

Ernest Communications, Inc.
Local Service Customer Agreement

This agreement (Agreement) is made and entered into on the 4th day of September, 2012, ("Effective Date") by and between Ernest Communications, Inc. ("ECI") a Georgia Corporation, at 5275 Triangle Parkway, Suite 150, Norcross, GA 30092 and the City of Redlands ("Customer") at 35 Cajon Street, Suite 200, Redlands, California 92373.

For purposes of this agreement, "Ernest Communications, Inc.", "ECI", or "Company" means the corporation or an affiliate thereof that is certified to provide the Services in the applicable states.

IN CONSIDERATION of the mutual covenants and conditions set forth below, it is agreed as follows:

- OBLIGATIONS OF ECI:** Throughout the term of this Agreement, ECI shall provide local line services ("Services") to Customer at the locations listed on Exhibit A of this Agreement, which may be amended from time-to-time by Customer by entering orders for service in accordance with ECI practices, provided that ECI does not reject such order within thirty (30) days of submission. ECI shall provide the Services and shall have the responsibility to arrange, move, disconnect, change and repair facilities to allow for the services provided under this Agreement and the signed Letter of Agency entered into between the parties contemporaneously herewith ("LOA").
- OBLIGATIONS OF CUSTOMER:** Customer shall provide all information, access, and support required for timely installation and proper use of the Services. Additionally, Customer shall make full and timely payments as described under Paragraph 8 of this Agreement. Customer shall assure that Customer's use of the Services is at all times consistent with the use intended, is not utilized in any unlawful manner, and is used in such a manner as to prevent damage to ECI's network or equipment.
- QUALITY SERVICE GUARANTEE:** If at any time during the Term (as defined hereinafter), subject to the conditions below, ECI is in material breach (provided that such breach is within ECI's control) of its obligations regarding network quality, service support or billing functions, and ECI fails to cure such breach within thirty (30) days of written notice (addressed to the Director of Customer Care, Ernest Communications, Inc., 5275 Triangle Parkway, Suite 150, Norcross, GA 30092) from Customer, ECI will, upon Customer's written request, terminate this Agreement.
- TERM OF SERVICE:** This Agreement shall commence on the Effective Date and shall continue thereafter on a month to month basis (each month to be referred to as a "Renewal Term"), unless the service is terminated in accordance with the provisions of paragraph 13 or 3 herein. No termination of this Agreement shall relieve Customer of its obligation to pay any charges incurred prior to such termination.
- PRICING, FEES AND CHARGES:** Prices and fees for the Services are outlined in Exhibit A, which is attached hereto and incorporated herein by this reference. These charges are categorized as (1) "Recurring Charges" and (2) "Non-Recurring Charges" as outlined in Exhibit A. Recurring Charges are billed monthly to the Customer and will remain fixed during the term hereof, subject to the provisions of Exhibit A. Non-Recurring Charges shall be billed as they occur. Charges will begin to accrue at the time the Services to which they relate have been activated.
- ADDITIONAL CHARGES:** Any applicable federal, state or local use, excise, sales or privilege taxes, duties or similar liabilities including Federal or State mandated regulatory assessments, charged to or against ECI or Customer because of the Services and equipment furnished by ECI shall be paid by the Customer.
- SERVICE ADDITIONS:** Customer may request additional quantities or types of service to those currently provided under this Agreement, at the then-prevailing rates under the terms of this Agreement, by executing a written order for such additional service ("Order"). Each Order must be accepted by ECI and shall specify the agreed date on which the activation of the services covered by that Order shall be completed and the additional costs of the addition. The additional charges relating to these service additions will then be included in the monthly bill as described in Paragraph 5 of this Agreement.
- PAYMENT:** Customer agrees to make payment on each undisputed invoice to ECI within fifteen (15) days from the date of each invoice. A late payment charge of one and one-half percent (1.5%) per month shall be applied to any invoice paid after the due date. ECI will also charge a fee of twenty-five dollars (\$25.00) for the return of any dishonored check. Customer agrees to submit any disputes charges, along with an explanation of such dispute, to the Director of Customer Care at the address set forth in Section 3 hereof, within sixty (60) days of invoice date. ECI shall issue a determination regarding each submitted dispute within thirty (30) days of submission. Customer shall render payment in respect of all charges which are determined by ECI to be properly due and payable, within fifteen (15) days of such determination.
- CREDIT ALLOWANCE FOR INTERRUPTION OF SERVICE:** The liability, if any, of ECI arising out of or in any way connected with any defect, error, omission, delay, mistake, interruption, suspension, or other failure in connection with furnishing services, facilities, or maintenance, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the affected service for

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the time period during which the interruption occurred. ECI shall not be liable, nor shall any credit be given to a Customer, for any interruption of less than twenty-four (24) hours or which is: 1) caused by the underlying interexchange or local exchange carrier, Customer, or any entity other than ECI; 2) due to the failure of equipment, systems or services provided by the Customer or any other entity other than ECI; 3) during periods when the Customer elects to use the service on an impaired basis; or 4) a group of interruptions, resulting from a common use, for amounts less than one dollar (\$1.00).

10. **SERVICE WARRANTIES:** ECI warrants that it will use reasonable efforts, in conformity with those generally acceptable in the industry in which ECI operates, to provide services hereunder in conformance with such standards. SUCH WARRANTIES AS EXPRESSLY SET FORTH IN THIS AGREEMENT ARE GIVEN AND ACCEPTED IN LIEU OF, AND ECI DISCLAIMS TO THE EXTENT PERMITTED BY LAW, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. **LIMITATION OF LIABILITY:** The liability of ECI under this Agreement shall be limited to the extent provided in Paragraph 9 of this Agreement and this Paragraph. IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES, WHICH MAY ARISE IN SITUATIONS WHERE THERE MAY BE A FAILURE OF THE SERVICE OR EQUIPMENT PROVIDED BY ECI DUE TO THE UNCERTAIN NATURE OF THE VOLUME, NATURE, CONTENT AND VALUE OF MESSAGES, SIGNALS OR COMMUNICATIONS TRANSMITTED AND RECEIVED BY CUSTOMER. THEREFORE, IF ANY LIABILITY IS IMPOSED ON ECI, SUCH LIABILITY SHALL BE LIMITED AS PROVIDED HEREIN AND IN PARAGRAPH 9 HEREOF, WHICH SHALL BE ECI'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER. ECI SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE OR FOR THE LOSS OF REVENUE, PROFIT, DATA OR ECONOMIC LOSS OF ANY KIND FOR ANY REASON WHATSOEVER.

The liability of ECI for damages arising out of omission, interruptions or delays or defects in the service or equipment provided by ECI or for breach of the warranties set forth in Paragraph 10, or otherwise, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the affected service or equipment for the period during which mistake, omission, interruption, delay, error or defect occurs, in accordance with Paragraph 9.

12. **INDEMNIFICATION:**

12.1. In the event any claim, demand, lawsuit or liability ("Claim") is made or asserted against Customer by any third party and the same is caused by any grossly negligent or willful act or omission of ECI, or ECI's infringement upon the intellectual property rights of any third party, then, and in such event, ECI shall indemnify, defend and hold harmless Customer and its agents and representatives from and against all Claims, including the payment of Customer's reasonable attorneys' fees to defend such action.

12.2. In the event any Claim is made or asserted against ECI by any third party and the same is caused by any grossly negligent or willful act or omission of the Customer or Customer's infringement upon the intellectual property rights of any third party, then, and in such event, Customer shall indemnify, defend and hold harmless ECI and its agents and representatives from and against all Claims, including the payment of ECI's reasonable attorneys' fees to defend such action.

12.3. The parties' respective liability pursuant to this Section 12 shall, under no circumstances, exceed the fees paid by Customer to ECI in respect of the previous twelve (12) months' Services.

13. **TERMINATION:**

13.1. **Termination by ECI:** ECI may terminate this Agreement without notice to Customer if (a) Customer is in arrears in the payment of any undisputed amount which is due hereunder for more than sixty (60) days from the date of the initial bill therefore or (b) Customer is in arrears in the payment of any disputed amount, ultimately determined by ECI to be properly due and payable, for more than fifteen (15) days following such determination, or (c) at any time that, in the judgment of ECI, Customer lacks the financial ability to perform under this Agreement or if the account is of a financially hazardous nature.

ECI may also terminate this Agreement without further notice to Customer if ECI reasonably determines that Customer is misusing or abusing the system or is using such service for an unlawful purpose or if Customer is otherwise in default of this Agreement.

13.2. **Termination by Customer:** Customer may terminate this Agreement in accordance with Section 3 hereof, or by notifying ECI of its intent not to permit automatic renewal of this Agreement at least thirty (30) days prior to the expiration of the then-current Renewal Term.

13.3. **Termination by Either Party:** Either party shall have the right to terminate this Agreement, without liability, if ECI is prohibited from furnishing the Services or if any material rate or term contained herein is substantially changed by order of the highest court of competent jurisdiction to which the matter is appealed, the Federal Communications Commission, or other local, State or Federal government authority.

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14. **CHOICE OF LAW:** This Agreement and performance hereunder shall be governed by the laws of the State of California, without reference to any conflict of laws rules or principles.
15. **ASSIGNMENT:** Customer shall not have the right to assign its rights in this Agreement without the prior written approval of ECI. ECI may assign this Agreement so long as it does not affect the service provided hereunder.
16. **BINDING EFFECT:** The Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
17. **WAIVER:** The waiver in writing by either party of any rights granted to it shall not operate as a waiver of any of the rights or future breach of any such provision or any other provision hereof. The failure to enforce any provision of this Agreement shall not constitute a waiver of either party's right hereunder unless such waiver shall be in writing signed by both parties to this Agreement.
18. **ENTIRE AGREEMENT:** This Agreement and ECI's FCC and respective local and long distance state tariffs comprise the entire Agreement between the parties on the subject matter contained in this Agreement and supersede all prior representations, agreements, and understandings of the parties, including, without limitation, any letter of intent, letter or memorandum of understanding, or similar documents.
19. **ADDITION MODIFICATION:** No addition to or modification of this Agreement shall be binding unless executed in writing by all parties. Notices: All notices or other communications given in connection with this Agreement shall be made in writing and either delivered in person, or by a recognized overnight courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid, and return receipt requested, to ECI at the following address:
- Ernest Communications, Inc.
5275 Triangle Parkway
Suite 150
Norcross, GA 30092
- Such communication shall be effective upon receipt or four (4) days after mailing. The notice address as provided herein may be changed by written notice given as provided above.
20. **SEVERABILITY:** In the event that any of the terms of this Agreement or the application of any such term shall be held to be invalid by any court of any competent jurisdiction, the remaining terms of this Agreement, or their application, shall not be affected thereby and shall remain in full force and effect.
21. **FORCE MAJEURE:** ECI shall be excused for any failure, delay, or interruption in performing its obligations hereunder that is due to causes or conditions beyond its control, including, without limitation, acts of God, elements, weather conditions, earthquakes, settlements, fire, accidents, sabotage, power failures, cable cuts, acts or omissions of governmental authorities (including regulatory authorities and courts), shortages of labor and materials, acts of third parties for which ECI is not responsible, injunctions, labor disputes of every kind (including those which affect ECI or its contractors, suppliers or subcontractors), or any other conditions or circumstance, whether similar to or different from the foregoing, which is beyond the control of ECI or which cannot be prevented or remedied by reasonable effort and at reasonable expense.
22. **LEGAL COMPLIANCE:** The parties agree that this Agreement will be carried out to compliance with all local, state and federal laws, regulations and decisions.
23. **EFFECTIVE DATE:** This Agreement shall become effective on the date made and entered into.
24. **BINDING TERMS AND CONDITIONS:** CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Pete Aguilar, Mayor

For Ernest Communications

Attest:

Sam Irwin, City Clerk

Print Name

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Title

Title

Date

Date