

Terms and Conditions

These Terms and Conditions (and all applicable addenda attached hereto or incorporated by reference (collectively, the "Terms and Conditions")) are made between BEK Communications Cooperative and its respective Subsidiaries and Affiliates (collectively, "BEK", "us", "we" or "our") and you ("Customer", "you" or "your") for the services identified by or in an order form(s), work invoice(s), and/or other BEK-authorized service order or work order documentation or information provided to or requested by Customer (collectively, the "Service Order"). BEK and Customer may be referred to individually as a "Party" or collectively as "Parties." These Terms and Conditions and the Service Order are collectively referred to herein as the "Agreement".

Customer acknowledges and agrees (i) the Services are provided subject to the Terms and Conditions, (ii) the Terms and Conditions shall be deemed incorporated into any Service Order executed by the Parties and the Parties' signature on or acknowledgement of such Service Order shall be evidenced of the Parties' adoption of the Terms and Conditions for the Service Order, (iii) this Agreement shall supersede and replace any prior Service Order or agreement between the Parties (iv) in the event that BEK provides Service to a Customer that fails or refuses to sign a Service Order, Customer's payment of the invoice or use of the Service shall be conclusive evidence of Customer's acceptance of this Agreement, and (v) the Terms and Conditions, pricing, product features and product capabilities may be changed by BEK after providing Customer 30-days written notice.

1. **Products and Services.** BEK shall provide certain services and products to Customer pursuant to this Agreement. Customer may submit one or more orders to BEK for services, equipment or materials including (a) certain network services ordered from BEK, which include but are not limited to local, long distance (including international long distance), facsimile service, data telecommunication services (including digital subscriber line, satellite, wireless, Ethernet transport or fiber), broadband, IP TV ("IPTV"), digital TV, analog TV (such TV services "BEKTV") cloud or hosted services like BEK Connect, BEK Protect, BEK Watch, BEK TV, and BEK TEK, Nurse Call services, Managed IT services, data backup, computer software applications and other related telecommunications services, features or functions at the physical locations identified in a Service Order (collectively, the "Services") along with a separate service term for each Service Order, (b) certain equipment, software or materials like the BEK Freedom App, whether sold, licensed or leased to Customer, which may be required in connection with the Services (collectively, the "Products") and (c) delivery location of the Services or Products (the "Premises"). BEK retains title to the Products used to deliver the Services, except for Products sold to Customer. BEK will use all commercially reasonable efforts to deliver the Services on or before the date set by BEK. Customer understands that an interruption of Services may occur in transferring the Services from the Customer's current provider to BEK, despite BEK's commercially reasonable efforts to switch the Services without interruption.

2. **E911 Disclosure Statement; 911 Calls from Remote Phones.**

- (a) BEK is subject to an FCC requirement to provide notification of any E911 limitations that may be associated with the service provided to its customers. As is the case with E911 service provided with traditional telephone service, you are advised that the E911 service provided by BEK:
- (i) may not function with the loss of electrical power, including, but not limited to, the loss of power to telephone equipment or other equipment necessary to route E911 calls to the appropriate emergency call center;
 - (ii) will not function at a remote location or via remote IP phone which can be moved or not located at the customer's E911 location of record or may transmit incorrect physical location information for the caller if calls are made from an off-premises extension, bridged on-premises extension, dedicated circuit, dry copper pair, or other communications link to another physical location such as BEK Connect product(s) using shared call appearance, a mobile device, a mobile device application (APP), a computer or any replicated phone;

calls made through remote phone(s) or softphone(s) will be transferred to an emergency center near the Customer's official E911 address of record.

- (iii) will not function if the telephone equipment or other equipment necessary to place calls is not correctly configured;
 - (iv) may not transmit the correct physical address for the E911 call due to incorrect information provided by you, use of a non-native telephone number or delays in loading or updating automatic number identification and location information into the E911 databases;
 - (v) may not be capable of being received and/or processed by an emergency call center due to the center's technical limitations; and
 - (vi) may be affected by other factors or events, including, but not limited to, the quality of the broadband connection, network congestion, outages, cybercrime attacks, ransomware, and malware.
- (b) Your acknowledgement and agreement to the Service Order(s), this Agreement or your continued use and payment for the Services or Products will serve as your acknowledgement that BEK has advised you of these potential limitations. The actual physical location of the building (as assigned by the county E911 coordinator) where the primary service is delivered shall be the registered location that will be provided to the emergency call center when you place a 911 call.

3. **Customer's Obligations.** Without limiting any other obligations Customer may have hereunder, Customer hereby authorizes, represents and warrants, agrees to and/or shall:

- (a) Customer is of legal age to enter into this Agreement if an individual and if an entity has the full power and authority to enter into this Agreement;
- (b) provide and maintain, as applicable, adequate space, power (including batteries, if such Products are powered by batteries), broadband internet connection and climate control, for the Services and the Products;
- (c) provide BEK with continuous and reasonable access and rights to the Premises for access to all equipment and facilities, including, but not limited to, routes for BEK's cable access, antenna mounting, wall penetration and wall attachments to the Premises;
- (d) authorizes BEK to Customer's consumer report or credit report from consumer reporting agencies and Customer certifies any information contained in such consumer report is true and accurate to the best of Customer's knowledge;
- (e) Customer is responsible for the perfecting and establishing warranty and maintenance for any promotional consumer electronics provided by BEK, including, but not limited to, all costs for such warranty and maintenance; and
- (f) pay BEK:
 - (i) in advance or arrears for monthly charges billed by BEK for the Services and Products on the twentieth (20) day of each month or as agreed to in a Service Order or otherwise (e.g., pursuant to authorizations or elections granted or made through SmartHub, BEK's online customer portal), with adjustments applicable to following months, including any applicable fees as published by BEK from time to time, and the first monthly invoiced amount which will include the period from the installation of the Service(s) through the end of the month, including installation charges for the Services or Products;

- (ii) all charges for the Service and Products, including, but not limited to (A) any unauthorized charges, fraudulent charges, charges incurred due to hacking of your account or incurred by a third party in relation to the Services or Products, (B) all undisputed portions of charges and (C) all service charges for visits to the Premises (unless waived); (D) a late payment fee of \$30, for failure to pay any invoice by the 20th day of each month.
- (iii) any damages caused by Customer, or allowed to be caused, to the Products, including, but not limited to, Customer's negligence or willful acts or by fire, electrical, lightning surges, or any other cause except BEK's equipment malfunction;
- (iv) all non-recurring charges (e.g., installation fees, setup fees, reconnect fees, and other fees related to providing the Services or Products) associated with the installation or delivery of the Services or Products, unless specifically waived on the Service Order submitted for the Services or the Products;
- (v) any deposit required by BEK, which such deposit based on applicants credit history; and
- (vi) all applicable taxes, including, but not limited to, federal, state, or local use, excise, sale, access, franchise, license fees, taxes, duties, or other governmental taxes, fees or liabilities incurred by Customer, however designated, whether charged to or against BEK or Customer for the Services or Products furnished by BEK;
- (g) take all necessary and reasonable precautions in:
 - (i) guarding against the acts or causes of any action to rearrange, disconnect, remove, attempt to repair, or otherwise tamper with the Products, the Services or any facilities or equipment installed or owned by BEK;
 - (ii) prohibiting the use of the Services, the Products, or any facilities or equipment installed by BEK for any purpose (legal or otherwise) other than as contemplated by this Agreement; and
 - (iii) maintaining and operating Customer's activities, facilities, and equipment to protect against hazard or injury and to avoid interfering with the Services or the Products;
- (h) upon cancellation or termination of any Service:
 - (i) return to BEK or allow BEK to retrieve the Products undamaged and in good working order and condition;
 - (ii) pay BEK the charges identified in a Service Order for any damaged or unreturned Products; and
 - (iii) pay BEK for any applicable Termination Fee (defined below) and promotional credits, promotional gifts or promotional consumer electronics BEK provided in connection with the Products or Services;
- (i) Customer shall not:
 - (i) use the Services, the Products or any facilities or equipment of BEK for any unlawful, fraudulent, improper or inappropriate purposes;
 - (ii) use any automated means to manipulate the Services or Products;

- (iii) commit or support the unauthorized access to prohibited areas in connection with or in relation to the Products or Services (such violation may lead to Service and Product termination and/or criminal prosecution);
 - (iv) sell, re-sell, distribute or allow to be distributed any of the Services or Products provided by BEK;
 - (v) during the term and Services or Products are provided and for a period of 2 years thereafter, Customer shall not hire, retain or attempt to hire or retain any employee or independent contractor of BEK or in any way interfere with the relationship between BEK and BEK employees or independent contractors; and
 - (vi) use BEK products or services to compete with BEK in providing any of the Products or Services, without regulatory, franchise and jurisdictional authority, BEK's prior written consent; and
- (j) Customer shall:
- (i) notify BEK by phone, email or web before the due date of any invoice in which Customer has a dispute, Customer acknowledges and agrees that any failure to dispute the charge prior to the due date will be deemed a waiver of any right to dispute such invoiced amount;
 - (ii) be solely responsible for the contents of his, her or its usage of the Services and Products;
 - (iii) be solely responsible for the security of his, her, or its computer, hardware, software applications, data, and files. BEK shall not be liable for any damage or loss to Customer's computer, hardware, software applications, data, and files. BEK makes no representation or warranty that any software or content installed on Customer's devices, networks, or servers, or that Customer downloads using a Service or Product, does not contain a virus, malware, or other harmful feature, and it is Customer's sole responsibility to take appropriate precautions to protect his, her, or its computer, network, and all other personal equipment, software, and hardware from damage as a result of any such virus, malware or other harmful feature;
 - (iv) be solely responsible for backing up any important information. BEK is not responsible for the loss of Customer's data or for the backup or restoration of Customer's data, regardless of whether this data is maintained on BEK's servers or Customer's devices, servers, or networks;
 - (v) comply with all regulations, policies and procedures of networks connected to the Services; and
 - (vi) to the extent Customer becomes actually aware, report misuse or abuse of the Services or Products provided by BEK to bekcomm@bektel.com or 701-475-2361.
- (k) Term Agreement (No Price Guarantee):
- (i) Customer is obligated to fulfill the agreement Term or be responsible for early termination fees, penalties, reimbursement or promotion, make goods, construction fees, installation fees, waived fees, labor or materials

- (ii) BEK does not provide any price guarantee on any product for any term longer than 30 days. All products are eligible for a price change upon 30 day notice provided by BEK, or upon notice provided by the FCC, North Dakota PSC or other legitimate authority.
- (iii) An agreement by Customer to commit to a multiple-month Term agreement for a Service or Product does not provide Customer a price guarantee; it is the Customer's commitment in exchange for a promotional offer or BEK waiving set-up service fees such as, installation fees, construction fees, asset use fees, wiring fees, and truck roll fees.

4. **Legal Compliance.**

- (a) You expressly agree that you are subject to and will comply with all applicable laws, rules and regulations related to your use of the Services and the Products, including, without limitation, wiretapping, eavesdropping, privacy, voyeurism, child pornography or similar laws, and that your use of the Services and Products is at your own risk. You are solely responsible, and we shall have no liability whatsoever, for any and all pictures, audio, video or other data that you upload, download, monitor, record, store, post, email, transmit, disclose or otherwise make available using the Products or the Services.
- (b) You are required and agree to maintain compliance with all applicable state and federal call recording laws and regulations, and under no circumstances shall BEK be held responsible or held liable for such compliance. You agree that, if you select settings as part of the Services that involve monitoring, recording, storing, or disclosing oral communications made by you and third parties, you consent to such monitoring, recording, storage and disclosure, on behalf of yourself and any minor children for whom you are the parent or legal guardian. You may need to inform your employees and third-parties whom you call that their calls are being recorded. You are responsible for obtaining any and all legally-required consents when you make a call with call recording enabled.
- (c) You acknowledge that BEK may be required by applicable law to disclose communications and records stored by BEK, including, but not limited to, communications related to your use of the Services and the Products, to government agencies and law enforcement. You consent to such disclosure.
- (d) The Services and Products are protected by trademark, copyright, patent and/or intellectual property laws and international treaty provisions, which you agree to comply with.

5. **Delivery of the Services and Products.** The Services and Products provided pursuant to this Agreement are subject to the continuing availability of all underlying facilities and the Services and Products themselves. BEK may modify the pricing, packaging, bundling, underlying provider, technology, term, content, channel line-up of Services upon 30-day notice to Customer. BEK may also terminate any or all Services provided pursuant to this Agreement without further liability to Customer, upon notice to Customer. Any Services or local programming will be provided using "commercially reasonable efforts" and the Services may not be available in all locations. Customer hereby grants BEK the explicit authority to change third party service providers, originating service providers or unlimited long distance service providers for any Service that is not specifically sold, delivered, fulfilled or originated by BEK. BEK may, in its sole discretion and at any time, change the underlying Internet carrier, long distance carrier, television content provider, channel line-up, news group provider, RSS feed, transport company, monitoring company, managed service company, software company or any other underlying service.

6. **Suspension of Services.** In the event BEK does not receive payment in full on or before the respective due date, BEK shall have the right, to suspend, disconnect, or discontinue the Services, charge a \$30.00

late fee, as well as all applicable disconnect fees, vacation rate fees, reconnect fees and, upon demand from BEK, Customer shall return all Products.

7. **Vacation Rate Policy.** At BEK's discretion and at vacation rates that are set by BEK, as adjusted from time to time, BEK offers a vacation rate policy that provides cooperative customers the opportunity to temporarily suspend Service during periods of extended absence from their residence within the BEK operating or service territory. The primary purpose is to avoid the full burden of the monthly charges, avoid disconnect and reconnect fees required by regulators, avoid breach of term agreements and avoid delays waiting for physical installation or de-installation of Service. During any period where vacation rates apply, any Service term, agreement or contract, excluding promotions, will be extended by the number of months the Customer utilized the vacation rate relief. In the event that the Service term, agreement, contract or promotional offer stipulates a price guarantee, free use period or similar marketing offer, the duration of such offer will continue through the vacation rate period and such offer shall not be extended. The maximum term for vacation rates is 12 months after which Service will be disconnected. Early termination penalties may apply if the terms and conditions of this Agreement are not fulfilled.

8. **Service Portability & Relocation.** BEK provides for Service portability and relocation within the BEK facility and cloud-based service territory subject to the following conditions: (a) applicable relocation fees will apply, (b) when Services are under a term agreement, the agreement will transfer without penalty (c) in the event a Service is not available at the new address of the relocation and such address is within the BEK facility and cloud-based territory, the then existing term will be waived for only such Service(s) that is unavailable at the new location and (d) all term commitments, penalties and construction fees will be immediately due if the Services provided were made possible by construction investments or fees waived in lieu of a service term commitment, those fees may be prorated. For relocation outside the BEK facility and cloud-based service territory where services are not relocated, all term commitments, penalties and construction fees will be immediately due if the Services provided were made possible by construction investments or fees waived in lieu of a service term commitment, those fees may be prorated as applicable.

9. **System Maintenance.** BEK performs scheduled and unscheduled maintenance and repair of the network from time-to-time, including, but not limited to, between 12:00 a.m. and 5:00 a.m. BEK reserves the right to disrupt the Services at any time for emergency maintenance and repair. In the event Customer experiences an outage of Services for an unscheduled, non-maintenance related outage, and that is not otherwise provided for in this Agreement, then Customer's sole remedy is issuance of any applicable credits pursuant to Section 11. An outage of Service(s) for a scheduled, regular maintenance related outage, will not qualify Customer for any credits unless such outage exceeds twenty-four (24) continuous hours, then such outage shall be credited pursuant to Section 11 herein as if such outage was deemed "unscheduled."

10. **Technical Support.** BEK performs certain Customer specific technical support services from time-to-time, including, but not limited to, installation, troubleshooting, or repair of Customer hardware or software which may be required in connection with the Services or Products. BEK will use its best efforts to resolve Customer technical problems in a professional, reasonable, and timely matter. Response times may be delayed due to research and inquiries, as may be necessary. BEK does not assure that every request for technical support will be resolved. Customer technical problems may be a result of hardware or software failure, corruption(including, but not limited to, cybercrime, viruses, ransomware, malware, and physical or electronic corruption), or user error and may not be correctable. BEK reserves the right to refuse to provide technical support services if it is believed such technical support services may cause damage or create problems, if minimum system requirements are not met, or if technical conditions or Customer requirements are unusual, extensive, or beyond BEK's control as reasonably determined by BEK. BEK will never share anything it may find or come across on a Customer's hardware or software unless required by applicable law to disclose such content or information to government agencies and law enforcement. You consent to such disclosure.

11. **Credits.**

- (a) Product(s). BEK's sole responsibility to Customer for the failure of any Product shall be that Product's repair or replacement determined in BEK's sole discretion.
- (b) Service(s). BEK's sole responsibility to Customer and Customer's sole remedy against BEK for any unscheduled interruption, defined as BEK's inability to provide a service level of 98% or more, in a 30 day month, of the Services (a "Service Disruption") for BEK Services shall be the issuance of applicable credits as follows: (A) a credit equal to one pro-rated day of Monthly Recurring Charge ("MRC") for each period over eight (8) continuous hours and up to twenty-four (24) continuous hours during a Service Disruption, and (B) a credit equal to one pro-rated day of MRC for each additional continuous twenty-four (24) hours of Service Disruption above the initial twenty-four (24) hour period. This credit applies only to Service Disruptions caused by problems or failures that are not caused by a Force Majeure and that occur on the BEK side of any interface between BEK's equipment or facilities and the Customer's equipment or facilities.

12. **Software, Numbers & IP Addresses.** "Licensed Software" means computer software required to use the Products or the Services, "Numbers" means any phone number under the administration of BEK, "IP Addresses" means any number used in conjunction with the Internet to determine the point of origin or destination that is under the administration of BEK (collectively such technical intellectual property is "BEK TIP"). To the extent required for the delivery and Customer's use of the Services and Products as contemplated pursuant to this Agreement, BEK hereby grants Customer a revocable, nonexclusive, nontransferable license to use BEK TIP. Customer has not been granted any ownership in any BEK TIP and Customer expressly disclaims ownership rights in any BEK TIP (or any derivations/improvements thereto). Customer agrees not to (a) copy BEK TIP, (b) reverse engineer, decompile or disassemble BEK TIP, (c) sell, lease, license or sublicense BEK TIP nor (4) create, write or develop derivative software or other software based on BEK TIP or confidential information. All software used on the Premises or by BEK is the property of BEK or its software suppliers and is protected, as applicable, by United States and international copyright laws.

13. **Copyright.** All content included on BEK websites, print material, emails, BEKTV or in any other communications medium such as text, graphics, logos, button icons, images, audio, video, digital downloads, data compilations and software is the property of BEK or its content suppliers and protected, as applicable, by United States and international copyright laws. The compilation of all content in printed, electronic or in any other communications form is the exclusive property of BEK, its content suppliers and protected, as applicable, by U.S. and international copyright laws.

14. **Trademarks.** BEK and other marks indicated on our websites, emails, in print, on BEKTV or in any other communications medium are registered trademarks of BEK in the United States and other countries. BEK and other BEK graphics, logos, page headers, button icons, scripts, images, video, audio and service names are trademarks or trade dress of BEK. BEK's trademarks and trade dress may not be used in connection with any product or service that is not BEK's, in any manner that is likely to cause confusion among customers or in any manner that disparages or discredits BEK. All other trademarks not owned by BEK that appear on this site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by BEK.

15. **Customer Information; Customer Account.**

- (a) Customer Information. Whenever you provide BEK information, you agree to:
 - (i) provide true, accurate, current and complete information; and
 - (ii) maintain and promptly update such information to keep it true, accurate, current and complete.

BEK or its third party suppliers may suspend or terminate your Services and refuse any and all current or future Services (or any portion thereof) when information provided is, or BEK has reasonable grounds to suspect that the information is, untrue, inaccurate, not current or incomplete.

(b) Customer Account. As a Customer using the Services or Products you are responsible for maintaining the confidentiality of your account and password and for restricting access to your devices, servers, networks, hardware, and software, and you agree to accept responsibility for all activities that occur under your account or password. You agree to:

- (i) immediately notify BEK of any unauthorized use of your password or account or any other breach of security; and
- (ii) ensure that you exit **and log out** from your account at the end of each session.

BEK will not be liable for any loss or damage arising from your failure to comply with this Section 15.

16. Termination

- (a) BEK Termination. BEK, at its sole discretion, may terminate the Services or provision of Products at any time, for any violation of the provisions contained in Sections 3 and 16 of this Agreement or for noncompliance with any other provision of this Agreement, including but not limited to, failure to pay all amounts due, rejection of any form of payment, unauthorized access or use of Products or Services, violation of any laws, violation of the Acceptable Use Policy (posted at www.bek.coop), mistreatment of a BEK employee, suspected or actual fraud or misrepresentation or reasonable suspicion thereof, or Customer's bankruptcy, insolvency, assignment for benefit of creditors, or any similar action. In the event that, or BEK has reasonable grounds to suspect that, BEK's Services or Products have been used for any unlawful purpose BEK may, without notice, forward the relevant communications and/or other information to the appropriate authorities for investigation and prosecution. Upon termination of any Service or Service Order, demand for the return of any Products or demand for an equipment fee, then BEK may collect all amounts identified in this Agreement (and applicable Service Order(s)), as if Customer had voluntarily cancelled this Agreement (or a Service Order). BEK has the sole discretion over terms of restoration of the Services or the Products.
- (b) BEK Refusal of Service. BEK may refuse to serve Customer until Customer has complied with all governmental regulations, the rules and regulations outlined in this Agreement and any applicable BEK Tariff or published service terms. The Service and Products also may be refused if Customer's installation or equipment is known to be hazardous or of such character that satisfactory Service cannot be given or if the Customer is not current on any indebtedness to BEK.
- (c) Customer Termination. Customer may, at any time, terminate any portion of the Services (the "Termination"), upon thirty (30) days prior written notice to BEK and shall pay to BEK any outstanding charges plus an early termination fee ("Termination Fee") which will be an amount equal to the remainder of the commitment term for the Services and Products multiplied by the applicable rates for such Service(s) and Product(s) as then in effect plus any prorated waived construction fees or promotional giveaways.
- (d) Remediation. Upon Services or Product removal or service relocation in the Premise, BEK is only responsible for sealing holes made by BEK with colored or paintable calk, painting using standard colors available in the retail market and filling drywall holes made by BEK with calk. BEK will not be responsible for any other remediation, including, but not limited to, external siding replacement, molding replacement, floor covering or wood flooring replacement. If Customer has custom or matching paint, BEK will use such provided material upon your request.

17. Acceptable Use Policies. It is not acceptable to use the Services or Products for any purpose that violates law, including, but not limited to, local, state or federal laws; violates any third party's intellectual property or personal rights; transmit communications that might be highly offensive or damaging to any recipients or to use

the Services or Products in a manner that is unintended, including in a manner that is detrimental to BEK's other Customers' ability to use Services or Products or which adversely affects BEK operations. Customer shall not interfere with, violate, circumvent, misuse, distribute or disrupt network users, the Services or Products, including, but not limited to, contrary to any of the following/in any of the following manners:

(a) Local Phone Service:

- (i) use of the telephone service for unlawful purposes;
- (ii) illegal harassment or terrorizing via the use of the phone network or Services;
- (iii) use of the phone to simulate another identity or otherwise deceive another about one's true identity;
- (iv) circumventing international banking or settlement regulation via the phone network or the Services; and
- (v) distribution of local phone services.

(b) Network & Internet:

- (i) attempting to obtain unauthorized access to any network or account, including accessing data not intended for Customer, logging into a server or account without being expressly authorized to access or probing the security of other networks;
- (ii) attempts to interfere with the Service of others including users, hosts and networks, including "denial of service" attacks, "flooding" of networks, deliberate attempts to overload a Service and attempts to "crash" any host;
- (iii) reselling any Services or Products, without BEK's prior written consent;
- (iv) distribution of the Services or Products;
- (v) equipment, accessory, apparatus, circuit or devices that are harmful to the network, shall not be attached to or connected with Services or Products;
- (vi) circumventing copyright laws and regulation, including the unauthorized download of music, video, images, books, software or content and/or other copyright protected works;
- (vii) attempting to provide commercial or noncommercial distribution of content or information knowingly or unknowingly, directly or indirectly using peer to peer or other methods, under a residential service agreement with BEK; and
- (viii) excessive use of the Services, which is defined as exceeding 300% over the average of Service usage of BEK customers in the same class of service that you have purchased from BEK.

(c) E-Mail:

- (i) illegal harassment through language, image, message frequency or message size;
- (ii) sending messages to any person not wishing to receive them, including, but not limited to, requests by the recipient to stop receiving such messages;
- (iii) sending unsolicited messages which are disruptive or generates a significant number of user complaints, including, but not limited to bulk-mailing of commercial advertising and/or informational announcements;

- (iv) malicious mail, such as "mail bombing" or "flooding" a user or host with very large and/or frequent pieces of mail;
 - (v) forging message header information;
 - (vi) collecting message replies from messages sent through another service provider where those messages violate this Agreement or the terms of that other provider; or
 - (vii) introducing harmful code and/or viruses.
- (d) News/UseNet:
- (i) cross posting, UseNet Spam, or otherwise posting the same messages to large numbers of unrelated newsgroups;
 - (ii) posting of message(s) of which the subject matter is unrelated to the content of the newsgroup posted to or generates a significant number of user complaints;
 - (iii) posting of binary or executable files to newsgroups not created for that purpose;
 - (iv) forging header information; or
 - (v) introducing harmful code and/or viruses.
- (e) Personal Web Space:
- (i) selling or distributing products or services that are unlawful;
 - (ii) illegal posting of content intended to commit slander or libel against another person;
 - (iii) illegal posting of scandalous, threatening, harassing or private information without consent of the person, persons or organizations involved;
 - (iv) posting content of a nature that is obscene, lewd, lascivious, violent, harassing or objectionable; or
 - (v) introducing harmful code and/or viruses on the Internet.
- (f) Unlimited Long Distance:
- (i) use of a residential unlimited long distance Service for business purposes or business calls is prohibited;
 - (ii) utilizing any unlimited long distance Service for telemarketing, call center, fax broadcast, Internet access, fax distribution or programmatic call functions is prohibited;
 - (iii) the residential unlimited long distance Service is designed for typical residential or personal use and any substantial deviation (over 300% of the residential members' cooperative wide average) of use or usage pattern may result in Service disconnection or additional service charges as outlined below;
 - (iv) the business unlimited long distance Service is designed for typical office use or business use and any substantial deviation (over 300% of the business members' cooperative wide

average) of use or usage pattern may result in Service disconnection or additional service charges as outlined below;

- (v) calls outside the U.S., Puerto Rico, Guam, Saipan, and the U.S. Virgin Islands are not included in the unlimited long distance Service rate plan, nor are any non-direct dial calls and such calls will be billed for separately;
 - (vi) unlimited long distance Service does not include 9XX calls, 8XX Services, calling card calls, international calls, directory assistance, operator assistance, multi-line conference calls, or data Services; or
 - (vii) unlimited long distance Service is not intended for use to connect to Internet service providers, data providers or information services; commercial facsimile distribution or broadcasts, auto-redialing, resale and telemarketing are also strictly prohibited.
- (g) Unlimited Outbound Fax:
- (i) Unlimited outbound fax Service is designed for typical office use or business use and any substantial deviation (over 300% of the business members' cooperative wide average) of use or usage pattern may result in Service disconnection or additional service charges as outlined below;
 - (ii) BEK may determine that abnormal, unreasonable or impermissible usage of unlimited outbound fax Service is occurring, and may take appropriate steps described below even if the number of minutes used is not excessive, when a Customer's faxing patterns during more than one month reflect excessive:
 - fax blasting
 - fax broadcasting
 - resale to others
 - continuous connectivity
 - short duration calls;
 - number of calls made during a month;
 - number of calls terminated and re-initiated consecutively, which, in the aggregate, result in excessive call lengths during a specific time frame; or
 - other calling patterns indicative of an attempt to evade enforcement of this Agreement
- (h) BEK provided TV:
- (i) distribution of BEK provided TV content beyond its intended use pursuant to this Agreement;
 - (ii) copying, ripping, duplicating or capturing content for other than personal use;

- (iii) opening, tampering, probing, experimenting or violating the technology used to deliver the BEK provided TV Service;
 - (iv) public showing of any content on BEK provided TV without the prior written consent of BEK provided TV, without commercial distribution rights or its content partners;
 - (v) decryption, de-compiling, dissecting, decoding of any content other than provided by the set-top;
 - (vi) circumventing the conditional access or Digital Rights Management policies applicable to the content and/or Services; or
 - (vii) making any of the BEK provided TV content portable via DVD, PMP, Internet, tape, memory card or stick, hard drive, IPOD, VPOD or similar devices under different product names.
- (i) Remedies for Abnormal or Impermissible Usage: In the event that BEK determines that Customer is engaging in abnormal or impermissible usage of Products or Services, BEK, with or without notice may assess abnormal usage charges based on comparisons to the usage patterns and levels of BEK's other customers on the same plan(s); transfer Customer's Service to a more appropriate plan and charge applicable rates for that plan; implement other limitations; or suspend or terminate Customer's Product or Service.

18. **Broadband Internet Access; Network Management Policies.**

- (a) FCC. BEK complies with the Federal Communications Commission ("FCC") Internet Policy Statements. As such, BEK commits to the open and non-discriminatory use of the Internet by its customers and commits to use reasonable network management practices to ensure an open Internet. Specifically, BEK will not:
- (i) prevent any of its users from sending or receiving the lawful content of the user's choice over the Internet;
 - (ii) prevent any of its users from running the lawful applications or using the lawful services of the user's choice;
 - (iii) prevent any of its users from connecting to and using on its network the user's choice of lawful devices that do not harm the network; or
 - (iv) deprive any of its users of the user's entitlement to competition among network providers, application providers, service providers, and content providers.
 - (v) block or discriminate against lawful content
 - (vi) throttle, impair or degrade lawful internet traffic or
 - (vii) place cap(s) on data usage
- (b) Access. BEK has designed its network to reduce congestion by monitoring aggregate traffic to determine current application-agnostic utilization rates. Monitoring occurs at key points throughout the network, including the: Middle Mile, Core, Second Mile, Last Mile, Platform electronics and PON. Using 15-minute measurement windows and 60% capacity thresholds, BEK

is alerted in the unlikely event that network traffic experiences a sustained bandwidth loading requiring remediation prior to customers experiencing infrastructure overload issues.

BEK also checks for abnormal traffic patterns, network security breaches, malware and loss or damage to the network. BEK's network congestion management practices do not:

- (i) Prioritize customers by purchased service levels
 - (ii) Prioritize traffic to benefit particular content applications, service or devices
 - (iii) Enter into paid prioritization deals to create "fast lanes"
 - (iv) Impose individual usage limits
 - (v) Consider customers' lawful applications
- (c) Spam Filter. BEK provides spam filtering services in connection with each Customer's email address. Details of this service are listed on www.bek.coop.
- (d) Security. BEK offers its customers unrestricted access to all of the lawful content, services, and applications available on the Internet. BEK uses industry standard tools and generally accepted best practices and policies to protect our customers from spam, phishing, and other unwanted or harmful online content and activities. In the instances where these tools and policies identify online content as harmful or unwanted, the content may be prevented from reaching customers.
- (e) Device Attachment Rules. In order for a device to be approved for use on BEK's network, the device must conform to publicly available industry standards and be non-harmful to BEK's network.
- (f) Application Specific Behavior. BEK does not make use of any application-specific network management practices. BEK does not favor, modify, inhibit, rate control or block any specific protocols, protocol ports or fields, or any applications or classes of applications.
- (g) Non-Biased Services. The FCC has defined Non-Broadband Internet Access Services (Non-BIAS) to include services offered by broadband providers that share capacity with Broadband Internet Access Services (BIAS) (previously known as "Specialized Services"), also offered by the provider, over the last-mile facilities. BEK's BIAS and Non-BIAS services do not share bandwidth, are separated by Virtual Local Area Networks (VLANs) and are not prioritized one over the other.

19. **Copyright Infringement Procedures**. Upon receipt of any authorized notice from a content provider that Customer is in violation of copyright law or regulation or has illegally obtained copyright-protected material, BEK (or its 3rd Party Representative) will employ a multi-step process to mitigate such activity. Should Customer fail to discontinue the illegal activity and/or settle with the content provider, BEK may degrade, or permanently disconnect, the Service or Product provided to Customer.

20. **Privacy Policy and Statement**.

- (a) Customer Privacy. Protecting the privacy of our customers is important to us. Any contact information you provide in an information request will be used only for purposes of selling, distributing, fulfilling or settlement of the Services or Products. Without your express authorization, we will not divulge any information to third party for purposes other than the sales,

distribution, fulfillment or settlement of Services and Products except as otherwise provided herein.

- (b) Use of Customer Information. The privacy of your information is important to us. The privacy policy and statement in this Section 20 tells you how we collect information from you and how we use it.
- (i) BEK Partners. BEK sells various "co-branded" services on its website, in newspapers, via phone sales and other mass media. Although BEK requests all partners to have a privacy policy consistent with the policy listed below, it is recommended that you view the privacy policy adopted by the BEK partners when taking their services.
- (ii) Customer Information. It is a fact of modern life that companies, including BEK, must collect information about their customers in order to carry out business and offer services. Privacy concerns focus on protecting customer information that an individual expects to be kept private. Such information is information associated with a specific individual or entity, including, for instance, email address, Services offered and information about that customer's usage activities. You consent to BEK's collection of such information from you.
- (iii) Customer Proprietary Information. From time to time, BEK Communications changes its Service and Product offerings and makes available additional features and Services and Products, which may enhance and augment the Service or Product to which you are already subscribed. In order for us to determine which customers may benefit from the new Services and Products, we will use information about your account from our databases, legally referred to as Customer Proprietary Network Information ("CPNI") unless you restrict that use in the manner described below. CPNI includes information such as the long distance carrier and calling plan to which you are subscribed, calling features and plans to which you are subscribed, calling patterns and usage of various features, and charges associated with the Services you subscribe to. Use of this data will allow BEK to identify Service and Product offerings to meet your individual needs. For this purpose, CPNI data will be used by BEK only. This data will not be shared by BEK with any other outside source except as necessary to provide the Services and Products to which you are already subscribed and when we are legally compelled to do so.
- (iv) Restricting CPNI Usage. You have the right under federal law to protect the confidentiality of your account information and restrict the use of CPNI data, and we have a responsibility to protect your data. To restrict the use of your CPNI data, you must call the business office toll free at 1-888-475-2361 during regular business hours, or email us at bekcomm@bektel.com within 30 days of your receipt of this notice to request that we not utilize your CPNI data. Your denial or approval for BEK to use this data will not affect the provision of any Services or Products to which you subscribe. You may change your decision at any time and your decision will remain valid until you tell us otherwise. Again, we will only use your account information to market other communications Services and Products BEK offers and no action is required unless you wish to restrict our use of your CPNI. You will still receive monthly bill inserts, newsletters and other publications that are sent to all customers at the same time, so that you are kept up to date on what is happening at BEK.
- (v) Non-CPNI Collected Automatically. In some cases, we may collect information about you that is not personally identifiable such as the type of Internet browser you are using, the type of computer operating system you are using, the domain name of the website and/or

Internet Service Provider from which you linked to our site, advertisements and the like. You consent to BEK's collection of such information from you.

- (vi) "Cookies". Pieces of information that a website transfers to a customer's hard drive are called "Cookies." When you view our website or advertisements, we store some information on your computer. This information will be in the form of a "Cookie" or similar file and will be used to determine ways to improve our website, advertisements, Products or Services. For example, Cookies allow us to tailor a website to better match your interests and preferences. You consent to BEK's storage of "Cookies" or similar files on your hard drive.
- (vii) BEK Freedom App. BEK collects and processes information provided directly by you when you install the BEK Freedom App on any device and register for an account to use the BEK Freedom App, including: (a) your name, email address, location, user's phone or contact book data, user's inventory of installed apps, and user's screen recording; (b) browser information and session cookies related to your access and use of the BEK Freedom App; (c) data insights BEK attains based on correlation and analytics of your information collected in providing the BEK Freedom App, which may be used in aggregated and dis-aggregated formats or to obtain trend analytics, to provide the BEK Freedom App; and (d) use of the above-described collected information in aggregated and dis-aggregated formats to enhance BEK's current BEK Freedom App or to provide BEK Freedom App features. BEK uses the information collected as described in this Section 20, including personal information, to: (a) provide you with the BEK Freedom App; (b) implement improve and/or enhance the BEK Freedom App, including to make future releases available to you; (c) carry out BEK's obligations as described or authorized in any applicable Service Order and these Terms and Conditions; (d) enforce BEK's rights arising from any applicable Service Order and these Terms and Conditions; and (e) fulfill any other purpose authorized by you and reasonably required for the BEK Freedom App. You consent to BEK's collection, processing, and use of the information collected and processed as described in this Section 20.
- (viii) Information Security and Data Retention. BEK maintains strict customer information privacy policies and uses current technology to safeguard customer information from unauthorized disclosure. Employees are trained on the importance of protecting privacy and on the proper access to, use and disclosure of customer information. Personally identifiable and other sensitive records are retained only as long as reasonably necessary for business accounting, tax, or legal purposes. If during the provision of services for customer, private information provided to customer by third-parties, as part of customer's business activities, is unintentionally or unavoidably disclosed to BEK, BEK will not copy, tamper with, remove from the place where found, retain, disclose or use in any way the information. Although we work hard to protect personal information that we collect and store, no program is 100% secure and we cannot guarantee that our safeguards will prevent every unauthorized attempt to access, use, or disclose personal information.

21. **Third-Party and External Links**. Our website may contain links to the websites of other companies or governmental offices that are outside our control. When you follow a link to another site, you leave our site and your interactions are no longer protected by our privacy policy. BEK is not responsible for, and does not endorse the privacy or security practices and content of these external websites.

22. **Enforcement and Violation**. All Service access and usage is at the discretion of BEK. BEK management will review all alleged violations of the terms of this Agreement on a case by case basis. Clear

violations of this Agreement which are not promptly remedied by the Customer may result in, but not limited to, immediate termination of Service and forfeit of all fees paid to date. You are prohibited from using BEK Services for illegal purposes. Transmission, theft, procurement, communication, alteration, publication or storage of information, data, or material in violation of any federal, state, local law, statute, regulation or rule is prohibited. This includes and in no way limited to: copyrighted material, material legally judged to be obscene, threatening, in violation of the Telecommunications Reform Act of 1996, or materials protected by trade secret. BEK will cooperate fully with investigation proceedings by law enforcement agencies. BEK will share information with law enforcement agencies if it has a good-faith belief disclosure of the information is reasonably necessary to meet any applicable law, regulation, legal process or enforceable governmental request or to protect against harm to the rights, property or safety of its users or the public as required or permitted by law.

23. **Tariff.** The Service(s) or any other matters described in or related to this Agreement which are or later become subject to any of BEK and its respective Subsidiaries and Affiliates' tariffs (collectively, the "Tariff") filed with, or regulations of, the FCC, any state commission, or any other government body, board, or commission of competent jurisdiction, the provisions of this Agreement shall supersede any conflicting provisions of the Tariff, unless otherwise set forth herein.

24. **Disclaimer of Warranties; Limitations of Liability; Force Majeure.**

- (a) CUSTOMER ACKNOWLEDGES AND AGREES THAT USE OF THE SERVICES AND PRODUCTS ARE ENTIRELY AT CUSTOMER'S OWN RISK. THE SERVICES AND PRODUCTS ARE PROVIDED BY BEK ON AN "AS IS" AND "AS AVAILABLE" BASIS. BEK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THESE SERVICES, THE INFORMATION, CONTENT, MATERIALS, OR PRODUCTS INCLUDED IN THE SERVICES AND PRODUCTS OR FOR THE UNINTERRUPTED OR ERROR-FREE ACCESS TO THE SERVICES OR PRODUCTS. STATEMENTS AND DESCRIPTIONS CONCERNING SERVICES AND PRODUCTS BY BEK OR BEK'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.
- (b) YOU EXPRESSLY AGREE THAT YOUR USE OF THESE SERVICES IS AT YOUR SOLE RISK. BEK MAKES NO WARRANTY THAT (a) OUR SERVICE WILL MEET YOUR REQUIREMENTS, (b) OUR SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF OUR SERVICES WILL BE ACCURATE OR RELIABLE, (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU WILL MEET YOUR EXPECTATIONS AND (e) ANY MATERIAL AND INFORMATION OTHERWISE OBTAINED THROUGH THE USE OF OUR SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR SYSTEM OR BUSINESS OR LOSS OF INFORMATION OR DATA THAT RESULTS FROM THE USE OF OUR SERVICES OR PRODUCTS.
- (c) TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, BEK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. BEK DOES NOT WARRANT THAT OUR SERVICES, PRODUCTS, SITES, SERVERS, OR EMAIL SENT FROM OR PROVIDED BY BEK ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. BEK WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF OR INABILITY TO USE THESE SERVICES OR PRODUCTS, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE OR PROFITS, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL,

EXEMPLARY AND CONSEQUENTIAL DAMAGES. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL THE AGGREGATE LIABILITY FOR ANY AND ALL CUSTOMER CLAIMS AGAINST BEK AND BEK EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, OFFICERS AND DIRECTORS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE SERVICES, PRODUCTS OR WEBSITE EXCEED THE TOTAL FEES YOU HAVE PAID IN ANY 12 MONTH PERIOD. YOU AGREE THAT THIS LIMITATION OF LIABILITY REPRESENTS A REASONABLE ALLOCATION OF RISK.

- (d) The security of information transmitted through the Internet can never be guaranteed. BEK is not responsible and expressly disclaims responsibility for any interception or interruption of any communications through the Internet or for changes to or losses of data. Customer is responsible for maintaining the security of any password, user ID, or other form of authentication involved in obtaining access to password protected or secure areas of BEK sites. In order to protect you and your data, BEK may suspend your use of a client site, without prior notice, pending an investigation, if any breach of security is suspected.
- (e) BEK shall not be liable to Customer or any other person for any of the following:
 - (i) any "Force Majeure" event, including, but not limited to, acts of God, fires, floods, earthquakes, loss of power, outages, equipment shortage, network shortage, facility shortage, explosions, hurricanes, storms, or other catastrophes; national emergencies, insurrections, riots, terrorism, third party actions or omissions, such as hacking, wars, or other civil commotions; strikes, lockouts, work stoppages, or other labor difficulties; unavailability, failure, or malfunction of equipment or facilities, cable cuts, unavailability of rights-of-way or materials, and labor difficulties of any kind; and any law order, regulation, or other action of any governing authority or agency thereof,
 - (ii) defacement of or damage to Premises resulting from the installation or furnishing of the Services or the Products,
 - (iii) any representations made by BEK employees that are inconsistent with the provisions of this Agreement, or
 - (iv) for any interruption caused by an act or omission of any other person or provider furnishing any portion of the Services, including, but not limited to, directory listings, long distance services, TV channels, internet transport or software failure.

25. **Indemnification**. Customer agrees to defend, indemnify, and hold harmless BEK and their employees, contractors, agents, licensors, officers and directors from all liabilities, claims, and expenses, including, but not limited to, attorney's fees that arise from Customer's (a) use of Services or Products or use or possession of BEK equipment, (b) any misrepresentation or omission by Customer in this Agreement or any other application, communication or agreement submitted to or with BEK, (c) use or misuse of the Services or Products or (d) any other breach by Customer of this Agreement. BEK reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, in which event you will cooperate with BEK, including, but not limited to, asserting any available defenses.

26. **BEK is not an Insurer**. BEK is not an insurer and you will obtain from an insurer any insurance you desire. The amount you pay us is based upon the services BEK performs and the limited liability we assume under this Agreement and is unrelated to the value of your property or the property of others located in your Premises. In the event of any loss or injury to any person or property, you agree to look to your insurer to recover

damages. You waive all subrogation and other rights of recovery against us that any insurer or other person may have as a result of paying any claim or loss or injury to any other person.

27. **Time to Seek Action.** You agree to initiate any action you may have against BEK or our employees, contractors, agents, licensors, officers and directors within one (1) year from the date of the event that caused the loss, damage or liability.

28. **Amendments; Website Use.**

- (a) BEK, at its sole discretion, may amend the pricing for its Products and Services in this Agreement. Changes to pricing for Products and Services shall become effective thirty days after the change is posted via any of the following: BEK's website at www.bek.coop, published in the newspaper, BEK Beacon, bill notice, bill stuffer, post card, letter, or published by the FCC or the PSC. Customer, by continuing to use the Service and Product after such thirty-day notice of the changes to the pricing of the Product and Service in this Agreement, will have been deemed to acknowledge and agree to the changed pricing.
- (b) BEK, at its sole discretion, may change or amend the terms and conditions of this Agreement without notice by posting the change or amendment to BEK's website. The change or amendment shall become effective 30 days after it is posted via any of the following: BEK website, published in the newspaper, BEK Beacon, bill notice, bill stuffer, post card, letter, or published by the FCC or the PSC. Customer, by continuing to use the Service and Product after the effective date of the change or amendment will have been deemed to acknowledge and agree to the change or amendment.
- (c) BEK provides Customer access to its website subject to the conditions of this Agreement. Customer, by using BEK websites, signifies and acknowledges his, her or its agreement to all terms, conditions, and notices contained or referenced herein, which BEK may update from time to time without notice. It is Customer's responsibility to stay informed of any posted changes.

29. **Electronic Communications.** When you visit BEK websites or send emails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by email or by posting notices on our website www.bek.coop, or other sites that may be added from time to time. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

30. **Jurisdiction and Venue.** Any legal suit, action or proceeding arising out of or relating to this Agreement or the Products or Services contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of North Dakota in each case located in the City of Bismarck and County of Burleigh, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail in accordance with Section 32 shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

31. **Waiver of Jury Trial.** Each Party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the Services and Products. Each Party to this Agreement certifies and acknowledges that (a) no representative of any other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such party has considered the implications

of this waiver, (c) such party makes this waiver voluntarily and (d) such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 31.

32. **Notices.** Notice under this Agreement shall be given as follows:

- (a) any notice BEK gives to Customer is deemed properly given when (i) delivered in person, (ii) sent by facsimile, (iii) sent by courier, (iv) sent by electronic mail, or (v) sent by U.S. Postal Service, to the contact information designated on BEK's account for Customer; and
- (b) any notice Customer gives to BEK shall be directed to BEK Communications Cooperative, Attn: General Manager, 200 E. Broadway, PO Box 230, Steele North Dakota, 58482.

Customer will immediately notify BEK of any changes to Customer's contact information (including billing address, physical address, telephone numbers, facsimile numbers or electronic email). The effective date of any notice sent pursuant to this Agreement shall be the date such notice is sent.

33. **Entire Agreement.** This Agreement and any other documents or policies incorporated herein by reference and constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and any other documents or policies incorporated herein, the statements in the body of this Agreement shall control.

34. **General Provisions.**

- (a) **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- (b) **Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- (c) **Relationship of the Parties.** Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee/employer relationship. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.
- (d) **Attorneys' Fees.** In the event BEK seeks to enforce the covenants contained in this Agreement (or obtain any other remedy in respect of any breach of this Agreement)/arising out of or relating to this Agreement, then BEK shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by BEK in conducting the suit, action or proceeding, including, but not limited to, actual attorneys' fees and expenses and court costs.
- (e) **Assignment.** Customer may not assign any of its rights hereunder without the prior written consent of BEK, which may be withheld in BEK's sole discretion. BEK may assign any of its rights or obligations hereunder without the prior written consent of Customer. Any purported assignment in violation of this Section 34(e) shall be null and void.

- (f) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.
- (g) Third Party Beneficiaries. BEK's licensors, agents and contractors are intended third-party beneficiaries of this Agreement.
- (h) Severability. Should any term or provision of this Agreement prove to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, such term or provision shall be deemed to be revised so as to effect the original intent of the parties as closely as possible in order that the Services and Products and the terms of delivery and use thereof contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.
- (i) Applicability of Terms and Conditions to all Service Orders. The Parties agree that the Terms and Conditions shall be incorporated into each Service Order and each Party shall abide by the terms of this Agreement in reference to the Services or Products provided pursuant to each Service Order.
- (j) Subsidiaries and Affiliates. The following are wholly-owned Subsidiaries and Affiliates of BEK Communications: Steele Cablevision, Inc., BEK Sports Network, Inc., and Inter-Community Telephone Company.