

Sherwood Broadband: Master Service Agreement



This Master Service Agreement (“Agreement”) sets forth the terms and conditions by which Sherwood Broadband (“SBB”) agrees to provide communication services to Customer. Each of Customer and SBB are collectively referred to as “the Parties” or individually, a “Party” herein. BY EITHER (1) SUBMITTING OR EXECUTING A SERVICE ORDER (AS HEREINAFTER DEFINED), OR (2) USING ANY SBB SERVICES, CUSTOMER ACCEPTS THIS AGREEMENT AND AGREES TO THE TERMS HEREOF. For good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. DEFINITIONS

In addition to terms defined elsewhere and industry standard terms, where capitalized, the following words and phrases used herein shall be defined as follows:

- (a) **Acceptance Date.** The beginning date of the Service Term and the date billing commences for the Service. The Acceptance Date is the earlier of: (i) when testing following installation of a Service has been successfully completed and Customer agrees that the Service is working properly; (ii) when Customer accesses and utilizes the Service; or (iii) five days past the Service Installation Date if testing is complete but Customer has failed to accept.
- (b) **Default.** Circumstances which may lead to termination of this Agreement as described in Section 5, including but not limited to: (i) any material breach of any term of this Agreement; (ii) an assignment for the benefit of creditors; (iii) a voluntary filing of bankruptcy; or (iv) any proceedings filed against the defaulting party under any law relating to creditor’s rights in general provided such proceeding is not dismissed within ninety (90) days of its filing.
- (c) **End Users.** The Customer or Customer’s authorized users.
- (c) **Emergency Maintenance.** Maintenance which, if not performed promptly by SBB, could result in a serious degradation or loss of Service to SBB customers.
- (d) **On-Net Services.** Services provided entirely on SBB-controlled facilities that connect two locations served by SBB’s network
- (e) **Planned Service Interruption.** Any Service outage caused by scheduled maintenance, planned enhancements or upgrades to the SBB Network.
- (f) **Point of Presence (“POP”).** A specific location where Customer terminates and/or originates Service.
- (g) **Point of Termination.** The physical location at which SBB’s responsibility to provide Service ends and where the End-User responsibilities begin.
- (h) **Premises.** The address to which Service is provided, identified on the Service Order.
- (i) **Service(s).** “Service(s)” means the communication service, ordered by Customer and provided by SBB pursuant to a Service Order provided by Customer, subject to the terms and conditions of this Agreement and the applicable Service Addendum.
- (j) **Service Installation Date.** The date SBB designates to begin installation of Service following receipt of a complete and accurate Service Order.
- (k) **Service Order.** A document provided by the Customer to SBB, which identifies the type of Service desired and provides all information necessary for SBB to provide the Service to Customer, including but not limited to the following: quantity and type of Service; location served; Point of Termination; protocols; Service Term; and the date Customer would like Service to be installed and activated.
- (l) **Service Term.** The period of time Customer has requested that the Service be provided, as identified on each Service Order. If the Service Term is not stipulated in the Service Order, an initial 12-month term will apply. Following each Service Term, the Services will continue on a month-to-month term unless terminated by either Party by providing thirty (30) days prior written notice to the other Party.

2. SERVICE DESCRIPTION

- (a) SBB will provide communication or information technology Services, or both, to Customer pursuant to a Service Order issued by Customer, and in accordance with these terms and conditions and any applicable Service Addendum. SBB reserves the right, in its sole reasonable discretion, to reject any Service Order.
- (b) SBB will provide Services to Customer using SBB owned and managed facilities in conjunction with facilities of SBB’s network partners. SBB reserves the right to substitute, change, or rearrange any equipment used in delivering Services that does not affect the quality, cost, or type of Services.
- (c) Unless otherwise provided herein, Customer is responsible to provide equipment compatible with the Service and SBB’s network and facilities. Customer will bear the cost of any additional equipment or protective apparatus (e.g. surge protectors) reasonably required to be installed because of the use of SBB’s network or facilities by End Users. Any wiring required to extend a communications termination and/or demarcation at the End User premises is not the responsibility of SBB, and SBB is not responsible for the costs thereof.
- (d) Customer’s use of the Services provided herein and any equipment associated therewith will not: (i) interfere with or impair service over SBB’s network or facilities; (ii) impair privacy of any communications over such network or facilities; (iii) cause damage of any nature to SBB’s assets; (iv) be used to transmit, distribute, or store any material in violation of any applicable law or regulation; or (v) be used to frighten, abuse, torment, or harass another. At the time Customer becomes or is made aware of any interference or conduct prohibited by this Section, Customer shall immediately take all necessary action to discontinue such interference or prohibited conduct. Notwithstanding any other provision herein, in the event Customer is in breach of this Section, SBB may suspend the affected Service until the equipment or prohibited conduct is modified to prevent said interference or conduct. In most circumstances SBB will provide twenty-four (24) hours’ notice (which may be provided by telephone or e-mail, regardless of whether receipt is acknowledged) of such interference or prohibited conduct to Customer and suspend the Service if Customer fails to cure the same within such twenty-four (24) hour period. However, if the interference or conduct is a threat to the integrity of SBB’s network, including without limitation, to the privacy or security of data transmitted over the SBB network, then in SBB’s sole discretion, SBB may suspend the affected Service immediately and without notice. Customer’s failure to diligently pursue and cure such interference or prohibited conduct within a reasonable time of such suspension will be deemed a material breach of this Agreement.
- (e) SBB will manage its network in SBB’s sole discretion. Customer will provide all reasonable information and authorizations required by SBB for the purpose of installing Services, providing the Services, maintaining the security of the Services, performing routine network maintenance, upgrades, and addressing emergencies.

(f) SBB will maintain a point-of-contact for Customer to report a Service outage to SBB twenty-four (24) hours a day, seven (7) days a week.

(g) SBB will use reasonable efforts to restore On-Net Services within four (4) hours after SBB receives notification of a Service outage from Customer. Restoration of dark fibers shall be completed on a mutually agreed upon schedule.

(h) Customer will comply, and will use best efforts to ensure that all of its End Users comply, with all SBB policies, regulations, and requirements applicable to the Services, including without limitation, SBB's Acceptable Use Policy, if applicable to the Services ordered by Customer.

3. TERM

(a) This Agreement shall commence on the Effective Date of this Agreement and shall remain in effect through the Service Term of each Service Order issued hereunder ("Term").

(b) Each Service Order is effective upon execution, and the Service Term of each Service Order begins on the Acceptance Date of the applicable Service. Subject to Section 5, following expiration of the Service Term, the Service Order shall continue in effect on a month to month basis until terminated by either Party with at least thirty (30) days advance written notice to the other Party.

4. CUSTOMER CHANGES, CANCELLATION, TERMINATION

(a) Customer may change or cancel a Service Order without incurring termination charges by submitting a Change Order or providing written notification of cancellation to SBB at least five (5) business days prior to the Service Installation Date. Customer will be liable to SBB for a reasonable administrative fee associated with any such change or cancellation, as determined by SBB on an individual case basis, plus any actual costs incurred by SBB in connection with such change or cancellation.

(b) If Customer changes or cancels a Service Order as set forth above less than five (5) business days prior to the Service Installation Date, but prior to commencement of installation, customer will be liable to SBB for a termination charge equal to three (3) months' MRC plus the amounts described in subsection (a) above.

(c) If Customer changes or cancels a Service Order after the commencement of installation, such change or cancellation will be deemed a termination of Service subject to Section 5(c).

5. DEFAULT AND TERMINATION

(a) Either Party may terminate this Agreement without incurring termination liability if the other Party is in Default ("Defaulting Party"), provided that: (i) prior written notice is given to the Defaulting Party specifying the circumstances which may lead to Default and allowing fifteen (15) days to cure such circumstances, or a longer period of time if mutually agreed in writing ("Cure Period"), and (ii) the Defaulting Party fails to cure the circumstances within the Cure Period.

(b) Notwithstanding the Cure Period referenced in Section 5(a), Customer's failure to comply with the terms of Section 6 of this Agreement shall be deemed a Default, and upon such a Default SBB may, in its sole discretion, immediately suspend or terminate this Agreement or any individual Service Order after such notice as may be required by Section 6.

(c) If a Service is terminated either by Customer without cause, or by SBB for cause, or Customer's breach identified in Section 5(b), Customer will pay SBB an amount equal to the following: (i) any unpaid amounts for Services provided through the date of termination; (ii) any charges from providers related to the terminated Service; (iii) any special build costs incurred by SBB through the date of such termination; and (iv) one hundred percent (100%) of the monthly recurring charge ("MRC") for the remainder of the Service Term.

(d) It is agreed that SBB's damages in the event of early termination will be difficult or impossible to ascertain. These provisions are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

6. PAYMENT FOR SERVICES

(a) Customer will pay all undisputed charges related to the Services, beginning on the applicable Acceptance Date. SBB will transmit invoices to Customer either electronically (via e-mail or other electronic means) or by U.S. mail. Invoices transmitted electronically will be considered received immediately. Invoices transmitted via U.S. mail will be considered received three (3) business days after mailing. Invoices are due upon receipt, and subject to a late fee of one and one half percent (1.5%) per month, or the maximum legal rate if lower, if not paid on or before the thirtieth (30th) day following the invoice date. When the Acceptance Date falls on a day other than the first day of the month, or the Service Term ends on a day other than the last day of the month, the charges will be determined by prorating the monthly payment by the number of days during which Service was provided. SBB reserves the right to adjust the rates and charges for any renewal term hereof by providing thirty (30) days' written notice to Customer prior to the end of the current Service Term, or, in the case of a month-to-month extension of the Service Term, thirty (30) days' written notice prior to the effective date of the change. All payments will be in United States currency.

(b) If Customer does not make payment of undisputed charges within the period specified in Section 6(a) above, SBB may suspend Service after written notice to Customer and a reasonable period of time (in accordance with any applicable statutory requirements) to cure all undisputed amounts. Following such a suspension, SBB may condition reinstatement of Service on one or more of the following events: (i) payment of all charges then due, including any late fees and interest charges; (ii) satisfactory assurance (such as a deposit) of Customer's ability to pay for Service; and (iii) advance payment for the cost of reinstating Service. If Customer fails to timely cure the nonpayment, Customer will be deemed to have terminated the Service as of the effective date of the suspension and will be in Default of this Agreement pursuant to Section 5(b).

(c) In the event Customer disputes any billing by SBB, Customer will (i) pay all charges not disputed, and (ii) notify SBB of the dispute in writing, providing the billing identification, and an explanation of the issue in dispute. No charges may be disputed more than thirty (30) days after the date such charges are invoiced. Payment will not prejudice Customer's right to dispute charges, so long as they are disputed in the manner and within the time specified in this Section. The Parties will cooperate in good faith to resolve any such disputes within a thirty (30) day period after the dispute is submitted to SBB. If the dispute is not resolved during this period, then either Party may seek mediation and subsequent dispute resolution in accordance with Section 21. If neither party seeks such dispute resolution within the time frame specified in said section, the charges shall be deemed legitimate. If a disputed amount is determined to be a legitimate charge, Customer will pay such amount within ten (10) days of such determination. If Customer previously paid a disputed amount and the charges are determined to be illegitimate, SBB will credit the Customer with that amount on the next monthly invoice. If Customer withheld a disputed amount and the disputed amount is determined to be valid, Customer shall pay interest on the unpaid amount from the due date at the rate of one and one half percent (1.5%) or the maximum rate allowed by law, whichever is higher. If Customer does not make payment consistent with the foregoing within the period specified, SBB may suspend Service, and reinstatement of Service may be conditioned as set forth in subsection (b) above.

(d) Without waiving any right of termination or any other rights hereunder, SBB may require Customer to tender a deposit of up to two (2) months of Customer's aggregate MRC, to guarantee payment hereunder if (i) in SBB's sole discretion, the initial credit check warrants the request for a deposit; (ii) Customer fails to make

a payment when due; (iii) Customer files for bankruptcy; or (iv) any Service Order exceeds established credit limits initially approved by SBB. Upon request, Customer will provide SBB with information regarding payment history for communications services, number of years in business, financial statement analysis, and commercial credit bureau rating.

7. TAXES, FEES, SURCHARGES AND OTHER CHARGES

(a) Any and all applicable national, federal, state, county, and local taxes, fees, surcharges, and all other related charges that may be imposed or levied on the Customer or SBB by any appropriate statute or regulation which provides the authority for the imposition of taxes, fees, surcharges, and all other charges, whether assessed, levied, or invoiced by a governmental body, telecommunications carrier, or other entity required or permitted by law to assess and collect such charges (collectively, "Taxes") with respect to the provision, sale, or use of Services and equipment will be paid by the Customer in addition to all other fees and charges as set forth elsewhere in this Agreement. Taxes include, but are not limited to, business and occupation, commercial, death, district, excise, franchise fee, gross receipts, high cost fund, license, lifeline assistance, low income, occupational, privilege, property, Public Utility Commission, rights-of-way, sales, telecommunications relay service, telephone assistance, universal service funding, use, utility user, value-added, 911, or other similar taxes, fees, and surcharges as may be levied against SBB and passed through to customer.

(b) When applicable, Customer shall furnish SBB a valid and properly executed tax exemption/resale certificate(s) or an SBB-approved statement of indemnification, or both, for any request for exemption from Taxes. Any exemption, resale certificate, or SBB-approved statement of indemnification shall be effective only for Services provided subsequent to the receipt of the exemption, resale certificate, or statement of indemnification by SBB. SBB's approval of Customer's tax exempt status will not be unreasonably withheld or delayed. SBB shall not bill Customer for any Taxes covered by an SBB-approved exemption, resale certificate, or an SBB-approved statement of indemnification. In the event that Customer at any time thereafter ceases to be exempt from any Taxes or ceases to remit any Taxes directly as a reseller, Customer shall notify SBB immediately of such change in status, and failure to do so shall be a material Default hereunder. SBB may, in its sole discretion from time to time, request such information from Customer as SBB deems reasonably necessary to confirm Customer's continuing exempt status.

(c) Customer agrees to indemnify SBB for any and all Taxes, interest, and penalties, including all legal and collection fees or any other costs that may be assessed against SBB or Customer by any authority or jurisdiction for which an exemption has been claimed by Customer.

(d) Customer and SBB agree to cooperate with each other and coordinate their mutual good faith efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the provision, sale, or use of purchases, activities, or transactions arising from or under this Agreement, which may be required or initiated from or by Customer, SBB, or any duly authorized governmental authority relating to Taxes.

8. INSTALLATION, MAINTENANCE, AND REPAIR OF EQUIPMENT

(a) Except as otherwise provided herein, SBB will provide, install, maintain, repair, operate, and control the telecommunications equipment necessary for Service to the Point of Termination ("SBB Equipment and will pay the cost of purchasing and installing all SBB Equipment. SBB is responsible for the procurement and maintenance of all rights-of-way and private or public easements or licenses required for the installation of SBB Equipment. Notwithstanding any provision of this Agreement, if Customer provides its own telecommunications equipment, SBB will have no obligation to install, maintain, or repair such Customer equipment. Maintenance and repair of all such equipment will be performed so as to meet the manufacturer's specifications and any specifications identified in the Service Addendum.

(b) SBB will endeavor to provide one (1) week advance notice (which may be provided by telephone or e-mail, regardless of whether receipt is acknowledged) prior to any Planned Service Interruption. SBB reserves the right to suspend Service for Emergency Maintenance to SBB's network without notice to Customer.

(c) The Parties agree that if either Party, in its sole discretion, determines that an emergency action is necessary to protect its own network or to comply with applicable law or industry requirements, the Party may block any transmission path over its network by the other Party where transmissions do not meet standard industry or legal requirements. The Parties further agree that none of their respective obligations to one another under this Agreement will be affected by any such blockage and that neither Party will have any obligation to the other Party for any claim, judgment, or liability resulting from such blockage.

(d) Employees or agents of SBB will have escorted access to any SBB Equipment or facilities at End User Premises. If Customer provides equipment or conduit space, or both, for SBB Equipment, Customer will grant SBB access to its premises for the installation, operation, removal, repair, and maintenance of the facilities and equipment for the Services hereunder. To the extent access is outside the control of Customer, Customer will cooperate with SBB in obtaining access to its premises or its End Users' premises to install, operate, maintain, repair, and remove such SBB Equipment. SBB employees or agents will comply with the applicable State and Federal, End-Users', and Customer's access and security rules and regulations, provided that Customer or End User, or both, shall provide SBB with reasonable advance notice of its access and security requirements. SBB will provide notice to Customer prior to entering the POP to install, operate, remove, maintain, or repair any SBB Equipment in connection with the Services. SBB will only enter the POP if escorted by Customer personnel, unless Customer gives SBB unescorted access. SBB shall not be responsible for any installation, operation, repair, or maintenance activities for any time period during which End User fails to provide SBB with access as required by this Section, nor shall any such time period count against any service level commitments made by SBB in a Service Level Agreement or otherwise.

9. EQUIPMENT OWNERSHIP

(a) SBB Equipment will remain the sole and exclusive property of SBB or SBB's assignee, and nothing contained herein will give or convey to Customer any right, title or interest whatsoever in such SBB Equipment, which will at all times be and remain personal property notwithstanding that it may be or become attached to or embedded in realty. Customer will not tamper with, remove or conceal any SBB identifying plates, tags or labels. Customer hereby grants to SBB the right to recover SBB provided equipment from Customer's premises upon termination of this Agreement.

(b) Neither Party will adjust, align, or attempt to repair the other Party's telecommunications equipment except as expressly authorized in advance in writing by the other Party. Neither Party's telecommunications equipment will be removed or relocated by the other Party except as may be otherwise agreed in writing. Without SBB's prior written consent, Customer will not modify any SBB Equipment, nor attempt to reverse engineer any SBB Equipment or software provided therewith.

(c) Customer will indemnify, hold harmless, and defend SBB against any liens placed on SBB Equipment due to Customer's action or inaction. Any lien will be discharged by Customer within ten (10) days of notice of filing. Failure to discharge any such lien is a material breach of this Agreement.

10. SBB WARRANTIES

(a) SBB represents and warrants to Customer that it has the right to provide Customer the Service specified herein, and that it is a municipal corporation, duly organized, validly existing, and in good standing under the laws of Oregon, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

(b) SBB represents and warrants that its provision of the Service will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements, and any other authorities having jurisdiction over the subject matter of this Agreement and it will be responsible for applying for, obtaining, and maintaining all registrations and certifications which may be required by such authorities.

(c) The warranties and remedies set forth in this Agreement constitute the only warranties and remedies with respect to this Agreement. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

11. CUSTOMER WARRANTIES

(a) Customer represents and warrants that it is a person or entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

(b) Customer represents and warrants that neither its equipment nor facilities will pose a hazard to SBB's Equipment or facilities or create a hazard to SBB's personnel or customers or the public in general.

(c) Customer represents and warrants that its use of the Service will comply and conform with all applicable federal, state, and local laws, administrative and regulatory requirements, and any other authorities having jurisdiction over the subject matter of this Agreement and it has, or will be responsible for applying for, obtaining, and maintaining, all registrations and certifications which may be required by such authorities.

(d) Without limiting the generality of Section 11(c), Customer represents and warrants that either (a) it has filed an FCC Form 499-A with the Federal Communications Commission (individually or on a consolidated basis) in accordance with the registration requirement of 47 C.F.R. 64.1195, or (b) it will not resell interstate telecommunications service(s) provided by SBB under this Agreement (if any), unless it first registers with the Federal Communications Commission in accordance with the registration requirement of 47 C.F.R. 64.1195 or any successor regulation. Customer will indemnify and hold SBB harmless from any and all loss, liability, claim, demand, and expense (including reasonable attorneys' fees) related to Customer's violation of this Section.

12. COMPLIANCE WITH LAW

This Agreement is subject to all applicable federal, state, and local laws, and regulations, rulings, orders, and other actions of governmental agencies ("Rules"), including, but not limited to: the Communications Act of 1934 as amended by the Telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission ("FCC"), and the obtaining and continuance of any required approvals, authorizations, or tariffs filed with the FCC or any other government agency. SBB will use reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any such Rule adversely affects the Services or requires SBB to provide Services other than in accordance with the terms of this Agreement, either Party may, without liability to the other Party, terminate the affected Services upon thirty (30) days prior written notice to the other Party. In performing their obligations under this Agreement, the Parties will comply with all applicable federal, state, and local laws, regulations, rules, and orders. When Customer uses the Services to carry a mixture of intrastate and interstate communications, Customer represents that the interstate communications will constitute less than 10% of the total communications carried over the Services unless SBB is notified in writing by Customer. Upon request, Customer will make its records available to SBB for inspection and verification.

13. INDEMNIFICATION

Subject to the limits of applicable laws, including without limitation the Oregon Tort Claims Act and the Oregon Constitution, SBB will indemnify and hold Customer harmless from and against any and all loss, liability, claim, demand, and expense for damages to any property, or injury to or death of any person to the extent caused by a negligent or intentional act or omission of SBB. Customer will indemnify and hold SBB harmless from and against any and all loss, liability, claim, demand, damage, and expense (including reasonable attorneys' fees) to the extent caused by any act or omission of Customer or End User. The provisions of this Section shall survive the termination of Services and any Service Order(s) issued hereunder and this Agreement.

15. LIMITATION OF LIABILITY

SBB'S LIABILITY AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR DAMAGES ASSOCIATED WITH THE INSTALLATION, PROVISION, TERMINATION, MAINTENANCE, REPAIR, OR RESTORATION OF SERVICES, WILL BE SOLELY LIMITED TO AN AMOUNT NO GREATER THAN THE AMOUNTS PAID BY CUSTOMER TO SBB DURING THE CONTRACT TERM. EXCEPT FOR THE INDEMNIFICATIONS REQUIRED BY THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT, THE SERVICES, AND ANY SALES ORDER(S) ISSUED HEREUNDER.

16. FORCE MAJEURE

In the event that either Party's performance is delayed, prevented, obstructed, or inhibited because of any act of God, fire, casualty, delay, or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut down of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer network or any cause beyond such Party's reasonable control, the Party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of Default by either Party hereunder.

17. NOTICES

Except as otherwise specified herein, all notices provided pursuant to this Agreement will be in writing and delivered by registered or certified US Mail, postage prepaid, effective on the date of return receipt acknowledgement; or by commercial overnight delivery service, effective the day after sending; or by regular mail, effective three (3) days after mailing; or by hand delivery, effective upon receipt; or by any electronic means which allows for acknowledgement of receipt, effective upon such acknowledgement.

18. WAIVER

The failure of either Party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder will not be construed as a waiver of such provision or any provisions herein, and the same will continue in full force. The various rights and remedies given to or reserved by either Party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach of any provision be considered a waiver of any continuing or subsequent breach of the same provision.

19. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflicts of laws provisions thereof.

20. ASSIGNMENT

Customer may not assign its obligations hereunder without the prior written consent of SBB, which consent will not be unreasonably withheld.

21. DISPUTE RESOLUTION

Except as otherwise specifically provided in or permitted by this Agreement, all disputes, differences of opinion, or controversies arising in connection with this Agreement shall first be attempted to be resolved through good faith negotiation to arrive at an agreeable resolution. If, after negotiating in good faith for a period of sixty (60) days (thirty (30) days in the case of Customer disputes of bills) or any mutually agreed further period, the Parties are unable to resolve the dispute, either of the Parties may submit the dispute to mediation within ten (10) days after the expiration of the negotiation period. Mediation is a necessary prerequisite before the filing of any litigation or the commencement of arbitration. The requesting Party must suggest an independent mediator with the request for mediation. If the Parties cannot agree upon a mediator, either Party may apply to the Presiding Judge, Washington County Circuit Court, for appointment of a mediator. The Parties shall share equally in the fees and costs of the mediator. Each Party shall be responsible for its own attorney fees. Mediation shall be at Portland, Oregon, unless the Parties agree otherwise. If the dispute is not resolved by mediation, either of the Parties may submit the matter to binding arbitration utilizing the Arbitration Service of Portland, Inc. (ASP) and by filing a claim within ten (10) business days of the notice by the mediator that mediation has failed. Said arbitration shall be in accordance with the filing and effective arbitration rules of the ASP and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The Parties shall be responsible for their own attorneys' fees and costs incurred in the arbitration and share equally the costs of the arbitrator. The Parties agree that arbitration as set forth above shall be the sole means of resolving any dispute not resolved through negotiation or mediation.

22. SEVERABILITY OF PROVISIONS

In the event any provision in this Agreement is held invalid, illegal or unenforceable, the unaffected provisions shall remain in full force and effect. The Parties shall negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intentions of the Parties.

23. RULES OF CONSTRUCTION

- (a) Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- (b) Except as set forth to the contrary herein, any right or remedy of either Party will be cumulative and without prejudice to any other right or remedy, whether or not contained herein.
- (c) Except as set forth in this Agreement, nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement. Except as otherwise stated, this Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.
- (d) In the use of any defined term, unless context clearly requires otherwise, the singular shall include the plural and vice versa, and terms of any gender shall include all other genders.

24. ENTIRE AGREEMENT

This Agreement and any documents referenced herein constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, representations, statements, negotiations, and undertakings written or oral. This Agreement and any of the provisions hereof may not be amended, altered or added to in any manner except by a written document signed by an authorized representative of each Party. In the event of a conflict between the provisions of this Agreement and those of any Service Addendum or Service Order, unless specifically otherwise agreed, the provisions of this Agreement shall prevail and such Addendum or Service Order will be interpreted accordingly.