



## Master Services Agreement – Data & Dark Fiber Services Vol. 1.0

The terms herein apply to Data or Dark Fiber Service Orders or Agreements (“agreement(s),” “service order(s),” or “contract(s)”) between Hunter Communications (“Hunter”, “Contractor” or “Provider”) and Customers (“Customer”) utilizing Hunter’s Fiber Optic Network (the “network” or “system”).

**1. Services.** Customer shall purchase and Hunter Communications (Hunter) shall provide to Customer:

**1.1 Data Services.** Data services permit access by Customer to Hunter’s telecommunications system to receive service(s) indicated on a service order or agreement (hereafter “Agreement”) at the point of delivery located at the service location(s) as indicated therein. The point of delivery is the location where the network and Customer’s system are interconnected. The data services provided shall meet all service standards set forth in Section 4 of this Agreement.

**1.2 Dark Fiber Services.** Dark fiber service (“service(s)”) describes a lease of a strand or more of fiber spliced for a direct path between two locations. The number of strands leased, the A and Z location(s), and specifications concerning path (diversity, if applicable) shall be defined on Customer’s Agreement. Customer shall be responsible for owning, providing and maintaining any equipment necessary to light the circuit over Hunter provided dark fiber. On a case by case basis, Customer may contract with Hunter to provide equipment, however Customer shall maintain ownership of equipment and any work Hunter performs on Customer’s equipment shall be billable in accordance with Hunter’s standard time and materials rates. Terms herein pertaining to Hunter provided equipment or managed services provided by Hunter shall not apply to Dark Fiber Service Orders.

**1.3. Installation Services.** Installation services consist of coordinating with Customer the necessary engineering, site survey, system configuration and other services necessary to provide Customer Data Services. These services shall be provided up to the date that the service testing is completed based on Hunter’s customary testing procedures and the service is available to the Customer (“the service acceptance date”).

In addition, Hunter will provide the equipment (collectively referred to as “Hunter facilities”) necessary to connect Customer’s facilities to the network.

**2. Terms.** Agreements will be effective upon the date executed by Hunter and shall continue for the amount of time as set forth in the service order from the service start-up date, unless sooner terminated as provided therein. In the event written notice is not given by either party to terminate an Agreement at least 30 days prior to the termination date, said Agreement shall automatically revert to a month-to-month service basis on the same terms and conditions except for the rate specified in said Agreement. The rate for each extension period shall be the rate then in effect, as published by Hunter, at least 25 days prior to termination date.

**3. Charges.** Hunter agrees to provide data services for which Customer agrees to provide consideration as outlined in a service order or Agreement.

**3.1. Data Services Rate.** From the service start-up date, Customer shall pay the rate specified in Customer’s Agreement for each month of service. If the service does not begin on the first day of a billing cycle, then payments for the first month shall be prorated on a daily basis. All accounts will be invoiced monthly, and all sums shall be paid by the first or fifteenth day of the following month (the “due date”); please see invoice or contact [accounting@hunterfiber.com](mailto:accounting@hunterfiber.com) for details

**3.2. Installation Services Charge.** Customer shall pay the installation charge (“Non-recurring Charge” or “NRC”) specified in in Customer’s Agreement for the installation services provided by Hunter. Unless otherwise specified, a Materials Deposit in the amount of 50% of the total NRC will be required on projects prior to commencement. The remaining NRC shall be due and payable upon onsite installation of the fiber terminating hardware and therefore establishing the due date of the installation charges and any prorated data services for the start-up period.

**3.2.1. Uninterruptible Power Supply.** Customer shall provide a form of uninterruptible power for the fiber termination hardware and any Hunter facilities or equipment at the Customers location. If the Customer does not provide an uninterruptible power source, Hunter will provide one for the price listed below.

- APC Uninterruptible Power Supply: \$200.00 (one needed for each location)

**3.3. Late Payment, Deposit, Electronic Billing.** Payments received after the due date may be subjected to a charge of 1.5% per month on the unpaid balance. Hunter may require Customer to pay a deposit in advance of the provision of any service. Hunter shall hold any such deposit in a non-interest bearing account and used to satisfy (in whole or in part) any obligation of Customer under an Agreement. Customers can sign up for account management online at [www.hunterfiber.com](http://www.hunterfiber.com). Online bill-pay, auto bill-pay and e-billing options are available. Hunter will accept payments via check, ACH or credit card (Visa/MC only). All invoices will be sent via email unless Customer requests mailed invoices. There will be a \$75.00 returned check fee on all returned checks.

**3.4. Taxes, Fees, Government Charges.** Customer agrees to pay any applicable taxes, franchise fees or other governmental charges imposed upon Hunter Communications by governing body with jurisdictional authority over this service or for use of public right of ways and/or easements.

**4. Service Levels.** Hunter will exercise reasonable efforts to provide Internet service on a 24-hour-a-day, 7-day-per-week basis. Customer understands and acknowledges that Hunter does not warrant that its Internet service will be provided without interruption. Customer also understands that the rates and speed for this service is based on the utilization of burstable data transmission methodology where the full bandwidth contracted for is to be utilized in bursts only and not continuously, unless otherwise indicated in Customer’s Agreement. Hunter may monitor Customers’ bandwidth utilization in order to ensure that Customer’s transmissions are within burstable utilization rate guidelines. These guidelines are subject to change at any time by Hunter acting in its sole discretion, and all such changes shall be binding upon Customer upon written notice to Customer by Hunter.

In the event of a data service outage deemed to be at the Hunter service level, Hunter will have a technician investigating the issue within 4 hours after receiving notification of the outage from the Customer to the assigned service number provided to Customer. With respect to a failure of continuous interruption which is not excused as provided in this section or otherwise, which exceeds 24 consecutive hours in

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duration, and of which Hunter receives written notice within 48 hours of such failure or interruption, Hunter shall credit Customer's account with respect to the affected service by an amount equal to one-thirtieth of the recurring monthly charge for the service for each 24-hour period during which the failure or interruption continues. This credit shall be the sole and exclusive remedy of Customer with respect to any interruption or failure of the service.

No such credit shall be due, however, if the interruption is caused by reasons beyond the reasonable control of Hunter or for reasons related to scheduled network maintenance.

**5. Hunter Facilities and Equipment.** Any Hunter facilities and/or equipment installed on Customer's premises shall be and remain the property of Hunter and may be repaired or replaced at any time and removed at the termination of service, and may be used to supply other customers of Hunter whether or not on the same premises. No rent or other charge shall be made by Customer on Hunter for placing or maintaining its facilities or equipment upon Customer's premises. Hunter shall be entitled, at any time, to affix to Hunter facilities or equipment a label indicating the interest of Hunter. After at least 48 hours' notice, Customer will grant Hunter Communications or cooperate with Hunter Communications in obtaining reasonable access to its premises for the installation, operation, removal, repair and/or maintenance of the facilities and equipment for the services hereunder. In the event that Customer does not provide Hunter with the necessary access to remove said equipment and/or facilities after the termination of service upon receiving notification as indicated above, Hunter may assess a fee to Customer equal to the retail cost of said equipment and/or facilities plus 25%.

**5.1. Removal.** Customer will use reasonable efforts to ensure that Hunter facilities and/or equipment are not removed or caused to be removed by any person, other than Hunter or without Hunter's prior written consent.

**5.2. Proper Environment.** Customer shall use reasonable efforts to keep the location of Hunter's facilities and/or equipment in the proper environment as specified by Hunter.

**5.3. Damage.** Customer agrees to exercise due care and caution to protect Hunter's facilities and equipment from the weather, vandalism and other potential problems. Customer shall be liable for any loss or damage to Hunter's facilities and/or equipment at any location arising from Customer's negligence, intentional act, unauthorized maintenance or other cause within the reasonable control of Customer, its employees or agents. In the event of any loss or damage to Hunter's facilities or equipment for which Customer is liable, Customer shall reimburse Hunter for the lesser of the reasonable cost of repair or the actual cost of replacement.

### 6. Rights and Obligations of Customer.

**6.1. Installation.** Customer shall at its expense undertake all necessary preparations required to comply with Hunter's installation and maintenance instructions. Such preparations include obtaining all necessary consents for the installation and use of Hunter facilities and/or equipment in the building, including consents for necessary alterations to buildings; ensuring that any floor loading limits will not be exceeded; providing suitable accommodations, foundations and an environment to meet the environmental specifications for Hunter including all necessary trunking, conduits and cable trays; providing suitable electric power and any other utilities needed by Hunter to install, test and or maintain Hunter's facilities and equipment; providing a suitable and safe working environment for Hunter's personnel, including an environment safe from environmental hazards; and taking up or removing, in time to allow Hunter to carry out installation as

scheduled, any fitted or fixed floor coverings, ceiling tiles, suspended ceilings and partition covers. Customer will provide Hunter with access to all existing conduits, raceways and etc. to be used in cable pathway. By accepting an Agreement Customer implicitly provides Hunter with permission to use any available conduits in said pathway.

Hunter is not responsible for the condition or fill rate of any Customer provided or existing conduits, raceways and etc. to be used in cable pathway; Customer guarantees that said pathway meets all required fill rate capacities and that all components of said pathway comply with NEC (National Electric Code) recommended "bend ratios." If, during the course of installation, Hunter encounters Customer provided conduit which is unusable due to excessive fill rate, bend ratio or condition (crushed, blocked, missing, etc.) additional material and/or labor may be required to complete installation. Additional material or labor needed to complete installation shall require prior authorization by both parties in the form of a signed "Change Order."

Any changes to the physical installation lengths, delays caused by adverse soil/rock conditions and/or material requirements, and delays caused by other contractors and/or subcontractors made after notice to proceed will require a written "Change Order" and be considered due upon completion. Each occurrence will be reviewed on an individual basis, (unless otherwise agreed upon by Contractor and Customer) and any additional costs incurred will be the responsibility of Customer. All required changes will be described as 'additional work' and be billed accordingly only after written approval has been reviewed and signed by both parties describing material, labor and compensation requirements

Contractor shall, after notice from Customer, commence work. At such time, Contractor may designate resources and continue diligently in the performance of such work. Contractor shall employ sufficient crew, work sufficient hours and/or shifts so as to complete the requirements within the time frames noted in an Agreement; if no time frames for completion are provided, Contractor shall complete all service activation requirements within a reasonable period of time not to exceed 90-days after the estimated start date. Estimated start date: (5) five days or sooner, after notice to proceed has been given by Customer, materials have been received and all preparatory and preliminary requirements of this proposal have been satisfied, including the receipt of all necessary technical information from the Customer and any work or construction permits associated with the project.

For the purpose of change(s) to the contract, the following rates are to be used unless otherwise agreed in writing: standard hourly labor rate per employee will be billed at \$85.00 per hour. This hourly rate does not provide for any materials. (\*Adverse soil/rock conditions: Contractor will not be held responsible for the removal of any material or obstructions such as lava rock, large boulders, sandstone, concrete slabs/sidewalks or any other materials not normally removed by hand trenching or by backhoe-bucket attachments).

**6.2. Premises Access.** Customer shall provide Hunter or other persons authorized by Hunter with access (on both a routine and emergency basis) for the implementation of all service acceptance dates; Customer will provide Hunter reasonable access to the Customer premises where any Hunter facilities or equipment are installed. Hunter shall not be responsible for any faults on the network or any failure to perform the provisions of an Agreement to the extent that Hunter, in good faith, requires access, and any such faults or failures or the continuation thereof are a result of the failure of Customer to provide access to the place at each location where Hunter facilities and/or equipment are installed supporting the failing service or connection.

(a) During implementation, Hunter will normally carry out work required to install and/or repair Hunter's facilities and equipment during its normal working hours but may, on reasonable notice, require access at

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other times. At Customer's request, Hunter will carry out work to install Hunter's facilities and equipment outside Hunter's regular working hours, in which event Customer agrees to pay overtime and any other appropriate charges agreed between the parties.

(b) Any out-of-pocket costs, reasonably incurred by Hunter, as a consequence of the denial of access by Customer (or building owner) to any location shall be paid by Customer. Hunter shall advise Customer of any such costs on a case-by-case basis.

**6.3. Acceptable Use Policies (AUP).** Hunter's Acceptable Use Policy (AUP) is posted to our web site ([www.hunterfiber.com](http://www.hunterfiber.com)) and is to be acknowledged and known by the Customer at all reasonable times. Customer shall comply with Hunter's acceptable use policies. The acceptable use policies are subject to change at any time by Hunter acting in its sole discretion, and all such changes shall be binding upon Customer upon written notice to Customer by Hunter.

(a) Customer shall be responsible for the use and compatibility of equipment or software not provided by Hunter. In the event that Customer uses equipment or software not provided by Hunter which impairs Customer's Data Services or the network, Customer shall nonetheless be liable for payment for all service, including without limitation any software provided by Hunter. Upon notice from Hunter that any equipment or software not provided by Hunter is causing or is likely to cause a hazard, interference, or service obstruction, Customer shall immediately eliminate the likelihood or hazard, interference, or service obstruction and if Customer fails to do so, Hunter may take such action as it deems required to eliminate such hazard, interference or service obstruction.

(b) Customer will only connect to the network using industry standard equipment, which complies and is compatible with the service specifications set forth in applicable technical publications. Notwithstanding the undertaking of Customer in the prior sentence, if, in Hunter's reasonable opinion, the technical integrity of the network or the service being provided over the network to Customer or any other third party is being jeopardized or is likely to be jeopardized as a result of the connection of any Customer premises equipment to the network by Customer or by any other activity for which Customer is responsible, Hunter may suspend the provision of the services to any connection so affected. Following remedial action by Customer satisfactory to Hunter, Hunter will reinstate the service provided through that connection as soon as possible.

(c) Hunter reserves the right to allow or refuse to allow any make, model or software revision of customer-provided equipment to be used as a gateway to any network access. Customer will cooperate with Hunter in setting the initial configuration for its equipment's interface with the network.

(d) Hunter may from time to time issue technical instructions on the use of the network to ensure the proper functioning of the services or the protection of the network from damage or deterioration. Customer will observe technical instructions.

**6.4. System Integrity.** Customer to cure any violation (other than failure to pay) of the provisions of an Agreement within 30 days after receiving written notification from Hunter.

**6.5. Hunter Equipment Movement.** Customer is obligated to obtain written approval from Hunter prior to moving any of Hunter's equipment. Moving of equipment without authorization may cause damages and/or an outage. A customer-caused outage, due to the moving of equipment without written authorization, will be the sole responsibility of the Customer. Costs for repairs performed by Hunter technicians as a result of damages due to movement of Hunter

equipment shall be borne by the Customer. No deductions to billing will be made for Customer-caused outages.

**7. Termination** Either party may terminate an Agreement for cause, provided written notice is given the other party specifying the cause for termination and requesting correction within 10 days for failure to pay a sum due, or within 30 days for any other cause, and such cause is not corrected within the applicable period. Cause is any material breach of the terms of an Agreement, including the failure to pay any amount when due; the filing of a petition in bankruptcy by or against Customer or Customer's inability to meet obligations when due; or failure of Hunter to provide services as detailed in the Agreement. In the event of a failure to pay a sum due, Hunter may choose to temporarily deactivate service in lieu of terminating said Agreement. For service deactivation(s), Hunter must follow all notification guidelines relating to Agreement termination set forth herein. In the event of a service deactivation, Customer may have service reactivated by paying all sums due. Hunter may assess a \$50.00 service reconnection fee. Hunter will provide additional information upon request.

**7.1. Cessation of Service.** Hunter may deny Customer access to the network and cease to provide all or part of any services described in Customer's Agreement without notice if Customer:

- (a) violates any provision of applicable acceptable use policies;
- (b) engages in any conduct or activity that Hunter, in its sole discretion, reasonably believes causes a risk that Hunter may be subjected to civil or criminal litigation, charges, or damages; or;
- (c) would cause Hunter to be denied access or to lose services by Hunter's internet provider.

**7.2. Cessation of Access.** If Hunter ceases to provide or denies Customer access to the network pursuant to this section, neither Customer nor any of its customers shall have any right:

- (a) to access through Hunter any materials stored on the internet,
- (b) to obtain any credits otherwise due to Customer, and such credits shall be forfeited, or;
- (c) to access third party services, merchandise or information on the internet through Hunter. Hunter shall have no responsibility to notify any third-party providers of services, merchandise or information of any discontinuance of any services pursuant to this section, nor any responsibility for any consequences resulting from lack of such notification.

**7.3. Termination Fee.** Either party may terminate an Agreement upon 30 days written notice to the other party (e-mail notification is allowed; Hunter will receive such notifications at [contracts@hunterfiber.com](mailto:contracts@hunterfiber.com)). Upon early termination for any reason, other than material breach by Hunter Communications, or if Hunter terminates the Agreement for cause, any and all installation waivers, all rates and charges actually incurred up to the date of termination, as well as the full amount otherwise due to Hunter Communications over the full term of the Agreement, will become immediately due and payable by Customer to Hunter Communications, unless otherwise indicated.

**8. No Warranties.** To the extent permitted by applicable law, Hunter is providing the services and the system (including but not limited to the Hunter facilities and/or equipment and any access to the network) as is and with all faults, and hereby disclaims all other warranties, if any, either express, implied, statutory or otherwise with respect to any of the system and services provided or to be provided under an Agreement, including but not limited warranties of merchantability, fitness

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for a particular purpose, of lack of viruses, lack of negligence or lack of workmanlike effort.

**Hunter makes no warranty:**

**(a) of title, quiet enjoyment or lack of infringement with respect to the system or services;**

**(b) that the operation of the system or service will be uninterrupted or error free.**

**9. Exclusion Of Certain Damages; Limitation Of Liability And Remedy; Exclusive Remedy.** To the maximum extent permitted by applicable law, in no event will Hunter be liable under any contract, negligence, strict liability or other theory for any special, indirect, incidental or consequential damages (including but not limited to damages for loss of profits for confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence, and for any other pecuniary or other loss whatsoever) arising out of or in any way related to any breach by Hunter of this Agreement, to the provision or use of or inability to use the system or services or otherwise with respect to any subject matter of this Agreement, even if Hunter has been advised of the possibility of such damages.

Hunter's total liability to Customer under this Agreement and the transactions contemplated hereby, including without limitation any liability of Hunter for any damages of any nature whatsoever, including without limitation direct or actual damages, shall be limited to the direct damages incurred by Customer in actual and reasonable reliance on the system or services, which damages shall not, in the aggregate, exceed 100% of the amount having actually been paid by Customer to Hunter in the twelve month period immediately preceding the date on which the breach giving rise to the damages occurred.

Except for the provision of credits to Customer's account as specifically provided in section 4, the rights and remedies granted to Customer under this section 9 constitute Customer's sole and exclusive remedy against Hunter, its agents, officials and employees for any and all claims arising under statutory or common law or otherwise.

There are no third party beneficiaries of any Agreement. Customer agrees that Hunter shall have no liability for the negligence, products, services or websites of Customer; of affiliates; of developers or consultants identified or referred to Customer by Hunter; or of any other third party, including but not limited to liability for the content, quality and accuracy of the foregoing which are accessible by use of the system or services of Hunter.

**10. Uncontrollable Conditions.** Neither party shall be deemed in violation of any Agreement if it is prevented from performing any of the obligations under said Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies;

acts of legislative; judicial; executive or administrative authorities; or any other circumstances which are not within its reasonable control.

**11. Severability.** In the event that a court, governmental agency, or regulatory body with proper jurisdiction determines that any Agreement or a provision of said Agreement is unlawful, the Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of an Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of that Agreement shall continue in effect.

**12. General Provisions.** Failure or delay by either party to exercise any right or privilege under an Agreement and/or the terms herein will not operate as a waiver of such right or privilege. Customer may assign an Agreement only with the consent of Hunter. An Agreement constitutes the entire understanding between Customer and Hunter with respect to Service provided therein and supersedes any prior Agreements or understandings.

**13. Attorney Fees.** The prevailing party in any legal proceeding brought under or with respect to this Customer's services and this Agreement shall recover from the non-prevailing party all costs of such proceeding as well as reasonable attorney fees.

**14. Hunter Communications Acceptable Use Policy for Hunter IP Products and Services.**

Hunter Communications Acceptable Use Policy (the "Policy") for Hunter IP Products and Services is designed to help protect Hunter, Hunter's customers and the Internet community in general from irresponsible or, in some cases, illegal activities. The Policy is a non-exclusive list of the actions prohibited by Hunter Communications. Hunter Communications reserves the right to modify the Policy at any time.

### 14.1 Prohibited Uses of Hunter's Systems, Products and Services.

1. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
2. Sending unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material (e.g., "e-mail spam"). This includes, but is not limited to, bulk mailing of commercial advertising, informational announcements, and political tracts. It also includes posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting). Hunter accounts or services may not be used to collect replies to messages sent from another Internet Service Provider where those messages violate this Policy or that of the other provider.
3. Unauthorized use, or forging, of mail header information (e.g., "spoofing").
4. Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
5. Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
6. Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any Hunter customers or end-users by any means or device.

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7. Knowingly engage in any activities that will cause a denial-of-service (e.g., synchronized number sequence attacks) to any Hunter customers or end-users whether on the Hunter network or on another provider's network.
8. Using Hunter's Products and Services to interfere with the use of the Hunter network by other customers or authorized users.
9. Any open wireless network is strictly prohibited. Any type of unauthorized service sharing will be searched for and immediately identified. Any Customer unwilling to bring down any such network will be terminated

Each Hunter IP customer is responsible for the activities of its customer base/representatives or end-users and, by accepting service from Hunter, is agreeing to ensure that its customers/representatives or end-users abide by this Policy. Complaints about customers/representatives or end-users of Hunter IP Customer will be forwarded to the Hunter IP customer's postmaster for action. If violations of the Hunter Communications Acceptable Use Policy or Acceptable Use Policy for Hunter IP Products and Services occur, Hunter reserves the right to terminate services with or take action to stop the offending customer from violating Hunter's AUP as Hunter deems appropriate, without notice.

**14.2 Terms of Service.** To ensure that all Hunter Network users experience reliable service, Hunter requires users to adhere to the following terms and conditions. If you have any questions or concerns regarding Hunter service, call the appropriate contact listed on your monthly billing statement. Cable Modem customers need to contact their respective ISP.

### **14.3 High Speed Direct Fiber Connection.**

- No reselling of bandwidth services; any wireless devices distributing internet access or bandwidth on Customer premises shall be secured and identified to Contractor.
- Bandwidth use will be monitored at the Hunter Head end.

Should a Business Service site exceed the maximum sustained bandwidth contracted, you will receive a notification requiring your service level to be upgraded to match the needs of your business usage.

Web Hosting services are permissible uses, such as a marketing firm hosting pages for their customers. Other services not yet implemented may be allowed by written consent of Hunter Network Administration.

**14.4 Internet Protocol Addresses.** Customer may request provision of Internet Protocol (IP) Addresses by Hunter, and Hunter may provide IP Addresses to Customer in its sole discretion. Hunter provided IP Address Ownership at all times will remain solely with Hunter, and Customer shall have no right to use any Hunter provided IP addresses except as permitted by Hunter during the term of Customer's Agreement. Hunter, in its sole and absolute discretion, may also need to change or remove any and all such IP Numbers and Addresses, and will do so with a minimum notice of (30) days to Customer.

Hunter's allocation of IP Addresses is limited by policies and protocols set forth by the American Registry for Internet Numbers (ARIN). Hunter will periodically review IP Address usage, and if it is determined that Customer is not using Hunter provided IP Addresses in accordance with ARIN's policies, Hunter will revoke authorization to use said IP Addresses. All IP Addresses provided to Customer by Hunter must be utilized within 72 hours of allocation. If allocated IP Addresses are not utilized within this time frame Hunter reserves the right to retract any and all unused IP Addresses without notifying the client.