



## VOICEOVER IP TERMS OF SERVICE

These Terms of Service constitute an agreement ("Agreement") between Citynet, LLC (hereinafter "Citynet") and the user (hereinafter "you", "user" or "Customer") with respect to Citynet's residential voice services or business voice services, as the case may be, and any related products or services ("Service"). This Agreement governs both the Service and any devices, such as an IP phone, or IP connection device ("Equipment"), used in conjunction with the Service. By activating the Service, you acknowledge that you have read, understood and agreed to the terms and conditions of this Agreement, and you represent that you are of legal age to enter this Agreement and become bound by its terms.

### 1. SERVICE

1.1 Term. Service is offered on a monthly basis for a term which begins on the date that Citynet activates your Service and ends on the day before the same date in the following month. Provided, however, Customers may opt for a one (1) year term, the monthly cost for which may be less than the cost for the month-to-month term. Subsequent terms of this Agreement automatically renew on a monthly (or yearly, as the case may be) basis without further action by you unless you give Citynet written notice of non-renewal at least ten (10) days prior to the end of the term in which the notice is given. You are purchasing the Service for full monthly (or yearly, as the case may be) terms - meaning, that if you attempt to terminate Service prior to the end of a term, you will be responsible for the full charges to the end of the then-current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. Expiration of the term or termination of Service does not excuse the Customer from paying all unpaid, accrued charges due in relation to this Agreement.

1.2 Residential Use of Service and Equipment. If you have subscribed to Citynet's residential services, the Service and Equipment are provided to you as a residential user only, for your personal, residential, non-business and non-professional use. Specifically, "residential use" means that you are not using the Service or Equipment for any commercial or governmental activities, profit-making or non-profit, including but not limited to home office, business, sales, tele-commuting, tele-marketing, autodialing, continuous or extensive call forwarding, fax broadcast, fax blasting or any other activity that would be inconsistent with normal residential usage patterns. "Residential use" also means that you shall not resell or transfer the Service or the Equipment to any other person for any purpose, or make any charge for the use of the Service, without prior, express written permission from Citynet. You agree that your use of the Service and/or Equipment for any non-residential purpose will obligate you to pay Citynet's higher rates for commercial service on account of all periods, including past periods, in which you use, or used, the Service for non-residential purposes. Citynet reserves the right to immediately terminate or modify the Service if Citynet determines, in its sole discretion, that the Service is being used for non-residential or commercial use. For purposes of this Agreement, should your long distance calling usage exceed 500 minutes during any thirty (30) day period, such usage shall be presumed to be non-residential or commercial use.

1.3 Business Use of Service and Equipment/Prohibition on Resale. If you have subscribed to Citynet's Business services, the Service and Equipment are provided to you as a business user. This means that you shall not resell or transfer the Service or Equipment to any other person for any purpose, without prior, express written permission from Citynet. You agree that the Citynet Business Plans do not confer the right to use the service for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting. Citynet reserves the right to immediately terminate or modify the Service if Citynet determines, in its sole discretion, that the Service is being used for any of the aforementioned

activities.

1.4 Lawful Use of Service and Equipment. You agree to use the Service and Equipment only for lawful purposes. Customer shall not use the Service or Equipment for transmitting or receiving any communication or material of any kind when in Citynet's sole judgment the transmission, receipt or possession of such communication or material would: (i) constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law; or (ii) encourage conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. Citynet reserves the right to terminate your Service immediately and without advance notice if Citynet, in its sole discretion, believes that you have violated the above restrictions, leaving you responsible for the full charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. Customer is liable for any and all use of the Service and/or Equipment by any person making use of the Service or Equipment provided to you and agrees to indemnify and hold harmless Citynet against any and all liability for any such use that fails to comply with this Section. If Citynet, in its sole discretion, believes that you have violated the above restrictions, Citynet may forward the objectionable material, as well as your communications with Citynet and your personally identifiable information to the appropriate authorities for investigation and prosecution. In addition, Customer should be aware that, pursuant to the terms of the Truth in Caller ID Act of 2009, it is illegal for any person or entity to knowingly cause, directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value. Citynet reserves the right to limit or otherwise prevent calls to certain services such as chat lines, free conference call services and the like where Citynet is charged fees by a third party carrier related to the termination of those calls that are higher than average wholesale long distance rates.

1.5 Use of Service and Equipment by Customers Outside the United States. While we encourage use of the Service within the United States to other countries, Citynet does not presently offer or support the Service to customers located in other countries. Citynet urges you not to take the Equipment outside of the United States. If you do and you use the Service from there, you do so at your own risk, including the risk that such activity violates local laws in the country where you do so. You are liable for any and all use of the Service and/or Equipment by any person making use of the Service or Equipment provided to you.

1.6 Loss of Service. You acknowledge and understand that the Service does not function in the event of power failure or failure of your high speed Internet device. Should there be an interruption in the power supply or a failure of your high speed Internet device, the Service will not function until power is restored and/or the device is repaired, as the case may be. A power failure or disruption may require the Customer to reset or reconfigure the Equipment prior to utilizing the Service. Power disruptions or high speed Internet device failures also will prevent dialing to emergency service numbers including the 911 calling feature.

1.7 Copyright, Trademark, Unauthorized Usage of Device, Firmware or Software. The Service and Equipment and any firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the Equipment, and all Services, information, documents and materials on Citynet's website(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively the "marks") of Citynet are and shall remain the exclusive property of Citynet and nothing in this Agreement shall grant you the right to use or license such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the Equipment, other than a nontransferable, revocable license to use such firmware or software (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement, and that the Equipment is exclusively for use in connection with the

Service. If you decide to use the Equipment through an interface device not provided by Citynet, which Citynet reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that interface device with the Service and you will indemnify and hold harmless Citynet against any and all liability arising out of your use of such interface device with the Service.

1.8 Tampering with Equipment. Customer agrees not to change the electronic serial number or equipment identifier of the Equipment, or to perform a factory reset of the Equipment, without prior, express permission from Citynet. Citynet reserves the right to terminate your Service should you tamper with the Equipment, leaving you responsible for the full charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. Additionally, if tampering results in destruction of the equipment, Citynet reserves the right to charge the credit account on file for the device.

1.9 Theft of Service. Customer agrees to notify Citynet immediately, in writing or by calling Citynet's customer support line, if the Equipment is stolen or if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances of the Equipment theft or fraudulent use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. You will be liable for all use of the Service using Equipment stolen from you and any and all stolen Service or fraudulent use of the Service.

1.10 Return of Equipment. All Equipment provided for free by Citynet to Customer must be returned to Citynet within fourteen (14) days of the termination of Service. If the Equipment is returned within said fourteen (14) days, Customer will not be charged for the Equipment or for the shipping charges related to the return of the Equipment to Citynet. If the Equipment is returned later than fourteen (14) days after termination of Service, but within thirty (30) days after termination of Service, Customer will be required to pay for the shipping charges related to the return of the Equipment to Citynet. Citynet will not accept return of the Equipment after thirty (30) days following termination of Service, or if the Equipment has been returned in a damaged condition at any time. In such events, Citynet will charge Customer's credit card or bank account for the full cost of the Equipment and Customer shall not be entitled to a refund.

1.11 Number Transfer on Service Termination. Upon termination of Service, Citynet may, solely at Citynet's discretion, release the telephone number that was ported to Citynet by you, if any, and used in connection with your Service provisioned by Citynet to your new service provider, if such new service provider is able to accept such number, and provided: (i) your Citynet account is paid in full, including payment for all charges and disconnect fees; and (ii) you request the transfer upon terminating your account.

1.12 Telephone Number Portability.

(a) Customer Request for Current Number Port. Upon applying for the Service, Citynet may, at Customer's request, attempt to transfer (i.e., "port") your current telephone number(s) into our system. You understand and hereby warrant that Citynet cannot control the time and duration of the number porting process and that there will be no credit issued for the time between when you request the number port and the actual date any such transfer occurs.

(b) Terms of Number Portability. In the event you are transferring an existing local phone number for use in connection with the Service, the following terms and conditions apply:

(i) You hereby authorize Citynet to process your order for the Service and to notify your current local telephone company of your decision to switch your local services to the Service and to transfer your telephone number, and represent that you are authorized to take these actions.

(ii) You agree that you must install and activate your Equipment prior to the date on which the number switch becomes effective ("Port Effective Date").

(iii) You agree that you will be assigned a temporary telephone number until your transfer is completed. You may place and receive calls using this temporary number until such time as your phone number is transferred.

(iv) Citynet has the right to refuse to import a number if, in its sole discretion, it does not have the infrastructure to support the number

1.13 Service is Not Telephone Service. You acknowledge and understand that the Service is not a telephone service. Important distinctions exist between telephone service and the Service provided by Citynet. The Service may be subject to different regulatory treatment than phone service. This treatment may limit or otherwise affect your rights of redress before Federal and State regulatory agencies.

1.14 Incompatibility With Other Services.

(a) Home Security Systems. You acknowledge and understand that the Service may not be compatible with your home security system. You may be required to maintain a telephone connection through your local exchange carrier in order to use any alarm monitoring functions for any security system installed in your home or business. You are responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.

(b) Certain Broadband and Cable Modem Services. You acknowledge and understand that the Service may not be compatible with certain broadband providers. You further acknowledge that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. We do not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

(c) Other Communications Equipment. You acknowledge and understand that you may experience difficulties when using the Service in conjunction with certain non-voice communications equipment, including, but not limited to, some aspects of satellite TV systems, digital entertainment systems, fax machines, modems and medical monitoring devices. By accepting this Agreement, you waive any claim you may have against Citynet for interference with or disruption of such systems due to the Service.

(d) Dialing Options. You acknowledge and understand that you cannot make 500, 700, 900, 976, 0+ collect calls or dial around calls (e.g., 1010-XXXX). In addition, you agree that this service does not support n11 calling with the exception of 411 and 911, as described below in section 2.

1.15 Directory Listing.

Citynet will use its commercially reasonable efforts to provide Customer with a listing in the telephone directory produced and published by the local exchange carrier in the area of the physical location you provide to Citynet. Customer acknowledges, however, that Citynet's ability to provide the directory listing is subject to, and contingent on, Citynet's ability to validate Customer's address via the local carrier's address validation tools.

## 2. EMERGENCY SERVICES - 911 DIALING

2.1 911 ACKNOWLEDGEMENT AND WARNING LABELS. END USER ACKNOWLEDGES THAT CITYNET'S EQUIPMENT AND SERVICES DO NOT SUPPORT 911 EMERGENCY DIALING OR OTHER EMERGENCY

FUNCTIONS IN THE SAME MANNER THAT TRADITIONAL WIRELINE 911 SERVICES WORK. THE DIFFERENCES ARE DETAILED IN THIS SECTION 2 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. CITYNET 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 CITYNET. CITYNET WILL PROVIDE END USER WITH ADVISORY NOTICES REGARDING 911 EMERGENCY DIALING AND REQUEST ACKNOWLEDGMENTS FROM END USER. BY AGREEING TO THESE TERMS OF SERVICE, END USER AGREES THAT CITYNET HAS ADVISED END USER OF THE CIRCUMSTANCES UNDER WHICH CITYNET E911 SERVICE MAY NOT BE AVAILABLE OR MAY BE LIMITED IN COMPARISON TO TRADITIONAL 911 EMERGENCY DIALING. CITYNET URGES END USER TO MAINTAIN AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES.

## 2.2 Registration of Physical Location Required.

(a) Location. For each phone number that you use for the Service, you must register with Citynet the physical location where you will be using the Service with that phone number. IF YOU MOVE EQUIPMENT TO ANOTHER LOCATION, YOU MUST IMMEDIATELY REGISTER YOUR NEW LOCATION. IF YOU DO NOT REGISTER YOUR NEW LOCATION, ANY CALL YOU MAKE USING THE 911 DIALING FEATURE WILL BE SENT TO AN EMERGENCY CENTER NEAR YOUR OLD ADDRESS. A CHANGE OF LOCATION MAY TAKE UP TO A WEEK TO REGISTER SUCH THAT YOUR 911 CALLS ARE SENT TO THE APPROPRIATE LOCATION. You will register your initial location of use when you subscribe to the Service. Thereafter, you may register a new location by following the instructions from the "911" registration link on your Citynet web account page. For purposes of the 911 dialing feature, you may only register one location at a time for each phone line you use with the Service.

(b) Permitted Locations. Please note that you will only be able to register in locations served by Citynet. (View List).

2.3 Moving Phone Locations. Although the Service and Equipment are designed to function properly if moved to a different physical location, Citynet strongly recommends against taking your Equipment on vacation or otherwise using it in multiple locations. As reflected in Section 2.1, unless you update the physical location of your Equipment, 911 calls may not be sent to an emergency center near the location from which you are calling.

## 2.4 Service Outages.

(a) Service Outages Due to Power Failure or Disruption. 911 dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 dialing, will not function until power is restored.

(b) Service Outages Due to Internet Outage or Suspension or Termination of Broadband Service or ISP Service. Service outages or suspensions or terminations of service by your broadband provider or ISP will prevent all Service, including 911 dialing, from functioning.

(c) Service Outage Due to Suspension or Termination of Your Citynet Account. Service outages due to suspension or termination of your account will prevent all Service, including 911 dialing, from functioning.

(d) Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts. Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your Service is impeded, and unless and until the blocking or impediment is

removed or the blocking or impediment is otherwise resolved, your Service, including the 911 dialing feature, may not function. You acknowledge that Citynet is not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of service, including 911 dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you terminate the Service in accordance with this Agreement.

(e) Other Service Outages. If there is a Service outage for any reason, such outage will prevent all Service, including 911 dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

(f) Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls. There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

(g) Alternate 911 Arrangements. If you are not comfortable with the limitations of the 911 dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or terminating the Service

### 3. CHARGES / PAYMENTS / DEFAULT / TAXES / TERMINATION

3.1 Billing. Payment for Service, including any applicable federal, state, and local taxes, is due within thirty (30) days of the date of invoice - whether electronic or by mail. Beginning thirty-one (31) days after the date of invoice, interest on late payments will accrue at the rate of 1.5% per month, or the highest rate allowed by law on the unpaid balance, whichever is lower. You must provide us with a valid credit card number or bank account and routing number when the Service is activated. If the card expires, you close your bank account, your billing address changes or your credit card is cancelled or replaced owing to loss or theft, you must advise Citynet at once. We will bill all charges monthly (including, but not limited to, activation fees, monthly Service fees, taxes, international usage charges, advanced feature charges, equipment purchases and shipping and handling charges). Customers on a yearly term may pay by check, credit card or automatic withdrawal from your bank account. Customers on a month-to-month term must pay by automatic charges to your credit card or automatic withdrawal from your bank account. Citynet reserves the right to bill at more frequent intervals or to charge your credit card or make an automatic withdrawal from your bank account if the amount due at any time exceeds \$25.

3.2 Billing Disputes. You must notify Citynet in writing within seven (7) days after receiving your invoice if you dispute any Citynet charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address: Billing Department, Citynet, 100 Citynet Drive, Bridgeport, West Virginia 26330 or [billing@cityent.net](mailto:billing@cityent.net).

3.3 Payment. Your use of the Service authorizes Citynet to charge your credit card or automatically withdraw from your bank account any charges that accrue during the billing cycle that are not paid within thirty (30) days of the date of the applicable invoice. This authorization will remain valid until forty-five (45) days after Citynet receives your written notice terminating Citynet's Services. Citynet may terminate your Service at any time in its sole discretion, if any charge to your credit card or bank account is declined or reversed or in case of any other non-payment of account charges. Termination of Service for declined card, reversed charges or non-payment leaves you fully liable to Citynet for all charges accrued before termination and for charges incurred by Citynet as the result of your non-payment, such as (but not limited to) collection costs and attorney's fees.

3.4 Termination/Discontinuance of Service. Citynet reserves the right to suspend or discontinue providing

the Service generally, or to terminate your Service, at any time in its sole discretion. If Citynet discontinues providing the Service generally, or terminates your Service in its discretion without a stated reason, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If your Service is terminated for any stated reason, including without limitation violation of this Agreement, or because of any improper use of the Service or Equipment (such as, but not limited to, your attempts to hack, disrupt, or misuse the Service), you will be responsible for the full charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

3.5 Taxes and \*11 Fees. Customer is responsible for, and shall pay any applicable federal, state, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of Customer's subscription or use or payment for the Service or Equipment. Customer also shall be responsible for the payment of any fees related to dialing of \*11 numbers, including, without limitation, 411, 811 and 911. Such amounts are in addition to payment for the Service or Equipment and will be billed to your account. If Customer is exempt from payment of such taxes, it will provide Citynet with an original government-issued certificate attesting to tax-exempt status. Tax exemption will only apply from and after the date Citynet receives the Tax Exempt Document.

3.6 Disconnect Fee. Customer will be charged a disconnect fee of \$75 per voice line upon termination of Service for any reason or for convenience by Customer. The disconnect fee becomes due and payable immediately upon termination and will be billed directly to Customer's credit card or bank account. Activation and any shipping fees incurred are non-refundable. To receive a credit for the disconnect fee, Customer must return the Equipment undamaged and in original condition within fourteen (14) days of termination. Citynet will not credit Customer if the Equipment is damaged or not in its original condition as received by the Customer.

3.7 Delinquent Accounts. All Accounts that are past due will be turned over to a collection agency and may be reported to an applicable credit reporting company.

3.8 Incompatibility with High Speed Provider. In the event that the Service is not compatible with the services offered by your high speed Internet provider, Citynet will refund fees paid by Customer, if any.

3.9 Rates for Service. Rates for Service are subject to change on five (5) days written notice to the Customer.

3.10 Restocking Fee. For accounts using Citynet provided equipment, a \$15.00 restocking fee will apply if service is terminated prior to 60 days after commencement of service. The \$15.00 restocking fee will not apply to services terminated within 10 days of initiation of service. Should the customer request new equipment, and original equipment is found to be in good working order, Citynet reserves the right to charge the customer a \$15.00 restocking fee.

#### 4. WARRANTY AND LIABILITY LIMITATIONS/INDEMNIFICATION

4.1 Limitation of Liability. Citynet shall not be liable for any delay or failure to provide the Service, including 911 dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following: 1) act or omission of an underlying carrier, service provider, vendor or other third party; 2) equipment, network or facility failure; 3) equipment, network or facility upgrade or modification; 4) force majeure events such as (but not limited to) acts of God; strikes; fire; war; riot; government actions; 5) equipment, network or facility shortage; 6) equipment or facility relocation; 7) service, equipment, network or facility failure caused by the loss of power to Customer; or 8) any other cause that is beyond Citynet's control, including without limitation the failure of an incoming or outgoing communications, the inability of communications to be connected or completed, including 911 dialing, or degradation of voice quality. Citynet's liability for any act, omission,

failure or mistake shall in no event exceed the amount of Service charges paid by Customer to Citynet.

4.2 No Consequential Damages. In no event shall Citynet, its officers, directors, employees, members, managers, affiliates or agents or any other service provider who furnishes services to Customer in connection with this Agreement or the Service be liable for any incidental, indirect, special, punitive, exemplary or consequential damages, or for any damages, including but not limited to personal injury, death, loss of data, loss of revenue or profits, or arising out of or in connection with the use or inability to use the Service, including inability to be able to dial 911 or to access emergency service personnel through the Service. The limitations set forth herein apply to claims founded in breach of contract, breach of warranty, products liability, tort and any and all other theories of liability and apply whether or not Citynet was informed of the likelihood of any particular type of damages.

4.3 Indemnification. Customer agrees to defend, indemnify, and hold harmless Citynet, its officers, directors, employees, members, managers, affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorney's fees) by, or on behalf of, Customer or any third party or user of Customer's Service, relating to this Agreement, the Services, including 911 dialing, or the Equipment. This paragraph shall survive termination of this Agreement.

4.4 No Warranties on Service. CITYNET MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE SERVICE OR THE EQUIPMENT FOR A PARTICULAR PURPOSE. CITYNET DOES NOT WARRANT THAT THE SERVICE WILL BE WITHOUT SERVICE FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER CITYNET NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, MANAGERS, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO CITYNET'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF CITYNET'S OR ITS SERVICE PROVIDER'S OR VENDOR'S NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR EQUIPMENT, IF ANY, BY CITYNET OR CITYNET'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

4.5 No Third Party Beneficiaries. No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

4.6 Content. You are liable for any and all liability that may arise out of the content transmitted by or to you or other users using the Services. You shall assure that your or your user's use of the Services and content will at all times comply with all applicable laws, regulations and written and electronic instructions for use. Citynet reserves the right to terminate or suspend affected Services, and/or remove your or your users' content from the Services, if Citynet determines that such use or content does not conform with the requirements set forth in this Agreement or interferes with Citynet's ability to provide Services to you or others or receives notice from anyone that your or your users' use or Content may violate any laws or regulations. Citynet's actions or inaction under this Section shall not constitute review or approval of your or your users' use or content. You will indemnify and hold Citynet harmless against any and all liability arising from the content transmitted by or to you or to other users using the Services. A "user" means any person, whether authorized or unauthorized, using the Service and/or Equipment provided to you.

5. GOVERNING LAW/RESOLUTION OF DISPUTES/MISCELLANEOUS



5.1 Mandatory Mediation. Any dispute or claim between Customer and Citynet arising out of or relating to the Service or Equipment provided in connection with this Agreement shall attempted to be resolved by first by mediation in accordance with the Rules of Court Annexed Mediation for the State of West Virginia.

5.2 Governing Law. This Agreement and the relationship between you and Citynet shall be governed by the laws of the State of West Virginia without regard to its conflict of law provisions. Customer and Citynet agree to submit to the personal and exclusive jurisdiction of the courts located within the State of West Virginia. Venue shall be proper only in the Circuit Court of Harrison County or in the United States District Court for the Northern District of West Virginia. The failure of Citynet to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the applicable provision, and the other provisions of the Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

5.3 Entire Agreement. This Agreement and the rates for Services found on Citynet's website constitute the entire agreement between you and Citynet and govern your use of the Service, superseding any prior agreements between you and Citynet and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. No amendment to this Agreement shall be binding upon Citynet unless and until posted in accordance with Section 3 hereof.

5.4 Severability. If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

## 6. PRIVACY

(a) Use of Public Internet. Citynet's Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Citynet is not liable for any lack of privacy which may be experienced with regard to the Service.

(b) Customer Proprietary Information. Citynet and its affiliates are committed to protecting the confidentiality of your telecommunications service information, and we have the duty to do so under Federal law. Moreover, Federal law gives you a right to protection of all such information, including how many telecommunications services you have, the type of lines you buy, technical characteristics, class of service, as well as where, when, and to whom you place a call, and the related billing for these services. From time to time we may have the opportunity to offer you products and services that will better meet your needs by using information about the services you have already purchased from Citynet. Use of your service-related information for this purpose may enhance our ability to make you aware of new or alternate products and services that are tailored to your needs. If you elect to let the Company use confidential service information for this purpose and only this purpose, we also may share the information with our Company's affiliates, agents, partners, joint venturers, or other related entities (but not unrelated entities) for administrative and marketing purposes, but only for communications related services. You have the right to restrict the Company's use of your customer information for these purposes. Your decision to restrict our use of your customer information is free of charge and will not affect the service you receive from Citynet. If you wish to restrict Citynet's use of your customer information, please notify Citynet, in writing, at [info@citynet.net](mailto:info@citynet.net) or call us at 1-800-903-8906 within 30 days of the commencement of your Service. Moreover, you may also contact us at any time in the future to restrict the use of your information. If you elect not to restrict use of your information, the

Company may use it for the purposes described in this notice. You may change your decision at any time, but your decision will remain valid until you tell us otherwise. You may receive marketing information from the Company even if you restrict the Company's use of your customer information. These materials are developed without use of confidential customer information. We also encourage you to contact us at any time to find out about the Company products and services.

## 7. CHANGES; NOTICES

Notice to Customer of any changes to the "Terms of Service" shall be considered given by posting to the new terms on Citynet's website (currently located at [www.citynet.net](http://www.citynet.net)). Notice will be considered received by Customer, and such changes will become binding on Customer, on the date posted to the Citynet website and no further notice by Citynet is required.

Revision 10/25/2007

Revision 05/20/2008

Revision 08/29/2008

Revision 02/05/2009

Revision 11/03/2010

Revision 07/11/2011