

# El Paso County Telephone Company Internet Services Agreement

This El Paso County Telephone Company Internet Services Agreement together with the exhibits and materials referenced herein ("Agreement") is between El Paso County Telephone Company ("EIPasoTel") and the end user of the EIPasoTel® service(s) and equipment described below ("you" or "Customer"). Please review the Agreement carefully; it governs your use and EIPasoTel's provision of the Service, Software, and Equipment.

BY ENROLLING IN, ACTIVATING, USING, OR PAYING FOR THE SERVICE AND/OR EQUIPMENT, OR INSTALLING THE EQUIPMENT YOU AFFIRM THAT YOU UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, EVEN IF YOU CHOOSE NOT TO READ IT. FURTHER, YOU AFFIRM THAT YOU UNDERSTAND AND AGREE TO THE PRICES, CHARGES, AND OTHER TERMS AND CONDITIONS QUOTED TO YOU DURING THE ORDERING PROCESS AND ON <http://www.elpasotel.com/legal.html>, ALL OF WHICH ARE INCORPORATED BY REFERENCE, AND YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND ARE BOUND BY IT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT (INCLUDING FUTURE REVISIONS), DO NOT USE THE SERVICE OR EQUIPMENT, CALL ELPASOTEL AT 719 683 2501 opt 2 TO CANCEL THE SERVICE IMMEDIATELY.

## 1. Definitions.

"AUP" means the EIPasoTel Acceptable Use Policy posted <http://www.elpasotel.com/legal.html>, including all future revisions.

"*Equipment*" means EIPasoTel-provided modem(s) and equipment to enable networking which may include without limitation USB adaptors.

"*Force Majeure Event*" means an unforeseeable event beyond the reasonable control of a party, including without limitation: act of God; fire; flood; labor strike or unrest; sabotage; cable cuts; acts of terror; power shortage or power failure, e.g., rolling blackouts; material shortages or unavailability or other delay in delivery not resulting from EIPasoTel's failure to timely place orders therefore; lack of or delay in transportation; government codes, laws, regulations, ordinances, rules, or restrictions; war or civil disorder; or failures of suppliers of goods and services.

"*Late Charge*" is the portion of the payment not received by or immediately available to EIPasoTel by the due date multiplied by the highest lawful amount for commercial transactions in the state you receive Service, Equipment, and/or Software in.

"*MRCs*" means monthly recurring charges.

"*NRCs*" means non-recurring, one-time charges.

"*Regulatory Activity*" means any regulation and/or ruling, including modifications thereto, by any regulatory agency, legislative body or court of competent jurisdiction.

"*Service*" means all of the services you receive from EIPasoTel from the following list: EIPasoTel® E-mail, , EIPasoTel® Net Pro DSL, EIPasoTel® Wireless Broadband; additional services described in the Service Description Section below, and related EIPasoTel® installation, repair, support and provisioning. "Service" when used in the Service Description Section below refers to the specific service being described.

"*Taxes*" means foreign, federal, state and local taxes, surcharges, other similar charges, and any other imposition that may be passed on by EIPasoTel to Customer.

**2. Service Description.** EIPasoTel will provide, and you will purchase the Service. Further details regarding the Service may be provided in product literature, user manuals, and on <http://www.elpasotel.com/InternetServices.html> and are incorporated herein by reference.

### (a) EIPasoTel® Net Pro DSL and Wireless Broadband.

(i) EIPasoTel will provide Net Pro DSL or Wireless Broadband service that runs over the same line as your EIPasoTel wireline telephone line or wireless broadband service. If you do not have an EIPasoTel wireline telephone line, EIPasoTel will provide stand-alone Service that either runs over a physical connection or wireless broadband service to your location. You must specify an EIPasoTel telephone number to use with the Service (unless you order stand-alone Service or wireless broadband service). EIPasoTel may terminate your Service or charge you for stand-alone Service if you change your EIPasoTel® local telephone service to another company, or move your EIPasoTel® local telephone service to a wireless service provider.

(ii) *Availability.* EIPasoTel® Net Pro DSL and Wireless Broadband service may not be available in all areas or at the rates or speeds generally marketed. The speed(s) available at your location are identified during the ordering process. Service speeds are "up to" and EIPasoTel will provision your line at the maximum speed it qualifies for within the speed range of the Service you selected. Your location may subsequently be eligible for additional speed options; provided that you will be charged a speed change charge for any speed downgrade. Availability of service depends on availability and limits of EIPasoTel wire centers and facilities. Service will not be provided using unsuitable facilities or if provision of Service creates interference with other services. Service is offered only to location(s) qualified by EIPasoTel line qualification procedures. Some lines may not qualify for the Service even if initial tests qualified such lines. Speed and availability of Service are not guaranteed and may be limited by a variety of factors including but not limited to the physical condition of your line and wiring at your location, your service location, phone line qualifications, computer performance/configuration, and network/Internet congestion. Service is provided on a per-line basis, and the actual throughput and connection speed of your Service depends on a number of factors such as Internet traffic and congestion or bandwidth, distance of your home from an EIPasoTel central office, viruses or spy ware, server speed of the Web

sites you connect to, traffic and congestion on your home network or corporate LAN, and Windows PC settings, in addition to the factors listed above. Uninterrupted or error-free Service is not guaranteed and EIPasoTel may limit speeds. During EIPasoTel's network maintenance and software update period, it may be necessary to temporarily place Service central office equipment out of service. EIPasoTel also reserves the right to temporarily interrupt Service at other times in emergency situations.

(iii) *Moves.* If you move to another location (including a move within the same building) you are not guaranteed to have Service at the new location. Your line must be re-qualified for Service at any new location and MRCs and NRCs applicable to new Service will apply.

(iv) *EIPasoTel Facilities and Equipment to Provide Service; Licenses.* Certain EIPasoTel facilities and equipment used to provide you Service may be located on your premises. These facilities and equipment are the property of EIPasoTel and must be installed, relocated, rearranged, tested, inspected, and maintained only by EIPasoTel. You are responsible for damage to such facilities and equipment resulting from your negligence (including failure to reasonably prevent damage by others) or willful conduct. You may not attach or connect anything to the EIPasoTel facilities or equipment unless authorized by EIPasoTel. Any unauthorized attachments or connections may be removed or disconnected by EIPasoTel and your Service may be suspended or terminated as a result. You agree to provide EIPasoTel access to your premises at reasonable hours if necessary to terminate or cancel Service or to maintain or remove the facilities and/or equipment. EIPasoTel is not liable for defacement or damage to your premises resulting from the existence of EIPasoTel facilities or equipment and associated wiring, or from the installation or removal thereof, when such defacement or damage is not the result of EIPasoTel negligence. You may be required to provide, install, and maintain, at your expense, certain items such as appropriate space and power, and rights or licenses, to receive Service, if such items are not already in place. These items may include without limitation suitable commercial power, power wiring and outlets, housing, heat, light, and ventilation for the operation of telephone facilities, rights to use or install pathways, shafts, risers, conduit, telephone closets, interior wiring, service areas, racks, cages, utility connections, entries and/or trench (for purpose of providing entrance facilities into multi-unit housing complexes, commercial properties or business developments to reach points of termination).

(b) Internet Access. Your Internet access will be provided by EIPasoTel. EIPasoTel does not support selection of alternative Internet service providers at this time.

(i) *Account Usage and Password.* You will receive a user name and password upon completing the application process. You are responsible for maintaining the confidentiality of the user name and password, and are fully responsible for all activities that occur under your user name or password including payment for all such activities. You agree: (A) that only you and your authorized designees will use your user name and password and that you will not transfer or disclose either your user name or password to any other person, (B) to immediately notify EIPasoTel of any unauthorized use of your user name or password or any other breach of security, and (C) to ensure that you exit from your account at the end of each session. "Authorized designees" means members of your family or business associates that you, at your own risk and responsibility, permit to access the Internet access service using your user name and password. You must ensure that any such authorized designees will comply with this Agreement and you will be responsible for all use of the Internet access service and any other services accessed through the Internet access services on your account whether or not authorized by you. You acknowledge that you are aware that certain content accessible through the Internet access service may contain material that is unsuitable for minors. Accordingly, you agree to supervise any minor's use of the Internet access service through your account. EIPasoTel will not be liable for any loss or damage arising from your failure to comply with this Section. **ELPASOTEL RECOMMENDS USE OF COMMERCIALY AVAILABLE CONTENT FILTERING SOFTWARE.**

(ii) *E-mail Storage Space and Other Limitations.* Your mailbox storage space, the size of outgoing and incoming e-mail, and the number of mailboxes available to you are limited. Limits are listed at <http://www.elpasotel.com/faq.html>. When a mailbox reaches its limit, you will not be able to receive e-mail. Additionally, e-mail that exceeds the size limit will not be delivered, and you will receive a notice that the e-mail was too large. EIPasoTel e-mail accounts may not be used for purposes of distributing and storing excessive amounts of multimedia files. Multimedia files are defined as any graphics, audio, and video files.

(iii) *Additional Features and Applications.* Additional features and applications may be provided as part of the Service. Additional charges may apply. Please see information at the following URL for details: <http://www.elpasotel.com/legal.html>

**3. Equipment.** Separately purchased equipment is required to use the Service. Certain Equipment is available from EIPasoTel and other equipment must be provided by Customer.

(a) EIPasoTel-Provided Equipment.

(i) *Ownership; Risk of Loss.* You will be deemed the owner of the purchased Equipment, and bear all risk of loss of, theft of, casualty to or damage to the Equipment, from the time it is received by you until the time (if any) when it is returned by you pursuant to this Agreement and has been received by EIPasoTel.

(ii) *Delivery and Installation of Equipment.* Equipment may be delivered to you only in the United States. EIPasoTel will perform installation of all Equipment.

(iii) *Damaged/Defective Equipment.* If the Equipment is inoperable, technical support is available at 719-683-6830. If EIPasoTel deems the Equipment has a manufacturing defect, the Limited Warranty (set forth in the "Warranty" section below) will apply if it has not expired. If the Equipment fails as a result of a manufacturing defect after the Limited Warranty has expired or fails for any other reason you may request that EIPasoTel deliver replacement Equipment. Any such replacement Equipment will be charged to you at the price specified in the Rate Card at <http://www.elpasotel.com/legal.html>, plus shipping and handling and any applicable Taxes. Replacement Equipment may or may not be the same model.

(iv) If, in connection with your Service you are purchasing an ActionTec modem, you should be aware that the modem contains copyrighted software that is licensed under the General Public License (GPL). A copy of the GPL and other applicable provisions are available at <http://www.elpasotel.com/actiontec.html>. You may also obtain the complete Corresponding Source code from us for a period of three years after our last shipment of this product at the same location. This offer is valid to anyone in receipt of this information.

(b) **Customer-Provided Equipment.** If you do not purchase a modem from EIPasoTel you must provide equipment that supports the Service and meets the minimum system requirements found at <http://www.elpasotel.com/InternetServices.html> ("Customer Equipment"). EIPasoTel may revise the minimum requirements from time to time. You represent that you own the Customer Equipment or otherwise have the right to use it with the Service and agree that EIPasoTel has no responsibility or liability for it. Installing or using the Service with Customer Equipment: (i) limits support available for Service, (ii) may damage Customer Equipment, software, peripherals or data, and/or Equipment, and (iii) NEITHER ELPASOTEL, ITS AFFILIATES, SUPPLIERS, OR AGENTS WILL BE RESPONSIBLE/LIABLE IF YOU CANNOT ACCESS YOUR SERVICE, IF SERVICE DOES NOT FUNCTION CORRECTLY OR AT ALL, OR IF CUSTOMER EQUIPMENT, SOFTWARE, PERIPHERALS, DATA, OR EQUIPMENT IS DAMAGED. The foregoing limitation of liability is in addition to and will not limit any other limitation of liability set forth in this Agreement.

**4. Changes to Service or this Agreement.** EIPasoTel is not obligated to give you notice of changes to this Agreement before it becomes effective. You should review the Agreement at the time it becomes effective for you. Subject to any applicable rules or laws, EIPasoTel may:

(a) at any time, effective upon posting to <http://www.elpasotel.com/legal.html> or any written notice to you, including e-mail: (i) stop offering the Service and/or Equipment, (ii) modify the Service, including, but not limited to, access procedures, hours of operation, menu structures, commands, documentation, vendors, and Services offered, and/or any of the terms and conditions of this Agreement, and/or (iii) reduce MRCs or NRCs. Please check such Web site and your e-mail regularly for changes.

(b) upon 30 days notice to you: (i) increase MRCs and/or NRCs or (ii) change this Agreement or the Service in a way that directly results in a material and adverse economic impact to you. EIPasoTel may reduce the foregoing notice period where commercially reasonable and/or if such increase is based upon Regulatory Activity.

Your continued use of the Service and/or Equipment constitutes acceptance of those changes. You must immediately stop using the Service and Equipment and cancel your Service if you do not agree to the changes. Any changes you make or other terms you add to this Agreement, or propose in any other documents, written or electronic, are void.

**5. Third-Party Services, Software and Equipment.** Purchase, use, or subscription to any third-party services, software, or equipment offered by or through EIPasoTel is subject to the third-party provider's terms and EIPasoTel is not responsible or liable for any such services, software, or equipment.

#### **6. Software.**

(a) **Software.** Use of the Service may require or enable you to download or otherwise install or use certain software that is owned by EIPasoTel or by third parties (the "Software"). By installing the Software and using the Services or using Equipment with embedded Software you are agreeing to abide by all of the terms and conditions of this Agreement that relate to the Software, including without limitation the terms and conditions of this Section.

(b) **License.** If the Software is accompanied by an end user license agreement ("EULA"), your use of the Software is governed by the terms of that agreement and by the terms of this Agreement where applicable. You must accept and agree to the terms of the EULA before installing the Software and using the Service. If the Software is not accompanied by a EULA, EIPasoTel grants you a limited, personal, revocable, nonexclusive, nontransferable, non-assignable license to install and use the Software for purposes of using the Service and/or Equipment. The license is effective upon the earlier of delivery or installation, and extends only to Customer's own use of such Software and only on the designated Equipment or with the designated Service.

(c) **No Modification.** You may not modify the Software in any way or change or delete any copyrights, trademarks, service marks or other proprietary rights or notices of EIPasoTel or a third-party that appear or are used in connection with the Software or the Service. You agree that the Software is the confidential and proprietary property of its owner and may not be disclosed or reproduced unless specifically authorized by EIPasoTel or the third-party licensor or supplier. In addition, you agree that you will not de-compile, disassemble, reverse engineer or otherwise reduce the Software to a human readable form.

(d) **Ownership.** You acknowledge that EIPasoTel or the third-party licensor or supplier of the Software, as applicable own all right title and interest, including without limitation all copyright, patent, trademark, and trade secret rights in the Software and related documentation, updates, and upgrades. You are not granted any ownership rights in the Software and may not sublicense, loan, rent, lease, distribute, share, or otherwise transfer the Software to any one else.

(e) **No Export.** The Software may be used only in the United States and any export of the Software is strictly prohibited.

(f) **Updates, Upgrades, or Changes.** EIPasoTel may update, upgrade or change the Software and related settings on your computer from time to time. You agree to cooperate with EIPasoTel in performing such activities.

(g) **Termination.** EIPasoTel may discontinue provision of the Software for any reason, including without limitation if EIPasoTel's agreement with a software vendor is terminated. Upon termination of your Service or EIPasoTel notice to you of discontinuance of the Software offering for any reason, you must immediately stop using the Software associated with the terminated Service and destroy any copies you may have and delete it from your computer.

(h) Federal Procurements. This section applies to all acquisitions of the Software by or for the Federal Government or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other transaction with the Federal Government which calls for delivery or use of the Software by the Government. By accepting delivery of the Software under any such contract, grant, cooperative agreement, or as part of any such transaction, the Government agrees that the Software qualifies as commercial computer software and that the associated documentation qualifies as commercial computer software documentation within the meaning of the acquisition regulations and contract clauses applicable to this procurement. The terms and conditions of this Agreement are fully applicable to the Government's use and disclosure of the Software and documentation, and will supersede any conflicting terms or conditions. No license of any kind is granted in the case of acquisitions which contain or are subject to the clauses FAR 52-227.19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUNE 1987) or any other clause which purports to grant to the Government rights greater than, or additional to, those set forth in this Agreement, or which purports to impose additional requirements upon EIPasoTel to make the Agreement effective, unless EIPasoTel specifically so consents by separate written agreement. Please contact EIPasoTel for Software manufacturer information.

**7. Service Conditions.** The following conditions apply to the Service. EIPasoTel may suspend, terminate, or limit use of your Service if you violate any of these conditions.

(a) Limits on Use. You agree not to use the Service for high volume or excessive use, in a business or for any commercial purpose if your Service is a residential service, or in a way that impacts EIPasoTel network resources or EIPasoTel's ability to provide services. You agree not to: (i) offer public information services (unlimited usage or otherwise), or (ii) permit more than one Internet log-on session to be active at one time. A log-on session represents an active connection to your Internet access provider. The active session may be shared to connect multiple computers/devices within a single home or office location or within a single unit within a multiple dwelling unit (e.g., single apartment or office within an apartment complex) to your modem and/or router to access the Service (including the establishment of a wireless fidelity ("WiFi") hotspot), but the Service may only be used at the single home or office location or single unit within a multiple dwelling unit for which Service is provisioned by EIPasoTel. You may not use a WiFi hotspot in violation of this Agreement or in a way that circumvents EIPasoTel's ability to provide Service to another customer (e.g., you cannot use a WiFi hotspot to provide Service outside your single home or office location or outside your single unit within a multiple dwelling unit and you cannot resell Service provided over a WiFi hotspot). You may not use more than one IP address for each log on session unless an advanced service allocating you more than one IP address has been purchased. Service may only be used in the U.S. Service may be used to host a server, personal or commercial, as long as such server is used pursuant to the terms and conditions of this Agreement applicable to Service and not for any malicious purposes. Malicious purposes include without limitation Spam, viruses, worms, Trojans, etc. EIPasoTel may restrict your use of or interrupt the Service without notice for: (i) maintenance activities; (ii) equipment, network, or facility upgrades or modifications; and (iii) to ensure the provision of acceptable service levels to all EIPasoTel customers. EIPasoTel is not responsible or liable for any Service deficiencies or interruptions caused by such events.

(b) No Resale, Distribution, Transfer, or Assignment. You agree not to resell or distribute, transfer or assign this Agreement and/or the Service via any means including but not limited to wireless technology, except with EIPasoTel's prior consent and according to EIPasoTel's policies and procedures; provided that you may establish a WiFi hotspot as provided above, but may not resell Service provided over the WiFi hotspot. This Agreement is intended solely for you and it will not benefit or be enforceable by any other person or entity. EIPasoTel may assign this Agreement and your rights and obligations under this Agreement, in whole or in part, at any time without notice to you and you agree to make all subsequent payments as directed. If we do that, we have no further obligations to you.

(c) Authorized Use. You (i) are responsible for maintaining the confidentiality of passwords used with the Service, (ii) are responsible for all use of the Service, including your primary account and any secondary accounts or sub-accounts registered to that account, and will not permit any unauthorized use of the Service, and (iii) will ensure that all use of the Service complies with this Agreement. You are responsible for unauthorized and non-compliant use of the Service.

(d) Compliance. The Service cannot be used for any unlawful, abusive, or fraudulent purpose, including without limitation, using the Service in a way that: (i) interferes with EIPasoTel's ability to provide service to EIPasoTel customers, (ii) avoids your obligation to pay for services, (iii) constitutes a criminal offense, (iv) gives rise to a civil liability, or (v) otherwise violates any law, order, ordinance, governmental requirement or regulation or this Agreement.

(e) Monitoring and Testing the Service. EIPasoTel may, but is not obligated to, monitor the Service. You are responsible for monitoring your accounts for access to newsgroups and Web sites that may contain improper material. You will notify EIPasoTel of the continual receipt of e-mail that you view as illegal or that is unsolicited. You must not design or provide systems used for the collection of information about others without their express knowledge and consent. EIPasoTel may also test Service for maintenance purposes to detect and/or clear trouble.

(f) Wi-Fi. Service may be used in a wireless network environment at your own risk. Wireless networking devices use public radio channels to transmit voice and data communications. EIPasoTel cannot guarantee the security, privacy, or confidentiality of any transmissions made via such devices, and EIPasoTel makes no assurances or warranties relating to their use by you. You are responsible for all use of your Service regardless of the source of a transmission, whether by you, or an authorized or unauthorized third-party, over your Service.

(g) Data Management and Security. ELPASOTEL STRONGLY RECOMMENDS USE OF COMMERCIAL ANTI-VIRUS AND FIREWALL SOFTWARE. You are responsible for the management and security of your data, including without limitation backing up and restoring your data, managing file and print sharing, implementing procedures for accuracy of data and its transmission, and implementing security such as anti-virus and firewalls. EIPasoTel is not responsible or liable for the management or security of your data, including without limitation loss of your data or back-up or restoration of your data, regardless of whether your data is maintained on EIPasoTel servers or your computer or server.

(h) Intellectual Property Rights. Unless otherwise expressly provided in this Agreement, all aspects of the Service are the property of EIPasoTel and are protected by trademark, copyright or other intellectual property laws and international treaty provisions. EIPasoTel grants you a personal, revocable, limited, nonexclusive, nontransferable, non-assignable right and license to use the Service in accordance with the terms and conditions of this Agreement. No other license or rights are granted by EIPasoTel or will be implied or arise by estoppel, with respect to any Service.

**8. Installation, Maintenance and Support.** EIPasoTel will provide on-site installation. Charges apply for installation, and for certain maintenance, trouble isolation, and support services and if a technician is dispatched. Charges may be per technician, may vary depending on when services are performed (e.g., time of day and weekday, holiday or weekend), and may include a minimum charge regardless of the actual number of hours worked. EIPasoTel will notify you of any applicable charges in advance of you incurring such charges. If you report trouble, you must pay a dispatch charge if the trouble is not found in EIPasoTel facilities (no charge if EIPasoTel later finds the trouble was in EIPasoTel facilities) or EIPasoTel equipment or is found in customer equipment/systems or Equipment. A dispatch charge also applies if: (A) Customer requests a service date change but fails to notify EIPasoTel before the service date and an EIPasoTel technician is dispatched on the service date (will have to pay dispatch charge and EIPasoTel will change the service date) or (B) EIPasoTel technician dispatched for maintenance of service and no trouble is found in EIPasoTel facilities (applies each time this happens). Any requested repairs to your facilities or equipment are not included in the dispatch fee, and will be charged on a time and materials basis. If you purchased networking equipment from EIPasoTel and did not purchase a Charge Guard® service, EIPasoTel will provide you telephone support for connectivity, and settings, on wireless networks created with the EIPasoTel-provided networking equipment for 30 days from the date of the networking equipment purchase, at no additional charge.

**9. Acceptable Use Policy.** All use of the Services will comply with the AUP, posted at <http://www.elpasotel.com/legal.html>. Among other things, the AUP prohibits sending unsolicited e-mail messages, including bulk commercial advertising or informational announcements (collectively, "Spam"). EIPasoTel may immediately terminate or suspend any account which EIPasoTel believes is transmitting or is otherwise connected with any Spam. Further, EIPasoTel may hold you liable for EIPasoTel's actual damages in any way arising from, or related to, any Spam transmitted by or in any way connected to you or your account, to the extent such actual damages can be reasonably calculated. If actual damages cannot be reasonably calculated, you agree to pay EIPasoTel liquidated damages of five U.S. dollars (\$5.00) for each piece of Spam transmitted from or otherwise connected with you or your account. You will not, however, be liable for actual or liquidated damages arising from Spam generated from you or your account if you establish that the Spam was sent as a result of a virus or worm or other malicious software infection and if you have taken reasonable actions to prevent and resolve such infections and stop the Spam.

**10. Privacy.** EIPasoTel may provide customer information to third parties or governmental entities when required, or permitted by law; to establish rights or obligations under this Agreement; or to protect EIPasoTel's or others' rights or property regarding our services or the services of other providers from fraudulent, abusive or unlawful use of, or subscription to, such services. Additionally, EIPasoTel, its affiliates and third-party vendors, may access and use information regarding your bandwidth usage and performance of your Equipment, Software, and Service to: (a) perform related registration (Equipment serial number, activation date, and WTN also provided to manufacturer), maintenance, support, and other service-quality activities and (b) verify AUP compliance and network performance.

EIPasoTel does not require or intend to access or use confidential health related information of Customer or Customer's clients (collectively "End Users") that constitutes Protected Health Information ("PHI"), as defined in 45 C.F.R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The obligation to comply with HIPAA is the sole responsibility of the Customer. Standard commercial telecommunications service providers acting as a conduit for such information are not considered "business associates" as defined in 45 CFR 160.103 under HIPAA. In its role as a conduit telecommunications service provider, HIPAA does not apply to EIPasoTel. Any exposure to End Users' PHI will be incidental to EIPasoTel's provision of Service and is not meant for the purpose of managing the PHI or creating or manipulating the PHI. Such incidental exposure is allowable under 45 CFR 164.502(a)(1)(iii) and, as such, EIPasoTel represents that it is not a "Business Associate" or "covered entity" under HIPAA for the purposes of this Agreement.

**11. Rates and Charges; Payment.**

(a) Rates and Charges. All Service and Equipment is provided to you at the MRCs and NRCs quoted to you during the ordering process and as set forth on <http://www.elpasotel.com/legal.html> at the time(s) you order Service and/or Equipment. You are responsible for any charges associated with the Service and Equipment, including without limitation Equipment purchase charges, monthly Service charges, and charges related to installation or activation, maintenance, delivery, shipping and handling, changes to Service, and Taxes.

You will not be eligible for any discounts or promotional offers other than those you qualify for at the time you order qualifying Service and/or Equipment, unless the discount or promotional offer specifically states that existing customers are eligible and in that instance you will receive the discount or promotional offer strictly in accordance with its terms. Customers who move Service or disconnect and reconnect Service may not be eligible for promotional pricing available to new customers. You may only take advantage of one special pricing promotion per Service per account during any twelve-month period.

(b) Payment.

(i) Billing. Charges are billed monthly with MRCs and NRCs billed in advance and usage and governmental charges billed in arrears. You will pay all billed charges by the due date set forth in your billing statement, as well as any Late Charge. You may be charged for each additional copy of your bill.

You will provide all information necessary for EIPasoTel to provide and bill for the Service and Equipment. You affirm that the information you supply to us is correct and complete and will promptly notify EIPasoTel whenever your personal or billing information changes. If you elect to pay by credit card, you are responsible for directly updating, or notifying EIPasoTel, of any

changes to your credit card (including, but not limited to card number, expiration date, billing address, or card status). You understand that false or incorrect information may result in Service provisioning or delivery delays or the suspension or termination of your Service.

(ii) *Disputes.* The billed rate will continue unless you call us promptly and inform us that the billed monthly rate is not the one quoted to you. You must give EIPasoTel notice of any dispute on your bill. If you pay the disputed amount you will receive interest at the lesser of the highest lawful amount for commercial transactions or 1% per month on any amounts EIPasoTel determines were wrongly charged to you. If you give notice of a billing dispute within 90 days of the billed date such interest will be from the due date to the date EIPasoTel credited back or refunded the wrongly charged amount. If you give notice after this 90-day period, such interest will be from the date EIPasoTel received your notice to the date EIPasoTel credited back or refunded the wrongly charged amount. You may be charged a Late Charge on any amounts withheld that are undisputed or ultimately determined to have been correctly charged. You will pay all EIPasoTel expenses incurred to recover such withheld amounts, including attorneys' fees.

(iii) *Credit Limits.* Access is subject to credit limits established by the issuer of your credit card and/or by EIPasoTel. A credit limit is applied to all accounts. Your access to the Service may be suspended if your balance exceeds the applicable credit limit unless prior arrangements have been made.

(iv) *Deposit.* EIPasoTel may reasonably modify the payment terms or require other assurance of payment, including a deposit, based on Customer's payment history, lack of established credit, or a material and adverse change in Customer's financial condition. Refunded deposit amounts will be credited to your account and any credit balance will be refunded. If you make a cash deposit, you will receive interest at the rate required in the state you receive Service, Equipment, or Software from date EIPasoTel received deposit until date EIPasoTel refunded the deposit.

(v) *Method of Payment.* Some Internet access services require you to pay by credit card. For those services, EIPasoTel currently accepts VISA, MasterCard or Discover. If you provide EIPasoTel your credit card information, you authorize EIPasoTel to automatically charge your credit card for charges that apply to your account. EIPasoTel will automatically charge your credit card on the billing due date shown on your billing statement. In the event you request a chargeback on your credit card of the amounts EIPasoTel has charged you, you may be subject to a chargeback fee. If EIPasoTel is unable to charge your credit card for any reason, the Late Charge will be twenty dollars (\$20.00). Additionally, you may be subject to Service suspension or account termination at EIPasoTel's discretion. You must not remit payment for the Services by funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate EIPasoTel to provide certain information or perform certain functions unless those functions and obligations are specifically included and agreed to by the parties elsewhere in this Agreement or in an Amendment to this Agreement.

## 12. Term and Termination.

(a) 30-Day Cancellation Policy. You may cancel Service and return the Equipment within 30 days following your order/purchase of such Service or Equipment and avoid payment of MRCs if: (i) you are a new Service customer, and either (ii) you notify EIPasoTel you wish to cancel Service because you do not agree with the terms and conditions of this Agreement, or (iii) you notify EIPasoTel you wish to cancel because you are not satisfied with the Service. Except as provided below, you must pay all NRCs related to canceled Service, including without limitation installation, maintenance and shipping charges. You must also pay MRCs related to canceled Service if you cancel Service and return Equipment more than 30 days after ordering. To return equipment, must bring it into the EIPasoTel office: 480 N. Peyton Highway, Colorado Springs, CO. You will receive billing credit for the Equipment purchase price made to EIPasoTel, if EIPasoTel receives your Equipment in new condition. No billing credit will be given for Equipment that is incomplete or not in new condition. If more than 30 days have passed since you purchased your Equipment from EIPasoTel, do not return your Equipment; you will not receive credit for it and it will not be returned to you. Existing customers, including those who make changes to their Service, or customers who cancel more than 30 days after ordering, are not eligible for the 30-day cancellation policy.

(b) Month-to-Month Term. Except otherwise specified herein, Service is offered on a monthly basis for a term that begins on the date your Service order is completed, ends on the last day of the billing cycle during which you placed the order for Service, and automatically renews monthly.

(c) Term Commitment and Early Termination Charge. IF YOU ORDER WIRELESS BROADBAND SERVICE, YOU AGREE TO MAINTAIN THAT SERVICE FOR THE ENTIRE TERM COMMITMENT PERIOD. IF YOU TERMINATE THAT SERVICE BEFORE THE END OF THE TERM COMMITMENT PERIOD YOU WILL BE REQUIRED TO PAY THE EARLY-TERMINATION CHARGE SET FORTH IN THE RATE CARD. THE EARLY-TERMINATION CHARGE IS NOT A PENALTY. RATHER, IT IS AN OFFSET OR RECOVERY OF ELPASOTEL COSTS RELATED TO EARLY TERMINATION AND THE DISCOUNTS ASSOCIATED WITH YOUR TERM COMMITMENT.

(d) Termination. You may terminate this Agreement and your use of the Services at any time and for any reason by calling EIPasoTel at 719-683-2501; **you cannot terminate your Service online or by e-mail.** EIPasoTel may terminate this Agreement, your password, your account, and/or your use of the Service, without notice and for any reason, including, without limitation, if you fail to pay any charges when due or if EIPasoTel believes you or someone using your account has violated this Agreement. EIPasoTel may, but is not obligated to, send notice of any violations to you before termination. Additionally, EIPasoTel reserves the right to terminate access to Service for any Customer account which has been inactive for 6 months. When an account has been terminated or suspended, the reactivation of the old account or the acquisition of a new account will only be allowed by the express approval of EIPasoTel and is subject to applicable charges. If Service is terminated by you or EIPasoTel prior to the end of a monthly term, you will be required to pay a prorated amount of the MRCs for the month and the full amount for any NRCs or other charges for the month and any accrued but unpaid amounts related to Service and Equipment through the effective date of termination.

(e) Deletion of Data upon Termination. Upon termination of your Service, EIPasoTel may immediately delete all data, files, and other information stored in or for your account without notice.

**13. Limitation of Liability.** TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

(a) YOU ASSUME TOTAL RESPONSIBILITY FOR USE, RESULTS OF USE, AND PERFORMANCE OF THE SERVICE, SOFTWARE, EQUIPMENT, AND THE INTERNET AND ACCESS THE SAME AT YOUR OWN RISK. ELPASOTEL EXERCISES NO CONTROL OVER AND DISCLAIMS ANY RESPONSIBILITY FOR THE CONTENT CREATED OR ACCESSIBLE USING THE SERVICE, SOFTWARE, OR EQUIPMENT AND FOR ACTIONS TAKEN ON THE INTERNET. ELPASOTEL RECOMMENDS YOU DO NOT USE THE SERVICE IN HIGH RISK ACTIVITIES WHERE AN ERROR COULD CAUSE DAMAGE OR INJURY.

(b) REGARDLESS OF THE LEGAL THEORY UNDER WHICH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER ELPASOTEL HAS BEEN ADVISED OF THE POSSIBILITY OF LIABILITY, LOSS, OR DAMAGE, ELPASOTEL, ITS AFFILIATES, AGENTS, AND CONTRACTORS WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, LOSS OF BUSINESS, LOST OR IMPUTED PROFITS OR REVENUES, LOSS OF INFORMATION OR DATA, COSTS OF COVER, INTERRUPTED SERVICE, OR RELIANCE UPON THE SOFTWARE AND/OR ASSOCIATED DOCUMENTATION) ARISING OUT OF OR RELATED TO THIS AGREEMENT, SERVICE, SOFTWARE, OR EQUIPMENT EVEN IF ANY SUCH DAMAGES ARE CAUSED BY ELPASOTEL, ITS AFFILIATES, AGENTS, OR CONTRACTORS.

(c) THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE LIMITED WARRANTY IN SECTION 15 BELOW IS THE ONLY REMEDY AVAILABLE WITH RESPECT TO THE EQUIPMENT. WITH REGARD TO ANY SERVICE RELATED CLAIM FOR DAMAGES THAT IS NOT LIMITED BY THIS SECTION 13, YOUR EXCLUSIVE REMEDIES FOR SUCH CLAIM WILL BE LIMITED TO THE TOTAL MRCs OR USAGE CHARGES PAID BY YOU TO ELPASOTEL FOR THE AFFECTED SERVICE IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. ELPASOTEL'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL MRCs AND USAGE CHARGES PAID BY YOU TO ELPASOTEL UNDER THIS AGREEMENT IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM ("DAMAGE CAP").

(d) ELPASOTEL DISCLAIMS ALL LIABILITY OR RESPONSIBILITY FOR ACTS AND OMISSIONS OF OTHER PROVIDERS. ADDITIONALLY, IF PART OF THE SERVICE IS PROVIDED BY A THIRD-PARTY AND THE THIRD-PARTY FAILS TO PROVIDE THAT SERVICE, ELPASOTEL WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DEFICIENCIES IN OR LACK OF SERVICE.

(e) ELPASOTEL DISCLAIMS ALL LIABILITY OR RESPONSIBILITY IF SERVICE CHANGES REQUIRE EQUIPMENT CHANGES, DEGRADE EQUIPMENT PERFORMANCE OR SERVICE PERFORMANCE WITH THE EQUIPMENT, OR MAKE EQUIPMENT OBSOLETE.

(f) As part of providing Service we may access your premises, computer hardware and software, and your networking and Internet-related equipment. We do not represent or warrant that the technicians doing such work have any special expertise regarding your computer or such equipment. EIPasoTel liability is limited to damage arising from willful misconduct or grossly negligent acts of EIPasoTel technicians in accessing your premises, computer, or networking and Internet-related equipment up to \$500. This is your sole remedy for such activity and neither EIPasoTel nor its affiliates, agents, or contractors is liable for any other damages, loss or destruction regardless of the theory, whether direct, indirect, incidental, special or consequential. This is a limitation upon the remedy for such grossly negligent or willful misconduct, and is NOT part of any benefit under this Agreement.

(g) Any claim or dispute arising out of or relating to this Agreement must be brought within one year after the cause of action arises.

**14. Personal Injury, Death, and Property Damage.** ELPASOTEL'S LIABILITY TO YOU ON ACCOUNT OF ANY ACT OR OMISSION OF ELPASOTEL RELATED TO THIS AGREEMENT WILL BE LIMITED TO ACTUAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY (AS LIMITED IN SECTION 13 ABOVE), OR BODILY INJURY OR DEATH DIRECTLY CAUSED BY ELPASOTEL'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. EXCEPT FOR DAMAGES DESCRIBED IN THE PREVIOUS SENTENCE, YOU WILL NOT BE ENTITLED TO ANY OTHER DAMAGES, INCLUDING INDIRECT OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION. ELPASOTEL AND OUR AFFILIATES, AGENTS, AND CONTRACTORS WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR MODIFICATIONS TO, OR LOSS OR DESTRUCTION OF, ANY OF YOUR SOFTWARE, FILES, DATA OR PERIPHERALS, REGARDLESS OF THE CAUSE. Damages under this Section will be subject to the limitation of liability in this Agreement but not the Damage Cap. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

### 15. Warranty.

(a) Limited Warranty for Equipment. EIPasoTel extends a Limited Warranty to the original purchaser (you) for the Equipment. The terms of the Limited Warranty are set out below (the "Limited Warranty") and are part of this Agreement. A copy of the Limited Warranty is also available upon request from EIPasoTel at no charge. Nothing in this Agreement will be deemed to alter the terms of the Limited Warranty. THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE LIMITED WARRANTY IS THE ONLY REMEDY AVAILABLE WITH RESPECT TO THE EQUIPMENT, WHETHER ARISING UNDER THE LIMITED WARRANTY, UNDER A LEGALLY EFFECTIVE IMPLIED WARRANTY OR OTHERWISE.

#### LIMITED WARRANTY

(i) This Equipment is warranted by EIPasoTel to the person originally purchasing the Equipment, and no others, to be free of manufacturing defects: (A) for a period of one year from the date of Equipment purchase (for networking equipment purchased from EIPasoTel (other than a modem) if Charge Guard service is also purchased and/or modems purchased from EIPasoTel); and (B) for a period of 30 days from the date of Equipment purchase (for networking equipment (other than a modem) purchased from EIPasoTel if Charge Guard service is not purchased). Notwithstanding the foregoing, any unexpired limited warranty period for networking equipment will expire immediately upon termination of your Charge Guard service and you will have no further warranty for such equipment.

(ii) This Limited Warranty covers only the basic operations of the Equipment, and EIPasoTel does not warrant the compatibility of the Equipment with any computer, operating system, or networking equipment, nor does this Limited Warranty cover any defect present in any computer, network, or operating or other system. If the Equipment malfunctions due to a manufacturing defect, before the one year term expires, EIPasoTel will replace or repair it, at its option, without charge, so long as (A) you notify EIPasoTel by calling the correct number set forth in Section 15(a)(vi) below, report that the Equipment's basic operations are not functioning properly, and cooperate with the EIPasoTel representative to evaluate the circumstances; (B) the date you so notify EIPasoTel is within the warranty period specified above; and (C) the Equipment is returned to EIPasoTel. EIPasoTel will either bring replacement Equipment to you and pick up the defective Equipment, or you may return the Equipment to EIPasoTel's office at 480 N. Peyton Highway, Colorado Springs, CO and receive replacement Equipment. No other person or party is authorized to provide repair or replacement service pursuant to this Limited Warranty.

(iii) *Repaired/Replacement Equipment.* EIPasoTel may use new or reconditioned parts to repair the Equipment, or replace the Equipment with new, repaired, or reconditioned Equipment, all at the sole discretion of EIPasoTel. This Limited Warranty will apply to the replaced or repaired Equipment, for ninety (90) days or until the end of the warranty period set forth herein, whichever is longer. All replaced products or parts become the property of EIPasoTel and will not be returned.

(iv) *Exceptions and Exclusions.* This Limited Warranty does not cover defects due to defacement, misuse, abuse, neglect, improper use, improper electrical voltages or current, repairs by others, alterations, modifications, accidents, fire, flood, vandalism, acts of God or the elements. No advice or information given by EIPasoTel, its affiliates, its contractors, or their respective employees will vary the terms of the Limited Warranty.

(v) *No Other Express Warranties and Limitation of Implied Warranties.* This Limited Warranty is the only express warranty extended by EIPasoTel in connection with the Equipment. Implied warranties which may not be disclaimed are limited in time to the duration of this Limited Warranty, and all remedies for all such implied warranties are restricted to the remedy and procedure set forth for this Limited Warranty. This Limited Warranty is in lieu of all other warranties, however arising, and all such other warranties are hereby disclaimed. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

(vi) This Limited Warranty is extended to the person originally purchasing the Equipment, and no others, by:

EIPasoTel, 480 N. Peyton Highway, Colorado Springs, CO  
Please call 719-683-2501

If you have questions or comments, call or write us at the above number or address.

(vii) This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

(b) Disclaimer of Warranties. THE SERVICE, SOFTWARE, AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT FOR THE LIMITED WARRANTY IN THE PRECEEDING SECTION, ELPASOTEL PROVIDES THE SERVICE, SOFTWARE, AND EQUIPMENT WITHOUT WARRANTIES OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INTERFERENCE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING OR COURSE OF TRADE AND DISCLAIMS ANY SUCH WARRANTIES. ELPASOTEL DOES NOT WARRANT THAT THE SERVICE OR SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NO ADVICE OR INFORMATION GIVEN BY ELPASOTEL, ITS AFFILIATES, ITS AGENTS, OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL VARY THE TERMS OF THE LIMITED WARRANTY OR THIS AGREEMENT OR CREATE ANY WARRANTY. ELPASOTEL IS NOT RESPONSIBLE FOR DEFACEMENT, MISUSE, ABUSE, NEGLIGENCE, IMPROPER USE, IMPROPER ELECTRICAL VOLTAGES OR CURRENT, REPAIRS BY OTHERS, ALTERATIONS, MODIFICATIONS, ACCIDENTS, FIRE, FLOOD, VANDALISM, ACTS OF GOD, OR THE ELEMENTS. ELPASOTEL TECHNICAL SUPPORT IS NOT WARRANTED AND IS USED AT YOUR OWN RISK. ELPASOTEL MAKES NO WARRANTY REGARDING TRANSACTIONS EXECUTED AND CONTENT AND INFORMATION ACCESSED BY USING THE SERVICE. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BY APPLICABLE LAW.

**16. Indemnification.** You agree to indemnify, defend, and hold harmless EIPasoTel and its affiliates, contractors, officers, directors, employees, or agents from any and all third-party claims, liabilities, costs, and expenses, including reasonable attorney fees and punitive damages arising from: (a) violation of any provision of this Agreement by you or others who use your Service, Software, and/or Equipment; (b) installation, modification, or use of the Service, Software, and/or Equipment by you and/or any parties who use your Service, Software, and/or Equipment, with or without your permission; (c) claims for libel, slander, invasion of privacy, or infringement of any intellectual property rights arising from the use of the Service, Software, or the Internet; (d) patent infringement arising from your acts combining or using the Service in connection with facilities or equipment (circuit, apparatus, system or method) furnished by you;

(e) negligent acts, errors, or omissions by you; or (f) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the gross negligence or willful misconduct of EIPasoTel.

**17. Dispute Resolution and Arbitration; Governing Law.** PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH MANDATORY ARBITRATION WITH A FAIR HEARING BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION.

(a) Arbitration Terms. You agree that any dispute or claim arising out of or relating to the Services, Equipment, Software, or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration. The sole exceptions to arbitration are that either party may pursue claims: (1) in small claims court that are within the scope of its jurisdiction, provided the matter remains in such court and advances only individual (non-class, non-representative, non-consolidated) claims; and (2) in court if they relate solely to the collection of any debts you owe to EIPasoTel.

(i) Arbitration Procedures. Before commencing arbitration you must first present any claim or dispute to EIPasoTel in writing to allow EIPasoTel the opportunity to resolve the dispute. If the claim or dispute is not resolved within 60 days, you may request arbitration. The arbitration shall be conducted by the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitration of the dispute. Colorado state law, without regard to choice of law principles, shall otherwise govern and apply to any and all claims or disputes. All face-to-face proceedings shall be conducted at a location which is reasonably convenient to both you and EIPasoTel. Arbitration is final and binding. Any arbitration shall be confidential, and neither you nor EIPasoTel may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. The arbitrator may award any relief or damages that a court could award, except an arbitrator may not award relief in excess of or contrary to what this Agreement provides. Judgment on any arbitration award may be entered in any court having jurisdiction.

(ii) Costs of Arbitration. The party requesting arbitration must pay the applicable AAA filing fee, except that if you are an individual using the Services for household or personal use and you initiate arbitration against EIPasoTel: (1) you must pay one-half the arbitrator's fees up to a maximum of \$125 if your claim does not exceed \$10,000; (2) you must pay one-half the arbitrator's fees up to a maximum of \$375 if your claim is more than \$10,000 but less than \$75,000; and (3) you must pay an Administrative Fee in accordance with the AAA's Commercial Fee Schedule if your claim exceeds \$75,000 or if your claim is non-monetary. Except as provided in the preceding sentence, each party shall pay its own expenses of the arbitration, including the expense of its own counsel, witnesses, and presentation of evidence at the arbitration. If any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorneys' fees.

(b) Waiver of Jury and Class Action. By this Agreement, both you and EIPasoTel are waiving rights to litigate claims or disputes in court (except small claims court as set forth in paragraph (a) above). Both you and EIPasoTel also waive the right to a jury trial on your respective claims, and waive any right to pursue any claims on a class or consolidated basis or in a representative capacity.

**18. Notices.** Except as otherwise provided herein, all required notices to EIPasoTel must be in writing and sent to 1801 California Street, Suite 900, Denver, Colorado 80202; Facsimile #: 1 888-778-0054; Attn.: Legal Department. Except as otherwise provided herein, you agree that all required notices to you will be provided by one or more of the following: posting, bill message, bill insert, postcard, letter, call to your billed telephone number, **or e-mail to an address provided by you when you ordered Service or Equipment.** You agree to provide EIPasoTel with any and every change to your e-mail address by calling 719-683-2501. Except as otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by facsimile so long as duplicate notification is also sent in the manner set forth in subsection (b).

**19. General.** If any term of this Agreement is held invalid, illegal or unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder. All terms of this Agreement that should by their nature survive the termination of this Agreement will so survive. EIPasoTel will not be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by a Force Majeure Event. This Agreement, together with the other agreements and policies and posted information referenced herein, constitutes the entire agreement between you and EIPasoTel with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written agreements or understandings relating to the subject matter hereof. In the event of any inconsistency between this Agreement and any other documents exchanged between you and EIPasoTel related to the Service, Software, or Equipment, the provisions of this Agreement will control.

Please call EIPasoTel at 719-683-2501 if you have any questions regarding your account.

**Where required by law, customers who cancel their Service within the first three days, or seven days, as applicable, following acceptance of this Agreement will be refunded all charges incurred with respect to their account.**