



# **City of Grand Island**

**Tuesday, March 11, 2008**

**Council Session**

## **Item G11**

**#2008-88 - Approving Contract for Cable Television Services at the  
Law Enforcement Center**

**Staff Contact: Steve Lamken**

# **Council Agenda Memo**

**From:** Steven Lamken, Police Chief  
**Meeting:** March 11, 2008  
**Subject:** Cable Television Contract for Law Enforcement Center  
**Item #'s:** G-11  
**Presenter(s):** Steven Lamken, Police Chief

## **Background**

The Police Department is requesting to contract with Charter Business cable television services for installation of service into the building to the cable distribution point and also for monthly cable outlet fees. Charter Business has proposed a three year contract of a one time \$1,000.00 installation charge and a fee of \$10.00 per month per cable service in the building. The costs of the regular monthly service will be shared with the County.

## **Discussion**

The new Law Enforcement Center was prewired for cable television outlets; however, the installation of service into the building is to be provided under a separate contract with a local vendor. Charter Communications has prepared a three year contract that will provide for the installation of cable into the building and a three year service contract for outlets in the building. The contract includes a one time installation cost of \$1,000.00 and a monthly fee of \$10.00 per month per service in the building with one service provided free.

The City Legal Department has reviewed the contract with Charter. The costs of the monthly services will be shared with the County with the County paying 30% of the costs.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve

2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the contract with Charter Communications for installation and monthly cable television services to the Law Enforcement Center.

### **Sample Motion**

Move to approve the contract with Charter Communications for installation and monthly cable television services to the Law Enforcement Center.



**\*200801100665532\***

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### BUSINESS VIDEO SERVICE AGREEMENT

This Service Agreement ("Agreement") is executed and effective upon the latest date of the signatures set forth in the signature block below ("Effective Date") by and between Charter Communications VI, LLC, ("Charter Business" or "Charter") with local offices at 809 Central Avenue, Kearney, NE 68848 and Grand Island Hall County Law Enforcement, ("Customer") with offices located at 111 Public Safety Drive, Grand Island, NE 68801.

Both parties desire to enter into this Agreement in order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. **This Agreement and each Service Order will be effective only after both parties have signed each document.**

### SERVICE ORDER

#### Under the Business Video Service Agreement

#### CUSTOMER INFORMATION:

Account Name: Grand Island Hall County Law Enforcement

Invoicing Address: \_\_\_\_\_, Grand Island, \_\_\_\_\_

Invoicing Special Instructions: \_\_\_\_\_

Customer Federal Tax ID#: \_\_\_\_\_

#### 1. SITE-SPECIFIC INFORMATION:

Order Type: New Service

Service Location (Address): 111 Public Safety Drive, Grand Island, NE 68801

Service Location Name (for purposes of identification): \_\_\_\_\_

Service Location Special Instructions: \_\_\_\_\_

☒ Non-Hospitality or Non-Video

**Customer Contact Information.** To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name		308-385-5400	Jim Bartlett
Phone		Steve Lamken	308-379-5253
Fax		_____	
Cell		308-380-8506	
Pager			
Email Address		slamken@gipolice.org	jbartlett@chartercom.com

MONTHLY SERVICE FEES:		
<b>Video Services:</b>		
Video Service:	Private Office: Basic and Expanded -- 12 units @ \$10.00 + 1 Comp	\$120.00

*\* If Customer has selected the Charter Business Special Offers, the Section 2(k) of the Standard Terms of Service (for Charter Business Bundle) shall apply.*

ONE-TIME CHARGES:	
One-Time Standard Installation Fee:	\$1000.00
<b>ONE-TIME CHARGES \$1,000.00</b>	

## 2. TOTAL FEES.

**Total Monthly Service Fees of \$120.00 are due upon receipt of the monthly invoice.**

**Total One-Time Charges of \$1,000.00 are due included in the first monthly invoice.**

- SERVICE PERIOD.** The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 36 months. Upon expiration of the initial term, this Service Order shall automatically renew for successive one-month terms unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term. Video Services are subject to rate increases during the term of the contract as described in Video, Music and Content Services.
- NO UNTRUE STATEMENTS.** Customer further represents and warrants to Charter that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to Charter contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.
- CONFIDENTIALITY.** Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law, including but not limited to, Nebraska laws relating to access to public records. If any unauthorized disclosure is made by Customer and/or its agent or representative, Charter shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Charter shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement.
- FACSIMILE.** A facsimile of a duly executed Agreement and Service Order signed by both authorized parties shall be considered evidence of a valid order and Charter may rely on such facsimile copy of the Agreement and Service Order as if it were the original.

**NOW THEREFORE,** Charter and Customer agree to the terms and conditions included within this Service Agreement, including the Standard Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

**Charter Communications VI, LLC**

**Grand Island Hall County Law Enforcement**

By:

By: Charter Communications, Inc., Its Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Charter Business Account Executive:**

Name: Jeanne Noyes

Telephone: (308) 698-1742

Sales Code: \_\_\_\_\_

Fax: (308) 236-1509

## STANDARD TERMS OF SERVICE

1. **SERVICE.** Charter agrees to provide the Services during the Service period to the Customer at the site(s) identified in the Service Order(s). "Service Period," is the time period starting on the date the Services are fully functional in all material respects and available for use as described in a Service Order or as reflected in the first invoice (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).
2. **STANDARD PAYMENT TERMS.** Customer agrees to pay the monthly Service fees and one-time charges as set forth in the Service Order(s) incorporated under this Service Agreement by execution thereof by the parties. "Monthly Service Fees" is the amount specified as the monthly fee to be paid by the Customer for the Services. "One-Time Charges" include, but are not limited to, construction, Service installation charge(s), repair, replacement, or any non-recurring charges. "Service Installation Charge" is the amount specified as the fee for installation of equipment and network facilities. "Equipment" means components including, but not limited to, any gateway or edge electronic device, antenna, node, concentrator, bridge, receiver, transmitter, transceiver, router, switch, hub or communications lines/cables that makes up the network of Charter-provided Equipment, facilities and materials (the "Network") necessary to provide the Services.
  - (a) Monthly Service Fees. Customer agrees to pay Monthly Service Fees in advance of the provision of the Services. Monthly Service Fees are due upon receipt of the invoice.
  - (b) One-Time Charges. Customer agrees to pay the One-Time Charges as described on the applicable Service Order(s).
  - (c) Taxes, Fees, and Government Charges. Customer agrees to pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes), arising under this Agreement, including, without limitation, applicable state property taxes. A copy of the Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees.
  - (d) Charges for Change Requests. Any charges associated with Service and Equipment installations, additions, modifications, substitutions, upgrades, reconfigurations, rebuilds or relocations at a site and requested by Customer subsequent to executing a Service Order for that site, are the sole financial responsibility of Customer. Charter shall notify Customer, orally or in writing, of any additional One-Time Charges and/or adjustments to Monthly Service Fees associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to object to such additional charges within three (3) days of receiving such notice shall be deemed an acceptance by Customer of such charges. Customer shall be assessed such additional One-Time Charges and/or adjusted Monthly Service Fees, either (i) in advance of implementation of the change request or (ii) beginning on the Customer's next and/or subsequent invoice(s).
  - (e) Site Visits and Repairs. If Customer's misuse, abuse or modification of the Services, Equipment or Network facilities supplied by Charter necessitates a visit to the Customer site for inspection, correction or repair, Charter shall charge Customer a site visit fee as well as charges for any Equipment or Network repair or replacement necessary to restore Service.
  - (f) Invoicing Errors. Customer must provide notice to Charter of any invoice errors or disputed charges within thirty (30) days of the invoice date on which the errors and/or disputed charges appear in order for Customer to receive any credit that may be due.
  - (g) Late Fees. If Customer fails to pay an invoice within sixty (60) days of issuance, Charter will issue a notice of late payment. Customer will be charged a late fee of not more than five percent (5%) per month on any outstanding past-due balance.
  - (h) Non-Payment. If Services are disconnected because Customer does not pay the invoice, Charter may, in its sole discretion, require that Customer pay all past due charges, a reconnect fee, and a minimum of one month's Monthly Service Fees in advance before Charter will reconnect Services.
  - (i) Returned Checks, Bankcard or Credit Card Charge-Backs and Collection Fees. Charter may charge a reasonable service fee for all returned checks and bankcard, credit card or other charge card charge-backs.
  - (j) Collection Fees. Customer shall be responsible for all expenses, including reasonable attorney's fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement if so ordered by a court of law.
  - (k) Bundled Pricing. In the event Customer has selected a Charter Business Bundle (as must be specifically indicated by component Service in this Service Order), the following conditions shall apply:

In consideration for Customer's purchase of the Charter Business Bundle and only with respect to that period time during which Customer continues to purchase such Charter Business Bundle (for purposes of clarification, continues purchase of each bundled Service component of such Charter Business Bundle), Charter agrees to apply a discount to the Services ordered under this Service Order. Such discount has been applied to the Services included in Charter's bundled pricing offer and is reflected in the Monthly Services Fees for such Services contained in this Service Order.

For purposes of clarification, in the event Charter's provision to Customer of one or more of the bundled Service components of the Charter Business Bundle, is discontinued or otherwise terminated for any reason, the pricing for the remaining Service components listed above shall revert to Charter's a la carte pricing for such Services in effect at the time of the discontinuation or termination. Termination liabilities applicable to the Services under the Service Agreement shall otherwise remain unchanged.

### 3. SERVICE LOCATION ACCESS and INSTALLATION.

- (a) Access. Customer shall provide Charter with reasonable access to each Service Location listed on a Service Order as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns and/or controls the Service Location(s), Customer grants to Charter permission to enter the site(s) for the exercise of such right. If a site is not owned and/or controlled by Customer then Customer will obtain, with Charter's assistance, appropriate right of access. If Customer is not able to gain right of access for a site from owner and/or controlling party, Charter's obligations under this Agreement and the appropriate Service Order for such site are terminated, null and void.
- (b) Installation Review; Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services at that Service Location. Customer may be required to provide Charter with accurate site and/or physical network diagrams or maps of a Service Location prior to the installation review. Charter may directly or through its agents inspect the Customer Premises before beginning installation, and shall satisfy itself that safe installation and proper operation of its Equipment and the Services are possible in the location(s) provided by Customer. If Charter, in its sole discretion, determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon prior written notice to Customer or may require the Customer to correct the situation before proceeding with installation or activation of the Services.

In the event during the initial or any renewal Service Period, (i) proper operation of Charter's Equipment and/or unhindered provision of the Services is no longer possible as a result of interference or obstruction caused by the acts or omissions of Customer, a third party or any Force Majeure Event, or (ii) such interference/obstruction or the cause thereof will have negative consequences to Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, as Charter may determine in its sole discretion, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.

- (c) Site Preparation. Customer shall be responsible, at its own expense, for all site preparation activities necessary for delivery and installation of the Equipment and the installation and ongoing provision of Services, including, but not limited to, the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment and/or Services. To ensure proper installation of the Equipment and the Services, Customer may be required to provide electrical or other utility service, and/or accurate physical network diagrams and/or maps prior to installation.
- (d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. During installation, Charter shall test to confirm that the Services can be accessed from the Service Location. In the event that during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any new or additional One-Time Charges that may be necessary. In the event the Customer does not agree to pay such One-Time Charges by executing a revised Service Order reflecting such new charges (and superseding the underlying applicable Service Order) within five (5) business days of receiving the revised Service Order, Customer and/or Charter shall have the right to terminate the applicable Service Order. Customer shall be responsible for access paths, moving or relocating furniture, furnishings, or equipment, or other preparation activities necessary for Charter to install the Services. Customer shall connect any Equipment provided by Charter to Customer's computer or network to enable access to the Services. With respect to any excavation, Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from such excavation.
- (e) Ongoing Visits. Charter will need access to the Customer Premises from time to time for inspecting, constructing, installing, operating and maintaining Charter's Network facilities, Equipment or materials and/or any related facilities. Except in emergency situations, Charter will obtain approval from the Customer (not to be unreasonably withheld or delayed) before entering the Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for the purpose of installing, repairing, maintaining, upgrading, and/or removing the Equipment.

### 4. EQUIPMENT AND MATERIALS.

- (a) Responsibilities and Safeguards. Except as otherwise provided in this Service Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party, provided, however, that subject to the Indemnification limitations set forth in section 11 hereunder, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct.

Without limiting the foregoing, Customer will not be liable for loss of or damage to cable, electronics, structures or Equipment owned by Charter and located on Customer Premises which occurred as a result of the occurrence of any Force Majeure Event, natural disaster or other casualty loss over which Customer has no control.

Customer shall:

- i Safeguard Charter-provided Equipment against others;
- ii Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- iii Not hire nor permit anyone other than personnel authorized by Charter acting in their official capacity to perform any work on the Equipment; and

- iv Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services, Equipment, any system or its components shall be cause for immediate disconnection of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including, but not limited to, the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including, but not limited to, reasonable attorneys' fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services provided by Charter hereunder, Customer acknowledges and agrees that Charter shall not be obligated to distribute a quality signal to the Premises better than the highest quality which can be furnished as a result of such interference, until such time as the interference is eliminated or corrected by Customer or a third party.

- (b) Ownership. Customer understands and agrees that notwithstanding any other provision contained herein to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment.
- (c) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of Services ("Termination" shall mean the termination of the Service Agreement and/or Service Order(s)), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer, in good condition. Failure of Customer to return, or allow Charter to retrieve, Equipment within ten (10) days after Services are terminated will result in a charge to Customer's account equal to the full retail cost of replacement of the unreturned Equipment. In addition, Customer agrees to pay for the repair or replacement of any damaged Equipment (whether or not caused by Customer's negligent act, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects), together with any costs incurred by Charter in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorneys' fees.

5. **VIDEO, MUSIC AND CONTENT SERVICE.** This Video, Music and Content Service section shall only apply if Video, Music and Content Services are included in this Service Agreement or any related Service Order. Continued reception of the Video Services is subject to these Terms and Conditions. Charter may, in its sole discretion, preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming, packaging, and distribution of its Video Services or of any of Charter's Video Services packages.

- (a) Payment Terms. Increases in any and all programming, license, copyright, retransmission and/or other costs, charges, fees or amounts including, without limitation, taxes and any and all other governmental fees, charges and/or other amounts, shall not be deemed to be included in the Monthly Service Fees or limited by any provision in this Agreement, and may be passed on to Customer at any time when such costs are incurred by, assessed or required of Charter.

The initial Monthly Service Fees shall remain in effect for the first 12-months of this Agreement. Thereafter, Charter may increase the Monthly Service Fees from time to time upon thirty (30) days' prior written notice to Customer. Customer hereby agrees to any such increases that do not exceed six percent (6%) of the Customer's total Monthly Service Fees incurred in the month immediately preceding the month in which the increase is to be effective. Increases shall not occur more frequently than once per 12-month period. In the event such increased Monthly Service Fee would exceed the amount permitted under applicable law, the Monthly Service Fees shall be increased only to the maximum allowable under applicable law. Notwithstanding the foregoing, increases in any and all programming, license, copyright, retransmission and/or other costs, charges, fees or amounts including, without limitation, taxes and any and all other governmental fees, charges and/or other amounts, shall not be limited by any provision in this Agreement, and may be passed onto Customer at any time when such costs are passed on to Charter.

- (b) Music Rights Fees. In all cases, Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI") and SESAC, Inc. ("SESAC") or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate in connection with Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.
- (c) Premium and Pay-Per-View. Customer may not exhibit any premium Services such as HBO or Showtime in any public or common viewing area. Customer may not order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment. Customer may not exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to Charter's prior written consent. If Customer fails to abide by these restrictions, in addition to all other liability and not by way of limitation, Customer accepts liability for any and all claims made against Customer or Charter of any unauthorized commercial exhibition and Customer agrees to indemnify and hold Charter harmless from any loss, cost, liability, or expense, including reasonable attorney's fees, arising from a breach of this provision.
- (d) Provision of Service. Charter may, in its sole discretion, from time to time, rearrange, delete, add or otherwise change packaging and programming of Services contained in Charter's basic cable, Digital Music or other Services provided pursuant



to this Agreement. Customer acknowledges that Charter has the right at any time to preempt without notice specific advertised programming and to substitute programming that Charter deems to be comparable.

- (e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); (ii) transmit the Services (or any part thereof) by any television or radio broadcast or by any other means or use the Services (or any part thereof) outside the Service Location. Customer acknowledges that such duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. Customer shall not, and shall not authorize or permit any other person to (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services (or any part thereof) are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services (or any part thereof) unless Customer can demonstrate to the reasonable satisfaction of Charter that Customer or a third-party has obtained a then-current music license permitting such activity; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements. If Customer fails to abide by these restrictions, Customer accepts liability for any and all claims made against Customer or Charter due to any unauthorized commercial exhibition and Customer agrees to indemnify and hold Charter harmless from any damages, loss, cost, liability, or expense, including reasonable attorneys' fees, arising from a breach of these restrictions.

**6. INTERNET ACCESS SERVICE.** Continued use of the Internet Service is subject to these Terms and Conditions.

- (a) Equipment and Software Requirements. Customer shall maintain certain minimum Equipment and software to receive the Service. Please refer to [www.charter-business.com](http://www.charter-business.com) (or the applicable successor URL) for the current specifications.
- (b) Internet Service Speeds. Charter shall use commercially reasonable efforts to achieve the Internet speed selected by the Customer on the Service Order. However, Customer understands and agrees that such speeds may vary.
- (c) Access and Use. Customer agrees to ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement. Customer shall be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.
- (d) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security procedures and standards. Charter may temporarily discontinue or disconnect the Internet Services upon learning of a breach of security and will attempt to contact Customer in advance, if possible. The temporary discontinuation or disconnection of the Internet Services shall not constitute a breach of this Agreement.
- (e) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by Charter are and shall remain the property of Charter. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.
- (f) No Liability for Changes of Address. Due to growth, acquisitions and changes in technology, Charter reserves the right to change addressing schemes, including e-mail and IP addresses.
- (g) No Liability for Risks of Internet Use. The Internet is a shared network and Charter does not warrant that Service will be error free. The Service, Charter's network and the Internet are not secure, and others may access or monitor the Customer's traffic. Charter does not warrant that data or files sent or received by the Customer over the Network will not be subject to unauthorized access by others, that other users will not gain access to the Customer's data, nor that the data or files will be free from computer viruses or other harmful components. Charter has no responsibility and assumes no liability for such acts or occurrences.
- (h) No Liability for Purchases. Through use of the Service, the Customer may access certain information, products and services of others, for which there is a charge. The Customer shall be solely liable and responsible for all fees or charges for these online services, products or information. Charter shall have no responsibility to resolve disputes with other vendors.
- (i) Blocking and Filtering. While the computer industry may provide blocking and filtering software that empowers Customer to monitor and restrict access to Customer's computer and its data, Charter is not the publisher of this software. Charter strongly recommends that the Customer employ a "firewall" or other security software. The Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Except to the extent set forth in the Supplemental Charter Business Security Service Section, Charter shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. Charter does not warrant that other users will be unable to gain access to Customer's computer(s) and/or data even if the Customer utilizes blocking and filtering technologies.
- (j) Acceptable Use Policy. Customer agrees to comply with the terms of Charter's Acceptable Use Policy ("AUP"), found at [www.charter-business.com](http://www.charter-business.com) (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and agrees to be bound by its terms as they may from time to time be amended, revised, replaced, supplemented or otherwise changed. Customer expressly understands and agrees that the AUP may be updated or modified from time to time by Charter, with or without notice to Customer. Charter may discontinue or disconnect Services immediately for any violation of the Charter AUP with or without notice to Customer.
- (k) Supplemental Charter Business Security Service. This Charter Business Security Service subsection shall only apply if Charter's managed security service ("Charter Business Security") is included in this Service Agreement or any related Service

Order. Charter Business Security is made up of software and hardware components. Charter shall ensure that Charter Business Security is operational and updated from time to time based on manufacturer-sent updates. Except to the limited extent described in the foregoing sentence, Charter makes no warranties of any kind (express or implied) regarding Charter Business Security and hereby disclaims any and all warranties pertaining thereto (including but not limited to implied warranties of title, non-infringement, merchantability, or fitness for a particular purpose). Customer understands and acknowledges that Charter is not the manufacturer of any software or hardware components of Charter Business Security nor is Charter the supplier of any components of such software or hardware. IN ADDITION TO BUT WITHOUT ABROGATING THE TERMS SET FORTH IN SECTION 11, CHARTER SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF CHARTER BUSINESS SECURITY (INCLUDING BUT NOT LIMITED TO THAT ATTRIBUTABLE TO BLOCKED CONTENT OR EMAIL). REGARDLESS OF CAUSE OR FAULT, CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO CUSTOMER'S PURCHASE OR USE OF CHARTER BUSINESS SECURITY, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO CHARTER FOR CHARTER BUSINESS SECURITY.

- (l) Supplemental CB Back-Up Service. This CB Back-Up service subsection shall apply only if Charter's data storage service ("CB Back-Up") is requested by the Customer. In addition to One Time Charges and Monthly Service Fees, monthly storage overage fees shall apply each month Customer exceeds the respective subscribed storage level. Additional One Time Charges and Monthly Service Fees also apply to Customer-requested media and/or professional services.

CB Back-Up is made up of software components. Customer understands and acknowledges that Charter is not the manufacturer or supplier of any CB Back-Up software components. Customer shall be responsible for updating CB Back-Up from time to time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve Charter from any responsibility to ensure that CB Back-Up remains operational. Except to the limited extent described in the foregoing sentences, Charter makes no warranties of any kind (express or implied) regarding CB Back-Up and disclaims any and all warranties pertaining to CB Back-Up (including but not limited to implied warranties of title, non-infringement, merchantability, or fitness for a particular purpose). IN ADDITION TO, BUT WITHOUT ABROGATING OR LIMITING THE TERMS SET FORTH IN THE LIMITATION OF LIABILITY SECTION OF THIS AGREEMENT, CHARTER SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF CB BACK-UP REGARDLESS OF CAUSE OR FAULT. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO CUSTOMER'S PURCHASE OR USE OF CB BACK-UP SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO CHARTER FOR CB BACK-UP SERVICE.

In the event the functionality of the CB Back-Up service cannot be maintained by Charter or the manufacturer, Charter shall have the right to discontinue providing the service immediately and Charter shall credit Customer's account for any pre-paid Monthly Service Fees attributable to the service, except where such lack of functionality is caused by the Customer or any end user gaining access to the service through the Customer's facilities, equipment, or point of access. Customer shall not be relieved of its responsibility to continue to pay for CB Back-Up in the event CB Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES (1) THAT IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE CB BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE CB BACK-UP SERVICE AND (2) THAT CHARTER HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S CB BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS OF ACCESSABILITY TO DATA STORED VIA THE CB BACK-UP SERVICE.

- (m) Supplemental CB Hosting Service. This Hosting Service subsection shall only apply if one of Charter's Hosting Services ("Hosting") is included in this Service Agreement or any related Service Order. Charter will provide to Customer Hosting Service in accordance with the Specifications associated with the plan Customer has selected on the Service Order.
- i. Third Party Software via Hosting Service. The Hosting Service will permit access to a variety of resources available from selected third parties, including developer tools, communication forums and product information (collectively, "Hosting Software"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may subject to end user license agreements between such third parties and Customer. Version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility.
  - ii. WITHOUT LIMITING THE FOREGOING, COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS SUCH REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PERMITTED IN WRITING BY CHARTER.
  - iii. WITHOUT LIMITING OR ABROGATING THE TERMS SET FORTH IN SECTION 7, CHARTER HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE HOSTING SOFTWARE, INCLUDING ALL WARRANTIES AND CONDITIONS OF MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
  - iv. Domain Names. Customer shall be solely responsible for registering for or renewing a desired domain name, Charter disclaims such responsibility, and Customer acknowledges that Charter does not guarantee that Customer will be able to register or renew a desired domain name, even if an inquiry indicates that domain name is available at the time of such inquiry.

- v. **Specification Limitations.** Individual websites may not at any time exceed the Hosting Specifications identified on the applicable Service Order. If a Customer's Hosting account is found exceed the Specifications set forth in the applicable Service Order, or is adversely impacting Charter's network or server(s), Charter may (i) contact the Customer to resolve the issues; or if Customer has exceeded the then-applicable Specifications in any given month, (ii) upgrade the Customer's account on the next available billing cycle to the next service level tier or (iii) suspend or terminate the Hosting Service.

Notwithstanding anything to the contrary, in the event Customer's use of the Hosting Service is causing an adverse impact on Charter's network or servers, Charter may (i) suspend or terminate the Hosting Service or (ii) terminate the Agreement in its entirety.

- vi. **Limitation of Charter-Provided Services.** Customer understands and agrees that certain services are not provided by Charter as part of the Hosting Service (e.g., Charter does not provide nor offer web page creation, development, design or content services).
- vii. **No Additional Warranties.** Charter makes no warranties of any kind (express or implied) regarding Hosting and hereby disclaims any and all warranties pertaining thereto (including but not limited to implied warranties of title, non-infringement, merchantability, or fitness for a particular purpose). IN ADDITION TO, BUT WITHOUT ABROGATING AND LIMITING THE TERMS SET FORTH IN THE LIMITATION OF LIABILITY SECTION OF THIS AGREEMENT, CHARTER SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF CHARTER HOSTING REGARDLESS OF CAUSE OR FAULT. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO CUSTOMER'S PURCHASE OR USE OF THE HOSTING SERVICE SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO CHARTER FOR HOSTING SERVICE.
- viii. **Hosting Fees.** The applicable Service Order sets forth the Monthly Service Fees for the Hosting Service. Customer is responsible for payment whether or not the hosting platform is used. Customer shall not be relieved of its responsibility to continue to pay for Hosting in the event Hosting does not function properly as a result of (i) Customer's failure to install or properly use any software; or (ii) Customer's failure to utilize in any way or less than the maximum Specifications the Hosting Service.
- ix. **Content Liability and Use Restrictions.** Customer acknowledges Charter exercises no control whatsoever over the content of the information passing through Customer's site(s) and that it is Customer's sole responsibility to ensure that Customer and Customer's users use of the Hosting Service complies at all times with all applicable laws and regulations and Charter's AUP.

Upon activation of Customer's account, Charter shall have the right to disclose any, or all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes, but is not limited to IP addresses, account history, and files stored on Charter servers.

In addition to the foregoing, Customer expressly understands and agrees that the following activities are prohibited. In the event that Customer engages in such activities, Charter shall have the right to suspend or terminate the Hosting Services and/or this Agreement:

- a. The hosting of unlicensed software that is available to the public;
- b. Use of software or files that contain computer viruses or files that may harm user's computers;
- c. Any attempt or actual unauthorized access by Customer or through Customer's equipment to any Charter website or the website of any Charter customer;
- d. The collection or any attempt to collect personally identifiable information of any person or entity without their express written consent. Customer shall maintain records of any such written consent throughout the Term (and any Renewal Term) of this agreement and for three years thereafter;
- e. Any action which is harmful or potentially harmful to the Charter server structure;
- f. Running a banner exchange, free adult tgp (thumbnail gallery post) and/or free adult image galleries on your website;
- g. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites or providers.
- x. **Impositions on Customer's End Users.** Customer is responsible for charging and collecting from Customer's end-user customers any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users or customers as required herein, then, as between Charter and Customer, Customer shall remain liable for such uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax by the applicable taxing authority. With respect to any tax that Customer has agreed to pay or impose on and/or collect from Customer's end users or customers, Customer agrees to indemnify and hold harmless Charter for any costs incurred as a result of actions taken by the applicable taxing authority to collect such tax from Charter due to Customer's failure to pay or collect and remit such tax to such authority.

- 7. **NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT.** Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. For purposes of this Agreement the Hosting Software shall be considered third party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, any Customer-supplied

hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

8. **CUSTOMER USE.** Customer agrees not to re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer agrees not to use or permit third parties to use the Service(s), including but not limited to the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer agrees not to interfere with other customers' use of the Equipment or Services or disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this section is grounds for immediate Termination of this Service Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have hereunder.
9. **PERFORMANCE.** Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions of Service. Specifically, Customer understands and agrees that the Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by the Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Service Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.
10. **DEFAULT; SUSPENSION OF SERVICE; TERMINATION.** No express or implied waiver by Charter of any event of default shall in any way be a waiver of any further subsequent event of default. Nothing herein, including, but not limited to Termination, shall relieve Customer of its obligation to pay Charter all amounts due.
  - (a) Default by Customer. Customer shall be in default under this Service Agreement in the event that the Customer does one (1) or more of the following (each individually to be considered a separate event of default) and the Customer fails to correct each such noncompliance within twenty (20) days of receipt of written notice in cases involving non-payment or within thirty (30) days of receipt of written notice in cases involving any other noncompliance:
    - i Customer is more than thirty (30) days past due with respect to any payment required hereunder;
    - ii Customer otherwise has failed to comply with the terms of this Service Agreement or any other Service Order(s) incorporated herein by execution thereof by the parties; or
    - iii Customer files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within sixty (60) days.
  - (b) Charter's Right to Terminate and Termination Charge. In the event Customer is in default, Charter shall have the right, at its option, and in addition to any other remedies it may have, to:
    - i Immediately suspend Services to the Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this Agreement (e.g., the Monthly Service Fees), as if such suspension of Services had not taken place;
    - ii Terminate the Services; or
    - iii After the occurrence of two (2) such events of Customer default in any twelve (12) month period of time, terminate this Service Agreement and/or any or all of the applicable Service Order(s).

If Termination is due to noncompliance by the Customer, Customer must pay Charter a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to fifty percent (50%) of the unpaid balance of the Monthly Service Fees that would have been due throughout the remainder of the applicable Service Period plus one hundred percent (100%) of (1) the outstanding balance of any and all One-Time Charges plus (2) any and all previously waived One-Time Charges
  - (c) Default by Charter. Charter shall be in default under this Service Agreement in the event that Charter does one (1) or more of the following (each instance individually to be considered a separate event of default), and Charter fails to remedy each such noncompliance or occurrence within thirty (30) days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance:
    - i Charter fails to comply with the terms of this Service Agreement and/or any or all of the applicable Service Order(s);
    - ii Charter files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within sixty (60) days.
  - (d) Customer's Right to Terminate and Termination Charge.

- i Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of default and/or noncompliance by Charter is limited to Services provided under the applicable Service Order(s) or this Service Agreement, if such noncompliance is not so limited, provided that Charter's diligent efforts to correct such breach are not commenced and pursued within thirty (30) days after Charter's receipt of a written notice from the Customer describing in reasonable detail the nature, scope and extent of the event of default/noncompliance.
- ii If Termination is due to noncompliance by Charter, Charter shall reimburse Customer for any pre-paid, unused Monthly Service Fees attributable to such terminated Service Order(s). In addition, if Termination is due to noncompliance by Charter within one (1) year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any One-Time Charge that has already been paid by the Customer to Charter relative to Service at the sites covered by the terminated Service Order. This Termination Charge Charter must pay Customer shall be equal to the product of a) the number of months (or portion thereof) remaining in the initial twelve (12) months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of One-Time Charges paid to date and the denominator is twelve (12).
- iii Notwithstanding any provision herein to the contrary, Customer, at its option, may terminate this Agreement without early termination charges by providing written notice to Charter not more than sixty (60) days following receipt from Charter of notice of any increase in the Monthly Service fees.

Fees attributable to Video Services exceeding six percent (6%) of the Monthly Service Fees attributable to the Video Service in the immediately preceding month. Customer's failure to provide Charter notice of Termination within such thirty (30) days period shall constitute an acceptance of such increase in the Monthly Service Fees exceeding six percent (6%).

**LIMITATION OF LIABILITY.** PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- (a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to the Customer.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS SERVICE AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS PROVIDED FOR ELSEWHERE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within thirty (30) days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Customer acknowledges that any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include, without limitation, programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and their authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.
- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer agrees that Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind.

Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.

- (d) **Unauthorized Access.** If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate Termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold Charter harmless from and indemnify Charter against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing the Customer's computers, its internal network and/or the Network through Customer's equipment, and Customer shall hold Charter harmless from and indemnify Charter against any such claims, losses, or damages to the full extent arising from such access.
- (e) **Force Majeure Event.** Customer agrees that Charter shall not be liable for any inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond Charter's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services.

11. **INDEMNIFICATION.** In addition to its specific indemnification responsibilities set forth elsewhere in this Service Agreement and as permissible under applicable law, Customer agrees, at its own expense, to indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including but not limited to, reasonable attorneys' fees and court costs incurred by Charter Indemnified Parties under this Service Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Service Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer agrees to cooperate with Charter Indemnified Parties in such case.

Charter agrees, at its own expense, to indemnify, defend and hold harmless Customer and its affiliates, directors, employees, representatives, officers and agents, (the "Customer Indemnified Parties") against any and all claims, liabilities, lawsuits, direct damages, losses, judgments, costs, fees and expenses incurred by Customer Indemnified Parties (including but not limited to, reasonable attorneys' fees and court costs), to the full extent that such arise directly from (1) Charter's failure to comply with applicable law, (2) physical damage to personal or real property caused by the negligent or willful misconduct of Charter, its employees or contractors, at the Site(s) during the installation or maintenance of the Equipment, and/or (3) third party claims that any of the Charter-owned or controlled equipment, facilities, and/or system used to deliver the Services infringes upon the intellectual property rights of such third party. Customer Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Charter's cost and Charter agrees to cooperate with the Customer Indemnified Parties in such case.

12. **TITLE.** Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer Premises free and clear of all liens, encumbrances and security interests. Upon Termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to the Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within sixty (60) days after such Termination.
13. **COMPLIANCE WITH LAWS.** Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.
14. **PRIVACY.** Charter treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy can be found on Charter's website at [www.Charter-Business.com](http://www.Charter-Business.com). Customer represents and warrants that Customer has read the Privacy Policy and agrees to be bound by its terms. Customer expressly understands and agrees that the Privacy Policy may be updated or modified from time to time by Charter, with or without notice to Customer.
15. **GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to Charter that Customer has the authority to execute, deliver and carry out the terms of this Service Agreement and associated Service Orders. Customer also represents that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Service Agreement. Customer shall be responsible for ensuring that all such users understand the Service Agreement and comply with its terms.

The Customer shall be responsible for all access to and use of the Service by means of the Customer's equipment, whether or not the Customer has knowledge of or authorizes such access or use. The Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until the Customer informs Charter of any breach of security.

Charter expressly prohibits using the Service for the posting or transferring of sexually explicit images, material inappropriate for minors, or other offensive materials. By signing, Customer expressly acknowledges that Customer will not post or transfer or permit others to post or transfer such materials using the Service..

16. **NOTICES.** Any notices to be given under this Service Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:

Charter Communications  
ATTN: Charter Business

with copies to:

Charter Communications  
ATTN: Legal Department  
Dept: Corporate Operations  
12405 Powerscourt Drive  
St. Louis, MO. 63131

and

Charter Communications  
ATTN: CB Corporate – Contracts Management  
12405 Powerscourt Drive  
St. Louis, MO. 63131

If to Customer:

Grand Island Hall County Law Enforcement  
ATTN:  
111 Public Safety Drive, Grand Island, NE 68801

Each party may change its respective address(es) for legal notice by providing notice to the other party.

17. **MISCELLANEOUS.**

- (a) Entire Agreement. This Service Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Service Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Service Agreement.
- (b) No Amendments, Supplements or Changes. This Service Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both parties' prior written consent.
- (c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Service Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld, provided, however, that Charter may assign this Service Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Charter, or to its successor-in-interest in the event Charter sells the underlying communications system, without Customer's consent.
- (d) Severability. If any term, covenant, condition or portion of this Service Agreement, any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Service Agreement, any related, executed Service Order(s), shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) Section Headings. The section headings are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of this Service Agreement.
- (f) Governing Law. This Service Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of Nebraska, without regard to conflicts of law provisions. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- (g) Jointly Drafted. Both parties hereby acknowledge that they participated equally in the negotiation and drafting of this Service Agreement and any related, executed Service Order(s) and that, accordingly, no court construing this Service Agreement and any related, executed Service Order(s) shall construe it more stringently against one party than against the other.
- (h) No Third Party Beneficiaries. The parties agree that the terms of this Service Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Service Agreement, that the consideration provided by each party under this Service Agreement only runs to the respective parties hereto, and that

no person or entity not a party to this Service Agreement shall have any rights under this Service Agreement nor the right to require the performance of obligations by either of the parties under this Service Agreement.

- (i) Waiver. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.



RESOLUTION 2008-88

WHEREAS, the Law Enforcement Center is pre-wired for cable television; and

WHEREAS, installation of cable television service shall be provided by Grand Island's local vendor, Charter Communications; and

WHEREAS, a three year contract with Charter Communications has been prepared to provide service to the Law Enforcement Center for three years, which will include a one time installation cost of \$1,000 and a monthly fee of \$10 per month per service in the Law Enforcement Center, with one service provided at no cost.; and

WHEREAS, the proposed contract between Charter Communications and the City of Grand Island has been reviewed and approved by the City Attorney's Office.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the contract between Carter Communications and the City of Grand Island to provide cable television services is hereby approved and the mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

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Mitchell Nickerson, President  
Grand Island City Council

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 6, 2008	☐ City Attorney