



## HIGHCOMM, LLC

# TERMS AND CONDITIONS

**These Terms and Conditions of Service are incorporated into, and constitute an essential part of, the Master Services Agreement (the “Agreement”) between Customer and Company. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Agreement.**

- 1. Unauthorized Access/Interference.** Users may not attempt to gain unauthorized access to, or attempt to interfere with or compromise the normal functioning, operation, or security of any network, system, computing facility, equipment, data, or information. Users may not use the Service to engage in any activities that may interfere with the ability of others to access or use the Service or the Internet. Users may not use the Service to monitor any data, information, or communications on any network or system without authorization. Users may not attempt to gain unauthorized access to other User accounts or passwords. Customer is subject to the Fraud Policy found on Company’s website at [www.HighComm.Com/legal](http://www.HighComm.Com/legal)
- 2. Billing Disputes.** Only disputes made in good faith, in a timely manner and properly documented as required herein, as determined by Company in its sole discretion, will be considered by Company. To meet these requirements, Customer must provide Company with written notice of any disputed charge(s) within thirty (30) days of the original Due Date for such charges. Along with such notice, Customer shall set forth in detail all grounds for disputing each charge and provide all documents supporting each dispute. Customer shall not have the right to withhold any amount not properly disputed. Company and Customer shall attempt in good faith promptly to resolve any dispute within thirty (30) days of Company’s receipt of notice of that dispute. If a dispute is not resolved, Company shall have the right to determine in good faith the merit of each dispute and Customer’s associated payment obligation. If Company determines that any amount withheld in dispute is owed, Customer shall pay that amount within ten (10) days of its receipt of written notice from Company of such determination, plus interest at the lower of 2.0% per month or the maximum rate permissible under applicable state law, calculated from the Due Date until the date payment is received by Company. Failure to pay such amount in full within such ten (10) day period shall be a breach hereof and shall entitle Company, in addition to its other remedies at law or equity, to terminate all Services to Customer without notice and without liability of any kind or amount. If Company determines that any amount withheld in dispute is not owed, Company shall issue a credit for that amount on the first invoice issued by Company for a full billing cycle after Company’s determination is made. Customer’s exclusive remedy for issues relating, whether directly or indirectly, to any disputes shall be in the forum and pursuant to the laws as set forth in the Agreement.
- 3. Limitation of Liability.** IN NO EVENT SHALL COMPANY OR ANY AFFILIATED PERSON OR ENTITY BE LIABLE TO CUSTOMER OR ANY AFFILIATED PERSON OR ENTITY FOR ANY LOSS OF PROFIT OR REVENUE OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, RELIANCE, COST OF COVER, SPECIAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES, UNDER ANY THEORY OF



TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, INCURRED OR SUFFERED AS A RESULT OF UNAVAILABILITY, PERFORMANCE, NON-PERFORMANCE, TERMINATION, BREACH, OR OTHER ACTION OR INACTION UNDER THE AGREEMENT, EVEN IF CUSTOMER OR ANY AFFILIATED PERSON OR ENTITY ADVISES COMPANY OR ANY AFFILIATED PERSON OR ENTITY OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. COMPANY SHALL NOT BE RESPONSIBLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION, MAINTENANCE OR REMOVAL OF EQUIPMENT OR THE PROVISION OF SERVICES, AND CUSTOMER HEREBY INDEMNIFIES AND HOLDS HARMLESS COMPANY FROM AND AGAINST ANY LIABILITIES INCLUDING ATTORNEY'S FEES ARISING OUT OF SUCH DAMAGE OR INJURY. CUSTOMER'S REMEDIES FOR CLAIMS UNDER THE AGREEMENT SHALL BE STRICTLY LIMITED TO OUTAGE CREDITS AS DESCRIBED HEREIN.

4. **No Right to Intellectual Property.** The Agreement confers no right to use the name, service marks, trademarks, software rights or licenses, copyrights, or patents of either Party except as expressly provided herein. Neither Party shall take any action, which would compromise the registered copyrights or service marks of the other.
5. **Notices.** All notices, demands, consents, requests, approvals, Customer name and address changes, billing inquiries and requests, or other communication which either Party is required or desires to give or make upon or to the other Party shall be in writing and will be effective when sent, if hand delivered or faxed (with confirmation of receipt); on the next business day if sent by a generally recognized overnight delivery service (subject to confirmation from the service); or on the date received if sent by United States certified or registered mail, return receipt requested. Such Notices will be sent to the addresses set forth in the Agreement on the signature page, unless either Party changes its address by giving written notice of such changes to the other Party in accordance with the Agreement. Customer acknowledges that rate change notices may be delivered by Company to Customer by email or facsimile and shall be deemed to be delivered when received by Customer.
6. **No Third Party Beneficiaries.** The Agreement is being executed for the sole and exclusive benefit of the Parties hereto and is not for the benefit of any third parties. The execution hereof shall not create any obligations or confer any rights on any person or entity other than the Parties hereto.
7. **Obligations of Customer.** Customer acknowledges that it is Customer's sole responsibility to supply immediate notice to Company if Customer changes any of its contact information. If at any time Customer's name or billing information changes from that which is set forth below, Customer shall have five (5) days to inform Company of such changes in accordance with the Notice provisions set forth in the Terms/Conditions.
8. **Relationship of Parties.** Neither the Agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between Company and Customer; the Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party, nor any agent or representative of either Party, shall have, or hold itself out as having; the power or authority to bind or create liability for the other Party by its intentional or negligent act and no claimed act of authority shall have any binding effect.



9. **Voice Services.** Company reserves the right, in its sole discretion, to examine Customer's voice calling usage pattern and adjust the rates or impose a surcharge if such usage pattern is not normal or customary under generally accepted industry standards for the type of voice Service being used ("Non-Customary Calling"). In the event Company adjusts Customer's rates due to Non-Customary Calling, Customer's sole and exclusive remedy shall be to terminate the remaining usage commitment (if any) under the applicable CSO. In such event, Customer shall continue to be liable for any access loop monthly recurring charges through the remainder of the CSO Term.

If 10% or more of Customer's completed calls during any billing cycle constitute calls with a duration of less than six seconds in length (each, a "Short Duration Call"), Company may charge each Short Duration Call during such Billing Cycle (including those Short Duration Calls under the 10% threshold) an additional surcharge per call. Company shall rate all such calls to the fourth (4th) decimal. In the event of any inconsistency between the provisions of this paragraph and an applicable pricing table set forth in an Attachment or a CSO, the provisions in this paragraph shall control.

If the completion percentage of Customer's attempted calls is in excess of 50% (the "Non-Completed Call Percentage Threshold") for any given week on any given trunk group, Company may, in its sole discretion: (a) upon 30 calendar days' email notice, disconnect any and all circuits providing the applicable Service; or (b) charge a surcharge for all circuits providing such Service.

The following minimum utilization requirement ("Utilization Commitment") shall apply to end user dedicated 1+ outbound service and end user Dedicated 8xx Inbound Service:

No Company port ("Port") to which any dedicated access loop ("DAL") is connected may have zero traffic utilization for thirty (30) consecutive days following the first three (3) calendar months after connection of the Port to the DAL.

If the Customer violates the foregoing Utilization Commitment, Company may, in its sole discretion and upon thirty (30) calendar days' e-mail notice, disconnect the DAL from the Port. This will not excuse Customer from paying the monthly charge for such Loop or release Customer from any monthly usage commitment set forth in any applicable CSO.

Subject to Company's Underutilization Policy, if in any applicable monthly or annual period, Customer's total utilization is less than the Utilization Commitment, Customer shall pay Company an underutilization charge ("Underutilization Charge") equal to the difference between the Utilization Commitment and Customer's total utilization of the applicable Services for such monthly or annual period. Such payment shall be in addition to any current usage or recurring monthly charges and shall be paid within thirty (30) days of Customer's receipt of an invoice containing such Underutilization Charge(s). Customer hereby agrees that the Utilization Commitment and Underutilization Charge(s) are reasonable.

10. **Recording of Calls.** Company hereby puts Customer on notice that any calls between Customer and Company personnel may be recorded for quality assurance and other commercially reasonable purpose. Customer hereby acknowledges and agrees that such calls may be recorded.



- 11. Attorney's Fees and Costs.** In the event Company seeks to enforce any of the terms or conditions of this Agreement or protect any of its rights or privileges hereunder, either informally or through formal legal action, Customer shall be liable for all costs incurred by Company as a result thereof, including but not limited to reasonable attorney's fees and court costs (if applicable).
- 12. Service Delivery.** Company will deliver Service to the network point of presence (POP) or demarc, and a Service is considered installed and working when it is turned over clean at the POP or demarc, as applicable. Extension of Service beyond the demarc is the responsibility of Customer. If Company extends Service beyond the demarc, the Service will be considered in working condition once accepted by Customer and Company will have no further obligation to maintain the Service. Any delay in extension of the Service beyond the demarc by Company will not delay the billing of the Service or Customer's liability for such billing.
- 13. Firm Order Commitment.** No Firm Order Commitment ("FOC") issued by Company if any, shall be considered guaranteed in any manner. In no way shall Company's inability or failure to deliver any ordered Service by the date of issuance of an FOC ("FOC Date") be considered a default under the Agreement and Company shall not be liable to Customer for any costs or damages of any kind that Customer may incur in anticipation of the FOC Date, including but not limited to lost revenue, lost profit, travel expenses, technician costs, etc.
- 14. Monitoring and Auditing.** Company may monitor Customer's use of the Services electronically from time to time to insure Company's compliance with all governing SLAs and/or CSO's and/or SAs and may disclose any information necessary to satisfy any Legal Requirement, to operate the Services properly, and/or to protect Company or its other subscribers.
- 15. Customer Must Back-Up Its Own Data and Files.** Company shall have no responsibility for Customer's personal files and data (including voicemail, e-mail, or fax messages) that reside on, are transferred through, and/or that are attached to Company's Provided Equipment or network. Customer shall be solely responsible for independent backup of all such data and files. Company reserves the right to delete Customer's data and files after the expiration or termination of this Agreement.
- 16. Company Has No Control Over the Internet or Public Telephone Network.** CUSTOMER ACKNOWLEDGES THAT COMPANY DOES NOT OPERATE OR CONTROL THE INTERNET OR PUBLIC TELEPHONE NETWORK. CUSTOMER AND ITS AUTHORIZED USERS ASSUME ALL RISK OF LOSS OR DAMAGE THAT MAY ARISE FROM USE OR ACCESS TO THE INTERNET AND/OR PUBLIC TELEPHONE NETWORK, AND ASSUME THE SOLE RESPONSIBILITY TO EVALUATE THE ACCURACY, MERCHANTABILITY, COMPLETENESS AND USEFULNESS OF ALL MERCHANDISE, OPINIONS, ADVICE, SERVICES AND OTHER INFORMATION PROVIDED THROUGH THE SERVICES OR ON THE INTERNET AND/OR PUBLIC TELEPHONE NETWORK.

CUSTOMER ACKNOWLEDGES THAT THE INTERNET CONTAINS UNEDITED MATERIALS, SOME OF WHICH ARE SEXUALLY EXPLICIT AND/OR MAY BE OFFENSIVE. CUSTOMER HAS AUTHORIZED ITS USERS' ACCESS TO THE INTERNET AND SUCH MATERIALS CONTAINED ON IT AT THEIR OWN RISK.



**17. Modification to Company's Services.** Company reserves the right to modify, revise, or upgrade its Monthly Recurring Services, including access procedures, menu structures, commands, documentation, vendors and Services offered; *provided; however*, Company shall not lower the bandwidth and/or other material features of the Services provided to Customer.

**18. Certain Customer Responsibilities.** Customer shall be responsible for providing, maintaining and supporting customer-managed applications, software and software licenses and Customer's LAN including, but not limited to, personal computers, site wiring, switches and related hardware, software, and peripherals, as well as providing electrical power to all devices and backup power supply if so desired. Company shall have no obligation to install, create, configure, or maintain any LAN or to configure, install or support any software, application or other equipment in or on Customer's computers or LAN unless specifically provided for in the CSO's or SOW(s). Even if Company deploys any Customer-provided equipment, software, applications and/or devices on Customer's premises, or installs Customer's applications on Company's servers on Company's premises, Company shall have no responsibility for maintaining or supporting any such Customer-provided computer, facsimile, telephone, paging, networking, software, licenses, applications, equipment or other device used by Customer whether used in conjunction with the Services or not. If Customer engages Company's technical support personnel to diagnose an issue and Company determines in its reasonable judgment that the issue is caused by a device, application, software or situation for which Customer is responsible, Customer shall pay for any time incurred by Company in diagnosing, troubleshooting, and/or repairing any of the above-mentioned equipment, software, applications or devices at Company's then-current hourly rates and terms for time and material service.

Customer and Company shall jointly agree on a user training plan that at minimum details the time(s) and location(s) for training and the amount of training time included for Monthly Recurring Services. In no event shall the length of training time included exceed that required to train in groups of less than five (5) users at a time. Customer shall make its personnel available for training at the times and locations set forth in such plan. If Customer fails to have its personnel available at the agreed upon times, Customer will pay for any additional time required by Company's trainer(s) at the rates set forth in any SOW unless otherwise provided in the Agreement, training will be delivered remotely over Company's network.

**19. Emergency Services and 911 and E-911 Calling.** Company understand acknowledge that VoIP Service may not support traditional 911 or E-911 access to emergency services. Company may not be able to use VoIP Service, IP Phones or CPE and other Equipment to call for emergency assistance by dialing 911. 911 or E-911 calls may be routed to the nearest Public Safety Answering Point office (PSAP). Typically, these calls are answered by the front desk of the PSAP and then routed to an emergency operator at that location, however, some PSAPs will not accept calls in this manner. Additionally, network congestion, radio interference, weak wireless signals, or other causes of reduced Internet access service performance may prevent Company from being able to call 911, or may delay the routing of Company 911 call or E-911 information. Company agrees to notify, as appropriate, any users of Company's VoIP Service of the terms and conditions described herein relating to 911 and E-911. **IN ADDITION, YOU UNDERSTAND AND AGREE THAT IF YOU UNPLUG THE EQUIPMENT PROVIDED TO YOU BY COMPANY TO**



**ENABLE YOUR VOIP SERVICE AND MOVE IT TO A DIFFERENT LOCATION THAT THIS MAY COMPLETELY DISRUPT YOUR ACCESS TO EMERGENCY SERVICES. COMPANY AGREES TO ASSUME ALL RESPONSIBILITY FOR AND INDEMNIFY COMPANY FROM ALL DAMAGES INCURRED BY YOU OR OTHERS AS A RESULT OF YOU UNPLUGGING AND MOVING EQUIPMENT THE PROVIDED TO YOU BY COMPANY TO ENABLE YOUR VOIP SERVICE TO ANOTHER LOCATION. FURTHER, YOU AGREE TO NOTIFY COMPANY IMMEDIATELY IF YOU UNPLUG THE EQUIPMENT PROVIDED TO YOU BY COMPANY TO ENABLE YOUR VOIP SERVICE AND MOVE IT TO A DIFFERENT LOCATION.**

- 20. Loss of Service Due to Power Failure or Internet Service Outage.** Company acknowledges and understands that the VoIP Service does not function in the event of a power failure. Should there be an interruption in the power supply, the VoIP Service will not function until power is restored and may require you to reset or reconfigure the CPE, IP Phones, or other equipment. Company acknowledges and understands that the VoIP Service requires a fully functioning connection to the Internet and that in the event of an Internet service outage the VoIP Service will not function until the Internet connection is restored. Further, you acknowledge and understand that in the event of a power failure or Internet service outage your access to Emergency Services via the VoIP Service may be completely disrupted.
- 21. Parts And Labor.** The Agreement is inclusive of all parts and labor as it pertains to the CSO. The cost and purchase of necessary hardware and software is to be borne by the Customer. Sales and other similar taxes, tariffs, or other regulatory or governmental charges, if any, are to be borne by Customer and are not included in Company's prices.
- 22. Third Party Services.** Company may arrange on behalf of Customer for services to be provided by a third party ("Third Party Services"). For instance, and by way of illustration only, Third Party Services may include Local Access Services. Local Access Services shall be arranged pursuant the Agreement and CSO. Although this Agreement governs the terms of Company's arrangement of Third Party Service, the service level parameters and related warranties (if any), pricing, surcharges, outage credits, required commitments, termination liability, and other service-specific terms of the Third Party Service shall be those of the provider of the Third Party Services ("Third Party Provider").
- 23. Subcontractors.** Company may, at its discretion, engage subcontractors to perform work, provided Company shall fully pay said subcontractor and remain responsible for the proper completion of this Contract. Company warrants that Company and its subcontractors are adequately insured for injury to its employees and others incurring loss or injury as a result of the negligence of Company or its employees and subcontractors in performance of their work under this Contract.
- 24. Operational Matters.** The Customer shall be solely responsible at its own expense for connecting to the Company VOIP network, for procuring the necessary facilities or equipment required to interconnect and for coordinating the provisioning of its respective matching facilities and/or equipment by the anticipated Service Date. Company will use its best endeavors to provide the Services on the anticipated Service Date. The Parties shall coordinate the management of their respective system facilities, with each Party being responsible for



providing and operating, at its own expense, its respective network facilities. The Parties also shall interface on a 24 hours/7 days a week basis to assist each other with the isolation and repair of any facility faults in their respective networks. The Party which pays for the installation and monthly cost of any such interconnection will be considered the owner of the interconnection, and any associated equipment needed.

**25. Telemarketing Traffic.** Company does not accept for termination any dialer-originated telemarketing traffic or any fax broadcasts, including any traffic that would violate the Telephone Consumer Protection Act ("TCPA"), which prohibits the sending of facsimile advertisements without the prior consent of the recipient, do not call laws, or similar consumer protection laws.

**26. Traffic Control By Customer.** In addition to any other terms and conditions of the Agreement or the T&C's, Customer shall bear the following responsibilities in connection with the Service:

Customer shall manage the integrity of the traffic egressing Customer's network;

Customer shall screen and block calls destined to (a) unassigned numbers or (b) numbers with invalid formats;

Customer shall manage and correct, as necessary, any fraudulent calling patterns or calling patterns perceived as fraudulent that may harm or adversely affect Company or its network.

In the event that Customer fails to comply with the requirements described above, Company shall have the right (but not the obligation) to take protective action against Customer in order to protect Company's egress network, which protective action may include, without limitation, the temporary blocking of Customer's traffic until the applicable problem is reasonably resolved.

**27. Service Limitations.** The Service is not intended to replace Customer's primary phone service. All telecommunications traffic carried by the Service(s) must be IP originated. Customer acknowledges and agrees that the Service(s) may not be compatible with all communication equipment. In addition, different regulatory treatment may be applied to the Service(s) than is applied to other telecommunications services, which may affect Customer's rights before regulatory agencies and other governmental bodies.

Company does not support 0+ calling (including without limitation collect or third party billing), 900 and 976 calls, and 10-10 "dial-around" calls. The Service(s) may not support 311, 411, 511 and/or other x11 services in some or all Service areas. Customer understands and acknowledges that access to the aforementioned functionality is not part of the Service(s).

**28. Customer Network Facilities.** Customer shall be solely responsible for any installation, testing, maintenance and security of its own network facilities.

**29. Database Updates.** Customer shall furnish all information reasonably requested by Company in order for Company to provide each Service. Customer shall ensure that all information and data that it has given or that it will give to Company, including but not limited to Customer's billing information, mailing address and email address, is current and



accurate at all times. Company shall have no responsibility to verify the accuracy of any information provided by Customer and shall have no liabilities or obligation relative to any amount billed or notices delivered incorrectly as a result of inaccurate information provided by Customer and Customer's failure to correct or update the same.

**30. Local Number Portability (LNP).** If Customer desires to port a number either to or from Company's network, Customer shall execute and/or deliver to Company all documents and information requested by Company, including, but not limited to, all required Letters of Authorization ("LOA"). Customer acknowledges and agrees that Company shall have the right to refuse to port any number to its network for any reason. Customer agrees that Company, in its sole discretion, may port a number to any Third Party Vendor selected by Company in order to provide the Service(s), and that Company may be required to be named as the Customer of Record for such number. Company will make reasonable commercial efforts to execute all port requests; however, Company has no control over any porting process (either to or from Company's network). As such, Company makes no guaranties or warranties that a number will be ported on a particular day, or that a submitted port request will actually result in the number being ported. Company will inform Customer of port dates when such dates are known to Company. Company reserves the right to change the port date in its sole discretion. Customer agrees to comply with all applicable rules, regulations and orders, including but not limited to all FCC and public utility commission rules regarding number porting. Company makes no warranty that the Service(s) associated with a number will be uninterrupted or error free during any porting process. Customer acknowledges that, if any account associated with the number being ported is canceled or suspended prior to the port date, such number may not be eligible for porting. It is Customer's sole responsibility and obligation to timely cancel its account(s) with the Company from which the number is being ported, and Customer shall be solely responsible for any contractual obligations it has with such Company and any applicable fees and charges, including early termination fees. Number porting is done at the Customer's sole risk. Under no circumstances shall Company be liable for any damages, including, without limitation, loss of profits, associated with porting or not porting a number. Customer agrees to indemnify and hold Company, the third party vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of any number port requested by Customer, including those arising from any slamming complaints.

Customer acknowledges that requests to port numbers away from Company's Network will be completed not less than seven (7) days from the date of the request. Customer also acknowledges that it will not port any vanity or 800 numbers without verification from the end user. Customer agrees to comply with all LNP policies established from time to time by Company. Company may modify its LNP policies at any time with or without notice to Customer and customer agrees to comply with all such modifications.