



Board of County Commissioners Agenda Request

2M

Agenda Item #

Requested Meeting Date: May 14, 2019

Title of Item: LLCC SCI Broadband Agreement

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
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Submitted by: Rich Courtemanche	Department: Land
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Presenter (Name and Title): Rich Courtemanche - Land Commissioner	Estimated Time Needed:
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Summary of Issue:

Long Lake Conservation Center currently has slow internet and phone service. These speeds limit the campus' ability to host schools, events, webinars, and conventions. During previous school audits, the internet service has been brought up as a concern by the accrediting service.

SCI Broadband has provided a proposal to bring Fiber Optic internet and phone service to LLCC buildings and residences for a fiber build of \$20,000.

LLCC has obtained a grant from Blandin Foundation for \$15,000 and a commitment to financially match from the Long Lake Foundation for up to \$10,000 (\$5,000 direct costs and \$5,000 for equipment upgrades). All installation and equipment costs are covered by these two outside funds.

The new dedicated line will allow intent speeds of up to 1Gb upload and 1 Gb download allowing the facility to host more diverse programs.

Alternatives, Options, Effects on Others/Comments:

Current phone and internet monthly costs are \$580. Monthly cost will rise to \$640/mo (an increase of \$60/mo) but will have more reliable internet and phone speeds.

Recommended Action/Motion:

I would ask that you approve of moving forward by signing the fiber optic agreement

Financial Impact:

Is there a cost associated with this request? Yes No

What is the total cost, with tax and shipping? \$ 20,000 1x and \$640/mo

Is this budgeted? Yes No *Please Explain:*

Grants and LLCC Foundation to cover all build costs.
 Monthly phone and internet prices will go up ≈\$60 per month. Resulting in approximately \$360 over budget for 2019 assuming a July installation.

Savage Communications Inc. 111 Tobies Mill Place Hinckley MN, 55037 Phone 320-384-7442 Fax 320-279-8085 Toll Free 800-222-9809		SCI Broadband Fiber Internet and Phone Agreement				
Company Name						
Long Lake Conservation Center						
Street Address		City	State	Zip		
28952 438 th Ln		Palisade	MN	56469		
Billing Address (if different)		City	State	Zip		
Main Phone Number		Fax Number	Contact Name	Direct Phone Number:	E-mail:	
218-768-4653			Wendie Carlson	218-768-4653	wendie@longlakecc.org	
Fed. ID Number/State ID Number/Social Security Number		Tax Exempt (if yes, attach copy of exemption certificate) YES NO		Current Customer (if yes, Account #) YES NO		
NO		NA		No		
Description of Monthly Recurring Charges				Qty	Rate	Total
Digital Voice						
Business Voice Unlimited Main Line				1	\$49.95	\$49.95
Additional Business Voice Unlimited Lines				5	\$34.95	\$174.75
Fax Line				1	\$24.95	\$24.95
Total Digital Voice MRC						\$249.65
High-Speed Internet						
1Gig Symmetrical Fiber Internet				1	\$350.00	\$350.00
Total High-Speed Internet						\$350.00
Total MRC (Phone and Fiber Internet)						\$599.65+tax
Description of Non-Recurring Charges/Service Location				Qty	Rate	Total
Fiber Build (Construction/Install)				1	\$20,000.00	\$20,000.00
Term: Sixty (60 Months)						
By signing below, Savage Communications Inc. (we, us, our) and Subscriber (you, your) agree to be bound by the terms and conditions of the attached Voice Terms of Service and Fiber Internet Terms of service. Each month you shall purchase the services and pay the monthly recurring fees set forth herein and on any/all attachments, all calculated prior to the application of any taxes, governmental fees or surcharges.						
Savage Communications Inc.			Long Lake Conservation Center			
Signature _____			Signature _____			
Printed Name _____			Printed Name _____			
Title _____			Title _____			
Date _____			Date _____			

Voice Terms of Service

BY SIGNING THIS AGREEMENT OR ACTIVATING OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ AND UNDERSTAND FULLY THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU ALSO AGREE TO SUBMIT ANY DISPUTE OR CLAIM YOU HAVE WITH OR AGAINST US AND OUR UNDERLYING CARRIERS AND INTERNET SERVICE PROVIDERS TO BINDING ARBITRATION AND YOU WAIVE ANY RIGHT YOU MIGHT OTHERWISE HAVE TO RESOLVE THE DISPUTES AND CLAIMS BY JURY TRIAL. YOU ALSO AGREE AND UNDERSTAND THAT BY SIGNING THIS AGREEMENT AND USING THE SERVICE YOU OTHERWISE LIMIT THE REMEDIES AND RECOURSES AVAILABLE TO YOU WITH RESPECT TO THE SERVICE. DO NOT SIGN THIS AGREEMENT NOR USE THE SERVICE UNLESS YOU UNDERSTAND AND AGREE TO THIS PARAGRAPH. YOUR USE OF THE SERVICE IS FURTHER EVIDENCE THAT YOU CONSENT TO THE TERMS OF THIS AGREEMENT.

EMERGENCY SERVICES 911 DIALING All of our customers have access to either basic 911 or Enhanced 911 (E911) service. With E911 service, when you dial 911, your telephone number and registered address may be sent to the local emergency center assigned to your location. Emergency operators may have access to the information they need to send help and call you back if necessary. We do not have control over emergency operators nor can we guarantee that a 911 call will be routed to the correct operator. Customers in locations where the emergency center is not equipped to receive their telephone number and address may have basic 911. With basic 911, the local emergency operator answering the call will not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator your phone number, he/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak. You authorize us to disclose your name and address to third-parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

Notify All Users. You agree to assume the obligation to inform any employees, guests and other third persons who may be present at the physical location where you utilize the services and/or products we provide under this Agreement of the important differences in and limitations of your phone service as compared with basic 911 or E911. The documentation that accompanies each telephone device will include a sticker concerning the potential non-availability of basic 911 or E911 (the "911 Sticker"). It is your responsibility, in accordance with the instructions that accompany each device, to place the 911 Sticker as near as possible to each phone that you use with the service. If you did not receive a 911 Sticker with your telephone device, or you require additional 911 Stickers for phone devices we do not provide, please contact our customer care department at 1-800-222-9809 for additional 911 Stickers which we will provide for no additional cost.

Location of service. This service is provided at a specific permanent address and is not available as a nomadic offering. Before you move the telephone device(s) to another location, you must notify us to determine if service can be provided at your new permanent address. **Service will only be provided at locations where E911 or basic 911 connectivity are available.**

Service Outages.

(a) **Service Outages Due to Power Failure or Disruption.** Failure of network power backup systems or the telephone device's internal backup system during a power failure or disruption will prevent all service, including 911 dialing from functioning.

(b) **Service Outages Due to Internet Outage or Suspension or Disconnection of Broadband service or ISP service.** Service outages, suspensions or disconnections of your broadband service will prevent all service, including 911 Dialing, from functioning.

(c) **Service Outage Due to Disconnection of Your Account.** Service outages due to disconnection of your account will prevent all service, including 911 Dialing, from functioning.

(d) **Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts.** Other third party transport providers may intentionally or inadvertently block the ports over which the service is provided or otherwise impede the usage of the service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, your service, including the 911 Dialing feature, may not function. You acknowledge that we are not responsible for the blocking of ports or any other impediment to your usage of the service, and any loss of service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the service, you will continue to be responsible for payment of the service charges unless and until you disconnect the service in accordance with this Agreement.

(e) **Other service Outages.** If there is a service outage for any reason, such outage will prevent all service, including 911 Dialing, from functioning. SUCH OUTAGES MAY OCCUR FOR A VARIETY OF REASONS, INCLUDING, BUT NOT LIMITED TO, THOSE REASONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls. There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the service as compared to traditional 911 dialing over traditional public telephone networks.

Alternate 911 Arrangements. If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the service.

Term; Termination. Term. This Agreement shall have an initial term of Five (5) years (the "Initial Term") beginning on the latest date that your last ordered service starts, and shall automatically renew for successive one (1) year terms thereafter (in each case, a "Renewal Term"), until terminated in accordance with the remaining terms of this Agreement

Termination

(a) Either party may terminate this Agreement, for any reason or for no reason, at the end of the Initial Term or any Renewal Term by providing the other party with not less than ninety (90) days prior written notice of termination.

(b) Either party may terminate this Agreement if the other party has committed a material breach of this Agreement, and such breach is not cured within thirty (30) days of the date the party in breach receives written notice of the breach.

(c) Before the end of the Initial Term or any Renewal Term, and without our breaching this Agreement, you may terminate this Agreement with respect to all services by written notification to us. The Agreement shall terminate thirty (30) days thereafter, at which time you shall pay us a termination charge equal to the sum of fifty percent (50%) of the remaining minimum monthly fees that would have been incurred for the remainder of the Term of this Agreement (the "Termination Charge"), plus all fees incurred prior to the date of termination of services.

Fees. We will bill all charges, applicable taxes and surcharges monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which we decide to bill in arrears), including but not limited to: activation fees; monthly service fees; usage charges international usage charges; advanced feature charges; advanced features/add-ons; subscriber line charge, universal service fund; 911 fees; federal, state and/or local taxes; disconnection fees; and shipping and handling charges.

We may introduce new products and services at special introductory pricing. Introductory pricing may change at our discretion. Notification of monthly invoices will be sent to you via your email address on file with us. Any usage charges will be billed in increments that are rounded up to the nearest minute unless otherwise set forth in the rate schedules found on our website. A directory listing will be provided. We shall not be liable for the content or accuracy of any Subscriber Listing Information (SLI) (including, but not limited to, failure to "un-publish" a number) provided under this Agreement. You shall indemnify, hold harmless and defend us from and against any damages, losses, liabilities, demands, claims, suits, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising from our obligations to provide directory listing and resulting from or arising out of your or a third party's claim of inaccurate listings or use of the SLI, or failure to "un-publish" the listing provided pursuant to the Agreement.

Billing. Other than good faith disputes, you shall not be entitled to retain, withhold or delay any payments or other amounts due us under this Agreement. In the event that you in good faith dispute any fees, costs or other charges appearing on our invoices, you shall notify us in writing and specify the disputed amount and the reasons for the dispute within 30 days of the receipt of the invoice. Any fees, costs or other charges which remain undisputed for 30 days after receipt by you of our invoices shall be conclusively presumed to be correct. All good faith disputed fees, costs or other charges which we determine were invoiced in error shall be credited back to you on the next invoice. We shall invoice you monthly, by written or electronic mail, for amounts due us under this Agreement, and such amounts shall be due and payable ten (10) business days of the date of such invoice. Amounts not paid us when due shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law until paid in full. Your failure to pay on time shall entitle us to immediately terminate this Agreement, your service and all of our obligations hereunder without the necessity of notice or other action on our part. We may require you to make a deposit or deliver another form of security as a condition to us providing our Services to you.

Disclaimer. We make no warranty of any kind, express or implied, and WE HEREBY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE PERFORMANCE OF ANY OF OUR OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES BASED ON CUSTOM, USAGE OR PRIOR COURSE OF DEALING. WE SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF AN END USER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD DEvised BY A THIRD-PARTY. We do not operate, control or endorse any products, including phone devices, whether purchased through us or otherwise. Making such products available to you is an accommodation to you only. We are not responsible for examining or evaluating, and we do not warrant the offerings of, any products, including phone devices. We do not assume any responsibility or liability for products manufactured by third parties, and you should carefully review their warranties if any.

Limited Liability. The services and products provided under this Agreement are provided on a strictly "as is" basis. Under no circumstances shall we be liable to you under this Agreement for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss or corruption of data or cost of purchasing replacement services or products, injury to your network, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement, even if you have been advised in advance of the possibility of such damages. Our maximum liability arising hereunder or relating hereto shall in no event and under no theory exceed the amounts paid to us by you in any calendar year.

Indemnification. You shall indemnify and hold us, our officers, directors, employees, agents and representatives harmless from and against any and all claims, costs, liabilities, damages, and expenses arising out of or in connection with (a) a breach of your obligations under this Agreement; (b) injury to property or person (including but not limited to death) if and to the extent caused by you, your employees or your agents in the course of performing your obligations under this Agreement, and (c) any injury claimed by any third-party to this Agreement, relating in any way to our performance or non-performance of its obligations under this Agreement or our services.

Disputes. Any and all disputes between us that arise under or in connection with this Agreement which cannot be resolved through good faith negotiation shall be submitted to binding arbitration, to be conducted in accordance with the Commercial Arbitration rules of the American Arbitration Association, and any judgment of the arbitrator(s) rendered pursuant to such a proceeding shall be enforceable in any court having jurisdiction thereof.

Fiber Internet Access Agreement □ General Terms

Unless the context otherwise requires, any reference herein to the "Agreement" shall be deemed to include these General Terms and the BAUP.

1. Provision of the Services. (a) Subject to the terms of the Agreement and subject to the performance by Customer of its responsibilities thereunder, SCI shall provide to Customer during the Service Term those Services described in the Agreement, and SCI's responsibilities are expressly limited to the provision of such Services.

(b) SCI's responsibility to provide the Services ends at the Demarcation Point. Customer will be responsible for all use and compatibility issues relating to the Services beyond the Demarcation Point.

(c) If SCI becomes aware that the Turn-Up Date will be delayed beyond the Estimated Availability Date, SCI shall notify Customer of the new Estimated Availability Date. The failure of the Turn-Up Date to occur by any Estimated Availability Date, or at all, shall not be a breach of the Agreement. If, for any reason other than the acts or omissions of Customer, the Turn-Up Date does not occur within one hundred (100) days after the date on which SCI executes the Agreement, Customer's sole right and remedy shall be to terminate the Agreement by written notice to SCI given not later than five (5) business days after the expiration of such one hundred (100) day period, upon receipt of which notice SCI will refund the Installation Fee to Customer.

(d) In providing and performing the Services, SCI shall use commercially reasonable efforts to observe the normal standards of performance within the telecommunications industry in the relevant market.

2. Fees and Charges. (a) All Fees will be billed via invoice and payment of such Fees will be due in advance, prior to the provision of the applicable Services. Customer agrees to pay SCI all Fees by the due date specified in the applicable invoice, without offset or reduction. In addition, Customer promises to pay, or reimburse SCI for its payment of, any applicable federal, state and local taxes, copyright fees, FCC fees, franchise fees or pass-throughs and other governmental charges or pass-throughs from time to time levied upon or in connection with the Services or otherwise related to the performance of the Agreement, any and all of which may be added to invoices rendered under the Agreement.

(b) During any Successive Term, the Fees are subject to adjustment and increase, at the sole discretion of SCI, upon thirty (30) days prior written notice to Customer.

(c) In the event that Customer fails to pay any Fees invoiced by SCI (i) within thirty (30) days following the due date specified in the applicable invoice, such unpaid Fees shall bear interest at an amount equal to the lesser of (x) 6% per annum and (y) the maximum amount permitted by law, and (ii) within sixty (60) days following the due date specified in the applicable invoice, SCI shall have the right to suspend performance of the Services. SCI will use reasonable efforts to provide Customer with notice of its intent to suspend the Services, provided, however, no failure of SCI to provide such notice will be deemed a bar to suspension or a breach of the Agreement by SCI. Customer shall also reimburse SCI for all expenses

(including reasonable attorney's fees) incurred by SCI in collecting past due amounts.

3. Tariffed Services. Provision of the Services may be subject to tariffs filed with certain state regulatory agencies having jurisdiction over the Services or the Federal Communications Commission ("Tariffed Services"). Tariffed Services shall be provided in accordance with the provisions of any applicable tariff, which provisions are incorporated herein by reference. In the event that the Fees, rates, terms and conditions set forth in the Agreement applicable to any Tariffed Service conflict at any time with those set forth in the applicable tariff, the rates, terms and conditions of the applicable tariff shall control. SCI shall notify Customer in writing in a timely manner of the conversion, at SCI's discretion and in SCI's sole judgment, of an untariffed Service to a Tariffed Service or of the modification of the terms of an applicable tariff.

4. Equipment; the Service Location. (a) SCI will be responsible for the installation of all equipment and materials required, in SCI's sole opinion, to provide the Services (collectively, the "Equipment"). SCI may modify, replace or remove any Equipment at any time during the Service Term. All Equipment will remain the sole property of, and all title thereto will remain with, SCI.

(b) Customer agrees to provide adequate secured space in the Service Location for the Equipment and adequate electrical power, climate control and protection against fire, theft, vandalism and casualty. Customer will insure that (i) non-SCI-supplied wiring, equipment and other items in the Service Location are adequate, compatible and safe for use with the Equipment, and (ii) the Equipment is not moved or tampered with by any person not authorized by SCI to do so. If any of the Equipment is destroyed, stolen or damaged in any way, Customer will pay SCI an amount equal to the value of the required repairs, if damaged, or the value of the applicable Equipment, if destroyed or stolen.

(c) Customer will provide SCI all necessary or desirable access at all reasonable times to the Service Location, and will provide reasonable access to the Service Location to allow SCI to remove the Equipment within sixty (60) days after termination of the Agreement.

(d) Customer will obtain all rights-of-entry, rights-of-way, easements, licenses, approvals, consents, authorizations, and permits necessary (i) to permit SCI access to the Service Location, (ii) to allow the provision of the Services and/or (iii) to allow installation of the Equipment and establishment of the Demarcation Point, in each case pursuant to reasonably satisfactory and acceptable arrangements with the Customer, or the agency, authority, entity or other person having control or jurisdiction over or owning, the applicable property (collectively, "Permits"), when such Permits (x) relate to property owned, leased or controlled by Customer or (y) are reasonably requested by SCI to be obtained by Customer ("Requested Permits"). With respect to Requested Permits, Customer acknowledges that (i) the applicable SCI request may come

as a result of Customer's superior, or more appropriate, relationship with the entity potentially granting the Requested Permit and (ii) such requests are reasonable. Upon request by SCI, Customer will provide copies of all such Permits to SCI as soon as reasonably practicable. If the costs of construction, installation of Equipment or, when applicable, repair to or restoration of any property disturbed or damaged by such construction or installation are in excess of those customary and reasonable for similar work because of peculiar or unexpected site conditions or requirements of Customer or any controlling agency, authority or other person, Customer will reimburse SCI for such excess costs.

SCI's representatives shall have the right to inspect the Service Location prior to the installation of the Equipment. From the date of execution of the Agreement until SCI retrieves all Equipment pursuant to Section 4(c), Customer shall provide SCI, upon request, with sufficient data to assist SCI in evaluating conditions at the Service Location (including the presence of hazardous materials). Customer is responsible for removing and disposing of hazardous materials, including asbestos, prior to the installation of the Equipment and for correcting, on an expedited basis, any conditions at any of the Service Locations if, in SCI's determination, the Service Location is unsecure, hazardous or unsuitable for the storage of the Equipment.

5. Customer Cooperation and Use of Services.

(a) Customer shall cooperate, and cause its agents, representatives, contractors, suppliers, landlords and licensors to cooperate, expeditiously and in good faith with SCI to enable the Services to be provided, the Equipment be installed and the Demarcation Point be established without delay.

(b) Customer is responsible for all authorized or unauthorized use of the Services at or through any Service Locations or by means of equipment or access which Customer allows and all claims directly or indirectly arising out of or based upon any such use. SCI is not responsible for any information or content provided by or act or omission of, any third party with whom Customer or any user interacts through use of the Services.

(c) Customer warrants and agrees that use of the Service by Customer and all Users shall not (i) violate any applicable law, (ii) infringe, violate or constitute a misappropriation of any person's intellectual property, publicity, privacy or other legally protected rights or property or (iii) interfere with the use of the networks and services of SCI or by any other customer.

(d) Customer will cooperate in any investigation of any alleged illegal use of the Service. If Customer fails to do so, SCI may suspend the Service. Additionally, SCI may modify or suspend the Service or take other action as necessary to comply with or obtain the benefit of any "safe harbor" or other protection under any law or regulation, including the Digital Millennium Copyright Act of 1998, as reasonably determined by SCI.

6. Termination. (a) Either party may terminate the Agreement upon thirty (30) days written notice to the other party if such other party materially breaches or violates any term or provision of the Agreement; provided, however, that if Customer determines that SCI has failed to deliver

Service in accordance with its Service Objectives which are set forth in the Service Schedule attached hereto, then SCI shall have thirty (30) days from the date it receives written notice from Customer of its intention to terminate this Agreement due to SCI's failure to meet its Service Objectives to deliver Service in accordance with the Service Objectives. In the event that SCI corrects such failure on a going forward basis, Customer's notice of termination shall be null and void and this Agreement shall continue in full force and effect.

(b) In addition to its termination rights under any other provision of the Agreement, SCI may upon two (2) days prior written notice terminate the Agreement without any liability if:

(i) all or any significant portion of the SCI Network is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain,

(ii) SCI determines in good faith that Customer's use of the Services is interfering unreasonably with the operation of the SCI Network; provided, however, that SCI shall provide in its notice to Customer information regarding the interference and its suspected cause and shall give Customer five (5) days to cure such interference prior to terminating the Agreement provided that Customer takes immediate action to attempt to cure, or

(iii) SCI sells, disposes of, or otherwise transfers, in one or a series of transactions, substantially all the assets used to provide the Services to Customer, provided, however, that SCI shall provide notice to the Customer as soon as such transaction is publicly announced in the event that the purchaser of such assets does not intend to assume SCI's obligations hereunder.

(c) At any time when SCI is entitled to terminate the Agreement under Section 6(b), then SCI may, at its sole discretion and without prior notice, suspend the provision of any and/or all Services without liability on the part of SCI or any requirement to allow any credit for an Unscheduled Interruption and without prejudice to SCI's discretion to subsequently exercise the applicable termination right.

(d) SCI will use commercially reasonable efforts to provide Customer with notice of any such termination or suspension within a reasonable amount of time, provided however that the timing of such notice will not affect the timing of such termination.

7. Effects of Termination. Upon the termination of the Agreement, all rights and obligations of each party under the Agreement (including SCI's obligation to provide any Services) shall immediately cease, except that:

(i) any rights or remedies arising out of a breach or violation of any terms of the Agreement, whether known or unknown, shall survive any expiration or termination of the Agreement for the applicable statute of limitations period or, if shorter, the period specified herein, subject to any applicable limitation or exclusion or rights or remedies or liability contained in the Agreement;

(ii) the provisions of the Agreement which state that they survive or which, by their nature, reasonably would be expected to be intended to survive expiration or termination (including any provisions relating to payment of Fees, disclaimers, limitations or exclusions of warranties and liability, confidentiality or indemnification) shall survive indefinitely; and

(iii) SCI may immediately invoice Customer for all accrued Fees, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. In the event that SCI terminates this Agreement due to Customer's breach, then in addition to all accrued Fees payable through the date of termination, Customer shall also pay SCI a termination charge, which the parties recognize as liquidated damages, equal to: (i) any unpaid installation charges, plus (ii) 100% of the product of the number of months, if any, remaining in the first 30th months following the Turn Up Date multiplied by the Monthly Service Fee, plus (iii) 50% of the product of the number of months remaining after the 30th month following the Turn Up Date through the end of the Initial Term hereunder multiplied by the Monthly Service Fee.

8. Service Interruptions. (a) SCI will use commercially reasonable efforts in keeping with industry standards to ensure that the Services are available to Customer twenty four (24) hours a day, seven (7) days a week. Customer acknowledges and agrees, however, that availability of the Services may be interrupted from time to time, including during periods of routine maintenance of the SCI Network or the Equipment (each such interruption, a "**Scheduled Interruption**"), and that no Scheduled Interruption, regardless of cause or reason, shall constitute a breach of the Agreement or a failure by SCI to perform its obligations under the Agreement or result in any right or remedy on the part of Customer other than the right to receive credits as provided in this Section 8. SCI will use commercially reasonable efforts to provide Customer with advance notice of any known or anticipated Scheduled Interruption.

(b) In the event of a complete loss of the Services which (i) is not a Scheduled Interruption, (ii) lasts more than four (4) consecutive hours, (iii) is not caused by Customer or any third party not under the control of SCI, (iv) does not occur as result of equipment or connections that SCI does not provide, (v) is not the result of a fiber cut or a Force Majeure Event (as defined below) and (vi) is reported to SCI within twenty four (24) hours after the commencement of such interruption (each such interruption, an "**Unscheduled Interruption**"), Customer will be entitled, for each Unscheduled Interruption, to request a billing credit, to be applied to the next monthly invoice issued to Customer, equal to the applicable pro-rata portion of the Monthly Service Fee affected by the Unscheduled Interruption, as calculated by SCI, against the following month's Monthly Service Fees (each credit, a "**Service Credit**"). No Service Credit or other credit will be provided for any Scheduled Interruption. Service Credits shall be customer's sole and exclusive right and remedy for SCI's failure to provide the Services.

(c) Service credits for Unscheduled Interruptions shall be calculated as follows: the Monthly Service Fee divided

by 30 days (average days in one month) equals the average daily rate, which is then divided by 24 hours in one day to arrive at the Average Service Hour Rate.

(d) SCI shall monitor the Services twenty-four (24) hours a day, seven (7) days a week. SCI shall provide Customer with a toll free telephone number the Customer may call to report Unscheduled Interruptions. If necessary, in SCI's sole opinion, SCI will conduct an on-site investigation of the Equipment, Service Location, Termination Location or any Service Interruption and will use commercially reasonable efforts to remedy any disruption in the Services.

9. Conditions to SCI's Obligations. Any obligation of SCI under the Agreement, including any obligation to provide any Service, is subject to:

(i) the due and punctual performance and satisfaction by Customer of each of its covenants, agreements, obligations, commitments and responsibilities; and

(ii) the receipt and continuation in effect throughout the Service Term of all Permits.

In the event any Permit is not granted or is not continued during the Term, the parties shall negotiate promptly and in good faith such revisions to the Agreement as may reasonably be required to obtain such Permit, but if they are unable to agree within sixty (60) days after such negotiations begin, either party may terminate the Agreement by written notice to the other. In the event of any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award or other legal action that makes the performance of the Agreement illegal, requires any additional Permit or otherwise materially affects either party's performance or significantly increases its costs of performance, either party may, by providing written notice to the other party, require that the affected provisions of the Agreement be renegotiated in good faith, but if the parties are unable to agree within sixty (60) days after such negotiations begin, the affected party may terminate the Agreement by written notice to the other party.

10. Disclaimer of Warranties. The Services are provided at the Customer's sole risk on an "as is" and "as available" basis, with no guarantee concerning performance or any other aspect of the Services. SCI has not made, and in rendering Services, neither SCI nor any of its affiliates or subcontractors shall be deemed to make, any representation or warranty of any nature whatsoever, whether express, implied, statutory or other, and SCI expressly disclaims all such representations or warranties, including any implied warranty of merchantability, fitness for a particular purpose, title or non-infringement, that the Services will operate in an uninterrupted fashion, that any communication, data or file sent by or sought to be accessed by Customer or any user will be transmitted or received successfully, at any particular speed, within any period of time, without interruption or in uncorrupted form, or resulting from course of dealing or course of performance. Specifically, SCI makes no representation that the Services will be compatible with any of Customer's networks, systems, facilities or equipment. No oral or written specification, advice, service description, quality characterization or other information or statement given or made outside of the Agreement by SCI or any of its

affiliates, employees, agents, subcontractors, licensors or suppliers shall create a representation or warranty or expand or otherwise affect the express warranties, if any, set forth herein.

11. Bandwidth. SCI will use commercially reasonable efforts, and reasonably expects, to provide the Services at the bandwidth noted in the Agreement and in accordance with the Service Schedule attached. Customer acknowledges that upon connection to the internet, actual performance speed is dependent upon a number of factors, some of which are out of the control of SCI. SCI is not responsible for the effect of such factors on actual performance speed.

12. Limitations on Liability. (a) Customer acknowledges and agrees that all obligations and liabilities of SCI pursuant to or arising out of the Agreement, including the Services, are solely obligations of Savage Communications, Inc. an S Corporation.

(b) Customer covenants and agrees that SCI, each of SCI's contractors, subcontractor, licensors and suppliers, each partner, stockholder, member director, officer, employee, agent or representative of any of the foregoing and each successor and assignee of any of the foregoing (the "**SCI Parties**") shall not have any liability (whether direct or indirect, in contract or tort or otherwise) to Customer or any other person for any damages, losses, liabilities, fines, penalties, settlement payments, indemnification and contribution payments, costs and expenses, including attorneys' fees and disbursements and costs and expenses of investigation, defense and settlement of any claim or appeal of decisions or judgments rendered therein or with respect thereto ("**Losses**") arising out of or in connection with the Agreement, except for such liability for such Losses directly caused by SCI's gross negligence or willful misconduct, which liability will be subject to the limitations set forth herein.

(c) Customer agrees that none of the SCI Parties shall be liable to Customer, or any other person for any indirect, incidental, consequential, reliance, special, exemplary or punitive damages or for any other damages (however denominated) for or based on or measured by harm to business, lost revenues, lost savings, loss of or on any investment, lost profits, loss of opportunity, loss of use, loss of data, loss of goodwill, costs of replacement goods or services, property damage, losses or liabilities that are a consequence of destruction or alteration of data, introduction of viruses, hacking, cracking or breaches of security, claims of users or other indirect or consequential loss, harm or damages arising out of or in connection with the Agreement.

(d) The aggregate liability of all SCI Parties with respect to the subject matter of the Agreement shall not exceed an amount equal to six times the Monthly Service Fee.

(e) Customer agrees that regardless of any statute or other law to the contrary, Customer must file any claim or cause of action arising out of or related to the Agreement or the Services (except with respect to billing disputes which are subject to the shorter time limitation set forth elsewhere in the Agreement) within one (1) year after such claim or cause of action arose, or such claim or cause of action shall be forever barred. Except as otherwise stated in the Agreement, any claim of any nature against SCI shall be deemed conclusively to have been waived unless presented

in writing to SCI within thirty (30) days after the date of the occurrence that gave rise to the claim.

(f) Each of the disclaimers and exclusions of and limitations on liability or damages contained in the Agreement shall independently apply regardless of (i) the form of action (including any action in contract or based on warranty, negligence, tort, strict liability or statute), (ii) any claim or finding that any breach of or default under the Agreement was total or fundamental, (iii) the type of damages, (iv) any claim or finding with respect to the adequacy, failure, purpose or sufficiency of any remedy provided for under the Agreement and (v) whether a person was informed or aware of, or otherwise could have anticipated the possibility of, such damages or liability.

(g) Customer understands and irrevocably accepts the limitations on liability contained in this section, and Customer acknowledges and agrees that but for such provisions, SCI would not offer or provide the Services or would require Customer to pay additional Fees.

(h) Each of the foregoing limitations contained in this Section 13(i) will apply regardless of form of action, any claim that breach of this Agreement or SCI's obligations was total or fundamental, the type of damages or any finding with respect to the adequacy, sufficiency or nature of the remedies contained herein, (ii) will apply to the maximum extent permitted by law and (iii) will survive the unenforceability of any other provision contained herein purporting to exclude or limit damages or liability.

13. Indemnification. Customer agrees to indemnify, defend and hold harmless SCI from and against all Losses incurred by or awarded against SCI arising out of or in connection with (i) any breach by Customer of the terms of the Agreement or Customer's obligations, covenants, representations or warranties contained therein, (ii) the operation or conduct of Customer's business or (iii) Customer's and its end users use of the Services including, but not limited to, violations of intellectual property rights of others by Customer and its end users, and the combination of the Services with other products or services not provided by SCI, in each case except as such Losses were caused by the gross negligence or willful misconduct of SCI. Customer's indemnification obligations will survive the expiration or termination of the Agreement.

14. [INTENTIONALLY LEFT BLANK]

15. Customer Use. Customer agrees not to resell or redistribute access to any of the Services or Equipment, or any part thereof, in any manner without the express prior written consent of SCI. Except with respect to actions taken for the limited purpose of accessing and using the Services, Customer agrees not to interfere with the use or operation of the Equipment or the SCI Network in any way.

16. Waivers. (a) To the fullest extent permitted by applicable law, Customer waives the application of all existing and future laws or provisions of any state constitution that otherwise would limit the enforceability or efficacy of (i) the disclaimers and exclusions of and limitations on liability or damages contained in the Agreement or (ii) Customer's indemnification obligations. If any of the disclaimers, exclusions or limitations or exclusions contained herein may not be enforced under applicable law of provisions of any state constitution, even though the express provisions hereof provide for it and the

parties intend for it to be enforced, then in such jurisdiction the liability of the SCI Parties collectively and individually for any and all causes of action and claims shall be limited, on an aggregate and cumulative basis, to the smallest amount permitted by applicable law.

(b) The parties specifically waive any right to trial by jury in any court with respect to any contractual, tortious, or statutory claim, counterclaim, or cross-claim against the other arising out of or connected in any way to the Agreement, because the parties hereto, both of whom are represented by counsel, believe that the complex commercial and professional aspects of their dealings with one another make a jury determination neither desirable nor appropriate.

(c) If Customer is a government or governmental subdivision, agency or authority or is otherwise entitled to sovereign immunity, Customer hereby waives to fullest extent permitted by applicable law, any immunity that it may have against claims, actions, suits or proceedings that directly or indirectly arises out of or relates to the Agreement, whether based on contract, tort or any other theory. Customer acknowledges that such waiver has constituted a material inducement for SCI to enter into the Agreement.

17. Business Acceptable Use Policy. At any time and at SCI's sole discretion, SCI may modify, delete or replace the BAUP, in part or in whole, and/or institute other policies and procedures relevant to the Service. Notice of such modifications, deletions or replacements, and such other policies and procedures, will be posted on SCI's website <http://www.scibroadband.com> or, at SCI's discretion, via e-mail, postal mail or other permitted means of notification.

18. Force Majeure. SCI will not be liable for any loss, damage, delay or failure of performance resulting directly or indirectly from any cause, event or circumstance which is beyond our reasonable control, including without limitation acts of God, government restrictions or actions, war, terrorism, epidemics, insurrection, sabotage, adverse weather conditions or adverse labor conditions or actions. If any such event causes an increase in the time necessary for SCI's performance under the Agreement, SCI shall be entitled to an equitable extension of time for such performance equal to at least one (1) day for each day of delay resulting from such event.

19. Independent Contractors; No Agency or Intellectual Property Licenses. The parties are independent contractors. Neither the Agreement nor any course of dealing creates or shall create any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party has or shall have the right, power or authority to act for or on behalf of or assume, create or incur any liability or any obligation of any kind, expressed or implied, binding upon the other party. Customer acknowledges that the Agreement is nonexclusive and that SCI may contract with others to provide services work of the same or similar type as provided to Customer under the Agreement. No license under patents or other intellectual property rights is granted by either party or shall be implied or arise by estoppel in connection with the subject matter of the Agreement.

20. Assignability. Customer may not assign or delegate the Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of

SCI, which will not be unreasonably withheld. SCI may freely assign the Agreement and may contract with subcontractors for the performance of any maintenance, repair or other services contemplated by the Agreement, including unaffiliated contractors. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, legal representatives and permitted assigns.

21. Severability. If any provision of the Agreement or its application to any person or circumstance is held by a court with jurisdiction to be invalid or unenforceable, the remaining provisions, or the application of such provision to other persons or circumstances, shall remain in full force and effect. Such court may substitute therefore a suitable and equitable provision to carry out, so far as may be valid and enforceable, the intent and purpose of the invalid or unenforceable provision and, if such court shall not do so, the parties shall negotiate in good faith to agree upon such a provision. Any provision that is judicially unenforceable in any jurisdiction shall not be affected with respect to any other jurisdiction.

22. Governing Law. The Agreement shall be governed by the laws of the State in which the Service Location is located, without regard to or application of conflicts of law rules or principles.

23. Entire Agreement. The Agreement is the entire agreement between the parties pertaining to its subject matter, and all written or oral agreements, representations, warranties or covenants, if any, previously existing between the parties with respect to such subject matter are canceled. No course of dealing or practice shall be used to interpret, supplement or alter in any manner the express written terms of the Agreement.

24. No Third Party Beneficiaries. No other person is a third party beneficiary of the Agreement. Customer shall not be a third party beneficiary of any contract, agreement or arrangement between SCI and any other party.

25. Amendments and Waivers; Counterparts. Any amendments of the Agreement must be in writing and signed by both parties. No failure or delay in exercising any power, right, or remedy will operate as a waiver. A waiver, to be effective, must be written and signed by the waiving party. The Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. In addition to any other lawful means of execution or delivery, the Agreement may be executed by facsimile signatures and delivered by the exchange of signature pages by means of telecopier transmission.

26. Remedies Are Cumulative. Unless otherwise expressly stated in the Agreement, all remedies available under or with respect to the Agreement are cumulative and in addition to all other remedies, if any, available at law or in equity. The exercise of any suspension or termination right granted a party in the Agreement shall not result in a breach of the Agreement by such party, and neither such exercise nor any consequence thereof (even if the exercising party was notified or otherwise aware that such consequence would or might result) shall give rise to any claim by or liability to the other party, whether in contract, tort or otherwise. The prevailing party in any litigation between the parties arising out of the Agreement shall be entitled to recover its legal expenses, including court costs and attorneys' fees.

27. Binding Agreement. Each party represents and warrants to the other that (i) such party has the authority to execute, deliver and carry out the terms of the Agreement, and (ii) the Agreement has been duly authorized, executed and delivered by, and constitutes a legal, valid and binding agreement of, such party.

28. Notices. Any notice required or permitted to be given under the Agreement shall be in writing and shall be deemed to be given when delivered personally, , the next business day after being sent by reliable overnight courier or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given at such party's notice address set forth below such party's signature to the Agreement or any other address designated by such party upon at least ten (10) days' prior written notice to the other party.

29. Confidential and Proprietary Information. All information, in whatever form obtained by Customer from SCI and the terms of the Agreement shall be held in confidence by Customer and shall not be used by Customer for any purpose other than the performance of the Agreement. Customer's confidentiality obligations will survive for a period of five (5) years after termination.

30. SCI's Discretion. If any provision of the Agreement states that SCI "may" take or refrain from taking any action or that any action requires the consent, approval or agreement of SCI or otherwise gives SCI any right, option, election or discretion that is not expressly limited, then the decision as to whether, when and how to take or refrain from taking such action, give or withhold such consent or approval or exercise or refrain from exercising such right, option, election or discretion shall be within the sole and absolute discretion of SCI.