

Fill in this information to identify the case:

Debtor 1 Gold's Holding Corp.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Amarillo Division

Case number 20-31320-hdh11

E-Filed on 06/17/2020
Claim # 89

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Nitel USA</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor <u>Network Innovations</u>	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Accounts Receivable</u> Name <u>350 North Orleans Suite 1300N</u> Number Street <u>Chicago</u> <u>IL</u> <u>60654</u> City State ZIP Code Contact phone _____ Contact email <u>ARNitel@Nitelusa.com</u>	Where should payments to the creditor be sent? (if different) Name Number Street City State ZIP Code Contact phone _____ Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☐ No
☒ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 3 0 0 4

7. How much is the claim? \$ 8,132.46. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Services Performed

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ 0.00

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☐ Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/17/2020
MM / DD / YYYY

Deanne Costanzo

Signature

Print the name of the person who is completing and signing this claim:

Name Deanne Costanzo
First name Middle name Last name

Title Director of Accounts Receivables

Company Nitel USA
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address
Number Street

City State ZIP Code

Contact phone Email

Attachment 1 - Account History - Preptition Balance.xlsx

Description -

This document is security protected or damaged and cannot be viewed.

Attachment 2 - Golds Holding Corp_Nitel MSA.pdf

Description -



SERVICE AGREEMENT

This service agreement is entered into on the date of the last signature below ("Effective Date") by and between Nitel, Inc., an Illinois corporation (hereinafter "NITEL") and the customer identified below ("Customer"), for the provision of the telecommunications services described herein. This service agreement consists of the terms and conditions stated herein; the NITEL Service Guide located at <http://serviceguide.nitelusa.com> or any other location NITEL may designate in the future ("Service Guide"); the Service Level Agreements located at <http://www.nitelusa.com/sla.htm> or any other location NITEL may designate in the future (collectively referred to as the "SLA"); and the NITEL Acceptable Use Policy located at <http://www.nitelusa.com/aup.htm>, or any other location NITEL may designate in the future ("AUP"). This service agreement, the Service Guide, the SLA, and the AUP are collectively referred to herein as the "Agreement." NITEL reserves the right to modify the Service Guide, the SLA, and the AUP at any time. In such an event, NITEL will provide a thirty (30) day email notice of any changes to Customer's email address on record. In the event of conflict among the documents, the order of priority shall be this service agreement, the Service Guide, and then the SLA.

I. GENERAL

1. TERMS AND CONDITIONS:

The Agreement shall govern the provision and use of all telecommunications services ordered from NITEL by Customer. As used hereinafter, the "Service" or "Services" may, depending upon the context and the nature of Customer's orders with NITEL, refer singularly or collectively to NITEL's private line, MPLS, Ethernet, Internet services, Fiber Ring, E Net, WiMax or Voice services. The Agreement does not by itself order any Service. Customer shall order Service(s) through Service Order Form(s).

2. PROVISION OF CIRCUITS:

NITEL will provide Customer use of the Service as described in a Service Order Form executed by Customer. All Services are subject to availability. Any and all local-access or other off-net Services shall be provided on an individual case basis and shall be subject to terms and rates specified on the applicable Service Order Form. Each Service Order Form shall be, in all respects, subject to the terms and conditions set forth in the Agreement. Notwithstanding anything to the contrary herein, NITEL shall not be liable for any delays in meeting requested or specified installation dates or from an inability on its part to provide Services. Customer shall cooperate with NITEL in all facets relating to the installation and testing of the Services.

3. SERVICE SPECIFICATIONS:

- a. All private line circuits, IP services, or voice services shall conform to the operational specifications and standards contained in Bell Publication 62411 (October 1985).
- b. Service shall be provided as follows:
 - i. NITEL or one of its affiliates will either provide the Service using its own facilities or those of third-party service providers on a resale basis, or, acting on Customer's behalf will order facilities from other service providers. NITEL will bill customer directly for all charges (including, without limitation, application, special access surcharges and early termination charges) related to such facilities.
 - ii. Customer shall be responsible for determining channel sequencing, for ensuring that Customer's multiplexing equipment is compatible with D3/D4 super-frame (SF) framing standards, and for ensuring that Customer's terminal equipment will accept timing from the NITEL network if applicable.
 - iii. NITEL will deliver Service to the building or campus public network point of presence or point of demarcation. Extensions

beyond this point of demarcation are the responsibility of the Customer.

- iv. NITEL is not responsible for the quality of transmission or signaling on Customer's side of the network interface between NITEL and Customer. Service is furnished subject to the availability of the service components required, and subject to operational and systems constraints.

4. TERM:

- a. The term of the Agreement will commence on the Effective Date and continue for a period of three (3) years thereafter. Upon expiration of the initial term, the Agreement will automatically renew for successive annual periods under the terms and conditions then in effect, unless terminated by written notice provided by either party to the other no less than sixty (60) days prior to the end of the initial term or any renewal term.
- b. Each Service shall be provided for the minimum term ("Term") specified in the applicable Service Order Form or attached pricing schedule. The Term of a Service shall commence upon the Start of Service Date (defined below). Unless either (i) Customer gives written notice of termination at least forty-five (45) days prior to the expiration of any Term (but no earlier than 75 days prior to the expiration of such Term) for any given Service; or (ii) NITEL gives written notice of termination at least thirty (30) days prior to the expiration of any Term for any given Service, the Term for each Service will automatically renew for periods equal to the initial term. Each automatic renewal period will also be referred to herein as the "Term." If the Term of one or more Service(s) extends beyond the expiration of the Agreement, notwithstanding the language above, then the Agreement will continue to govern the provision of such Service(s) until the respective Terms for such Service(s) have expired. In no event will new Service Order Forms under the Agreement be permitted if the term of the Agreement has expired or been terminated.
- c. For purposes of the Agreement, the "Start of Service Date" means the date that the Service is available for use by Customer, subject to acceptance testing in accordance with Section 4(e).
- d. After NITEL receives the Firm Order Commitment (the "FOC") date for a Service from the underlying carrier, NITEL will provide Customer with the FOC date. If the underlying carrier changes the FOC date, NITEL will provide Customer with the updated FOC date. NITEL's inability or failure to deliver any ordered Service by the FOC Date will not be a default under the Agreement, and NITEL will not be liable to Customer or as a result of NITEL's inability or failure to deliver the Service.
- e. After NITEL notifies Customer that a Service is available, Customer may test the Service to determine if the Service is operating in accordance with the technical specifications set out in the service level agreements described in Section 12 below (the "Technical Specifications"). If Customer provides NITEL with written notice that a Service is in material non-compliance with the applicable Technical Specifications within two (2) business days after NITEL notifies Customer that the Service is available, then NITEL will promptly take such reasonable action as is necessary to correct any such non-compliance in the Service and shall, upon correction, notify Customer of a new Start of Service Date. Any non-compliance notice must contain information describing the nature of the material non-compliance with the Technical Specifications for the Service(s) in question. If Customer does not deliver such a non-compliance notice within the two (2) business day period, Customer shall be deemed to have accepted the Service, and billing will commence on the original Start of Service Date.

5. CHARGES:

- a. Customer will pay the recurring and non-recurring charges for the Service(s) ordered hereunder that are set forth in the applicable Service Order Form or the Agreement. Recurring charges include

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- the price to be paid by Customer each calendar month period for the purchase of the Services. Recurring cross-connect charges, multiplexing charges and other charges due each month are also recurring charges. Non-recurring charges include any one-time rates, fees, charges or expenses, including but not limited to installation charges, construction fees, extended demarcation fees, facility entrance fees, cross-connect fees, channel bank charges, order supp charges, move, add, or change ("MAC") charges and expedite charges. These amounts are exclusive of taxes, surcharges, or fees as set out in Section 6. Charges for Service shall commence from the Start of Service Date regardless of whether Customer is ready to use the Service or any Customer inability to use the Service, including but not limited to whether Customer's equipment is operational or any interconnecting facilities are available, except if NITEL has been requested to provision local end circuits from a local exchange carrier, or if NITEL's underlying carrier has been requested to provision local end circuits from a local exchange carrier, then no charges shall accrue under the Agreement until such local end circuits are provided. In addition, the rate for local end circuits and other circuits provisioned under any Service Order Form shall be subject to change in accordance with the terms of the underlying carrier's tariff or service agreement. Notwithstanding any other provision, Customer will pay all rates and charges applicable to local end circuits commencing from the date that they are made available by the local exchange carrier.
- b. For multi-point Services such as MPLS, multi-point metro Ethernet, Frame Relay, and IP VPN, NITEL will incrementally deliver multipoint Services ("Incrementally Delivered Services") as Service is made available to each ordered Customer location. Start of Service for all locations is not dependent on delivery timing of host or remote locations.
- c. Prior to the Start of Service Date, Customer will promptly either accept for billing or cancel (under Section 10) and re-order the portion(s) of the Service that are ready for activation if activation has been delayed due to (i) Customer or any Customer or third party facilities by which Customer elects to access the property; or (ii) Services or other products (including, without limitation, routers) provided by a party other than NITEL ("Interconnection Facilities/Equipment").
- d. Customer understands that NITEL's rates and charges do change, from time to time, and that NITEL must reserve the right to change Customer's rates accordingly. If NITEL raises Customer's rates and charges for a Service to Customer's dissatisfaction, then within the thirty (30) day period following NITEL's written notification to Customer that such rates and charges for a Service are increasing, Customer may disconnect such affected Service with NITEL without penalty by providing NITEL with forty-five (45) days prior written notice of disconnection. As described in Section 10(g), the disconnection of such affected Service will be effective at the end of the forty-five (45) day notice period unless NITEL elects (in its sole discretion) to change the rates and charges back to the original amounts being charged by NITEL, in which case NITEL will notify Customer and no disconnection will occur. If Customer does not provide NITEL with notice to disconnect the affected Service within the thirty (30) day period following NITEL's notice of the rate increase, the new rates and charges will be binding and the then current Term of such Service will remain in force.
- e. NITEL charges (and Customer will pay) an eight dollar (\$8.00) per month billing administration fee. This is a single monthly billing administration fee per customer, not per Service.
- f. Customer may request that NITEL "MAC" (Move, Add, Change) a circuit. NITEL is under no obligation to accept such a request. Additional charges apply to a MAC and will be agreed upon by the parties in advance of the completion of the MAC, together with any applicable terms related to the MAC. Customer will pay all applicable MAC charges.

6. TAXES:

- a. If any federal, state or local taxes, fees, surcharges, or other charges are imposed on NITEL or Customer as a result of NITEL's provision of Service or Customer's use of Service ("Additional Charges"), Customer shall pay any such Additional Charges and indemnify NITEL from any liability or expense associated with the Additional Charges. For clarity's sake, the term Additional Charges includes amounts NITEL is required or permitted by governmental or quasi-governmental authorities or administrative or regulatory authorities to collect from or pay to others to support statutory or regulatory programs including but not limited to federal and state universal service fund obligations. NITEL may list certain Additional Charges that Customer must pay on its website at <http://www.nitelusa.com/pages/csr.php>.
- b. To the extent permitted by applicable law, in the event of any change to any law, rule, regulation or other regulatory activity ("Regulatory Activity") that affects the Services provided hereunder, NITEL may at any time upon written notice: (i) pass through to Customer all, or a portion of, any charges or surcharges directly or indirectly related to such Regulatory Activity; or (ii) modify the rates, and/or other terms and conditions contained in the Agreement to reflect the impact of such Regulatory Activity.

7. PAYMENTS & BILLING CYCLE:

- a. NITEL will invoice Customer monthly in advance for Services with monthly recurring charges. All payments are due in U.S. currency within thirty (30) days of the invoice date (the "Due Date") and shall be sent to the address specified upon the invoice, unless properly disputed per Section 8. NITEL may, in addition to any other remedies available to it, impose a late payment charge ("Late Fee") of the lower of one and one-half percent (1½%) per month or the highest rate legally permissible per month on any past-due balance.
- b. In addition to the Late Fee and any other rights and remedies it may have, if Customer fails to pay any invoice by the applicable Due Date, NITEL reserves the right to place orders on hold and request a deposit and/or a wire transfer for such late amount. NITEL may also suspend provision of any or all Services if Customer fails to pay any past due amounts within five (5) days of receipt of written notice.
- c. Customer shall reimburse NITEL for reasonable attorney's fees and any other collection costs, including collection agency fees, associated with collecting delinquent or dishonored payments. If NITEL engages a collection agency to collect delinquent or dishonored payments from Customer, then the parties stipulate and agree that the reasonable costs of such collection will be thirty-five (35%) of the amount due to NITEL.
- d. Restrictive endorsements or other statements on checks accepted by NITEL will not be applicable to NITEL, and will not have any force or effect whatsoever as to NITEL.

8. BILLING DISPUTES:

- a. Customer will only initiate a billing dispute if it has a good faith belief that it has been invoiced an amount in error, and all such billing disputes must be initiated within sixty (60) days of the invoice date of the disputed invoice or such dispute shall be deemed waived. Upon disputing any charges, Customer shall: (i) pay all undisputed charges by the Due Date; (ii) present by the Due Date a written statement of amounts disputed in good faith in reasonable detail with supporting documentation; and, (iii) negotiate in good faith to resolve any good faith dispute within thirty (30) calendar days from the date such billing dispute was initiated. Any disputes related to Service outages shall be governed by Section 12 of the Agreement.
- b. Disputed charges resolved in favor of NITEL, together with the applicable Late Fee, are due and payable within five (5) calendar days of NITEL's written notice denying the dispute, which shall be the Due Date for such payment. Disputed charges resolved in favor of Customer will be credited to Customer on the following month's billing cycle and no Late Fees shall apply.



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9. DEPOSITS:

- a. All Services are subject to credit approval. If at any time there is a material and adverse change in Customer's financial condition, business prospects or payment history, which shall be determined by NITEL in its sole reasonable discretion, NITEL may demand that Customer provide NITEL with a security deposit or increase the amount of any existing security deposit, as the case may be, as security for the full and faithful performance of Customer of the terms, conditions and covenants of the Agreement.
- b. Any deposit will be held by NITEL as a guarantee for the payment of charges. A deposit does not relieve Customer of the responsibility for the prompt payment of any amount due hereunder. If Customer breaches the Agreement, including by failing to pay amounts by the Due Date, the deposit will become the property of NITEL. NITEL will have the right to apply any deposit to any outstanding receivables owed by Customer. If Customer becomes a debtor in a bankruptcy case under any chapter of the Bankruptcy Code, Customer will not object to any motion filed by NITEL under Section 362 of the Bankruptcy Code seeking authority to apply the deposit to any outstanding claim, and will not seek recovery of the deposit on a turnover theory.

10. TERMINATION:

- a. Upon Customer's (i) failure to perform any non-monetary provision of the Agreement or any Service Order Form hereunder that is not corrected by Customer within thirty (30) days after having received notice from NITEL; (ii) failure to meet any of its payment obligations (including failure to pay a required deposit) that is not corrected in full by Customer within five (5) days after receipt of written notice from NITEL; or (iii) becoming the subject of a bankruptcy, liquidation or other insolvency proceeding or upon commencement of any other action against Customer with respect to creditors in the nature of bankruptcy, insolvency or liquidation, NITEL may, at its option, terminate the Agreement and all underlying Services, suspend all or any Service, and/or require a deposit, advanced payment, or other satisfactory assurances as a condition of continuing to provide Services. NITEL may also pursue all other rights and remedies available to it under the Agreement, at law or in equity, including but not limited to payment of early termination charges.
- b. If, prior to the Start of Service Date of a Service, Customer either (i) terminates such Service or (ii) issues a change order, Customer will pay to NITEL a charge equal to any charges incurred by NITEL from the underlying service providers, in addition to any charges listed in the Service Guide. Customer will also pay any charges associated with an "order supp" (a Customer requested delay to the FOC date) pursuant to which the Start of Service Date is delayed. Customer is obligated to send such notice to NITEL via email to: orders@nitelusa.com. NITEL is under no obligation to accept a change order or an order supp. Any change order or order supp must be mutually agreed to by the parties and may result in a change to the charges or other terms applicable to the requested Service.
- c. If NITEL terminates the Agreement or any Service(s) due to Customer's default, or if Customer terminates the Agreement or any Service(s) prior to the expiration of such Service's specified Term, Customer will pay to NITEL an early termination charge equal to (i) all recurring and non-recurring charges specified in the applicable Service Order Form(s) for the balance of each Service's specified Term, plus; (ii) any charges levied by the underlying service provider in connection with the termination that NITEL does not recover under clause (i) of this Section 10(c). Customer shall also be liable to NITEL for all non-recurring and recurring charges that were waived or discounted by NITEL. Customer agrees that NITEL's damages will be impossible to ascertain if any Service is terminated and that the foregoing early termination charge establishes liquidated damages and is not a penalty.

- d. With respect to usage based Services, in the event Customer terminates the Agreement or such Services prior to the end of the Term, or NITEL terminates the Agreement or such Services due to Customer's default, Customer will be liable for all usage Services, including voice calls or metered data Services, including burstable Internet bandwidth billed to Customer location(s) and shall pay a termination charge equal to the minimum term commitment plus the actual usage through the date of termination for each individual Service that was terminated.
- e. In the event of any termination of the Agreement or any Service, all amounts owed to NITEL under the Agreement, including early termination charges, shall be paid within thirty (30) days of the termination date. For clarity's sake, such amounts will also include all unpaid amounts due for Service provided prior to the effective date of termination.
- f. If Customer wishes to terminate (disconnect) Service for any reason, Customer is required to follow the disconnection process set forth in the Service Guide. Nitel reserves the right to modify the disconnection process and may designate an alternative location for publishing the process.
- g. The parties agree that for all purposes, including but not limited to U.S. Bankruptcy Code Section 365, that the Agreement and any Service Order Form(s) entered pursuant to the Agreement constitute a single integrated agreement and the parties' intent is to create a single contract. The nature and purpose of the Agreement and any Service Order Form entered hereunder are the same, and the obligations of the parties are interrelated between the Agreement and any Service Order Forms.

11. INTERRUPTIONS:

- a. In the event of an interruption of Service, NITEL will use reasonable efforts to restore Service promptly. Whenever an interruption occurs, NITEL shall have no liability or obligation unless and until Customer has notified NITEL or unless NITEL network personnel have actual knowledge of such condition. In the event of an interruption of Service, NITEL's liability shall be limited to its obligation to issue service credits as described in Section 12 of the Agreement. The duration of any interruption will be calculated from the time the report of the interruption is made to NITEL. In the event of any interruption, Customer shall, immediately grant NITEL's employees, agents, and/or contractors access to Customer's premises and all pertinent equipment therein and fully assist and cooperate with NITEL in remedying the interruption.
- b. If, on responding to an interruption in Service, NITEL determines that the cause of the interruption or other problem is a failure, a malfunction or the inadequacy of Customer's or a third party's equipment or facilities, then NITEL reserves the right to invoice Customer, at NITEL's prevailing rates, for actual time spent in responding to the interruption, plus materials. NITEL's current prevailing rate is \$125.00 per hour (calculated in fifteen minute increments with time rounded up to the next closest increment). Customer will pay the invoiced amount by the Due Date as set out in Section 7.

12. SERVICE LEVEL AGREEMENTS:

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

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would have been charged by NITEL for the affected Service in that month.

13. INDEMNITY:

- a. Customer and NITEL shall defend, indemnify and hold harmless the other from and against any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, of any third party, including without limitation all reasonable costs and expenses, such as reasonable litigation costs and attorneys' fees ("Claim"), relating to damage to tangible property or bodily injury, or wrongful death, to the extent such Claim arises out of the negligence or willful misconduct of the respective Indemnifying party, its employees, agents, or contractors in connection with the Agreement or the provision of Services hereunder.
- b. Customer will release, defend, indemnify and hold harmless NITEL and its officers, directors, employees, contractors and agents from and against any Claim to the extent such Claim (i) is brought by a downstream customer of Customer or an end user and arises out of an alleged defect in or failure of Service; or (ii) arises out of or relates to the content transmitted over NITEL's network, whether sent by Customer or any third party, including without limitation, Claims relating to any violation of copyright law, export control laws, or that such transmissions are libelous, slanderous, or an invasion of privacy or illegal.
- c. The indemnified party shall promptly notify the indemnifying party in writing of any claims which are subject to the terms of this section. The indemnified party shall have the right at its own expense to appoint its own counsel who shall be entitled to participate in any settlement negotiations or litigation regarding any matter for which it is entitled to be indemnified hereunder. The indemnifying party shall not agree to any settlement or consent to any decree, order or judgment without obtaining the consent of the indemnified party, which consent shall not be unreasonably withheld.

14. LIMITATION OF LIABILITY:

- a. OTHER THAN PURSUANT TO SECTION 14(c), UNDER NO CIRCUMSTANCES SHALL A PARTY AND/OR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR USERS BE LIABLE TO THE OTHER PARTY AND/OR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR USERS FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND/OR LOSS OF BUSINESS (EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND/OR LOSS OF BUSINESS (EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) THAT RESULT IN ANY WAY FROM: (A) CUSTOMER'S OR ANY THIRD PARTY USERS' RELIANCE ON OR USE OF INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE SERVICE; OR (B) COMPUTER FAILURE, WORK STOPPAGE, MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY OTHER FAILURE OF PERFORMANCE.
- b. SUBJECT TO THE FOREGOING AND SECTION 14(c), IN NO EVENT SHALL EITHER PARTY'S LIABILITY HEREUNDER TO THE OTHER PARTY EXCEED THE AMOUNT OF SERVICE CHARGES PAID BY THE CUSTOMER DURING THE SIXTY (60) DAY PERIOD PRIOR TO THE ACCRUAL OF THE MOST RECENT CLAIM. IN NO EVENT SHALL EITHER PARTY ASSERT ANY CAUSE OF ACTION AGAINST THE OTHER MORE THAN ONE (1) YEAR AFTER SUCH CAUSE OF ACTION HAS ACCRUED.

C. NOTWITHSTANDING THE ABOVE DISCLAIMERS OR LIMITS OF LIABILITY IN SECTIONS 14(A) AND 14(B), A PARTY'S LIABILITY WILL NOT BE LIMITED WITH RESPECT TO CLAIMS ARISING FROM (1) A PARTY'S PAYMENT OBLIGATIONS, INCLUDING EARLY TERMINATION CHARGES; (2) A PARTY'S INDEMNIFICATION OBLIGATIONS.

d. SECTION 14 OF THE AGREEMENT SHALL APPLY EVEN IF THERE IS A BREACH OF A CONDITION, A BREACH OF AN ESSENTIAL OR FUNDAMENTAL TERM, OR A FUNDAMENTAL BREACH OF THE AGREEMENT.

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

15. DISCLAIMER OF WARRANTY:

- a. EXCEPT AS EXPRESSLY PROVIDED BY THE APPLICABLE SLA, NITEL PROVIDES THE SERVICE ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE, NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER NITEL NOR ITS AFFILIATES WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY INFORMATION, SOFTWARE OR OTHER MATERIAL ACCESSIBLE ON THE SERVICE IS FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER HARMFUL DATA.
- b. NEITHER NITEL NOR ITS AFFILIATES MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER (INCLUDING WARRANTIES OF TITLE OR NON-INFRINGEMENT, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) REGARDING ANY MERCHANDISE, INFORMATION OR SERVICE PURCHASED OR PROVIDED THROUGH NITEL'S SERVICES, AND THEY SHALL NOT BE LIABLE FOR ANY COST OR DAMAGE ARISING EITHER DIRECTLY OR INDIRECTLY FROM ANY SUCH TRANSACTION.

16. COMPLIANCE WITH LAW:

Customer's use of the Services and NITEL's provision of the Services shall be in accordance, and comply with, all applicable laws, regulations, and rules. Customer shall obtain all approvals, consents and authorizations necessary to conduct its business and initiate or conduct any transmissions over any facilities covered by the Agreement. NITEL shall obtain all approvals, consents and authorizations necessary to conduct its business and to provide the Services covered by the Agreement. Customer and NITEL will release, defend, indemnify and hold harmless the other from and against any Claim arising out of, resulting from or based upon the indemnifying party's violation of any law, rule or regulation.

17. FORCE MAJEURE:

If the performance of the respective obligations of NITEL or Customer under the Agreement shall be prevented or interfered with by reason of a Force Majeure (other than Customer's payment obligations for delivered Services), then that party shall not be liable to the other for its failure to perform such obligations and such failure shall not constitute a breach of the Agreement. "Force Majeure" as used herein shall mean acts of God, strike or other labor dispute, cable cut, riot or civil disturbance, war or armed conflict, failure of common carrier or "carrier's carrier," interruption of power, municipal ordinance including any state or federal law, governmental order or regulation or order of any court of competent

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jurisdiction, or any other similar thing or occurrence not within the control of the party claiming excuse. Changes in economic, business or competitive conditions are not Force Majeure conditions.

18. ABUSE OF SERVICE:

- a. Customer agrees that it will not:
 - i. use Service(s) for any purpose other than that for which it is intended or in violation of any law or regulation or in aid of any unlawful act;
 - ii. violate the then current Acceptable Use Policy located at the following or another designated url:
<http://www.nitelusa.com/aup.htm>
 - iii. interfere with:
 - a. the use of NITEL's Service by other customers or authorized users, or
 - b. the operation of NITEL's network or equipment.
 - iv. subject NITEL's personnel or subcontractors to hazardous conditions;
 - v. attempt to avoid the payment, in whole or in part, of any charges by any means or device (non-payment of billed charges will not be considered abuse of Service for purposes of this section);
 - vi. use the Nitel™ name for advertising or promotion of a commercial product or service without the express, written consent of NITEL; or
 - vii. open or otherwise tamper with any of the equipment installed or provided by NITEL.
- b. In any instance in which NITEL believes in good faith that there is abuse of Service as set forth above, NITEL may immediately restrict, suspend or discontinue providing Service or prevent the display or transmission of content, without liability on the part of NITEL, and then notify Customer of the action that NITEL has taken and the reason for such action. To the extent doing so does not interfere with its ability to prevent abuse of Service (to be determined in NITEL's reasonable commercial judgment), NITEL will attempt to notify Customer before taking such action, and will attempt to limit any restriction, suspension or discontinuance under this Section to the locations, content, or Services with respect to which the abuse is taking place.

19. IF CUSTOMER IS A CARRIER:

- Customer shall certify that it is a "common carrier" as defined in the Communications Act of 1934 (see 47 USC §§153(10) and 211), with all required operating authority. Customer further certifies either:
- a. It has filed an FCC Form 499-A with the Federal Communications Commission (individually or on a consolidated basis) in accordance with the registration requirement of 47 C.F.R. 64.1195, or
 - b. It will not resell interstate telecommunications service(s) provided by NITEL under the Agreement, unless it first registers with the FCC in accordance with the registration requirement of 47 C.F.R. 64.1195.

20. FURTHER RESPONSIBILITIES OF CARRIER CUSTOMERS:

- a. NITEL will not provide support directly to nor interface with any end user. Customer is responsible for:
 - i. Selecting the users that it permits to access each Service;
 - ii. Implementing with end users appropriate terms, conditions, and measures to ensure that all end users comply with the terms and conditions of the Agreement; and
 - iii. Establishing its end users' rights to access each Service.
- b. Customer is solely responsible for establishing the prices according to which end user customers will be billed; for determining the taxes and other charges that are to be billed to end user customers; for remitting those taxes and other charges

to the applicable authorities and for handling related disputes; and for collecting billed amounts from end user customers. Customer assumes all risk of delinquent and uncollectible amounts billed to end user customers.

- c. Customer shall not use any materials referencing NITEL or the Service that have not been approved in writing by NITEL.
- d. Customer may identify itself as a reseller of NITEL only to the end user customers and only as expressly permitted in writing by NITEL and only with respect to the Service, and shall otherwise identify itself as an independent business. Neither NITEL nor Customer shall make any express or implied agreements, guarantees or representations, or incur any debt in the name or on behalf of the other. NITEL's use of Customer to resell NITEL Service is not an implied endorsement of Customer's independent business or any service solution, and no such representation should be made.

21. TRAFFIC:

Where Customer is ordering private line or multipoint metro Ethernet Services from NITEL on a standalone basis, the end points for which are located in the same state, Customer certifies to NITEL that less than 10% of Customer's traffic utilizing such Services will be deemed interstate traffic. Where Customer is ordering private line Services from NITEL on a standalone basis, the end points for which are located in different states, or any MPLS Service, Customer certifies to NITEL that more than 10% of Customer's traffic utilizing such Services will be deemed interstate traffic. Where Customer is ordering transport Services which are terminated to a NITEL provided IP port, Customer certifies to NITEL that more than 10% of Customer's traffic will be originated or terminated outside of the state in which the port is located.

22. NON-DISCLOSURE:

- a. If NITEL and Customer have executed a Nondisclosure Agreement, Confidentiality Agreement, or similar agreement, the parties agree that the terms therein shall apply to any disclosure made hereunder and remain in full effect throughout the term of the Agreement. If no such agreement is in effect, Customer and NITEL agree to maintain in strict confidence all technology, research and development, business affairs, pricing, trade secrets, and other proprietary information of the other party disclosed under the Agreement. No obligation of confidentiality shall apply to disclosed information that is in the public domain (through no violation of this Section by the recipient) that the recipient: (i) already possesses at the time of disclosure without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without obligation or confidentiality from a third party. The parties' obligations under this Section shall survive expiration or termination of the Agreement.
- b. If the recipient is required by law, rule, regulation or court order to disclose any confidential information, the recipient will promptly notify the disclosing party in writing prior to making any such disclosure in order to facilitate the disclosing party seeking a protective order or other appropriate remedy from the appropriate body. The recipient agrees to cooperate with the disclosing party in seeking such order or other remedy. The recipient further agrees that if the disclosing party is not successful in precluding the requesting legal body from requiring the disclosure of the confidential information, it will furnish only that portion of the confidential information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the confidential information.
- c. Neither party shall use the other's name in publicity or press releases without obtaining the other's prior written approval.



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23. ASSIGNMENT RIGHTS:

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

24. NON-WAIVER; AMENDMENT:

Except as otherwise specifically provided herein, the failure of a party to enforce any right under the Agreement at any time shall not constitute a continuing waiver of any such right with respect to the remaining term of the Agreement, or the waiver of any other right under the Agreement. No modification of the Agreement or any Service Order Form shall be binding upon the parties unless the modification is made in writing and signed by an authorized representative of the party against which enforcement is sought.

25. NOTICE:

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

26. JURISDICTION, FORUM, GOVERNING LAW, AND JURY WAIVER:

The Agreement is made in Chicago, Cook County, Illinois. The Agreement shall be interpreted and construed according to the laws of Illinois, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal and state courts located in Cook County, Illinois shall be the only courts with jurisdiction to hear disputes under the Agreement, and Customer consents to the jurisdiction of the federal and state courts located in Cook County, Illinois to hear such disputes. NITEL and Customer each waive trial by jury in any civil actions or proceedings that are brought by either of the parties under the Agreement.

27. Customer Consent to Use of Customer Proprietary Network Information (CPNI):

NITEL acknowledges that it has a duty, and Customer has a right, under federal and/or state law to protect the confidentiality of Customer's CPNI. Such CPNI includes information about the telecommunications Services purchased by Customer from NITEL or its affiliates, Customer account activity (for example, telephone numbers) and charges incurred by Customer. With Customer's consent, NITEL may use this information for marketing purposes to offer Customer the full range of products and services available from NITEL and NITEL affiliates that may be different from the type of Services Customer currently buys from NITEL and its affiliates. In addition to private line and other dedicated transport services, NITEL and NITEL affiliate's offer other services, including voice, collocation, hardware (by sale or lease) and managed services. A more complete description of NITEL companies and product and service offerings is available at <http://www.nitelusa.com> or Customer may contact its NITEL account manager. NITEL may also share

Customer information with its affiliates, agents and partners to offer the services and products described above. NITEL requires Customer's consent for NITEL and its affiliates, agents, and partners to use this information to offer the services and products described above. By signing the Agreement and taking no further action, Customer gives NITEL Customer's consent to use and disclose Customer CPNI as described above. Customer may refuse CPNI consent by signing the Agreement but then notifying NITEL in writing of Customer's decision to withhold Customer's consent. Customer's consent or refusal to consent will remain valid until Customer otherwise advises NITEL. Customer's decision to approve or disapprove use or disclosure of Customer CPNI as described in this section will not affect NITEL's provision of service to Customer.

28. ATTORNEY'S FEES:

The parties agree that if either party to the Agreement brings any civil action related in any manner to the Agreement, the prevailing party in any such civil action shall recover all of its reasonable attorneys' fees and litigation expenses incurred from the non-prevailing party.

29. SEVERABILITY:

If any provision of the Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect, and such invalid or unenforceable provision will be deemed to be amended to the minimum extent necessary to render it valid and enforceable. If such provision cannot be so amended, the parties will promptly negotiate in good faith a replacement provision that will as closely as possible reflect the parties' original intent.

30. SURVIVAL:

Those Sections of the Agreement that by their nature should survive the termination or expiration of the Agreement, will survive the termination or expiration of the Agreement.

31. ENTIRE AGREEMENT:

The Agreement and any Service Order Form(s) constitute the entire understanding of the parties with respect to the Service and supersede all previous agreements and representations of any kind with respect thereto.

32. COUNTERPARTS; FACSIMILE SIGNATURE:

The Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which when taken together will constitute one and the same instrument. The Agreement may be executed by facsimile or digital signature, and any such facsimile or digital signature by any party hereto shall be deemed to be an original signature and shall be binding on such party to the same extent as if such facsimile or signature were an original signature.

33. NO THIRD PARTY BENEFICIARIES:

The Agreement's benefits do not extend to any third party.

II. VOICE SERVICES

34. VOICE SERVICES:

Voice Services provided by NITEL include Local, Long Distance, Toll Free, Directory Assistance (411), Direct Inward Dial (DID) (collectively "Voice Services"). Customer orders Voice Services from NITEL by submitting an order form ("Order") to NITEL for the provision of Voice Services.

35. RATES:



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During the term of the Voice Services, NITEL shall charge for the Voice Services, and Customer shall pay for such Voice Services, the amount determined by using the domestic rates set forth in the Service Order Form and international rates set forth at <http://www.nitelusa.com/filebin/pdf/n-TellVoiceInternationalRates.pdf>, or subsequent rate addendums forwarded to Customer by NITEL. All rate addendums should be clearly marked by NITEL as to the exact time, including time zone stamp, as to when the rates become effective. Failure to provide this information will create an irrefutable assumption that the rates will become effective as of CST/CDT time.

36. SERVICE PLANS:

Voice Services provided by NITEL include varying rates and minute bundles and additional terms and conditions that can be found here: <http://serviceguide.nitelusa.com>. Customer agrees to these plans and additional terms and conditions (if any) by signing the Agreement.

37. START OF SERVICE:

Charges for Voice Services shall commence on the Start of Service Date, defined as the date Customer is notified that the Voice Services are available. In order to deliver Voice Services, NITEL must deliver data service to Customer ("Data Service"). The Start of Service Date for Voice Services is independent of the Start of Service Date for Data Service. Customer will begin incurring charges for the Data Service beginning at the Start of Service Date for Data Service, and this date may be independent of the Start of Service Date for Voice Services. NITEL will make reasonable efforts to schedule the respective Start of Service dates for Data Service and Voice Services as close as practicable, but Customer may incur charges for Data Service provided before the Start of Service Date for Voice Services.

38. USAGE BILLING INCREMENTS:

Usage sensitive charges are based on the actual usage of Customer's facilities. Such charges are measured in "Conversation Minutes," with billing increments defined in the Service Guide.

39. RATE CHANGES:

NITEL shall have the right to modify rates of the Voice Services from time to time. Any increase in such rates will be effective on at least 7 (seven) calendar days prior written notice via electronic mail ("e-mail") to Customer's designated technical and/or billing contact. Any such rate decreases shall become effective immediately upon receipt. It is solely Customer's responsibility to notify NITEL of any changes to Customer's email address for such rate change notifications.

40. WARRANTY DISCLAIMERS/DISCLAIMERS OF LIABILITY:

a. NITEL neither owns nor controls the Internet or certain other facilities through which the Voice Services may be provided, and does not represent, warrant, or guarantee any particular level of Voice Services availability or quality. Customer agrees that NITEL's Voice Services are provided "as is," except as otherwise specifically provided in the Agreement. Customer understands and agrees that the Internet is not a secure network and that third parties may be able to intercept, access, use or corrupt the information Customer transmits using the Voice Services. NITEL is not responsible for invalid destinations, transmission errors, or corruption or security of Customer's communications. NITEL does not represent, warrant, or guarantee the Voice Services to be uninterrupted or error-free. Customer understands and agrees that delays and disruptions of the Internet transmission of Voice Services are completely beyond NITEL's control.

b. Customer agrees that Customer's use of the Voice Services is Customer's sole responsibility, is solely at Customer's own risk, and is subject to all applicable local, state, national and international laws and regulations.

c. Customer agrees not to connect monitoring services or devices, such as security systems or medical monitoring devices, or the like, to the Voice Services. In addition, NITEL makes no representation, warranty, or guarantee of any kind that the Voice Services will operate without errors when used to connect (a) any device that requires a dial-up network connection, including, but not limited to, satellite television receivers, modems and digital video recorders; or (b) a facsimile machine. Customer waives any claim against NITEL and/or its affiliates, officers, directors, owners, agents, underlying service providers, suppliers, licensors and licensees for any injury and/or damages arising from interference with, or disruption of, any devices described in this section by the Voice Services.

d. In no event will NITEL, its officers, directors, employees, affiliates or agents, independent contractors, or any other service provider who furnishes any services or Customer Premises Equipment to Customer in connection with NITEL's Voice Services be liable for any damages, including but not limited to personal injury, wrongful death, property damage, loss of data, loss of revenue or profits, or damages arising out of or in connection with the use or inability to use a device or the Voice Services, including inability to access emergency service personnel through 911 or to obtain emergency help. These limitations apply to claims founded in breach of contract, breach of warranty, product liability, tort, and any and all other theories of liability. These limitations apply whether or not NITEL was informed of the likelihood of any particular type of damages, and shall apply even if there is a breach of a condition, a breach of an essential or fundamental term, or a fundamental breach of the Agreement. Customer agrees that the limitations of liability set out in this section are fair and reasonable in the circumstances of the Agreement, and that NITEL would not have entered into the Agreement but for Customer's agreement to limit NITEL's ability in the manner and to the extent provided in this section.

41. 911 SERVICE LIMITATIONS AND DISCLAIMERS:

a. THE VOICE SERVICES DO NOT PROVIDE ACCESS TO EMERGENCY SERVICES VIA "911" IN THE SAME MANNER AS TRADITIONAL LANDLINE TELEPHONE SERVICE. THE VOICE SERVICES WILL ATTEMPT TO ROUTE 911 CALLS TO AN EMERGENCY SERVICES AGENCY SERVING THE ADDRESS ASSOCIATED WITH CUSTOMER'S ACCOUNT IN NITEL'S RECORDS, BUT NITEL DOES NOT REPRESENT, WARRANT, OR GUARANTEE IN ANY MANNER THAT ANY CALL TO 911 OR OTHER EMERGENCY SERVICES WILL BE COMPLETED; THAT ANY SUCH CALL WILL BE DELIVERED IN A MANNER THAT INCLUDES INFORMATION CORRECTLY IDENTIFYING THE NUMBER OR ADDRESS FROM WHICH THE CALL WAS PLACED (OFTEN KNOWN AS "ENHANCED 911" OR "E911"); OR THAT ANY SUCH CALL WILL BE DELIVERED TO THE CORRECT RECIPIENT.

b. Customer cannot use the Voice Services to call 911 in the event of a power interruption at Customer's Voice Services location or on any portion of the electrical network NITEL uses to deliver the Voice Services to Customer's Voice Services location.

c. If the broadband service or modem or other equipment Customer's Voice Services uses is malfunctioning for any reason or is installed incorrectly, Customer will not be able to place or receive 911 calls.



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- d. Following a power outage, Customer may have to reset its Integrated Access Device (IAD)(by disconnecting and then reconnecting the device's power cord) in order to restore the Voice Services.
- e. NITEL will attempt to deliver information to the agency receiving a 911 call that will identify the telephone number and address assigned to the IAD from which the call was placed. However, NITEL does not represent, warrant, or guarantee in any manner that the Voice Services will be able to correctly deliver such information. If a call is placed to 911 using the Voice Services and such call is disconnected or the caller is unable to speak or otherwise communicate his/her location to the agency receiving the 911 call, the agency receiving that call may not be able to determine Customer's location or call back. Customer will ensure that anyone using the Voice Service to call 911 will immediately tell the dispatcher Customer's location (or the location of the emergency, if different).
- f. If Customer has activated Service features such as Call Forwarding, Call Blocking or Do Not Disturb at the time a call is placed to 911 through the Voice Services and the call is interrupted, the agency receiving the 911 call may not be able to call back at the number from which the 911 call was placed.
- g. Customer agrees to not attempt to use the IAD from any location other than the service address associated with Customer's service account in NITEL's records. If Customer's IAD is moved to a location other than the address associated with Customer's account in NITEL's records, a 911 call placed from Customer's IAD will be directed to the 911 response center associated with Customer's service address, not the location of Customer's IAD. In addition, the Service will attempt to transmit information to the 911 responder that a call is originating from the address in NITEL's records, not from Customer's IAD's new location. If Customer uses the Voice Services to call 911, the caller should immediately tell the responder the caller's location (or the location of the emergency, if different). It is Customer's sole responsibility to ensure that NITEL has the correct service address for the Voice Services. Calls placed from an incorrectly provisioned e-911 service, due to sending calls from an un-provisioned number or due to NITEL receiving incorrect information from Customer will result in a \$350.00 service charge to Customer.
- h. For technical reasons, there is a greater possibility that a 911 call placed using the Voice Services will result in a busy signal or take longer to answer, as compared to traditional 911 calls.
- i. A 911 call placed using the Voice Services may not be compatible with all types of TDD, TTY or similar devices for the hearing impaired. NITEL does not represent, warrant, or guarantee in any manner that any such device will be able to successfully communicate with the agency responding to a 911 call placed using the Voice Services.
- j. Customer agrees to inform all individuals present at Customer's Voice Services location, and others who may use the Voice Services, about the above limitations on the Voice Services' ability to support 911 or E911 capability.
- k. Customer agrees to maintain an alternative means of reaching 911 from the Voice Services location(s), such as a wireless phone, in addition to the Voice Services.
- l. **DISCLAIMER OF LIABILITY, INCLUDING 911 SERVICE LIMITATIONS:** NITEL DISCLAIMS ALL RESPONSIBILITY FOR 911 SERVICE, INCLUDING BUT NOT LIMITED TO THE CONDUCT OF LOCAL EMERGENCY RESPONSE CENTERS. NITEL DOES NOT HAVE ANY CONTROL OVER ANY LOCAL EMERGENCY RESPONSE CENTER. THEREFORE, NITEL IS NOT RESPONSIBLE FOR WHETHER THEY ANSWER CALLS USING THE VOICE SERVICES, HOW THEY ANSWER CALLS USING THE VOICE SERVICES, OR HOW THEY HANDLE VOICE SERVICES CALLS. NEITHER NITEL NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR

AGENTS, INDEPENDENT CONTRACTORS, OR ANY OTHER SERVICE PROVIDER THAT FURNISHES ANY SERVICES OR CUSTOMER PREMISES EQUIPMENT TO CUSTOMER IN CONNECTION WITH NITEL'S VOICE SERVICES MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, FINE, PENALTY, COST, AND EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF VOICE SERVICES, RELATING TO NITEL'S VOICE SERVICES, INCLUDING, WITHOUT LIMITATION, 911 DIALING, OR ANY CUSTOMER PREMISES EQUIPMENT.

- m. SECTION 41 OF THE AGREEMENT SHALL APPLY EVEN IF THERE IS A BREACH OF A CONDITION, A BREACH OF AN ESSENTIAL OR FUNDAMENTAL TERM, OR A FUNDAMENTAL BREACH OF THE AGREEMENT.
- n. CUSTOMER AGREES THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION 41 ARE FAIR AND REASONABLE IN THE CIRCUMSTANCES OF THE AGREEMENT AND THAT NITEL WOULD NOT HAVE ENTERED INTO THE AGREEMENT BUT FOR CUSTOMER'S AGREEMENT TO LIMIT NITEL'S LIABILITY IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THIS SECTION.

42. CERTAIN SERVICES NOT SUPPORTED:

The Voice Services cannot be used to place the following types of calls: 900-, 976-, 1010xxx (sometimes known as "dial-around" calls), and "0+" calling (such as collect calls or third party billing). In addition, the Voice Service may not support some types of "N11" calls (such as 311, 511, etc.) other than 911 and 411 calling.

43. CALLING PARTY NUMBER:

Neither Customer nor NITEL will take any steps to misrepresent or conceal the nature, origin or destination of any of Customer's traffic. Customer will use all reasonable efforts to transmit in its signaling the Calling Party Number (CPN) or equivalent information regarding the end user originating each call. NITEL will transmit all of the signaling information it receives from Customer.

- 44. **CERTIFIED IP ORIGINATED TRAFFIC.** All of Customer's traffic delivered to NITEL for termination is and will at all times be IP Originated from an end user's (i.e., dialing party's) originating equipment. "IP Originated" shall mean voice traffic which (a) utilizes TCP/IP as a transmission protocol from an end user's (i.e. dialing party's) originating equipment to a TCP/IP gateway in Customer's network and (b) constitutes "Information Services" or "Enhanced Services" according to the regulations of the Federal Communications Commission. If Customer delivers traffic to NITEL traffic which is not IP Originated, Customer shall indemnify and hold harmless NITEL from any losses, claims or other damages of whatever kind arising from, or related to, NITEL's termination of, or representation of such traffic as being IP Originated. Further NITEL may: i) charge Customer an incremental \$.08 per minute for such traffic which Customer cannot establish was IP Originated; and/or ii) immediately terminate the Service Schedule without liability

45. THEFT OF SERVICE/LAWFUL PURPOSES ONLY:

Customer may not use or obtain NITEL's Services and/or Voice Services in any manner that avoids NITEL policies and procedures, including an illegal, fraudulent, improper, or inappropriate manner. If NITEL believes that Customer has used NITEL's Services or Voice Services for an unlawful purpose, NITEL may forward the relevant communication and other information, including Customer's identity, to the appropriate authorities for investigation and prosecution, and Customer consents to NITEL's forwarding of any such communications and information to these authorities. Customer will notify NITEL immediately if Customer believes that the Service and/or Voice Service is being stolen, fraudulently used, or otherwise

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being used in an unauthorized manner, or if Customer's Customer Premises Equipment is lost or stolen. When Customer notifies NITEL of one of these events, Customer must provide the account number and a detailed description of the circumstances of the theft, fraudulent use, or unauthorized use of the service. If Customer fails to notify NITEL in a timely manner, NITEL may disconnect the Services and/or Voice Services and impose additional charges against Customer. Until Customer notifies NITEL and NITEL takes action to prevent use of service using reasonably best efforts, Customer will be liable for all use of NITEL's service using a device and/or Customer Premises Equipment lost or stolen from Customer and any stolen, fraudulent, or unauthorized use of NITEL's service whether or not it involves a lost or stolen device or Customer Premises Equipment.

III. CUSTOMER PREMISES EQUIPMENT

46. CUSTOMER PREMISES EQUIPMENT:

The term Customer Premises Equipment ("CPE") refers to those items of equipment listed in a NITEL-approved order form ("Order") and obtained by Customer under the Agreement. CPE includes appropriate licenses to use related software provided in connection with CPE and all parts, cables, repairs, additions and accessories to CPE.

47. DELIVERY OF CPE:

- a. NITEL will use reasonable efforts to deliver CPE to Customer according to a mutually-agreed schedule. All delivery dates provided by NITEL are approximate and are based on the then current lead-times and available inventory. NITEL will not be liable for failure to meet delivery or installation completion dates.
- b. NITEL will pay for the shipment of CPE to Customer's designated site(s) in the United States set forth in the Order. If Customer is not ready to accept delivery at the designated site, Customer must notify NITEL at least thirty (30) days before the delivery date to avoid special handling charges.
- c. Installation Assistance. NITEL will provide telephone-based installation assistance to Customer and/or Customer's designated technician(s).

48. TITLE, PERSONAL PROPERTY AND UCC'S:

- a. Title and Personal Property. NITEL will have title to CPE. Customer acquires only the opportunity to use CPE for the Term. CPE will at all times remain personal property regardless of its manner of attachment. NITEL may, at its own expense, affix plates or markings to CPE indicating NITEL's ownership interest. Customer may not remove such plates or markings. Customer, at its own expense, will at all time keep CPE free and clear of all liens and encumbrances except for those arising through NITEL, and otherwise cooperate to defend NITEL's interest in CPE and to maintain the status of CPE as personal property. As between NITEL and Customer, Customer will bear the entire risk of loss, theft, casualty, destruction or damage to the CPE following its delivery to Customer, from any cause whatsoever (collectively, "CPE Loss"), until returned to NITEL. Customer will indemnify, defend and hold harmless NITEL, its affiliates, and contractors for any CPE Loss. Customer agrees to advise NITEL in writing within five (5) business days of any CPE Loss. In no event will CPE Loss relieve Customer of the obligation to pay NITEL any amounts due hereunder.
- b. UCC Filings. At NITEL's request, Customer will execute and deliver, at its expense, any documents reasonably necessary to protect NITEL's interest in CPE. NITEL, its Assignee(s), and their agent(s) may sign UCC financing statements on behalf of Customer and file financing statements without Customer's signature. Customer will pay the out-of-pocket costs of filing and/or

recording such documentation. Filed financing statements are evidence of an attempt to protect NITEL's rights and title to CPE and not of any contrary intent. Customer must notify NITEL at least 30 days before any change in its name, state of organization or other legal organizational status that may affect any filed financing statements. Customer must send requests for identification of CPE or for an accounting to NITEL at its notice address in the Service Agreement.

49. MAINTENANCE:

Customer shall allow NITEL reasonable access to the CPE as required for Service and/or Voice Services ordered by Customer. If NITEL CPE requires maintenance or repair, NITEL or its independent contractors/agents shall either arrange to repair the CPE at Customer's premises or ship an equivalent pre-configured replacement to Customer. Customer shall return any faulty CPE to NITEL within ten (10) days of receiving the replacement equipment or pay for such equipment at an amount equal to 100% of the list price for the unreturned CPE as listed here; <http://serviceguide.nitelusa.com>. Customer shall reimburse NITEL, on a time and materials basis as documented in an invoice, for the entire cost to repair and/or replace any of the CPE in the event that CPE requires replacement due to (a) misuse, (b) failure to exercise reasonable care, (c) altering original NITEL configuration, (d) damage, (e) theft, or (f) disaster. Any service interruptions due to equipment repair or replacement due to (a) misuse, (b) failure to exercise reasonable care, (c) altering original NITEL configuration, (d) damage, (e) theft, or (f) disaster will not be eligible for service outage credits under the applicable service level agreement(s).

50. RENTAL AND OTHER CHARGES:

- a. Monthly Recurring Charges. The installation charges are specified in the Service Order Form. The recurring charges listed in the Service Order Form reflect the monthly charges for CPE rental. Customer will pay NITEL the total Monthly Recurring Charges ("MRC") set forth in the Service Order Form according to NITEL's invoices and the Service Agreement. NITEL may modify any and all rates or charges for products or services not under an Initial Term upon thirty (30) days written notice to Customer.
- b. EXCEPT AS SET FORTH IN SECTION 54 OF THE AGREEMENT, CUSTOMER'S OBLIGATIONS UNDER AN ORDER, INCLUDING PAYMENT OBLIGATIONS, ARE ABSOLUTE, UNCONDITIONAL AND NON-CANCELABLE AND NOT SUBJECT TO ANY DELAY, REDUCTION, SETOFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER INCLUDING, WITHOUT LIMITATION, WARRANTY, MAINTENANCE OR OTHER PERFORMANCE ISSUES.

51. INSURANCE:

At its expense, Customer must keep CPE insured against all risks of loss and damage, from the date CPE is delivered to the Installation Site, for an amount equal to the full installed replacement cost of CPE. Customer must also maintain comprehensive general liability insurance with NITEL or its Assignee named as additional insured with limits not less than \$1,000,000.00 per occurrence and aggregate, unless such insurance is required elsewhere at a higher limit. All insurance policies must be with an insurer having a "Best Policy Holders" rating of "B+" or better, and be in such form, amount and deductible as are satisfactory to NITEL. Each policy must name NITEL or its Assignee as a loss payee and state by endorsement that the insurer must give NITEL or its Assignee not less than 30 days prior written notice of any amendment, renewal, or cancellation. Customer will, upon request, furnish satisfactory evidence that such insurance coverage is in effect. Customer may

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SERVICE AGREEMENT

self-insure with prior written consent of NITEL and any Assignee, which consent will not be unreasonably withheld. Nothing within the Agreement will limit Customer's liability to NITEL to the amounts of insurance carried.

52. CASUALTY:

If any CPE, in whole or in part, is lost, stolen, damaged, or destroyed, or is taken in any condemnation or similar proceeding (an "Event of Loss"), Customer will immediately notify NITEL. Customer must immediately restore the affected CPE to good condition and working order, replace the affected item with identical CPE and software in good condition and transfer clear title and any sublicense to NITEL, or pay to NITEL, within 30 days of the Event of Loss, an amount equal to 100% of the list price for the unreturned CPE as listed here; <http://serviceguide.nitelusa.com>.

53. WARRANTY AND DISCLAIMERS:

NITEL PROVIDES CPE "AS IS." NITEL DOES NOT WARRANT THAT THE OPERATION OF CPE WILL BE UNINTERRUPTED OR ERROR FREE. NITEL MAKES NO EXPRESS OR IMPLIED WARRANTIES FOR CPE INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE. TO THE EXTENT THAT ARTICLE 2A OF THE UCC APPLIES TO AN ORDER AND CUSTOMER HAS CERTAIN RIGHTS THEREUNDER AND TO THE EXTENT PERMITTED BY LAW, CUSTOMER WAIVES ANY RIGHTS OR REMEDIES IT MAY HAVE UNDER UCC ARTICLE 2A-508 THROUGH 5-222 INCLUDING, WITHOUT LIMITATION, RIGHTS OF REJECTION, REVOCATION, CANCELLATION, RETENTION OF SECURITY INTERESTS, AND RECOVERY FOR BREACH OF WARRANTY (EXCEPT TO THE EXTENT CUSTOMER IS SPECIFICALLY GRANTED ANY RIGHTS IN AN ORDER).

54. TERMINATION:

- a. If the Agreement or any Service and/or Voice Services provided hereunder are terminated on or after the CPE start date but prior to the expiration of the applicable Term, then Customer must pay to NITEL the following charges related to CPE: (a) all charges for CPE provided through the effective date of such termination; (b) an early termination charge of 100% of the balance of the MRCs that otherwise would have become due for the unexpired portion of the Term; and (c) if NITEL granted Customer a discount or waiver with respect to any non-recurring charge for CPE, then the discounted or waived amount.
- b. NITEL and Customer agree that NITEL's damages in the event of early Service and/or Voice Services termination will be difficult or impossible to determine. NITEL and Customer therefore agree that this section is intended to establish liquidated damages for CPE in the event of early termination and the associated termination charges are not intended as a penalty.

55. RETURN OF CPE:

Upon termination/expiration of any Service, or when Customer replaces/upgrades CPE, Customer must return terminated or replaced/upgraded CPE to NITEL at Customer's own expense within 15 days of termination or replacement/upgrade. NITEL will provide Customer with return instructions. Customer must deliver CPE to NITEL in the same condition as it was when first delivered to Customer, normal wear and tear excepted, and give NITEL written notice of such return. If CPE is not returned as such, or not returned, Customer will be responsible for 100% of the list price for the unreturned CPE as listed here; <http://serviceguide.nitelusa.com>. NITEL may invoice and collect from Customer all charges due under this section as a single amount. Customer may not sell or transfer title to any CPE without the express written consent of NITEL. Any attempted sale in violation hereof shall be null and void and considered Cause under the Service Agreement. In addition the parties

acknowledge that any unauthorized sale may result in the immediate voiding of any warranties that may have been passed through to Customer.

56. ADDITIONAL LIMITS OF LIABILITY:

If CPE contains a firewall or other security features, NITEL makes no warranty, guarantee, or representation, express or implied, that all security threats and vulnerabilities will be detected or that the performance of the Services will render Customer's systems invulnerable to security breaches. Customer is responsible for Customer's own network security policy and security response procedures. If any equipment or software not provided by NITEL impairs Customer's use of any Services: (a) Customer will nonetheless be liable for payment for all Services provided by NITEL; and (b) any SLA generally applicable to the Services will not apply.



SERVICE AGREEMENT

Customer Name:

Gold's Holding Corp

(FULL LEGAL NAME)

Delaware Holding Corporation

(STATE OF FORMATION & TYPE OF ENTITY)

By:

(SIGNATURE)

[Signature]
Adam Zerbiff

(PRINT NAME)

CTO

(TITLE)

11/30/17

(DATE)

Customer Address:

4001 Maple Avenue

(Street Address)

Suite 200

Dallas

TX

75219

(City)

(State)

(Zip)

Nitel, Inc.

1101 W. Lake Street #600
Chicago, IL 60607

By:

Paul Rios

(SIGNATURE)

Paul Rios

(PRINT NAME)

General Counsel

(TITLE)

February 6, 2017

(DATE)