

**MAINTENANCE AGREEMENT**

Agreement Number: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Monthly Charge: \_\_\_\_\_ Contract Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_

Billing Cycle: Monthly: \_\_\_\_\_ Quarterly: \_\_\_\_\_ Yearly: \_\_\_\_\_

**TERMS AND CONDITIONS**

1. **MAINTENANCE SERVICES:**

A) Pursuant to the Terms and Conditions of this Agreement, *Centerpoint Digital Services, Inc.* shall provide the customer during the term of this Agreement and with respect to the Equipment described in Schedule A, Equipment Summary, the services summarized as follows:

- I) Remedial maintenance services upon request by the Customer in order to restore malfunctioning operating component part the equipment to proper working order.
- II) Priority response to the Customer request for remedial maintenance and/or service work over other types of *Centerpoint Digital Services, Inc.* service arrangements.

B) *Centerpoint Digital Services, Inc.* remedial response objectives are as follows:

- I) With the respect to major malfunction of the equipment (defined as no incoming or outgoing telephone service, no station to station service, or voice mail equipment failure effecting the majority of Company functions), *Centerpoint Digital Services, Inc.* policy is to respond to the Customers' Premises within two (2) hours from the time *Centerpoint Digital Services, Inc.* first receives the Customers' request for Remedial Maintenance and will complete such repairs as soon as reasonably practicable.
- II) With respect to Minor Malfunction (any malfunction other than major malfunction) of the equipment, *Centerpoint Digital Services, Inc.* policy is to respond to the Customer Premises between the hours of 0800 and 1700, Monday through Friday, excluding holidays within twenty-four (24) hours from the time *Centerpoint Digital Services, Inc.* first receives the Customers request for Remedial Maintenance and will complete such repairs as soon as reasonably possible.

C) *Centerpoint Digital Services, Inc.* responsibility with respect to the Maintenance Services shall be limited to the customers side of the interconnect devices connecting the Equipment to the telephone system operated by the local telephone utility, or if no such interconnect devices exist, to the Customer's side of the point of connection between the Equipment and said local telephone system.

D) The Customer shall allow employees of *Centerpoint Digital Services, Inc.* free access to the premises and facilities where the Equipment is to be maintained at all hours consistent with the requirements of this Agreement.

E) Maintenance or service work performed on the Equipment by others during the period of this agreement without written consent of *Centerpoint Digital Services, Inc.* shall cause this agreement to become null and void.

**CUSTOMER ACKNOWLEDGES AND WARRANTS TO *Centerpoint Digital Services, Inc* THAT THEY HAVE READ ALL OF THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE REVERSE SIDE, AND ALL OTHER AGREEMENTS MADE AS PART OF THIS TRANSACTION, BEFORE EXECUTING THIS AGREEMENT. THIS AGREEMENT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS AGREED UPON. THERE ARE NO REPRESENTATIONS, WARRANTIES, OR STIPULATIONS, WRITTEN OR ORAL, NOT HEREIN CONTAINED. NO MODIFICATION OF THIS AGREEMENT MAY BE MADE EXCEPT BY A WRITING EXECUTED BY AN OFFICER OF *Centerpoint Digital Services, Inc.*, THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL SIGNED BY AN OFFICER OF *Centerpoint Digital Services, Inc.***

Customer: \_\_\_\_\_

*Centerpoint Digital Services, Inc.*

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

NOTICE TO CUSTOMER

1. DO NOT SIGN THIS AGREEMENT BEFORE READING REVERSE SIDE OR IF ANY SPACES ARE LEFT BLANK.
2. YOU MAY CANCEL THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT ON THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.
3. YOU ARE ENTITLED TO AN EXACT COPY OF THIS AGREEMENT AT THE TIME YOU SIGN IT.

F) Maintenance does not include any services necessitated by, or of the type described in any of the following:

- I) Labor and material costs of additions, changes and relocation; specification or engineering changes;
- II) Labor and material cost for replacement of those component parts subject to normal wear and tear as a result of use which do not effect the operational condition of the equipment;
- III) Negligent, willful or intentional acts of the customer;
- IV) Accident, casualty, neglect, misuse or any cause other than normal use in the manner intended by the parties hereto as described in the Equipment specifications;
- V) An act or event occurring external to the Equipment which causes, either directly or indirectly, a failure or malfunction in the Equipment, including without limitations, failures or malfunctions of the trunk or toll lines, cable or other equipment connecting the Equipment to the telecommunications system of the operations telephone utility or abnormal power fluctuations or failures which adversely affect the Equipment;
- VI) Repair or maintenance or increase in normal service time resulting from Customer's failure to provide a suitable Equipment environment as required in the Equipment specification or any other failure of the Customer to fully perform its responsibilities under this Agreement;
- VII) Any other acts or events which may adversely affect the performance of the Equipment occasioned by the acts of the Customer or any other third party, or the use by the Customer or any third party of the Equipment in the combination with any other apparatus, device or other system not supplies, or approved as to such combined use of *Centerpoint Digital Services, Inc.* or the use by Customer of any item of the Equipment in a manner not intended by the parties hereto or specified by *Centerpoint Digital Services, Inc.*.

2. **TERM AND PAYMENT:**

- A) The term of this Agreement shall commence as of the date set forth above and will cover a period of one (1) year, unless a period other than one (1) year is expressly stipulated in the space provided above hereto.
- B) Payments due from the Customer to *Centerpoint Digital Services, Inc.* hereunder shall be made within thirty (30) days from the date of *Centerpoint Digital Services, Inc.* invoice therefore, in the event payment is not made within thirty (30) days, *Centerpoint Digital Services, Inc.* shall not be obligated to perform pursuant to this Agreement.

3. **TAXES:**

The Maintenance Service rate(s) or other charges incurred by the Customer in this Agreement do not include any federal, state or local privilege, use, sales or excise taxes paid or payable by either *Centerpoint Digital Services, Inc.* or Customer with respect to the Agreement or any of the services performed or material, equipment or other items provided by *Centerpoint Digital Services, Inc.* net income or capital stock, which shall be borne by *Centerpoint Digital Services, Inc.*.

4. **LIMITATION OF LIABILITY:**

The Customer agrees that neither *Centerpoint Digital Services, Inc.* or its Sub-Contractors shall be liable for any loss or damage to the Equipment or other property or injury or death to the Customer's agents, employees, or other customers arising in the connection with Maintenance Services provided by *Centerpoint Digital Services, Inc.* or its sub-contractors under this Agreement unless such loss, injury, death or damage results solely from the negligence or willful misconduct of *Centerpoint Digital Services, Inc.* officer, employees or agents or those of *Centerpoint Digital Services, Inc.* and Sub-Contractors. IN NO EVENT SHALL *Centerpoint Digital Services, Inc.* OR IT'S SUB-CONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS BY CUSTOMER OF BUSINESS, REVENUES OR GOODWILL), ARISING IN CONNECTION WITH THIS AGREEMENT OR THE EQUIPMENT.

5. **FORCE MAJEURE:**

The timeliness of performance by *Centerpoint Digital Services, Inc.* of Maintenance Services hereunder or the performance of any other obligations of *Centerpoint Digital Services, Inc.* under this Agreement is in every case subject to delays causes by an Act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel or power, government laws, regulations or orders, act or injunction, (whether or not such labor event is within the reasonable control of *Centerpoint Digital Services, Inc.*). In the event of such delay, the period of time for performance of services affected by such delay will be extended to reflect the effective delay occasioned thereby.

6. **ASSIGNMENT:**

*Centerpoint Digital Services, Inc.* may assign sub-contract, transfer or otherwise dispose of, in whole or in part, any of its interest, rights or obligations under this Agreement including without limitation, *Centerpoint Digital Services, Inc.* obligation to provide Maintenance Services or other services hereunder will be subject to the same terms and conditions as are set forth herein. Customer shall not assign or sub-contract any part or all of its interests hereunder except upon the prior written consent of *Centerpoint Digital Services, Inc.* which consent shall not be unreasonably withheld, and any attempted assignment or sub-contracting without *Centerpoint Digital Services, Inc.* prior written consent shall be null and void.

