

## CHEROKEE LONG DISTANCE

### INTERSTATE AND INTERNATIONAL LONG DISTANCE SERVICE AGREEMENT

This INTERSTATE AND INTERNATIONAL LONG DISTANCE SERVICE AGREEMENT (“Agreement”) contains the general rates, terms and conditions for provision by CHEROKEE LONG DISTANCE, d/b/a “TEC”, (the “Company”) of your interstate long distance services between points within the United States and your international long distance services (together, the “Service”). Throughout this Agreement, our use of the term “you” or “your” refers to the individual or entity using or paying for the Service. **UNDERSTAND THAT THIS AGREEMENT INCORPORATES BY REFERENCE THE SPECIFIC RATES, CHARGES, AND OTHER TERMS AND CONDITIONS SET OUT IN THE COMPANY’S SERVICE TERMS, AGREEMENTS, AND RATES DOCUMENT.** The Company’s Service Terms, Agreements and Rates may be accessed by visiting the Company’s office at 955 Second Street, Cherokee, Alabama and on the Company’s website at [www.cherokeelongdistance.com](http://www.cherokeelongdistance.com).

**BY APPLYING FOR, SUBSCRIBING TO, USING, OR PAYING FOR THE COMPANY’S SERVICES DESCRIBED BELOW, YOU AGREE TO BE BOUND BY THE PRICES, CHARGES, TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND IN THE COMPANY’S SERVICE TERMS, AGREEMENTS AND RATES. IF YOU DO NOT SO AGREE, DO NOT USE THE SERVICES AND CANCEL THE SERVICES IMMEDIATELY BY CALLING THE COMPANY AT THE NUMBER ON YOUR BILL.**

**THE RATES, TERMS AND CONDITIONS OF ANY INTRASTATE LONG DISTANCE SERVICE OFFERED BY THE COMPANY ARE STILL GOVERNED BY TARIFF ON FILE WITH THE ALABAMA PUBLIC SERVICE COMMISSION, WHICH HAS ALSO ADOPTED REGULATIONS THAT GOVERN THE MANNER IN WHICH THE COMPANY BILLS FOR ALL OF ITS SERVICES.**

- 1. AVAILABILITY OF SERVICE.** Subject to the availability of facilities and subject to transmission and like conditions, Service is available for your use twenty-four (24) hours a day, seven (7) days a week.
- 2. USE OF SERVICE.** You may use the Service for any lawful purpose. Any unlawful use of the Service is strictly prohibited and may be grounds for immediate termination of Service by the Company.
- 3. RATES AND CHANGES IN RATES, TERMS AND CONDITIONS.** The Company may change its Service prices or the terms and conditions of its service or this Agreement upon providing seven (7) days’ advance notice. The Company may elect to provide such notice by any reasonable commercial method including, but not limited to, a bill insert, changes to the website, or a bill message. This agreement shall also be subject to any promotions and/or bonus offers which may be communicated to you orally or in writing at the Company’s discretion. Promotions and bonus offers are limited as follows: (a) only one bonus program may be utilized, subscribed to, or associated with any account or customer at any one time; (b) sign-up promotions or bonuses are available only to new customers of the Company; (c) to receive on-going benefits of a promotion or bonus, you must be a customer in good standing with the Company at the time such promotion or bonus is scheduled to be granted; and (d) the Company reserves the right to amend or terminate promotions and/or bonus

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programs upon seven (7) days' advance notice to you. **YOU AGREE THAT YOU WILL BE BOUND BY ANY CHANGE IN THE RATES, TERMS AND CONDITIONS OF YOUR SERVICE UNLESS YOU CANCEL YOUR SERVICE AS PROVIDED PRIOR TO THE EFFECTIVE DATE OF THE CHANGE.**

4. **LIABILITY OF THE COMPANY.** Subject to the provisions of Section 12 of this Agreement, the liability of the Company, if any, for interruption, delays, or failures in transmissions ("Service Problems"), whether caused by the negligence of the Company or otherwise, is limited to a credit for the proportionate monthly subscription fee charged by the Company to you for such Service during the period during which the Service Problem occurred. The Company will issue a credit for such monthly service charges only when the Service Problem has a continuous duration of more than 24 hours. You are obligated to notify the Company immediately of any interruption in service for which a credit allowance is desired. Before giving such notice, you should ascertain that the trouble is not being caused by any action or omission of yours within your control, or is not in wiring or equipment, if any, furnished by you and connected to the Company's facilities.

In no event shall the Company be liable to any person for any cost, damage or harm whatsoever arising from: (a) your negligence or willful act; (b) the attachment or use of any equipment or wiring by you which you use in conjunction with the Service; (c) the use of any facilities of other carriers by the Company in rendering the Service to you; (d) errors or omissions associated with your telephone number or listing information provided via directory assistance; or (e) any acts beyond the control of the Company including, but not limited to: (1) acts of God, riots, fire, flood or other catastrophe; or (2), any law, regulation directive, order to request of any a federal or state governmental authority or agency having jurisdiction over the Company or its officers, agents, or employees. Without limiting the forgoing, the Company shall not be liable for indirect, incidental, special, punitive, exemplary, or consequential damages.

5. **INDEMNITY.** You agree to indemnify and hold harmless the Company for any liability with respect to any and all claims and damages, of every kind (including specifically special or consequential damages), arising from your use of the Service. Your indemnity of the Company also extends to: (a) any claims or damages arising out of or attributed, directly or indirectly, to Service Problems; (b) any claims or damages of the owner of your premises or equipment; or (c) any other third party claims and damages.
6. **NO WARRANTIES. EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN, THE COMPANY MAKES NO WARRANTIES EXPRESS OR IMPLIED WITH RESPECT TO THE PROVISION OF ITS SERVICES, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
7. **PAYMENT.** You are required to provide the Company with accurate information, including, but not limited to, your name, address and telephone number for billing purposes. Business entities are required to provide the name of a designated officer or agent. You agree that the Company may seek information from third parties and credit reporting agencies for purposes of verifying credit information.

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Once service is activated, you are responsible for paying all charges associated with the Service. Monthly Service charges are billed in advance and any usage charges are billed in arrears. Payments for monthly Service will be due as indicated on your bill. In the event that a payment is not received by the due date indicated on your bill, an interest charge of 1.5 percent (%) of the unpaid balance will apply to each subscriber's bill with a balance when any undisputed portion of a previous month's bill has not been paid in full prior to the subsequent billing date. Lifeline Service Subscribers are exempt from these interest charges. The 1.5 percent (%) interest charge is applied to the total unpaid amount carried forward and is included in the total amount due on the subscriber's bill. SUBJECT TO PARAGRAPH 14 HEREUNDER, you are responsible to pay all the Company's cost of collection, including but not limited to, bank charges, collection agency charges, court costs, and reasonable attorneys' fees.

If you pay for Service by a check, draft or similar instrument (collectively "check") that is returned unpaid by a bank or other financial institution to the Company for any reason, the Company reserves the right to assess a return check charge of \$25.00. Notwithstanding the return check charge provision as set forth in this Section 7, the Company may disconnect your service in the event of a returned payment, as set forth in Section 13 of this Agreement.

8. **CALCULATION OF USAGE.** Long distance usage charges are based upon your actual usage of the Company network. Chargeable time begins when a connection is established between you and your called party. Chargeable time ends when either party hangs up and the network connection is released. Unless otherwise indicated in the Company's service terms, agreements, and rates document, charges are assessed in increments of one minute, with additional seconds rounded up to the next minute. Where charges for Service vary due to time of day, time periods are defined in the Company's rate table and are determined by the local time of the location where you make the call. When a call is established in one rate period and ends in another rate period, the rates are based on the portion of your call that occurs within each rate period.
9. **TAXES, FEES AND SURCHARGES.** In addition to the charges for the Service, you are also responsible for paying all applicable federal, state, and local use, excise, sales or privilege taxes, and all fees chargeable to or against the Company as a result of its provision of Service to you.
10. **BILLING ENTITY CONDITIONS.** When billing for the Company's Services is performed by local exchange telephone companies, credit card companies or others, the payment conditions and regulations of such companies apply, including, any applicable interest and/or administrative charges, including, but not limited to interest, charges or fees imposed due to your failure to pay your bills timely.
11. **DEPOSITS.** The Company may require a deposit, of up to two times your estimated charges, to guarantee payment before activating or reactivating Service. The Company will pay interest on any deposit held at a rate of seven percent (7%) annually for the time such deposit was held by the Company and the customer was served by the Company, unless such period is less than thirty

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(30) days. Such interest shall be calculated to December 1<sup>st</sup> of each year, and the payment made by credit to customer's account on the December billing of the customer. After your Service is activated, the Company may require, upon five (5) days' written notice, a new or additional deposit from you if (a) your account is not in good standing; (b) if your deposit has been refunded or found to be inadequate; or (c) if your usage increases sufficiently to warrant an additional deposit.

The Company will return your deposit, with accrued interest unless such period is less than thirty (30) days, upon the discontinuance of Service, or the cancellation of a service order, to the extent that it exceeds any unpaid charges. If you are a residential customer, we will return your deposit if your account is in good standing for twenty-four (24) months after the date the initial deposit was made, through a credit on your next following December billing. The Company may also elect to refund your deposit, at its sole discretion, upon your written request.

12. **TESTING AND INSPECTIONS.** The Company may, upon notice, make such tests and inspections as may be necessary to determine that the requirements of this AGREEMENT are being complied with in the installation, operation or maintenance of your or the Company's equipment.
13. **TERMINATION OF SERVICE OR CHANGES IN SERVICE BY YOU.** You may terminate or change your Service by providing written notice to the Company, Attention: **Customer Service Dept., TEC, 955 Second Street, Cherokee, Alabama 35616** or by telephone to the Company Customer Service Department at **(256) 359-4321**. You shall be responsible for all amounts due and payable upon termination. For your protection, the Company may require adequate proof of identity prior to any service change or termination.

**TERMINATION OF SERVICE BY THE COMPANY.** If you do not pay any amount owed under this Agreement in a timely manner or violate of any other provision of this Agreement, the Company may discontinue Service upon five (5) business days written notice.

Without limiting the forgoing, you may not use, or seek to use, the Services for any illegal, abusive, or fraudulent purpose, including, without limitation, any use that: (1) hinders or obstructs our ability to provide Services to you or any third party; or (2) avoids or attempts to avoid your responsibility to pay for the Services. If we believe that you or someone using the Services is abusing the Services or using them fraudulently, abusively or unlawfully, or if you refuse to comply with a request for additional deposit or any other information under this Agreement, we may immediately and without notice suspend, restrict, or cancel the Services.

Following the discontinuance of your Service by the Company, you will be notified that your Service has been discontinued and why. The notice will include all reasons for the discontinuance and will include a telephone number where you can obtain additional information.

If the Company terminates Service as set forth above, you will be considered to have cancelled Service as of the date of termination and shall pay any amount due as a result of such termination of Service.

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You will remain responsible for all unpaid Service charges due and owing to the Company if your service is terminated. The Company may apply your deposit and any accrued interest to all associated outstanding charges associated with your Service. Prior to reinstatement of Service following a partial or complete termination of Service, you will pay: (a) all accrued and unpaid charges; and (b) a deposit.

**14. BINDING ARBITRATION. YOU AGREE THAT ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE SERVICE AND NOT SUBJECT TO THE JURISDICTION OF THE ALABAMA PUBLIC SERVICE COMMISSION OR THE FCC (AND SUBMITTED TO SUCH AGENCIES), SHALL BE SETTLED BY ARBITRATION, INSTEAD OF THE COURTS.** Such arbitration claim and proceeding shall be administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, except to the extent those rules are inconsistent with this Section 14, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Provided however that should your claim or controversy be under \$10,000, the claim or controversy shall be settled by arbitration by the AAA in accordance with its Rules for the Resolution of Consumer-Related Disputes (“CRD Rules”), except to the extent that those rules are inconsistent with this Section 14. You and the Company agree that should any claim or controversy qualify for settlement by arbitration by the AAA in accordance with its CRD Rules, you and the Company are prohibited from seeking relief in an Alabama small claims court, even if the claim or controversy is within its jurisdiction.

In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement and the Service, you and the Company agree to first use your collective best efforts to settle the dispute, claim, question, or disagreement. To this effect, you and the Company shall consult and negotiate with each other in good faith and, recognizing mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. In the event that the dispute concerns your bill, you must bring your billing inquiry or dispute to the Company’s attention, either in writing to the Company, 955 Second Street, Cherokee, AL 35616 or verbally using the Company’s telephone number, (256) 359-4321. If you and the Company do not reach such solution within a period of sixty (60) days, then, upon notice by either party to the other, all disputes, claims, questions or differences shall be finally settled by arbitration administered by the AAA in accordance with the provisions of its Commercial Arbitration Rules or, as applicable its CRD Rules, except to the extent those rules are inconsistent with this Section 14.

You and the Company both agree that in the event that arbitration is necessary, a single arbitrator, mutually selected by the parties, shall conduct the arbitration. If the parties cannot agree on the appointment of such arbitrator within ten (10) days following the date notice of the dispute is provided by you or the Company to the adverse party, the arbitrator will be selected according to the applicable AAA Rules. The place of any in-person arbitration shall be Montgomery, Alabama. As far as is practical, the parties agree that such arbitration shall be

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conducted as informally and expeditiously as the arbitrator may allow. Any arbitration award will be subject to the liability limitations contained herein.

**YOU AND THE COMPANY BOTH AGREE THAT AN AWARD OF DAMAGES, IF ANY, BY THE ARBITRATOR WILL BE SUBJECT TO ANY AND ALL STATUTORY MAXIMUMS IMPOSED BY ALABAMA LAW.**

The arbitrator shall award reasonable attorney's fees and other reasonable costs, including, but not limited to, the costs of the arbitrator, to the party prevailing in such arbitration whether or not the controversy is reduced to judgment or award. The prevailing party will be that party who is determined by the arbitrator to have prevailed on the major disputed claim.

Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties.

### 15. MISCELLANEOUS.

- a. **Entire Agreement.** This Agreement contains the entire agreement between you and the Company and supersedes all prior oral or written agreements, understandings and representations to the extent that they relate in any way to the subject matter hereof. This AGREEMENT can be amended only as provided in Section 3 above.
- b. **Governing Law.** This Agreement and the rights of the parties under it shall be governed by and construed in all respects in accordance with the laws of the State of Alabama without giving effect to its choice of law rules, except **that the arbitration provisions in Section 14 will be governed by the Federal Arbitration Act.**
- c. **Savings Clause.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.
- d. **No Third-Party Beneficiaries.** This Agreement shall not confer any rights and remedies upon any person other than you and the Company and any permitted assigns.
- e. **Assignment by You.** You may not assign or transfer, at any time prior to or after the commencement of Service, your Service or any rights or obligations hereunder without the prior written consent of Company. All terms and conditions contained in this Agreement shall apply to all such assignees or transferees. Any unauthorized assignment by you shall become null and void except as ratified by Company.
- f. **Assignment by the Company.** The Company may assign all or part of its rights or duties under this Agreement without notifying you.

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- g. No Waiver.** Based on the circumstances presented, the Company may waive certain of the requirements stated herein. Such waiver will be limited to that set of specific circumstances and will not eliminate your obligation to continue to comply with the terms and conditions stated herein.

### 16. INTERSTATE SERVICE, PACKAGES AND PRODUCTS

- a. Standard.** To be enrolled in the Company's "Standard" service offering, you must affirmatively select Cherokee Long Distance, d/b/a "TEC", as your interstate and international long distance provider. Terms and conditions of the Company's standard service offering are set out in its **SERVICE TERMS, AGREEMENTS, AND RATES DOCUMENT** at [www.cherokeelongdistance.com](http://www.cherokeelongdistance.com).

### 17. INTERNATIONAL SERVICE, PACKAGES AND PRODUCTS

- a.** The Company also offers you the ability to make international calls at rates that are based not only on the country that is being dialed but also the time of day that the call is made by you. In order to make a call to a country included in the Company's rate section, you must affirmatively select Cherokee Long Distance, d/b/a "TEC", as your interstate and international long distance provider. The Company's International Service is billed in increments of one minute, with additional minutes rounded up to the next whole minute.
- b.** The Company's rates for its International Service are attached hereto or, if you are viewing this Agreement electronically, can be accessed by clicking on the web link provided below. Terms and conditions of the Company's standard service offering are set out in its **SERVICE TERMS, AGREEMENTS, AND RATES DOCUMENT** available at its offices or at [www.cherokeelongdistance.com](http://www.cherokeelongdistance.com). When you review these rates, you will note the use of various abbreviations. The meanings of these abbreviations are as noted below:

A – A.M.

P – P.M.

MID – Midnight.

- c.** The determination of the time of day for an international call is based on the local time that you place the call. When a call is established in one rate period and ends in another rate period, the rates are based on the portion of your call that occurs within each rate period.