223947

STATE OF SOUTH CAROLINA

(Caption of Case)

In the Matter of the Application of Tower Cloud, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Interexchange Telecommunications Services in the State of South Carolina and for Alternative Regulation

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2010 - 172 - C

(Please type or print)

Submitted by: Marsha A. Ward, Esq.
Address: Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, GA 30044

SC Bar Number: 5823
Telephone: 404.853.8039
Fax: 404.853.8806
Other:
Email: marsha.ward@sutherland.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
☐ Electric	☐ Affidavit	☐ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certificatio
☐ Electric/Telecommunications	☐ Answer	☒ Motion	☐ Request for Investigatior
☐ Electric/Water	☐ Appellate Review	☐ Objection	☐ Resale Agreement
☐ Electric/Water/Telecom.	☒ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☒ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☐ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☐ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

SUTHERLAND

999 Peachtree Street, NE
Atlanta, GA 30309-3996
404.853.8000 Fax 404.853.8806
www.sutherland.com

ATLANTA
AUSTIN
HOUSTON
NEW YORK
TALLAHASSEE
WASHINGTON DC

MARSHA A. WARD
DIRECT LINE: (404) 853-8039
Email: marsha.ward@sutherland.com

May 13, 2010

VIA ELECTRONIC FILING

Jocelyn D. Boyd, Esq.
Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

Re: In the Matter of the Application of Tower Cloud, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Interexchange Telecommunications Services in the State of South Carolina and for Alternative Regulation

Dear Ms. Boyd:

Enclosed please find for filing an Application of Tower Cloud, Inc. for a Certificate of Public Convenience and Necessity. By copy of this letter, I am serving the Office of Regulatory Staff.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Sincerely,

Marsha A. Ward

MAW/cg
Enclosures

cc: Tricia Morrison
James R. McGibbon, Esq.

STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In re:	)	
Application of Tower Cloud, Inc.	)	
For a Certificate of Public	)	**DOCKET NO.**
Convenience and Necessity to	)	
Provide Resold and Facilities-Based	)	
Interexchange Telecommunications Services	)	
and for Alternative Regulations	)	

APPLICATION OF TOWER CLOUD, INC. FOR AUTHORITY TO PROVIDE RESOLD AND FACILITIES-BASED INTEREXCHANGE SERVICE

Tower Cloud, Inc. ("Tower Cloud" or "Applicant"), pursuant to S.C. Code Ann. § 56-9-280 and the rules and regulations of the South Carolina Public Service Commission ("Commission"), respectfully submits this Application for Authority to Provide Resold and Facilities-Based Interexchange Service ("Application") in the State of South Carolina and for interexchange service offerings to be regulated in accordance with procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Tower Cloud intends to offer interexchange back-haul service to wireless carriers from various cell tower locations to the carriers' mobile switching center throughout the State. Applicant will not serve any end-user retail customers.

Approval of this Application will promote the public interest by increasing the level of competition for back-haul services in the South Carolina telecommunications market. Ultimately, competition will compel all telecommunications service providers to operate more efficiently and to improve the quality of telecommunications service.

In support of its Application, Tower Cloud states as follows:

I. Introduction

1. The name and address of the Applicant are:

Tower Cloud, Inc.
9501 International Court North
St. Petersburg, Florida 33716

2. All correspondence, notices, inquiries and other communications regarding this Application should be directed to:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court North
St. Petersburg, Florida 33716
Telephone: 727.471.5639
Facsimile: 727.471.5638
PMorrison@towercloud.com

Counsel:
Marsha A. Ward, Esq.
James R. McGibbon, Esq.
Sutherland Asbill & Brennan LLP
999 Peachtree St., NE
Atlanta, GA 30309
Telephone: 404.853.8000
Facsimile: 404.853.8806
marsha.ward@sutherland.com
jim.mcgibbon@sutherland.com

3. In support of this Application, the following exhibits are attached hereto:

a. Exhibit A - Tower Cloud's Amended and Restated Certificate of Incorporation filed with the Secretary of State for the State of Delaware;

b. Exhibit B - Tower Cloud's Certificate of Authority to Transact Business in South Carolina as a Foreign Corporation;

c. Exhibit C – List of Tower Cloud's Directors and Officers;

d. Exhibit D - Biographies of key Tower Cloud management;

e. Exhibit E – Tower Cloud's Financial Statements (See attached Motion);

e. Exhibit F – Proposed Tariff for Interexchange Service.

II. Description of the Applicant

1. **General Information**

Applicant is a Delaware Corporation and was incorporated on September 14, 2006. The company is headquartered at 9501 International Court North, St. Petersburg, Florida 33716.

2. **Registered Agent**

Applicant's registered agent in South Carolina is:

Corporation Service Company
1703 Laurel Street
Columbia, SC 29201

3. **Customer Service**

Applicant's customer service representatives are available to assist its customers and will promptly respond to all customer inquiries. Customers may call (888) 897-2568. The applicable toll free or local numbers will be printed on customers' monthly billing statements. All Commission referred customer complaints should be sent to:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court North
St. Petersburg, FL 33716
Telephone: 727.471.5639
Facsimile: 727.471.5638
pmorrison@towercloud.com

III. Tower Cloud Possesses the Technical, Managerial and Financial Expertise Necessary to Provide Local Exchange and Interexchange Service

Tower Cloud possesses the requisite technical, financial and managerial capabilities to operate as a competitive telecommunications provider. These capabilities are explained in detail below.

1. **Financial Qualifications**

Tower Cloud is financially able to provide the services proposed in its tariff as evidenced by the financial documents in Exhibit E which will be filed with the appropriate trade secret protection after the Commission rules on the Applicant's concurrent Motion.

2. **Technical and Managerial Qualifications**

Tower Cloud's senior management team is highly skilled, having acquired considerable management and business experience in the telecommunications industry. Its officers and senior managers have over 125 years of combined managerial, technical and financial experience. The management team will use this collective expertise and experience to ensure the Applicant is managed and operated efficiently and profitably. The biographies of these key executives are submitted as evidence that the Applicant possesses the managerial and technical qualifications required for the provision of facilities-based intra LATA and inter LATA back-haul telecommunications services described herein.

Tower Cloud is authorized to provide interexchange service in Arizona, Florida, Georgia and North Carolina. Tower Cloud remains registered or certificated in these states, and it is in good standing with the respective state regulatory bodies.

Tower Cloud intends to provide resold and facilities-based intra-LATA and inter-LATA back-haul telecommunications services primarily to wireless carriers. Generally, Tower Cloud's service is chosen through a competitive bid process or request for proposals initiated by the wireless carrier. Tower Cloud provides the service primarily by leasing fiber facilities from an existing provider or by installing its own fiber network. Licensed microwave service supplements the fiber where viable. Tower Cloud then provides its back-haul service from the wireless carrier's cell tower locations to the wireless carrier's mobile switching centers. In this way, Tower Cloud operates only as a back-haul provider for the wireless carrier, much like a "carrier's carrier." The service is non-switched, point to point service for wireless carriers and can be to and from their points of presence. Tower Cloud will not directly serve any end-user

retail customers. All services provided by Tower Cloud will meet the applicable service standards the Commission may adopt.

Based on the foregoing, Tower Cloud possesses the requisite technical, managerial and financial qualifications to provide interexchange telecommunications services as described herein in South Carolina.

IV. Approval of Tower Cloud's Application is in the Public Interest

Granting Tower Cloud's Application is consistent with S.C. Code Ann. § 58-9-280, and in that regard Applicant makes the following representations to the Commission:

a. Applicant possesses the technical, financial, and managerial resources sufficient to provide the services requested;

b. Applicant's services will meet the service standards required by the Commission;

c. The provision of interexchange services by Applicant will not adversely impact the availability of affordable interexchange service;

d. Applicant, to the extent it is required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and,

e. The provision of interexchange services by Applicant will not adversely impact the public interest.

The demands of a competitive market are a better means to achieve affordability and quality of service than a monopoly environment. As competitors vie for market share, they will compete based upon price, innovation and customer service. In addition to driving the market prices closer to costs, thereby ensuring just and reasonable rates, competition also promotes efficiency in the delivery of services and in the development of new services. These benefits work to maximize the public interest by providing continuing incentives for carriers to reduce costs while simultaneously promoting the availability of potentially desirable services.

V. Description of Services Offered and Service Territory

As required by S.C. Code Ann. §58-9-280, attached as Exhibit F is Tower Cloud's proposed Tariff containing rates, terms and conditions for the services to be provided in South Carolina by the Applicant.

VI. Waivers and Regulatory Compliance

Tower Cloud requests that the Commission grant it a waiver of those regulatory requirements inapplicable to Tower Cloud's services because compliance would cause Tower Cloud unusual hardship.[1] Specifically, Tower Cloud requests a waiver of the following Commission Rules:

1. Rule 103-610

Tower Cloud respectfully requests that it be exempt from the regulation that requires a utility to maintain its records in the State of South Carolina. Tower Cloud is headquartered in Florida and it would be impractical for it to maintain separate records in South Carolina. If the Commission determines it is necessary to review Tower Cloud's books, Tower Cloud will provide this information to the Commission upon request or will bear the cost of any out-of-state travel expenses incurred by the Commission Staff in reviewing the records on-site in Florida.

2. Marketing Practices

Because Tower Cloud is operating as a carrier's carrier and will not market its telecommunications services to retail end-users, it respectfully requests a waiver of the Commission Order 95-658 (issued March 20, 1995) relating to the marketing practices of intrastate telecommunications service providers. Tower Cloud does not market its services to

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[1] S.C. Code Regs. § 103-601(3).

retail customers, does not employ telemarketers either directly or indirectly and does not perform directly or indirectly any activity related to a retail consumer's PIC. Therefore, this requirement is inapplicable to the interexchange back-haul services provided by Tower Cloud and should be waived.

3. **Maps**

Applicant's interexchange operating areas will initially mirror the service areas of the incumbent local exchange carriers; therefore, Applicant hereby respectfully requests a waiver of the map-filing requirement pursuant to 26 S.C. Code & Ann. Regs. 103-612.2.3: Maps defining those areas are already on file with the Commission. Tower Cloud requests that the Commission continue to observe its practice of granting such a waiver to similarly situated Applicants.

VII. Alternative Regulation of Service Offerings

Applicant respectfully requests that its interexchange service offerings be regulated in accordance with procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

VIII. Conclusion

This Application demonstrates that Tower Cloud, Inc. possesses the technical, financial and managerial resources to provide resold and facilities-based interexchange back-haul service in the State of South Carolina. Furthermore, granting this Application will promote the public interest by increasing the level of back-haul competition in the South Carolina telecommunications market. Ultimately, competition will compel all telecommunications service providers to operate more efficiently, improve the quality of service and/or pass the resultant cost savings on to consumers.

Wherefore, Tower Cloud, Inc. respectfully petitions this Commission for authority to operate as a reseller and facilities-based provider of interexchange telecommunications services

in the State of South Carolina and for interexchange service offerings to be regulated in accordance with the applicable procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, in accordance with this Application and for such other relief as it deems necessary and appropriate.

Respectfully submitted,

Tower Cloud, Inc.

Marsha A. Ward, Esq.
James R. McGibbon, Esq.
Sutherland Asbill & Brennan LLP
999 Peachtree St., NE
Atlanta, GA 30309
Telephone: 404.853.8000
Facsimile: 404.853.8806
marsha.ward@sutherland.com
jim.mcgibbon@sutherland.com

Attorneys for Applicant

May 13, 2010

EXHIBIT A

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TOWER CLOUD, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF SEPTEMBER, A.D. 2009, AT 12:47 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4148073 8100

090897358

You may verify this certificate online at corp.delaware.gov/authver.shtml

Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 7557700

DATE: 09-30-09

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:51 PM 09/30/2009
FILED 12:47 PM 09/30/2009
SRV 090897358 - 4148073 FILE

EXECUTION VERSION

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF TOWER CLOUD, INC.

(Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware)

Tower Cloud, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Tower Cloud, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on September 14, 2006 under the name Tower Cloud, Inc.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

FIRST: The name of this corporation is Tower Cloud, Inc. (the "**Corporation**")

SECOND: The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 200,000,000 shares of Common Stock, $0.0001 par value per share ("**Common Stock**"), and (ii) 100,000,000 shares of Preferred Stock, $0.0001 par value per share ("**Preferred Stock**").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders

of the Preferred Stock set forth herein and as may be designated by resolution of the Board of Directors with respect to any series of Preferred Stock as authorized herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

1. Issuance and Reissuance.

Preferred Stock may be issued from time to time in one or more series, each of such series to consist of such number of shares and to have such terms, rights, powers and preferences, and the qualifications and limitations with respect thereto, as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided.

2. Blank Check Preferred Stock.

Subject to any vote expressly required by the Certificate of Incorporation, authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation thereof, dividend rights, special voting rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the General Corporation Law. Without limiting the generality of the foregoing, and subject to the rights of any series of Preferred Stock then outstanding, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law.

C. SERIES A PREFERRED STOCK

75,000,000 shares of the authorized Preferred Stock, 7,900,000 of which were designated prior to the date hereof, are designated as "**Series A Preferred Stock**" with the following rights,

preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to 'Sections' or 'Subsections' in this Part C of this Article Fourth refer to sections and subsections of Part C of this Article Fourth.

1. Dividends.

1.1 The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the greater of (i) **$0.0192** per share of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock) per year from and after the second anniversary of the date of the issuance of any shares of Series A Preferred Stock (to the extent not previously paid) and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series A Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series A Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series A Preferred Stock dividend. The **"Series A Original Issue Price"** shall mean **$0.32** per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock.

1.2 From and after the second anniversary date of the filing of this Certificate of Incorporation (the **'Filing Date'**) any outstanding shares of Series A Preferred Stock shall accrue dividends at the rate per annum of **$0.0192** per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock) (the **"Accruing Dividends"**). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided however, that except as set forth in Subsection 1.1, Subsections 2.1 and Section 6, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors, and the Corporation shall be under no obligation to pay such Accruing Dividends.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (including any Deemed Liquidation Event), the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders (on a pari passu basis with the holders of any series of Preferred Stock ranking on liquidation on a parity with the Series A Preferred Stock), and before any payment shall be made to the holders of Common Stock or any other class or series of capital stock ranking on liquidation junior to the Series A Preferred Stock by reason of their ownership thereof, an amount per share equal the Series A Original Issue Price (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock), plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock and any other series of Preferred Stock ranking on liquidation on a parity with the Series A Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series A Preferred Stock and any other series of Preferred Stock ranking on liquidation on a parity with the Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (including any Deemed Liquidation Event), after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock and any other series of Preferred Stock of the Corporation ranking on liquidation senior to the Common Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series A Preferred Stock, any other series of Preferred Stock entitled pursuant to the terms of the Certificate of Incorporation to participate with the Common Stock in the distribution of such remaining assets and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Subsections 2.1 and 2.2 is hereinafter referred to as the "**Series A Liquidation Amount**."

2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a "**Deemed Liquidation Event**" unless the holders of at least sixty-two percent (62%) of the outstanding shares of Series A Preferred Stock elect otherwise by written notice sent to the Corporation at least ten (10) days prior to the effective date of any such event:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 2.3.1, all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.3.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the '**Merger Agreement**') provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Series A Preferred Stock, and (ii) if the holders of at least fifty percent (50%) of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to

its stockholders (the "**Available Proceeds**"), to the extent legally available therefor, on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the **Available** Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock and of any other series of Preferred Stock ranking on redemption on parity with the Series A Preferred Stock that is required to then be redeemed, the Corporation shall redeem a pro rata portion of each holder's shares of Series A Preferred Stock and any such other series of Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The provisions of Subsections 6.2 through 6.4 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series A Preferred Stock pursuant to this Subsection 2.3.2(b). Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.3.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

2.3.4 **Allocation of Escrow.** In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the Merger Agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Series A Preferred Stock shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

3.2 Election of Directors. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect four (4) directors of the Corporation (the "**Series A Directors**"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Series A Preferred Stock fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of shares of Series A Preferred Stock issued and outstanding, and voting together as a single class shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2. The rights of the holders of the Series A Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date following the Filing Date on which there no longer any shares of Series A Preferred Stock outstanding that were issued on or after the Filing Date.

3.3 Series A Preferred Stock Protective Provisions. At any time when shares of Series A Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least sixty-two percent (62%) of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

(a) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing;

(b) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation;

(c) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock, or increase the authorized number of shares of Series A Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock;

(d) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Series

A Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at an amount not to exceed the original purchase price or, if applicable, the amount as provided in the Corporation's employee equity incentive plans, as approved from time to time by the Board of Directors;

(e) create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security in excess of the aggregate amount of $250,000, other than equipment leases, fiber leases, collocation leases or other indebtedness incurred in the Corporation's ordinary course that has been approved by the Board of Directors of the Corporation;

(f) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

(g) increase or decrease the authorized number of directors constituting the Board of Directors above or below seven (7);

(h) pledge all or substantially all of the assets of the Corporation or any subsidiary of the Corporation; or

(i) the acquisition of all or substantially all of the equity securities or all or substantially all of the assets of any other entity.

4. Optional Conversion.

The holders of the Series A Preferred Stock shall have conversion rights as follows (the **'Conversion Rights'**):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The **"Series A Conversion Price"** shall initially be equal to Series A Original Issue Price. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last

full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Series A Preferred Stock to voluntarily convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver to such holder of Series A Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof, a certificate for the number (if any) of the shares of Series A Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, and cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and payment of any declared but unpaid dividends (but not any undeclared Accruing Dividends) on the shares of Series A Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price.

4.3.3 Effect of Conversion. All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Series A Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Series A Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) **'Option'** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) **'Series A Original Issue Date'** shall mean the date on which the first share of Series A Preferred Stock was issued after the Filing Date.

(c) **'Convertible Securities'** shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(d) **'Additional Shares of Common Stock'** shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Series A Original Issue Date, other than the following shares of Common Stock, and shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively **'Exempted Securities'**):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series A Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;

(iii) up to 12,295,124 shares of Common Stock, Options or Convertible Securities issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation, whether issued before or after the Series A Original Issue Date (provided that any Options for such shares that expire or terminate unexercised or any restricted stock repurchased by the Corporation at cost shall not be counted toward such maximum number unless and until such shares are regranted as new stock grants (or as new Options) pursuant to the terms of any such plan, agreement or arrangement);

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or

other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation; or

(vi) shares of Common Stock, Options or Convertible Securities issued for the acquisition of another business, products or technologies or pursuant to a strategic partnership, approved by the Board of Directors of the Corporation.

4.4.2 No Adjustment of Series A Conversion Price. No adjustment in the Series A Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least sixty-two percent (62%) of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series A Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Series A Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of

(i) the Series A Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Series A Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series A Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series A Original Issue Date), are revised after the Series A Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4.4.4, the Series A Conversion Price shall be readjusted to such Series A Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Series A Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Series A Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Series A

Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Series A Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series A Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Series A Conversion Price in effect immediately prior to such issue, then the Series A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "CP_2" shall mean the Series A Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(b) "CP_1" shall mean the Series A Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue, Common Stock issuable upon exercise of outstanding warrants (and, in the case of warrants to purchase preferred stock, conversion) or upon conversion or exchange of Convertible Securities (including the Series A Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing

(i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a

series of related transactions and that would result in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4.4.4 then, upon the final such issuance, the Series A Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock, the Series A Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Common Stock, the Series A Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of

Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price per share of at least 5 times the Series A Original Issue Price (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $20,000,000 of proceeds, net of the underwriting discount and commissions, to the Corporation or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least sixty-two percent (62%) of the then outstanding shares of Series A Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "**Mandatory Conversion Time**"), (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Series A Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series A Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and

agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series A Preferred Stock converted pursuant to Section 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends (but not any undeclared Accruing Dividends) on the shares of Series A Preferred Stock converted. Such converted Series A Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

5A. Special Mandatory Conversion.

5A.1. Trigger Event. In the event that any holder of shares of Series A Preferred Stock who owns in excess of two percent (2%) of the total number of shares of Series A Preferred Stock of the Corporation then outstanding (each, a "**Requisite Holder**") does not participate in a Qualified Financing (as defined below) by purchasing in the aggregate, in such Qualified Financing and within the time period specified by the Corporation (provided, that, the Corporation has sent to each Requisite Holder at least 10 days written notice of, and the opportunity to purchase its Pro Rata Amount (as defined below) of, the Qualified Financing), such Requisite Holder's Pro Rata Amount, then the Applicable Portion (as defined below) of the shares of Series A Preferred Stock held by such Requisite Holder shall automatically, and without any further action on the part of such Requisite Holder, be converted into shares of Common Stock at the Series A Conversion Price in effect immediately prior to the consummation of such Qualified Financing, effective upon, subject to, and concurrently with, the consummation of the Qualified Financing. For purposes of determining the number of shares of Series A Preferred Stock owned by a Requisite Holder, and for determining the number of Offered Securities (as defined below) a Requisite Holder has purchased in a Qualified Financing, all shares of Series A Preferred Stock held by Affiliates (as defined below) of such Requisite Holder shall be aggregated with such Requisite Holder's shares and all Offered Securities purchased by Affiliates of such Requisite Holder shall be aggregated with the Offered Securities purchased by such Requisite Holder (provided, that, no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons). Such conversion is referred to as a "**Special Mandatory Conversion**."

5A.2. Procedural Requirements. Upon a Special Mandatory Conversion, each Requisite Holder converted pursuant to Subsection 5A.1 shall be sent written notice of such Special Mandatory Conversion and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 5A. Upon receipt of such notice, each Requisite Holder shall surrender his, her or its certificate or certificates for all such shares (or, if such Requisite Holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered Requisite Holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series A Preferred Stock converted pursuant to Subsection 5A.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the time of the Special Mandatory Conversion (notwithstanding the failure of the Requisite Holder or Requisite Holders thereof to surrender the certificates for such shares at or prior to such time), except only the rights of the Requisite Holder thereof, upon surrender of their certificate or certificates therefor (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Subsection 5A.2. As soon as practicable after the Special Mandatory Conversion and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock so converted, the Corporation shall issue and deliver to such Requisite Holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends (but not any undeclared Accruing Dividends) on the shares of Series A Preferred Stock converted and a new certificate for the number of shares, if any, of Series A Preferred Stock represented by such surrendered certificate and not converted pursuant to Subsection 5A.1. Such converted Series A Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

5A.3. Definitions. For purposes of this Section 5A, the following definitions shall apply:

5A.3.1 **"Affiliate"** shall mean, with respect to any Requisite Holder, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such Requisite Holder, including, without limitation, any entity of which the Requisite Holder is a partner or member, any partner, officer, director, member or employee of such Requisite Holder and any venture capital fund now or hereafter existing of which the Requisite Holder is a partner or member which is controlled by or under common control with one or more general partners of such Requisite Holder or shares the same management company with such Requisite Holder.

5A.3.2 **"Applicable Portion"** shall mean, with respect to any Requisite Holder of shares of Series A Preferred Stock, a number of shares of Series A Preferred Stock

calculated by multiplying the aggregate number of shares of Series A Preferred Stock held by such Requisite Holder immediately prior to a Qualified Financing by a fraction, the numerator of which is equal to the amount, if positive, by which such Requisite Holder's Pro Rata Amount exceeds the number of Offered Securities actually purchased by such Requisite Holder in such Qualified Financing, and the denominator of which is equal to such Requisite Holder's Pro Rata Amount.

5A.3.3 **'Offered Securities'** shall mean the equity securities of the Corporation set aside by the Board of Directors of the Corporation for purchase by Requisite Holder of outstanding shares of Series A Preferred Stock in connection with a Qualified Financing, and offered to such Requisite Holder.

5A.3.4 **'Pro Rata Amount'** shall mean, with respect to any Requisite Holder of Series A Preferred Stock, the lesser of (a) a number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of Series A Preferred Stock owned by such Requisite Holder, and the denominator of which is equal to the aggregate number of outstanding shares of Series A Preferred Stock, or (b) the maximum number of Offered Securities that such Requisite Holder is permitted by the Corporation to purchase in such Qualified Financing, after giving effect to any cutbacks or limitations established by the Board of Directors and applied on a pro rata basis to all holders of Series A Preferred Stock.

5A.3.5 **'Qualified Financing'** shall mean the first transaction after the Filing Date involving the issuance or sale of Additional Shares of Common Stock that would result in at least $5,000,000 in gross proceeds to the Corporation, unless the holders of at least sixty-two percent (62%) of the Series A Preferred Stock elect, by written notice sent to the Corporation at least ten (10) days prior to the consummation of the Qualified Financing, that such transaction not be treated as a Qualified Financing for purposes of this Section 5A. For purposes of the calculations in this Section 5A, the maximum amount of the Qualified Financing subject to these provisions shall be $18,000,000.

6. Redemption.

6.1 Redemption. Shares of Series A Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series A Original Issue Price per share, plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the **'Redemption Price'**), 60 days after receipt by the Corporation at any time on or after the sixth (6th) anniversary of the Filing Date, from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, of written notice requesting redemption of all shares of Series A Preferred Stock (the **'Redemption Date'**). On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series A Preferred Stock owned by each holder, that number of outstanding shares of Series A Preferred Stock determined by dividing (i) the total number of shares of Series A Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies); provided, however, that Excluded Shares (as such term is defined in Subsection 6.2) shall not be redeemed on such Redemption Date and shall be excluded from the calculations set forth in this sentence. If the Corporation does not have

sufficient funds legally available to redeem on any Redemption Date all shares of Series A Preferred Stock and of any other class or series of capital stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

6.2 Redemption Notice. Written notice of the mandatory redemption (the '**Redemption Notice**') shall be sent to each holder of record of Series A Preferred Stock not less than 40 days prior to The Redemption Date. Each Redemption Notice shall state:

(a) the number of shares of Series A Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(b) the Redemption Date and the Redemption Price;

(c) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Subsection 4.1); and

(d) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed.

If the Corporation receives, on or prior to the 20th day after the date of delivery of the Redemption Notice to a holder of Series A Preferred Stock, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 6, then the shares of Series A Preferred Stock registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be '**Excluded Shares**' for purposes of such Redemption Date.

6.3 Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series A Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series A Preferred Stock shall promptly be issued to such holder.

6.4 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the Redemption Date the Redemption Price payable upon redemption

of the shares of Series A Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Series A Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series A Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

7. Redeemed or Otherwise Acquired Shares. Any shares of Series A Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock following redemption.

8. Waiver. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the holders of at least sixty-two percent (62%) of the shares of Series A Preferred Stock then outstanding.

9. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Series A Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

FIFTH: Subject to any additional vote required by the Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

SEVENTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

EIGHTH: Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

NINTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then

the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

TENTH: The following indemnification provisions shall apply to the persons enumerated below.

1. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "Indemnified Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article Tenth, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

2. Prepayment of Expenses of Directors and Officers. The Corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article Tenth or otherwise.

3. Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this Article Tenth is not paid in full within 30 days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

4. Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an

employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorney's fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.

5. Advancement of Expenses of Employees and Agents. The Corporation may pay the expenses (including attorney's fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

6. Non-Exclusivity of Rights. The rights conferred on any person by this Article Tenth shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these by-laws, agreement, vote of stockholders or disinterested directors or otherwise.

7. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

8. Insurance. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article Tenth; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article Tenth.

9. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article Tenth shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

10. Priority of Indemnification. Notwithstanding anything to the contrary set forth in this Article Tenth, the Corporation hereby acknowledges that Indemnified Persons have or may have in the future certain rights to indemnification, advancement of expenses and/or insurance provided by other entities and/or organizations (collectively, the "**Fund Indemnitors**"). The Corporation hereby agrees (i) that it is the indemnitor of first resort with respect to any claim or in respect of any Proceeding (i.e., its obligations to each Indemnified Person are primary and any

obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnified Person are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnified Person and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Article Tenth or the Bylaws of the Corporation (or any other agreement between the Corporation and Indemnified Person), without regard to any rights Indemnified Person may have against the Fund Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Fund Indemnitors on behalf of Indemnified Person with respect to any claim or Proceeding for which Indemnified Person has sought indemnification from the Corporation shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnified Person against the Corporation. The Corporation and each Indemnified Person agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Supplement.

ELEVENTH: The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "**Excluded Opportunity**" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series A Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "**Covered Persons**"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

* * *

3. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

4. That this Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 30th day of September, 2009.

By: R. J. Mudry
President R. J. Mudry

EXHIBIT B

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

MAR 3 0 2010

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

APPLICATION BY A FOREIGN CORPORATION FOR A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THE STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY WITH BLACK INK

Pursuant to Section 33-15-103 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation hereby applies for authority to transact business in the State of South Carolina, and for that purpose, hereby submits the following statement:

1. The name of the corporation is (see Sections 33-4-101 and 33-15-106 and Section 33-19-500(b)(1) if the corporation is a professional corporation) Tower Cloud, Inc.

2. It is incorporated as (check applicable item) [×] a general business corporation, [ ] a professional corporation, under the laws of the state of _____.

3. The date of its incorporation is 4-25-06 and the period of its duration is perpetual.

4. The address of the principal office of the corporation is 9501 International Court N. (Street Address) in the city of St. Petersburg and the state of Florida 33716 (Zip Code).

5. The address of the proposed registered office the state of South Carolina is 1703 Laurel Street (Street Address) in the city of Columbia in South Carolina 29201 (Zip Code).

6. The name of the proposed registered agent in this state at such address is Corporation Service Company (Print Name)

I hereby consent to the appointment as registered agent of the corporation.

Corporation Service Company
By: Sue G. Knight
Assistant Vice President
Signature of the Registered Agent

100402-0054 FILED: 03/30/2010
TOWER CLOUD, INC.
Filing Fee: $135.00 ORIG
Mark Hammond South Carolina Secretary of State

Tower Cloud, Inc.
Name of Corporation

7. The name and usual business address of the corporation's directors (if the corporation has no directors, then the name and address of the persons who are exercising the statutory authority of the directors on behalf of the corporation) and principal officers:

a) Name of Directors	Business Address
See attached	

b) Name and Office of Principal Officers	Business Address
Ronald J. Mudry, CEO	9501 International Ct. N., St. Petersburg, FL 33716
Thomas W. Guard, CFO and Secretary	9501 International Ct. N., St. Petersburg, FL 33716
Patricia T. Morrison, VP Finance	9501 International Ct. N., St. Petersburg, FL 33716

8. The aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class:

Class of Shares (and Series, if any)	Authorized Number of Each Class (and Series)
Preferred Stock	100,000,000 shares authorized
Common Stock	200,000,000 shares authorized

9. Unless a delayed date is specified, this application shall be effective when accepted for filing by the Secretary of State (See Section 33-1-230): _____

Date 3-26-10

Tower Cloud, Inc.
Name of Corporation

Patricia T Morrison
Signature

Patricia T. Morrison, VP Finance
Type or Print Name and Office

Tower Cloud, Inc.
Attachment to South Carolina Application for a Certificate of Authority
Names of Directors
March 26, 2010

Cam Lanier
ITC Holding Company
1791 O. G. Skinner Drive, Suite A
West Point, GA 31833

Rodger Johnson
Knology
1241 O G Skinner Drive
West Point, GA 31833

Tench Coxe
Sutter Hill Ventures
755 Page Mill Road, Suite A-200
Palo Alto, CA 94304

Scott Irwin
El Dorado Ventures
2440 Sand Hill Road, Suite 200
Menlo Park, CA 94025

Ronald J. Mudry
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

INITIAL ANNUAL REPORT OF CORPORATIONS

CL-1
(Rev. 7/24/07)
3134

Office Use Only
▶ File Number _____ ▶ ENDING PERIOD _____ (Month Year) SID Number _____

Date "Application for Charter" filed with Secretary of State _____
Date of "Request for authority to do business in this state" (Foreign Corp.) 3-26-10
FED EI Numbe _____ Business Code _____

For Secretary of State Use Only
MAR 30 2010
(Office Use Only)

NAME OF CORPORATION Tower Cloud, Inc.

PHYSICAL ADDRESS OF HEADQUARTERS (NUMBER AND STREET)			MAILING ADDRESS FOR TAX CORRESPONDENCE	
9501 International Court N.			9501 International Court N.	
CITY AND STATE	ZIP	COUNTY	CITY AND STATE	ZIP
St. Petersburg, Florida	33716	Pinellas	St. Petersburg, FL	33716

1. State of incorporation: Delaware 2. Indicate month corporation closes its books: December
3. Nature of principal business in SC: telecommunications services
4. Location of registered office of the corporation in the state of SC is in the city of Columbia
Registered agent at such address is Corporation Service Company.
5. Location of principal office in SC (street, city, zip and county): no location yet
6. Date business commenced in SC: Expected 5/1/10 Telephone # 727-471-5639
7. If a professional corporation, are all shareholders, one-half of the directors (or individuals functioning as directors) and all officers (other than the secretary and treasurer) qualified to practice the professional services engaged in by the corporation? NA
8. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the corporation are:

SSN	Name/Title	Business Address and Office
Directors - see attached		
	Ronald J. Mudry, CEO	9501 International Court N., St. Petersburg, FL 33716
	Thomas W. Guard, CFO/Secretary	9501 International Court N., St. Petersburg, FL 33716
	Patricia T. Morrison, VP Finance	9501 International Court N., St. Petersburg, FL 33716

9. The total number of authorized shares of capital stock itemized by class and series, if any, within each class as follows:
Number of Shares 100,000,000 Class Preferred Stock Series A
200,000,000 Common Stock —
10. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
Number of Shares 69,951,766 Class Preferred Stock Series A
636,458 Common Stock —

ATTACH REMITTANCE HERE

1. Fee due with this report	1.	25 00
2. Interest due	2.	
3. Penalty due	3.	
4. Total - Due	4.	25 00

Make remittance payable to SC Department of Revenue
Mail To: SC Department of Revenue, License and Registration Unit, Columbia, SC 29214-0140

AFFIDAVIT

I, the undersigned incorporator or principal officer of the corporation for which this return is made, declare that this return, including accompanying statements and schedules, has been examined by me and is to the best of my knowledge and belief a true and complete return made in good faith.

Patricia T Morrison
THIS RETURN PREPARED BY

Patricia T Morrison
SIGNATURE OF INCORPORATOR OR OFFICER AUTHORIZED TO SIGN

3-26-10
DATE

VP, Finance
TITLE

31341027

EXHIBIT C

Tower Cloud, Inc.
Attachment to South Carolina Application for a Certificate of Public Convenience and Necessity
List of Company Directors and Officers

Directors:

Campbell B. Lanier, III
ITC Holding Company
1791 O.G. Skinner Drive, Suite A
West Point, GA 31833

Rodger Johnson
Knology, Inc.
1241 O.G. Skinner Drive
West Point, GA 31833

Tench Coxe
Sutter Hill Ventures
755 Page Mill Road, Suite A-200
Palo Alto, CA 94304

Scott Irwin
El Dorado Ventures
2440 Sand Hill Road, Suite 200
Menlo Park, CA 94025

Ronald Mudry
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

Officers:

Ronald Mudry
CEO
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

Thomas Guard
CFO
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

George Townsend
VP, Business Development
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

Patricia Morrison
VP, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

EXHIBIT D

Tower Cloud, Inc.
Attachment to South Carolina Application for a Certificate of Public Convenience and Necessity
Biographies of Key Personnel

Ronald Mudry
President and CEO

Ron Mudry founded Tower Cloud in 2006 and has served as its CEO since inception. Ron has over 25 years of experience in the telecommunications industry, and prior to Tower Cloud, served as President and CEO of Progress Telecom, LLC. As the founding CEO for Progress Telecom, formed in 1998, Ron successfully created an industry-leading provider of fiber and backhaul services. Prior to launching Progress Telecom, Ron gained cross-functional experience in the telecom industry with over 15 years at GTE Corporation (now Verizon). He held key management positions in finance, sales and marketing, international operations, treasury, strategic planning, and mergers and acquisitions. Ron has also served on the executive committee of the CEO Council of CompTel (the primary industry association for the competitive telecom industry). Ron holds an MBA from the University of Tampa and a Bachelor's degree from the University of Michigan.

Thomas Guard
Chief Financial Officer

Thomas Guard was named CFO in September 2007 and is responsible for all financial aspects of the business. Tom has over 20 years of experience in Finance and Business Administration. Prior to joining Tower Cloud, Tom served as Senior Vice President and Treasurer of Global Signal, which was acquired by Crown Castle in January 2007. Tom was an essential member of the turn-around executive team that brought Global Signal from bankruptcy to one of the largest independent wireless tower companies in North America, operating over 11,000 wireless communication towers with a $3.9 billion market value. Tom has significant experience in raising capital. He was a member of IPO team that successfully raised $145 million in conjunction with listing on the NYSE. Tom was a lead financial executive that negotiated and closed over $2.5 billion in debt through three securitizations and various bank credit agreements. Tom also has experience in corporate finance, accounting operations, financial corporate management and mergers and acquisitions. Before joining Global Signal, Tom was Vice President of Finance at TMP Worldwide, a publicly traded international on-line recruitment and human capital management firm and parent company of Monster.com. Tom also worked as a consultant to businesses assisting in taxation, accounting and raising capital. He is a Certified Public Accountant. Tom earned his Bachelor of Science in Business Administration at University of Missouri and his Masters Degree in Business Administration from the University of Florida.

George Townsend
Vice President, Business Development

George Townsend joined Tower Cloud in July 2006 with the responsibilities of business development, sales and marketing. George has over 30 years business experience in the telecommunications and utility industries. Prior to Tower Cloud, George served as Vice President and General Manager of Progress Telecom's wireless division, a group he founded in 1995. Under George's leadership the business became a very profitable segment with strong revenue growth and a portfolio of over 400 tower lease attachments. George personally

negotiated Master Tower Land Lease Agreements and MSA's with 4 Tier 1 and 3 regional wireless carriers. In May 2005, George assumed additional responsibility to facilitate a launch of PT Wireless, a start-up subsidiary focused on distributed antenna systems. During his 7 years with Progress Telecom, George held senior executive positions within the Sales department. Before joining Progress Telecom, George's 25 year history with Florida Power Corporation gave him diverse experience in Business Development, Finance and Real Estate. George earned his Bachelor of Arts in Business Administration from the University of South Florida.

Patricia Morrison
Vice President Finance and Controller

Tricia Morrison joined Tower Cloud in July 2006 and was named Vice President of Finance and Controller. Tricia Morrison has 30 years of business experience in financial administration. Prior to joining the company, Tricia served as Vice President of Finance for Progress Telecom where she was responsible for all financial functions of the business including financial reporting, long range planning, budgeting, cash management, procurement, taxation and regulatory compliance. Tricia's experience includes an 18 year career with Florida Progress, a diversified electric utility acquired by Progress Energy in 2000. As director of tax administration, she was responsible for the tax affairs of an affiliated group of 49 companies in diverse industries. Tricia has several years of experience of public accounting experience providing a range of financial services to small and medium-sized businesses. She is a Certified Public Accountant and Certified Internal Auditor (inactive). Tricia received an MBA from the Florida Institute of Technology and a Bachelor of Science degree in Accounting from the University of South Alabama.

John Mogg
Director of Operations and Field Services

John Mogg joined Tower Cloud in 2007 and was named Director of Operations and Field Services. John has over 38 years of experience in leading high-performing teams in Network Operations, Field Services and Engineering. Prior to joining the company, John served as Director of Engineering and Field Services for Progress Telecom, where he implemented the company's domestic and international metro and long haul networks spanning nine states from New York City to Miami and serving several major Latin American Markets. John's experience includes a 20 year career with Florida Power Corporation, a major electric utility. John held various management positions responsible for operations, maintenance, installation and field engineering of all telecommunications networks consisting of fiber optics, microwave, and networks for six fossil fuel power plants.

EXHIBIT E

(Financial Statements)

EXHIBIT F

SOUTH CAROLINA PUBLIC SERVICE COMMISSION
TELECOMMUNICATIONS TARIFF
OF
Tower Cloud, Inc.

9501 International Court N.
St. Petersburg, FL 33716

INTEREXCHANGE TELECOMMUNICATIONS SERVICES

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of interexchange telecommunications services provided by Tower Cloud, Inc. within the State of South Carolina. This tariff is on file with the South Carolina Public Service Commission ("Commission"). Copies may be inspected during normal business hours at Company's principal place of business, 9501 International Court N., St. Petersburg, FL 33716.

Issued: _____
Issued By:

Effective Date: _____

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

CHECK SHEET

The Title Sheet and Sheets 1 through 44 inclusive of this Tariff are effective as of the date shown at the bottom of the respective sheet(s). Revised sheets as named below contain all changes from the original filing that are in effect on the date listed.

SHEET	REVISION	SHEET	REVISION
Title	Original	23	Original
1	Original	24	Original
2	Original	25	Original
3	Original	26	Original
4	Original	27	Original
5	Original	28	Original
6	Original	29	Original
7	Original	30	Original
8	Original	31	Original
9	Original	32	Original
10	Original	33	Original
11	Original	34	Original
12	Original	35	Original
13	Original	36	Original
14	Original	37	Original
15	Original	38	Original
16	Original	39	Original
17	Original	40	Original
18	Original	41	Original
19	Original	42	Original
20	Original	43	Original
21	Original	44	Original
22	Original		

Issued: _____ Effective Date: _____

Issued By:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

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Issued: _____ Effective Date: _____

Issued By:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

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Issued: _____ Effective Date: _____
Issued By:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

CONCURRING CARRIERS

None

CONNECTING CARRIERS

None

OTHER PARTICIPATING CARRIERS

None

EXPLANATION OF SYMBOLS

(C) To signify **changed** condition or regulation.

(D) To signify **deleted or discontinued** rate, regulation or condition.

(I) To signify a change resulting in an **increase** to a Customer's bill.

(M) To signify that material has been **moved from** another tariff location.

(N) To signify a **new** rate, regulation, condition or Page.

(R) To signify a change resulting in a **reduction** to a Customer's bill.

(T) To signify a change in **text,** but no change to rate or charge.

Issued: _____ Effective Date: _____
Issued By:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

TARIFF FORMAT

A. **Sheet Numbering** - Sheet numbers appear in the upper right corner of the Sheet. Sheets are numbered sequentially. However, occasionally, when a new Sheet is added between Sheets already in effect, a decimal is added. For example, a new Sheet added between Sheets 14 and 15 would be 14.1.

B. **Sheet Revision Numbers** - Revision numbers also appear in the upper right corner of each Sheet. These numbers are used to determine the most current Sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd Revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in its tariff approval process, the most current Sheet number on file with the Commission is not always the Sheet in effect. Consult the Check Sheet for the Sheet currently in effect.

C. **Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of code is subservient to its next higher level:

2.
2.1.1
2.1.1.A.
2.1.1.A.1.
2.1.1.A.1.(a)
2.1.1.A.1.(a).I.(i).
2.1.1.A.1.(a).I.(i).(1)

D. **Check Sheets** - When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the Sheets contained in the tariff with a cross-reference to the current revision number. When new Sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this Sheet if these are the only changes made to it (i.e., the format, etc., remains the same, just revised revision levels on some Sheets). The tariff user should refer to the latest Check Sheet to find if a particular Sheet is the most current on file with the Commission.

Issued: _____ Effective Date: _____
Issued By:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

APPLICATION OF TARIFF

A. This tariff schedule sets forth the Service offerings, rates, terms and conditions applicable to the furnishing of interexchange telecommunications Services offered by Tower Cloud, Inc. ("Company") to Customers located within the State of South Carolina.

B. The rates and regulations contained in this Tariff apply only to the intrastate telecommunications Services furnished by Company and do not apply, unless otherwise specified, to the lines, facilities, or the services provided by a Local Exchange Carrier or other common Carrier for use in accessing the Services of Company. This Tariff does not cover any information service or other unregulated service offered by Company. Company will offer any information or other unregulated service in accordance with Company's current price list or contract, whichever applies to the particular customer.

C. Company may not be deemed to have waived or impaired any right, power, requirement or option reserved by this Tariff (including, but not limited to, the right to demand exact compliance with every term and condition herein), by virtue of any custom or practice of Company at variance with the terms hereof, or any failure, refusal or neglect of Company to exercise any right under this Tariff or to insist upon exact compliance with its terms, or any waiver, forbearance, delay, failure or omission by Company to exercise any right, power or option hereunder.

D. The rates, rules, terms and conditions contained herein are subject to change pursuant to the rules and regulations of the Commission.

E. This tariff will be maintained and made available for inspection by any Customer at Company's principal business office at Tower Cloud, Inc., 9501 International Court N., St. Petersburg, FL 33716.

Issued: _____

Issued By:

Effective Date: _____

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS

Certain terms used generally throughout this Tariff for Services of Company are defined below.

Authorized User:

A person, firm, corporation or other entity that either is authorized by the Customer to use Service or is placed in a position by the Customer, either through acts or omissions, to use Service.

Carrier:

A company authorized by the South Carolina Public Service Commission to provide telecommunications services.

Channel:

A communications path between two or more points of termination.

Commission:

South Carolina Public Service Commission

Company:

Tower Cloud, Inc.

Customer:

The person, firm, corporation or other entity which orders or uses Service and is responsible for payment of charges and compliance with tariff regulation.

Customer Premises:

A location(s) designated by the Customer for the purposes of connecting to Company's Services.

Issued: _____ Effective Date: _____

Issued By:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

Customer Premises Equipment (CPE):

Equipment located at the Customer's Premises for use with Company's Service.

Facility:

Includes, in the aggregate or otherwise, but is not limited to, the following:

channels	lines
apparatus	devices
equipment	accessories
communications paths	systems

which are provided by Company and utilized by it in the furnishing of telecommunications Services or which are provided by a Customer and used for telecommunications purposes.

Force Majeure:

Causes beyond Company's control, including but not limited to: acts of God, fire, flood explosion, hurricane, or other catastrophes; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrection, riots, wars, unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, cable or fiber cut, acts of a third party or other labor difficulties.

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

Local Exchange Carrier:

A company that furnishes local exchange telecommunications service.

Premises:

A building or buildings or contiguous property, not separated by a public highway or right-of-way.

SECTION 2 - RULES AND REGULATIONS

2.1 UNDERTAKING OF COMPANY

2.1.1 Company undertakes to provide Services subject to the terms and conditions of this Tariff.

2.1.2 Company's Services are furnished for telecommunications originating and terminating in any area within South Carolina.

2.1.3 Company offers Services to Customers for the transmission and reception of voice, data, and other types of communications.

2.1.4 Company does not transmit messages pursuant to this Tariff but its Services may be used for that purpose.

2.1.5 Company's Services are provided on a monthly basis unless otherwise provided, and are available twenty-four (24) hours per day, seven (7) days per week.

2.1.6 Company may, at Company's sole discretion, elect to employ third parties to perform any of its obligations under this tariff.

SECTION 2 - RULES AND REGULATIONS, Continued

2.2 CUSTOMER'S USE OF SERVICE

2.2.1 Service may be used for any lawful purpose consistent with this Tariff and with the transmission and switching parameters of the telecommunications facilities utilized in the provision of Services.

2.2.2 Service may not be used or for any purpose for which any payment or other compensation is received by the Customer, except when the Customer is a duly authorized and regulated common carrier. This provision does not prohibit an arrangement between the Customer, authorized user or joint user to share the cost of service.

2.2.3 Equipment Company provides or installs at the Customer's premises for use in connection with the Services Company offers may not be used for any other purpose other than for which Company provided it. Customer may not, and may not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the Services or equipment installed by Company or Company's agent, except upon the consent of Company.

2.2.4 The Services Company offers may not be used for any unlawful purpose or for any use as to which the Customer has not obtained all governmental approvals, authorizations, licenses, consents and permits required to be obtained by Customer with respect thereto.

2.2.5 Resellers and rebillers of Company's service must be certified as Local Exchange Carriers and must be approved by Company in writing for the provision of such service.

2.2.6 Service may not be used in any manner, which interferes with other persons in the use of their Service, prevents other persons from using their Service, otherwise impairs the quality of Service to other Customers, or impairs the privacy of any communications over any Service provided by Company. Company may require a Customer to shut down its transmission of signals if said transmission is causing interference to others.

2.2.7 Service may not be used in any manner so as to annoy, abuse, threaten, or harass other persons.

Effective Date: _____

Issued: _____
Issued By:

Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

SECTION 2 - RULES AND REGULATIONS, Continued

2.2. CUSTOMER'S USE OF SERVICE, Continued

2.2.8 The use of Company's Services either without payment for Service or attempting to avoid payment for Service by fraudulent means or devices, schemes, false or invalid numbers, or false calling or credit cards is prohibited.

2.2.9 The Customer obtains no property right or interest in the use of any specific type of facility, Service, equipment, telephone number, process or code. All rights, titles and interests remain, at all times, solely with Company.

2.2.10 The Company reserves the right to refuse an application for service made by a present or former Customer who is indebted to the Company for service previously rendered pursuant to this Tariff until the indebtedness is satisfied.

2.2.11 Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this Tariff shall apply to all such permitted assignees or transferees, as well as all conditions of service.

SECTION 2 - RULES AND REGULATIONS, Continued

2.3 APPLICATION FOR SERVICE

2.3.1 A Customer desiring to obtain Service must complete the appropriate service order form and submit the service order in compliance with Company subscription requirements as may be established from time to time.

2.3.2 The name(s) of the Customer(s) desiring to use the Service must be set forth in the application for Service.

2.3.3 Company may refuse an application when, in Company's sole discretion, provision of Service is precluded under Section 2.6.1. below.

2.3.4 Request for Service under this Tariff will authorize Company to conduct a credit search on the Customer. Company reserves the right to refuse Service on the basis of credit history and to refuse further Service due to late payment or nonpayment by the Customer.

2.3.5 Where the Customer cancels an application for Service, a cancellation charge will apply as specified in the Cancellation or Modification of Service by Customer Section of this Tariff.

2.3.6 Minimum quantity requirements – Service can only be ordered under this tariff in minimum quantities established from time to time by Company.

SECTION 2 - RULES AND REGULATIONS, Continued

2.4 DEPOSITS/PRE-PAYMENTS

2.4.1 To safeguard its interests, Carrier may require an applicant or Customer to make a deposit to be held as a guarantee for the payment of charges or a pre-payment.

2.4.2 Company may require a deposit from an existing business Customer as a condition to the further provision of Service if according to Company's assessment, the Customer has become a credit risk.

2.4.3 The deposit or pre-payment will not exceed an amount equal to two and one-half months' estimated charges for such service(s).

2.4.4 The fact that a deposit has been made shall in no way relieve the applicant or Customer from complying with the Tariff regulations for the prompt payment of bills on presentation.

2.4.5 Each applicant or Customer from whom a deposit is collected will be given a receipt in accordance with the rules and regulations of the Commission pertaining to customer deposits.

SECTION 2 - RULES AND REGULATIONS, Continued

2.4. **DEPOSITS/PRE-PAYMENTS,** Continued

2.4.6 Simple interest will be credited or paid to the Customer at the rate of one and a half percent (1.5%) per annum while Carrier holds the deposit. Interest shall be paid annually to the Customer or, at the option of the Customer, shall be applied to the Customer's bill.

2.4.7 A deposit may be required in addition to a pre-payment. The sum of any deposit and any pre-payment shall not exceed an amount equal to two and one-half months' estimated charges for such service(s).

2.4.8 When a service or facility is discontinued, the amount of a deposit, if any, relating to such service or facility will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, Carrier will return the deposit or credit it to the Customer's account.

SECTION 2 - RULES AND REGULATIONS, Continued

2.5 CREDIT

2.5.1 Company, in order to ensure payment of its charges for Service or for loss of or damage to Company property, will require Applicants and Customers to establish and maintain credit. The establishment or re-establishment of credit as provided in this Section does not relieve an applicant or Customer from compliance with other provisions of this Tariff as to the payment of bills and in no way modifies the Sections regarding disconnection and termination of Service for failure to pay bills due for Service furnished.

2.5.2 Company may require any applicant or Customer to establish and maintain credit in one or more of the following ways:

A. Demonstrating credit satisfactory to Company by providing information pertinent to the applicant's or Customer's credit standing;

B. Providing a suitable guarantee in writing, in a form presubscribed by Company; or

C. Paying a cash deposit and/or a pre-payment pursuant to Section 2.4.

Company may determine, in its sole discretion, whether or not a particular reference or guarantee in writing would be acceptable as a substitute for demonstrating satisfactory credit.

SECTION 2 - RULES AND REGULATIONS, Continued

2.6 PROVISION AND MAINTENANCE OF SERVICE

2.6.1 Company will use reasonable efforts to make Service available to Customers on or before a particular date, subject to the provisions and compliance by the Customer within the provisions of this Tariff. The lack of facilities or other operational impediments, including regulatory approvals, may preclude or delay provision of Service (a) in a particular location or to a particular Customer and/or (b) at any promised performance level. Actual transmission speeds and service characteristics of a Service may vary from those expected by the Customer due to such factors as the length and gauge of the line and other operational characteristics of the equipment and facilities used.

2.6.2 Company will have control over the installation, rearrangement, repair, maintenance, and disconnection of all network elements owned or otherwise obtained to ensure the required level of Service. Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but will not thereby alter the technical parameters of the Service provided to the Customer.

2.6.3 Company will use reasonable efforts to maintain the Service that it furnishes to the Customer. Company may make such tests, adjustments and inspections as may be necessary to maintain Company's Services and equipment in satisfactory operating condition. When possible, Company may, in its sole discretion, provide the Customer with reasonable notice of Service-affecting activities that may occur in the normal operation of Company business.

SECTION 2 - RULES AND REGULATIONS, Continued

2.7 INTERCONNECTION

2.7.1 The Customer shall secure all licenses, permits, rights-of-way and other arrangements necessary for interconnection with the Company. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's service and the signals emitted into the Company's network are of the proper mode, band-width, power, data speed and signal level for the intended use of the Customer. If the Customer or its agent fails to properly maintain and operate its equipment and/or system of that of its agent, the Company may, upon written request, require the use of protective equipment at the Customer's expense.

2.7.2 Service furnished by Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to the technical limitations established by Company. Any special interface of equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers shall be provided at the Customer's expense.

2.7.3 Interconnection between the facilities or services of other carriers shall be under the applicable terms and conditions of the other carriers' tariffs. The Customer is responsible for taking all necessary legal steps for interconnecting Customer-provided terminal equipment or communications equipment with Company's facilities. The Customer shall secure all licenses, permits, rights-of-way, and other such arrangements necessary for interconnection.

SECTION 2 - RULES AND REGULATIONS, Continued

2.8 MINIMUM SERVICE PERIOD

2.8.1 The minimum Service period is one month (30 days). The Customer must pay the regular tariffed rate for Service for the minimum period of Service. If a Customer disconnects Service before the end of the minimum Service period, that Customer must pay the regular rates for the remainder of the minimum Service period. When the Service is moved within the same building, to another building on the same Premises, or to a different Premises entirely, the period of Service at each location is accumulated to calculate if the Customer has met the minimum Service period obligation.

2.8.2 If Service is terminated before the end of the minimum period of Service as a result of condemnation of property, damage to property requiring the Premises to be abandoned, or by the death of the Customer, the Customer is not obligated to pay for Service for the remainder of the minimum period.

SECTION 2 - RULES AND REGULATIONS, Continued

2.9 CUSTOMER RESPONSIBILITIES

2.9.1 The Customer is responsible for the payment of all charges for Service furnished to the Customer.

2.9.2 The Customer is responsible for compliance with applicable regulations set forth in this Tariff.

2.9.3 The Customer must make arrangements or obtain permission for safe, reasonable and continuous access and right-of-way for Company employees or agents of Company to enter the Premises of the Customer or any Authorized User of the Customer at any reasonable hour for the purpose of performing Company's obligations under this Tariff.

2.9.4 The Customer is responsible for the payment of (a) Service charges as set forth herein and (b) charges for visits by Company's agents or employees to the Premises of the Customer or Authorized User when the Service difficulty or trouble report results from the use of Services and equipment by the Customer or Authorized User.

2.9.5 Customer will, at Customer's expense, provide reasonable space, power, and level of heating and air conditioning, and otherwise maintain the proper environment to operate Company's Service at Customer's or Authorized User's premises.

2.9.6 The Customer may not, without prior written consent of Company, 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 Tariff and any attempt to make such an assignment, transfer, disposition without consent will be null and void.

2.9.7 A Customer or Authorized User may not represent in any way that the relationship between Customer or Authorized User and Company is anything other than one of customer and supplier, respectively. Nothing in this Tariff gives Customer or Authorized Users any authority to bind or otherwise incur liability on behalf of Company. Nothing in this Tariff constitutes an endorsement by Company of any activity, service or product of Customer or Authorized Users.

SECTION 2 - RULES AND REGULATIONS, Continued

2.9 CUSTOMER RESPONSIBILITIES

2.9.8 The Customer is responsible for any damages, including usage charges that the Customer may incur as a result of the unauthorized use of its communications equipment. The unauthorized use of the Customer's communications equipment includes, but is not limited to, the placement of calls from the Customer's Premises and the placement of calls through Customer-controlled or Customer-provisioned equipment that are transmitted or carried over Company's network without the authorization of the Customer.

SECTION 2 - RULES AND REGULATIONS, Continued

2.10 PAYMENTS AND BILLING

2.10.1 Service is provided and recurring Service charges billed on a monthly (30 day) basis. The billing date is dependent on the billing cycle assigned to the Customer.

2.10.2 Billing is payable upon receipt and past due thirty (30) days after issuance and posting of invoice. Invoices of $20.00 or more that are not paid within thirty-one (31) days after the date of posting are subject to a 1.5 percent late payment charge for the unpaid balance.

2.10.3 A Customer will not be liable for any late payment charge applicable to a disputed portion of that Customer's bill, so long as the Customer pays the undisputed portion of the bill and enters into bona fide negotiations to resolve the dispute on a timely basis, pursuant to Section 2.9.8, provided if disputed bill is correct, late payment charges shall apply retroactive to the original due date.

2.10.4 Checks presented in payment for Services and subsequently returned to Company by the Customer's financial institution for "Non-Sufficient Funds" or other reasons will incur a nonrecurring charge.

2.10.5 Billing disputes should be addressed to Company's Billing organization at the following address: 9501 International Court N., St. Petersburg, FL 33716.

SECTION 2 - RULES AND REGULATIONS, Continued

2.10. PAYMENTS AND BILLING, Continued

2.10.6. In case of a billing dispute between Customer and Company as to the correct amount of a bill, which cannot be adjusted with mutual satisfaction, Customer may enter the following arrangement:

A. First, Customer requests, and Company will comply with the request, an investigation and review of the disputed amount.

B. The Customer pays the undisputed portion of the bill by the Due By Date shown on the bill or the Service will be subject to disconnection if Company has notified Customer by written notice of such delinquency and impending termination.

C. If there is still disagreement after the investigation and review by a manager of Company, Customer may appeal to Commission for its investigation and decision.

D. Company will not disconnect Customer's Service for nonpayment as long as Customer complies with this arrangement.

E. Company will respond to the Commission's requests for information within ten (10) business days.

F. The Commission will review the claim regarding the disputed amount, communicate the results of its review to Customer and Company, and require disbursement according to those results.

SECTION 2 - RULES AND REGULATIONS, Continued

2.10. PAYMENTS AND BILLING, Continued

2.10.6 Disputed Bills, continued

G. After the investigation and review are completed by Company as noted in subsection A., such amount becomes due and payable at once. In order to avoid disconnection of Service, such amount must be paid within seven (7) calendar days after the date Company notifies Customer that the investigation and review are completed and that such payment must be made or Service will be interrupted. However, the Service will not be disconnected prior to the Due By Date shown on the bill. In no event will service be discontinued on the day preceding any day on which Carrier is not prepared to accept payment of the amount due and to reconnect service, and service will not be disconnected for non-payment of any disputed amount during the Commission's review of the dispute.

H. If there is still disagreement over the disputed amount after the investigation and review by a manager of the Company, the Customer may appeal to the South Carolina Public Service Commission. The Commission's address is:

101 Executive Center Dr.
Suite 100
Columbia, SC 29210

SECTION 2 - RULES AND REGULATIONS, Continued

2.11 TAXES

Customer must pay, without limitation, all sales, use, gross receipts, excise, access, bypass, and other local, state and federal taxes, charges, fees, and surcharges, however designated, imposed on or based upon the provision, sale or use of the Services (excluding taxes on Company's net income). Such taxes may be separately stated on the applicable invoice. Applicable taxes, charges, fees and surcharges shall include any new taxes, charges, fees or surcharges imposed after the effective date of this tariff and shall also include all interest, penalties, fees and other charges for late payment.

2.12 ALLOWANCES FOR INTERRUPTION OF SERVICE

2.12.1 For the purpose of applying this provision, the word "interruption" means the inability to access Service due to equipment malfunction or human errors. "Interruption" does not include, and no allowance will be given for, Service difficulties such as slow access, circuits busy or other network and/or switching capacity shortages.

2.12.2 Credit allowances will be given in accordance to this Section 2.12. for interruptions of Service which are not due to an event of Force Majeure, Company's testing or adjusting, to the negligence of the Customer, or to the failure of channels, equipment and/or communications equipment provided by the Customer or another Carrier, and are subject to the general limitation of liability provisions set forth in Section 2.16. herein. Customer must notify Company of any interruptions of Service. Before giving such notice, the Customer must ascertain that the trouble is not caused by any action or omission of the Customer, and not otherwise within the Customer's control.

2.12.3 For purposes of computing a credit under Section 2.12. every month is considered to have 720 hours. No credit will be allowed for an interruption of a continuous duration of less than two hours. Company will credit the Customer for an interruption of two (2) hours or more at the rate of 1/720th of the monthly charge for the Service affected for each hour or major fraction thereof that the interruption continues beyond two hours after the Company's receipt of notice of the interruption from the Customer.

Credit formula: Credit - (A/720) X B

A - outage time in hours

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B - total monthly charge for affected Service

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Effective Date: _____

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Vice President, Finance
Tower Cloud, Inc.
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SECTION 2 - RULES AND REGULATIONS, Continued

2.13 CANCELLATION OR MODIFICATION OF SERVICE BY CUSTOMER

2.13.1 Customers may cancel Service by providing written notice to Company at least thirty (30) days prior to cancellation. The notice must specify the date on which Service is to be discontinued.

2.13.2 The Customer remains responsible for all Service charges until the day and time on which Service is actually disconnected.

2.13.3 If Customer cancels Service before Company completes installation of the Service the Customer will pay an early termination charge.

2.13.4 In the case of a Customer-initiated modification of Service, charges for the subsequent order are in addition to the costs incurred and any other applicable charges before the Customer changed the original order.

2.13.5 Any non-recoverable cost of Company expenditures shall be borne by the Customer if:

A. The Customer orders service requiring special facilities dedicated to the Customer's use and then cancels the order before such service begins, before completion of the minimum period or before completion of some the period mutually agreed with the Customer for the non-recoverable portions of expenditures; or

B. Liabilities are incurred expressly on behalf of the Customer by Company and not fully reimbursed by installation and monthly charges; and

C. If based on an order for service and construction has either begun or has been completed, but no service provided.

SECTION 2 - RULES AND REGULATIONS, Continued

2.14 CANCELLATION BY COMPANY

2.14.1 Company may immediately discontinue furnishing the Service to a Customer without incurring liability:

A. If there is a condition determined in Company's sole discretion to be hazardous to the Customer, to other Customers of Company, to Company's equipment, to the public or to employees or agents of Company; or

B. If Company deems refusal or disconnection necessary to protect itself or third parties against fraud or to otherwise protect its personnel, agents, facilities or Services; or

C. For non-compliance with and/or violation of any State or municipal law, ordinance or regulation pertaining to Service; or

D. For use of Company's Services for any purpose other than that described in the application; or

E. In the event of Customer use of equipment in such a manner as to adversely affect Company's equipment or the Service to others; or

F. In the event of tampering with the equipment furnished and owned by Company; or

G. When necessary for Company to comply with any order or request of any governmental authority having jurisdiction; or

H. In the event of unauthorized or fraudulent use of Service.

SECTION 2 - RULES AND REGULATIONS, Continued

2.14. CANCELLATION BY COMPANY, Continued

2.14.2 Company may discontinue Service without liability upon ten (10) days written notice to the Customer via first-class mail prior to discontinuance of Service:

A. For violation of this Tariff except as provided in Section 2.14.1., including without limitation, non-payment of bills for Service, refusal to provide Company with either a deposit or advance payment, or failure to meet Company's credit requirements; or

B. For failure of the Customer to make proper application for Service including, without limitation, the provision of false information.

2.14.3 The discontinuance of Service(s) by Company pursuant to this section does not relieve the Customer of any obligations to pay Company for charges due and owing for Service(s) furnished up to the time of discontinuance. The remedies set forth herein are not exclusive, and Company is at all times entitled to all the rights available to it under law or equity.

SECTION 2 - RULES AND REGULATIONS, Continued

2.15 RESTORATION OF SERVICE

2.15.1 The use and restoration of Service in emergencies may be in accordance with part 64, Subpart D of the Federal Communications Commission's Rules and Regulations which specifies the priority system for such activities.

2.15.2 When a Customer's Service has been disconnected in accordance with this Tariff and the Service has been terminated through the completion of a Company service order, Service will be restored only upon the basis of application for new Service.

2.15.3 A Customer whose Service has been discontinued for failure to establish credit or for nonpayment of bills will be required to pay the unpaid balance due Company before Service is restored.

2.15.4 Whenever Service has been discontinued for fraudulent or other unlawful use, Company may, before restoring Service, require the Customer to make, at its own expense, all changes in facilities or equipment necessary to eliminate such fraudulent or otherwise unlawful uses and to pay an amount reasonably estimated as the loss in revenues resulting from such fraudulent use.

2.15.5 Any Customer whose Service has been disconnected may be required to pay Service reconnection charges equal to the initial Service Connection Charge before Service is restored.

SECTION 2 - RULES AND REGULATIONS, Continued

2.16 LIMITATION OF LIABILITY

2.16.1 Company will not be liable to the Customer or any user of the Company's Services for, and the Customer and any Authorized User, jointly and severally, will indemnify, defend and hold harmless Company from any allegation, claim, loss, damage, liability, defect, cost or expense resulting from or involving:

A. Libel, slander, or invasion of privacy from material, data, information or other content transmitted over Company's facilities; or

B. Patent or trademark infringement or other infringement of intellectual property rights including, but not limited to, copyrights, trademarks, and trade secrets, arising from (1) combining (or using in connection with) Company-provided Services and equipment with any facilities, services functions, or products provided by the Customer or Authorized User or (2) use of Services, functions, or products which Company furnished in a manner Company did not contemplate and over which Company exercises no control. In the event that any such infringing use is enjoined, the Customer or Authorized User at its expense, will obtain immediately a dismissal or stay of such injunction, obtain a license or other agreement so as to extinguish the claim in infringement, terminate the claimed infringing use, or modify such combination so as to avoid any such infringement; or

C. A breach in the privacy or security of communications transmitted over Company's facilities; or

D. Acts, mistakes, omission, interruptions delays, errors or defects in transmission over Company's facilities or equipment; or

E. Injuries to persons or property from voltages or currents transmitted over Company-provided facilities caused by Customer-provided equipment or Premises wire; or

F. The disconnection of Service for failure to pay the charges billed to Customer, including but not limited to, any direct, indirect, incidental, special consequential, exemplary or punitive damages, so long as such disconnection of Service complied with the applicable rules and regulations; or

SECTION 2- RULES AND REGULATIONS, Continued

2.16. LIMITATION OF LIABILITY, Continued

2.16.1. Continued

G. Violations of the obligations of the Customer under this Tariff' or

H. Defacement of or damage to Customer Premises, facilities or equipment resulting from the furnishing of Service or equipment on such Premises or the installation, maintenance, repair or removal thereof' unless such defacement or damage is caused by willful misconduct of Company's agents or employees; or

I. Any loss, destruction or damage to property of the Customer, the Customer's agent, distributors, or any third party, or the death of or injury to persons, including, but not limited to, employees or invitees of either Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of Company, Customer, Authorized User or their employees, agents representatives or invitees; or

J. Any delay or failure of performance or equipment due to a Force Majeure condition or any unlawful acts of Company's agents and employees if committed beyond the scope of their agency or employment.

K. Changes in any of the facilities, operations or procedures of the Company that: (1) render any equipment, facilities or services provided or utilized by the User obsolete; (2) require modification or alteration of such equipment, facilities or services; or (3) otherwise affect use or performance of such equipment, facilities or services except where reasonable notice is required by the Company and is not provided to the Customer.

L. The Company shall not be liable for injury to property or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities.

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Vice President, Finance
Tower Cloud, Inc.
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SECTION 2 - RULES AND REGULATIONS, Continued

2.16. LIMITATION OF LIABILITY, Continued

2.16.1 Continued

K. Any act, mistake, omission, fraudulent act of a third party, interruption, delay, error, or defect caused by or contributed to by:

1. Another company or Carrier, or its agents or employees, when the facilities or equipment of the other company of Carrier are used for or with the Service Company offers.

2. The Customer, or any third party acting as its agent, in connection with Company-provided or Customer-provided facilities or equipment, including, but not limited to, the Customer's failure to take all necessary steps to obtain, install and maintain all necessary equipment, materials and supplies for interconnecting the terminal equipment or communications system of the Customer to Company's network; or

3. A third party.

L. Any unauthorized use of the Service provided to Customer.

2.16.2 The liability of Company for damages arising out of the furnishing of, or failing to furnish, its Services, including but not limited to mistakes, omission, disconnections, interruptions, delays, acts of a third party, errors, defects, or representations, whether caused by acts or omissions is limited to the extension of allowances for interruption as set forth in this Tariff. Such allowances for interruptions are the sole remedy of the Customer and the sole liability of Company. Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company Service, equipment or facilities, or the acts or omissions, acts of a third party, or the acts or omissions or negligence of Company, its employees or agents.

SECTION 2 - RULES AND REGULATIONS, Continued

2.16. LIMITATION OF LIABILITY, Continued

2.16.3 The liability of Company's suppliers and vendors for damages arising out of the furnishing of' or failing to furnish, their services, including but not limited to mistakes, omissions, interruptions, delays, errors, defects, or representations, whether caused by acts or omissions of such suppliers and vendors shall be limited to the extension of allowances for interruptions as set forth in this Tariff. The extension of such allowances for interruptions will be the sole remedy of the Customer and the sole liability of Company's supplier and vendors. Company's suppliers and vendors will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer, as a result of any service, equipment or facilities, or the act of omissions, or negligence of Company's suppliers and vendors, its employees or agents.

2.16.4 The entire liability of Company for any claim, loss, damage or expense from any cause whatsoever will in no event exceed sums actually paid to Company by the Customer for the specific Services giving rise to the claim, and no action or proceeding against Company may be commenced more than one (1) year after the Service is rendered.

2.16.5 THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. COMPANY MAKES NO WARRANTY THAT SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE OR MEET ANY PARTICULAR PERFORMANCE LEVEL; NOR DOES COMPANY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED THROUGH THE SERVICES OR THAT ANY DEFECT IN THE SERVICE WILL BE CORRECTED. THE COMPANY DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND THE CUSTOMER SHOULD NOT RELY ON ANY SUCH STATEMENTS.

2.16.6 The liability of Company for errors in billing that result in overpayment by the Customer will be limited to a credit equal to the dollar amount erroneously billed or, in the even that payment has been made and Service has been discontinued, to a refund of the amount erroneously billed.

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Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

SECTION 2 - RULES AND REGULATIONS, Continued

2.16. LIMITATION OF LIABILITY, Continued

2.16.7 Company makes no warranty or representation of any kind whatsoever with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any entity or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of any installation so provided. Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section as a condition precedent to such installations.

SECTION 2 - RULES AND REGULATIONS, Continued

2.17 NOTICES

Any notice Company may give to a Customer will be deemed properly given when delivered, if delivered in person, or three (3) days after deposit with the U.S. Postal Service, registered or certified, postage prepaid, addressed to the Customer's billing address. Any notice the Customer may give Company will be deemed properly given when delivered, if delivered in person, or three (3) days after deposit with the U.S. Postal Service, postage prepaid, addressed to Company at the address provided in the most recently revised tariff pages.

SECTION 2 - RULES AND REGULATIONS, Continued

2.18 CUSTOMER PROVIDED EQUIPMENT

2.18.1 Customer-provided equipment on the Premises of Customer or Authorized User, the operating personnel there, and the electric power consumed by such equipment must be provided by and maintained at the expense of the Customer or Authorized User. Conformance of Customer-provided equipment with Part 68 of the FCC Rules is the responsibility of Customer.

2.18.2 Customer or Authorized User must ensure that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring must be such as not to cause damage to Company-provided equipment and wiring or injury to Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury may be provided by Company at Customer's expense.

2.18.3 Company will not be responsible for the installation, operation or maintenance of any Customer-provided communications equipment. Where Customer-provided equipment is connected to the facilities and equipment furnished under this Tariff, the responsibility of Company will be limited to the furnishing of Service, facilities and equipment offered pursuant to this Tariff Beyond this responsibility, Company will not be responsible for:

A. the transmission of signals by Customer-provided equipment or for the quality of' or defects in, such transmission; or

B. the reception of signals by Customer-provided equipment; or

C. network control signaling when performed by Customer-provided network control signaling equipment.

SECTION 2 - RULES AND REGULATIONS, Continued

2.18. CUSTOMER PROVIDED EQUIPMENT, Continued

2.18.4 The Customer must secure all licenses, permits, rights-of-way and other arrangements necessary for interconnection with Company. In addition, the Customer must ensure that its equipment and/or system or that of its Authorized User or agent(s) is properly interfaced with Company's Service and the signals emitted into Company's network are of the proper mode, bandwidth, power, data speed and signal level for the intended use of the Customer. If the Customer or its Authorized User or agent(s) fails to properly maintain and operate its equipment and/or system, Company may, upon written request, require the use of protective equipment at the Customer's expense.

2.18.5 Interconnection between the facilities or services of other carriers is governed by the applicable terms and conditions of the other carriers' tariffs.

2.18.6 Service furnished by Company may be interconnected with services or facilities of other authorized carriers and with private systems, subject to the technical limitations established by Company. Any special interface of equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers must be provided at the Customer's expense.

SECTION 2 - RULES AND REGULATIONS, Continued

2.19 PROMOTIONAL OFFERINGS

Company may make promotional offerings of its tariffed services which may include reducing or waiving applicable charges for the promoted Service. No individual promotional offering will exceed six (6) months in duration, and any promotional offering will be extended on a non-discriminatory basis to any customer similarly classified who requests the specific offer. At the Company's option, a letter outlining the promotion may be filed with the Commission in lieu of filing tariff language.

2.20 INDIVIDUAL CASE BASIS (ICB) ARRANGEMENTS

Arrangements will be developed on a case-by-case basis in response to a bona fide special request from a Customer or prospective Customer to develop a competitive bid for a service not generally available under this Tariff. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis. All ICB arrangements will be made available to the Commission upon request.

However, unless otherwise specified, the terms, conditions, obligations and regulations set forth in this tariff shall be incorporated into, and become a part of, said contract, and shall be binding on Carrier and Customer. Specialized rates or charges will be made available to similarly situated Customers, on the same terms and conditions, on a non-discriminatory basis.

2.21 FULL FORCE AND EFFECT

Should any provision or portion of this Tariff be held by a court or administrative agency of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions of this Tariff will remain in full force and effect.

2.22 CREDIT LIMIT

The Company may, at any time and at its sole discretion, set a credit limit for any Customer's consumption of services for any monthly period.

SECTION 3 - DESCRIPTION OF SERVICE

3.1 APPLICATION OF RATES

3.1.1 The following sections set forth the rules and regulations governing the application of rates for Company Services, including the following general rate categories:

A. Nonrecurring Charges for installation of facilities and Services;

B. Monthly Rates for availability and use of facilities and Services; and

C. Usage or Transaction Charges (where applicable).

3.1.2 **SERVICE AREAS**

A. Unless otherwise specified in this tariff' Company's local exchange Service area is statewide.

B. Unless otherwise specified in this tariff' Company's interexchange Service area is statewide.

C. Company's description of service area in no way compels Company to provide any Service in an area where facilities or other extenuating factors limit Company's ability to provide Service.

D. Services are offered by the Carrier via its own facilities and/or the facilities of other carriers. Services are offered as one-way or two-way communications services, as specified. Special construction charges may apply in each case. Services may not be available to all Customers. In addition to the charges specified for each service, additional charges may apply for transfers of data per month or at certain times in excess of certain thresholds.

SECTION 3 - DESCRIPTION OF SERVICE, Continued

3.1. APPLICATION OF RATES, Continued

3.1.3 Service Connection Charges

A. Service Connection Charges are nonrecurring charges for establishing or modifying Services. Service Connection Charges are incurred by Customer-initiated requests only.

B. Unless specifically exempted in this or other Sections of this Tariff Service Connection Charges apply to all Customer-initiated requests, and are in addition to all other scheduled rates and charges.

C. The charges specified herein reflect Service provided during regularly scheduled work hours, at current installation intervals and without work interruptions by the Customer.

D. Customer requests for expedited Services that require installations on a date that is less than the normal offered interval may result in an increase in applicable Service Connection Charges.

E. Customer requests performed on an out-of-hours basis shall also incur an add-on to applicable Service Connection Charges (excluding the Service Ordering Charge), along with any additional costs that may be involved.

F. Service Connection Charges for the initial establishment of Service are payable with the first bill rendered for Service

SECTION 3 - DESCRIPTION OF SERVICE, Continued

3.2 GENERAL DESCRIPTION OF SERVICE

3.2.1 Service is offered to customers on a full-time monthly basis.

3.2.2 All Dedicated Telecommunications Services shall remain in effect for a minimum period of thirty (30) days.

3.2.3 Service furnished by the Company will be furnished at the rates contained in this tariff. The Company offers its services subject to the availability of the necessary facilities and/or equipment.

3.2.4 The Company reserves the right to refuse to provide service to or from any location where the necessary facilities and/or equipment are not available.

SECTION 3 - DESCRIPTION OF SERVICE, Continued

3.3 DEDICATED TELECOMMUNICATIONS SERVICE

3.3.1 Dedicated Telecommunications Service is offered in the form of intrastate communications facilities which are dedicated to the use of a specific customer and are billed at the pre-determined fixed monthly rates.

3.3.2 Tower Cloud's broadband networks are designed to provide a wide range of services to wireless carriers. Service offerings include TDM (time division multiplexing) services at speeds of T1/DS1, DS3 and OCn, as well as Ethernet services ranging from 10 megabits per second (mbps) to 300 mbps. These services are provided through a fully redundant and diverse fiber backbone of core rings that include connectivity to key interconnection points within each market. Fiber laterals and licensed microwave extensions provide service out to specific customer locations.

3.3.3 Service in digital transmission formats other than those listed above may be provided at the Company's option on an Individual Case Basis (ICB).

3.3.4 A Customer must provide Company with 30 days written notice to disconnect a circuit. All charges for telecommunications service and service components ordered under this tariff and provided by Company, or by Company as agent acting in the customer's behalf' will apply for 30 days from the time notice is received or until the requested disconnection date, whichever is later. The charges will apply whether or not the customer uses the circuit.

SECTION 4 - RATES AND CHARGES

4.1 RATES

Where this Tariff provides for a Standard Rate or Charge for a service, such Standard Rate or Charge shall apply to Customer's use of such service regardless of the terms of Customer's Customer Service Agreement, if any, unless the service is provided as part of an Individual Case Basis arrangement in which case the rate or charge applicable to Customer's use of such service shall be the rate or charge specified in such ICB arrangement.

4.1.1 The charge for basic Dedicated Telecommunications Service is a flat rate per channel charge. One-time installation charges will also be billed when a customer establishes service. Optional features and services encompass additional services or service options available to customers for additional charges.

4.1.2 **Service Pricing for On-Net Locations**

Bandwidth Served	Non-Recurring Charge	Monthly Recurring Charge		
TDM Services		12 Month	36 Months	60 Months
DS1 (1.54 Mbps)	$250	$450	$420	$375
DS3 (45 Mbps)	$750	$3,300	$3,000	$2,700
OC3 (155Mbps)	$1,000	$6,000	$5,175	$4,500
Ethernet Mbps				
10	$500	$2,150	$1,950	$1,750
20	$500	$2,300	$2,088	$1,875
30	$750	$2,438	$2,213	$1,988
50	$750	$2,513	$2,288	$2,063
100	$1,000	$3,675	$3,338	$3,000
200	$1,000	$6,100	$5,550	$5,000
300	$1,000	$7,325	$6,663	$6,000
> 300 MBPS	ICB	ICB	ICB	ICB

On-Net Pricing Conditions
Pricing subject to terms and conditions of Master Service Agreement (MSA).

Off-Net locations
Pricing to connect new sites will be determined on an individual case basis.

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Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

SECTION 4 - RATES AND CHARGES, Continued,

4.1. RATES, Continued

4.1.6. Returned Check Charge $25.00

4.2 REGULAR WORKING HOURS, EXCEPTIONAL WORKING HOURS, AND HOLIDAY HOURS

For purposes of exceptional working hours and holidays the rates and charges specified in this Tariff contemplate that all work in connection with furnishing (not repairing) or rearranging service will be performed during regular working hours. Whenever a customer requests that such work be performed outside the Company's regular working hours or that work once begun be interrupted, so that the Company incurs costs that would not otherwise have been incurred, the customer may be required to pay, in addition to the other rates and charges specified in this Tariff, the amount of additional cost incurred by the Company as a result of the customer's special requirements. A customer may also be required to pay the amount of additional cost incurred by the Company resulting from the customer's special requirements. The customer will be informed of such estimated cost prior to its occurrence by the Company.

Business Day:	8:00 a.m. - 5:00 p.m. - Monday - Friday
Evening:	5:00 - 11:00 p.m. Sunday - Friday and all Holidays *
Night/Weekend:	11:00 p.m. - 8:00 Weeknights; 8:00 a.m. - 11:00 p.m. - Saturday; 8:00a.m. - 5:00p.m. - Sunday

The hours listed above do not have any application to the services contained in this tariff other than to differentiate regular and exceptional work hours.

* Holidays include New Year's Day, Good Friday, Memorial Day, July 4th, Labor Day, Thanksgiving Day and the day after, Christmas Eve and Christmas Day.

The Company normally observes holidays falling on a Sunday on the following Monday and holidays falling on a Saturday on the preceding Friday.

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Patricia T. Morrison
Vice President, Finance
Tower Cloud, Inc.
9501 International Court N.
St. Petersburg, FL 33716

CERTIFICATE OF SERVICE

I hereby certify that I have this day served electronically and by U. S. Mail a copy of the pleading(s) indicated below, upon the following parties:

RE: In the Matter of the Application of Tower Cloud, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Interexchange Telecommunications Services in the State of South Carolina and for Alternative Regulation

DOCKET NO.: 2010 _____

PARTIES SERVED: Nannette Edwards, Esquire
Chief Counsel and Director of Legal Services
Office of Regulatory Staff
P.O. Box 11263
Columbia, SC 29211

PLEADING: Application and Motion

This 13th day of May, 2010.

Marsha A. Ward

Marsha A. Ward

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