

UPSHUR COUNTY EMERGENCY SERVICES DISTRICT NO. 1

MAY 8, 2023

7:00 P.M.

MINUTES

The regular meeting of the Upshur County Emergency Services District No. 1 Board of Commissioners was held on May 8, 2023, at 7:00 p.m. at the West Mountain Fire Station, 7613 Pacal Road, Gilmer, Texas 75645.

- 1) **Open meeting.** The meeting was opened at 7:05 p.m. by Michael Kuza.
- 2) **Call meeting to order, Roll Call of Board and establish quorum.** Michael Kuza called the meeting to order. Michael Kuza determined a quorum was present with Michael Kuza, Scott Mischnick, Cloddie Henson, and Kenny Southwell present. Bobby Jenkins arrived at 7:17 p.m.
- 3) **Public comment.** Shelby Henderson announced CPR classes would be available for anyone interested. Michael Kuza announced that he had submitted the report that is due annually to the Comptroller. Chief Jerry Taylor commented regarding his issue with the Board spending taxpayer money on an air tank with one being available at his station. He also commented regarding the concerns with dispatching and that all calls are recorded at the station.

4) **Consider and take action on approval of:**

A. The minutes of the previous meetings.

Kenny Southwell made a motion with a second by Cloddie Henson to approve the minutes of the previous meeting held April 10, 2023. Motion carried 4-0. Unanimous vote in favor.

B. Accounts payable.

Cloddie Henson made a motion with a second by Kenny Southwell to pay the following bills:

ETEX Telephone	\$ 104.95
Terri Ross (April bookkeeping/clerical)	\$ 750.00
Terri Ross (reimbursement office supplies)	\$ 100.49
City of Gilmer (April Dispatching)	\$ 3,000.00
VFIS (Add 2024 Deed South FR)	\$ 1,072.88
VFIS (Add 2008 Brush vehicle)	\$ 298.90

Motion carried 4-0. Unanimous vote in favor.

- 5) **Discuss and take action regarding Harmony Consolidated VFD station.** After speaking with attorneys and the Upshur County Judge, Kenny Southwell announced that we needed to have blueprints drawn and then go out for bids. Notice for bids must be posted in the newspaper for 3 weeks in advance. No action.
- 6) **Discuss and take action regarding logo design for the Upshur County ESD #1.** Three designs were submitted to the Board for review. Scott Mischnick made a motion with a second by Kenny Southwell to adopt logo design #3. Motion carried 5-0. Unanimous vote in favor.
- 7) **Discuss and take action regarding the renewal of the FCC license.** Motion by Scott Mischnick with a second by Kenny Southwell to hire Mobile Communications America in the amount of \$2,150.00 per quote submitted. Motion carried 5-0. Unanimous vote in favor. (SEE ATTACHED)
- 8) **Discuss and take action regarding sales tax estimate report.** Simon VanDyk with Touchstone Direct Services made a presentation to the Board regarding the services he would provide to the District if the ESD chose to contract with him for a sales tax election. No action.
- 9) **Discuss and take action on signing Gilmer National Bank forms regarding the old Glenwood VFD accounts.** Motion by Bobby Jenkins to sign the forms at Gilmer National Bank for the ESD to take control of these two accounts in the Glenwood VFD name. ~~Scott Mischnick made a motion opposing the action to sign forms to take control of these accounts.~~ After discussion, Bobby Jenkins withdrew his motion. No action. mk
- 10) **Discuss and take action on adopting guidelines for dispatch.** No action.
- 11) **Report/discuss on training school and future use of drop tanks, turbo draft options.** No action. Place this item on next month agenda.
- 12) **Discuss annual department inspection reports.** No action.
- 13) **Discuss and take action to update Policy #5 regarding submission of monthly expense reports and setting a deadline to submit electronically.** Motion by Kenny Southwell with a second by Bobby Jenkins to update Policy #5 to include setting the deadline for submitting monthly expense reports electronically by the July meeting. Motion carried 3 for – 2 against.
- 14) **Discuss and take action to pay bills for Bettie VFD as submitted and approved.** Motion by Bobby Jenkins with a second by Kenny Southwell to pay Bettie VFD in the amount of \$1,817.04. Motion carried 4-0 with Michael Kuza abstaining.

- 15) **Discuss and take action to pay bills for East Mountain VFD (station #1 and station #2) as submitted and approved.** Motion by Kenny Southwell with a second by Cloddie Henson to pay the bills for East Mountain VFD (station #1 and station #2). After discussion, Kenny Southwell withdrew his motion. No further action.
- 16) **Discuss and take action to pay bills for Ewell VFD as submitted and approved.** Motion by Kenny Southwell with a second Scott Mischnick to pay Ewell VFD in the amount of \$921.99. After discussion regarding the deduction of the \$730.00 for the invoice paid to Ewell in November for pump testing, Kenny Southwell withdrew his motion. The \$730.00 will be discussed with the auditor and handled as recommended. Motion by Kenny Southwell with a second by Cloddie Henson to pay Ewell VFD in the amount of \$1,651.99. Motion carried 5-0. Unanimous vote in favor.
- 17) **Discuss and take action to pay bills for Harmony VFD as submitted and approved.** Motion by Scott Mischnick with a second by Kenny Southwell to pay Harmony VFD in the amount of \$1,243.27. Motion carried 5-0. Unanimous vote in favor.
- 18) **Discuss and take action to pay bills for Pleasant Grove VFD as submitted and approved.** Motion by Cloddie Henson with a second by Kenny Southwell to pay Pleasant Grove VFD in the amount of \$575.92. Motion carried 4-0 with Scott Mischnick abstaining.
- 19) **Discuss and take action to pay bills for Pritchett VFD as submitted and approved.** Motion by Scott Mischnick with a second by Cloddie Henson to pay Pritchett VFD in the amount of \$987.21. Motion carried 5-0. Unanimous vote in favor.
- 20) **Discuss and take action to pay bills for Simpsonville VFD as submitted and approved.** None submitted.
- 21) **Discuss and take action to pay bills for West Mountain VFD as submitted and approved.** Motion by Scott Mischnick with a second by Kenny Southwell to pay West Mountain VFD in the amount of \$2,095.78. Motion carried 5-0. Unanimous vote in favor.
- 22) **Discuss and take action on any insurance claim pay outs to rural departments.** No action.
- 23) **Discuss and take action on any grant reimbursement requests submitted.** No action.
- 24) **Discuss and take action on any budget amendments.** No action.
- 25) **Items to be considered for next month's agenda.** #11 above; Updated Policy #5 for signatures only; training courses including an 8 hour traffic course
- 26) **Adjournment.** Motion by Cloddie Henson and second by Bobby Jenkins to adjourn. Motion carried 5-0. Unanimous vote in favor.

Michael Keys
Presiding Officer Signature
Title: President

Date: 6-12-23



Mobile Communications America
 2121 Old Henderson Hwy
 Tyler, TX 75702
 Phone: 844-276-7705
 Fax:

QUOTATION
727000316

Bill To:
 Upshur County TX
 PO Box 730
 Gilmer, TX 75644

Ship To:
 Upshur County TX
 PO Box 730
 Gilmer, TX 75644

Contact: Marc Nichols
Contact #:

Contact: Marc Nichols
Contact #:

Date: 04/21/2023		Customer #: 123382		Terms: NET 30 DAYS		
Qty	Item	Description	U/M	Unit Price	Extended	
1	FCC-LICENSE	FCC Filing Fees **FCC FEES ARE NON-REFUNDABLE ** Estimated Cost for Existing Frequencies 011 New Freq Below 450 MHz 153.8900(PF) MO/FX1 154.2530(PF) FB2@ @ location 2 and 4 154.2800(PF) FB @ location 3 12 Form 601 Application Fee	EA	1,400.00	1,400.00	
5	FCC-LICENSE	FCC Filing Fees **FCC FEES ARE NON-REFUNDABLE ** Letter of Concurrence Preparation x 5 LOC's will be require for 154.235 from KNFX309 Kilgore Police Department .WRWN388 EMORY, CITY OF and WPFY578 BOWIE CO FIRE FIGHTERS ASSOCIATION LOC's will be require for 153.890 from WPPY928 ORE CITY, CITY OF and WPLE445 MINEOLA, CITY OF	EA	150.00	750.00	

Accepted By: _____ **Date:** _____

Please contact customer representative by phone or email with any questions:
 Customer Rep: George Arnold
 Phone #:
 Email: georgearnold@callmc.com

Subtotal : \$2,150.00
 Tax :
 Total Quote : \$2,150.00

Quote Valid for 30 Days.

Effective August 1, 2018, all credit card payments are subject to a 2% convenience fee

All orders are subject to partial shipment and partial invoice

Tax calculations provided are estimates and are subject to change.



MOBILE COMMUNICATIONS AMERICA, INC. TERMS AND CONDITIONS

"MCA" shall mean Mobile Communications America, Inc. and "Buyer" shall mean the customer named in the applicable Order (defined below). "Parties" shall mean MCA and Buyer, collectively, and "Party" shall mean MCA or Buyer, individually. "Products," "Equipment" or "Services" shall individually or collectively mean the equipment and parts (with respect to Products and Equipment) and services (with respect to Services) referred to in the applicable Order. These Terms and Conditions ("T&Cs") shall apply to and form a part of all orders for Services and, if applicable, Products, issued by Buyer and expressly accepted by MCA (each, an "Order" and together with the T&Cs, the "Agreement"). The Agreement, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these T&Cs and the Order, these T&Cs shall govern, unless the Order expressly states that the terms and conditions of the Order shall control. Neither the transactions contemplated hereby and/or the Agreement, nor any Order consummated between the Parties, are intended to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind. The Parties shall act as independent contractors at all times and neither Party shall act as an agent for the other, and the employees of one Party shall not be deemed employees of the other Party. Buyer shall place an Order with MCA in compliance with these T&Cs.

MCA reserves the right, without notice to Buyer, to provide any Product through, or cause any of its obligations under these T&Cs to be performed by, any of its Affiliates. In such case, the work shall be treated as a separate agreement between the Buyer and Affiliate, governed by these T&Cs with the Affiliate taking the place of MCA for all purposes herein. Buyer is to make payment directly to the Affiliate for such Orders. For the purposes of these T&Cs, "Affiliate" shall mean, with respect to a Party, any entity which owns or controls, is owned or controlled by, or is under common ownership or control with, such Party. In addition, MCA may subcontract the Services provided to Buyer to a third party without Buyer's consent, provided that such subcontracting will not release MCA from any of its obligations under the Agreement.

MCA's acceptance of an Order is expressly conditioned upon Buyer's consent to these T&Cs. These T&Cs prevail over any other terms and conditions or other provisions contained in Buyer's documentation whether pre-printed or attached to any Order or any other documentation exchanged by the Parties. If these T&Cs are not acceptable to Buyer, Buyer must so notify MCA prior to Order placement by specific written objection. Buyer's consent to these T&Cs will be conclusively established by Buyer's acceptance of a quote from MCA, unless written objections are received prior to Order placement. No waiver, alteration or modification of these T&Cs shall be binding on MCA unless in writing and signed by an Executive Officer of MCA. The quantity, quality and description of the Equipment shall be as specified in an applicable Order and/or any applicable specification agreed to in writing by the Parties. Solely with respect to Services, MCA's acceptance of an Order is also expressly subject to MCA's inspection of the site where the Services will be performed and its suitability for the Services in MCA's sole and absolute discretion.

QUOTATION DETAILS: All quotations reflect U.S. Dollars. All payments must be made in U.S. Dollars. If Buyer makes payment by check, the check must be drawn on a US bank. Payment shall not be deemed received by MCA for any purpose hereunder, including MCA's security interest in the Products, until such time as MCA receives cleared available funds. The price for the Services and, if applicable, the Products, or the manner or method by which such prices shall be set or finally determined, shall be set forth in the Order. Buyer acknowledges that Product prices may fluctuate due to manufacturer costs, supply chain variances or Force Majeure Events (hereinafter defined). As such, MCA reserves the right to adjust Services and/or Product prices accordingly and/or cancel Orders at any time. MCA will make reasonable effort to provide Buyer timely notice of such changes. The right to refuse to accept any Orders for any reason is reserved by MCA even if a previous quotation has been made.

TERMS AND METHODS OF PAYMENT: Payment shall be due and payable thirty (30) days from the date of invoice. Payment shall not be withheld on account of any claim by Buyer against MCA. If Buyer disputes any portion of a MCA invoice, Buyer shall pay the undisputed portion when due and MCA and Buyer shall work to resolve the dispute within thirty (30) days. Nonpayment or delay in payment by Buyer shall be considered a breach of the Agreement.

Each Order, assuming due fulfillment thereof, shall be considered a separate and independent transaction and payment therefor shall be made accordingly. If services, installation and/or shipments (as applicable to a particular Order) are delayed by the Buyer, payments shall be due on the date when MCA is prepared to perform (or cause a third party to perform). Products held for the Buyer shall be at the risk and expense of the Buyer. Products shipped as exchanges will be invoiced for full value until the exchange is complete and Product has been returned to MCA in good and working condition, at which point a credit for the full value will be given to Buyer. If the financial condition of the Buyer at any time does not, in MCA's sole and absolute discretion, justify continuance of performance or shipment on the terms of payment specified, MCA may require full or partial payment from the Buyer in advance in MCA's sole and absolute discretion. In the event of bankruptcy or insolvency of the Buyer, or in the event any proceedings are brought by or against the Buyer under any bankruptcy or insolvency laws, MCA shall be entitled to cancel any Order then outstanding and shall receive reimbursement for any expenses incurred by it in connection with such cancellation and any applicable cancellation charges.

Buyer grants to MCA a purchase money security interest in the Products, including any software provided hereunder, and to the proceeds thereof until the full price and all other liabilities due to MCA are satisfied. Upon payment in full to MCA, title to the Products shall pass to Buyer free of such security interest. Buyer hereby authorizes MCA to take any and all steps it determines are necessary to cause its security interest to be maintained and perfected, including, without limitation, the filing of any financing statements, and any amendments and/or renewals thereof. Any invoiced amount which is not paid in accordance with these T&Cs shall be considered overdue. MCA shall be entitled, without prejudice to any of its other rights or remedies, after a seven (7) day grace period to charge Buyer with interest at the rate of 1.5% of total past due amount. Buyer shall not deduct from any invoice any amounts, except such amounts as are set forth in any written credit memorandum (or equivalent) issued by MCA to Buyer prior to the due date of the outstanding invoice. Upon any default or breach by Buyer hereunder and to the extent applicable, MCA shall have all of the rights and remedies of a secured party under the Uniform Commercial Code or other applicable law, which rights shall be cumulative. MCA shall have the right to enter Buyer's premises and repossess and remove any Products if full payment has not been timely received by MCA.



Buyer shall not and acknowledges that it will have no right, under these T&Cs or any other agreement, document, or law to withhold, offset or debit any amounts owed or due to MCA or any of its Affiliates, whether under these T&Cs or any other agreement between the Parties against any other amount owed or due to MCA or any of its Affiliates under any other document or agreement between MCA and/or any of its Affiliates, on the one hand, and Buyer and/or any of its Affiliates, on the other.

STANDARD TERMS WITHOUT CREDIT: If Buyer has not established preliminary credit with MCA, prepayment of full amount under the Agreement is required, unless such requirement is waived by MCA in its sole and absolute discretion.

STANDARD TERMS WITH CREDIT:

- A. Up to \$50,000.00 - Net within thirty (30) days after date of invoice submitted by MCA.
- B. Over \$50,000.00 require the below milestone payments:
 - 40% down once an Order is accepted by MCA
 - 50% once materials shipped for Buyer's use
 - 10% within thirty (30) days of the earlier of invoice or completion of installation, if applicable.

NON-STANDARD CREDIT TERMS: Negotiable prior to Order acceptance.

NON-STANDARD PAYMENT TERMS:

- A. Cash
- B. Credit card payments by customers with credit terms with MCA

Non-standard payment terms may be subject to convenience fees, in MCA's sole and absolute discretion.

LATE FEES: Without prejudice to any other rights or remedies of MCA, if payment is outstanding after a seven (7) day grace period, 1.5% of the total past due amount will be added to the balance.

TAXES: The prices stated in any quote or Order may not include any provision for sales, use, excise, or similar taxes. The amount of any and all such present or future taxes or other government charges applicable to the Services and, if applicable, the Products will be added by MCA to the sales price and shall be paid by the Buyer, unless Buyer provides MCA with a tax-exemption certificate acceptable to the taxing authority. If MCA is required to pay or bear the burden of any excluded tax, the prices set forth herein shall be increased by the amount of such tax and any interest or penalty assessed, and Buyer shall pay to MCA the full payment of any such increase no later than ten (10) days after receipt of invoiced charges.

DELIVERY: Unless otherwise specifically stated in an agreement between the Parties, delivery of all Products shall be FOB MCA's shipping facility or at MCA's option, FOB point of manufacture. Ground shipment charges through carrier chosen by MCA, unless carrier agreed upon by Buyer and MCA, will be prepaid and added to invoice. Title and risk of loss or damage shall pass to Buyer upon MCA's delivery of the goods to a common carrier or other delivery agency for shipment to Buyer. MCA assumes no liability in connection with shipment nor shall the carrier in any way be construed to be an agent of MCA. MCA shall not be liable for any damages or penalty for delay caused by transportation or failure to give notice of such delay. The Equipment shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, if applicable, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course. The Equipment shall be delivered to the delivery address stated in the order on the date or within the period stated in the order, in either case during the Buyer's usual business hours. If MCA is unable to make deliveries as specified by Buyer, MCA shall notify Buyer immediately. Insurance is not included in the price unless requested by Buyer at the time of order placement. It shall be the responsibility of the Buyer to file claims with the carrier for loss or damage to goods while in transit.

INSPECTION: MCA shall take any steps necessary to comply with any reasonable request by the Buyer to inspect or test the Products prior to installation. If as a result of inspection or testing the Buyer is not satisfied that such Products will perform as anticipated per the written guidelines of the applicable manufacturer of a particular Product (each, a "Manufacturer"), and if the Buyer so informs MCA within seven (7) days of inspection or testing, MCA shall take commercially reasonable steps as are necessary to ensure compliance. Failure to so inform MCA within such seven (7)-day period shall constitute Buyer's irrevocable waiver of its rights under this Section.

LIMITED WARRANTY:

- A. **MANUFACTURER'S WARRANTIES.** Manufacturers of the Products provide warranties, including, a software warranty and a license warranty, of varying periods and coverage (collectively, "Manufacturer Warranties"). Written copies of Manufacturer Warranties are available upon request. Buyer acknowledges and agrees that MCA shall have no obligation whatsoever in respect of Manufacturer Warranties and makes no warranty with respect to any goods or supplies supplied by any third party.
- B. **LIMITED SERVICES WARRANTY.** MCA warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Agreement ("Limited Services Warranty"). The Limited Services Warranty shall survive for a period of twelve (12) months following the date Services commences (the "Warranty Period"). The Limited Services Warranty is not assignable or transferrable to any third party (including any Affiliate of Buyer).
- C. **WARRANTY DISCLAIMER. EXCEPT FOR THE LIMITED SERVICES WARRANTY, MCA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO SERVICES AND/OR ANY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; OR (E) OTHER WARRANTY WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
- D. **WARRANTY CONDITIONS.** MCA shall not be liable for a breach of the Limited Services Warranty unless: (A) Buyer gives written notice of breach thereof, reasonably described, to MCA within twenty (20) days of the time when Buyer discovers or ought to have discovered the breach and such notice is given during the Warranty Period and (B) MCA reasonably verifies Buyer's claim that the Services was defective. MCA shall not be liable for a breach of the Limited Services Warranty if (i) Buyer makes any further use of such Products after giving such notice; (ii) the defect arises because Buyer failed to follow MCA's oral or written instructions as to the storage, installation,



commissioning, use or maintenance of the Products; or (iii) Buyer alters or repairs such Products without the prior written consent of MCA.

- E. **EXCLUSIVE REMEDIES.** Subject to Buyer's compliance with the paragraph titled "Warranty Conditions" above, Buyer's sole and exclusive remedy for breach of the Limited Services Warranty shall be, in MCA's sole discretion, (i) to repair or re-perform the applicable Services or (ii) to credit or refund the price of such Services at the pro rata contract rate. **SUCH REMEDY SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND MCA'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED SERVICES WARRANTY.**

SHORTAGES AND DEFECTS OF PRODUCTS: Buyer will be deemed to have accepted the Products upon shipment unless MCA is notified in writing of the rejection of any unit of the Product. Any claim of shortages or defects must be made within three (3) days of delivery to Buyer. Claims must be provided to MCA in writing and must detail for MCA the specific reason(s) for rejection. Buyer shall afford MCA prompt and reasonable opportunity to inspect all Products against which any claim is made. Buyer shall not return any Equipment to MCA without prior authorization. After MCA has reviewed the rejection notice and authorized the return, Buyer will return the unit to MCA (or MCA's designee) in the same condition as when it was received. All returns must be in the original container and packaging along with all accessories and instructions included must be shipped freight prepaid. Notwithstanding the foregoing, (a) in the event MCA reasonably determines that the basis for rejection relates to a matter covered by a Manufacturer Warranty, MCA shall have no liability under this Section other than to inform Buyer of such determination.

FORCE MAJEURE: MCA shall not be responsible for any failure to perform due to causes beyond its reasonable control, such as, but not limited to, acts of God, flood, fire, earthquake, explosion, acts of the Buyer, acts of civil or military authority, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, embargoes or blockades, national or regional emergency, judicial action, pandemic, epidemic, default of subcontractors or vendors, labor disputes, accident, failure or delays on transportation, and inability to obtain necessary power, labor or materials (each, a "Force Majeure Event"). In the event of any delay due to such causes, or other difficulties, (whether or not similar in nature to any of those specified) the date of delivery shall be extended in writing for a period equal to the time lost.

CANCELLATION: Special order items are not cancelable due to restrictions in third party vendor terms and conditions. Orders of (i) Products regularly stocked by MCA and (ii) Services may be cancelled, subject to the following terms. If Buyer provides written notice of cancellation prior to shipment of Products or commencement of the Services (whichever occurs first), the Order may be cancelled without charge. If Buyer provides written notice of cancellation once shipment of Products has occurred or Services have commenced, but prior to delivery and installation (with respect to Products) or completion (with respect to Services), Equipment may be returned at Buyer's expense and may be subject to restocking charges and Buyer will be charged and agrees to pay for all Services (or portion thereof) rendered to Buyer. Programmed Equipment may be returned at MCA's discretion and will be subject to a reprogramming fee. Orders may not be cancelled once Products are delivered and installed. Orders may not be cancelled, and Buyer will be charged for and agrees to pay for all Equipment actually delivered or Services rendered, upon the earlier of (x) the completion of the Services and (y) the delivery and installation of the Products.

ASSIGNMENT: The Buyer shall not assign in whole or in part these T&Cs or any interest therein or any rights hereunder without the written consent of MCA, which shall not be unreasonably withheld or delayed. Any such assignment without consent shall be void. Notwithstanding the foregoing, MCA may assign these T&Cs or any other agreement between the Parties, without consent in whole or in part, for the purposes of corporate reconstruction, reorganization, or analogous proceeding, or to (a) any Affiliate; or (b) a third party in the event of a merger, recapitalization, conversion, consolidation, other business combination or sale of all or substantially all of the assets of MCA to such third party.

TERMINATION FOR DEFAULT: In the event that a Party (the "Breaching Party") is in breach of a material provision of the Agreement, the other Party (the "Non-Breaching Party") shall submit a written cure notice to the Breaching Party advising of such breach. Except in the case of amounts due to MCA from Buyer, which shall be paid immediately upon Buyer's receipt of the notice, the Breaching Party shall have thirty (30) days from receipt of such notice to cure the breach. If the Breaching Party does not cure the breach within the thirty (30) day cure period, the Non-Breaching Party may terminate the Order.

SEVERABILITY: If any provision or part-provision of these T&Cs is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these T&Cs.

DISPUTES: MCA and Buyer shall attempt in good faith to resolve any dispute, controversy, or claim arising under or relating to an Order or these T&Cs by negotiation between the representatives of each Party who have the authority to settle the dispute. If the Parties are unable to resolve such dispute, either Party may refer the dispute to arbitration. The arbitration shall be conducted in English and in accordance with the Commercial Rules of the American Arbitration Association, which shall administer the arbitration and act as appointing authority. The arbitration, including the rendering of the decision and/or award, shall take place in Spartanburg County South Carolina, United States of America, and shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final determination as to any discovery disputes between the Parties. Examination of witnesses by the Parties and by the arbitrator shall be permitted. A written transcript of the hearing shall be made and furnished to the Parties. The cost of this transcript shall be borne equally by the Parties. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based and shall be final and binding upon the Parties. The prevailing Party shall be entitled to compensation for the expense of the arbitration, including, but not limited to, the award of attorneys' fees, at the discretion of the arbitrator. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. Each Party irrevocably and unconditionally waives any right to a trial by jury in respect to any legal action arising from these T&Cs or any other agreement between the Parties.

GENERAL: Both Parties will comply with all applicable federal, state and local laws. These T&Cs shall be governed by the laws of the State of South Carolina, without regard for conflict of laws provisions thereof. If any term or provision of these T&Cs shall to any extent be held by a court or other tribunal to be invalid, void or unenforceable, then that term or provision shall be inoperative and void insofar as it is in



conflict with the law, but the remaining terms and provisions shall nevertheless continue in full force and effect and the rights and obligations of the Parties shall be construed and enforced as if these T&Cs did not contain the particular term or provision held to be invalid, void or unenforceable. The failure of MCA to insist, in any one or more instances, upon the performance of any such term, covenant or conditions of these T&Cs or to exercise any right herein, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of the Buyer with respect to such future performance shall continue in full force and effect.

GOVERNMENT CONTRACTS: In the event that the Buyer's customer is the United States Government, the Services and, if applicable, Products are purchased as Commercial Services or Commercial Products, respectively, under the Federal Acquisition Regulation ("FAR"), and MCA will agree to comply with, if applicable, FAR 52.212-5 (Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services). Any other Government flow downs shall be negotiated by the Parties and agreed upon between the Parties in writing prior to acceptance of an Order by MCA.

FCC AND OTHER GOVERNMENT MATTERS: Although MCA may assist in the preparation of FCC License Applications as a courtesy, Buyer is solely responsible for obtaining any licenses dictated under the FCC's rules and regulations or required by any other Federal, State or Local government agency. Neither MCA nor any of its employees is an agent of the Buyer in FCC or other governmental matters.

LIMITATIONS:

- A. **LIMITATIONS OF MCA LIABILITY.** IN NO EVENT SHALL MCA BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY MATTER ARISING OUT OF OR RELATED TO THESE T&Cs IN RESPECT OF ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MCA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- B. **MAXIMUM LIABILITY.** IN NO EVENT SHALL MCA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE T&Cs, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PARTICULAR PRODUCTS SOLD AND/OR SERVICES RENDERED HEREUNDER WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED.
- C. **EXCLUSIONS.** Notwithstanding the foregoing, the limitations of MCA's liability set forth herein shall not apply to (i) liability resulting from MCA's willful misconduct and (ii) death or bodily injury resulting exclusively from MCA's acts or omissions.
- D. **INSURANCE:** It is further understood that MCA is not an insurer, and that Buyer shall obtain and maintain all necessary and appropriate policies of insurance in respect of its obligations under these T&Cs. MCA does not represent or warrant, and MCA hereby expressly disclaims any responsibility for, that Products will avert or prevent occurrences, or the consequences therefrom, which are monitored, detected, or controlled with the use of the Equipment sold herein.
- E. **NO REPRESENTATIONS.** MCA's representatives are only authorized to fill in the blanks on any agreement, sales order or quote form governed by these T&Cs. The issuance of information, advice, approvals, instructions or cost projections by MCA sales or service personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect MCA and Buyer's rights and obligations hereunder, unless that same is in writing and signed by an officer of MCA with the explicit statement that it constitutes an amendment to this Agreement.

INDEMNIFICATION: Each Party (the "**Indemnifying Party**") agrees to indemnify, defend, and hold harmless the other Party, its officers, directors, and employees (the "**Indemnified Party**") from and against any and all liabilities, losses, damages, expenses, liens, claims, demands, actions, judgments, settlements, interest, awards, penalties, fines costs and expenses, including, without limitation, reasonable attorneys' fees, costs of collection, costs of recovering insurance, and costs of enforcing this indemnification provision ("**Claims**") for death, personal injury, or property damage arising out of any negligent act or omission of the Indemnifying Party in the performance of an Order, except to the extent such Claims are contributed to by (i) the negligence or willful misconduct of the Indemnified Party or (ii) the negligence or willful misconduct of any third parties. Buyer agrees to indemnify, defend, and hold harmless MCA, its officers, directors, and employees for any and all claims, including claims asserted by third parties, related to any Equipment or Services performed in whole or in part by MCA. The Indemnified Party agrees to (i) notify the Indemnifying Party in writing of any Claims as soon as reasonably practicable; (ii) allow the Indemnifying Party to control the defense of any such Claim and related settlement negotiations; and (iii) reasonably cooperate with the Indemnifying Party in any defense actions.

PATENT, COPYRIGHT AND TRADEMARKS:

- A. **COPYRIGHT AND MASK WORKS:** Laws in the United States and other countries preserve for manufacturers certain exclusive rights, in the manufacturer's software incorporated into any Product ("**Manufacturer's Software**") or included in Services, mask works and other works of authorship furnished hereunder, including, without limitation, the exclusive rights to prepare work derived from same, reproduce copies in same and distribute copies of same. Such Manufacturer's Software, mask works and other works of authorship may be used in, and redistributed with, only the equipment which incorporates the same. No other use, including without limitation, the reproduction, modification, or disassembly of such Manufacturer's Software, mask works and other works of authorship or exclusive rights in same is permitted.
- B. **REVERSE ENGINEERING:** Buyer acknowledges manufacturer's claim that the Manufacturer's Software and Equipment furnished hereunder contain valuable trade secrets of manufacturer and therefore agrees that it will not translate, reverse engineer, decompile, or disassemble, or make any other unauthorized use of such manufacturer's software and equipment. Since unauthorized use of such Manufacturer's Software and equipment will greatly diminish the value of such trade secrets.
- C. **LOGOS AND TRADEMARKS:** Buyer shall not have a right to use any trademarks, names, slogans, or designations of MCA or any manufacturer of products incorporated into or included in any Products and/Services.