

Add/Moves/Changes and Parts & Service TERMS AND CONDITIONS

THIS AGREEMENT is made as of the date of the signed and accepted Quotation, AMC or Service Request document, incorporated herein by reference, by the CUSTOMER, herein referred to as the "BUYER", whose name and principal address appears on the associated document, and accepted by Accurate Telecom Inc, a California Corporation, herein referred to as "SELLER", whose principal address is 16108 Covello Street, Van Nuys, CA 91406.

In accordance with the terms and conditions stated herein, SELLER agrees to sell and BUYER agrees to purchase certain items of EQUIPMENT and software licenses herein after referred as the "EQUIPMENT" itemized on the associated Quote, AMC or Service Request document. The below terms and conditions apply to all add, move, change, service and repair orders commonly referred to as "AMC", "Service", "Repair" or "Maintenance" as requested by the BUYER and provided by SELLER. The BUYER hereby accepts the Terms and Conditions, herein referred to as the "Agreement", as the only agreement between the parties.

1. **TAXES.** All taxes levied or based on price or the EQUIPMENT including sales, use, personal property, privilege, import duties & fees or excise tax based on gross revenue shall be paid by BUYER.

2. **GRANT OF SECURITY INTEREST.** BUYER shall acquire title to the EQUIPMENT upon payment in full of the purchase price plus all applicable tax to SELLER. As long as any part of the purchase price remains outstanding title to the EQUIPMENT shall remain with SELLER and SELLER shall retain a security interest in the EQUIPMENT until all amounts are paid in full. BUYER shall execute any document which becomes necessary or appropriate to perfect SELLERS' interest in the EQUIPMENT, including but not limited to a UCC1. Risk of loss for the EQUIPMENT shall transfer from SELLER to BUYER upon delivery of the EQUIPMENT to BUYER's delivery location.

3. **DEFAULT.** If BUYER breaches any provision of this Agreement, including without limitation, its payment obligations, or any sums that subsequently becomes due to SELLER, BUYER shall be in default, and all unpaid amounts shall, at the option of SELLER, become immediately due and payable. Upon BUYER's default, SELLER shall have all the rights and remedies available under the Uniform Commercial Code and shall have the right to immediately cease all work.

4. **LIMITED WARRANTY.** SELLER extends to the BUYER the original manufacturers new EQUIPMENT warranty for a period of 30 days from the date of EQUIPMENT delivery. SELLER provided refurbished or used EQUIPMENT is replacement warranted for 30 days from date of delivery. If SELLER is notified of a component failure and such failure is caused by a defect in material or workmanship then SELLER shall at its option repair or replace the failed component with a like version. Upon replacement, the failed item or component shall become the property of SELLER. SELLER does not warrant replacement is readily available nor does SELLER warrant that replacement EQUIPMENT is new or refurbished unless SELLER so warrants the said condition in writing. This warranty shall be void if the EQUIPMENT is altered or repaired by anyone other than SELLER, its employees or agents or damage to the EQUIPMENT is believed to be caused by accident, negligence, act of God, mishandling, abuse, improper storage or operation, theft, power surges or other power related failures or improper environment. THIS IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY SELLER AND ITS SUPPLIERS. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTIES RIGHTS. BUYER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE ABOVE LIMITED WARRANTY PERIOD. MOREOVER, IN NO EVENT WILL WARRANTIES PROVIDED BY LAW, IF ANY, APPLY UNLESS THEY ARE REQUIRED TO APPLY BY STATUTE NOTWITHSTANDING THEIR EXCLUSION BY CONTRACT. NO AGENT, OR EMPLOYEE OF SELLER IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS LIMITED WARRANTY.

5. **BUYER TO PROVIDE.** BUYER shall provide in commercially reasonable quantities the following: reasonable access to the premises, commercial power including ground, proper lighting, dust free air conditioned (with non condensing humidity) EQUIPMENT installation location, all required conduit or fire retardant cabling (when required by applicable building or fire codes or standards) or other items not listed herein and reasonably necessary for SELLER to deliver and install the EQUIPMENT.

6. **FORCE MAJEURE.** The obligations of SELLER hereunder shall be suspended to the extent and for the period of time that is hindered or prevented from performing because of labor disturbances, strikes, lockouts, acts of God, fires, storm, water, unreasonable delays in transportation, governmental action, or other cause beyond SELLER's control.

7. **LIABILITY LIMITATION.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER INCLUDING THIRD PARTIES FOR ANY CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES OR COMMERCIAL LOSS WHATSOEVER IN CONNECTION WITH ANY EQUIPMENT AND/OR LABOR PROVIDED FOR HEREUNDER.

8. **REPRESENTATION OF BUYER.** BUYER warrants and represents that BUYER has the corporate or other necessary power and authority to make and perform this Agreement and that the making and performance of this Agreement by BUYER has been duly authorized by all necessary corporate or other action and will not violate any provision of law or BUYER's Articles of Incorporation or Bylaws, or result in the breach of any agreement to which BUYER is a party.

9. **PAYMENT.** Unless credit terms are granted in advance, BUYER shall pay 50% of the estimated total upon placing any order for EQUIPMENT or service. On special order items and software SELLER may require 100% payment prior to ordering EQUIPMENT or services. Under no circumstance is SELLER offering to extend credit to the BUYER unless terms are granted in advance in writing by SELLER. ALL PURCHASES ARE CASH TERMS ONLY. ANY OUTSTANDING BALANCE SHALL BE DUE COD.

10. **FINANCING OPTION.** In the event that the BUYER obtains third party financing for the EQUIPMENT that is acceptable to SELLER, the third party agrees to make all installment payments on behalf of BUYER and in accordance with payment requirements of SELLER. All

deposit monies paid to SELLER shall be refunded to BUYER upon payment in full to SELLER from BUYER's third party financing source. BUYER understands and agrees that delivery and installation of the EQUIPMENT shall be delayed to the extent installments or SELLER required deposits are not received as stipulated by SELLER.

11. PATENTS AND COPYRIGHTS.

A. SELLER shall defend any suit or proceeding brought against BUYER based on a claim that the use, possession or sale of the EQUIPMENT in accordance with the terms of this Agreement constitutes an infringement of any United States patent or copyright provided SELLER is notified in writing by BUYER of the claim and is given authority, information and assistance by BUYER for defense of the matter and, subject to the provision of Paragraph B. SELLER shall pay all damages and costs awarded therein against BUYER. In the event the EQUIPMENT is held in such matter to be infringing and as a result the use of the EQUIPMENT is enjoined, SELLER shall, at its expense and option, either procure for BUYER the right to continue using the EQUIPMENT, replace the same with a non infringing product or modify it so it becomes non infringing, or remove the infringing EQUIPMENT and refund the purchase price thereof to BUYER.

B. In no event shall SELLER's total liability to BUYER under or as a result of compliance with the provisions of Paragraph A exceed the aggregate sum paid by BUYER for the infringing or allegedly infringing EQUIPMENT. Paragraph A and this Paragraph B state the entire liability of SELLER for patent or copyright infringement by the EQUIPMENT. THE PROVISIONS THEREOF ARE IN LIEU OF ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR PATENT OR COPYRIGHT INFRINGEMENT OF ANY KIND.

12. ASSIGNMENT. Neither party may assign its rights under this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld or delayed. SELLER may delegate or sub-contract its obligations with respect to the installation and maintenance of the EQUIPMENT.

13. TOLL FRAUD. SELLER disclaims any express or implied warranty that the EQUIPMENT is technically immune from or prevents third party fraudulent intrusions into and/or unauthorized use of the EQUIPMENT (including its interconnection to a long distance network, or data network including the internet). BUYER is hereby warned that third party fraudulent use of the EQUIPMENT is possible and hereby assumes all risk and liability of such fraudulent or unauthorized use or intrusion.

14. INVASION OF PRIVACY DISCLAIMER WARNING. SELLER hereby disclaims any expressed or implied warranty that the BUYER'S EQUIPMENT is technically immune from or prevents unlawful and/or unauthorized third party utilization that may result in invasion of one's right to privacy. SELLER hereby warns BUYER that such is possible, and BUYER agrees to warn its employees and agents of such.

15. DATABASE LOSS OR THEFT DISCLAIMER. SELLER disclaims any express or implied warranty that the EQUIPMENT is technically immune from or prevent the loss or theft of BUYER'S database. It is the BUYER's responsibility to retain and maintain a current copy of the CUSTOMER database and take such security measures as it deems necessary. SELLER will provide services as may be required to re-create lost database on billable bases in accordance with its normal operating procedures.

16. RECORD A CALL FEATURE. SELLER hereby makes the CUSTOMER aware that the "Record a Call Feature" has legal implications requiring the users to indicate verbally to callers that the call is being recorded when activating this feature. Record a Call does not provide a warning tone to the caller or user. SELLER disclaims any responsibility for improper use of this feature.

17. EXTERNAL LISTEN & MUSIC ON HOLD. The "External Listen Feature" contained in the EQUIPMENT may violate state or federal statutes including privacy and criminal legislation. The BUYER is hereby warned of such. SELLER disclaims any responsibility for improper use of this feature.

18. ALARM NOTIFICATION. Should the EQUIPMENT contain optional remote alarm notification devices SELLER disclaims any responsibility for failure of the device function. Additionally, SELLER will not respond to notifications received from BUYER sites not under a specific support plan providing for the use of and response to alarm reporting devices.

19. BUYER'S DATA NETWORK DISCLAIMER. SELLER disclaims all express or implied warranty that BUYER'S existing DATA network is suitable for or is capable of supporting VOIP or Qos transmission. It is the BUYER'S sole obligation to provide a suitable DATA network required for SELLER's proper EQUIPMENT operation. BUYER agrees to provide DATA network evaluation studies at the request of SELLER and promptly upgrade or replace it's DATA network non complying equipment.

20. VIRUS AND SPYWARE DISCLAIMER. SELLER disclaims all express or implied warranty that it's EQUIPMENT is immune from, protects from or that SELLER's actions can prevent VIRUS or SPYWARE intrusion. BUYER is hereby warned that the EQUIPMENT and any other BUYER connected equipment may become dysfunctional as a result of same. BUYER is hereby warned of such.

21. REMOTE ACCESS INTRUSION DISCLAIMER. SELLER disclaims all express or implied warranty that it's remote access EQUIPMENT is secure from or prevents third party intrusion. BUYER hereby assumes all liability associated with third party access and agrees to indemnify, defend and hold harmless SELLER. BUYER is hereby warned of such.

22. PARTIAL INVALIDITY. If any term or provision of this Agreement is held by any Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the term(s) or the provision(s) shall remain in full force and effect and shall be in no way affected, impaired or invalidated.

23. **ENTIRE AGREEMENT.** This Agreement, together with all Exhibits and Schedules attached to it and incorporated in it, contains the entire agreement of the parties with respect to the matters covered by this Agreement; and it supersedes any and all prior proposals, quotes, negotiations, agreements, contracts and understandings between the parties with respect to the matters covered by this Agreement. No other prior or contemporaneous proposal, quote, negotiation, agreement, statement or promise made by any party, or any employee, officer or agent of any party or other entity which is not contained in this Agreement shall be binding or valid. This Agreement may not be modified or amended, except in writing, signed by both parties. Any terms or conditions that are contained in the BUYER's purchase order that are different from or conflict with the terms and conditions set forth in this Agreement, shall be null and void and of no force or effect, except to the extent that such purchase orders are used as reference or transmittal documents for the sole purpose of providing a reference number or code for invoicing and billing purposes.

24. **INTERPRETATION & CONSTRUCTION.** The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against SELLER or the BUYER. The parties hereby waive Section 1654 of the California Civil Code, and all decisions and rules which state that in cases of uncertainty the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

25. **NUMBER & GENDER.** In this Agreement, the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the words "person" "entity" and "it" includes corporation, partnership, firm, association or limited liability company wherever the context so requires.

26. **CAPTIONS.** Captions of articles, sections or paragraphs of this Agreement are for convenience and reference only, and the words contained in the captions shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

27. **ARBITRATION.** All questions, disputes and controversies with respect to the rights and obligations of the parties, and/or the effect, construction or application of this Agreement, or any of its terms or provisions, and/or any other claims arising out of this Agreement or its breach shall be resolved by binding arbitration, as follows:

A. **DEMAND FOR ARBITRATION.** If a claim or dispute arises under this Agreement, either party may demand arbitration by filing a written demand with the other party within 60 days after occurrence of the claim or dispute.

B. **APPOINTMENT OF ARBITRATORS.** The parties may agree on one arbitrator. If they cannot agree on one arbitrator, there shall be three: one named in writing by each of the parties within five days after demand for arbitration is given, and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) may proceed ex-parte.

C. **HEARING.** A hearing on the matter to be arbitrated shall take place before the arbitrator(s) in the county of Los Angeles, State of California, at the time and place selected by the arbitrator(s). The arbitrator(s) shall select the time and place promptly and shall give each party written notice of the time and place at least 30 days before the date selected. At the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the arbitrator(s). The arbitrator(s) shall hear and determine the matter and shall execute and acknowledge the award in writing and cause a copy of the writing to be delivered to each of the parties.

D. **AWARD.** If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties, and if there are three arbitrators, the decision of any two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) shall be a condition precedent to any right of legal action on the dispute. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that court may vacate, modify, or correct the award in accordance with the prevailing provision of the California Arbitration Act.

E. **NEW ARBITRATORS.** If three arbitrators are selected, but no two of the three are able to reach an agreement regarding the determination of the dispute, then the matter shall be decided by three new arbitrators who shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is agreed on by two of the three arbitrators selected.

F. **COSTS OF ARBITRATION.** The costs of the arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrator(s) determine(s).

28. **ATTORNEY'S FEES.** If any legal action, arbitration or other proceeding is brought for the enforcement of this Agreement, or on account of an alleged breach, dispute, default or misrepresentation in connection with any of the provisions of this Agreement, or any schedule or exhibit attached to this Agreement or incorporated in it, then the successful or prevailing party in such action shall be entitled to recover from the other party actual attorney's fees and all other costs and expenses incurred in any such action or proceeding, in addition to any other relief or damages to which the prevailing party may be entitled to.

29. **CHOICE OF LAW.** This Agreement shall be governed and construed under and in accordance with the laws of the State of California.

For more information, call 818 997-6700 or email us today.