

# Telecommunications Services Terms of Agreement



9628 Highway 281 • PO Box 69 • Ellendale, ND  
58436

During the term of this Agreement, Dickey Rural Telephone Cooperative and its subsidiaries Dickey Rural Services, Inc. and Dickey Rural Enterprises, Inc. ("DRN") agrees to provide service to Customer, and Customer agrees to purchase the Service subject to the terms and conditions of this Agreement and in DRN's general and special tariffs filed with the local state public service commission as modified from time to time as well as any general and special tariffs of other carriers in which DRN concurs. In the event of a conflict between the terms of any applicable tariff and this Agreement, the terms of the tariff will control. Customer hereby agrees to and is hereby bound by all other terms of use and indemnification and hold harmless agreements with DRN that Customer agrees to be bound by in accepting services and products from DRN including, but not limited to, DRN's Network Management Policies, Acceptable Use & Terms of Use Policies, Privacy Policies, etc., which are found on DRN's web-page and/or upon request.

**COMMENCEMENT AND TERM OF SERVICE.** This Agreement shall become effective upon execution by authorized representatives of DRN and Customer. DRN reserves the right to terminate this Agreement with or without cause at any time prior to the commencement of Service. The term of this Agreement shall begin on the date that service is established by DRN (the "Service Commencement Date") and shall continue until the expiration of the applicable term for the Service ordered. At the expiration of the term, this Agreement shall continue in effect with respect to the Service on a month-to-month basis. The charge for Service during such month-to-month period shall be at the then-current monthly rate charged by DRN for such Service. Either party may cancel such month-to-month Service upon 30 days written notice to the other. Unless otherwise provided by law, Customer agrees it will pay for Service, and DRN agrees it will provide Service, for the 30-day period commencing on the date of such notice.

**INSTALLATION AND CUSTOMER RESPONSIBILITIES.** DRN shall only be responsible for bringing the lines ordered by Customer to the Customer's designated demarcation point at Customer's premises where DRN's equipment terminates. In no event shall DRN be responsible for connecting, installing or wiring past the demarcation point. Customer agrees and acknowledges that it shall be Customer's sole responsibility to provide and arrange for all necessary wiring and equipment required to extend dial tone including phone system programming and any other related wiring or work required to implement the Service. Customer agrees to (i) provide full and unrestricted access to the premises of Customer by personnel of DRN for all installation, maintenance and repair services, if any, to be provided under this Agreement; and (ii) to provide DRN electrical power to operate the Service and adequate space in Customer's premises to house any equipment used in connection with provision of the Service.

**PAYMENT.** Customer agrees to timely pay DRN throughout the term of this Agreement, the Service Charge, together with installation and fees set forth on the front page hereof. The first monthly Service Charge shall be prorated from the Service Commencement Date through the end of the calendar month in which the Service Commencement Date occurs. Non-recurring charges are payable with the first Service Charge. DRN shall submit monthly invoices to Customer and payment of all charges thereon shall be due at the address shown on the invoice no later than 20 days after the invoice date. Any amount not paid within 30 days of the invoice date will be subject to a late charge of 1.5% per month or at the maximum lawful rate, whichever is lower. Any applicable surcharge, federal, state, local, use, excise or sales tax or similar levy chargeable to or against DRN because of the service provided to Customer shall be charged to and paid by Customer in addition to the Service Charge and other charges in this Agreement. If payment of a check is returned due to insufficient funds, Customer will be in immediate default and subject to a return check charge of \$30.00.

**INTERRUPTION OF SERVICE.** For any interruption of Service that is not due to negligence or non-compliance with any term or condition of this Agreement by Customer or the failure of operation or malfunction of facilities, power or equipment provided by the Customer, Customer will be entitled to a credit for the period of time in which Service was interrupted. For purposes of this Agreement, Service will be deemed to be interrupted from the time DRN receives notice from Customer that the Service is not working until the time the Service is working. Credits shall be calculated on the basis of a 30-day month and shall be credited against the monthly Service Charge as follows:

If Service is not restored within twenty-four (24) hours of DRN being notified of the Service Interruption, the Customer shall receive one (1) full day's credit for each 24 hours or fraction thereof that Service is interrupted.

**DISCLAIMER OF WARRANTIES.** DRN MAKES NO WARRANTY AS TO THE CONTINUOUS OPERATION OF THE SERVICE OR ANY SPECIFIC FEATURE OF THE SERVICE. ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED.

**LIMITATION ON DAMAGES/CLAIM PERIOD.** DRN SHALL NOT BE LIABLE IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF THE USE OF THE SERVICE, LOSS OF DATA, CUSTOMER'S INABILITY TO USE THE SERVICE, INTERRUPTIONS OR CLAIMS BY THIRD PARTIES. THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, DRN LIMITS LIABILITY RELATED TO THE PROVISION OF SERVICES AS FOLLOWS: FOR DIRECT DAMAGE DRN'S LIABILITY IS LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR SERVICES GIVING RISE TO, OR WHICH ARE THE SUBJECT OF, THE CLAIM WHETHER SUCH CLAIM ALLEGES BREACH OF CONTRACT, OR TORTIOUS CONDUCT INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR ANY OTHER THEORY. NO ACTION, REGARDLESS OF FORM ARISING OUT OF THE SERVICE OR PERFORMANCE BY DRN UNDER THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

**CANCELLATION CHARGES.** If Customer cancels this Agreement or any particular Service provided hereunder prior to expiration of the respective term for such Service, Customer shall pay to DRN Cancellation Charges equal to: (i) 50% of the Customer's average monthly billing (inclusive of toll, taxes, and mandated charges), with such average being calculated based on actual monthly billing statements from the inception of the Agreement through the most recent statement prior to the date of cancellation, multiplied by the remaining number of months of this Agreement; plus, (ii) 100% of the actual installation and construction charges incurred by DRN to provide the Service, which financial outlay was incurred by DRN in detrimental reliance on Customer's commitment to purchase the Service for the entire length of the term of this Agreement. Either party may cancel this Agreement without liability in the event DRN is prohibited from providing Service or if any material rate or term contained herein is substantially changed by final order of a court, administrative agency or other body of competent jurisdiction. Cancellation Charges will not apply if the Customer replaces the Service with a new DRN contract whose term is equal to or greater than the original term period. Each Service designation is deemed a separate Service and cancellation of any single Service shall not affect the other Services ordered by Customer in this Agreement.

**DEFAULT.** An event of default ("Event of Default") shall occur upon the occurrence of all or any one of the following events: (a) the Customer does not pay when due any invoice; (b) the Customer files, or has filed against it, a petition in bankruptcy or for its reorganization, arrangement, composition or readjustment under the federal bankruptcy code or any state insolvency law or the Customer liquidates all or a substantial part of its assets not in the ordinary course of its business, dissolves or takes other similar action; or (c) the Customer shall default in the performance of any of its obligations to DRN or any assignee arising under this Agreement or any applicable tariff or any other agreement between the Customer and DRN.

**REMEDIES/TERMINATION OF SERVICE.** Upon the occurrence of an Event of Default, DRN may, at its option and without notice or demand, exercise all or any one or more of the following remedies: (a) declare immediately due and payable all invoices and all other sums due or to become due hereunder or under any other agreement between the Customer and DRN; (b) terminate or suspend all of its obligations arising under this Agreement including Service, and any other agreement between the Customer and DRN; (c) enter the premises where any of DRN's equipment is located and repossess all or any part of the equipment; or (d) exercise all other legal and equitable remedies which DRN may have. The foregoing remedies shall be deemed cumulative and may be exercised successively or concurrently as permitted by law.

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER.** Customer warrants and represents to DRN that (i) Customer is to use the Service solely for business or personal purposes; (ii) Customer has the right, power and authority to enter into and perform its obligations under this Agreement; (iii) Customer has taken all the requisite legal action to approve the execution, delivery and performance of this Agreement; (iv) this Agreement constitutes a binding obligation enforceable against Customer in accordance with its terms; and (v) the individual executing this Agreement is either the Customer individually or is a duly appointed officer or agent of Customer with the authority to execute this Agreement on behalf of Customer.

**MISCELLANEOUS.** This Agreement shall be governed by and construed in accordance with the laws of the state where Customer's Service is established. The obligations of DRN are subject to force majeure and DRN shall not be in default under this Agreement if any failure or delay in performance is caused by strike, power failure, accidents, acts of God, fire, flood, adverse weather, lack of transportation, condemnation or exercise of rights of eminent domain, war or civil disorder, or any other cause beyond the reasonable control of DRN. Any assignment, in whole or in part, by Customer of any right or obligation or of any interest hereunder without the written consent of DRN shall be void. Notwithstanding expiration or termination of this Agreement, the provisions of the Agreement which by their nature or context are required or intended to survive shall survive and remain in full force and effect. All notices or requests which may be given by any party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered in person or via express service or on the date deposited, postage prepaid in the United States mail, to the Customer and DRN at the addresses set forth on the front page hereof. This Agreement sets forth the entire agreement and supersedes any and all prior agreements between the parties with respect to the transactions set forth herein. No change, amendment or modification of any provisions of this Agreement shall be valid unless set forth in a written instrument signed by both parties to this Agreement.