



## Terms and Conditions

Additional taxes and surcharges will apply. Contract Term: 12-month service agreement commencing on the service activation date. Contract Terms: This agreement shall automatically convert to Month to Month upon completion of initial 12 months. I agree to the Terms and Conditions and Fair Usage Policy\* as posted below and pricing per this quote and agree to make payments to Southwest Voice and Data, Inc. I am authorized to execute this Master Letter of Agency ("LOA") and to request changes in presubscribed carriers for the Customer designated above. I authorized Southwest Voice and Data, Inc to act as Customer's agent for preferred carrier changes. The telephone numbers to which this Master LOA applies are listed on the individual Service Order(s), attached hereto, which is incorporated by reference, and may be amended from time to time. Each amendment to a Service Order(s) or additional Service Orders from the same Customer will constitute an amendment to this Master LOA, and upon receipt by Southwest Voice and Data, Inc will be binding and in effect. Customer's written or electronically signed request to make a change, addition, or deletion to its service, including those made through amendments, will constitute a valid authorization and/or verification of Customer's request to designate as the preferred carrier Southwest Voice and Data Inc or the telephone numbers designated on the Service Order(s) for the services selected. For additional information, please view our Terms and Conditions page on our website.

In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. SERVICES.** Vendor agrees to provide to Customer the selected communication service(s) as set forth in any Service Addenda referencing this Agreement (the "Services").

**2. TERM AND CONSEQUENCES OF EARLY TERMINATION.** This Agreement shall be effective as of the date first set forth above. Each Service shall become subject to this Agreement as of the date of the Service Addendum on which it is listed and shall continue to be subject to this Agreement for the Term set forth in the Service Addendum applicable to such Service for a Term of 12 Months (One Year). If Customer desires to terminate any Services as set forth in a Service Addendum before the initial term has ended or any renewal term, Vendor shall charge and Customer will pay, an early termination fee equal to 80% of the Monthly Recurring Fee for the terminated Service(s) multiplied by the number of months remaining in the Terminated Term on the date of termination. The early termination fee is in addition to the full Monthly Recurring payable for the month of termination. Customer shall have the option to walk away with no questions asked between the execution of this Agreement and 30 days thereafter.

**2.1 AUTO-RENEWAL.** The Agreement will automatically renew at the expiration of the initial term stated above on a month-to-month basis unless either party terminates the Agreement by giving the other party thirty (30) day's advance written notice of non-renewal.

**2.2 NET OF TAXES.** All pricing for Services and other charges due hereunder are exclusive of all applicable taxes, including value added tax, sales taxes, duties, fees, levies or surcharges (including where applicable any Universal Service Fund or similar surcharges) imposed by, or pursuant to the laws, statutes or regulation of any governmental agency or authority, all of which shall be the sole responsibility of Customer. Pricing for services or products in any Service Addenda is subject to change at any time. Vendor shall give Customer thirty (30) days written notice of any pricing changes. Furthermore, Customer agrees to indemnify and hold Vendor harmless from any liability therefore.



Except as set forth herein, all amounts payable by Customer under this Agreement shall be made without any deduction or counterclaim, free and clear of any deduction or withholding on account of any tax, duty or other charges of whatever nature imposed by any taxing or governmental authority.

**2.3 PAYMENT TERMS; LATE PAYMENT CHARGE.** Unless otherwise provided, any recurring charges will be billed in advance and any usage charges will be billed in arrears. Invoices are due and payable in US Dollars within 15 days of the date on the invoice (“Due Date”). Vendor may invoice Customer one month in advance for fixed charges. Customer shall pay a late charge of 5% per month of undisputed amounts, or the highest lawful amount, whichever is higher, on any amount owed but not paid by the applicable Due Date.

**2.4 DISPUTES.** Customer agrees to pay any undisputed amounts by the Due Date. Any bona fide dispute that Customer may have concerning an invoice must be brought to Vendor’s attention by written notice, in hard copy or electronic format, within 15 days of receipt of the invoice with sufficient evidence and documentation for Vendor to analyze the dispute. The billing records of both parties shall be used to resolve such dispute. Vendor may not unreasonably reject Customer’s dispute/billing adjustment request, nor may Vendor reject a dispute without providing reasonable and material written documentation substantiating the justification for rejecting the dispute. The Parties shall cooperate in good faith to resolve any such disputes within a 30 day period thereafter. If Vendor brings legal action for the recovery of any amounts due from Customer under the Agreement, the non-prevailing party shall pay the prevailing Party’s reasonable attorneys’ fees, collection fees and costs actually incurred by the prevailing party.

**2.5 SUSPENSION/REDUCTION/TERMINATION.** In addition to any other rights at law or in equity, Vendor may immediately upon notice as applicable, suspend the delivery of Services, reduce the Services, and/or terminate this Agreement in the event that Customer: (a) exceeds the Credit Limit; (b) fails to make payment when due and such breach is not remedied within 10 business days after receipt of written notice thereof; or (c) becomes insolvent, files or has filed against it any proceeding pursuant to the U.S. Bankruptcy Code or ceases paying its debts generally as they mature.

**2.6** In the event that Customer commits a breach of any of the terms of this Agreement (other than those set forth above in (a) through (c)) and fails to remedy such breach within 30 days after receipt of written notice thereof, Vendor may suspend the delivery of Services, reduce the Services and/or terminate this Agreement, in addition to any other rights at law or in equity. In the event of any termination of this Agreement, Customer shall pay Vendor for all Services rendered through and including the date of termination.

**2.7** Unless expressly provided otherwise in any Service Addendum, Customer may terminate this Agreement or any applicable Service Addendum as of the end of any Service Addendum Term by written notice to Vendor not less than thirty (30) days prior to the expiration of such Service Addendum.



**3. LIMITATION OF LIABILITY; INDEMNITY.** The Parties acknowledge that they have no control over how a foreign administration or third-party carrier establishes its own rules and conditions pertaining to international telecommunications services. The Parties agree that they shall not be liable to each other for any loss or damage sustained by the other Party, its interconnecting carriers, its customers or end users due to any failure in or breakdown of the communication facilities associated with providing the Services or for any delay, interruption or degradation of the Services whatsoever. In no event shall either Party be liable to the other Party for consequential, special or indirect losses or damages sustained by them or any third parties relating to the Services howsoever arising and whether under contract, tort or otherwise (including, without limitation, third party claims, loss of profits, loss of customers or damage to reputation or goodwill).

**3.1** Each Party (for purposes of this paragraph, the “Indemnifying Party”) shall indemnify and hold harmless the other and all of their officers, agents, directors, shareholders, subcontractors, subsidiaries, employees and other affiliates (collectively “Indemnified Party”) from and against any claim, cost, damage, demand, liability, loss, penalty, proceeding or reasonable attorney’s fees imposed upon the Indemnified Party by reason of any claims or damages arising out of or relating to (a) damages to property or bodily injuries, including death, as a result of an intentional or negligent act or omission by the Indemnifying Party or any of its affiliates; and (b) the Indemnifying Party’s breach of the representations and warranties set forth in this Agreement. The Indemnifying Party will not settle any claims, demands, suits, proceedings or actions without the Indemnified Party’s prior written consent, which consent shall not be unreasonably withheld or delayed.

**3.2** In no event will Vendor be liable to Customer for any amount in excess of the aggregate amount Vendor has collected from Customer.

**4. REASONABLE BUSINESS USE.** Customer agrees, represents, and warrants that it is purchasing the Services and/or Equipment (if any) for its own internal use only, and shall not resell, transfer or charge for the Services or the Equipment without the advance written consent of Vendor. Vendor’s Services with usage are for reasonable business use of Customer only. Such use shall not include certain activities including, but not limited to, any autodialing, continuous or extensive call forwarding, continuous or extensive chat, continuous connectivity, fax or Text Message broadcast or blasting, telemarketing (including the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage. Customer will not use the Services to send unsolicited commercial e-mail or Text Messages outside of Customer’s organization. Customer shall not transmit through the Services any unlawful, harassing, defamatory, abusive, threatening, harmful, vulgar, obscene, indecent, or otherwise objectionable communications or material of any kind or nature. Customer further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, violate the intellectual property rights of others, give rise to civil liability or otherwise violate any applicable local, state, national or international statute, regulations, or other law. Without limiting any other remedies hereunder, Vendor reserves the right to immediately terminate or modify the Services of any Customer using Services if Vendor so determines, in its sole discretion, that Customer is not using such Services for Customer’s reasonable business use.

**4.1 INTERNATIONAL USAGE.** Vendor hereby reserves the right, in its sole discretion, to block access to certain international phone numbers in countries that are frequently implicated in fraudulent calls (“Fraud”). At Customer’s request, Vendor may provide access to those destinations on the following conditions: a) It shall be Customer’s responsibility to ensure the account is not used in any fraudulent scheme to make calls or faxes to those Fraud



destinations; b) In the event Customer's account is used fraudulently in connection with the Fraud destinations, Vendor reserves the right to immediately and irrevocably deny the Customer access to any international usage; c) Customer agrees to indemnify and hold harmless Vendor and its affiliates, agents, resellers, and other providers from any damages, losses, liabilities, claims, expenses, and costs (including, without limitation, reasonable attorneys' fees) arising from and or relating to fraudulent or improper calls or faxes to Fraud destinations.

**5. ASSIGNMENT.** This Agreement is personal to the Parties and may not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; except that either Party may assign this Agreement without consent to: (a) any affiliated entity; (b) a successor in interest whether by merger, reorganization or otherwise; or (c) a purchaser of all or substantially all of the assets of the Party. No such assignment of obligations shall relieve the assignor of any liability or obligation hereunder unless otherwise agreed to in writing by both parties.

**6. FORCE MAJEURE.** No failure or omission by either Party to carry out or observe any of the terms and conditions of this Agreement (other than any payment obligation) shall give rise to any claim against such Party or be deemed a breach of this Agreement if such failure or omission arises from an act of God, an act of Government, any cause reasonably beyond the control of a Party, or any other circumstance commonly known as force majeure. In the event that Vendor is unable to provide Service (or a component thereof) for thirty (30) consecutive days due to a Force Majeure event, Customer may terminate the affected Service (or component thereof) with no liability upon written notice thereof.

**7. PUBLICITY, CONFIDENTIALITY.** Each Party shall maintain the confidentiality of all information or data of any nature ("Information") provided to it by the other Party hereto provided such Information contains a conspicuous marking identifying it as "Confidential". In the case of oral information, such Information is characterized as "Confidential" in writing sent by the disclosing Party to the other Party within 15 days of disclosure thereof. Each Party shall use the same efforts (but in no case less than reasonable efforts) to protect the Information it receives hereunder as it accords to its own confidential and proprietary information. The above requirement shall not apply to Information which is already in the possession of the receiving Party through no breach of an obligation of confidentiality to the disclosing Party or any third party, is already publicly available through no breach of this Agreement or has been previously independently developed by the receiving Party. This Agreement shall not prevent any disclosure of Information pursuant to applicable law or regulation, provided that prior to making such disclosure, the receiving Party shall use reasonable efforts to notify the disclosing Party of this required disclosure.

**8. DISCLOSURE.** Without obtaining the prior written consent of the other Party hereto, a Party shall not (a) refer to itself as an authorized representative of the other Party in promotional, advertising or other materials; (b) use the other Party's logo, trade marks, service marks, or any variations thereof in any of its promotional, advertising, or other materials, or (c) release any public announcements referring to the other Party of this Agreement.

**9. NOTICES.** All notices, requests or other communications hereunder shall be in writing, addressed to the Parties at the address set forth in the Service Addendum. Notices mailed by registered or certified mail shall be deemed to have been received by the addressee on the fifth business day following the mailing or sending thereof. Notices sent by facsimile shall be deemed to have been received when the delivery confirmation is received.

**COMPLIANCE WITH LAWS.** This Agreement and its continuance hereof is contingent upon the



obtaining and the continuance of such approvals, consents, governmental and regulatory authorizations, licenses and permits as may be required or deemed necessary by the Parties, and the Parties shall use commercially reasonable efforts to obtain and continue same in full force and effect. The Parties shall not use the Services in any manner or for any purpose which constitutes a violation of applicable laws or regulations in any jurisdiction in which the Services are being provided. The Parties agree that this Agreement is being entered into pursuant to those provisions of the Communications Act of 1934, as amended, and applicable state laws that provide for the sale of telecommunications services among carriers and that all services are being provided pursuant to the rates, terms and conditions set forth in this Agreement and not pursuant to any tariff on file with the Federal Communications Commission or any state or similar regulatory authority. The Parties further agree that the rates, terms and conditions set forth herein and in all Service Addenda shall take precedence over any inconsistent rates, terms and conditions in any federal, state or similar tariff, that neither Party shall have the right to assert the preeminence of its tariffs over any rate, term or condition set forth in this Agreement or any Service Addenda and that any such action by either Party shall be deemed a material breach hereof. The Parties acknowledge their awareness of the U.S. do-not-call requirements and rules set forth in 47 CFR § 64.1200 and 16 CFR Part 310. The Parties are in compliance with the Federal Communication Commission's CPN rules. The Parties shall indemnify each other against any violation of the terms of this Article 15. Customer acknowledges that for 911 services to function properly, the caller must be calling from the location associated with the number and agrees to execute vendor's Disclaimer and Waiver Addenda.

**9.1** The Parties agree to indemnify each other from all costs, expenses, claims, or actions arising from allegedly fraudulent calls through the Services. The Customer is responsible for payment of the total invoice amount from the Vendor regardless of whether its customers pay for those calls or they are allegedly fraudulent calls. The Parties agree to mutually implement suggestions to avoid any fraudulent activity through the Services.

**9.2** Customer agrees to reasonable usage for any unlimited calling plans it may purchase through any applicable Service Addendum. Vendor reserves the right to terminate or restrict services without notice.

**9.3 SEVERABILITY AND WAIVER.** If a part/provision of this Agreement is or becomes illegal, invalid or unenforceable, that part/provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the validity or enforceability of the remaining parts/provision of this Agreement. No waiver by either Party to any provisions of this Agreement shall be binding unless made in writing.

**9.4 RELATIONSHIP OF THE PARTIES.** The relationship between the Parties shall not be that of partners, and nothing herein contained shall be deemed to constitute a partnership between them, a joint venture, or a merger of their assets or their fiscal or other liabilities or undertakings. Neither Party shall have the right to bind the other Party, except as expressly provided for herein.

**9.5 GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Texas without reference to its principles of conflict of laws. The Parties irrevocably consent and submit to the personal jurisdiction in the courts of the State of Texas for all matters arising under this Agreement.

**9.6 ENTIRE AGREEMENT.** This Agreement, including the relevant Service Addenda represent the entire agreement between the Parties and supersedes and cancels all previous negotiations, agreements or commitments



(whether written or oral) with respect to the subject matter hereof. Notwithstanding the foregoing, any financial documents and/or representations provided by a Party pertaining to the credit application and/or financial information shall be deemed a part of this Agreement and the disclosing Party shall be responsible for advising the other Party of a material change in the disclosing Party's financial condition. Except as otherwise agreed herein, this Agreement may only be modified in writing signed by authorized representatives of both Parties. The headings in this Agreement are for convenience of reference and shall not affect its construction or interpretation. In the event of any conflict, inconsistency or ambiguity between the terms of this Agreement, any Service Addendum and/or the Tariffs, the interpretation shall be resolved by giving precedence to such documents in the following descending order: (a) this Agreement; (b) the Service Addenda; and (c) the Tariffs. This Agreement may be executed in as many counterparts as may be required, each of which when delivered is an original but all of which taken together constitute one and the same instrument. This Agreement may be executed by facsimile and the facsimile execution pages will be binding upon the executing Party to the same extent as the original executed pages.



## SERVICE LEVEL AGREEMENT

This SLA sets forth the service standards for Vendor’s Services provided to Customer. In the event Vendor fails to meet the service availability standards, Customer may, subject to certain conditions and exclusions, be entitled to certain credits against its monthly recurring charges in accordance with this SLA.

**1. Definitions.** As used in this SLA, the capitalized terms listed in this Section 1 and derivatives thereof shall have the meanings respectively ascribed to them in this Section 1. Certain other capitalized terms shall have the meanings ascribed to them elsewhere in the Agreement. “Monthly Recurring Charge” (or “MRC”) means the recurring charge incurred each month for a certain Service as set forth in a Master Service Agreement (or “MSA”), Service Addendum, and/or Service Change Order (or “SCO”) between Vendor and Customer; “Service” means a Service (or portion of a Service) provided by Vendor in accordance with an MSA, Service Addendum, or SCO between Vendor and Customer; “Vendor Platform” shall mean the network facilities or equipment owned and/or procured by Vendor to provide the Vendor Service.

**2. NOC Set Up.** Vendor shall perform NOC set up services, which include, but are not limited to vendor platform connectivity/configuration, and setup of Customer’s profile within Vendor’s network management system and/or trouble management system.

**3. Voice Availability.** Voice Availability is based on “Voice Platform Downtime,” which exists when a particular SIP Trunk Session is unable to transmit inbound and/or outbound voice calls and such failure is recorded in the Vendor’s trouble ticket system. Voice Platform Downtime is measured from the time a trouble ticket is opened in the Vendor’s system to the time the affected service is able to transmit inbound and outbound voice calls. In order to qualify for credits, the outage must be deemed a “Service Outage,” which is defined as a service outage network condition causing major service disruption to the customer relative to a SIP network segment provided by Vendor for which a trouble ticket is opened. A service outage on the Customer’s local Internet network that causes a service disruption will not be considered a Service Outage. This Voice Availability SLA does not apply to call quality. Subject to the foregoing limitations, each time Voice Availability is less than Vendor’s 99.9% availability goal, Customer qualifies for a percentage credit as shown in the table below, prorated from the MRC of the affected service, up to the maximums indicated below. The maximum credits given for a specific outage will not exceed ten (10) days’ credit.

Goal	Voice Platform Downtime	Amount of Monthly Bill Credit
99.9%	10 to 30 minutes	1 day’s credit
99.9%	31 to 60 minutes	2 days’ credit
99.9%	61 to 120 minutes	4 days’ credit
99.9%	121 to 240 minutes	7 days’ credit
99.9%	Over 241 minutes	10 days’ credit



**4. Customer Responsibility** Customer is ultimately responsible for the quality of the last mile Internet connection which will in large part determine the quality of service the Customer experiences. Customer shall be responsible for the maintenance, repair, operation and performance of any Customer provided equipment on which Services are installed.

**5. Response Notification SLA.** Response time is calculated from the time Customer dispatches a ticket to Vendor until the time that Vendor provides a response to the ticket.

Priority Definitions (All Tickets)

Priority 1: This priority is reserved for vendor's system-wide outages that affect all customers. Examples include no dial tone, unable to complete any calls, no web access to the vendor's portal (if provided), etc.

Priority 2: This is the priority when severe problems are experienced such as partial service outage on multiple accounts. Examples include outbound and/or inbound calls to/from specific areas not completing, problems with call quality, certain features not functioning properly, etc.

Priority 3: This is the default priority for day-to-day account centric problems such as access to a help desk account, password renewal, etc.

Priority 4: This is for un-important issues or tasks; rarely used.

Vendor shall use reasonable commercial efforts during standard USA business hours to adhere to the response times outlined below:

Priority 1 – 30 minutes to respond

Priority 2 – 2 hours to respond

Priority 3 – 8 hours to respond

Priority 4 – Commercially reasonable effort

In the event that Vendor does not meet the Response Notification objective with respect to Customer's Service, Customer may, subject to Section 3, be entitled to a flat credit of two percent (2%) of the total MRC(s) for the applicable month for the affected Service(s) identified in the trouble ticket(s) for that month.

**7. Outage Credit Request.** To request an Outage Credit, Customer shall file a claim in writing (or via fax or email) with Vendor's client services manager or customer service within thirty (30) days of the end of the month of the asserted Outage for the affected Service ("Outage Request"). Outage Credits will be credited on Customer's next invoice. Outage Credits only apply to the Service affected by the Outage. In the event Customer has not timely complied with this Section, Vendor shall not be obligated to provide any Outage Credits. Customer must be in good standing to receive an outage credit and must submit trouble tickets.

**8. Scheduled Maintenance:** Vendor may, upon twenty-four (24) hours notice, suspend the provision of all or any of the Services to Customer during the Maintenance Window (defined below), in order to maintain, test or configure



the Services, to upgrade hardware or software, increase capacity or to perform such other non-emergency work as Vendor may determine is necessary or appropriate (“Scheduled Maintenance”). The Maintenance Window means 12:00 a.m. to 5:00 a.m. (local time) and certain scheduled weekends, as required (the “Maintenance Window”).

**9. Emergency Maintenance:** Vendor may, without notice, perform work at any time to correct, replace or repair Vendor Platform conditions that are likely to cause an Outage, and that require immediate correction (“Emergency Maintenance”). In situations in which Emergency Maintenance is necessary, Vendor shall use commercially reasonable efforts to provide as much notice as is practicable under the circumstances.

**10. Exclusions.** Service Credits will not be issued where the SLA is not met as a result of: (a) the acts or omissions of Customer, its employees, contractors or agents or its End Users; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Vendor; (c) Force Majeure events; (d) scheduled service maintenance, alteration or implementation; (e) the unavailability of required Customer personnel, including as a result of failure to provide Vendor with accurate, current contact information; (f) Customer’s failure to release the Service for testing or repair and continuing to use the Service on an impaired basis; (g) Vendor’s termination of Service for Cause or Customer’s use of Service in an unauthorized or unlawful manner.

This SLA constitutes the entire agreement by Vendor and Customer pertaining to the subject matter hereof. Any and all Services pertaining to the subject matter hereof and active as of the Effective Date shall be governed by the terms and conditions herein.

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