



## CITY HOSTED MASTER SERVICE AGREEMENT

In consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Services:** MJ2 IP, LLC dba City Hosted Solutions ("CityHosted"), agrees to provide and Customer agrees to accept and pay for Services and other associated services (collectively the "Services") as further described in the Service Schedules "Schedule(s)" available at the CityHosted website [www.cityhosted.com](http://www.cityhosted.com) and incorporated herein by reference, which describe the particular services, rates, applicable service level commitments and guarantees, specific terms and other information necessary or appropriate for CityHosted to provide the services to the Customer. The Services provided by CityHosted are subject to (I) the terms and conditions contained in this Master Service Agreement ("MSA"), (II) the rates and discounts and other applicable terms set forth in the Schedule(s) including, but not limited to the City Hosted Solutions Service Agreement ("Service Agreement") and City Hosted Solutions Pricing Addendum ("Pricing Addendum") incorporated herein by reference, and (III) each new service request which is accepted hereunder. The Schedule(s), as subscribed to by the parties, shall set forth the Effective Date, the Service Term, Rates, Customer's minimum monthly commitment, if any, and other information necessary to provide the Services under this MSA. This MSA and the applicable Schedules are sometimes collectively referred to as the "Agreement". This Agreement will be effective as of the date the initial Service Agreement is executed by Customer and accepted by CityHosted (the "Effective Date").

**2. Sales Orders:** The Services are described in the Service Agreement and Pricing Addendum which detail (i) the price, location and required information about the Services; (ii) details relating to any equipment required to be purchased by the Customer, and (iii) any associated installation, maintenance, and the like. Service Agreements are valid for 30 days unless otherwise specified and are not binding until executed by Customer and accepted by CityHosted. Service Agreements and Pricing Addendums that have been executed by Customer and accepted by CityHosted will be collectively referred to as a "Sales Order". CityHosted has delivered a Sales Order with this Agreement. Additional Service Agreements and Pricing Addendums may be delivered from time to time during the term of this Agreement. Customer may order additional or incremental Services through an incremental Sales Order. Additional and incremental Sales Orders automatically become a part of this Agreement.

**3. Access to Customer Premises:** If access to Customer's premises is required for the installation, maintenance, or removal of the Services, Customer will ensure that CityHosted has reasonable access to the premises, and will use commercially reasonable efforts to obtain any necessary third party consents.

**4. Credit Approval and Deposits:** Customer will provide CityHosted with credit information as requested. CityHosted may require Customer to make a deposit as a condition of CityHosted's acceptance of any Sales Order or continuation of: a) usage-based Services; or b) non-usage based Service where Customer fails to pay CityHosted in a timely manner hereunder or CityHosted reasonably determines that Customer has had an adverse change in financial condition. Deposits will not exceed two months estimated charges for Services and are due upon CityHosted's written request. When Service is discontinued per the terms of the MSA, the deposit will be credited to Customer's account and any balance refunded.

**5. Equipment Compatibility:** CityHosted recommends specific equipment for use with its Services which Customer will be required to purchase. This equipment is available through one of CityHosted preferred vendors. While customer is not required to purchase the equipment through these vendors, Customer understands that if they purchase equipment and it is found to be incompatible with Service, Customer is responsible for any equipment replacement, special interface equipment, or facilities necessary to ensure compatibility with Service.

**6. Commencement of Billing:** For any given Sales Order, the "Service Date" is the date that ordered Service has been installed and/or activated, tested by CityHosted, and is available for Customer's use. Unless otherwise indicated on a Sales Order or agreed in writing by Customer and CityHosted, the Service Date will be the earliest practical date using reasonable commercial efforts. CityHosted will notify Customer of the Service Date. Customer may request an expedited Service Date and CityHosted will notify Customer of any additional charges from CityHosted ("Expedite Charge"), which will include any third party charges incurred by CityHosted. If CityHosted accepts the expedited Service Date, Customer must pay the Expedite Charge.

**7. Payment of Invoices and Disputes:** Invoices are delivered monthly and due 10 days after the invoice date. Fixed charges are billed in advance and usage-based charges are billed in arrears. Billing for partial months is prorated. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Customer is responsible for all charges respecting the Service, even if incurred as the result of unauthorized use. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute



and the Services and invoice(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice or Customer waives the right to dispute the charges. If the dispute is resolved against Customer, Customer shall pay such amounts plus interest from the date originally due.

**8. Taxes and Fees:** Excluding taxes based on CityHosted's net income, Customer is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service, including but not limited to value added, consumption, sales, use, gross receipts, excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges), whether imposed on CityHosted or a CityHosted affiliate, along with similar charges stated in a Sales Order (collectively "Taxes and Fees"). Some Taxes and Fees may be recovered by CityHosted through imposition of a percentage surcharge on the charges for Service. Basic charges for Service are exclusive of Taxes and Fees. Customer may present CityHosted with an exemption certificate eliminating CityHosted's liability to pay certain Taxes and Fees; CityHosted will give effect thereto prospectively.

**9. Service Term:** Sales Orders will contain the duration for which Services are ordered ("Service Term"). The term of the Sales Order will begin and billing will commence as of the Service Date and will not be delayed due to Customer's readiness to accept or use Service; provided that if Service includes a private circuit managed by CityHosted ("Private Circuit"), billing for the Private Circuit will begin on the Service Date for the Private Circuit, unless Customer has ordered other Service in connection with the Private Circuit and activation of such other Service is due to Customer's lack of readiness to accept or use such other Service then the billing for the Private Circuit will begin one week after the Service Date for the Private Circuit. If Customer notifies CityHosted within two business days after a Service Date that Service is not functioning properly, specifying the deficiencies, CityHosted will work to correct any deficiencies and, subject to the preceding sentence, the Service Date for such Service will occur when such issues have been resolved such that Service is operational. If it is determined that the specified issues were not attributable to CityHosted, its agents, or contractors, the original Service Date for that Service will remain unchanged. At the end of the initial Service Term or any renewal term, this Agreement will automatically renew for an additional term of one year unless either party terminates the Agreement by giving the other party written notice of termination not less than sixty (60) days prior to the expiration of the initial term, or renewal term, as the case may be. In connection with a renewal, all Services in effect at the renewal date that would otherwise have expired during the renewal term will have a new Service Term that expires at the end of the one year renewal term. The Service Term will remain unchanged for any Services for which the original Service Term extends past the end of the renewal term. Upon termination of this Agreement, Customer may not order any new Services, and CityHosted will not be obligated to furnish new Services to Customer. CityHosted may increase pricing after the initial term or any renewal term of the Agreement.

**10. Continuation of Services:** Upon written notice by a party to terminate this Agreement as provided in Section 9, Services with a remaining Service Term will remain in effect through the applicable Service Term, and the terms and conditions of this Agreement will continue to apply to such Services.

**11. Customer Cancellation Prior to Service Date:** If Customer, without any express right to do so, cancels any ordered Service prior to the Service Date for such Service, then Customer's liability for such cancellation shall be an amount equal to (a) all non-recurring charges incurred by CityHosted as a result of such cancellation; plus (b) two (2) months of the forecasted monthly recurring charges or monthly commitment level payments. Customer shall pay such cancellation amount immediately upon receipt of an invoice therefore.

**12. Cancellation and Termination Charges After Service Date:** If Customer terminates this Agreement or any Service after the Service Date for such Service but prior to the end of the applicable Service Term for any reason other than CityHosted's default, then Customer must pay immediately to CityHosted as liquidated damages 50% of all monthly recurring charges associated with the terminated Service(s) for the remaining monthly recurring charges through the end of the applicable Service Term(s). It is agreed that CityHosted' damages in the event of early termination will be difficult to ascertain. These provisions are therefore intended to establish a reasonable approximation of CityHosted' losses in the event of early termination and are not intended as a penalty.

**13. Regulatory and Legal Changes:** This Agreement is subject to all applicable U.S. federal, state and local laws, rules and regulations. CityHosted may discontinue, limit, or impose additional requirements to the provision of Service, as required to meet regulatory requirements. If changes in applicable law, regulation, rule or order materially affect delivery of Service (including the economic viability thereof), the parties will negotiate appropriate changes to this Agreement. If the parties cannot reach agreement within 30 days after CityHosted' notice requesting renegotiation: (a) CityHosted may, on a prospective basis after such 30 day period, pass any increased delivery costs on to Customer and (b) if CityHosted does so, Customer may upon notice given to CityHosted within 30 days after delivery of the notice of the increased charges terminate the affected Service, unless CityHosted agrees to waive the increased charges.

**14. Default:** If (A) Customer fails to make any payment when due and such failure continues for 5 business days after written notice from CityHosted, or (B) either party fails to observe or perform any other material term of this Agreement and such failure continues for 30 days after written notice from the other party, then the non-defaulting party may: (i) terminate this Agreement and/or any Sales Order, in whole or in part, and/or (ii) subject to the terms of this Agreement, pursue any remedies it may have at law or in equity. If Customer gives CityHosted notice of breach and such breach is not capable of cure within a 30 day period, the time for CityHosted to cure will be extended to 90 days from the date that CityHosted received notice of such breach so long as CityHosted is diligently attempting to remedy such breach during that period. Customer's rights under this Section are in addition to Customer's rights under any Service Schedule(s).

**15. No Special Damages:** Subject to Sections 11 and 12 and the Service Schedules, Customer understands and agrees that CityHosted and its underlying carriers shall not be liable to Customer or any other party for interruption or delays in transmission or failure to transmit, nor for special, incidental or consequential damages caused thereby, including lost profits or loss of goodwill (whether or not CityHosted has been advised of the possibility thereof) by reason of any breach, act or omission of CityHosted in its performance hereunder. Customer will indemnify and hold CityHosted harmless from and against any and all claims by any third party arising from or relating to provision of Services to Customer under this Agreement.

**16. Disclaimer of Warranties:** CityHosted will use reasonable efforts under the circumstances to maintain its overall network quality. The quality of Services provided hereunder shall be consistent with telecommunications service provider industry standards, government regulations and sound business practices. **CITYHOSTED MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE.**

**17. Support and Service Level Commitments:** Customer will report any issues with Service to the CityHosted support department "CityHosted Support". Contact information for CityHosted Support is provided on the Customer invoice as well as at [www.cityhosted.com](http://www.cityhosted.com). CityHosted Services require a high speed broadband connection. Events beyond CityHosted control may affect the Service, such as power outages, fluctuations in the Internet, or maintenance. CityHosted will act in good faith to minimize disruptions to the Customer's use and access to the Services, but due to the susceptibility of the Public Internet to service quality issues beyond CityHosted' control, we cannot guarantee the quality of the service beyond our specific service level guarantees ("Service Levels") outlined in the Service Schedules available at [www.cityhosted.com](http://www.cityhosted.com). If CityHosted does not meet a Service Level, on Customer's request a credit will be issued to Customer as stated in the applicable Service Schedule. CityHosted' trouble ticketing systems are used to calculate Service Level events. To request a credit, Customer must deliver a written request (with sufficient detail to identify the affected Service) within 30 days after the end of the month in which the event occurred. Total monthly credits will never exceed the charges for the affected Service for that month. Customer's sole remedies for any non-performance, outages, failures to deliver or defects in Service are contained in the Service Schedule applicable to the affected Service. If, in responding to a Customer-initiated service ticket, CityHosted reasonably determines that the cause of such service ticket is a failure, malfunction or inadequacy of Customer-provided internal wiring, equipment, or software (including Customer owned system equipment), or due to unauthorized equipment attached to the CityHosted managed network, Customer will pay CityHosted for its troubleshooting service at CityHosted' then prevailing rates.

**18. Porting of Customer Numbers:** Upon CityHosted's receipt of Customer's request to port any Customer telephone number(s), CityHosted will facilitate porting of the telephone number(s) identified in such request either to or from a telecommunications carrier or another interconnected VoIP provider by taking without unreasonable delay all steps necessary to initiate or allow a port-in or port-out, whether performed by CityHosted itself or through the telecommunications carriers, if any, that CityHosted relies on to obtain telephone numbers.

**19. Assignment; Change in Status:** Customer shall not assign or otherwise transfer (including, without limitation, a transfer due to a "Change of Control") its rights or obligations under this Agreement without the prior written consent of CityHosted, which shall not be unreasonably withheld. Customer must be current on all payments required by this Agreement before any assignment is approved by CityHosted. Any such assignment or transfer of Customer's rights or obligations without such consent shall entitle CityHosted to disconnect the Services provided hereunder at its option upon ten (10) calendar days prior written notice to Customer and shall constitute a default of a material obligation. A Change in Control shall be deemed to be an assignment, merger, sale of a controlling interest or other transfer of a controlling ownership interest.

**20. Force Majeure:** If CityHosted's performance of this Agreement or any obligation hereunder is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States



government, or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more such governments, or of any civil or military authority, or by national emergency, insurrection, riot, war, strike, lockout or work stoppage or other labor difficulties, or supplier failure, shortage, breach or delay, then CityHosted shall be excused from such performance on a day to day basis to the extent of such restriction or interference. CityHosted shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance and shall proceed to perform with reasonable dispatch whenever such causes are removed or cease.

**21. Use of Service:** Upon CityHosted's acceptance of a Service Order hereunder, CityHosted will provide the Services specified therein to Customer upon condition that such Services shall not be used for any unlawful or unauthorized purpose. Customer will not resell any of the Services. Customer will not use the Services for excessive uses such as auto-dialing, fax broadcasting (i.e., repeated transmission of unsolicited faxes), or similar excessive uses. Customer's use of Service shall comply with CityHosted's Acceptable Use Policy and Privacy Policy, as communicated in writing to Customer from time to time and which is also available through CityHosted's web site [www.cityhosted.com](http://www.cityhosted.com). Customer consents that CityHosted may use Customer data for the performance of CityHosted's obligations and the exercise of CityHosted's rights under this Agreement, including storing, processing or transferring data to or from the United States. The provision of Services is not intended to and will not create a partnership or joint venture between the parties or result in a joint communications service offering to any third parties, and CityHosted and Customer agree that this Agreement, to the extent it is subject to FCC regulation, is an inter-carrier agreement which is not subject to the filing requirements of Section 211(a) of the Communications Act of 1934 (47 U.S.C. § 211(a)) as implemented in 47 C.F.R. § 43.51.

**22. No Waiver:** No term or provision of this Agreement shall be deemed waived and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Consent to waiver of or excuse for a breach or default by either party, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach or default.

**23. Public Releases, Use of Name:** Without the prior written consent of the other party, neither party may issue a news release, public announcement, advertisement or other form of publicity concerning the existence of the Agreement or the Services. Without CityHosted's consent, Customer may not use CityHosted's name, logo or service mark in marketing services to end users.

**24. Confidential Information:** The parties understand and agree that the terms and conditions of this Agreement (but not the existence thereof), all documents referenced herein (including invoices to Customer for Services provided hereunder), communications between the parties regarding this Agreement or the Services to be provided hereunder (including price quotes to Customer for any services proposed to be provided or actually provided hereunder), as well as such information relevant to any other agreement between the parties (collectively "**Confidential Information**"), are confidential between Customer and CityHosted for a minimum period of one year or for the length of the agreement, whichever is longer.

**25. Choice of Law; Forum:** This Agreement shall be construed under the laws of the State of Arizona without regard to choice of law principles. Any legal action or proceeding with respect to this Agreement may be brought in the Courts of the State of Arizona in Maricopa County. By execution of this Agreement, both Customer and CityHosted hereby submit to such jurisdiction, hereby expressly waiving whatever rights may correspond to either of them by reason of their present or future domicile. In furtherance of the foregoing, Customer and CityHosted hereby agree to service by U.S. Mail at the billing address indicated on the Sales Order. Such service shall be deemed effective upon the earlier of actual receipt or seven (7) days following the date of posting.

**26. Non-exclusivity:** This Agreement is non-exclusive. Nothing in this Agreement prevents either party from entering into similar arrangements with other entities.

**27. Notices:** Any notice required or given under this Agreement will be in writing and will be made to the contact and address set forth on the Service Agreement. Such address and contact information may be changed by either party by notice to the other party in accordance with this paragraph. A notice will be deemed to be duly given (i) on the date of delivery if personally delivered by hand or by a nationally recognized overnight express courier, (ii) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) if sent by e-mail or fax, when the receipt of the e-mail or fax is acknowledged in writing (which acknowledgement may be by e-mail or fax).

**28. Survival; Entire Agreement:** The terms and conditions of this Agreement will survive the expiration or other termination of this Agreement to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the party in whose favor they operate. This Agreement (which includes the Sales Order(s), Service Schedules, and any other attachments,



and addenda) constitutes the entire agreement of the parties with respect to the subject matter, and supersedes any prior agreements and negotiations. In the event of a conflict, the terms of a Sales Order prevail over a Service Schedule, which prevails over these terms. Any modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by authorized representatives of both parties.

**29. ADVISORY RELATING TO 911 SERVICES:** PURSUANT TO FCC REQUIREMENTS, CITYHOSTED IS REQUIRED TO ADVISE YOU OF ANY LIMITATIONS THAT ITS E911 SERVICE MAY HAVE IN COMPARISON TO TRADITIONAL E911 SERVICE. BY SIGNING THE SERVICE ORDER, CUSTOMER ACKNOWLEDGES THAT CITYHOSTED HAS ADVISED IT OF THESE LIMITATIONS AND THAT CUSTOMER ACCEPTS THE SERVICES WITH THE FOLLOWING LIMITATIONS: POWER FAILURES: TELEPHONE SERVICE OVER INDIVIDUAL POTS LINES IS GENERALLY NOT INTERRUPTED IN THE EVENT OF A POWER FAILURE BECAUSE THE TELEPHONE LINE CONTAINS SUFFICIENT LINE POWER FOR PHONES THAT DO NOT REQUIRE A SEPARATE AC POWER ADAPTER. WHETHER YOUR SERVICE IS VOIP OR OTHERWISE, IF YOU RECEIVE YOUR PHONE SERVICE OVER A CIRCUIT THAT IS A T-1 OR GREATER, THROUGH AN ON-SITE PBX, OR THROUGH A PHONE THAT REQUIRES AN AC POWER ADAPTER, IN THE EVENT OF A POWER FAILURE THAT EXCEEDED THE DURATION OF ANY ON-SITE POWER SUPPLY BACKUP, SUCH AS A BATTERY PACK OR GENERATOR, THEN YOU WOULD NOT HAVE PHONE SERVICE OR 911 SERVICE UNTIL POWER WAS RESTORED.

**CHANGE OF PHONE LOCATION:** IF YOU MOVE YOUR PHONE TO A DIFFERENT LOCATION (INCLUDING A DIFFERENT FLOOR OF YOUR BUILDING, OR TO ANOTHER BUILDING), AND DO NOT REPORT YOUR NEW LOCATION TO US, THE ADDRESS AUTOMATICALLY REPORTED IN CONNECTION WITH A 911 CALL WOULD BE THE ADDRESS THAT YOU SUPPLIED US, NOT THE NEW LOCATION TO WHICH YOU HAVE MOVED YOUR PHONE. ALSO, AFTER YOU NOTIFY US OF A NEW REGISTERED LOCATION FOR A PHONE, THERE MAY BE A DELAY IN MAKING THE NEW REGISTERED LOCATION AVAILABLE IN OR THROUGH THE AUTOMATIC LOCATION INFORMATION (ALI) DATABASE. IT IS THEREFORE IMPORTANT THAT YOU NOTIFY US IN ADVANCE IF YOU PLAN TO MOVE ANY PHONES THAT WE MANAGE TO ANOTHER LOCATION.

**CALL BACK PHONE NUMBER:** IF YOU CALL 911, THE SYSTEM AUTOMATICALLY TRANSMITS A CALLBACK PHONE NUMBER. IF YOU HAVE MULTIPLE PHONES ON A SINGLE FLOOR, AND A SINGLE SPECIFIC CALLBACK NUMBER HAS BEEN DESIGNATED AS THE NUMBER THAT IS TRANSMITTED, THEN IF THIS CALLBACK NUMBER IS NOT THE NUMBER FROM WHICH THE 911 CALL IS PLACED, A DELAY IN RESPONDING TO THE 911 CALL COULD OCCUR IF THE PERSON ANSWERING THE CALLBACK NUMBER WAS UNAWARE OF THE EVENT THAT PROMPTED THE 911 CALL.

**CIRCUIT OUTAGE:** DURING AN OUTAGE IN THE CIRCUIT THAT CUSTOMER'S CITYHOSTED PHONE USES, WHICH IS EITHER A CITYHOSTED MANAGED PRIVATE CIRCUIT OR IN SOME CASES OVER A BROADBAND INTERNET CONNECTION (E.G., DSL, Cable Internet Service), THEN DURING AN OUTAGE TO SUCH CIRCUIT CUSTOMER'S VOICE SERVICE WILL BE INTERRUPTED AND 911 SERVICE WOULD NOT FUNCTION DURING SUCH INTERRUPTION.

**LABELS:** CITYHOSTED MAY PROVIDE CUSTOMER WITH ADHESIVE LABELS THAT ALERT USERS TO THE LIMITATION IN THIS SECTION. THE FEDERAL COMMUNICATIONS COMMISSION RECOMMENDS THAT CUSTOMER PLACE THESE LABELS ON OR NEAR THE IP PHONES ASSOCIATED WITH THE SERVICES.

**29. ADVISORY RELATING TO CALL RECORDING FEATURES:** Users of CityHosted's call recording features must understand and comply with all applicable laws which govern surveillance of electronic communications, eavesdropping, and the like. Failure to follow these laws may lead to civil or even criminal liability.

It is solely your responsibility to understand and obey all applicable laws and regulations when using CityHosted's call recording tools. Failure to adhere to any such applicable rules could put you at risk for fines, penalties, or other legal action. These laws and regulations are actively and regularly enforced, and may also give rise to lawsuits by those who feel their privacy has been invaded.

Our lawyers also require us to point out that CityHosted is neither your attorney nor your advisor; the information set forth above is not complete or exhaustive and does not constitute legal or other professional advice; and you are responsible to seek information or clarification from your own legal counsel pertaining to your specific activities or if you have any questions or concerns. You agree that we have no liability to you whatsoever, whether for direct, indirect, or other damages, and regardless of legal theory, based upon or arising out of your use of the above information (if you disagree, please do not use this information). We also reserve the right to comply or assist with any investigation or enforcement activities undertaken by any regulatory entity with applicable jurisdiction.