



This AGREEMENT for procurement of hardware and services is made by and between York Telecom Corporation (dba "Yorktel"), a corporation organized and existing under the laws of the State of New Jersey, and having a principal place of business at 81 Corbett Way, Eatontown NJ 07724 (hereinafter referred to as "Supplier" or "Yorktel"), and \_\_\_\_\_ for the purchase of products and services from Yorktel (Hereinafter referred to as "Customer").

## 1. DEFINITIONS

The following terms used in this Agreement shall mean:

**"Acceptance"** shall mean Customer's approval of the Equipment or Software as installed and tested at a Site for conformity with the Specifications, the associated Equipment and Software Documentation, as further set forth in the Schedules, or any other criteria mutually agreed upon by Customer and Supplier.

**"Acceptance Test(s)"** shall mean those tests which are intended to determine if the Products conform to the Specifications and the associated Equipment and Software Documentation, and meet any other criteria mutually agreed upon by Customer and Supplier to determine Customer's Acceptance of the Products. The Acceptance Test(s) and acceptance criteria shall be as described in the applicable Schedule or as otherwise designated in writing by the parties.

**"Agreement"** shall mean the agreement between Customer and Yorktel pursuant to which Yorktel provides and Customer receives the Services, comprising a Service Order Form with reference to these Terms and Conditions, the SLA and the AUP.

**"AUP"** means the Yorktel Acceptable Use Policy, as revised by Yorktel from time to time and incorporated herein.

**"Circuit"** is a digital data telecommunications service between the Yorktel point-of-presence and the Customer Location that includes one permanent virtual circuit connected to a network interface device on Customer's premises utilizing DSL, frame relay, ATM, leased line or other data communications technologies.

**"Computer Virus"** shall mean any virus, Trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access, to disable, erase, or otherwise harm software, hardware, or data; or to perform any such other actions. The term Computer Virus Code does not include Self-Help Code.

**"Content"** means the audio and video content transmitted using the managed video communications service.

**"Customer"** shall mean a person or entity that issues an order for the purchase of Products and Services provided by Yorktel.

**"Customer Location"** means any Customer premises described in a Service Order Form.

**"Effective Date"** means the date stated on the Service Order Form.

**"Equipment"** shall mean all physical items of machinery and other physical equipment referenced in Purchase Orders, Change Orders or other written instructions, and/or correspondence issued by Customer. The term shall include all Equipment purchased by Customer pursuant to this Agreement.

**"Equipment Documentation"** shall mean the written or other tangible media describing the Equipment and its operation (including instructions, listings, specifications, manuals, and user's guides).

**"Managed Services"** shall mean any combination of on-site staffing, on or off premise infrastructure and supporting software providing various meeting support functions including, but not limited to call scheduling, launching, monitoring of video calls, meeting support, event support, white glove concierge services, SLA monitoring and reporting.

**"Manufacturer"** See OEM.

**"OEM"** shall mean an original equipment manufacturer other than Supplier.

**"Payment Default"** has the meaning ascribed to such term in Section 16 below.

**"Product/s"** shall mean any Equipment and Software purchased or licensed by Customer pursuant to this Agreement.

**"Proposal"** shall mean a formal offer from the Supplier to provide Products and Services.



**"Purchase Order"** shall mean the funding instrument which is issued by the customer to contract for product and services from Yorktel.

**"Quote/Quotation"** See Proposal

**"Related Services or Services"** or **Order Form**, shall mean installation, support, training, maintenance, managed or other services relating to the Products or independently ordered. The term shall include all related services purchased by or furnished to Customer pursuant to this Agreement.

**"Service Order Form"** means a form describing the Services ordered by Customer that is signed by authorized representatives of Customer.

**"Services"** are the services ordered by Customer as described in a Service Order Form, which may include, without limitation: (i) high-speed telecommunications data services (which may include business-grade symmetric digital subscriber line ("DSL"), business-grade T1 Services, Frame Relay, ATM or other telecommunications services); (ii) application services provided by Yorktel to Customer using DSL, T1 technology or other means of digital data communications; (iii) application services provided to Customer for the purpose of communications either over Yorktel provisioned telecommunication services or through Customer-provided telecommunication services; and/or (iv) professional services. Regulated telecommunications services may be provided to Customer by a designated Yorktel Telecommunications Provider and Yorktel, Inc. may act as its billing agent to Customer.

**"Site"** shall mean the general physical location where the Equipment and/or Software are to be delivered, installed, and maintained.

**"SLA"** means the Yorktel Service Level Agreement, as revised by Yorktel from time to time and incorporated herein. The SLA as of the Effective Date is incorporated herein.

**"Software"** shall mean firmware, internal code and operating systems software associated with the Equipment, and other computer programs including any updates, modifications, enhancements, or new release for the same. The term shall include all Software licensed by Customer pursuant to this Agreement.

**"Software Documentation"** shall mean the written or other tangible media describing the Software and its operation (including instructions, listings, specifications, manuals, and user's guides).

**"SOW"** (Statement of Work) shall mean the document which accurately defines the scope of the products, services and the delivery of same for which a Customer issues a Purchase Order to transact business with Yorktel.

**"Specifications"** shall mean Supplier's and OEM's published specifications for Products and any specifications and performance capabilities of Products specified in the applicable Schedule.

**"Telecommunications Provider"** means a regulated or non-regulated telecommunications carrier which provides Circuits.

**"Vendor"** shall mean an entity which is either an OEM or a distributor from which Yorktel may source product or services.

**"Work"** shall mean all labor, supplies necessary or used in completing Supplier's obligations including, but not limited to, the delivery and installation of the Equipment, warranty and post-warranty maintenance service, project management services, and other related services.

**"Work Product"** means all materials, software, tools, data, inventions, works of authorship and other innovations of any kind (including, without limitation, any deliverable and any improvements or modifications to Yorktel proprietary computer software programs and related materials) that Yorktel, or personnel working for or through Yorktel, may make, conceive, develop or reduce to practice, alone or jointly with others, in the course of performing the Services or as a result of such Services, whether or not eligible for patent, copyright, trademark, trade secret or other legal protection.

## 2. GENERAL AGREEMENT

### 2.1 Terms and Conditions

This Agreement contains the terms and conditions upon which Supplier agrees to sell, license, or provide Equipment, Software, and Related Services to Customer. A mutually agreed to Statement of Work ("SOW") will be executed, to address the specific project governed by this Agreement. A SOW shall contain a description of the work to be performed, charges, time schedules and other special terms and conditions applicable to the particular project. Each SOW shall become effective only upon acceptance by both parties hereto as evidenced by signature of an authorized representative of each party. In addition to the terms and conditions related to Product and Services purchased, this agreement sets forth details regarding the professional services that Yorktel will deliver. Work will commence upon formal acceptance of the SOW and associated pricing citing the most current version of the offer and date of submittal and receipt of a valid Purchase Order or other



funding instrument from the Customer. Any deviations from the technical solution, price or delivery schedule offered by Yorktel must be definitized and agreed upon prior to commencement of work.

## **2.2 Term**

The term of this Agreement shall commence as of the date of receipt of a funded order from Customer to Yorktel and shall continue in effect, unless terminated in accordance with Section 16 of this agreement, until such work has been completed or services through a defined term of contract have been fulfilled.

## **2.3 Order of Precedence**

An individual Statement of Work (SOW) may specify project unique terms and conditions that differ from the terms set forth herein. These terms (such as project specific payment terms, hours for site access, delivery schedule, Security requirements, etc.) will be clearly identified in the individual SOW which must be acknowledged by customer in a form of written acceptance. In the event of a conflict between this Agreement and any SOW, Purchase Order, or Purchase Order Change Order, the terms and conditions of the applicable SOW shall prevail over the Agreement, any Purchase Order Change Order (if any) and Purchase Order, in that order of precedence.

## **3. PURCHASE ORDERS**

1. Customer may purchase or license Equipment, Software, or Related Services under this Agreement defined by the applicable Supplier Proposal which includes the SOW and price by submitting a Purchase Order to Supplier. Each Purchase Order will specify (a) the Yorktel Quote record number and date along with identification and quantities of the Equipment to be purchased or Software to be licensed; (b) identification of the Related Services to be provided; (c) applicable charges; (d) requested delivery date, installation date, or other performance dates; (e) method of shipment; (f) shipping destination; and (g) any other information specific to such Purchase Order. Each Purchase Order shall be effective upon its receipt by Supplier.
2. Promptly after receiving a Purchase Order, Supplier will advise Customer whether it will be able to deliver the Equipment, Software, or perform the Related Services by the dates requested. If Supplier advises that it will not be able to meet such dates, Customer may, at its option, elect to (a) request Supplier to expedite the Purchase Order at Customer's expense; (b) accept a later delivery or performance date; or (c) cancel the Purchase Order without cancellation charge. The terms and conditions of this Agreement and the applicable SOW shall be deemed to be included in, to modify, and to govern any and all (a) Purchase Orders and Change Orders submitted by Customer regarding Equipment, Software, or Related Services purchased or licensed under the Agreement; and (b) all acceptance documents, invoices, or other instruments issued by Supplier regarding the same, whether or not such documents reference this Agreement.

### **3.1 Change Orders**

Customer may from time to time issue orders setting forth particular changes to be made to Purchase Orders ("Change Orders"). If such changes will affect prices or other charges, and performance or delivery dates, such changes and any attendant cost adjustments will be effective upon written acceptance of the Change Order by Supplier's and Customer's authorized representatives.

### **3.2 Cancellations**

Customer may cancel any Purchase Order by giving written notice at any time. In the event the Customer issues a cancellation notice after shipment and/or receipt of any Equipment, Software or labor performed, Customer is responsible for payment of any costs associated with same. Customer is responsible for payment of all Product which has been ordered by Supplier for the Customer that is non-returnable to the manufacturer, any restocking fees for Product which can be returned and for any Work that was performed up to the date of receipt of the cancellation notice along with any applicable shipping charges and taxes.

## **4. PRICING**

The prices, license fees, charges, and discount provisions, if any, applicable to any Products or Services ordered by Customer will be the price as offered by Yorktel by means of a written proposal, quotation and related SOW. The pricing provided will be valid for as long as stated in the quotation or if not stated, Thirty (30) days from quotation date.

### **4.1 Taxes**

Customer will pay any federal, state, and local sales, use, VAT, or similar taxes (excluding taxes on Supplier's income or gross receipts) imposed or based on the sale, licensing, or provision of Products or Related Services under this Agreement. Such taxes will be separately stated on Supplier's invoices and reported and paid to appropriate governmental authorities by Supplier. At Customer's request, Supplier will file any certificate or other document which may cause any such tax to be avoided or reduced, and cooperate with Customer in contesting any such tax or in claiming, on Customer's behalf, refunds of any such taxes paid by or on behalf of Customer.

## **5. DELIVERY AND SHIPPING**

Supplier will use commercially reasonable efforts to deliver the Products on the delivery date(s) set forth in the applicable SOW.. All products shall be packed for shipment in Yorktel's and/or Manufacturer's standard containers, marked for shipment to the address specified by Customer, and delivered to a carrier or forwarding agent chosen by Yorktel or the vendor if the product is shipped directly from the vendor to the Customer. Unless otherwise agreed, all shipments will be F.O.B. Origin, and at the time of delivery to the carrier or forwarding agent chosen



by Yorktel or its vendor, all risk of loss and title shall pass to Customer. All freight, insurance and other shipping expenses, as well as any special packing expenses, shall be borne by Customer. Customer shall be deemed to have accepted the products unless written notice of rejection and reasons therefore is delivered to Yorktel within two (2) business days of Customer's receipt of such products. It is further understood that Yorktel arranges delivery to customer loading dock and that any and all additional fees incurred for inside delivery of equipment will be passed directly from Yorktel to customer. Some examples where a Customer will incur additional fees include but are not limited to the following: (a) the freight elevator is not available, (b) there are restricted hours for delivery, and (c) additional labor is required. Customer should identify any additional labor requirement at the time the purchase order is sent to Yorktel. For Supplier Installed Products, Customer shall provide secure storage for the Product upon delivery, through the installation process, and until Acceptance has occurred, and Customer shall assume risk of loss upon receipt. Title to the Equipment will pass to Customer, or if Customer so elects Customer's lessor, upon Acceptance.

#### **5.1 Shipping Instructions – Supplier Installed Products**

For those Product Supplier installs on Site, and for which the parties perform an Acceptance Test, and such shipping is set forth in the SOW or the parties have other prior written agreement to such shipping, Supplier may ship Product best way, and Customer will pay for such shipping. Supplier will pack and package all Products purchased or licensed under this Agreement to ensure they are not damaged in shipment.

### **6. EQUIPMENT AND WARRANTIES**

#### **6.1 Equipment Warranties**

Supplier makes the following warranties with respect to the Equipment:

1. Except as otherwise disclosed by Supplier in writing or specified on an applicable SOW prior to the placing of a Purchase Order, all Equipment sold to Customer is newly manufactured from new parts or components. If any used parts or components are incorporated in the Equipment, they are serviceable and will be equivalent to new in performance.
2. On the Acceptance Date, the Equipment will be free and clear of all liens and encumbrances of any kind.
3. The supplier will flow down/transfer any OEM warranties to Customer from the applicable Acceptance Date or such other Warranty Period set forth in to the applicable SOW. On the Acceptance Date the Equipment is, and will be during the Warranty Period, merchantable and in good operating condition and repair, free of defects in design, workmanship and material, including such defects as would create a hazard to life or property, and in conformity in all respects to and functioning properly in accordance with the Specifications, the associated Equipment Documentation, and any items of equipment provided to Customer for evaluation. If any or all of the Equipment components are grouped together in a configuration (as defined in the applicable Schedule or Specifications), such configuration is on the Acceptance Date, and during any Warranty Period will be, capable of performing the functions described for it in the applicable Schedule or Specifications. If the Equipment does not function as warranted above during the Warranty Period, Supplier will promptly repair or replace the Equipment or any part or component thereof without charge.
4. The Equipment, the manufacture and production thereof, and the sale to and use thereof by Customer do not infringe or encroach upon any third party's personal, contractual, or proprietary rights, including patents, trademarks, trade names, copyrights, rights of privacy, or trade secrets.
5. The Equipment, the manufacture, production, installation, and sale to and use thereof by Customer, are in compliance with, and have such approvals, ratings, and certifications as may be required by any and all applicable laws, rules, and regulations or, in the case of approvals, ratings and certifications, as are customarily provided under generally accepted industry practices.

#### **6.2 Hazardous Items**

The Supplier shall notify Customer if any Equipment contains hazardous materials requiring disposal in accordance with Hazardous Waste Regulations and provide Material Safety Data Sheets for such materials. If any Equipment contains defects or hazards which could possibly cause death or serious bodily injury to any person, or property damage (including property of Customer), Supplier at its own expense shall locate, identify, and recall such Equipment. Supplier, upon recalling such Equipment, shall repair or replace it or otherwise discharge at Supplier's expense the obligations applicable to a manufacturer or reseller of hazardous Equipment under the Consumer Product Safety Act or any other applicable law, regulation, order, or governmental request. If Supplier is unable to repair or replace any such Equipment, it will refund the full amount of the purchase price of such Equipment and reimburse Customer for all inbound and outbound shipping and handling costs and all other direct and incidental costs, including the cost of disassembly and packing, incurred by Customer in connection with such Equipment.

### **7. SERVICES**

#### **7.1 Provision of Services**

Yorktel will use commercially reasonable efforts to provide the Services that Customer may order from time to time either directly through Yorktel or through an authorized Yorktel sales agent. All Services will be supplied in accordance with this Agreement. If there is any inconsistency between these Terms and Conditions and any exhibit, schedule or other incorporated writing, this agreement shall prevail. Yorktel may revise these Terms and Conditions, the SLA or the AUP from time to time without Customer's consent, provided that any such revisions shall not materially reduce Customer's rights or materially increase its obligations hereunder. Yorktel reserves the sole and exclusive right to determine the geographic area within which it provides Circuits and Services, and the rights to maintain, reconfigure or discontinue any Circuits, Services or other product. If Yorktel intends to discontinue any of Customer's Circuits or Services, Yorktel will provide Customer with at least thirty (30) days' written notice before discontinuing such Circuits or Services, and Yorktel will refund to Customer a pro-rated portion of



any pre-paid fees associated with such discontinued Circuits or Services. Customer understands that Yorktel performance is dependent in part on third-party actions and the actions of Customer. Accordingly, Yorktel shall be excused from performing under the Agreement to the extent it is unable to perform as a result of such actions or inactions, including, without limitation, Customer's failure to provision or maintain a Circuit with respect to a Service Order Form under which Customer is obligated to provide network connectivity. Unless otherwise expressly set forth in a Service Order Form, provision of Circuits does not include access services to the Public Internet. Yorktel reserves the right to substitute Services that are different from, but substantially equivalent to, the Services ordered by the Customer on a Service Order Form. If the Services necessary to meet Customer's requirements are subject to charges in addition to those set forth in a Service Order Form, Yorktel will notify the Customer of any additional or increased charges and Customer shall have fourteen days to cancel the service order and avoid the additional or increased charges. Failure to cancel within such period will be deemed acceptance of the additional or increased charges.

## 7.2 Circuits and Services

Yorktel will not supply any Circuits or Services until Customer has signed a Yorktel Service Order Form. If necessary to providing the Services ordered by the Customer, Yorktel will not provide any Services until it has supplied a Circuit or Customer has provided appropriate network connectivity. Yorktel will begin charging Customer for each Circuit or Service immediately following the Yorktel notification to Customer that such Circuit or Service has been provisioned and tested by Yorktel. Customer acknowledges that; a). the availability and installed speed of a Circuit may vary from the pre-qualified or ordered speed depending on several factors, including, without limitation, the condition and length of the copper wiring that comprises the Circuit and availability of Services to the Customer Location where Services have been requested and, b). services that are not dependent upon circuit delivery are deemed active and billable upon notification to Customer that Services are activated and billing will not be deferred. Circuits provided by Customer are the sole responsibility of the Customer and Yorktel maintains sole responsibility for service delivery up to the Yorktel demarcation point.

## 7.3 Customer Responsibilities.

- a) **Generally.** Customer shall provide Yorktel with all information, cooperation and access that Yorktel reasonably requests (including, without limitation, information about and access to each Customer Location) as necessary or appropriate in performing the Services, including, without limitation, to allow installation and maintenance of each Circuit. Customer agrees to pay all taxes, federal universal service funds and other regulatory and governmental obligations, which amounts are payable and remitted by/through Yorktel on purchases of underlying telecommunications services from vendors of such services, which vendors then remit those amounts. Customer acknowledges and will inform all end users that Yorktel services do not include 911 or ancillary emergency services that may be available from local exchange service companies or other telecommunications services providers.
- b) **Content Rights.** Customer shall be solely responsible for obtaining, and for bearing all costs, obligations and liabilities associated with, any licenses, releases or waivers related to the Content required by any third party or any act or regulation of any government, and any necessary rebroadcast or retransmission rights or permissions.
- c) Customer covenants and agrees to retain all proprietary marks, legends and patent and copyright notices that appear on or in connection with the Services, Work Product, documentation and Confidential Information delivered to Customer by Yorktel and all whole or partial copies made by Customer thereof in accordance with this Agreement.

## 7.4 Use of Service

Customer may use the Services for its internal business purposes only. Resale or sub-contracting the Services to third parties is prohibited. Customer acknowledges that Customer's use of the Services pursuant to this Agreement does not authorize Customer to act as an agent of Yorktel with respect to the Services. Customer shall comply with the AUP. Yorktel reserves the right to suspend or cancel any Circuit or Service with respect to which Customer is found or suspected to be in violation of the AUP.

- 1) **Equipment.** Yorktel may supply new or recertified Customer premises Equipment ("CPE") as part of the Service. Recertified Equipment is Equipment that (a) may have been removed from its original packaging by Yorktel or returned to Yorktel by a customer after use, (b) is free from visible defects, and (c) is substantially equivalent in function and appearance to new units. Refurbished Equipment is previously-owned Equipment that has been remanufactured by the manufacturer or its agent, is free from visible defects, and is substantially equivalent in functionality to new units. Yorktel will repair or replace, in its sole discretion, any new or recertified Equipment that suffers from any manufacturer's defect. At the discretion of Yorktel, any Equipment that Yorktel provides as replacement Equipment may be new, recertified or refurbished. Yorktel shall have no obligation or liability in connection with any equipment not purchased or provided through Yorktel and configured by Yorktel, or for any abuse, reconfiguration, repair or misuse of any Equipment by any party (including, without limitation, Customer) other than Yorktel. Customer is responsible for the safety and security of any CPE. Customer shall provide proof of insurance with Yorktel as an additional named insured. Lost, damaged or non-returned CPE will be invoiced to Customer at the then-current replacement value. See the SLA for additional provisions regarding CPE.
- 2) **Support.** Yorktel shall be Customer's initial point of contact with respect to support for the Services. Yorktel shall use commercially reasonable efforts to provide first and second-level technical and engineering support to Customer for issues relating to the Services. Support contact information and escalation procedures will be provided upon the activation of Services or upon Customer request.



Customer understands that Yorktel may, from time to time, need to interrupt Services for maintenance and other operational reasons, and that Customer shall not receive any credits or compensation for such scheduled interruptions. If commercially feasible, Yorktel will give Customer reasonable advance notice (via email or otherwise) of such interruptions. Yorktel provides Customer support through the Yorktel Service Desk, which is made available as outlined in the SLA. Yorktel utilizes a ticketing system that escalates problems to higher levels within the Yorktel Service Desk using automated triggers. The response time matrix for trouble calls can be provided upon Customer request. The Customer contact will receive an outbound communication from the Service Desk at least once per day until a technical problem is resolved, or until the ticket is closed, whichever is earlier. It is the desire of Yorktel to respond to each inbound call as rapidly as possible, provided that the number of inbound requests per ticket does not negatively impact the ability of Yorktel to resolve issues. Lack of access to appropriate Customer resources or lack of cooperation by the Customer to actively work through the Yorktel Service Desk or assist in the effort to resolve a service issue can cause delays in achieving resolution. Open trouble tickets for an unavailable or uncooperative Customer will be considered closed 48 hours after three unsuccessful attempts to communicate with the Customer to resolve the problem are logged.

#### **7.5 Service Warranties; Outage Credits**

Yorktel warrants to Customer, and only Customer, that the Services shall perform substantially in accordance with the performance criteria set forth in the SLA. This limited warranty shall be void if: (a) any Equipment has been subjected to physical or electrical stress, misuse, neglect, accident or abuse, or damaged by any external causes; (b) the Services or any Equipment has been repaired or altered by anyone other than Yorktel or Yorktel subcontractors or affiliates, without Yorktel express, prior written approval; (c) the Services or any equipment has been provided by someone other than Yorktel or Yorktel subcontractors or affiliates; or (d) the Services or any Equipment is used in violation of the Agreement or any instructions furnished by Yorktel. Yorktel sole obligation and Customer's sole and exclusive remedy if the Service fails to meet the SLA shall be to use reasonable commercial efforts to correct such failure, provided that (i) Customer promptly reports such failure as specified in the SLA; (ii) the failure can be reproduced or confirmed by Yorktel; and (iii) the cause of the failure is within the control of Yorktel. If a performance failure occurs that is within Yorktel control, and Yorktel is unable to correct such failure within the time periods set forth in the SLA, then, as Customer's sole and exclusive remedy, Yorktel will credit Customer's account with the amounts set forth in the SLA for the type of failure experienced by Customer, but only up to the amount paid by Customer for such Services in the month in which such failure occurred, as specified in the SLA. A single failure to meet the SLA shall not be a material breach of this Agreement, but repeated failures that substantially interfere with Customer's use of the Services may constitute a chronic outage and permit Customer to terminate the affected Service if Yorktel is unable to remedy such failures after written notice and application of all commercially reasonable efforts. Except as provided herein and in the SLA, Yorktel shall have no liability in connection with the failure of any of the Services to meet any transmission speed, throughput rates or other performance criteria, or in connection with any unavailability of or interruption in the Services

## **8. SOFTWARE**

### **8.1 License**

Customer is licensed under the End User License Agreement and its terms provided by the vendor or manufacturer of the Software being purchased by Customer. Where custom software or programming is created for Customer by Supplier; Supplier grants to Customer a non-exclusive, perpetual, paid-up license for the Software and associated Software Documentation furnished to Customer under this Agreement. Supplier does not transfer title to the Software and associated Software Documentation to Customer. Under this license, Customer is authorized to (a) use the Software Documentation on or in conjunction with the Equipment for which the Software was initially furnished or such other equipment as may be approved by Supplier in writing; (b) copy the Software and the Software Documentation as required to support Customer's use of the Software, including copies for backup and archival purposes; (c) use the Software or copies of it on backup equipment when operation of the Software is temporarily interrupted on the Equipment; (d) disclose to third parties (provided they are advised of the conditions contained in this Agreement regarding use and confidentiality), execute, and display the Software as necessary to maintain the Equipment for which it was furnished. Customer agrees that (aa) it will not transfer or assign any license for operating Software except if the Equipment shall be sold or otherwise transferred to any third party, in which case Customer may transfer the Software and associated Software Documentation if such third party agrees to accept the terms and conditions of this license; (bb) it will maintain the confidentiality of the Software in accordance with this Agreement; and (cc) it will not reverse assemble, reverse compile, or otherwise translate any Software.

### **8.2 License Termination**

Where custom software or programming is created for Customer by Supplier; Customer may terminate the license for specific Software at any time by giving written notice to Supplier. Supplier may terminate the license for specific Software if Customer fails to comply with its license obligations as set forth in this Agreement and does not cure such failure within 90 days after notice from Supplier.

### **8.3 Software Warranties**

Supplier makes the following warranties with respect to the Software:

1. Supplier has full authority to grant the license and rights to the Software and associated Software Documentation without the consent of any other party, and neither the license to nor the use by Customer of the Software and associated Software Documentation will





infringe upon or violate any third party's personal, contractual, or proprietary rights, including patents, trademarks, trade names, copyrights, rights of privacy, or trade secrets.

2. The Warranty Period for the Software is 1 year from the applicable Acceptance Date or such other Warranty Period set forth in the applicable Statement of Work (SOW). On the Acceptance Date, the Software is, and will be during the Warranty Period, merchantable and free from significant programming errors and defects in design, workmanship, and material, and in conformity in all respects to and functioning properly in accordance with the Specifications and associated Software Documentation and all software provided to Customer for evaluation. During the Warranty Period, (a) Supplier will replace any copy of the Software that contains defects in the tangible media at Supplier's expense, including shipping and handling costs; and (b) if Supplier or Customer discovers one or more defects or errors in the Software or any other respect in which the Software fails to conform or function in accordance with the Specifications and associated Software Documentation or any warranty contained in this Subsection, Supplier shall, at its expense, promptly correct such defect, error, or non-conformity by, among other things, supplying Customer with such corrective codes and making such additions, modifications, or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties contained in this Subsection. If Supplier is unable to do so within 5 business days or the Software continues to exhibit defects, causing serious disruption of use and/or repeated periods of downtime, notwithstanding Supplier's remedial or maintenance efforts, over a continuous period of 1 month or more, Customer may terminate the license for and return such Software and associated Hardware to Supplier and Supplier shall refund to Customer the full amount of the license fees and Hardware costs, and reimburse Customer for all inbound and outbound shipping and handling costs and other direct or incidental costs incurred by Customer in connection with such Software and associated Hardware.
3. The Software, its license to and use thereof by Customer, is in compliance with any and all applicable laws, rules, and regulations.

#### **8.4 Software Warranty Service**

During the Warranty Period, Supplier shall provide warranty service, without charge, in accordance with; a) Supplier's warranty as defined in the applicable SOW for custom software or, b) the manufacturer's warranty policy.

#### **8.5 Software Maintenance**

Supplier will make maintenance services for the Software available to Customer for purchase. Such maintenance services will be provided in accordance with the terms and conditions specified in the applicable SOW. The charges for such maintenance services will be as set forth in the applicable SOW.

#### **8.6 Software Updates**

Supplier will make available to Customer for purchase any updates, modifications, enhancements or new releases for the Software when the same are developed or published by Supplier or an OEM and made generally available to other licensees of the Software. If such updates, modifications, enhancements or new releases are made generally available to other licensees at no charge, Supplier will not charge Customer for them. Otherwise, Customer will pay Supplier's prices then generally in effect for similarly situated purchasers of comparable quantities of similar software.

#### **8.7 Software Documentation**

Supplier shall provide Customer with one (1) set of all Software Documentation in electronic or paper format relating to the version of the Software licensed to Customer if made available by the software manufacturer. For custom developed software by the Supplier; Supplier will provide one (1) set of all Software Documentation in electronic or paper format and represents and warrants that the Software Documentation shall be sufficient to enable Customer to obtain the benefits of the Software.

### **9. INSTALLATION**

#### **9.1 Installation by Customer**

Equipment or Product generally considered, or specifically set forth, as "user installable" (i.e., replacement remote control devices, etc.) will be installed by Customer in accordance with the reasonable installation instructions furnished by Supplier or the OEM of the Product.

#### **9.2 Installation by Supplier**

Equipment or Product that is not "user installable" shall be installed by Supplier, as set forth in the applicable SOW. Supplier will provide qualified labor, and all materials, equipment, tools, and services, including all temporary structures, scaffolds, hoists, fuels, expendable supplies, and other facilities, and do all things necessary for proper installation.

### **10. ACCEPTANCE DATE AND ACCEPTANCE TESTS**

#### **10.1 Products Installed by Customer**

The Acceptance Date shall occur for Products installed by Customer on the day of receipt of the Products.

#### **10.2 Products Installed by Supplier**

The Acceptance Date shall occur for Products installed by Supplier, upon completion to Customer's satisfaction based on the Acceptance Test parameters fully described in the applicable SOW, as evidenced by an acceptance certificate signed by the parties. Customer and Supplier will perform the Acceptance Tests at the Site. If any part of the Products does not pass the Acceptance Testing, Supplier shall have 10 days to take



at its expense all reasonable actions (including correction, modification, adjustment, repair, or replacement of Products) necessary to make such part perform in accordance with the Specifications, associated Equipment, and Software Documentation and Acceptance criteria. After completion of any such actions, the Acceptance Tests will be conducted again; if the part still fails to pass the Acceptance Tests, Customer shall have the option, in its sole discretion, to (a) repeat the procedure set forth above; or (b) return the Products to Supplier at Supplier's expense, be refunded all advance payments therefore and reimbursed for all inbound and outbound shipping and handling costs and all other direct and incidental costs, including the cost of disassembly and packing, incurred by Customer in connection with such Products, and have no further obligations to Supplier with respect to such Products.

### **10.3 Effect of Acceptance**

Customer's Acceptance of any Product shall be without prejudice to Customer's remedies provided in this Agreement or by law for any breach of warranty that may subsequently occur or be discovered.

### **10.4 Right to Reject Acceptance**

Without prejudice to Customer's additional remedies arising by operation of law, Customer may reject or revoke any prior Acceptance which is later discovered is not in conformity with Supplier's representations and OEM's specifications set forth in this Agreement. Customer shall advise Supplier of any such rejection or revocation and Customer shall afford Supplier a reasonable opportunity to correct, remedy or rectify the matter.

## **11. DISCLAIMER OF WARRANTIES**

SUPPLIER MAKES NO WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT.

## **12. INVOICING AND PAYMENT**

Except as otherwise specified in an applicable SOW, Supplier will invoice Customer for Products sold or licensed to Customer, maintenance or any Related Services on or after the Acceptance Date. Payment terms for service invoices (Managed Services or Professional Services) are NET thirty (30) days from the date the customer receives our invoice. In the event of any dispute relating to an invoice issued pursuant to this Agreement, the customer shall pay the undisputed amount in accordance with the terms of this subsection, and shall cooperate with Vendor to promptly resolve the disputed amount. Purchased Equipment shall be billed at the time the Equipment is shipped from Manufacturer; payment terms are payment within thirty (30) days from date of invoice. Customers who wish to pay by Credit Card will be assessed a 3.5% processing fee.

### **12.1 Integration**

Yorktel will invoice the customer based upon the agreed payment terms in the Statement of Work. Yorktel's standard integration payment terms are 50% upon receipt of customer purchase order, 30% upon delivery of equipment, either at customer site or Yorktel's warehouse and final 20% upon acceptance of the job.

### **12.2 Services**

- 1) **Service Charges and Payment Terms.** Charges shall commence on the first day of the Initial Order Term. Yorktel shall invoice Customer by either providing a paper invoice or an electronic invoice. Yorktel will bill Customer in advance for recurring charges and anticipated one-time charges, generally on the first day of the month. For example, the Yorktel July 1 invoice will include any recurring charges for Services to be received from July 1 to July 31, any one-time and/or usage charges anticipated to be incurred during that period and any prior charges incurred but not yet invoiced. For new Services commencing during a month, the following month's invoice will reflect all charges associated with the installation and setup of such Services, prorated monthly charges for the month during which the Services commenced and the advance monthly charges for the following month. For example, if Yorktel begins providing Services on July 15, the August invoice will include (a) any one time non-recurring charges, (b) the prorated monthly charges for July 15 through July 31 and (c) the monthly charges for August. Payment shall be submitted to the remittance address listed on the invoice. Customer's payment shall be considered late if not received by Yorktel within thirty (30) calendar days following Customer's receipt of the applicable invoice. After this thirty (30) day period, all unpaid charges will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower, and Customer shall pay all collection costs incurred by Yorktel (including, without limitation, reasonable attorney's fees). Yorktel at its discretion may suspend any Services for overdue payment. If Customer has a bona fide, good faith dispute with any of the amounts on an invoice, Customer must pay, in accordance with the foregoing terms, all amounts not in dispute and provide Yorktel with a written request for a billing adjustment, together with all supporting documentation (in the form requested by Yorktel), within sixty (60) days after Customer's receipt of the applicable invoice. If Yorktel does not receive this information within this sixty (60) day period, Customer's right to a billing adjustment shall be waived.





- 2) **Cancellation and Disconnection.** If Customer desires to cancel or disconnect any Circuit or Services, Customer shall provide Yorktel with written notice of such desire, and Yorktel shall cancel or disconnect such Circuit or Service within thirty (30) days after receiving such notice. Such written notice shall be sent to Yorktel as specified in section 19 of this document. If Customer elects to cancel or disconnect any Circuit or Service during the applicable Order Term (or if Yorktel cancels or disconnects a Circuit or Service for Customer's Payment Default or other violation of the Agreement), Customer shall pay to Yorktel the following as liquidated damages: (i) the monthly fees for the balance of the remaining Order Term or three months, whichever is greater; plus (ii) the full amount of all past due charges and interest thereon, if any; plus (iii) any disconnection, early cancellation or termination charges incurred and paid to third parties by Yorktel due to such cancellation or disconnection; plus (iv) any additional amount specifically set forth in a Service Order Form. In the event Customer fails to make a required payment for two or more months and/or fails to respond to any Yorktel notice, Customer shall be deemed to have cancelled the Circuit(s) and/or Service(s) and the foregoing liquidated damages shall be due and payable. The Parties agree that the liquidated damages are a good-faith estimate of the Yorktel damages and are not a penalty. Upon cancellation or termination, all termination fees and accrued charges are due immediately upon receipt by Customer.

### **12.3 Time and Materials**

Services performed on a time and material basis will be invoiced upon completion. Extra charges may apply to service calls authorized by the customer which are outside Normal Office Hours of coverage, or for other services such as, but not limited to, refurbishment and cosmetic enhancement. Such charges will be invoiced in accordance with Supplier's then current commercial pricing and applicable business practices. Payment terms for Time & Material Services are NET thirty (30) days from date of invoice.

## **13. INDEMNITY AND LIABILITY**

### **13.1 General Indemnity**

Supplier agrees to indemnify, defend and hold Customer harmless from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines or judgments, including their reasonable attorney's fees, costs and expenses incidental thereto, which may be suffered by, accrued against, charged to or recoverable from said parties by reason of: (a) i) bodily injuries; or ii) loss, claim, damage or physical destruction of property, caused by any act, error, omission, negligent or intentional misconduct of Supplier, its officers, directors, employees, subcontractors, and agents, during Supplier's performance under this Agreement; or (b) third party claims, arising out of or in connection with any act, error, omission, negligent or intentional misconduct of Supplier, its officers, directors, employees, subcontractors, and agents, during Supplier's performance under this Agreement. Customer agrees to give Supplier prompt written notice of the claim and Supplier has the right to control the defense of such claim and any related settlement negotiations, provided that Customer shall have the right to use its own consulting counsel at its own expense, and Supplier shall provide such information as the consulting counsel may reasonably request.

### **13.2 Limitation of Liability**

THE LIABILITY OF YORKTEL AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, CONTRACTORS, AND OTHER REPRESENTATIVES (COLLECTIVELY "INDEMNITEES" AND INDIVIDUALLY AN "INDEMNITEE") TO CUSTOMER IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED (A) WITH RESPECT TO CLAIMS ARISING OUT OF OR CONNECTED WITH PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT, THE PRICE PAID BY CUSTOMER FOR SUCH PRODUCTS OR SERVICES, OR (B) IN ALL OTHER CASES, THE LESSER OF (I) \$2500, OR (II) THE AMOUNT PAID BY CUSTOMER FOR ALL PRODUCTS AND SERVICES IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH NOTICE OF SUCH CLAIM IS GIVEN TO SUCH INDEMNITEE BY CUSTOMER. UNDER NO CIRCUMSTANCE WILL AN INDEMNITEE BE LIABLE FOR ANY DAMAGES RESULTING FROM FAILURE TO MEET ANY DELIVERY SCHEDULE. IN NO EVENT WILL ANY INDEMNITEE BE LIABLE FOR COSTS OF PROCUREMENT OR SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, BODILY INJURY, LOSS OF LIFE, OR REVENUES OR DIMINUTION IN VALUE, OR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, ENHANCED, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING IN ANY WAY OUT OF OR RELATED TO THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION 13.2 SHALL APPLY REGARDLESS OF (A) WHETHER ANY INDEMNITEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) WHETHER SUCH DAMAGES WERE FORESEEABLE, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) WHETHER THE REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER ALSO AGREES THAT THIS LIMITATION OF LIABILITY REFLECTS AN ALLOCATION OF RISK BETWEEN CUSTOMER, THE END USER AND THE INDEMNITEES, AND THE PRICE OF ANY PRODUCTS PURCHASE FROM YORKTEL REFLECTS SUCH ALLOCATION OF RISK.

### **13.3 Software**

Customer acknowledges that all software sold separately or with hardware and obtained by Customer from Yorktel is proprietary to Yorktel and its licensors and is subject to copyrights owned by Yorktel and its licensors. Any reference to "purchases" of software and products containing software products signify only the purchase of a license to use the software in question pursuant to the terms of the licensing agreement of the respective software product provider, a copy of which is included with the products provided hereunder and which is incorporated herein in its entirety by this reference. Customer agrees to be bound by all of the terms of such Yorktel License and Limited Warranty Agreement, or the licensing agreement of the respective software product provider.



#### 13.4 Patent Infringement

- Indemnity. Yorktel will defend, at its own expense, any claim, suit or proceeding brought against Customer to the extent it is based upon a claim that any product sold by Yorktel to Customer infringes upon any patent, copyright or trade secret of any third party. Customer agrees that it shall promptly notify Yorktel in writing of any such claim or action and give Yorktel full information and assistance in connection therewith. Yorktel shall have the sole right to control the defense of any such claim or action and the sole right to settle or compromise any such claim or action. If Customer complies with the provisions hereof, Yorktel will pay all damages, costs and expenses finally awarded to third parties against Customer in such action. If a product sold to Customer, or in Yorktel's opinion might be, held to infringe as set forth above, Yorktel may, at its option, replace or modify such product so as to avoid infringement, or procure the right for Customer to continue the use and resale of such Product. If neither of such alternatives is, in Yorktel's opinion, commercially reasonable, the infringing product shall be returned to Yorktel and Yorktel's sole liability, in addition to its obligation to reimburse awarded damages, costs and expense set forth above, shall be to refund the amounts paid for such products by Customer.
- Limitations. Yorktel will have no liability for any claim of infringement arising as a result of Customer's use of a product in combination with any items not supplied by Yorktel, or any modification of a product by Customer or third parties.
- Entire Liability. THE FOREGOING STATE THE ENTIRE LIABILITY OF Yorktel TO CUSTOMER OR ANY SUBSEQUENT PURCHASER OR PRODUCTS CONCERNING INFRINGEMENT OR INTELLECTUAL PROPERTY RIGHT, INCLUDING BUT NOT LIMITED TO, PATENT, COPYRIGHT AND TRADE SECRET RIGHTS.

#### 14. CONFIDENTIALITY

1. Each party agrees that they may disclose to the other party ("Receiving Party"), during the course of this Agreement, business or technical information of a confidential nature ("Confidential Information") to the disclosing party ("Disclosing Party"). Confidential Information includes, without limitation, employee data, financial information not otherwise disclosed to the public, patent and patent applications, trade secrets, copyrighted information and other intellectual property, business and marketing plans, the identity of customers and suppliers, future products, product developments and other proprietary information. Any written document or other tangible material will be appropriately marked by the Disclosing Party to indicate whether it contains Confidential Information; however, information in the form of data transmitted electronically which falls within the list of examples above need not be appropriately marked to be Confidential Information and shall be protected pursuant to this provision. Except for data transmitted electronically as provided above, at the time of disclosure, the Disclosing Party will inform the Receiving Party about the confidential nature of any Confidential Information that is not in a written document or other tangible material form. Each party agrees not to use or disclose the Confidential Information of the other party for its own benefit, or for the benefit of any third party, except as may be required in their performance under this Agreement. The Confidential Information shall not be treated as confidential, even if it is designated as such by the Disclosing Party if: i) it is or becomes available to the public without confidentiality restrictions through no unauthorized act of the Receiving Party; ii) is received from a third party who is not under an obligation of confidence to the Disclosing Party; or iii) is independently developed by employees or contractors of the Receiving Party who did not use the Confidential Information of the other party in the development. A Party shall not be in breach of this provision if it is required to disclose Confidential Information pursuant to a requirement of a governmental agency or law, provided such Party gives prompt notice to the Disclosing Party of such obligation to disclose such Confidential Information. This Agreement is the Confidential Information of the parties.
2. All of a party's Confidential Information is the exclusive property of such party and the furnishing of the such party's Confidential Information to, or access to such items by, the other party and/or its subcontractors will not grant any express or implied license to or interest in such other party and/or its subcontractors relating to such Confidential Information except as required to perform the services pursuant to this Agreement. Upon request by a the disclosing party at any time and from time to time and without regard to the default status of the Parties under this Agreement, the receiving party and/or its subcontractors shall promptly deliver to the disclosing party its Confidential Information in such format as specified by the disclosing party.

#### 15. RELATIONSHIP OF PARTIES

Customer and Supplier acknowledge and agree that Supplier is an independent contractor, and not an employee of Customer. No partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship. Supplier will have no authority to bind Customer or otherwise incur liability on behalf of Customer, unless otherwise agreed in writing between Customer and Supplier. The personnel furnished by Supplier in accordance with the provisions hereof shall continue to be Supplier's Employees. Supplier's Employees shall not for any purpose be considered Customer's employees. Customer will have no obligation whatsoever to provide any salaries, benefits or privileges of any kind or nature to Supplier or its Employees, including without limitation insurance benefits, pension benefits or travel privileges. Supplier shall be solely responsible for the payment of the salaries, taxes and benefits of its Employees (and ensuring that such payment is actually made by its suppliers), including without limitation, the withholding and/or payment of all federal, state, and local taxes including income tax, payroll tax, workers compensation and social security. Supplier hereby agrees to indemnify and defend Customer against any and all such taxes and contributions, including, but not limited to, additions to tax, penalties, fines and interest.

#### 16. TERMINATION

##### 16.1 Termination for Cause



Either party may terminate this Agreement by written notice to the other if the other party breaches or is in default of any obligation hereunder which breach or default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such breach or default (or such additional cure period as the non-defaulting party may authorize in writing).

#### **16.2 Termination without Cause**

Either party may terminate this Agreement without cause at any time, with at least sixty (60) days written notice to the other party. Both parties are required to fulfill obligations of existing work already in progress which will be governed by this agreement until such obligations are met.

#### **16.3 Insolvency**

Either party may terminate this Agreement by written notice to the other party if the other party (a) suffers a material adverse change in its financial condition subsequent to the date hereof or (b) defaults, or suffers an event that with the passage of time would constitute a default, in respect of any obligation for borrowed money, whether as a borrower, guarantor, or otherwise.

### **17. FORCE MAJEURE**

In the event that either party is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of (or if loss of the Products is caused by) natural disaster, actions, or decrees of governmental bodies or agencies, war, civil disturbances, terrorism or communication line failure not the fault of the affected party (a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds 30 days from the receipt of notice of the Force Majeure Event, the party whose ability has not been so affected may by giving written notice terminate this Agreement or cancel, without cancellation charge, any unfilled Purchase Order(s). However, delays in delivery due to Force Majeure Events shall automatically extend the delivery date for a period equal to the duration of such Events. Any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such Event.

### **18. DAMAGES**

In no event will either party be liable for consequential or special damages. This limitation shall not restrict Supplier's obligation to indemnify any Indemnified Party.

### **19. NOTICES**

Unless otherwise specified in this Agreement, all notices or other communications under this Agreement shall be in writing and may be delivered in person, or may be sent by receipted courier, facsimile transmission, express mail, or postage prepaid certified or registered mail, addressed to the party for whom it is intended, at the following address:

If to Customer: *Primary Customer contact of record with Supplier*

If to Supplier: York Telecom Corporation  
Attn: Contracts Department  
81 Corbett Way  
Eatontown NJ 07724  
Email-contracts@yorktel.com  
Facsimile: 732-413-6060

Either party may change its notice information by giving notice to the other party of the change. Any notice or other communication shall be deemed given no later than the date actually received. Unless otherwise provided in this Agreement, notice by courier, express mail, certified mail, or registered mail shall be deemed given on the date it is officially recorded as delivered by return receipt or equivalent. Notice by facsimile shall be deemed given at the time evidence of receipt is confirmed by the person to whom addressed.

### **20. ASSIGNMENT**

Neither party may not assign, delegate, or subcontract any of its rights or obligations under this Agreement except with the prior written consent of the other party. Any purported assignment, delegation, or subcontracting without such consent shall be null and void and a breach of this Agreement. In the event of any assignment, delegation, or subcontracting with such consent, Supplier shall remain liable for performance of all of Supplier's obligations under this Agreement.



## **21. WAIVER**

No waivers given with respect to this Agreement shall be effective unless in writing and signed by the party granting the waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.



## **22. SURVIVAL**

Any terms of this Agreement, including warranties, indemnities, and confidentiality which, by their nature, extend beyond transfer of title to the Equipment, or the expiration or termination of this Agreement or any Schedule shall survive, remain in effect until fulfilled and apply to the party's respective successors and assigns permitted by this Agreement.

## **23. INSURANCE**

Supplier shall at all times during the term of any work executed under this Agreement maintain insurance, the types and levels within standard industry practice for the work being performed or as specifically set forth in a SOW.

## **24. EFFECT OF PARTIAL INVALIDITY**

If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected.

## **25. BINDING ON SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns permitted by this Agreement.

## **26. APPLICABLE LAW**

This Agreement shall be construed in accordance with the laws of the State of New Jersey, including such state's Uniform Commercial Code, without giving effect to principles of conflicts of law thereof. Both parties hereby consent and submit to the jurisdiction of the courts in the State of New Jersey in all questions and controversies arising out of this Agreement. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

## **27. AUTHORITY**

Customer represents and warrants that it has full power and authority to enter into and perform this Agreement. Customer acknowledges that it has thoroughly considered the terms and conditions of this Agreement, and had the opportunity to review it with legal counsel. Customer also acknowledges that, unless otherwise stated within the Proposal or SOW, this agreement governs all orders place to Supplier by Customer.

## **28. MISCELLANEOUS**

### **28.1 ISO-27001 Certified Information Security Management**

The Yorktel ISO-27001 Certified Information Security Management System deems some of the information that is commonly exchanged during customer support sessions as sensitive; requiring security treatment above and beyond normal email security. To support this requirement Yorktel supports the encryption of email via TLS tunnels between mail servers. Should Customer decline to leverage this capability Customer will be accepting the risk associated with the exchange of this information (e.g., internal IP addresses, video conference and audio conference details, etc.) via conventional electronic mail.



**29. ENTIRE AGREEMENT**

This Agreement, including any SOW, Exhibits, and other Attachments which may be added to this Agreement from time to time by agreement of the parties, constitutes the entire agreement between Customer and Supplier with respect to the subject matter contained herein and supersedes any prior understandings, agreements, and proposals, oral and written, between the parties on such subject matter. This Agreement, including any SOW, Exhibit, or other Attachment may be amended or modified, only by a written instrument signed by both parties.

In consideration of the mutual covenants in the Agreement, authorized signatories of the parties have signed below to evidence their agreement to be bound by its terms and conditions.

\_\_\_\_\_  
("Customer")

Yorktel  
("Supplier")

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: Roger Wesenyak

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

Title: VP of Contracts

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

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