



## Master Service Agreement

This Master Service Agreement ("Agreement") is entered into on the date of the last signature below ("Effective Date") by and between **NITEL INC.** ("NITEL") and the customer identified below ("Customer"). This Agreement sets forth the general terms and conditions applicable to Customer's purchase of communications services ("Service(s)") from NITEL. This Agreement consists of the general terms and conditions stated herein; the NITEL Service Guide located at <http://serviceguide.nitelusa.com> ("Service Guide"); the Service Level Agreements located at <http://www.nitelusa.com/sla.htm> (collectively referred to as the "SLA"); and the NITEL Acceptable Use Policy located at <http://www.nitelusa.com/aup.htm> ("AUP"). NITEL reserves the right to modify the Service Guide, the SLA, and the AUP at any time. In such an event, NITEL will provide a thirty (30) day email notice of any changes to Customer's email address on record. If there is a conflict, the order of priority shall be the Service Order, the General Terms and Conditions, the Service Guide, and then the SLA.

### GENERAL TERM AND CONDITIONS

**1. Service Orders & Term.** Customer must submit requests for Service in a manner and on a form designated by NITEL ("Service Order"). Each Service Order will state the term for which Service is requested (the "Initial Service Term") and the pricing for the Service. Upon expiration of the Initial Service Term, the Service will renew on a month-to-month basis ("Renewal Term") unless terminated by Customer or NITEL. In order to terminate the Service, prior to renewal, Customer must provide Nitel with written notice forty-five (45) days prior to the Initial Service Term (or any subsequent Renewal Term) but no earlier than 75 days prior to the expiration of such Term. The Initial Service Term and any Renewal Term are collectively referred to herein as "Term." If Customer wishes to terminate (disconnect) a Service for any reason, Customer is required to follow the disconnection process set forth in the Service Guide. After the Initial Service Term, NITEL may modify the rate for a Service upon thirty (30) days prior written notice to Customer.

#### **2. Service Installation and Acceptance.**

a. Nitel will issue Firm Order Commitment (the "FOC") date for a Service to the Customer. Customer acknowledges that FOC dates can change from time to time for various reasons. If Nitel changes the FOC date, NITEL will provide Customer with the updated FOC date. NITEL's inability or failure to deliver any ordered Service by the FOC Date will not be a default under the Agreement, and NITEL will not be liable to Customer as a result of NITEL's inability or failure to deliver the Service.

b. NITEL will attempt to provide Service by the requested installation date but will not be liable for any delays in Service delivery. The "Start of Service Date" refers to the date that the Service is available for use by Customer, subject to the following Service acceptance process. After NITEL notifies Customer that a Service is available, Customer may test the Service to determine if the Service is operating in accordance with the technical specifications set forth in the applicable SLA. If Customer provides NITEL with written notice that a Service is in material non-compliance with the applicable SLA within two (2) business days after NITEL notifies Customer that the Service is available, then NITEL will promptly take such reasonable action as is necessary to correct any such non-compliance in the Service and shall, upon correction, notify Customer of a new Start of Service Date. Any non-compliance notice must contain information describing the nature of the material non-compliance with the technical specifications for the Service(s) in question. If Customer does not deliver such a non-compliance notice within the two (2) business day period, Customer shall be deemed to have accepted the Service, and billing will commence on the original Start of Service Date.

**3. Service Cancellation.** If a Service is cancelled prior to the Start of Service Date, Customer will pay to NITEL a charge equal to any charges incurred by NITEL from the underlying service providers, in addition to any cancellation charges listed in the Service Guide.

**4. Service Disconnection.** In order to disconnect a Service, Customer must complete the NITEL Customer Disconnect Request Form located at [www.nitelusa.com/disconnects](http://www.nitelusa.com/disconnects). Such termination is effective 45 days after NITEL's receipt of the notice, unless otherwise agreed upon by Nitel and Customer.

**5. Credit Review & Deposits.** Provision of Services is subject to NITEL's credit approval of Customer. Based on the credit check, NITEL may, in its sole discretion, require that Customer provide a deposit as a condition of purchasing Services. Additionally, during the Term, if Customer fails to make timely payment for Services, NITEL may require adequate assurance of future payment (e.g., a deposit or other acceptable form of security) as a condition of continuing NITEL's Services. Customer's failure to provide adequate assurances required by NITEL is a material breach of the Agreement. NITEL may provide Customer's payment history or other billing/charge information to credit reporting agencies or industry clearinghouses.

**6. Invoices and Disputes.** Customer must pay all applicable Monthly Recurring Charges (MRCs) and Non-recurring Charges (NRCs) set forth in the applicable Service Order or pricing attachment. Invoices are delivered monthly and payment is due 30 days after the invoice date (the "Due 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 ("Late Fee"). Customer is responsible for all Service charges, even if incurred as the result of unauthorized use. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount by the Due Date and submit written notice of the disputed amount (detailing the nature of the dispute, the Services and invoice(s) disputed). Customer must submit disputes in writing within 60 days of the date of the invoice or the right to dispute is waived. If a dispute is resolved against Customer, Customer will pay the disputed amounts plus the Late



Fee from the initial Due Date. Customer will be liable to NITEL for all costs and expenses incurred in collecting amounts due to NITEL, including legal fees.

**7. Taxes and Fees.** Except for taxes based on NITEL's net income, Customer will be responsible for all taxes and fees arising in any jurisdiction, including but in no way limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges (including regulatory and 911 surcharges) imposed on or incident to the provision, sale or use of Service (collectively, "Taxes and Fees"). Such charges will include the following <http://www.nitelusa.com/pages/csr.php>. The Monthly Recurring Charge ("MRC") for Services is exclusive of Taxes and Fees. Customer may present NITEL with a valid exemption certificate and NITEL will give effect to any valid exemption prospectively (not retroactively) following NITEL's receipt of the certificate.

**8. Regulatory Activity.** To the extent permitted by applicable law, in the event of any change to any law, rule, regulation or other regulatory activity ("Regulatory Activity") that affects the Services provided hereunder, NITEL may at any time upon written notice: (i) pass through to Customer all, or a portion of, any charges or surcharges directly or indirectly related to such Regulatory Activity; or (ii) modify the rates, and/or other terms and conditions contained in the Agreement to reflect the impact of such Regulatory Activity.

**9. Use of Service.** Customer may use Services for any lawful purpose consistent with NITEL's then current acceptable use and privacy policies available at <http://www.nitelusa.com/aup.htm>. Customer will not resell or bundle the Services, nor permit any third party access to the Services in exchange for compensation of any kind.

**10. Service Interruptions.** In the event of an interruption of Service, NITEL will use reasonable efforts to restore Service promptly. Whenever an interruption occurs, NITEL shall have no liability or obligation unless and until Customer has notified NITEL or unless NITEL network personnel have actual knowledge of such condition. In the event of an interruption of Service, NITEL's liability shall be limited to its obligation to issue service credits as described in Section 11 of the Agreement. The duration of any interruption will be calculated from the time the report of the interruption is made to NITEL. In the event of any interruption, Customer shall, immediately grant NITEL's employees, agents, and/or contractors access to Customer's premises and all pertinent equipment therein and fully assist and cooperate with NITEL in remedying the interruption.

**11. Service Level Agreements.** Service Level Agreements ("SLAs") and additional terms for Services are listed at <http://www.nitelusa.com/sla.htm> and are incorporated herein by reference to the extent Customer orders those Services. NITEL reserves the right to modify the SLAs and additional terms from time to time effective upon notice to Customer set forth in a NITEL invoice to Customer. The SLAs set forth Customer's exclusive sole remedies for any claim relating to a Service including any failure to meet any objectives set forth in the SLA. NITEL's records and data shall be the basis for all SLA calculations and determinations. The maximum amount of credit in any calendar month under an SLA shall not exceed the monthly recurring charge, which, absent the credit, would have been charged by NITEL for the affected Service in that month.

**12. Termination.** Upon Customer's (i) failure to perform any non-monetary provision of the Agreement or any Service Order hereunder that is not corrected by Customer within thirty (30) days after having received notice from NITEL; (ii) failure to meet any of its payment obligations (including failure to pay a required deposit) that is not corrected in full by Customer within five (5) days after receipt of written notice from NITEL; or (iii) becoming the subject of a bankruptcy, liquidation or other insolvency proceeding or upon commencement of any other action against Customer with respect to creditors in the nature of bankruptcy, insolvency or liquidation, NITEL may, at its option, terminate the Agreement and all underlying Services, suspend all or any Service, and/or require a deposit, advanced payment, or other satisfactory assurances as a condition of continuing to provide Services. NITEL may also pursue all other rights and remedies available to it under the Agreement, at law or in equity, including but not limited to payment of early termination charges.

**13. Termination Liability.** If NITEL terminates the Agreement or any Service(s) due to Customer's default, or if Customer terminates the Agreement or any Service(s) prior to the expiration of such Service's specified Term, Customer will pay to NITEL an early termination charge equal to (i) all recurring and non-recurring charges specified in the applicable Service Order Form(s) for the balance of each Service's specified Term, plus; (ii) any charges levied by the underlying service provider in connection with the termination that NITEL does not recover under clause (i) of this Section 13. Customer shall also be liable to NITEL for all non-recurring and recurring charges that were waived or discounted by NITEL. Customer agrees that these terms provide a reasonable approximation of NITEL's damages and are not a penalty. In the event that Customer has signed a Minimum Monthly Commitment ("MMRC") Addendum to this Agreement, Customer will remain liable to pay NITEL the entirety of the MMRC for the agreed upon term of such Addendum.

#### **14. Indemnification and Limitations on Liability.**

a. Customer and NITEL shall defend, indemnify and hold harmless the other from and against any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, of any third party, including without limitation all reasonable costs and expenses, such as reasonable litigation costs and attorneys' fees ("Claim"), relating to damage to tangible property or bodily injury, or wrongful death, to the extent such Claim arises out of the negligence or willful misconduct of the respective indemnifying party, its employees, agents, or contractors in connection with the Agreement or the provision of Services hereunder.



b. Customer will indemnify, defend and hold NITEL, its affiliates and each of its respective owners, directors, officers, employees and agents, harmless from and against any and all claims, suits, expenses, losses, demands, actions, causes of action, judgments, fees and costs, of any kind or nature whatsoever (Claims), to the extent such Claim (i) is brought by a downstream customer of Customer or an end user and arises out of an alleged defect in or failure of Service; or (ii) arises out of or relates to the content transmitted over NITEL's network, whether sent by Customer or any third party, including without limitation, Claims relating to any violation of copyright law, export control laws, or that such transmissions are libelous, slanderous, or an invasion of privacy or illegal.

c. The indemnified party shall promptly notify the indemnifying party in writing of any claims which are subject to the terms of this section. The indemnified party shall have the right at its own expense to appoint its own counsel who shall be entitled to participate in any settlement negotiations or litigation regarding any matter for which it is entitled to be indemnified hereunder. The indemnifying party shall not agree to any settlement or consent to any decree, order or judgment without obtaining the consent of the indemnified party, which consent shall not be unreasonably withheld.

d. **IN NO EVENT SHALL EITHER PARTY'S LIABILITY HEREUNDER TO THE OTHER PARTY EXCEED THE AMOUNT OF SERVICE CHARGES PAID BY THE CUSTOMER DURING THE SIXTY (60) DAY PERIOD PRIOR TO THE ACCRUAL OF THE MOST RECENT CLAIM. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY DAMAGES WHATSOEVER FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, THE COST OF PURCHASING REPLACEMENT SERVICES, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT OR ANY ORDER. NITEL WILL HAVE NO LIABILITY FOR ANY CLAIM AGAINST CUSTOMER BY A THIRD PARTY IN CONNECTION WITH OR FOR RESPONDING TO EMERGENCY 911 OR OTHER EMERGENCY REFERRAL CALLS. NOTWITHSTANDING THE FOREGOING LIMITS OF LIABILITY, A PARTY'S LIABILITY WILL NOT BE LIMITED WITH RESPECT TO CLAIMS ARISING FROM (1) A PARTY'S PAYMENT OBLIGATIONS, INCLUDING EARLY TERMINATION CHARGES; (2) A PARTY'S INDEMNIFICATION OBLIGATIONS.**

e. **CUSTOMER AGREES THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION ARE FAIR AND REASONABLE IN THE CIRCUMSTANCES OF THE AGREEMENT AND THAT NITEL WOULD NOT HAVE ENTERED INTO THE AGREEMENT BUT FOR CUSTOMER'S AGREEMENT TO LIMIT NITEL'S LIABILITY IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THIS SECTION.**

**15. Force Majeure.** Neither party will be liable, nor will any remedy provided by this Agreement be available, for any failure of Service due to causes beyond such party's reasonable control ("Force Majeure"). Customer will not be obligated to pay NITEL for Service not delivered as the result of Force Majeure.

**16. Assignment.** Neither the Agreement nor any of Customer's rights and/or obligations under the Agreement shall be assigned, and/or delegated, and/or transferred by Customer to another party without the express written consent of NITEL (which shall not be unreasonably withheld, delayed or conditioned); however, NITEL may assign and/or delegate the Agreement to any of its related companies or any third party purchaser.

**17. Warranties. NITEL MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, RESPECTING THE SERVICE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**18. Confidentiality.** The terms of this Agreement and all knowledge and information of a proprietary nature acquired in performing this Agreement are confidential. Each party and its agents will keep such information confidential and not disclose such information to third parties, other than to its affiliates.

**19. Notices.** Except as otherwise specifically provided herein, any notices required or permitted to be given under the Agreement shall be given in writing and shall be delivered (a) in person; (b) by certified mail, postage prepaid, return receipt requested; (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt; (d) by electronic mail to Customer at Customer's designated technical and/or billing contact, or to NITEL at notice@nitelusa.com. Customer acknowledges and agrees that NITEL may contact Customer via e-mail at the e-mail address provided to NITEL when Customer ordered the Service for any reason relating to the Service, including for purposes of providing Customer any notices required under the Agreement. Customer is responsible for providing NITEL with any change to its email address. It is solely Customer's responsibility to notify NITEL of any changes to Customer's email address for such notice. Notice provided by personal delivery, certified mail, or commercial overnight courier is to be delivered to the addresses listed for each party in the signature area of the Agreement, or to any such other address as either party may from time to time specify in writing to the other party. Notice shall be effective upon delivery (or refusal to accept delivery).



**20. Miscellaneous.** This Agreement is binding on the parties and their permitted successors and assigns, and together with any Service Orders and exhibits hereto (if any) constitutes the entire agreement between the parties. As a material part of the consideration for entering into this Agreement, each party agrees not to contest or assert any defense relating to the authority of any representative or employee of such party to enter into this Agreement or any Service Order issued pursuant to this Agreement. This Agreement does not create any agency, joint venture, or partnership between NITEL and Customer, each of which are independent business entities. No prior agreements, understandings, statements, proposals or representations, either oral or written, respecting the subject matter hereof apply. Except with regard to an agreed upon Service Order, this Agreement can be modified only in a writing signed by the parties. If any provision of this Agreement is held to be illegal or unenforceable, this Agreement's unaffected provisions will remain in effect. If either party fails to enforce any right or remedy under this Agreement, such failure will not waive the right or remedy. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws provisions. The federal and state courts located in Cook County, Illinois shall be the only courts with jurisdiction to hear disputes under this Agreement, and Customer consents to the jurisdiction of these courts. This Agreement is not binding upon NITEL until signed by an authorized NITEL representative. The Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which when taken together will constitute one and the same instrument. The Agreement may be executed by digital signature, and any such digital signature shall be deemed to be an original signature and shall be binding on such party.

**NITEL INC.**

an Illinois corporation

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Public Health Management Corporation**

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

PA NFP

\_\_\_\_\_(State of formation &amp; type of entity)

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_