

**COMMERCIAL TERMS AND CONDITIONS TO THE PROVISION OF  
TELECOMMUNICATIONS AND INFORMATION SERVICES BY CAL-ORE  
COMMUNICATIONS, INC. (CAL-ORE”  
(hereinafter “Terms & Conditions”)**

**1. SUMMARY OF GENERAL COMMERCIAL TERMS.**

**1.1 Service[s]:** Services as used in these Terms & Conditions shall mean the telecommunications and information services and /or ancillary services described in any fully executed Service Agreement and attached Exhibits (hereinafter collectively referred to as “Service Agreement”) . These Terms & Conditions are incorporated by reference into any and all fully executed Service Agreement[s]. Upon full execution of the Service Agreement the Terms and Conditions shall become fully binding on CAL-ORE and any Customer as if the Terms & Conditions were set forth in full in such Service Agreement. The Exhibits applicable to any Service Agreement, to the extent fully executed by both parties, are as follows:

<b>Exhibit A</b>	<b>Commercial Services Quote</b>
<b>Exhibit B</b>	<b>Cloud Voice Services</b>
<b>Exhibit C</b>	<b>Backspace Off-Site Data Storage Services</b>

The Service Agreement, and these Terms and Conditions constitute the Master Agreement by and between Cal-Ore and the Customer identified in the Service Agreement.

**1.2 Customer:** Customer as used in these Terms & Conditions shall mean any party who obtains Services from CAL-ORE.

**1.3 Submission of Service Agreement:** To order any Service, Customer must submit to CAL-ORE a Service Agreement, in CAL-ORE’s standard form, specifying the requested Service and specifying the duration of the requested Service and any renewal periods (collectively the “Service Term”). Upon expiration of the initial Service Term, the applicable Customer Service Agreement shall renew upon the same rates, terms and conditions as set forth in the original Customer Service Agreement on an annual basis, not to exceed a total of two (2) renewals, unless and until either party provides the other with sixty (60) days prior written notice of its desire to terminate the applicable Service Agreement. Upon receipt of a Service Agreement, if CAL-ORE determines (in its sole discretion) to accept the Service Agreement by executing the same, CAL-ORE will become obligated to deliver the ordered Service.

**1.4 Commencement of Billing:** Upon installation and testing of the ordered Service, CAL-ORE will deliver to Customer a Connection Notice. Upon receipt of the Connection Notice, Customer shall have a period of forty-eight, (48) hours to provide CAL-ORE with written acceptance or rejection of the Service. Unless Customer delivers written notice of rejection to CAL-ORE within such period, indicating that the Service is not installed in accordance with the Service Agreement and functioning properly and identifying with specificity the basis for the rejection with reasonable supporting documentation, billing of one hundred percent (100%) of the Non-Recurring Charge(s) (“NRC”) and the Monthly Recurring Charge(s) (“MRC”) shall commence, regardless of whether Customer has procured services from other carriers needed to operate the Service, and regardless of whether Customer is otherwise prepared to accept delivery of the ordered Service. In the event CAL-ORE does not receive a written acceptance or rejection of the Service within the aforementioned time frame, the Service shall be deemed accepted (“Acceptance Date”).

If a Service, consists of more than one circuit, then CAL-ORE will issue a separate Connection Notice for each circuit. The terms and conditions outlined in the immediately preceding paragraph shall apply to each individual circuit when the Service consists of more than one circuit. Billing for Moves, Adds and Changes (MACs) for existing services will commence on the date CAL-ORE issues a Connection Notice to the Customer for the MAC.

**1.5 Payment of Invoices:** Except as otherwise provided for in any Service Agreement , invoices are sent monthly, in advance for Services to be provided during the upcoming month. All invoices shall be submitted to Customer via either paper invoice or electronic delivery to the Customer Contact designated in

the applicable Service Agreement and are due for payment within thirty (30) days of the invoice date. Billing for partial months is prorated based on a calendar month. Past due amounts bear interest at a rate of 1.5% per month (or the highest rate allowed by law, whichever is less) and continue to accrue until paid in full. CAL-ORE shall be entitled to recover all costs of collection of past due amounts, including without limitation, reasonable attorney's fees.

- 1.6 Billing Disputes:** Customer must notify CAL-ORE in writing of any disputed charge within fifteen (15) calendar days from the date of Invoice. Any charge not disputed within said fifteen (15) calendar day period will be deemed correct and Customer will be deemed to have waived its right to dispute the same. CAL-ORE will review any disputed charge and, as appropriate, credit Customer's account for any charge erroneously billed to Customer.
- 1.7 Taxes and Fees:** Taxes, surcharges, fees, universal service fund charges associated with the Service, and other payments contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise are not included in CAL-ORE's charges and will be billed and paid by Customer as separate line items to the extent imposed on a pass-through basis without mark-up of any kind whatsoever. Customer shall not be liable for any taxes, fees, or other charges based upon CAL-ORE's income. CAL-ORE will not invoice Customer for federal excise taxes or (if applicable) state sales taxes subject to Customer providing CAL-ORE with a valid Sales Tax Exemption Certificate. Should the Customer's Sales Tax Exemption Certificate be declined by any taxing authority Customer will be obligated to remit to CAL-ORE the sales tax associated with the Customer's impacted Service.
- 1.8 Regulatory and Legal Changes:** In the event of any condemnation or exercise of the right of eminent domain, change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Service, CAL-ORE and Customer will negotiate regarding the rates to be charged to Customer to reflect such increase in cost. In the event that the parties are unable to reach agreement respecting new rates within thirty (30) days after CAL-ORE's delivery of a change of law written notice, then (a) CAL-ORE may pass such increased costs through to Customer, and (b) Customer may terminate the affected Service Agreement without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase.
- 1.9 Early Termination Charges:** In the event that, prior to the end of the Service Term, Customer terminates Service or in the event that the delivery of Service is terminated due to a failure of Customer to comply with these Terms & Conditions, Customer shall pay a termination charge equal to the sum of the following: (a) 100% of the MRC that would have been incurred for the Service for the months remaining on the Service Term up to the first 12 months of the Service Term, (b) Customer shall pay a termination charge equal to 75% of the MRC that would have been incurred for the Service for the months remaining on the Service Term for months 13 through 24 of the Service Term, and (c) Customer shall pay a termination charge equal to 50% of the MRC that would have been incurred for the Service for the months remaining on the Service Term for months 25 and beyond. In addition Customer will be responsible for 100% of any termination charge imposed on CAL-ORE by a third party supplier whose facilities were contracted for by CAL-ORE in order to provide the Customer's Services.
- 1.10 Service Interruptions and Delivery:** CAL-ORE provides specific remedies regarding the provision and performance of Service as set forth in Section 4 and the same are Customer's sole remedies in the event of CAL-ORE's failure to provide Service. Customer's sole remedy for any uncured breach of these Terms & Conditions by CAL-ORE is to terminate the use of Service without penalty (except for payment of charges for Service provided through the effective date of termination). In the event of Customer's material breach of any provision of the Master Agreement, CAL-ORE, in addition to all other remedies available to it hereunder, at law, in equity, or under any applicable tariff, may suspend or terminate the provision of Service to Customer.
- 1.11 Limitation of Liability:** Notwithstanding any other provision hereof, neither party shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including but not limited to damages for lost profits, lost revenues or the cost of purchasing replacement services) arising out of the performance or failure to perform under any Master Agreement, or the CAL-ORE Acceptable Use Policy.

Neither Cal-Ore, its officers, directors, stockholders, parent corporation, its affiliated or subsidiary corporations, employees, representatives or agents may be held liable for any claim, damage or loss, and Customer hereby waives any and all such claims or causes of action, arising from or relating to Cloud Voice E-911 dialing service unless such claims or causes of action arise from Cal-Ore 's gross negligence or willful misconduct.

- 1.12 Disclaimer of Warranties:** CAL-ORE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CAL-ORE MAKE NO WARRANTIES OR GUARANTEES AS TO WHETHER, OR THE MANNER IN WHICH, E-911 DIALED CALLS THAT CUSTOMER MAKES ARE ANSWERED OR RESPONDED TO BY THE LOCAL EMERGENCY RESPONSE CENTER OR BY THE NATIONAL EMERGENCY CALLING CENTERS. CAL-ORE DISCLAIMS ANY AND ALL LIABILITY OR RESPONSIBILITY IN THE EVENT THAT THE THIRD PARTY DATA USED TO ROUTE E-911 DIALED CALLS IS INCORRECT OR YIELDS AN ERRONEOUS RESULT.
- 1.13 Force Majeure:** Neither party is liable for any failure of performance nor shall any credit allowance or other remedy be extended, for any failure of performance due to any cause or causes beyond such party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, adverse weather conditions war, revolution, civil commotion, acts of public enemies, terrorism or national emergency, governmental action or inaction (such acts including without limitation any regulatory or administrative decisions making said performance or obligation economically or technically unfeasible), condemnation or the exercise of rights of eminent domain, labor difficulties, failure of any third party (including any other carrier or supplier) to provide services, facilities or equipment required for such performance or obligation (or any other act or omission by said third party). Either party's invocation of this clause shall not relieve Customer of its obligation to pay for any Services actually provided up to Customer's demarcation point. In the event CAL-ORE is unable to deliver Service for seven, (7) consecutive days as a result of any force majeure events, Customer shall not be obligated to pay CAL-ORE for the affected Service for so long as CAL-ORE is unable to deliver such Service; provided, however, that the Service Term of such Service shall be extended for the period of time that the force majeure event continues.
- 1.14 Assignment and Resale:** Customer may not assign its rights and obligations to an unrelated third party under a Service Agreement or Master Agreement without the express prior written consent of CAL-ORE. As a condition to such assignment, (i) Customer shall cause the permitted transferee or assignee to be bound (in writing) by the rates, terms and conditions, set forth herein and (ii) Customer shall remain primarily liable for the payment of all charges due under any Master Agreement. Customer shall have the right to assign, or otherwise transfer any Master Agreement, in whole or in part, to any parent, subsidiary or affiliate of Customer which shall control, be under the control of, or be under common control with Customer, provided such assignee assumes in writing the Master Agreement without modification and such Assumption is delivered to CAL-ORE prior to the effective date of such permitted assignment. Any purported assignment and transfer made in violation of this Section is void.
- 1.15 Indemnification:** Each party shall indemnify, defend, and hold harmless (collectively, "Indemnify") the other from any and all claims, loss, (whether made, asserted or threatened), actions, judgments, damages, liabilities, fines, penalties, costs and expenses, including without limitation reasonable attorneys' fees, consultants' fees and experts' fees (all such claims collectively referred to herein as "Claims") arising from or in connection with loss or damage to tangible property, personal injury or death caused by such party's negligence or willful misconduct or any breach by such party of any obligation set forth in the Master Agreement. Customer agrees to release, indemnify, defend and hold harmless CAL-ORE its officers, directors, employees, agents, and affiliated companies from any and all Claims arising from or in connection with: (i) any fraudulent, unauthorized, or unlawful use of Service, (ii) any third party Claim based on the operation, resale, of or connection to the Service by Customer (or by any person other than CAL-ORE or its duly authorized representative, (iii) Claims for libel, slander, obscenity or indecency, and (iv) the content or use of any transmission, including without limitation (a) Claims by any domestic or

foreign governmental entities seeking to impose penal sanctions for the transmission of such content; (b) Claims of infringement of any third party's copyright, patent, trade secret, trademark, service mark or other intellectual property right arising from or related to such transmitted content or use of the Service in conjunction with Customer premises equipment, and (c) claims by third parties relating to such transmitted content or use; (v) any and all liability whatsoever, whether made, instituted or asserted by Customer or by any other person, for any personal injury to or death of any person or persons, or for any destruction of any property, whether owned by Customer or others, caused or claimed to have been caused, directly or indirectly, by the operation, failure or outage of Cloud Voice Services, incorrect E-911 routing, or use of, or inability of a person to use, Cloud Voice E-911 dialing feature or access emergency service personnel..

**1.16 Governing Law:** CAL-ORE has filed or may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain Services or CAL-ORE may post a Pricing Guide. Tariff(s) are (or upon filing will be deemed to be) incorporated herein by this reference and made a part hereof and the Pricing Guide upon posting on CAL-ORE's website will be incorporated herein by this reference and made a part hereof. Such tariffs and/or Pricing Guide as are then in effect at the time of the execution of the Service Agreement, are to be deemed binding upon all Services ordered by Customer, and, in the event such provisions are inconsistent with the terms of a Service Agreement the terms set forth in the applicable tariff or the Price Guide shall control. The Master Agreement shall be governed by, and construed and enforced in accordance with, as applicable, (i) the Communications Act of 1934, as amended and (ii) the laws of the State of Oregon, without regard to Oregon's conflict of law principles.

**1.17 Default:** In addition to any other basis for suspension or termination of Service as set forth in the Master Agreement, each of the following events shall constitute an event of default:

- a) The failure of Customer to make any payment required pursuant to any fully executed Service Agreement within thirty, (30) days of the date of invoice;
- b) A court or governmental authority of competent jurisdiction shall enter an order appointing a custodian, receiver, trustee, intervener, or other officer with similar powers with respect to a party or with respect to any substantial part of its property, or constituting an order for relief or approving a petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up, or liquidation of either party, or if any such petition shall be filed against a party and shall not be dismissed within sixty (60) days thereafter;
- c) The failure of a party to carry and maintain insurance in compliance with the provisions of any particular Service Agreement;
- d) The failure of a party to perform or observe any material covenant or agreement to be performed or observed by it hereunder, and such failure shall continue un-remedied for a period of thirty (30) days after written notice given to the defaulting party; provided, however, that where such failure cannot reasonably be cured within such 30-day period, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such breach shall be extended for such period of time as may be necessary to complete such curing up to a maximum cure period of sixty (60) days;
- e) The violation of the CAL-ORE Acceptable Use Policy.

**1.18 Entire Agreement:** These Terms & Conditions, and any Service Agreement constitute the "Master Agreement". The Master Agreement and any documents incorporated by reference therein, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations, understandings, and agreements with respect hereto, whether oral or written, and the terms of any purchase order issued in connection with Services ordered from CAL-ORE. Customer represents that Customer has read the entire Master Agreement and has had the opportunity to consult with legal counsel of its choosing.

- 1.19 Order of Precedence:** In the event of a conflict between these Terms & Conditions and any Service Agreement, the terms and conditions of the Service Agreement shall control, but only to the extent of any such conflict.
- 1.20 Severability:** In the event any term of the Master Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of the Master Agreement nor the validity of the terms of any Exhibit shall in any way be affected thereby.
- 1.21 Waiver:** No failure to exercise and no delay in exercising, on the part of either party hereto, any right, power, or privilege hereunder or under Master Agreement shall operate as a waiver thereof, except as expressly provided herein.
- 1.22 Relationship to Parties:** The parties hereto understand and agree that the Master Agreement does not create a joint venture or partnership between the parties and does not make CAL-ORE, on the one hand, and Customer on the other hand, an agent or legal representative of each other for any purpose whatsoever. No party hereto is granted by the Master Agreement any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of any other party hereto, or to bind any other party hereto in any manner whatsoever.
- 1.23 Survival:** Sections 1.7, 1.9 -1.12, 1.14-1.16, 1.19 2.1-2.3, 3.1 and 3.4 shall survive termination or expiration of any Service Agreement or Master Agreement.

## **2. ACCEPTABLE USE & CONTENT.**

- 2.1 Fraudulent Use of Services:** Customer is responsible for all charges attributable to Customer incurred respecting Service, even if incurred as the result of fraudulent or unauthorized use of Service by a representative, employee, contractor, agent or customer of the Customer or by any third party. Service is available for lawful use only. Notwithstanding any other provision hereof, CAL-ORE may discontinue Service in the event that it determines, in its sole reasonable discretion, that Service is being used for any fraudulent, unauthorized or unlawful purpose, that use of the Service violates CAL-ORE's AUP or the AUP of any of CAL-ORE's internet services providers, that Customer's use thereof is interfering with any other person, or that Customer shall have used, advertised, transmitted or otherwise made available any software program, product or service whose function violates the CAL-ORE AUP, including but not limited to, facilitating the sending of Unsolicited Commercial E-mail ("UCE", also known as SPAM).
- 2.2 Contents of Communications:** CAL-ORE shall have no liability or responsibility for the content of any communications transmitted via the Service, or for Customer's use thereof. To the extent the Service is used for access to the Internet, CAL-ORE provides Customer only with access to its backbone network that serves as a transmission conduit through which Customer may connect its data servers to the Internet. CAL-ORE does not operate, process or control the information, services, opinions or other content of the Customer's data servers or the information, services, opinions or other content of the Internet; nor does CAL-ORE engage in any protocol or information processing or conversion in connection therewith. Customer acknowledges that CAL-ORE is acting as a bandwidth intermediary providing transport to multiple internet access providers. Should any internet access provider elect to block Customer's address space or access to the intranet, such dispute does not constitute a breach by CAL-ORE of its obligations under the Master Agreement and the resolution of such disputes is the sole and exclusive responsibility of Customer. Customer shall defend, indemnify and hold CAL-ORE harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third parties relating to Customer's use of Service. Customer agrees that it shall make no claim whatsoever against CAL-ORE relating to, a) the content of the Internet, or b) respecting any information, product, service or software ordered through or provided by virtue of the Internet, or c) the blocking of Customer's address space or Customer's access to the internet.
- 2.3 Acceptable Use Policy:** To the extent the Service is used for access to the Internet, Customer agrees to be bound by and conform to the published CAL-ORE Acceptable Use Policy ("AUP"). In the event of

Customer's breach of the CAL-ORE AUP, in addition to all other remedies available to it hereunder, at law or in equity, or under any applicable tariff, CAL-ORE may suspend or terminate the provision of Service to Customer. Suspension of service due to Customer violation of the CAL-ORE AUP shall not in any way abrogate Customer's obligations under the Master Agreement. CAL-ORE may from time to time amend its Acceptable Use Policy. If Customer elects not to be bound by the published Acceptable Use Policy, Customer may terminate the Service Agreement and pay the termination charges set forth herein.

### **3. CUSTOMER OBLIGATIONS.**

**3.1 Customer Obligations for CAL-ORE Supplied Equipment:** Customer provides and bears the cost for space and racks (needs to be bolted down) to house CAL-ORE Supplied electronic equipment, connector panels, splice boxes etc. ("CAL-ORE Supplied Equipment"). Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to operate the CAL-ORE Supplied Equipment and to maintain the proper environment for all CAL-ORE Supplied Equipment. In the event Customer fails to do so, Customer shall reimburse CAL-ORE for the actual cost of repairing or replacing any CAL-ORE Supplied Equipment damaged or destroyed as a result of Customer's failure.

Except as otherwise agreed, title to all CAL-ORE Supplied Equipment shall remain with CAL-ORE. CAL-ORE will provide and maintain the CAL-ORE Supplied Equipment in good working order. Customer shall not, and shall not permit others to, rearrange, disconnect, remove, and attempt to repair, or otherwise tamper with any CAL-ORE Supplied Equipment without the prior written consent of CAL-ORE. The CAL-ORE Supplied Equipment shall not be used for any purpose other than that for which CAL-ORE provides them. Customer shall not take any action that causes the imposition of any lien or encumbrance on the CAL-ORE Supplied Equipment. In no event will CAL-ORE be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused or related to improper use or maintenance of the CAL-ORE Supplied Equipment by Customer or third parties provided access to the CAL-ORE Supplied Equipment by Customer in violation of these Terms & Conditions. Customer shall reimburse CAL-ORE for any damages incurred as a result thereof.

Customer agrees (which agreement shall survive the expiration, termination or cancellation of any Service Agreement or Master Agreement) to allow CAL-ORE to remove the CAL-ORE Supplied Equipment from the Customer facility after termination, expiration or cancellation of the Service Term; or during the Service Term, for repair, replacement or otherwise as CAL-ORE may determine is necessary or desirable, but CAL-ORE will use commercially reasonable efforts to minimize disruptions to the Service caused thereby.

**3.2 Customer Obligations for CAL-ORE Fiber Connection(s):** Customer is responsible for securing Building Entrance agreement(s) to permit CAL-ORE to construct a fiber connection from the CAL-ORE network to inside the Customer's facility or in the alternative where the CAL-ORE demarcation point is located outside of the Customer building, Customer is responsible for connectivity to the CAL-ORE demarcation point. Customer is responsible for the installation and all costs for the Inside Plant ("ISP") wiring from Customer's Premise Equipment ("CPE") to the CAL-ORE point of demarcation including all connections between the CAL-ORE Supplied Equipment to the defined point of interconnection. Customer will be responsible for any additional costs that may be incurred by CAL-ORE due to Customer delay in completing ISP work on time.

**3.3 Customer Obligations for CAL-ORE Access to Customer's Facility:** As a condition to CAL-ORE's obligation to provide and maintain the Service hereunder, Customer shall provide CAL-ORE 24 X 7 X 365 access to the Customer facility to the extent reasonably determined by CAL-ORE for the installation, inspection and scheduled or emergency maintenance of CAL-ORE Supplied Equipment and/or CAL-ORE System. CAL-ORE shall notify Customer in advance of any regularly scheduled maintenance that will require access to the Customer facility. Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions at the Customer facility. To facilitate CAL-ORE access for regular and emergency service, Customer shall provide CAL-ORE with the contact name and

telephone numbers where the contact can be reached by CAL-ORE on a 24 X 7 X 365 basis. It is the obligation of the Customer to keep this contact information up to date. CAL-ORE Supplied Equipment may be used to service other CAL-ORE customers.

**3.4 Customer Obligations for Customer Supplied Equipment:** CAL-ORE may install certain Customer-provided communications equipment upon installation of Service, but CAL-ORE shall not be responsible for the operation or maintenance of any Customer-provided communication equipment. CAL-ORE undertakes no obligations and accepts no liability for the configuration, management, performance or any other issue relating to Customer's routers or other Customer-provided equipment used for access to or the exchange of traffic in connection with the Service.

#### **4. CAL-ORE OBLIGATIONS.**

**4.1 General CAL-ORE Obligations:** CAL-ORE provides equipment as specified in the Service Agreement(s). CAL-ORE will configure and provision all agreed to network service parameters. CAL-ORE will maintain in good working order the CAL-ORE System and all CAL-ORE Supplied Equipment as specified in the Service Agreements. In the event it is determined that any Service Outage or Customer alarm was caused by the act or omission of Customer, its agents, employees or contractors, then Customer shall pay CAL-ORE for its costs incurred in responding to such Service Outage or Customer alarm.

**4.2 CAL-ORE Obligations as a Result of a Service Outage:** A Service Outage is expressly not a breach of a representation or warranty and is not a breach or default under the Master Agreement. After receiving notification of the Service Outage, CAL-ORE shall attempt to restore the Service as quickly as possible. A Service Outage begins when CAL-ORE is notified of the outage by the Customer submitting a reasonably detailed trouble ticket describing the nature of the problem or CAL-ORE becomes aware of the Service Outage, whichever occurs first. A Service Outage ends when the affected line and/or associated CAL-ORE Supplied Equipment is operational, subtracting any delay time associated with CAL-ORE or its agent's inability to access the equipment and/or CAL-ORE System at the Customer's site. If the Customer reports Services or a circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but shall not be deemed a Service Outage.

**4.3 Service Outage Exclusions:** All calculations of Service Outage duration do not include periods of service interruption resulting in whole or in part from one or more the following causes:

- Any act or omission on the part of the Customer, its contractors, agents or vendors, including, but not limited to any violation of the CAL-ORE AUP, or any refusal to release the Service to CAL-ORE or its agents for maintenance, testing or repair, or any period in which CAL-ORE or its agents are not given access to the Service facility at the site(s) where the Customer's Service terminates.
- The Customer's applications, equipment, or facilities including any third party facilities or equipment.
- CAL-ORE or Customer-scheduled maintenance, or in the event Customer's Order includes third party facilities, the third party provider's scheduled maintenance.
- Labor strikes.
- Force Majeure events as defined in these Terms & Conditions.
- Service Outages attributable to the installation of a new circuit.
- Failure or malfunction of third party circuits or alternate access arrangements.

**4.4 Credit Allowances and Customer Remedies for Service Outages:** In the event that CAL-ORE is unable to restore the Service, and in the event the Service Outage lasts in excess of four (4) hours, then Customer shall be entitled to claim a credit allowance equal to 1/30th of the MRC for each four hour period in excess of the initial four hour period for the impacted Service, for the duration of the Service Outage (“Credit Allowance”). In no event shall the cumulative Credit Allowance for a particular month ever exceed 100% of the total MRC for the impacted Service(s) for the particular month in which the Service Outage occurs.

(A) Credit Allowances do not apply to Service Outages caused by:

- i. The acts or omissions of Customer and/or end user or its agents including, but not limited to, any violation of the CAL-ORE AUP;
- ii. Failure of power;
- iii. Failure or malfunction of non-CAL-ORE equipment or systems, third party circuits or alternate access arrangements;
- iv. Circumstances or causes beyond the control of CAL-ORE or its agents;
- v. During any period in which CAL-ORE or its agents are not given access to the Service facility at the Customer site(s) where the CAL-ORE Service terminates;
- vi. A planned service outage, unscheduled emergency maintenance or scheduled maintenance by CAL-ORE or any third party facility provider (alteration or implementation as described herein).

(B) Customer must request a Credit Allowance for a Service Outage within thirty, (30) days after the Service Outage occurs or any claim for a Credit Allowance is waived. Unless otherwise specifically stated, Service Outages are not aggregated for purposes of determining the Credit Allowance. No Credit Allowance shall be due and payable if at the time of the Service Outage Customer was in default under the Master Agreement. Any timely claimed Credit Allowance shall be applied as a credit to the Customer’s MRC for the impacted Service on the second invoice after CAL-ORE’s receipt of the request for the Credit Allowance.