

**TRANSTELCO, INC.**  
**MASTER SERVICE AGREEMENT**

THIS MASTER SERVICE AGREEMENT (the "Agreement") is made and entered into effective as of \_\_\_\_\_ (the "Effective Date") between Transtelco, Inc, a Delaware limited liability company ("Supplier"), and [Customer Name], a [state of organization/type of entity] ("Customer"). Supplier and Customer are referred to in this Agreement individually as a "Party" and collectively as the "Parties".

WHEREAS, Supplier owns and operates telecommunications network facilities and Customer requires the provision of services from such network facilities; and

WHEREAS, the Parties desire to set forth in this Agreement the general terms and conditions that will apply to such telecommunication services; and

WHEREAS, upon reaching agreement upon the specific services and terms and conditions, the Parties would execute a Service Order, which would set forth the specific service and any associated terms and conditions that would apply to each such service.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Supplier and Customer agree as follows:

**ARTICLE I**  
**SERVICES**

1.1 Services. If agreed upon in a Service Order in the form substantially equivalent to the form of Service Order set forth as Exhibit A, then Supplier shall provide Customer the services set forth therein (the "Services").

1.2 Service Levels. The Service Order shall set forth any technical specifications associated with the Services. Supplier shall maintain a twenty-four (24) hours a day, seven (7) days a week point-of-contact for Customer to report to Supplier any network system trouble reports or faults, including access to a toll-free trouble reporting telephone number.

1.3 Installation and Maintenance of Facilities. The Service Order shall set forth any facilities or equipment that must be installed and which Party shall be responsible for installing and paying for the procurement and installation costs of such facilities or equipment. Customer shall provide Supplier, at no charge, floor space and such other space and access thereto as is reasonably required for the installation, maintenance, repair and operation of any facilities or equipment that Supplier must install to provide the Services at locations owned or controlled by Customer and shall use commercially reasonable efforts to obtain such rights at locations that are not owned or controlled by Customer. Unless otherwise set forth in a Service Order, each Party shall maintain, repair and operate any of its facilities and equipment. Customer shall also

provide to Supplier, at no charge, electrical power required by Supplier to provide the Service under this Agreement at the points of termination of Service owned or controlled by Customer.

1.4 Testing and Commencement of Service. Upon completion of installation or connection of facilities and/or equipment necessary for the provision of each Service to be provided to Customer, Supplier shall conduct appropriate tests to demonstrate that the Service meets the applicable specifications set forth in the Service Order. Upon successful completion of such tests, Supplier shall notify Customer that such Service is available for use.

**ARTICLE II**  
**FEES AND CHARGES**

2.1 Non-Recurring Fees. The Parties will set forth their agreement in the Service Order regarding any one-time, non-recurring fees that may be applicable to the Services (the "Non-Recurring Fees"), including without limitation, those applicable to the installation and set-up of any necessary facilities or equipment to provide the Services.

2.2 Recurring Fees. The Parties will set forth their agreement in the Service Order regarding any recurring fees that may be applicable to the Services (the "Recurring Fees"), including without limitation setting forth the period in which such fees recur (e.g. whether the fees are charged on a monthly basis or some other time period).

2.3 Tax Reimbursement. Customer shall be responsible for the payment of, and shall hold Supplier and its affiliates, harmless from and against, any sales, use or other taxes, fees, charges or surcharges (other than taxes imposed on Supplier's net income, capital, or net worth) which are assessed or due by reason of the provision of the Services by Supplier to Customer under this Agreement.

2.4 Credit of Fees. If the Services are interrupted and Supplier has been unable to provide the Services at the availability factors stated in the Service Order (a "Service Outage"), then Supplier will credit Customer's invoice for the applicable period with an amount equal to the Service Outage Credit (as defined below). Notwithstanding the above, a Service Outage shall not be deemed to have occurred and no Service Outage Credits will apply:

- (a) during periods (i) of less than thirty (30) minutes, (ii) in which Supplier is not given access to its facilities or equipment that are required to provide the Services or to remedy any Service Outage, (iii) in which planned maintenance and repair activities are occurring, (iv) in which Customer continues to use the Services on an impaired basis, or (v) that are not reported to Supplier within thirty (30) days of the date the Service was affected; or

(b) for interruptions that are caused by or due to (i) acts or omissions of Customer or a third party, including without limitation an interruption on the network facilities of a third party that may provide a portion of the Services, (ii) the failure or malfunction of facilities or equipment not owned or operated by Supplier, including without limitation the failure of the power supply, or (iii) an event of force majeure.

A Service Outage shall (a) commence when the Customer reports to Supplier's network operating center that a Service malfunction has occurred and Supplier identifies the location and cause of the Service Outage and (b) terminates when the affected Service is fully operational. The Service Outage Credit shall be equal to (a) the Recurring Fee during the month in which the Service Outage occurred multiplied by (b) the number of hours or fractions thereof that the Service Outage occurred during the applicable month divided by 720 hours. The Customer's right to receive such Service Outage Credit shall be the Customer's sole and exclusive remedy and the Supplier's sole and exclusive obligation in the event of a Service Outage

### **ARTICLE III TERM OF AGREEMENT**

3.1 Initial Term. Initial Term. The term of this Agreement shall be for a period of three (3) years from the Effective Date ("Initial Term").

3.2 Extended Term. The term of this Agreement shall continue year to year after the Initial Term until terminated prior to the beginning of any contract year upon sixty (60) days prior written notice by either Party delivered to the other Party (with the combination of the Initial Term and any extension thereof in accordance with this Section 5.2 being referred to as the "Term"). Notwithstanding anything to the contrary above, the Term shall be extended for the period of any outstanding Service Order agreed to by the Parties with regard to such Service Order.

3.3 Termination Payment. The minimum service term (the "Minimum Term"), if any, for the Service shall be set forth in the Service Order. Customer shall have no right to terminate or disconnect such Services prior to the expiration of such Minimum Term. Customer shall have the right to terminate or disconnect such Services following such Minimum Term; provided that if the Service is terminated or disconnected prior to the expiration of the requested term stated for such Services in the Service Order (the "Requested Term"), then Customer shall pay to Supplier an early termination charge for the period after the Minimum Term. Such early termination charge shall be equal to the Recurring Fees that would otherwise have been paid for the Service for the period after the early termination of the Services until the expiration of the Requested Term, unless otherwise set forth in the Service Order.

3.4 Termination by Supplier. Subject to the provisions of Section 4.1(b), Supplier shall have the right to terminate this Agreement if Customer is in default of any of its obligations under this Agreement and following thirty (30) days written notice by Supplier to Customer of such default Customer has not cured such default.

### **ARTICLE IV**

### **MISCELLANEOUS**

#### **4.1 Payment and Credit Matters.**

(a) Billing and Payment. Supplier shall provide Customer invoices for the Recurring Fees and the Non-Recurring Fees and any other amounts owed by Customer to Supplier under this Agreement. All invoices shall be sent to the address and contact indicated below. Customer agrees to make payment under this Agreement to Supplier in available funds by wire transfer (or check, if requested by Supplier) at such location as Supplier may from time to time designate in writing. Such invoices shall be sent by Supplier on or before the beginning of each month for the Services to be provided during such month and for any Services that commenced. Customer shall pay Supplier such invoices on or before thirty (30) days after the receipt of the invoice for the Services provided or amounts otherwise owed under this Agreement. If the Services commence or end on a day other than the first day of a calendar month, then any Recurring Fees that are applicable for the period in which such Services commence or end shall be prorated in the proportion that the number of days the Services are provided in such month bears to the total number of days in the month.

(b) Late Payment. If the invoiced amount is not paid when due, then interest on any unpaid amount shall accrue at a rate of one and one-half percent (1½%) per month, not to exceed any applicable maximum lawful rate, together with any court costs, reasonable attorneys' fees and all other costs of collection which Supplier may incur in enforcing the terms of this Agreement. If such default continues fifteen (15) days after written notice from Supplier to Customer, then Supplier may suspend the Services or terminate this Agreement without liability and without prejudice to other remedies.

(c) Adjustments to Payments - If any overcharge or undercharge in any form whatsoever shall at any time be found and the bill therefore has been paid, Supplier shall refund the amount of any overcharge received by Supplier and Customer shall pay the amount of any undercharge (in each case with interest at the rate equal to the Prime Rate as quoted in the Wall Street Journal on the first Monday of the month the Services were rendered for the charges in question), within thirty (30) days after final determination thereof; provided, there shall be no retroactive adjustment of any overcharge or undercharge if the matter is not brought to the attention of the other Party in writing within twelve (12) months following the date the Services were provided under this Agreement regarding which overcharge or undercharge apply.

(d) Credit Requirements. The provision of Services during the Term of this Agreement shall be subject to the review and approval of Supplier's credit department, such approval not to be unreasonably withheld or delayed. Customer agrees to provide information as reasonably requested by Supplier in order for Supplier to determine Customer's ability to make all payments under this Agreement. If Supplier has reasonable grounds to believe that Customer will be unable to make all such payments under this Agreement, then Supplier can request that Customer provide additional assurances that it will perform all of its obligations under this Agreement, in the form of cash collateral, letters of credit, parental guarantees or other forms of security, in each case that are reasonably acceptable to Supplier. If Customer fails to provide such

assurances or security within three (3) business days, then Supplier may suspend the Services or terminate this Agreement without liability and without prejudice to other remedies.

(e) Cross Connect Fees. Customer shall be responsible for all cross connect fees, including without limitation fees to cross connect to Customer, the customers of Customer, Customer's other vendors or another carrier.

(f) Universal Service Fund Programs. The Parties acknowledge that Supplier may be required to report revenues from end users and contribute a percentage of such revenues to the federal Universal Service Fund ("USF") and various other state and federal government programs (collectively, the "USF Programs"). Supplier may, to the extent permitted by law, recover such USF Programs contributions from Customer. Customer represents that it is not an end user as defined by the applicable federal and state laws and regulations pertaining to such USF Programs and agrees to provide Supplier, upon Supplier's request, with documentation satisfactory to Supplier that demonstrates Customer is not such an end user (e.g., written certification of such status or redacted copies of Customer's submitted USF Program worksheets). Alternatively, Supplier may charge Customer, and Customer shall pay Supplier, an amount equal to the USF Programs contributions imposed on Supplier that are based on the Services provided hereunder to Customer.

4.2 Force Majeure. Notwithstanding anything to the contrary contained herein, Supplier shall not be liable to Customer for any loss or damage, or deemed to be in breach of this Agreement due to a failure to perform, wholly or in part, if such nonperformance is due to causes beyond Supplier's control, including without limitation acts of God, fire, explosion, earthquake, hurricane, tornado, wind, flood, storm or other natural occurrences; vandalism; third party theft; computer, voice mail, e-mail, or other telecommunications system failure; any law, order, regulation, direction, action or lawful demand of any federal, state, local or foreign governments having jurisdiction over Supplier, this Agreement or the Services or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more such governments, or of any civil or military authority; national emergency; insurrection; riot; war; strike, lockout, work stoppage or other such labor difficulty. Supplier shall give notice thereof to Customer as soon as practicable after the occurrence of such events of force majeure. Such notice may be given orally or in writing, but, if given orally, it shall be promptly confirmed in writing, giving reasonably full particulars. Supplier shall use all commercially reasonable efforts to cure or correct such event of force majeure to the extent it may be corrected through the exercise of reasonable diligence by Supplier.

4.3 Insurance and Liability.

(a) Insurance. To the extent that Customer is required to interconnect with the facilities of Supplier or is otherwise required to access the premises or facilities of Supplier, then Supplier may require Customer, at Customer's sole expense, and any contractors or other third parties representing Customer to maintain property insurance, commercial general liability insurance, business interruption insurance, workers' compensation insurance and such other insurance or additional levels of insurance as may be

reasonable required by Supplier. Any insurance requirements set forth herein are independent of Customer's indemnification and other obligations hereunder and shall not be construed or interpreted in any way to restrict, limit, or modify Customer's indemnification and other obligations, or to limit Customer's liability.

(b) Indemnification. Each Party shall indemnify and hold the other harmless from and against all liabilities, claims, damages, losses, costs, expenses and judgments (including reasonable attorneys' fees) and cause of action arising out of or in connection with this Agreement or any Service Order for bodily injury (including death) or damage to tangible property caused by the negligence or willful misconduct of the other Party's employees, agents, or invitees. Customer shall indemnify and hold harmless Supplier from and against any claims made by any customer of Customer.

(c) Waiver of Consequential Damages. Under no circumstances shall either Party be liable to the other Party or any of their customers for any indirect, incidental, economic, special, punitive or consequential damages, whether for breach of contract, negligence or under any other cause of action, that result in any way associated with this Agreement.

(d) Limitation of Liability. Notwithstanding anything to the contrary, the liability of Supplier to Customer for (a) any breach by Supplier under the terms of this Agreement, (b) for any tort liability of Supplier or any of its affiliates to Customer, or (c) in any other circumstance in which Supplier or any of its affiliates is judicially determined to have some liability to Customer, for whatever reason arising under or related to the matter of this Agreement, shall, in each such instance, be limited to an amount equal to the Recurring Fees that have been paid by Customer to Supplier at the time of the incident giving rise to the liability. When the services or facilities of third parties are used in establishing connections to points not reached by Supplier's facilities or equipment, Supplier shall not be liable for any act or omission of such third parties or their employees, agents or representatives.

4.4 Notices. Any notice required or desired to be given regarding this Agreement shall be in writing and may be given by personal delivery, by overnight courier service, or by certified mail. A notice shall be deemed to have been given (i) on the third (3rd) business day after mailing if such notice was deposited in the United States mail, certified, postage prepaid, addressed to the Party to be served at its Address for Notices (as defined below), (ii) when delivered if given by personal delivery to the Party at its Address for Notice, and (iii) in all other cases when actually received at the Party's Address for Notices. "Address for Notices" shall be the address set forth on the signature page of this Agreement. Either Party may change its Address for Notices by giving notice of the same in accordance with this section.

4.5 Entire Agreement, Waiver and Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral, between the parties with respect to the subject matter hereof. The waiver or non-enforcement by either Party of any provision in this Agreement shall not be considered a waiver of any other provision of this Agreement or any waiver of the ability to enforce the provisions waived in the future.

This Agreement may only be amended by a writing executed by the Parties. SUPPLIER MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ANY AND ALL SERVICES PROVIDED UNDER THIS AGREEMENT OR ITS PERFORMANCE UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.

4.6 Assignment. This Agreement (or any rights hereunder) shall not be pledged, mortgaged, encumbered, assigned or delegated, in whole or in part, by Customer without first obtaining the prior written consent of Supplier, which consent shall not be unreasonably withheld.

4.7 Governing Law and Compliance with Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. This Agreement shall be subject to all applicable laws, rules, regulations, orders, ordinances and codes (collectively the "Laws") of all federal, state and local governmental authorities and each Party shall be responsible, at its sole cost, to comply with the Laws.

4.8 Confidentiality. Except as required by law, regulation, or order of governmental authority, the Parties and their respective agents, employees, officers, directors, Affiliates and attorneys shall keep and maintain this Agreement and all of the terms and provisions hereof in strict confidence and will not transmit, reveal, disclose, or otherwise communicate the substance of any of the terms or provisions of this Agreement to any other person. In the event the terms of this Agreement are inquired into or required to be produced in a proceeding in a court of law, administrative agency, or other judicial body, the Party subject to the disclosure inquiry or request shall notify the other Party of such inquiry or request and shall use its commercially reasonable efforts to obtain a protective order before disclosing any of the terms hereof.

4.9 Miscellaneous. Should any provision of this Agreement prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. Any executed copy of this Agreement shall be deemed an original for all purposes. This Agreement shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators and permitted assigns of Supplier and Customer.

IN WITNESS WHEREOF, Supplier and Customer represent that they have read this Agreement, understand it and agree to be bound by all the terms and conditions stated herein.

**TRANSTELCO, INC**

BY:  
NAME:

TITLE:

General Matters:

Attn: Vice President – Wholesale Network Services  
500 W. Overland, Suite 310  
El Paso, Texas 79915  
Phone: 915-534-8100  
Fax: 915-534-9100

Reporting Outages:

Transtelco NOC  
noc@transtelco.net  
Phone: 1-877-518-3526  
Fax: \_\_\_\_\_

**CUSTOMER**

BY:  
 NAME:  
 TITLE:

**Exhibit A – Service Order Form**

**Customer Name** \_\_\_\_\_  
**Address** \_\_\_\_\_  
 \_\_\_\_\_  
**Primary Contact** \_\_\_\_\_ **Phone:** \_\_\_\_\_  
**Technical Contact** \_\_\_\_\_  
**Billing Address** \_\_\_\_\_  
 \_\_\_\_\_

**Service Type**                                                                                  \_\_\_\_\_ **Other**

Quantity \_\_\_\_\_ Requested Installation Date \_\_\_\_\_

Type: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

<b>Pricing</b>		<b>Term</b>	
Monthly: _____	Non-Recurring: _____	<input type="checkbox"/> Month to Month	
Other: _____	Other: _____	<input type="checkbox"/> 1 Year	
_____	_____	<input type="checkbox"/> 2 Year	
_____	_____	<input checked="" type="checkbox"/> 3 Year	
Total MRC: _____	Total NRC: _____	<input type="checkbox"/> 4 Year	
_____	_____	<input type="checkbox"/> 5 Year	
		<input type="checkbox"/> Other: _____	

Location A		Location Z	
COMPANY		COMPANY	
PHYSICAL ADDRESS		PHYSICAL ADDRESS	
CONTACT		CONTACT	
PHONE		PHONE	
SITE CONTACT		SITE CONTACT	
PHONE		PHONE	
NPA/NXX		NPA/NXX	
LOA/CFA		LOA/CFA	
OTHER		OTHER	

**Special Terms and Conditions:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

TRANSTELCO, INC

Signature

Name

Title

Date

A.E.

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Customer

Signature

Name

Title

Date

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