnify and hold InfoWest harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third parties relating to Customer's use of Service. InfoWest provides only access to the Internet; InfoWest does not operate or control the information, services, opinions or other content of the Internet. Customer agrees that it shall make no claim whatsoever against InfoWest relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet.

7.8 Marks and Publicity.

(A) Neither party shall have the right to use the other party's or its Affiliates' trademarks, service marks or trade names without the prior written consent of the other party. The marks used in this Agreement

are either registered service marks or service marks of InfoWest, its Affiliates or third parties in the United States and/or other countries.

(B) Neither party shall issue any press release relating to any contractual relationship between InfoWest and Customer, except as may be required by law or agreed between the parties in writing.

7.9 Non-Disclosure. Any information or documentation disclosed between the parties during the performance of this Agreement shall be subject to the terms and conditions of the applicable non-disclosure agreement then in effect between the parties.

7.10 Disclosure of Customer Information. InfoWest reserves the right to provide any customer or potential customer bound by a nondisclosure agreement access to a list of InfoWest's customers and a description of Service purchased by such customers. Customer consents to such disclosure, including the listing of Customer's name and Service purchased by Customer (financial terms relating to the purchase shall not be disclosed). Under no uncertain terms these services will not be made available to call centers or mass phone solicitors.

7.11 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah, U.S.A., without regard to its choice of law rules.

7.12 Entire Agreement. This Agreement, including any Service Schedule(s) and Customer Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service, which are of no further force or effect. All Service Schedules, whether attached hereto or executed between the parties after the Effective Date, are integral parts hereof and are hereby made a part of this Agreement.

7.13 Amendment. This Agreement, and any Service Schedule or Customer Order, may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party. Without limiting the generality of the foregoing, any handwritten changes to a Customer Order or any terms and conditions included in any Customer-provided purchase order shall be void unless acknowledged and approved in writing by a duly authorized representative of each party.

7.14 Order of Precedence. In the event of any conflict between this Agreement and the terms and conditions of any Service Schedule and/or Customer Order, the order of precedence is as follows: (1) the Service Schedule, (2) this Agreement, and (3) the Customer Order.

7.15 Survival. The provisions of this Article 7 and Articles 3, 5 and 6 and any other provisions of this Agreement that by their nature are meant to survive the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

7.16 Relationship of the Parties. The relationship between Customer and InfoWest shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, without limitation, for federal income tax purposes.

7.17 No Waiver. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

7.18 Severability. If any provision of this Agreement shall be declared invalid or unenforceable under applicable law, said provision shall be ineffective only to the extent of such declaration and such declaration shall not affect the remaining provisions of this Agreement. In the event that a material and fundamental provision of this Agreement is declared invalid or unenforceable under applicable law, the parties shall negotiate in good faith respecting an amendment hereto that would preserve, to the fullest extent possible, the respective rights and obligations imposed on each party under this Agreement as originally executed.

7.19 Joint Product. The parties acknowledge that this Agreement is the joint work product of the parties. Accordingly, in the event of ambiguities in this Agreement, no inferences shall be drawn against either party on the basis of authorship of this Agreement.

7.20 Third Party Beneficiaries. This Agreement shall be binding upon, inure solely to the benefit of and be enforceable by each party hereto and their respective successors and assigns hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

7.21 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile signatures shall be sufficient to bind the parties to this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

INFOWEST ("InfoWest") \_\_\_\_\_  
("Customer")

## **ADDENDUM II**

### **Service Schedule**

#### **InfoWest voice Service**

This InfoWest Voice Service Schedule incorporates by reference the terms of that Master Services Agreement (the "Agreement") except as expressly modified herein. For Services ordered under this Service Schedule, when "InfoWest" is referenced in the Agreement and/or Addendum it shall be deemed to be InfoWest. only.

### **ARTICLE 1. DEFINITIONS**

1.1 "CPE Router" shall mean a Customer-provided router which enables access to InfoWest Digital Voice Services and which will be located at the Customer Premises.

1.2 "Customer Provided Facilities" shall mean all facilities necessary to the delivery of InfoWest Digital Voice Service which are not InfoWest Facilities, including but not limited to InfoWest recommended and approved IP telephone equipment, the CPE Router, inside wiring, desktop hardware and software, and internet access.

1.3 "InfoWest Voice Service" shall mean the enhanced service described in Section 2.1 of this Service Schedule and identified in a Customer Order

1.4 "Seat" shall mean a telephone number provisioned in relation to the InfoWest Digital Voice Service associated with a specific user or telephone device.

1.5 "Territory" shall mean the continental United States.

## **ARTICLE 2. INFOWEST SERVICE DESCRIPTION AND DELIVERY OF INFOWEST SERVICE**

2.1 InfoWest Service Description. InfoWest Voice Service is a hosted wholesale Internet Protocol ("IP") based voice service which may bundle Class 5 communications features with other available features and/or services as selected by Customer and identified in the Customer Order. Customer may choose to supply its own Internet connectivity. Customer acknowledges that the quality of the Internet connectivity will affect the performance of the Service. To use the InfoWest Voice Service, Customer must supply all necessary Customer Provided Facilities.

2.2 Grant of License and Restrictions.

(A) InfoWest hereby grants to Customer during the term of this Agreement:

(i) a non-exclusive, non-transferable, non-sublicenseable right and license in the Territory to install, and use the service as long as it complies with the terms of this Agreement.

2.3 Service Delivery and Billing Commencement. Upon provisioning of DID numbers ordered in a Customer Order, InfoWest will deliver a Connection notice to the Customer in the form of an email or voice confirmation. Billing in relation to the DID numbers shall commence at that time. Subject to Section 2.5 below, upon the sooner of (a) the assignment of Seats to the DID numbers; or (b) use of the DID number, InfoWest will commence billing for the monthly recurring seat charge and usage. Billing shall commence on the applicable Service Commencement Date, regardless of whether Customer or End User has procured other services from other carriers or Affiliates of InfoWest needed to operate the InfoWest Voice Service, and regardless of whether the End User is otherwise prepared to accept delivery of ordered InfoWest Voice Service.

2.4 Disputed Invoices. Notwithstanding anything to the contrary in the Agreement, all claims related to disputed invoices must be submitted to InfoWest in writing within thirty (30) days from the date of invoice of those Services. Customer waives the right to dispute any charges not disputed within such thirty (30) day period.

2.5 Termination Charges. Notwithstanding anything in the Agreement to the contrary, Customer may terminate or cancel InfoWest Digital Voice Service under a Customer Order upon thirty (30) days' prior written notice to InfoWest (in a form reasonably requested by InfoWest). In the event that Customer terminates InfoWest Voice Service as set forth herein or in the event that the delivery of InfoWest Voice Service is terminated by InfoWest as the result of an uncured default by Customer pursuant to Section 4.2 of the Agreement, Customer shall pay InfoWest a termination charge equal to the sum of:

(i) InfoWest's out of pocket costs incurred in delivering InfoWest Facilities in or to the Customer Premises necessary for InfoWest Voice Service delivery;

(ii) all unpaid amounts for InfoWest Voice Service through the date of termination;

(iii) any third party cancellation/termination charges related to the installation and/or termination of InfoWest Voice Service; and

(iv) the non-recurring charges for the canceled InfoWest Voice Service, if not already paid; and

(v) the full amount of the monthly recurring charges for the terminated InfoWest Voice Service for the month of the effective termination (regardless of whether the termination date is mid-billing cycle).

(B) The parties acknowledge that the cancellation or termination charges set forth are a genuine estimate of the actual damages that InfoWest will suffer and are not a penalty.

2.6 Service Term and Pricing. The Service Term shall be three (3) years. Pricing is subject to change in

InfoWest's sole discretion. InfoWest will provide Customer with sixty (60) days notice in advance of pricing changes. Pricing changes will impact all InfoWest Voice Services provided to Customer.

2.7 Assignment of DID by Office Administrator. In the event that the DIDs provisioned to a Tenant have not been assigned by the Office Administrator within one hundred and twenty (120) days following the Connection Notice, InfoWest may revoke the non-assigned DIDs, in InfoWest's sole discretion. DID will remain the property of InfoWest and are not transferable or portable.

2.8 Non-Standard Use. InfoWest may in InfoWest's discretion disconnect an Order or Orders and/or re-rate the service upon Customer's or its end user's improper usage patterns of the Service. Improper usage patterns may include but are not limited to calling patterns where the ratio of inbound or outbound call minutes exceeds 80% of the aggregate minutes of Customer and/or a Tenant, or if the aggregate minutes of usage per month per Seat in an Order exceeds 5000 minutes. Aggregate minutes are calculated by adding all inbound plus outbound minutes of Customer and/or a Tenant on a monthly basis. The InfoWest Service is intended for normal residential or small office use. You are expressly prohibited from using the Service for autodialing, telemarketing (including without limitation, religious, charitable or political solicitation or polling), continuous or extensive call forwarding, activities involving continuous connectivity, all types of broadcasting including fax broadcast, fax blasting, or any other activity that results in excessive usage inconsistent with normal residential or small office usage patterns. If InfoWest determines, in its sole discretion, that you are abusing the Service, or that your Service is being used for any of the aforementioned activities, InfoWest reserves the right to immediately terminate without notice or to modify the Terms of Service and to assess additional usage charges for each month in which excessive usage occurred.

2.9 Customer-Provided Equipment. Customer shall install Customer Provided Facilities using a vendor approved by InfoWest.

## **ARTICLE 3. SERVICE LEVELS**

3.1 Service Level Credits. In no event shall the total amount of credits issued to Customer in any month exceed the non-recurring charges and monthly recurring charges invoiced to Customer for the affected Seat(s) for that month. InfoWest Service Levels do not apply to any failure or degradation in InfoWest Voice Service resulting from Off-Net local access circuits, Off-Net Local Loops and/or Internet access or connectivity provided by any third-party supplier, Customer, or End User. Any Service Level Credit for services provided by an InfoWest Affiliate will be set forth in a separate Service Schedule. Notwithstanding anything in the Agreement to the contrary, to request a credit, Customer must contact InfoWest Customer Service or deliver a written request (with sufficient detail necessary to identify the affected Seats and Service) pursuant to Section 7.4 of the Agreement within fifteen (15) days of the end of the month for which a credit is requested.

3.2 Service Level Measurement Demarcation. Unless otherwise stated in a Service Level, Service Level measurements are made by InfoWest, and are taken between the ingress router of the InfoWest Communications-provided IP network and the egress router from the InfoWest-provided IP network at the locations provided in the Service Levels below. No Service Levels apply to Internet connectivity provided by third parties although failure of the same to perform will affect the InfoWest Voice Service.

3.3 Availability Service Levels.

(A) Network Availability. The Network Availability Service Level for InfoWest Service is 99.9% in a calendar month. The InfoWest network is considered unavailable if a Seat (or Seats) is unavailable such that Customer is unable to send and receive IP packets. In the event that InfoWest Voice Service becomes unavailable as defined above for reasons other than an Excused Outage, Customer will be

entitled to a service credit off of the monthly recurring seat charge for the affected Seat, based on the cumulative unavailability of the same in a given calendar month as set forth in the chart below. The maximum credit which may be provided pursuant to this Service Level is 30 days per month per affected Seat. Customer will not be entitled to a service level credit associated with any other Service Level related to InfoWest Digital Voice Service to the extent any such failure arises out of or is related to the unavailability event, giving rise to credits hereunder:

Cumulative Unavailability per event (in hrs:mins:secs)	Service Level Credit
00:00:01 - 00:10:00	No Credit
00:10:01 - 00:60:00	1 day
00:60:01 - or more	3 days

(B) Managed Applications. The availability Service Level for the InfoWest Managed Applications is 99.9% in a calendar month. In the event that the Managed Applications are available less than 99.9% of the time during a month (as determined by InfoWest) for reasons other than an Excused Outage, Customer will be entitled to a service credit off of the monthly recurring Seat charge, based on the cumulative unavailability of the Managed Application in a given month as set forth in the following table.

Cumulative Unavailability per event (in hrs:mins:secs)	Service Level Credit
00:00:01 - 00:10:00	No Credit
00:10:01 - 00:60:00	1 day
00:60:01 - or more	3 days

### 3.4 Quality of Service - Service Levels.

(A) Delay Service Level. The Delay Service Level for InfoWest Digital Voice Service is 55 milliseconds (ms) or less (on average) per month between InfoWest North American Gateways. The Delay Service Level will be measured by InfoWest as the average round trip delay over a calendar month for traffic on the InfoWest-provided IP network between Gateways.

In the event of average delay in excess of the Service Level set forth above for reasons other than an Excused Outage, Customer will be entitled to receive a service credit off the monthly recurring Seat charge for the affected Seat equal to one (1) day.

(B) Packet Delivery Service Level. The Packet Delivery Service Level for InfoWest Digital Voice Service is less than 0.25% (on average) of total IP packets dropped per month. The Packet Delivery Service Level will be measured by InfoWest between two (2) InfoWest North American Gateways, and is defined as the percentage of IP packets dropped between such Gateways.

In the event of average packet loss in excess of the Service Level set forth above for reasons other than an Excused Outage, Customer will be entitled to receive a service credit off the monthly recurring Seat charge for the affected Seat equal to one (1) day.

(C) Jitter Service Level. The Jitter Service Level for InfoWest Digital Voice Service is 10 milliseconds (ms) or less (on average) per month between InfoWest North American Gateways. The Jitter Service Level will be measured by InfoWest independently between two (2) InfoWest Gateways and determined separately for each circuit. Jitter is defined as the relative variation in delay between

consecutive packets.

In the event of average jitter in excess of the Service Level set forth above for reasons other than an Excused Outage, Customer will be entitled to receive a service credit off the monthly recurring Seat charge for the affected Seat equal to one (1) day.

3.5 Total Service Credits. In no event will the cumulative total of the Service Credits for all Service Levels above exceed the MRC for the Seat(s) affected. For the avoidance of doubt, the MRC for the Seats does not include usage based charges.

## **ARTICLE 4. EMERGENCY 911 SERVICE - CUSTOMER AND END USER RESPONSIBILITY**

4.1 The InfoWest Voice Service currently may not support access to enhanced 911 emergency calling functionality ("E911") in all locations. A list of locations where e911 is available will be provided upon request. In all locations, 911 functionality (as opposed to e911) will be provided by InfoWest. In such locations, Customer shall disclose to and advise its End Users of the lack of e911 functionality.

4.2 InfoWest, through its telecommunications providers, will provide to Customer 911 emergency call functionality through (i) the use of InfoWest if such 911 functionality is available (the "InfoWest 911 Solution"), or (ii) the use of a third party (the "Third Party 911 Solution").

4.3 Customer shall indemnify and hold harmless InfoWest ES, its officers, directors, employees, agents, parent, affiliated, and subsidiary companies for any and all losses, claims, costs or damages of whatever kind that result from Customer's or End User's (i) failure to obtain 911-functionality through InfoWest; (ii) procurement of 911-functionality through a third party; and/or (iii) failure to advise end users of the lack of e911.

## **ARTICLE 5. GENERAL TERMS**

5.1 Compliance with Law. InfoWest will comply with all applicable laws, rules and regulations relating to the delivery of the InfoWest Voice Service. Customer shall comply with all applicable laws, rules, licensing and certification requirements and regulations related to the provision and/or revocation of the InfoWest Voice Service to its End Users. Customer shall require its End Users to comply with all applicable laws, rules, licensing and certification requirements and regulations related to the use of the InfoWest Voice Service. If any change in law, rule, licensing requirement, certification requirement or regulation (or any interpretation of the same) impacts Customer's ability to offer the InfoWest Voice Service to End Users and/or bill or collect amounts from End Users therefore, Customer's obligations to pay InfoWest for the InfoWest Voice Service and otherwise to comply with the terms of this Agreement shall remain unaffected.

5.2 Limitation of Liability. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN AND EACH PARTY'S BREACH OF THE SECTION HEREIN ENTITLED "CONFIDENTIAL INFORMATION" AND SAVE FOR CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER AND ANY CLAIMS FOR TERMINATION LIABILITY, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER RELATED TO OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE GREATER OF ONE MILLION U.S. DOLLARS (\$1,000,000) OR ALL AMOUNTS PAID UNDER THIS AGREEMENT DURING THE PREVIOUS TWELVE (12)-MONTH PERIOD.

5.3 InfoWest Provided Software. In the event InfoWest provides any software to Customer in

connection with the Services, InfoWest grants Customer a personal, non-exclusive, non-transferable license, for the duration of the Service Term of the InfoWest Voice Service for which the software is used, to use such software, in object code form only, on the hardware on which it is installed for the sole purpose of enabling Customer or Customer's End Users to use the InfoWest Voice Services. InfoWest and/or its third-party suppliers retain all rights, title and interest (including all intellectual property and proprietary rights) in and to such software Customer acknowledges that the software and the content and design thereof are valuable copyrights, trade secrets and/or other intellectual property of InfoWest, its Affiliates, parents and/or its third party suppliers. Customer agrees not to (a) disclose or make available to third parties any portion of such software without InfoWest's advance written permission; (b) copy, modify (except as necessary to customize the "look and feel" of the web interface of the software) or create any derivative work of the software (or any portion thereof); (c) reverse engineer, decompile or disassemble such software or otherwise attempt to derive the source code, algorithms, structure or organization of the software; (d) assign, transfer, lease, time-share or redistribute the software; or (e) authorize or permit any End User or other third party to do any of the foregoing. Customer shall not, nor shall Customer permit its end users to remove, alter, cover or obfuscate any copyright, trademark, service mark or other proprietary rights notices placed or embedded by InfoWest or any of its third party software suppliers on or in any software. Customer shall not use or allow the use of the software after the applicable Service Term without obtaining a valid license from InfoWest or from the third-party supplier respecting such use. For certain software, additional licensing terms may be included as a "click-wrap" license with the software to which Customer and/or its End User must agree and abide. CUSTOMER ACKNOWLEDGES THAT INFOWEST AND INFOWEST'S THIRD-PARTY SOFTWARE SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THOSE ARISING FROM A COURSE OF DEALING AND USAGE OF TRADE AS RESPECTS ANY SOFTWARE. FURTHERMORE, INFOWEST WILL NOT BE RESPONSIBLE FOR ANY PROBLEMS ARISING FROM THE USE OF CPE (CUSTOMER PRESENCE EQUIPMENT) THAT IS NOT LISTED ON AN APPROVED VENDOR LIST OF INFOWEST.

#### 5.4 Affiliates.

(A) Notwithstanding the foregoing, InfoWest shall remain responsible to Customer for the delivery and performance of the InfoWest Voice Service in accordance with the terms and conditions of this Agreement. If a Customer Order requires the delivery of InfoWest Voice Service in a jurisdiction where, in order for such Customer Order to be enforceable against the parties, additional terms must be added, then the parties shall incorporate such terms into the Customer Order (preserving, to the fullest extent possible, the terms of this Agreement).

(B) The parties acknowledge and agree that Customer's Affiliates may purchase InfoWest Voice Service under this Agreement; provided, however, any such Customer Affiliate purchasing InfoWest Voice Service hereunder agrees that such InfoWest Voice Service is provided pursuant to and governed by the terms and conditions of this Agreement. Customer shall be jointly and severally liable for all claims and liabilities arising under this Agreement related to InfoWest Voice Service ordered by any Customer Affiliate, and any event of default under this Agreement by any Customer Affiliate shall also be deemed an event of default by Customer. Any reference to Customer in this Agreement with respect to InfoWest Voice Service ordered by a Customer Affiliate shall also be deemed a reference to the applicable Customer Affiliate.

5.4 Customer Default. In the event that Customer fails to pay amounts when due under the Agreement and/or defaults on a material term hereunder and fails to cure as set forth in the Agreement, Customer

hereby agrees that InfoWest may (if InfoWest so desires in its sole and absolute discretion) contact, communicate with and solicit (or refer such end users to third parties for solicitation), any or all of Customer's end users to make appropriate arrangements for the discontinuance or continuation of services. Customer expressly agrees that InfoWest shall have no liability to Customer whatsoever for initiating or continuing such communication or solicitation. Notwithstanding the foregoing, (i) Customer and InfoWest each agree and acknowledge that Customer's end users are not and shall not be considered to be third-party beneficiaries of this Service Schedule, the Agreement, or the Addendum and (ii) InfoWest's actions in initiating or continuing communications with Customer's end users shall in no way affect Customer's contractual obligations to InfoWest under the Agreement or Addendum.

5.5 Notices. Certain notices hereunder may be delivered to Customer by InfoWest by sending them to an e-mail address identified in the Customer Order Form, including but not limited to pricing updates, the Customer Welcome Letter and Service Connection Notices. Notices so e-mailed shall fulfill the notice requirements under the Agreement.