

TERMS AND CONDITIONS OF SERVICE

1. PAYMENT

- a) Nonrecurring charges and recurring charges shall be due within thirty (30) days of the date of the invoice: billing shall commence upon the Service being provisioned and deemed operational by Sho-Me Technologies, L.L.C. (Sho-Me) operations personnel. Any amount not received within thirty (30) days of the date of the invoice will be subject to Sho-Me's standard late charge of one and one-half percent (1½%) per month.
- b) If Customer is not able to provide written evidence of the pertinent exemption to Sho-Me, Customer agrees to pay any sales, use, gross receipts, excise, access, bypass or other local, state and Federal taxes or charges imposed on or based upon the provision, sale or use of the Services or Equipment provided. Sho-Me and Customer will cooperate with the appropriate authority as to applicability of taxes or charges. Taxes or charges will be separately stated on Customer's invoice.

2. USE

Customer may use the Services for any lawful purpose for which they are intended, provided that Customer will not use the Services so as to interfere with or impair service over any of the facilities and associated equipment comprising the Sho-Me fiber optic cable network and associated equipment, or to impair the transmission or privacy of any communications over the fiber optic facilities and associated equipment of Sho-Me, or of other users. Sho-Me, by the Service hereunder, is providing circuits for Customer on a private network, and may provide switching services within that network, however Sho-Me is not utilizing the switching capabilities of the Public Switched Telephone Network.

3. SERVICE DATE: TERM

- a) Sho-Me shall use reasonable efforts to make Services available by the estimated service date. Sho-Me shall not be liable for any damages whatsoever resulting from delays in meeting any Service dates due to delays resulting from NORMAL CONSTRUCTION PROCEDURES. Such delays shall include, but not be limited to, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right of way approvals, and delays in actual construction work. If Customer is not ready to accept Sho-Me Services thirty (30) days after the specified service date, Sho-Me shall commence billing.
- b) At the expiration of the term of this Contract, if Customer has not provided Sho-Me ninety (90) days' prior written notice of its intent to disconnect, the Contract will automatically convert to a month-to-month term, and the Monthly Recurring Charges at Sho-Me's election may be increased to Sho-Me's Standard Rate for the same Service based upon month-to-month pricing. Customer may disconnect Service upon thirty (30) days written notice during the month-to-month term.
- c) Sho-Me may use its own network ("On-Net") and the networks of other carriers ("Off-Net") to provide

completed circuits to its customers. Where Sho-Me does use Off-Net facilities to fulfill this Contract, Sho-Me may note that portion of its circuit price within this Contract related to Off-Net providers, and if the Contract is renewed on a month-to-month basis, Sho-Me will automatically increase or decrease Customer's bill by the amount that an Off-Net provider increases or decreases its charges to Sho-Me.

4. CUSTOMER RESPONSIBILITIES

- a) Access – Customer is responsible for arranging access to any of the rights of way, conduit and equipment space necessary to provide Service on the premises so that Sho-Me-authorized personnel, employees, or agents may install, repair, maintain, inspect, replace or remove any and all facilities and associated equipment provided by Sho-Me. Access to such sites shall be made available at a time mutually agreeable to Customer and Sho-Me. Sho-Me shall also have the right to obtain access to its cable installed in Customer-provided conduit at any splice or junction box.
- b) Provision of Customer Premises Equipment Space, Conduit, and Electrical Power – Customer shall provide the necessary customer's premise equipment space, conduit, and electrical power required to terminate and maintain the facilities used to provide Service on all applicable premises without charge or cost to Sho-Me. The space, conduit, and power must be made available to Sho-Me on a timely basis. Customer shall be responsible for assuring that the equipment space and associated facilities, conduit and rights of way which it is providing are a safe place to work and are protected against fire, theft, vandalism or other casualty, and that the use thereof complies with all applicable laws, rules and regulations and with all applicable leases or other contractual agreements.
- c) Governmental Authorizations – Customer shall be responsible to obtain and continue in effect all government authorizations necessary to permit Customer to receive Service and comply with its obligations under this Contract.

5. EQUIPMENT

- a) Title – Customer agrees that all right, title and interest in all the fiber optic or other facilities and associated equipment provided by Sho-Me hereunder shall at all times remain exclusively with Sho-Me. Customer shall not create or permit to be created any liens or encumbrances relating to Customer's use of the Service or arising from the location of the equipment. Upon termination of Service, Sho-Me shall remove its equipment and shall have the right, but not the obligation, to remove all other facilities from any applicable premises.
- b) Maintenance – Sho-Me shall use reasonable efforts to maintain the Services in accordance with applicable performance standards therefor. There are no additional charges for Sho-Me maintenance services. However, Sho-

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Me shall have no responsibility for the maintenance and repair of facilities and equipment which it does not furnish and Sho-Me may assess Customer its standard charge for false call outs.

6. DEFAULT

If Customer (a) shall fail to pay any amount required under this Contract and such failure continues for ten (10) days after written notice to Customer that the same is due and payable, or (b) fails to comply with any other material provision of this Contract and such noncompliance continues for thirty (30) days after written notice to Customer thereof, then Sho-Me, at its sole option, may elect to pursue one or more of the following courses of action: either (i) terminate this Contract whereupon in addition to all sums then due and payable, all future monthly or other charges thereunder or hereunder shall become immediately due and payable, (ii) take appropriate action to enforce payment, including suspension of all or any part of the Service, and/or (iii) pursue any other remedies as may be provided at law or in equity.

7. LIMITATIONS OF LIABILITY

- a) Liability for Service Interruptions – To the extent that any part or portion of the Service is unavailable, interrupted, degraded or otherwise unsatisfactory for any reason, Sho-Me and Customer agree that Customer's sole and exclusive remedy shall be the credit allowances for interruptions as follows: The Customer may, upon request directed to Sho-Me's designated representative, receive a credit at the rate of one-sixtieth (1/60th) of the monthly charges applicable to the affected facilities for each twelve hour period in excess of the first four hours that the affected service fails to conform to the technical standards. If a portion of the facilities fails to conform to the technical standards over a period of thirty days after written notice by Customer to Sho-Me, Customer may terminate the affected portion of the facilities without a cancellation charge.
- b) Liability for Damages to Property – Sho-Me shall not be liable for any damages whatsoever to Property at any Customer premises resulting from the installation, maintenance, repair or removal of equipment and associated wiring unless the damage is caused by Sho-Me's willful misconduct.
- c) Liability for Services and Equipment Not Provided by Sho-Me – Sho-Me shall not be liable for any damages whatsoever associated with Service, channels, or equipment which it does not furnish to Customer, or for any act or omission of any entity furnishing to Customer facilities or equipment used for or with the Service.
- d) Liability for Force Majeure Events – Sho-Me shall not be liable for any failure of performance or Service for reasons beyond its reasonable control including but not limited to casualty, act of God, wind, flood, tornado, storm, fire, explosion, vandalism, cable cut, governmental order, riot, insurrection, strike, lockout, condemnation or loss of rights-of-way.

- e) Liability for Negligence or Fault of Customer – Sho-Me shall not be liable for any interruptions or damages due to the fault of negligence of Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- f) Liability Regarding Governmental Authorization – Sho-Me shall use best efforts to obtain and keep in effect all government authorizations necessary, in order to provide Service under this Contract. Sho-Me shall be entitled to take, and shall have no liability for, any action necessary including termination, to bring the Service into conformance with any governmental regulations or authorizations, and Customer shall fully cooperate in and take such action as may reasonably be requested by Sho-Me as part of such compliance.
- g) No Special Damages – In no event shall Sho-Me be liable for special damages including, but not limited to, lost revenues or profits, consequential damages, or exemplary or punitive damages as a result of its performance or nonperformance of this Contract.

8. TERMINATION

Sho-Me may terminate this Contract without liability and Customer's payment obligation will be apportioned if:

- a) the facilities used to provide Service are taken by exercise of condemnation or eminent domain; or
- b) as a result of damages inflicted by Customer to Sho-Me's facilities shall, in Sho-Me's judgment, be made inoperable and beyond economically or technologically feasible repair.
- c) Should the performance of Sho-Me facilities and Service provided under this Contract not provide a ninety nine percent (99%) availability of service between the hours of 6:00 A.M. to 7:00 P.M. Central Time, Customer shall notify Sho-Me in writing. If Sho-Me is unable to provide this level of service within twenty (20) days of receipt of the notice, Customer shall have the right to terminate this Contract, or affected portion, effective as of the date of receipt of said notice without penalty, termination charge, or future payment obligation beyond the date of receipt of said notice.
- d) If a portion of the facilities fails to conform to the technical standards agreed to by Sho-Me, either in a response to a Customer's Request for Proposal, a Service Level Agreement issued by Sho-Me to Customer, or any other written correspondence from Sho-Me to Customer, over a period of thirty (30) days after written notice by Customer to Sho-Me, Customer may terminate the affected portion of the facilities without a cancellation charge.
- e) Customer may also, without justification or reason therefore, terminate this Contract in whole or in part only by canceling all or any portion of the facilities described herein by providing Sho-Me thirty (30) days advance written notice of cancellation. In such case, Customer shall pay to Sho-Me all charges for Facilities provided (without the right of set-off against non-refundable charges) through the effective date of such cancellation plus a cancellation charge equal to the remaining balance of the Monthly Recurring Charges that otherwise would have become due

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for the remainder of the Term. In the event of any cancellation, Customer shall also pay Sho-Me an amount equal to any termination charges, expenses, fees or penalties incurred by Sho-Me from any Off-Net provider(s) due to Customer's cancellation of Facilities that are not already included in the Monthly Recurring Charges. It is agreed that Sho-Me's damages in the event of a cancellation shall be difficult or impossible to ascertain. The provision for a cancellation charge in this subsection is intended, therefore, to establish liquidated damages in the event of a cancellation and is not intended as a penalty.

9. INDEMNIFICATION

Sho-Me shall be indemnified, defended and held harmless by Customer against all claims, suits, proceedings, expenses, losses, liabilities, or damages (collectively "Claims") arising from the use of Service pursuant to this Contract involving:

- a) Claims of third parties, including patrons or customers of Customer, arising out of, resulting from, or related to the Customer's resale or attempted resale of the Service;
- b) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from any Communication using the Service;
- c) All other claims arising out of any act or omission of Customer, or customers or patrons of Customer, in connection with the Services made available to Customer under the terms of this Contract. Customer agrees to defend Sho-Me against any such claim and to pay, without limitation, all litigation costs, reasonable attorney fees and court costs, settlement payments, and any damages awarded or resulting from any such claim.

10. ASSIGNMENT

Sho-Me may, without obtaining any further consent from Customer, assign any of its rights, privileges, or obligations under this Contract. Customer shall not, without prior written consent of Sho-Me, which consent shall not be unreasonably withheld, assign, transfer, or in any other manner dispose of, any of its rights, privileges, or obligations under this Contract.

11. WARRANTIES

- a) **THERE ARE NO AGREEMENTS, WARRANTIES, OR REPRESENTATIONS; EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**
- b) "Major Service Disruption" shall be defined as a loss of more than fifty percent (50%) of the effective bandwidth transmission over any portion of facilities provided or a total voice circuit transmission outage. "Excessive Service Disruption" shall be determined to have occurred if any of the following three (3) conditions are met:

- a Major Service Disruption lasts more than twenty four (24) consecutive hours, or
- a Major Service Disruption lasts more than eight (8) consecutive hours during the current calendar month, in which the previous two (2) calendar months had also incurred a Major Service Disruption for which the service provider had been notified in writing, or
- the total hours of all Major Service Disruptions in the current calendar month exceeds forty eight (48) hours.

In addition to a prorated refund of normal service charges, Sho-Me will pay the Customer a Penalty Fee each month where an Excessive Service Disruption has occurred. The amount of this Penalty Fee will be equal to three hundred percent (300%) of the prorated service charges for the lost communications bandwidth over the affected portion of the facilities provided.

12. MISCELLANEOUS

This Contract may be modified, waived or amended only by a written instrument signed by the party against which enforcement thereof is sought, shall be binding upon the parties' respective successors and assigns, and constitutes the entire agreement between Sho-Me and Customer.

13. REGULATORY JURISDICTION

In the event that provisions set forth in this Contract are determined to be in violation of any rule, order, decision, or tariff of any state or federal agency having regulatory jurisdiction over Sho-Me, the terms of this Contract shall be deemed to be modified to the extent permissible under such rule, order, decision or tariff.

14. JURISDICTION

The rights and obligations of the parties under this Contract shall be governed by and construed and enforced in accordance with the laws of the State of Missouri.

15. ADDITIONAL ETHERNET TERMS AND CONDITIONS

- a) Traffic Shaping:
 - Sho-Me reserves the right to monitor the use of its Ethernet network, and in doing so may apply traffic policing to enforce the Committed Information Rate (CIR) set forth in this Contract. Traffic shaping must be performed by Customer to ensure that data packets are not dropped when entering the Sho-Me network. Customer attempts at bursting data packets is not supported on the Sho-Me network, therefore if shaping is not applied to traffic entering the Sho-Me network, it is likely that Customer traffic will be dropped randomly if the contracted CIR is exceeded. If Customer does not or cannot implement traffic shaping, the CIR should equal the interface speed connecting to the Sho-Me network to achieve maximum use of bandwidth (e.g. 10/100/1000 Mbps).

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Customer failure to adhere to the above guidelines could result in reduced throughput and performance due to packet drop or retransmission. Sho-Me is not responsible for such reduced throughput and performance.

b) Customer Premise Equipment (CPE) and Media Access Control (MAC) Addresses:

- The Customer equipment connecting to the Sho-Me demarcation point should be a Layer 3 Switch/Router/Firewall. If Customer connects by Layer 2 switch, Sho-Me will only allow Customer a total of fifty (50) MAC addresses per connection. **Any additional MAC addresses will be assessed an additional charge, with a limit of one hundred (100) total MAC addresses per connection.**

c) Multicast and Broadcast traffic limitations:

- Broadcast Traffic is used to refer to Ethernet frames that are forwarded to all nodes on the network using the broadcast Ethernet address.
- Multicast Traffic is used to refer to Ethernet frames that are forwarded, in a point to multipoint fashion, across the network to multiple recipients that belong to groups that are identified using any of the multicast Ethernet addresses defined by the Internet Assigned Numbers Authority (IANA) as Internet Multicast.
- Reason for Controls - Continuous and unpredicted floods of broadcast and multicast traffic can use substantial network bandwidth to the point of overloading the network's capacity. For this reason, it is necessary to place the following limits on the traffic types noted above:

10/100 Mbps Interface Speed

Broadcast traffic limitation = 1 Mbps per port

Multicast traffic limitation = 1 Mbps per port

1000 Mbps (1 Gbps) Interface Speed

Broadcast traffic limitation = 10 Mbps per port

Multicast traffic limitation = 10 Mbps per port

d) Frame Size, Protocols and Layer 3 markings:

- Customer traffic (frames) entering the Sho-Me network must be between 64 bytes and 1518 bytes for untagged traffic and 64 bytes and 1522 bytes for tagged (802.1Q) traffic. Frames outside these limits will be discarded.
- Customer-initiated Spanning Tree Bridge Protocol Data Units (BPDUs) will be denied from entering or interacting with the Sho-Me network.
- The Sho-Me network will not participate in the Customers' Cisco Discovery Protocol (CDP) or Virtual Trunking Protocol (VTP).
- Layer 3 classification markings within a data field of customer traffic (packet) are maintained end to end throughout the Sho-Me network. The Sho-Me network is transparent to these markings and Layer 2 Class Of Service (COS) 802.1Q P-bit markings.

e) Virtual Local Area Network (VLAN) Identification (VID) Assignment:

- Sho-Me will be responsible for VID assignment if VLAN tagging (802.1Q) is required on the customer interface connecting to the Sho-Me demarcation.
- f) Customer Interface Configuration:
- Customer should first verify the CIR of their Contract. If the CIR is 10, 100 or 1000 Mbps, no traffic shaping is required, as the CIR equals the size of the Sho-Me interface. If the CIR is something other than 10, 100 or 1000 Mbps, the Customer must have the capability to shape their traffic. If the Customer cannot shape their traffic, they should either request that the CIR be changed to equal a Sho-Me interface option (10, 100 or 1000 Mbps) or Sho-Me can help Customer locate a vendor of equipment capable being able to shape their traffic.
 - When using traffic shaping, Customer should limit the output rate from Customer's equipment either at or below the CIR purchased per location.
 - Customer's equipment should always be set to Full Duplex, with a setting of No Auto-Negotiation. The only exception to this is when the Ethernet speed equals 1000 Mbps; Auto-Negotiation should be used when Ethernet speed equals 1000 Mbps.
 - Ethernet Speed should be set to 10 if the CIR is 10 Mbps or less, 100 if the CIR is greater than 10 or 100 Mbps or less, or 1000 Mbps if the CIR is greater than 100 Mbps.

16. INTERNET ACCEPTABLE USE POLICY

Sho-Me Technologies Direct Internet Access (DIA) is subject to Sho-Me's Acceptable Use Policy (AUP) which is available on the Internet at www.shometech.com under 'About Us'. Customers contracting for DIA are subject to the terms and conditions outlined in the AUP. Sho-Me reserves the right to modify the AUP from time to time.

17. ADDITIONAL MANAGED FIREWALL SERVICES TERMS AND CONDITIONS

Managed Firewall Services are options provided in addition to other communications facilities or services.

- a) Antivirus service protects against the latest viruses, spyware, and other content-level threats. It uses industry-leading advanced detection engines to prevent both new and evolving threats from gaining a foothold inside Customer network and accessing its content.
- b) Intrusion prevention system (IPS) service monitors for malicious activity to protect Customer network from outside attacks by use of two techniques, Anomaly-based and Signature-based. Anomaly-based takes action when network traffic is used as the weapon such as a denial of service (DoS). These attacks usually do not try to gain access to Customer network, but they can overwhelm a target so genuine traffic cannot reach its destination. A DoS policy is created to block traffic above a certain threshold from the attacker. Signature-based is used against known attacks or vulnerabilities. These attacks generally involve an attacker attempting to gain access to

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Customer's network. IPS signatures allow the service to detect and stop the attack.

- c) Web filtering service provides Web URL filtering to block access to harmful, inappropriate, and dangerous web sites. These websites may contain phishing attacks, malware, or objectionable content.

d) **DISCLAIMER:**

The primary function of any Firewall Service is to filter traffic coming into the network based on pre-determined criteria. On best effort basis, Sho-Me will provide a high standard of protection and service, however, no such service can claim to be completely secure and may not prevent some instances of dedicated hackers, or Customer's employee from gaining unauthorized access to the Internet or to confidential information stored on Customer's network. No firewall service can protect against all protocol or application weaknesses and new software vulnerabilities are discovered regularly. Customer agrees that it is not possible to create a secure service that guarantees absolute security with a Firewall Service and such service cannot protect against all protocol or application weaknesses and software vulnerabilities. Sho-Me does not and will not accept liability for any losses or damage to Customer's business or data that arise as a result of the Firewall Service not preventing unauthorized access. Sho-Me recommends that Customer, where necessary, make use of network security scanning solution to validate and test the effectiveness of the firewall solution.

CUSTOMER ACKNOWLEDGES THAT DATA TRANSMISSION SECURITY SERVICES SUCH AS THOSE PROVIDED HEREUNDER ARE NOT FOOLPROOF AND, THEREFORE, ARE NOT GUARANTEED. IN ADDITION TO THE DISCLAIMERS AND LIMITATIONS SET FORTH IN THIS CONTRACT, NEITHER SHO-ME NOR ITS PROVIDERS OR SUPPLIERS WILL BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO DATA) RELATING TO OR ARISING FROM THE USE OF THE SERVICES PROVIDED HEREUNDER (THIS EXCLUSION DOES NOT APPLY TO ANY SERVICE WARRANTIES OR SERVICE LEVEL AGREEMENTS FOR ANY COMMUNICATION SERVICES PROVIDED BY SHO-ME UNDER THIS CONTRACT).

18. **HOLD HARMLESS**

CUSTOMER UNDERSTANDS AND AGREES THAT SHO-ME IS PROVIDING SERVICES, AND ANY RELATED HARDWARE, SOFTWARE AND DOCUMENTATION TO CUSTOMER AND CUSTOMER HEREBY WAIVES ANY LIABILITY AGAINST SHO-ME AND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SHO-ME AND SHO-ME'S DIRECTORS, OFFICERS AND EMPLOYEES FROM ANY AND ALL LIABILITY ARISING FROM LOSS OR DAMAGE DUE TO DELAY

OF SERVICE COMMENCEMENT OR INABILITY TO PROVIDE THE SERVICE, FAILURE OF ALL OR PART OF THE SERVICE OR ANY RELATED SERVICE PROVIDED HEREUNDER.
