



bandwidth

## MASTER SERVICE AGREEMENT

This Master Services Agreement is made effective as of Sep 21, 2016 (the “**Effective Date**”), by and between Bandwidth.com, Inc., a Delaware corporation with its principal office located at 900 Main Campus Drive, Suite 500, Raleigh, NC 27606 (“**Provider**”), and Telesmart, Inc., a Oregon corporation with its principal office located at 56825 Venture Lane, Suite 110 Sunriver OR 97707 (on behalf of itself and its affiliates, “**Customer**”). Both Provider and Customer may also be referred to as “**party**” or “**Party**”, or when referred to collectively or together, may also be referred to as either the “**parties**” or “**Parties**”. Capitalized terms not otherwise defined in this Agreement (as defined below) will be as defined in Exhibit A attached to this Agreement.

Customer desires to purchase, and Provider desires to supply, certain communications services identified pursuant to this Agreement from time to time as described in this Agreement (“**Services**”) under the following terms and conditions.

### THIS AGREEMENT GOVERNS CUSTOMER PURCHASES OF PRODUCTS AND/OR SERVICE(S) FROM PROVIDER THROUGH PROVIDER'S WEBSITE, API, PORTAL, OR BY CUSTOMER SUBMISSION OF A SERVICE ORDER FORM VIA PHONE, FACSIMILE, EMAIL, MAIL, OR ANY OTHER MEANS.

**1. TERM.** The term of this Agreement will commence on the Effective Date and will continue for the longer of (i) twenty four (24) months, or (ii) the term of any SOF(s) (as defined below) entered into pursuant to this Agreement (the “**Initial Term**”). The Initial Term will automatically extend thereafter upon the same terms and conditions applicable during the Initial Term for additional consecutive term(s) (each a “**Renewal Term**”) of one (1) month until this Agreement is terminated pursuant to Section 7 below (the Initial Term and all Renewal Terms collectively referred to herein as the “**Term**”). For clarity, if any SOF automatically renews during the Initial Term or any applicable Renewal Term for a period longer than contemplated in the immediately preceding sentence, then, effective as of such automatic renewal of such SOF, this Agreement will automatically extend for a term at least coterminous with such SOF. Provider will not accept any new SOFs from Customer at any time after (i) either Party has notified the other of the termination of this Agreement pursuant to Section 7 below; or (ii) Provider has notified Customer of a Default (as defined below), unless such Default will thereafter be timely cured by Customer or waived in writing by Provider.

### 2. SERVICE ORDER PROCEDURE; RATES.

(a) During the Term, Customer may submit to Provider service order(s) requesting Service(s) as described in Service Order Forms (and/or the Terms and Conditions incorporated therein by reference) (each individually an “**SOF**” and collectively the “**SOFs**”), Rate Sheets, Terms and Conditions, Exhibits, any other attachments to this Agreement, and Provider’s Acceptable Use Policy (“**AUP**”) posted by Provider from time to time at [www.bandwidth.com/resources/legal](http://www.bandwidth.com/resources/legal), all of which are fully incorporated by reference within this Agreement between Customer and Provider (collectively referred to herein as the “**Agreement**”). Provider reserves the right in its sole discretion to reject or request modifications to any SOF(s) and/or Terms and Conditions Customer presents from time to time during the Term prior to acceptance of the applicable SOF by Provider. Provider will notify Customer of acceptance (in writing or electronically) of any applicable SOF. Upon acceptance of an SOF, Provider will use commercially reasonable efforts to meet Customer’s requested service start date(s), and will notify Customer if Provider does not anticipate that Provider can meet any requested service start date(s). Customer’s obligation for payment of Service(s) and the term of each SOF will commence on the applicable service start date (or any other commencement date provided in the applicable SOF) (“**Service Commencement Date**”). Any SOF not accepted by Provider will not be a valid SOF pursuant to this Agreement and Provider will have no liability or other obligations with respect to such SOF; provided, however, if Customer utilizes Service(s) without first submitting an SOF accepted by Provider, Provider’s standard Terms and Conditions applicable to such Service(s) will apply and Customer will remain obligated to pay for such Service(s) pursuant to this Agreement.

(b) All Service(s) will be provided in accordance with applicable SOFs, Terms and Conditions and Rate Sheets and any applicable Tariffs (collectively referred to herein as the “**Rates**”) for the applicable jurisdictions in which Service(s) are provided, in accordance with the applicable provisions of this Agreement. If no applicable Rates are attached (or Customer utilizes Service(s) without first submitting an SOF accepted by Provider), Provider’s standard rates will apply and will constitute the “**Rates**” for the purposes of such Service(s). Miscellaneous charges and/or fees imposed by any third party carrier or any underlying provider from time to time, whether charged to or against Provider, will be payable by Customer, including, without limitation, any cost recovery fee which will represent an accurate and non-inflated recovery of the miscellaneous charges and/or fees to or against Provider associated with the provision of Service(s) by Provider to Customer. Provider will use commercially reasonable efforts to provide to Customer information regarding any such miscellaneous charges and/or fees, including, without limitation, prior notice of any such charges and/or fees if reasonably practicable under the circumstances.

### 3. PAYMENT.

(a) Unless the Terms and Conditions of any applicable SOF provide for prepayment to Provider by Customer with respect to any applicable Service(s), Customer will pay for all Service(s) not later than the date fifteen (15) calendar days immediately after the invoice date reflected on Provider's invoice ("Due Date"), which invoice Provider will promptly deliver to Customer. If any Customer payment is not received by any applicable Due Date, Provider may impose a late payment charge of the lesser of (i) 1.5% per month, or (ii) the highest legally permissible rate, and apply such charge to the amount past due. It will not be a defense to nonpayment that all or any portion of charges for Service(s) were incurred by unauthorized users. Customer will reimburse Provider for reasonable attorneys' fees and any other costs associated with collecting delinquent or dishonored payments. Restrictive endorsements or other statements on checks accepted by Provider will not apply.

(b) Except for taxes based on Provider's net income (and/or unless expressly provided otherwise in any applicable SOF or Rate Sheet), all applicable federal, state or local taxes and all use, sales, commercial, gross receipts, privilege, surcharges, or other similar taxes, license fees, miscellaneous fees, and surcharges, including, without limitation, costs allocable or allocated to Provider in connection with any system mandated by any federal, state or local authority if administered by any such federal, state or local authority or by any third party, whether charged to or against Provider, will be payable by Customer, including, without limitation, any cost recovery fee which will represent an accurate and non-inflated recovery of Provider's, or any underlying provider's, miscellaneous tax, surcharge, and fee payments to federal, state or local governmental authorities associated with the provision of Service(s) by Provider to Customer pursuant to this Agreement. Provider retains the right to invoice Customer for costs incurred by Provider from time to time related to Provider's compliance with court orders and other actions of governmental agencies or entities, including, without limitation, subpoenas duces tecum (and similar subpoenas), related to telephone numbers and other information related to or associated with Customer or Customer's customers and/or End Users if such court orders and other actions of governmental agencies or entities with respect to Customer or Customer's customers and/or End Users materially exceed customary industry standards.

(c) Notwithstanding the foregoing provisions of Section 3(b) above, if Customer intends to resell Service(s) and provides Provider written documentation of Customer's tax-exempt status in a form reasonably acceptable to Provider, Provider will not charge Customer any taxes exempted due to Customer's request and supporting documentation. Such documentation of Customer's tax-exempt status will include a valid and properly executed tax exemption certificate(s) and/or statement(s) of indemnification for any taxes from which Customer seeks exemption. Customer will pay any and all remaining non-exempt charges. For clarity, the establishment of exemption from any taxes is the sole responsibility of Customer and Provider is not obligated to consider any retroactive request for tax exemption.

(d) Provider may require that Customer provide Provider with credit information as requested by Provider. Provider may require Customer to make a security deposit as a condition of Provider's acceptance of any SOF. Provider may, in any combination and at any time: (i) require a security deposit, in an amount determined by Provider, to continue Service(s) if Provider determines that (x) Customer's level of credit, as approved by Provider from time to time, is insufficient, (y) the level of expected and/or actual Customer Usage warrants a security deposit, or (z) Customer has failed to timely pay in full for the Service(s); (ii) demand immediate payment by wire in accordance with Provider's instructions (or other prompt means approved by Provider) and/or discontinue Service(s) if Customer's level of credit, as approved by Provider from time to time, is insufficient; (iii) if Customer fails to make payment pursuant to Section 3(a) or clause (ii) above at any time, Provider may, in addition to any other rights or remedies Provider may have pursuant to this Agreement, immediately suspend or terminate Service(s), any applicable SOF(s) (or any portion thereof) and/or this Agreement without prior notice; and/or (iv) if Customer has a pre-payment arrangement and Customer's pre-paid balance is depleted or such balance is insufficient to cover Customer's expected and/or actual usage during the time required for Customer to replenish its pre-paid balance, Provider may immediately suspend or terminate Service(s) and/or this Agreement without prior notice.

(e) Provider retains the right to invoice, including any amended or corrected invoices, for Service(s) for a period of up to six (6) months after the date Provider provided the Service(s) to Customer; provided, however, Provider retains the right to invoice, including any amended or corrected invoices, (i) for a period of up to twelve (12) months with respect to any charges or surcharges pursuant to any applicable SOF with respect to any calls and/or Usage sent to Provider by Customer for termination that are not IP Originated; and (ii) for a period of up to nine (9) months with respect to any charges pursuant to any applicable SOF with respect to Average Call Duration, any Short Duration Call or Abandoned Calls, any payphone calls, and/or any surcharge. Provider will retain such rights for such period notwithstanding any prior invoices to Customer for the same period(s) and regardless of any otherwise conflicting terms or conditions of this Agreement. For the duration of this period, Provider will not be deemed to have waived any rights with regard to invoicing for the provided Service(s) that are subject to this period, nor will any legal or equitable doctrines apply, including estoppel or laches.

**4. BILLING DISPUTES.** If Customer disputes any invoiced charges, Customer may withhold any amounts disputed in good faith, will pay in full all undisputed charges invoiced by the applicable Due Date, and will submit written notification on or before the applicable Due Date through Provider's customer portal found at <https://support.bandwidth.com/home> (or such other means Provider may provide to Customer from time to time by written notice). Such notification will include Customer's complete contact information, the specific dollar amount in dispute, detailed supporting reasons for the dispute, and any supporting documentation, if available. The Parties will work together in good faith to investigate any disputed charges and use commercially reasonable efforts to resolve any payment dispute within thirty (30) calendar days after receipt of such notification from Customer.

Any dispute resolved in favor of Customer will be credited to Customer's next invoice(s); any disputed amounts resolved in favor of Provider will be due and payable by Customer immediately.

**5. DEFAULT; REMEDIES.** Upon the occurrence of a Default, the non-defaulting Party may, in addition to delivering an Escalation Notice pursuant to Section 17(a) below: (i) if the defaulting Party is Customer, suspend Provider's performance of any or all Service(s) without liability or further obligation immediately; (ii) terminate any or all SOF(s) (or any portion thereof) without liability or further obligation immediately upon written notification of termination to Customer; and/or (ii) terminate this Agreement without liability or further obligation immediately upon written notification of termination to the other Party. All remedies expressed in this Agreement are without exclusion as to any rights or remedies that the parties may have under this Agreement or which may be recognized under controlling law.

**6. ACCEPTABLE USE POLICY.** All use of Service(s) must comply with Provider's Acceptable Use Policy ("AUP") posted by Provider from time to time at [www.bandwidth.com/resources/legal](http://www.bandwidth.com/resources/legal). The AUP is incorporated herein by reference and subject to change. Provider reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong, including, without limitation, due to or arising as a result of any violation of the AUP.

## 7. TERMINATION.

(a) Unless expressly provided otherwise in any applicable SOF, Customer may terminate this Agreement or any applicable SOF(s) as of the end of the Term (or the term of any applicable SOF(s)) by written notice to Provider through Provider's customer portal found at <https://support.bandwidth.com/home> (or such other means Provider may provide to Customer from time to time by written notice) not less than ninety (90) calendar days prior to the end of the Term and/or ninety (90) calendar days prior to the expiration of any applicable SOF(s), as the case may be. Provider will disconnect, or will cause to be disconnected, such Service(s), pursuant to such written notice. Customer will notify Provider of any and all requests for termination or disconnection of Services, including, without limitation, the porting out of billable telephone numbers (also referred to as DIDs), whether port outs are known or unknown by Customer; Customer remains solely responsible for all billable charges related to ported out DIDs.

(b) Provider may terminate this Agreement or any applicable SOF(s) (or any portion thereof) as of the end of the Term (or the term of any applicable SOF(s)) by written notice to Customer (via email or other written notice) not less than thirty (30) calendar days prior to the end of the Term and/or thirty (30) calendar days prior to the expiration of any applicable SOF(s), as the case may be.

(c) In addition to any other rights that Provider has or may have pursuant to this Agreement, including, without limitation, Section 5 above, if Provider determines, in its discretion, that Customer's use of any Service(s) (or the specific method or technology utilized by Customer and/or Customer's customers and/or End Users) materially and adversely interferes with or otherwise places in jeopardy Provider's network, other customers, partners and/or the overall business(es) of Provider or any of Provider's other customers or partners, Provider may suspend or terminate this Agreement, any applicable SOF(s) and/or any or all Service(s) immediately upon as much prior notification to Customer as is practicable under the circumstances, if any.

(d) Upon termination of this Agreement and/or any applicable SOF(s), then Provider may collect from Customer: (i) all amounts due and payable pursuant to this Agreement, including, without limitation, any document incorporated by reference into this Agreement, for Service(s) provided prior to such termination, including, without limitation, any past due balance at the time of such termination; (ii) the applicable monthly minimum commitment(s), if any, for any Service(s) for the remainder of the Term applicable pursuant to any applicable SOF(s), Terms and Conditions or any other document or agreement between Customer and Provider, multiplied by the number of months remaining in the Initial SOF Term (*pro rated* for any partial months remaining in the Initial SOF Term); and (iii) any early termination charges, if any, specified in any applicable SOF(s), Terms and Conditions, or any other document or agreement between Customer and Provider ("**Early Termination Charges**"). Customer acknowledges and agrees that the damages arising due to the early termination of this Agreement would be difficult to determine and, therefore, for the sake of efficiency, economy and convenience, any Early Termination Charges constitute liquidated damages and are not intended as a penalty or to be punitive in nature.

(e) If this Agreement is terminated for any reason other than Default attributable to the acts or omissions of Customer, Provider will continue to provide the Service(s) for a ninety (90) day period immediately after such termination (the "**Wind Down Period**") to enable Customer to locate and transition to an alternative provider. During the Wind Down Period, the charges set forth and payment terms prescribed in this Agreement, any applicable SOF, Terms and Conditions, or any other applicable document or agreement will remain applicable, including, without limitation, any then-applicable monthly minimum commitment. A Wind Down Period will not apply upon the expiration of the Initial Term or any Renewal Term if Customer gives notice of nonrenewal to Provider pursuant to Section 1 and Section 7(a) above; for clarity, a Wind Down Period will apply upon the expiration of the Initial Term or any Renewal Term if Provider gives notice of nonrenewal to Customer pursuant to Section 1 and Section 7(b) above. If a Default attributable to the acts or omissions of Customer occurs during the Wind Down Period, then Provider may immediately terminate the Wind Down Period.

## 8. MAINTENANCE; SERVICE MODIFICATIONS.

(a) Provider may from time to time interrupt or otherwise impact Service(s) for routine maintenance. Provider will make commercially reasonable efforts to provide to Customer reasonable advance notification (via phone, email or other means) of such maintenance. Provider will use commercially reasonable efforts to perform such maintenance in a manner that will not unreasonably interrupt Service(s). Provider normally will perform maintenance between the hours of 12:00 AM and 6:00 AM Eastern. If Provider determines that emergency maintenance is necessary for any reason, Provider will make commercially reasonable efforts to notify Customer with respect to the anticipated down-time and/or other information pertinent to the affected Service(s). Customer will provide Provider contact(s) for communications contemplated by this Section 8(a). Customer authorizes Provider to monitor and record calls to or from Provider concerning the Services for Provider's training and quality control purposes.

(b) Unless the terms of an SOF(s) or applicable Terms and Conditions expressly provide otherwise, Provider may amend or modify Service(s), any applicable SOF(s), any Rate Sheets, any Terms and Conditions and/or any Addendum(s) attached or applicable to any Service(s) or any SOF(s) thirty (30) calendar days after written notice to Customer. However, except as otherwise expressly provided in this Section 8(b), if the amendment or modification (i) materially adversely affects any applicable Service(s), or (ii) increases the cost of such Service(s) more than ten percent (10%) of the total sums to be paid by the Customer for the Service(s) specified in the applicable SOF (other than increases to Rates pursuant to any Terms and Conditions applicable to any applicable SOF(s) or as otherwise provided below), Customer may terminate the applicable SOF(s) without obligation for any otherwise applicable Early Termination Charge by written notice delivered to Provider not later than the date thirty (30) days immediately after Customer's receipt of Provider's written notice of such amendment or modification. If Customer terminates any applicable SOF(s) pursuant to the immediately preceding sentence, Customer will pay Provider promptly all amounts due and payable pursuant to this Agreement for Service(s) provided prior to such termination. If Customer does not notify Provider of the termination of the applicable SOF(s) prior to the date thirty (30) days immediately after Customer's receipt of Provider's written notice of such amendment or modification, Customer will be deemed to have received and accepted such amendment or modification. Notwithstanding the foregoing provisions of this Section 8(b), Customer will have no right to terminate if the applicable amendment or modification (i) is imposed or required by any governmental, industry, regulatory or other similar authority; (ii) increases the costs of any Service(s) attributable to fees, taxes or any other charges imposed or required by any governmental, industry, regulatory or other similar authority, or (iii) is expressly provided for under the terms of an SOF(s) or applicable Terms and Conditions.

## **9. LIMITATION OF LIABILITY; NO WARRANTIES; INDEMNIFICATION.**

(a) Unless caused by Provider's willful misconduct or gross negligence, Provider will not be liable for (i) delays in the installation, commencement or restoration of any Service(s); (ii) any temporary or permanent cessation of any Service(s); (iii) errors, malfunctions, delays or defects in the transmission of any Service(s); and (iv) to the fullest extent permitted by applicable law, for injury to or death of any person and/or damage to or loss of any property arising out of or attributable to any Service(s) and/or performance pursuant to this Agreement. Provider will not be liable for loss or damage occasioned by any Force Majeure Event.

(b) Except due to (i) damages caused by Provider's willful misconduct or gross negligence; (ii) Provider's breach of its obligations pursuant to Section 18 below; and/or (iii) with respect to any indemnification obligation of Provider, the aggregate liability of Provider hereunder, for any and all causes of action and/or claims, liabilities (including reasonable attorneys' fees), expenses, damages, costs or losses arising out of or relating to this Agreement, whether based in contract, warranty, negligence or otherwise, including, without limitation, intellectual property infringement (if any indemnity is expressly provided pursuant to Section 9(f) below), will in no event exceed (i) except as provided in clause (ii) or clause (iii) below, in the aggregate an amount equal to six (6) times the aggregate amount invoiced by Provider for Service(s) rendered during the calendar month prior to the calendar month in which the event giving rise to liability occurred, (ii) if the event giving rise to liability relates to 911 / E911 Services, in the aggregate an amount equal to the amount invoiced by Provider for such Service(s) rendered during the calendar month prior to the calendar month in which the event giving rise to liability occurred, or (iii) if applicable, the replacement value of any Customer Equipment (as defined below) lost or damaged as a result of Provider's willful misconduct.

(c) EXCEPT DUE TO (I) DAMAGES CAUSED BY A PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, (I) A PARTY'S BREACH OF ITS OBLIGATIONS PURSUANT TO SECTION 18 BELOW AND/OR (III) WITH RESPECT TO ANY INDEMNIFICATION, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS OR HARM TO BUSINESS AND WHETHER LIABILITY IS ASSERTED IN, AMONG OTHER THINGS, CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT PRODUCT LIABILITY) AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES AND AGENTS FROM ANY SUCH CLAIM TO THE EXTENT EXCLUDED BY THE FOREGOING EXCLUSION OF NON-DIRECT DAMAGES. WITH RESPECT TO ANY INDEMNIFICATION, THE INDEMNIFYING PARTY ONLY WILL BE LIABLE TO THE OTHER PARTY FOR THE LOSSES INCURRED BY THE INDEMNIFIED PARTY AND SUBJECT TO INDEMNIFICATION. THE PARTIES WAIVE ANY CLAIM THAT THE

EXCLUSIONS OR LIMITATIONS OF THIS SECTION 9 DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE.

(d) PROVIDER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, FOR THE SERVICE(S) (INCLUDING CUSTOMER EQUIPMENT) PROVIDED PURSUANT TO THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT WARRANT THAT THE SERVICE(S) WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICE(S) WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICE(S) WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. PROVIDER EXERCISES NO CONTROL OVER, AND HEREBY DISCLAIMS ANY RESPONSIBILITY FOR, THE ACCURACY AND QUALITY OF ANY INFORMATION TRANSMITTED WITH THE USE OF THE SERVICE(S). CUSTOMER ASSUMES TOTAL RESPONSIBILITY AND RISK FOR CUSTOMER'S OR ITS CUSTOMER'S AND/OR END USER'S USE OF THE SERVICES, INCLUDING ANY INFORMATION TRANSMITTED, PROVIDED BY PROVIDER. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE ACTIONS OF THIRD-PARTY TELECOMMUNICATIONS SERVICE PROVIDERS.

(e) EXCEPT AS OTHERWISE SET FORTH OR PROVIDED UNDER THIS AGREEMENT, THE SERVICE(S) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

(f) Each Party will defend, indemnify and hold the other Party, its subsidiaries and affiliates and their respective directors, officers, employees, agents, successors and assigns harmless from and against any and all actual or alleged costs, damages, expenses, losses, and/or liabilities of any kind, including, without limitation, reasonable attorneys' fees, arising from any action, claim, suit or proceeding commenced by any third party for damages to any tangible property or bodily injury to or death of any person arising out of or caused by the indemnifying Party's gross negligence or willful misconduct, except for those costs, damages, expenses, losses, and/or liabilities of any kind contributorily caused by any act or omission of the indemnified Party or its directors, officers, employees, agents or unless otherwise specified in any applicable SOF or Terms and Conditions. The indemnified Party will promptly notify the indemnifying Party in writing of any such action, claim, suit or proceeding. The indemnifying Party will control the response to any such action, claim, suit or proceeding and the defense thereof, including, without limitation, any agreement relating to the settlement thereof. In addition to the foregoing general indemnity, Customer will at all times defend, indemnify and hold Provider, its subsidiaries and affiliates and their respective directors, officers, employees, agents, successors and assigns harmless from all claims arising out of or due to the utilization by any other person or entity to which Customer provides any services in connection with or utilizing any Service provided to Customer pursuant to this Agreement (including, without limitation, any of Customer's customers and/or End Users), including, without limitation, due to (i) the failure of Customer or any of Customer's customers and/or End Users to comply with any applicable laws; (ii) claims for libel, slander, and/or invasion of privacy; (iii) claims for infringement of copyright and/or trademark; (iv) claims for infringement of patents arising from combining or using services or equipment furnished by Provider with services and/or equipment furnished by any other person or entity; and (v) claims arising from any failure, breakdown, interruption or deterioration of service provided by Provider to Customer or by Customer to Customer's customers and/or End Users. Customer will indemnify and hold harmless Provider from and against any actual or alleged losses, costs, claims, liability of any kind, damages, or expenses or fees (including, without limitation, reasonable attorneys' fees) on the part of or which may be incurred by Customer, Provider or any third-party relating to or arising from the use or operation of the Customer Equipment (as defined below). Customer's indemnification in this subsection includes any alleged or actual losses or claims in connection with or arising due to the unauthorized access to or use of the Service(s) by any third-party through or in connection with the Customer Equipment, whether or not such unauthorized access is accidental, intentional, unintentional, or by fraud and whether or not Customer had or should have had knowledge of such unauthorized access. In all such cases of unauthorized access, Customer retains full and sole responsibility for any and all charges for the Service(s) provided by Provider incurred due to such unauthorized access.

## 10. EQUIPMENT AND ELECTRONIC TOOLS.

(a) Customer has the sole and exclusive responsibility for the installation, configuration, security (including, without limitation, firewall security policies, even if Customer uses a third party to configure and implement such measures), and integrity of all Customer facilities, systems, equipment, proxy servers, software, networks, network configurations and the like (the "**Customer Equipment**") used in conjunction with or related to the Service(s) provided by Provider, including, without limitation, Customer's connectivity to Customer's customers and/or End Users.

(b) If Provider grants Customer access, either by online access, by API or access by any other means, to a service ordering/management system and/or any other electronic tools or computer software in connection with the Service(s) or the use of any Service(s) (collectively, the "**Electronic Tools**"), the following apply:

(i) Subject to Customer's compliance with this Agreement, Provider grants Customer a non-exclusive, non-transferable license to use such Electronic Tools solely in connection with Customer's internal use of the Service(s) during the Term. The Electronic Tools may be incorporated into, and may incorporate itself, software and other technology owned or controlled by third parties. Any such third party software or technology incorporated in such Electronic Tools falls under the scope of this Agreement. Any and all other third party software will be subject to Customer's acceptance of a license agreement with such third party. Customer will use the Electronic Tools solely for

lawful purposes in connection with Customer's internal use of the Service(s) during the Term. Customer will not, directly or indirectly: (A) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Electronic Tools; (B) modify, translate or create derivative works based on the Electronic Tools; (C) rent, lease, distribute, sell, resell, assign, display, host, outsource, disclose or otherwise commercially exploit or otherwise transfer rights to the Electronic Tools or make the Electronic Tools available to any third party; (D) use the Electronic Tools for timesharing or service bureau purposes or otherwise for the benefit of a third party; (E) remove any proprietary notices or labels on any Electronic Tools; or (F) copy, reproduce, post or transmit any Electronic Tools in any form or by any means, including, without limitation, electronic, mechanical, photocopying, recording or other means.

(ii) Each Electronic Tool is the intellectual property of Provider. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on or in connection with any Electronic Tool. Any third party intellectual property included in any Electronic Tool is the property of the respective owner of such intellectual property and may be protected by applicable law. Nothing in this Agreement gives Customer any right or license to any trademarks and/or trade names (whether registered or unregistered), signs, logos, icons, slogans, banners, screen shots, trade dress, links or other brand features of Provider, without the prior written consent of Provider, which consent may be withheld in Provider's sole discretion for any reason. If Customer from time to time provides suggestions, comments and/or other feedback to Provider with respect to the Service(s) and/or any Electronic Tool, Provider may, in connection with any of its products or services, freely use, copy, disclose, license, distribute and/or exploit any such suggestions, comments and/or other feedback in any manner and without any obligation or restriction based on intellectual property rights or otherwise. Provider will retain sole ownership of any such suggestions, comments and/or other feedback and Customer will not provide any such suggestions, comments and/or other feedback subject to any terms that would impose any obligation on Provider or any of its customers or partners. Customer agrees to (and to cause its employees, agents and contractors to) sign, execute and acknowledge documents and perform such acts as may be reasonably necessary to perfect the foregoing assignment and to obtain, enforce and defend Provider's intellectual property rights in connection with any Electronic Tool.

(iii) Customer is fully and exclusively responsible for all information accuracy, charges, costs, transactions, and activities conducted through or with such Electronic Tools. Customer is fully and exclusively responsible to safeguard, monitor, manage, and maintain access to the Electronic Tools, and to only allow authorized use of the Electronic Tools to persons that Customer designates.

**11. SERVICE OUTAGES.** When Customer believes that a loss or material degradation of any Service(s) has occurred ("Service Outage"), Customer will first conduct customary problem isolation, resolution and troubleshooting activities. If Customer believes that the Service Outage is attributable to or related to Provider or Provider's network, Customer will notify Provider's Customer Care department through Provider's customer portal found at <https://support.bandwidth.com/home> (or such other means Provider may provide to Customer from time to time by written notice), by calling (855) 864-7776 (or any other phone number specified in any applicable SOF or Terms and Conditions or otherwise provided by Provider from time to time), or by any Electronic Tools provided by Provider from time to time, to report the Service Outage(s) and initiate an investigation of the cause and remedy of such Service Outage ("Trouble Ticket"). Once a Trouble Ticket(s) has been opened, Provider's appropriate personnel will initiate diagnostic testing and isolation activities to determine the source and severity of the Service Outage(s) and suggest a remedy to, or enact a remedy on behalf of, Customer; Provider and Customer will cooperate to restore Service(s) as soon as reasonably practicable.

**12. FORCE MAJEURE.** If either Party's performance under this Agreement is delayed, prevented, obstructed or inhibited because of any act of God, governmental action or any other cause beyond either party's reasonable control ("Force Majeure Event"), such Party will not be in default of this Agreement or any applicable SOF; provided, however, such Party will exercise commercially reasonable efforts to prepare for, perform in spite of, and resume performance after the Force Majeure Event. For avoidance of doubt, Customer will ensure proper protection and conformity to industry standards to protect the integrity of Customer's network; Customer's failure to do so for any reason will not be considered a Force Majeure Event and any incurred charges for Service(s) will be deemed valid and due in accordance with the terms of this Agreement. If a Force Majeure Event materially impacts performance for ten (10) business days or more ("Extended Delay"), either Party may terminate the affected Service(s) without penalty or further obligation upon written notification to the other Party. During a Force Majeure Event, all payment obligations will abate with respect to the impacted Service(s).

**13. GOVERNING LAW; VENUE.**

(a) This Agreement will be governed by, construed under and enforced in accordance with the laws of the State of North Carolina without reference to its choice of law principles or the United Nations Convention on the International Sale of Goods. This Agreement also is subject to all applicable federal, state and local laws and to all applicable regulations, rules, orders and other relevant actions of governmental agencies or entities (except that the parties retain their rights with respect thereto as provided pursuant to this Agreement). Each Party will obtain, file and maintain any necessary tariffs, permits, certifications, authorizations, licenses or similar documentation as may be required by any governmental authority having jurisdiction over its business.

(b) If any Party brings a civil action or initiates judicial proceedings of any kind related to this Agreement (except for actions to enter or collect on judgments), the Parties consent to the exclusive personal jurisdiction and venue of the federal and/or state courts located in Wake County, North Carolina.

**14. CHANGE IN LAW.** If any statute, regulation, decision, rule or order by a court of law or governmental authority, including, without limitation, the FCC or any state regulatory agency or PUC: (a) prohibits performance pursuant to this Agreement or any applicable SOF(s) or Terms and Conditions, (b) makes such performance illegal, impossible or impractical, or (c) materially adversely impacts either Party's performance of its obligations under this Agreement, including, without limitation, the costs incurred by a Party to perform its obligations under this Agreement or any applicable SOF(s) or Terms and Conditions, the Parties will use their commercially reasonable efforts, to amend this Agreement or any applicable SOF(s) or Terms and Conditions so that: (i) performance pursuant to this Agreement or any applicable SOF(s) or Terms and Conditions is no longer prohibited, illegal, impossible, impractical or is no longer materially adversely impacted, and (ii) the Agreement or any applicable SOF(s) or Terms and Conditions preserves, to the maximum extent possible, the original intent of the Parties. If the Parties are unable to amend this Agreement or any applicable SOF(s) or Terms and Conditions as contemplated above, then the Party whose performance or use of Service(s) is rendered prohibited, illegal, impossible, impractical or materially adversely impacted may, in its sole discretion and upon thirty (30) calendar days (or less if required by law) prior written notification to the other Party, cease performance of any such obligations or Service(s) pursuant to any applicable SOF(s) or Terms and Conditions without further obligation or liability, excluding payment of any charges for Service(s) received by Customer prior to notification of change in law. The Parties will continue to perform all such obligations and Service(s) under this Agreement or any applicable SOF(s) or Terms and Conditions that are not so prohibited, impossible, impractical or materially adversely affected; provided, however, if a material part of the rights and obligations under this Agreement are suspended in accordance with the above and the performance of the remaining obligations would not reasonably maintain the respective original intent of the Parties or would not serve the essential purpose of this Agreement, then either Party will have the right to, at its sole discretion and upon thirty (30) calendar days written notification to the other Party, terminate this Agreement without further obligation or liability, excluding payment for charges for Service(s) received by Customer prior to termination of this Agreement.

**15. TARIFF APPLICATION.** Both Parties acknowledge that the Service(s) provided may be subject, in whole or in part, to one or more provisions of state or federal tariffs. In the event of any conflict between any provision of this Agreement or any applicable SOF(s) and any such tariff(s), such tariff(s) will prevail.

**16. CONFLICT OF TERMS AND SEVERABILITY.** Except as expressly provided in Section 15, any applicable SOF(s), Terms and Conditions and/or any Addendum(a), if this Agreement conflicts with any terms or conditions incorporated by reference into this Agreement, this Agreement will control. If any provision of this Agreement is held invalid, illegal or unenforceable, the unaffected provisions will remain in full force and effect.

**17. DISPUTE RESOLUTION PROCESS.**

(a) The Parties wish to promptly and fully resolve any dispute arising in connection with this Agreement in good faith, confidentially, and informally with minimal transaction costs. Neither Party may make any public statement regarding any such dispute and/or the existence of any such dispute except as otherwise expressly provided in this Section 17. If either Party determines that any dispute cannot be resolved informally, then such Party will initiate an escalation process by giving written notice ("Escalation Notice") to the other Party. Each Party then will name one (1) representative, which representative will be an executive knowledgeable of the subject matter in dispute and with authority to discuss the dispute (hereinafter the "Officers"). The Officers will meet in person or by conference call, together with any persons assisting them as determined by such Officers respectively, not later than fifteen (15) calendar days after delivery of the Escalation Notice. All negotiations conducted by the Officers will be confidential and will be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any other applicable rules of evidence. The Officers will conduct such additional meetings as they deem necessary to exchange relevant information, will appoint their respective staff to attempt to resolve any disputed facts, and will attempt to resolve the dispute. Should the Officers be unable to resolve the dispute within fifteen (15) days, or such additional time as the Parties may otherwise agree in writing, either Party may demand mediation by written notice to the other Party, whereupon the parties will, in good faith, mediate the dispute no later than thirty (30) days after such demand through the services of a mutually selected mediator, the cost of whom will be borne equally by the Parties, at a date and location selected by the mediator after consultation with the Parties. If the dispute is not resolved after applying the escalation procedures set forth above (or if either Party fails to timely appoint Officers, comply with a demand for mediation or otherwise fail to meet its obligations pursuant to this Section 17(a)), the Parties agree to waive any right to trial by jury in any judicial proceeding arising under or related to the subject matter of this Agreement, and will submit all controversies, claims, disputes and matters of difference to arbitration according to the commercial rules and practices of the AAA. Arbitration hereunder will occur within sixty (60) days of the date of submission before a single neutral arbitrator having significant experience in the subject matter of this Agreement and who will be selected in accordance with applicable AAA rules. Arbitration proceedings will take place in Wake County, North Carolina. Discovery will be permitted, including the use of interrogatories, requests for admission and production of documents and depositions. If the disputed amount is less than \$500,000, all applicable expedited procedures of the AAA will apply. The arbitrator's fees and costs of the arbitration will be borne by the Party against whom the award is rendered; provided, however, if the arbitrator grants partial relief to both Parties, the arbitrator will equitably allocate the arbitrator's fees and other costs. Each Party will pay its attorney's

fees related to any dispute related to this Agreement. The arbitration award will be final and binding on both Parties, will not be subject to any appeal and will be enforceable in any court of competent jurisdiction.

(b) Notwithstanding any term or condition of this Agreement to the contrary, including, without limitation, Section 17(a) above:

(i) Upon the occurrence of a Default, either Party may, in addition to delivering an Escalation Notice pursuant to Section 17(a) above, pursue any and all actions and/or remedies pursuant to Section 5 above.

(ii) Provider may, but will not be obligated, to utilize the dispute resolution proceedings contemplated by Section 17(a) above in connection with any collection of amounts not paid or properly disputed prior to any applicable Due Date. For clarity, Provider may utilize civil actions and/or judicial proceedings in connection with any collection of amounts not paid or properly disputed prior to any applicable Due Date.

(iii) ANY DISPUTE RESOLUTION PROCEEDINGS, WHETHER IN ARBITRATION OR IN COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS ACTION OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. CUSTOMER WILL NOT BE A CLASS REPRESENTATIVE, CLASS MEMBER OR OTHERWISE PARTICIPATE IN A CLASS, CONSOLIDATED OR REPRESENTATIVE PROCEEDING.

## **18. CONFIDENTIALITY; PUBLICITY.**

(a) This Agreement and its terms, together with any attachments, including, without limitation, any Exhibits, SOFs, Rate Sheets, and Terms and Conditions, but excluding only such information that may be available to the public on Provider's website from time to time, is designated as proprietary and confidential information of Provider. The Parties agree that such information will not be disclosed by Customer, either directly or indirectly, by any means, to any third person(s) without the express written permission of Provider. In the event disclosure is mandated by court order, subpoena, a governmental authority, or under law, Customer will give prompt written notice to Provider prior to any such disclosure and cooperate fully to obtain any protective order or other form of confidentiality protection sought by Provider prior to any such disclosure, except when Customer is lawfully compelled to maintain confidentiality pursuant to such court order, subpoena, governmental authority or law. Provider will abide by applicable CPNI regulations. Customer agrees and understands that Provider may, upon receipt of inquiries from law enforcement agencies and other governmental authorities, inform such agencies and authorities of Customer's identity and contact information to facilitate the service of subpoenas or other inquiries directly to Customer. Customer agrees and understands that it may be necessary for Provider in the course of providing the Service(s) to access, use or disclose Customer or Customer's customers and/or End Users' information, including, without limitation, pursuant to subpoenas duces tecum (and similar subpoenas) or court orders and other actions of governmental agencies or entities. To the extent agreed to by the Parties in writing from time to time, Customer or Provider may further designate as proprietary or confidential such information as set forth in a Confidentiality Agreement, if any. During the performance of this Agreement, it may be necessary for Provider to transfer, process and store billing and utilization data and other data necessary for Provider's operation of its network and for the performance of its obligations under this Agreement. The transfer, processing and storing of such data may be to or from the United States. Customer hereby consents that Provider may (i) transfer, store and process such data in the United States; and (ii) use such data for its own internal purposes and as allowed by law.

(b) Notwithstanding any term or condition of this Agreement to the contrary, including, without limitation, Section 18(a) above, Customer grants Provider the right to use Customer's name, mark and logo on Provider's website(s) and in Provider's marketing materials and to publicly identify Customer as Provider's customer from time to time.

**19. REPRESENTATIONS AND WARRANTIES OF THE PARTIES; INDEPENDENT CONTRACTOR; COMPLIANCE WITH LAWS.** Provider represents and warrants to Customer that Provider has the right to provide the Service(s) specified herein, is duly organized and validly exists in good standing under the laws of its state of incorporation, with the ability to enter into and perform its obligations under this Agreement in accordance with its terms and conditions, including any documents incorporated by reference into this Agreement. Customer represents and warrants to Provider that Customer is duly organized and validly exists in good standing under the laws of its state of incorporation, with the ability to enter into and perform its obligations under this Agreement in accordance with its terms and conditions, including any documents incorporated by reference into this Agreement. Each Party agrees that it will perform its obligations hereunder as an independent contractor and not as the agent, employee or servant of the other Party and that no joint venture or partnership is or has been expressed or implied. Customer will comply with all laws and regulations applicable to Customer and/or Customer's utilization of any Services; Customer will be directly responsible for compliance with applicable laws and regulations as such laws and regulations relate to Customer, Customer's utilization of any Services, Customer's customers and/or End Users' utilization of any Services, and/or the utilization by any other person or entity to which Customer provides any services in connection with or utilizing any Service provided to Customer pursuant to this Agreement.

**20. ASSIGNMENT.** A Party may not assign this Agreement or any obligations or rights therein, in whole or part, without the prior written consent of the other Party, which will not be unreasonably withheld, conditioned or delayed. Notwithstanding the

foregoing, a Party may assign this Agreement, without consent, to an affiliate, or an entity which acquires all or substantially all of the stock or assets of the assigning Party, or to a successor in a merger, acquisition or restructuring of the assigning Party; provided, however, (i) the assigning Party will give notice of any such assignment to the other Party not later than ten (10) business days immediately after such assignment; and (ii) in the event of any such assignment by Customer, (A) Provider may require the assignee to (i) be additionally and separately bound in writing to all the terms and conditions of this Agreement, including any additional provisions incorporated into this Agreement by reference, (ii) immediately cure all defaults and/or outstanding obligations of Customer pursuant to this Agreement; and (B) Provider reserves the right to review and consider the assignee according to Provider's practices and procedures, including, without limitation, a credit profile evaluation; Provider may, in Provider's discretion, impose additional contractual requirements as a condition to Provider's consent to any such assignment, including, without limitation, modification of payment terms, the imposition of a security deposit or the modification any existing security deposit, and/or the discontinuation of Service(s) without notice if any assignee fails to respond in a timely manner or otherwise cooperate with Provider during Provider's review.

**21. 911 / E911 MATTERS.** CUSTOMER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT PROVIDER'S VOICE SERVICE IS INTERNET BASED AND THEREFORE 911/E911 SERVICES ARE DIFFERENT FROM TRADITIONAL WIRELINE BASED SERVICES AND ARE OR MAY BE ONLY PROVIDED WITH CERTAIN SERVICES IF SPECIFICALLY DEFINED IN ADDENDUM(S), EXHIBIT(S), SCHEDULES, SOFS, TERMS AND CONDITIONS, SERVICE AGREEMENTS, AND ATTACHMENTS TO THIS AGREEMENT, AND INCLUDING OTHER APPLICABLE ADDENDA, AND APPLICABLE ONLINE TERMS & CONDITIONS, ALL OF WHICH ARE FULLY INCORPORATED HEREIN BY REFERENCE. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER PROVIDER, ITS UNDERLYING CARRIER(S), NOR ANY OTHER THIRD PARTIES INVOLVED IN THE ROUTING, HANDLING, DELIVERY, OR ANSWERING OF EMERGENCY SERVICES OR IN RESPONDING TO EMERGENCY CALLS, NOR THEIR OFFICERS OR EMPLOYEES, MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, LOSS, FINE, PENALTY OR COST (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION, ARISING FROM OR RELATING TO THE PROVISION OF ALL TYPES OF EMERGENCY SERVICES TO CUSTOMER. CUSTOMER FURTHER AGREES AND ACKNOWLEDGES THAT IT IS INDEMNIFYING AND HOLDING HARMLESS PROVIDER FROM ANY CLAIM OR ACTION FOR ANY CALLER PLACING SUCH A CALL WITHOUT REGARD TO WHETHER THE CALLER IS AN EMPLOYEE OR CUSTOMER OF CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY INJURY ARISING OUT OF A LACK OF OR MISROUTING OF 911 CALLS, REGARDLESS OF WHETHER THE CALL FAILED OR WAS ROUTED BY A PUBLIC SAFETY ANSWERING POINT OR AN OFFICIAL EMERGENCY OPERATOR, IS NEITHER THE FAULT NOR LIABILITY OF PROVIDER AND CUSTOMER HOLDS PROVIDER AND ITS SUBSIDIARIES AND AFFILIATES, AS WELL AS THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY DAMAGES OR LIABILITIES. THE LIMITATIONS APPLY TO ALL CLAIMS REGARDLESS OF WHETHER THEY ARE BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY OTHER THEORIES OF LIABILITY.

**22. SERVICE MOVES.** Service(s) may not be moved from a contracted Service address without written notification from Customer to Provider. Should Customer fail to notify Provider of a service move, then Provider, in its sole discretion, may immediately suspend any applicable Service(s) until such time as Provider processes a "move order" initiated by Customer. Failure to notify Provider of an intended service move may result in Service(s) being 911/E911 non-compliant, if otherwise applicable. Customer understands that said failure may cause incorrect routing of emergency services and any consequences of such rest solely with Customer. Additionally, Customer understands that continuation of Service with respect to any existing DIDs may be restricted by the location of the moved service.

**23. THIRD PARTY BENEFICIARIES.** The Parties do not intend by the execution, delivery, or performance of this Agreement to confer any benefit, incur any obligation or duty under law or otherwise, direct or incidental, upon any third-party, person or entity not a party to this Agreement, including, without limitation, Customer's customers and/or End Users.

**24. NON-EXCLUSIVE AGREEMENT.** This Agreement is not exclusive. Except as may be expressly provided in any applicable SOF(s) and/or Terms and Conditions from time to time with respect to Customer only, nothing in this Agreement will prevent Customer or Provider from entering into similar arrangements with, or otherwise providing services to, any other person or entity.

**25. NOTICES.** Any notice(s) by a party as set forth in this Agreement will be sent to each Party at the address provided on the signature page of this Agreement and to any additional address(es) as may be specified on the signature page of this Agreement. Unless otherwise expressly provided otherwise in this Agreement, notice will be deemed to be delivered when sent via one or any combination of the following: (i) email address(es) of record, (ii) facsimile number of record, and/or, (iii) overnight delivery to the physical address of record by nationally recognized overnight delivery service.

**26. SURVIVAL.** Sections 3, 4, 5, 9, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 27 and 28 will survive any expiration or termination of this Agreement. Notwithstanding the foregoing, the expiration or termination of this Agreement will not relieve the parties of any liability or obligation that accrued prior to such expiration or termination.

**27. MISCELLANEOUS.** This Agreement, together with any attachments, including, without limitation, any Exhibits, SOFs, Rate Sheets, and/or Terms and Conditions, incorporated herein by reference, constitute the entire understanding between the Parties with respect to Service(s) provided herein and supersedes any prior agreements or understandings pursuant to Section 28 below. Customer will receive the Service(s) detailed in an executed SOF(s) and Terms and Conditions pursuant to this Agreement only and Customer is not relying on any affirmation of fact, promise or description from any person or entity, nor any other oral or written representation other than what is contained in this Agreement and any incorporated documents. Handwritten alterations or additions by Customer to this Agreement or any applicable SOF(s) or Terms and Conditions will not be considered binding; such modifications must be provided by Customer in a separate written document and executed by both Parties. This Agreement will be binding on the parties hereto and their respective personal and legal representatives, successors and permitted assigns. Agreement headings are provided for reference purposes only. This Agreement may be executed in counterparts, each and all of which constitute the full executed Agreement, and the Parties agree that a digitized (electronic) or facsimile copy of the executed Agreement will be the same as an original copy. The failure of Provider to give notification of Default and/or to enforce compliance with any of the terms or conditions of this Agreement will not be considered the waiver of such Default and/or any further Default and/or enforcement or other term or condition of this Agreement. No waiver of Provider will be effective unless in writing and signed by an authorized representative of Provider. No amendment to this Agreement will be effective or binding unless it is made in writing and executed by authorized representatives of both Parties.

**28. PRIOR AGREEMENTS.** The Parties to this Agreement agree that in the event of any Prior Agreements, then any such Prior Agreements are hereby superseded by this Agreement immediately as of the Effective Date of this Agreement. Customer hereby represents and warrants that Customer has the full authority to agree to the supersession of all such agreements, directly or on the behalf of all such entities or persons that have entered into all Prior Agreements. In the event of any such Prior Agreements then such Prior Agreements include but are not limited to those which are set forth in the pertinent Exhibit(s). Customer agrees that any and all amounts due and owing under the Prior Agreements will remain due and payable under the terms of this Agreement. Customer agrees and understands that the effective date of any pricing or rates changes may depend upon individual SOFs or Terms and Conditions and rate change timeframes set forth therein.

*(The remainder of this page is intentionally left blank.)*

## **SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties have executed this Master Service Agreement as of the date first written above.

**PROVIDER:**

**BANDWIDTH.COM, INC.**

By: *Stephen Leonard*  
[Stephen Leonard \(Sep 21, 2016\)](#)

Name: Stephen Leonard

Title: Chief Operating Officer

Date: Sep 21, 2016

**Address:**

900 Main Campus Drive, Suite 500  
Raleigh, North Carolina 27606  
Attention: General Counsel

**Additional Provider Parties for Notice:**

Email: [legal@bandwidth.com](#)  
Fax: [919-238-9903](#)

**CUSTOMER:**

**Telesmart, Inc.**

By: *Brian Lynott*  
[Brian Lynott \(Sep 21, 2016\)](#)

Name: Brian Lynott

Title: President

Date: Sep 21, 2016

**Address:**

56825 Venture Lane, Suite 110 Sunriver, OR  
97707

**Additional Customer Parties for Notice:**

Email: [blynott@telesmart.com](#)

Fax:

## EXHIBIT A - DEFINITIONS

For the purposes of this Agreement, any SOFs, Rate Sheets, Terms and Conditions and/or other documents incorporated in the Agreement by reference, the following terms will have the following meanings if not otherwise defined in the Agreement:

“**1010xxx**” means a code to manually choose a long distance provider for an outbound call.

“**411**” means a directory services allowing the lookup of residential or business contact information.

“**511**” means the FCC-designated nationwide telephone number for traveler information.

“**711**” means a Telecommunications Relay Services (TRS) which permits persons with a hearing or speech disability to use the telephone system via a text telephone (TTY), or other device, to call persons with or without such disabilities.

“**900**” means a premium rate area code that is charged at a higher rate than normal.

“**911 / E911**” means functionality that allows End Users to contact emergency services.

“**976**” means a premium rate exchange that is charged at a higher rate than normal.

“**AAA**” means the American Arbitration Association.

“**Abandoned Call**” means any call attempt that is received by Provider for completion, but which is abandoned and/or canceled by the calling party for any reason prior to completion.

“**Agreement**” means (i) the Master Service Agreement to which this Exhibit A is attached, and (ii) any document incorporated therein by reference pursuant to the Master Service Agreement.

“**ANI**” means automatic number identification.

“**API**” mean an application program interface(s) and is the system(s) provided by Provider that enables Customer to remotely transmit requests to Provider’s interfacing system(s) to perform certain transactions.

“**Average Call Duration**” means the average call duration, as calculated with respect to all Customer’s completed calls in an applicable billing cycle.

“**CALEA**” means Communications Assistance for Law Enforcement Act regulated by the FCC.

“**Call Detail Record (CDR)**” means the electronic record of individual telephone calls, and may include such call components as: from, to, date/time, destination, and duration of call.

“**Call Signaling**” means the process of sending control information during a call. Call signaling may be in band (muting the audio while sending control information) or out of band (on a separate signaling channel (such as SS7) during the call. Provider utilizes Session Initiation Protocol (SIP) Call Signaling, as defined in RFC 3261.

“**Call Traffic**” means the transmission of telephone calls over Provider’s network, and generally is descriptive of patterns of Usage, such as: time of day, call duration, minutes of use. (May also be known as Voice Traffic).

“**Class 5 Features**” means additional phones features beyond standard routing and audio. For example, both call hunting and voicemail are Class 5 Features.

“**CNAM**” means Caller ID with Name.

“**Collect Calling**” means a service in which calling party is able to place a call at the called party’s expense.

“**Concurrent Call**” or “**Concurrent Call Channel**” means the number of active calls at any given moment which may be supported by Customer service as contracted depending upon number of channels ordered (a Concurrent Call Channel is the same as a Session).

“**CPN**” means called party number.

“**CPNI**” means Customer Proprietary Network Information and is defined and regulated by the FCC and includes such data as: CDRs, the type of services/network a Customer subscribes to, and any other information that appears on a Customer’s invoice.

**“Dedicated Interconnection”** means a dedicated data connection between Customer and Provider used to pass Voice Traffic.

**“Default”** means (and will occur), with respect to Customer: (i) if Customer fails to make any payment for Service(s) not disputed in good faith pursuant to Section 4 of the Agreement more than two (2) business days immediately after the applicable Due Date, or any other payment contemplated by this Agreement on or before the date two (2) business days immediately after any applicable required date, including, without limitation, pursuant to Section 3(d) of the Agreement; (ii) if Customer (or any customer and/or End User of Customer) violates the AUP; (iii) if Customer fails to perform or observe any term or obligation of this Agreement, including, without limitation, any document incorporated by reference into this Agreement, not otherwise specified in clauses (i) or (ii) above and applicable to the Service(s), which failure remains uncured thirty (30) calendar days after Customer’s receipt of written notification from Provider informing Customer of such failure; (iv) upon the institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings, by or against Customer, unless such proceedings have been dismissed or discharged not later than the date thirty (30) calendar days immediately after the commencement of such proceeding; (v) upon the making of an assignment for the benefit of creditors, adjudication of insolvency, or institution of any reorganization arrangement or other readjustment of debt plan, of or by Customer; and/or (vi) upon the appointment of a receiver for all or substantially all of Customer’s assets. “Default” means (and will occur), with respect to Provider: (i) if Provider fails to perform or observe any term or obligation of this Agreement, including, without limitation, any document incorporated by reference into this Agreement and applicable to the Service(s), which failure remains uncured thirty (30) calendar days after Provider’s receipt of written notification from Customer informing Provider of such failure; (ii) upon the institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings, by or against Provider, unless such proceedings have been dismissed or discharged not later than the date thirty (30) calendar days immediately after the commencement of such proceeding; (iii) upon the making of an assignment for the benefit of creditors, adjudication of insolvency, or institution of any reorganization arrangement or other readjustment of debt plan, of or by Provider; and/or (iv) upon the appointment of a receiver for all or substantially all of Provider’s assets.

**“DID”** or **“DID/DOD”** means “Direct Inward Dialing” and “Direct Inward Dialing / Direct Outward Dialing” associated with a telephone number assigned by Provider to Customer for use by Customer and/or an End User.

**“Directory Listing”** means the inclusion of Customer’s activated TN in the United States or Canada and associated subscriber name in a relevant public database for directory listing.

**“Disconnect Charge”** means a non-recurring charge charged by Provider and payable by Customer for any request to disconnect a Provider-assigned DID, DID/DOD, TFN or TN, including any port outs from Provider.

**“End User”** means an entity or individual receiving service from Customer.

**“Excessive Non-Completed Intrastate / Interstate Toll Free Call Surcharge”** means a surcharge, in addition to Customer’s current Rates, applicable if more than ten percent (10%) of Customer’s Toll Free calls are not completed for any reason, which Provider reserves the right to charge, and Customer will pay if charged, per excessive non-completed Intrastate or Interstate Toll Free call.

**“Excessive Non-Completed International Toll Free Call Surcharge”** means a surcharge, in addition to Customer’s current Rates, applicable if more than ten percent (10%) of Customer’s Toll Free calls are not completed for any reason, which Provider reserves the right to charge, and Customer will pay if charged, per excessive non-completed International Toll Free call.

**“FCC”** means the Federal Communications Commission.

**“Flat Rate Type”** means a fixed per minute pricing format whereby the rate is delineated by Interstate and Intrastate jurisdiction regardless of NPA-NXX or LATA/OCN.

**“Improper Calls”** means call types that (i) would result in Provider incurring originating access charges, local exchange carrier “DIP” fees or other call types that may be subject to a reverse billing process, (ii) 911 / E911 or other emergency service calls; (iii) any unauthorized or fraudulent communications on pay-per-call numbers, information service calls, directory assistance calls or the like; and/or (iv) mass calling events, excessive non-completed and invalid calls and failed calls due to inadequate Customer capacity.

**“Inbound Calling”** (or **“Inbound Calls”**) means a call from the PSTN through Provider or another IP endpoint to Customer.

**“Information Services”** is defined in the Telecommunications Act of 1996, as amended, and means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

**“Initial SOF Term”** will have the meaning provided in any applicable SOF.

**“Intermediate Number”** means a TN provisioned by Provider to Customer pursuant to this Agreement or any applicable SOF (i.e., on a wholesale basis), but which neither Provider nor Customer can appropriately demonstrate has been assigned to an End User.

**“International Call Termination”** means outbound calls destined for anywhere outside of the domestic United States.

**“Interoperability”** means the ability to exchange calls between Customer and Provider effectively.

**“Interstate”** means a call which is originated and terminated in different states.

**“Intrastate”** means a call which is originated and terminated in the same state.

**“IP”** means Internet Protocol.

**“IP Originated”** means traffic utilizing TCP/IP as a transmission protocol from the originating equipment (i.e. SIP phones, SIP PBX, TDM to SIP Gateway, IP-adapter, etc.) to a TCP/IP gateway, for termination to an IP destination or the PSTN.

**“LATA”** means Local Access Transport Area. A geographic area within a telephone company's franchised territory which has been established in accordance with the Modification of Final Judgment (MFJ) for the purpose of defining the area within which a telephone company may offer services.

**“LATA/OCN Rate Type”** means a pricing format where rates per minute are set for each unique OCN within a LATA for Interstate and Intrastate calling.

**“LCA”** (or **“Local Calling Area”**) means the local calling area defined geographically by the telecommunications industry standards.

**“LIDB”** means Line Information Database.

**“LNP”** means Local Number Portability as defined by the FCC.

**“Local”** means any call that originates and terminates within the same Local Calling Area.

**“Location Routing Number (LRN)”** means a telephone number (e.g. 10 digit number) that is used to route calls to an end office switch that allows for the processing of portable (assignable) telephone numbers.

**“MRC”** means monthly recurring charge.

**“NADP”** means the North American Dialing (or Numbering) Plan.

**“NPA-NXX”** means the area code and exchange of a telephone number.

**“NPA-NXX-X”** means the area code, exchange and first digit of the station code of a telephone number.

**“NPA-NXX-X Rate Type”** means a pricing format where rates per minute are set for each unique NPA-NXX-X (area code – exchange – 1<sup>st</sup> digit of station code) for Interstate and Intrastate calling.

**“NRC”** means non-recurring charge.

**“OCN”** means Operating Company Number. A four-character code assigned by the National Exchange Carrier Association (NECA) to any telecommunications provider.

**“On-Net”** means calls that are connected on a single network (such as calls through the Internet).

**“Operator Assisted Calling”** means a telephone call during which an operator places a call for the caller.

**“Operator Intercept”** means a service by which a caller is routed to an operator when a call error or special handling request is received.

**“Operator Services”** means live operator assistance to caller usually when dialing “0”.

**“Originating”** means the party initiating a call or request for service.

**“Origination” or “Voice Origination”** means a service which includes TNs to provide Inbound Calling.

**“Originating Equipment”** means equipment beginning a call session.

**“Prior Agreements”** means any prior contractual agreements for communications services between Provider and Customer, including, without limitation, any SOF(s) or other service agreements.

**“PSTN”** means the Public Switched Telephone Network.

**“Public Internet”** means a global system of interconnected computer networks that interchange data by packet switching using the standardized protocols.

**“PUC”** means a public utilities commission (or other similar governmental agency).

**“Rate Center”** means a geographic area (determined by the applicable ILEC) within an LCA or market that is associated with one or more specific NPA/NXX codes. A list of available Rate Centers is available upon request.

**“Rate Sheet”** means the rate sheet describing the Rates applicable to Services and attached to an applicable SOF.

**“Rate Type”** means the rate format option delivered to Customer, which will be either “NPA-NXX-X or LATA/OCN.

**“RBOC / Wireless Thresholds Surcharge (Flat Rate Only)”** means a surcharge, in addition to Customer’s current Rates, applicable if Customer has any quoted Flat Rate Types and less than seventy-five percent (75%) of Customer’s calls terminate on either an RBOC or wireless PSTN during any billing cycle, which Provider reserves the right to charge, and Customer will pay if charged, per minute on the number of minutes needed to meet the seventy-five percent (75%) threshold.

**“Responsible Organization”** means the party hereto that is responsible for managing and administering the account records in the Toll Free Service Management System Database.

**“Session”** means mean one (1) Concurrent Call Channel.

**“Short Duration Call”** means any call of a duration of less than or equal to six (6) seconds.

**“Short Message Service”** or “SMS” is the text communication service component of mobile communication systems that allows the exchange of short text messages between fixed line or mobile phone devices.

**“SIP”** means “Session Initiation Protocol” which is the signaling protocol established in RFC 3261 used between networks (such as VoIP networks) to establish, control and terminate signaling for SIP-based services such as voice calls and SMS messages.

**“SMPP”** means Short Message Peer-to-Peer protocol which is an open message-transfer protocol that enables short message entities to establish, control and terminate signaling for SMPP-based services like SMS.

**“Subscriber”** means an individual End User of Customer’s service assigned a DID/DOD.

**“Tariff”** means an open contract between telecommunications carriers and the FCC. Tariffs contain the rates, terms and conditions of certain services provided by telecommunications carriers.

**“TCP/IP”** means Transmission Control Protocol / Internet Protocol.

**“TFN”** means a Toll Free number that assigned by Provider to Customer (or that Customer ports to Provider) for use with the Provider Toll Free Service.

**“TN”** means a telephone number assigned by Provider to Customer (or that Customer ports to Provider) (other than a TFN) and is used by Customer in connection with any applicable Service.

**“Toll Free Calling”** or **“Toll Free”** means a call placed to a Toll Free number.

**“Toll Free Service”** means an IP termination service for PSTN originated calls to terminate to TFNs provided by Provider.

**“Usage”** means call traffic (including SMS) measured in units, usually in minutes or seconds (except with respect to SMS).

**“Voice Termination”** (or **“Termination”**) means outbound calling from Customer to Provider’s network for purposes of delivering (terminating) the call on the PSTN or another IP endpoint.

**“VoIP”** means Voice over Internet Protocol.

**“Wholesale”** means frequent volume purchases in large quantities for Customer resale or repurpose.

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bandwidth

900 Main Campus Drive, Suite 500  
Raleigh, NC 27606

## SERVICE ORDER FORM

Sales Rep: Eric Brummond

Billing Address	
Customer Name:	Telesmart, Inc.
Attention To:	Jim Lundeen
Address:	56825 Venture Lane, Suite 110
City, State and Zip Code:	Sunriver, OR 97707
Phone:	+1.888.354.8647
Billing Email:	blynott@telesmart.com
Service Address	
Address:	7039 SW 195th Ave
City, State and Zip Code:	San Francisco, CA 97007-5527
Customer Contact for Rate Changes	

Services
Inbound
Outbound

**Date of Master Service Agreement (“MSA”) to which this Service Order Form (“SOF”) applies:** Sep 21, 2016

**SOF Term:** This SOF will be effective upon signature by both Parties below and will continue until the date twenty four (24) months from the Service Commencement Date (the “**Initial SOF Term**”). The Initial SOF Term will automatically extend upon the same terms and conditions applicable during the Initial SOF Term for additional consecutive term(s) of twelve (12) months (the “**Renewal SOF Term**”) until either the MSA or this SOF is terminated pursuant to the MSA. Customer may terminate this SOF as of the end of the Initial SOF Term or any applicable Renewal SOF Term by written notice to Provider via email to [support@bandwidth.com](mailto:support@bandwidth.com) not less than thirty (30) calendar days prior to the end of such Initial SOF Term or applicable Renewal SOF Term.

**Miscellaneous:** The Service(s) described in this SOF will be governed by the MSA, the Terms and Conditions applicable to such Service(s) (the “**Terms and Conditions**”), and the Rate Sheet, each of which is incorporated by reference. Capitalized terms not otherwise defined will be as defined in the MSA and/or the Terms and Conditions. Customer acknowledges receipt of the Terms and Conditions and the Rate Sheet.

**Telesmart, Inc.:**

By: Brian Lynott  
Brian Lynott (Sep 21, 2016)

Printed Name: Brian Lynott

Title: President

Date: Sep 21, 2016

**BANDWIDTH.COM, INC.:**

By: Stephen Leonard  
Stephen Leonard (Sep 21, 2016)

Printed Name: Stephen Leonard

Title: Chief Operating Officer

Date: Sep 21, 2016



# RATE SHEET

**Customer Name: Telesmart, Inc.**

**Date of SOF to which this Rate Sheet Applies:** Sep 21, 2016

**Document # to which this Rate Sheet Applies:** SOF-O0021401

## ORIGINATION (INBOUND) RATES – FLAT RATE

(Per Min.)*		DID Rates**					
		Porting NRC*		NRC*		MRC*	
Tier 0	\$0.0025	Tier 0	<b>\$3.00</b>	Tier 0	<b>\$0.25</b>	Tier 0	<b>\$0.10</b>
Tier 1	\$0.0045	Tier 1	<b>\$3.00</b>	Tier 1	<b>\$0.25</b>	Tier 1	<b>\$0.25</b>
Tier 2	\$0.0080	Tier 2	<b>\$3.00</b>	Tier 2	<b>\$0.25</b>	Tier 2	<b>\$0.25</b>
Tier 3	\$0.0155	Tier 3	<b>\$3.00</b>	Tier 3	<b>\$0.25</b>	Tier 3	<b>\$0.25</b>
Tier 5	\$0.0180	Tier 5	<b>\$5.00</b>	Tier 5	<b>\$1.00</b>	Tier 5	<b>\$0.25</b>

## Toll Free Origination (Inbound) Rates\*\*\*

Service	Rate File Name	Toll Free DID Rates		
		Porting NRC	NRC	MRC
Toll Free	TeleSmart_NPANXX_TForig_082516	\$0.50	\$0.00	\$0.20
Expedite Fee to add a TFN (NRC) per TFN			\$45.00	
Excessive Non-Completed Intrastate / Interstate Toll Free Call Surcharge			\$0.10	
Excessive Non-Completed International Toll Free Call Surcharge			\$0.50	
Expedite Fee to add a TFN (NRC) per TFN			\$45.00	
Excessive Non-Completed Intrastate / Interstate Toll Free Call Surcharge			\$0.10	
Excessive Non-Completed International Toll Free Call Surcharge			\$0.50	
Pay Phone Surcharge			\$0.55 Per call	

## Directory Listing/Assistance

Service	NRC per DID	MRC per DID
Directory Assistance Only (may not be available to public or distributed to any print or online databases)	\$5.00	\$0.15
Directory Assistance and Directory Listing	\$7.00	\$0.15
Retained Listings (all Rates per DID) (applicable on Project Ports only)	\$0.90	\$0.15

## Additional Rates\*\*\*\*

LIDB Insertion Fee per TN (NRC)	\$0.1
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\* The applicable Tiers refer to applicable Rate Centers as determined from time to time by Provider.

\*\* The DID Rates do not apply to DIDs for Alaska, Hawaii or Puerto Rico, which Rates will be as follows, if DIDs are available: Alaska, Hawaii and Puerto Rico, Porting NRC is \$15, NRC is \$2 and MRC is \$1.5.

\*\*\* The Rates will not apply to Toll Free Service for any location outside the continental United States. With respect to any calls from any locations outside the continental United States, Provider's then-prevailing applicable Rates as posted at [www.bandwidth.com/resources/legal](http://www.bandwidth.com/resources/legal) will apply. All such Rates are subject to change upon five (5) calendar days prior notice. Customer will be deemed to have received and accepted notice of such changed Rates when posted by Provider to [www.bandwidth.com/resources/legal](http://www.bandwidth.com/resources/legal).

\*\*\*\* Applicable only if available.

## WHOLESALE TERMINATION (OUTBOUND) RATES – RATE DECK

Rate Type Format: NPA – NXX

**Customer represents and warrants receipt of the Rates in electronic format as provided by Provider to Customer separate from this Rate Sheet, which may be updated from time to time pursuant to the applicable Terms and Conditions. If there is no Rate otherwise provided in this Rate Deck for any applicable NPA-NXX (or LATA / OCN), then any call to any such NPA-NXX (or LATA / OCN) will have a Rate of \$0.10 per minute, subject to any other applicable Rates, fees or surcharges, including, without limitation, any applicable surcharge due to Provider pursuant to Section 3 of the Termination Terms and Conditions.**

Abandoned Call Surcharge	\$0.01 per applicable call (in addition to applicable Rates)*
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*Bandwidth - Proprietary & Confidential Information*

ACD Surcharge	<b>\$0.01 per applicable minute (in addition to applicable Rates)**</b>
MRC Per Channel (Outbound)	<b>300@\$0.00.ea</b>
Short Call Duration Surcharge (in addition to applicable Rates)***	<b>\$0.03</b>
Non-IP Originated Surcharge	<b>\$0.1</b>

\* If more than 30% of total call attempts are Abandoned Calls during any applicable calendar month, Provider reserves the right to charge, and Customer will pay, the Abandoned Call Surcharge with respect to those Abandoned Calls in excess of such threshold. The percentage of Abandoned Calls is determined by dividing the total number of Abandoned Calls by the total number of call attempts.

\*\* If the Average Call Duration during any applicable billing cycle is less than ninety (90) seconds, Provider reserves the right to charge, and Customer will pay, an ACD Surcharge equal to (i) (x) the number of minutes Customer would have used if the Average Call Duration would have equaled ninety (90) seconds with respect to the number of calls actually completed, minus (y) the number of minutes Customer actually used with respect to the calls actually completed, multiplied by (ii) the ACD Surcharge. (For example, if Customer's Average Call Duration during a billing cycle is sixty (60) seconds, Customer completed 1,000,000 calls during the billing cycle and the ACD Surcharge per applicable minute is \$0.01, the aggregate ACD Surcharge would be \$5,000.00, calculated as follows: (90 seconds x 1,000,000) – (60 seconds x 1,000,000) = 500,000 minutes x \$0.01 per minute.)

\*\*\* If, during any billing cycle, 5% or more of Customer's completed calls are Short Duration Calls, Provider reserves the right to charge, and Customer will pay, a surcharge per Short Duration Call as described above.

<b>ADDITIONAL CHARGES</b>	
MRC per Channel (Inbound)	1@\$0.00.ea
Directory Services or Information Services (NRC) (in addition to applicable Rates)	\$1
National Toll Free Directory Assistance Install Fee (NRC) per TFN	\$15
National Toll Free Directory Change Fee (NRC) per TFN	\$14
National Toll Free Directory (MRC) per TFN	\$21
Disconnect Charge (NRC) per TN	\$5
Port Out Charge (NRC) per TN	\$5
LNP Charge (canceled or supplemental more than 48 hours before Confirmed Port Date) (NRC) per TN	\$5
LNP Charge (canceled or supplemental within 48 hours before Confirmed Port Date) (NRC) per TN	\$5
LNP Reinstate/Snap-back Charge (within 24 hours) (NRC) per TN	\$50
Reclamation Fee (NRC) per TN ****	\$5
Service Reinstatement Fee (NRC)	\$200.00, plus charges imposed by any underlying carrier(s)
Missed Appointment Fee (NRC)	\$200.00
Rejected Credit Card / Returned (NSF) Check Fee (NRC)	\$40.00 (or legal limit)
Professional Services	Individual Case Basis

\*\*\*\* Except as provided in Section 6 of the Terms and Conditions applicable to Origination if Customer disconnects Intermediate Numbers identified in an applicable Intermediate Number Notification within thirty (30) days of the date of such Intermediate Number Notification, in which event the Reclamation Fee will be three (3) times the MRC applicable to each disconnected Intermediate Number.

**All Rates are net of any applicable origination charges by or from third party payphone providers; if Customer receives any Inbound Calls originating from a payphone, such calls will be subject to a charge, payable by Customer, per call based on regulated FCC Payphone Compensation rules.**

**All Rates included in this Rate Sheet are subject to change as provided in the MSA, any applicable SOF or any applicable Terms and Conditions. Capitalized terms not otherwise defined in this Rate Sheet will be as defined in the MSA, any applicable SOF or any applicable Terms and Conditions.**



## ORIGINATION – TERMS AND CONDITIONS

bandwidth

900 Main Campus Drive, Suite 500  
Raleigh, NC 27606

These Origination - Terms and Conditions (the “**Terms and Conditions**”) supplement the Master Service Agreement (the “**MSA**”) (including any Exhibits, SOFs, Rate Sheet(s), Service Agreement(s), and any other attachments to the MSA, all of which are fully incorporated by reference within these Terms and Conditions). Capitalized terms not elsewhere defined in these Terms and Conditions will have the meaning ascribed to them in the MSA or any applicable SOF.

- 1. Service Description.** Wholesale Voice Origination (“**Wholesale Voice Origination**”) provides the origination of voice traffic from the PSTN or an On-Net IP-enabled endpoint to Customer’s premises via the Session Initiation Protocol (“**SIP**”). Wholesale Voice Origination is based on RFC 3261 (“**SIP-Session Initiation Protocol**”) and requires Customer to conform to RFC 3261 at Customer’s sole expense. **WHOLESALE VOICE ORIGINATION IS AN INBOUND CALL ORIGINATION SERVICE ONLY. WHOLESALE VOICE ORIGINATION EXCLUDES THE FOLLOWING:**

- a) Outbound calling;
- b) 911 / E911;
- c) Directory services including, but not limited to, 411 and NPA-555-xxxx;
- d) 711;
- e) 611;
- f) Any and all other x11 services;
- g) Operator Services;
- h) Collect Calling;
- i) Any and all other operator, assisted, or intercept calling services;
- j) Caller ID Name or Location;
- k) Class 5 Features;
- l) Toll Free numbers / inbound Toll Free calling (except as may be specifically agreed in the SOF to which these Terms and Conditions is attached); and/or
- m) 976, 900, and 1010xxx calling.

Customer may not (i) use or otherwise enable any TNs provided by Provider (or its affiliates) at any time in connection with any Usage, SMS and/or any other form of traffic (other than Usage, SMS and/or any other form of traffic from Provider and its affiliates), or (ii) establish and/or operate peer-to-peer relationships with any third party(ies) with respect to any TNs provided by Provider (or its affiliates) at any time. Notwithstanding the foregoing, Customer will be responsible for all liability arising from its acts and omissions in establishing and/or operating such peer-to-peer relationships, and will defend, indemnify and hold harmless Provider (and its affiliates) from and against any and all third party claims in relation to such acts and omissions in accordance with and subject to the terms of Section 9 of the MSA.

- 2. E911/ Basic 911.** CUSTOMER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT THIS AGREEMENT WILL BE STRICTLY LIMITED TO THE PROVISION OF WHOLESALE VOICE ORIGINATION SERVICE TO CUSTOMER. CUSTOMER FURTHER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT WHOLESALE VOICE ORIGINATION DOES NOT CONSTITUTE “INTERCONNECTED VOIP SERVICE” AS DEFINED WITHIN 47 C.F.R. PART 9 AND, THEREFORE, **NO E911 SERVICE OR BASIC 911 SERVICE WILL BE PROVIDED BY PROVIDER TO CUSTOMER, ANY END-USERS, OTHER CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY PURSUANT TO THESE TERMS AND CONDITIONS OR THE WHOLESALE VOICE ORIGINATION CONTEMPLATED BY THESE TERMS AND CONDITIONS.** CUSTOMER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT PROVIDER HAS NO INTENT TO AND WILL NOT PROVIDE E911 SERVICE OR BASIC 911 SERVICE PURSUANT TO THESE TERMS AND CONDITIONS OR THE WHOLESALE VOICE ORIGINATION CONTEMPLATED BY THESE TERMS AND CONDITIONS. CUSTOMER WILL NOT REPRESENT IN ANY WAY OR THROUGH ANY MEANS TO ANY END-USERS, CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY THAT PROVIDER PROVIDES ANY 911 / E911 SERVICE PURSUANT TO THESE TERMS AND CONDITIONS OR THE WHOLESALE VOICE ORIGINATION CONTEMPLATED BY THESE TERMS AND CONDITIONS. CUSTOMER REPRESENTS AND WARRANTS TO PROVIDER THAT, IF CUSTOMER IS AT ANY TIME REQUIRED TO PROVIDE ANY 911 / E911 SERVICES DUE TO ANY TELECOMMUNICATIONS RELATED SERVICES CUSTOMER SELLS OR PROVIDES TO CUSTOMER’S END-USERS, CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY AT ANY TIME THAT ARE, IN WHOLE OR IN PART, ENABLED BY THE WHOLESALE VOICE ORIGINATION CONTEMPLATED BY THESE TERMS AND CONDITIONS, THEN CUSTOMER WILL ENSURE THAT 911 / E911 SERVICES ARE FULLY PROVIDED IN COMPLIANCE WITH SUCH 47 C.F.R. PART 9.

- 3. Connection.** Customer must connect to Provider’s network in a manner and at locations determined by Provider. Subject to Provider’s prior written approval, the connection may be made: (i) via the Public Internet, and/or (ii) via a dedicated interconnection to Provider’s network if Customer has been approved for and has executed an agreement for such connection. Customer will, at Customer’s sole cost and liability as between Customer and Provider, be solely responsible for (i) providing and successfully installing any and all equipment, software and the like necessary for End Users to use any service offered or sold by Customer; (ii) obtaining and providing to Provider, prior to installation of any applicable Wholesale Voice Origination services, the IP address(es) for any applicable proxy server, Customer application and/or any other applicable hardware/software solution; and (iii) any and all support for any End User to which Customer offers or sells services. For clarity, with respect to any and all Class 5 Features Customer may offer to Customer’s End Users from time to time, Customer will provide

to Provider any and all accurate information required to support Wholesale Voice Origination with respect to such services, even if Customer obtains such information from Customer's applicable End Users. CUSTOMER WILL INDEMNIFY AND HOLD PROVIDER HARMLESS AGAINST ANY AND ALL CLAIMS AND EXPENSES RESULTING FROM THE FAILURE OF CUSTOMER OR END USERS TO COMPLY WITH THIS SECTION.

- 4. Interoperability.** Customer and Provider will reasonably cooperate with each other to test to ensure interoperability between Provider and Customer's networks and systems. All necessary interoperability testing will be completed within a reasonable time not to exceed thirty (30) calendar days after Customer's execution of these Terms and Conditions. If after completion of initial interoperability, Customer plans to make upgrades, updates and/or enhancements (collectively "**Configuration Changes**"), Customer will notify Provider prior to implementing a Configuration Change so that Customer and Provider may work together in good faith to determine how best to proceed regarding such Configuration Change. If at any time an interoperability condition occurs that adversely affects Provider's network that cannot be adequately remedied within a reasonable period of time, taking into consideration the severity of the interoperability condition and the effect on Provider's network, Provider may, at its sole discretion, suspend the provision of Wholesale Voice Origination.

- 5. Charges and Rates.** Customer represents and warrants to Provider that Customer has received the Rates described in the Rate Sheet.

**If the Rate Sheet does not include Flat Rates, this paragraph will apply:** Such Rates will apply if Customer commences using Wholesale Voice Origination within seven (7) calendar days of the "as of" (ao) date in the electronic file name of such Rates. If such "as of" (ao) date in the electronic file name of such Rates is more than seven (7) calendar days prior to Customer's receipt of such electronic file, then such Rates may not be valid and Customer must obtain a new electronic file of Rates from Customer's sales or support contact with Provider. **All Rates are subject to change upon seven (7) calendar days' prior notice.** Provider will send such prior notice to Customer via email to Customer's "Contact Name" as recorded in the "Customer Contacts for Rate Change Notice" section on the SOF. Customer will be deemed to have received and accepted such changed Rates upon Provider's transmission of the email(s) containing the electronic file(s).

Billing increments are set forth below:

Originating Destination	Initial Billing Increment (Seconds)	Additional Billing Increment (Seconds)
US	6	6

- 6. TN Management and Related Matters.** Customer will obtain TNs from Provider in amounts only reasonably necessary for Customer and Customer's support of Customer's customers and/or End Users in accordance with these Terms and Conditions and Customer's reasonable and customary business practices. Provider will monitor Customer's Usage of any TNs provisioned by Provider to Customer during the preceding ninety (90) day period (or any other period determined from time to time by Provider in accordance with applicable FCC regulations, other applicable law or customary industry practices). Provider will manage Intermediate Numbers (as defined below) pursuant to applicable Industry Guidelines ("**Industry Guidelines**" for the purposes of these Terms and Conditions will include, without limitation, standards and guidelines established by ATIS, INC., NANC, and other authoritative industry organizations), FCC regulations, other applicable law, and customary industry practices; provided, however, Provider does not guarantee TN availability. "**Intermediate Number**" means a TN provisioned by Provider to Customer pursuant to this Agreement or any applicable SOF (i.e., on a wholesale basis), but which neither Provider nor Customer can appropriately demonstrate has been assigned to an End User. Provider will notify Customer if at any time Provider reasonably concludes that Customer's Intermediate Number(s) prevent (or are reasonably anticipated to prevent) Provider from obtaining TNs from the North American Number Plan Administrator, Number Pooling Administrator(s), FCC and/or any applicable PUC pursuant to applicable industry guidelines, FCC regulations, other applicable law, and customary industry practices (each an "**Intermediate Number Notification**"). Customer will have thirty (30) days from the date of such Intermediate Number Notification to disconnect Intermediate Numbers identified in such Intermediate Number Notification; if Customer disconnects such Intermediate Numbers within such thirty (30) day period, Customer will pay a one-time fee equal to three (3) times the MRC applicable to such disconnected Intermediate Number (i.e., TN) pursuant to the applicable SOF and/or Rate Sheet. Any Intermediate Number Notification will include a list of the applicable Intermediate Numbers (10 digits) and, if applicable, Provider's request for other applicable information from Customer, including, without limitation, any information Provider reasonably determines necessary for Provider to complete and submit applicable reports or other documentation to the FCC, any applicable PUCs and/or other agencies and/or entities with oversight authority regarding TNs. If Provider does not receive any other applicable information, Provider may, upon fourteen (14) days' prior written notice, reclaim any Intermediate Numbers listed on the Intermediate Number Notification, unless Customer disputes the Intermediate Number Notification as described below. If (i) Customer disputes the inclusion of any Intermediate Number on any Intermediate Number Notification, or (ii) Provider requests other applicable information in any Intermediate Number Notification, Customer will dispute and/or respond to the Intermediate Number Notification with applicable information, including any information reasonably necessary to support Customer's dispute, not later than ten (10) business days immediately after Customer's receipt of the Intermediate Number Notification through Provider's customer portal found at <https://support.bandwidth.com/home> (or such other means Provider may provide to Customer from time to time by written notice). The Parties will work together in good faith to investigate any disputed Intermediate Number Notification and use commercially reasonable efforts to resolve any such dispute within thirty (30) calendar days after receipt of notification of dispute from Customer. If the Parties fail to resolve any such disputed Intermediate Number Notification, or if Customer otherwise fails to disconnect Intermediate Numbers per the Intermediate Number Notification as described above, (1) Provider may, upon fourteen (14) days' prior written notice, reclaim any applicable Intermediate Numbers listed on the Intermediate Number Notification; and (2) if Provider reclaims any applicable Intermediate Numbers, Provider will charge Customer, and Customer will pay, a Reclamation Fee of Five Dollars (\$5.00) per Intermediate Number reclaimed.

- 7. Porting Numbers.** Provider will require a completed and signed Letter of Authorization ("LOA") for any existing telephone numbers Customer wishes to port from another carrier to Provider. Provider may require a recent copy of the current phone bill which contains

Customer's Billing Telephone Number ("BTN") as well as a record of any numbers that need to be ported. Provider must receive necessary LOA(s) and/or bill copy(ies) before Provider will initiate a port request and obtain a Confirmed Port Date. The "Confirmed Port Date" is the date upon which the current voice provider has agreed to port a number(s) to Provider. The Confirmed Port Date interval may in some cases take as long as one (1) to two (2) business weeks after Customer initiates the port request; since the port interval is a product of the accuracy of the information provided to Provider by Customer, as well as the processing speed of Customer's current voice provider, Provider makes no guarantees regarding the promptness of a port, however all ports will be provided consistent with applicable law.

8. **Forecasting.** From time to time, Provider may request from Customer a forecast of expected origination Usage volumes and/or TN procurement. Customer will cooperate with such requests. In the event Customer anticipates changes in origination Usage volumes, Customer will proactively contact Provider to review such changes. Provider will use commercially reasonable efforts to maintain adequate capacity to meet Customer provided forecasts. Provider's failure to adequately provide capacity, regardless of reason, will not constitute a breach of the MSA or these Terms and Conditions.
9. **Fraud.** Customer will not participate in or assist in any fraudulent origination Usage, in any form or by any means, either by itself or any of its End Users. If Customer suspects, knows of, or should have known of any fraudulent origination Usage, Customer will immediately stop all fraudulent origination Usage and notify Provider. Customer acknowledges, understands and agrees that Provider does not provide, is not required to provide, and does not warrant, any fraud prevention. If Provider becomes aware of unusual Usage volumes or patterns, Provider will make commercially reasonable attempts to promptly notify Customer; for clarity, Provider will not be deemed to be aware solely due to the availability of information regarding Usage volumes or patterns in any of Provider's applicable systems. Provider's sole obligation to Customer with respect to any actual, alleged or suspected fraudulent origination Usage will be to reasonably cooperate with Customer, upon Customer's request and at no expense to Provider, to assist Customer's efforts to stop any fraudulent origination Usage that Customer reports to Provider. Customer will be solely responsible for all risks, expenses and liabilities arising from or relating to fraudulent origination Usage by Customer, Customer's End Users, or any other person or entity directly or indirectly utilizing Wholesale Voice Origination. Notwithstanding anything in this Section 9 to the contrary, Customer is and will remain solely responsible for any and all origination Usage, fraudulent or otherwise, and the terms and conditions of the MSA, including, without limitation, Section 10 of the MSA, will apply.
10. **Regulatory Responsibilities of Customer.** Customer (i) will be solely responsible for and will undertake all required action(s) before the FCC, any PUC, any state regulatory agency, any court or any other controlling regulatory bodies, agencies, commissions or other authority, (ii) will obtain any required governmental approval(s), and (iii) will fully comply with any and all applicable laws and regulations, including, without limitation, all applicable FCC requirements, such as CALEA and CPNI, in each case as such actions, approvals and/or laws and regulations apply or relate to the utilization of Wholesale Voice Origination by Customer, Customer's End Users, or any other person or entity to which Customer provides any services utilizing Wholesale Voice Origination.
11. **Relationship.** Provider has no relationship with or obligation to any of Customer's End Users or any other person or entity to which Customer provides any services utilizing Wholesale Voice Origination, none of whom is a third party beneficiary of the MSA or these Terms and Conditions. Customer is solely responsible for all pricing, billing and collections, and/or compliance with any applicable laws or regulations related to any services Customer provides to its End Users or any other person or entity to which Customer provides any services utilizing Wholesale Voice Origination. Customer will provide technical support to Customer's End Users and will conduct customary problem resolution and troubleshooting activities directly with Customer's End Users to determine whether any condition affecting any Service(s) is attributable to Provider's network prior to reporting a Service Outage pursuant to Section 11 of the MSA.
12. **Call Detail Records.** If Provider makes CDRs available to Customer via an API at any time, Customer will obtain API documentation from Provider. Provider does not guarantee CDR availability, nor does it warrant the accuracy of the data available via API; the failure to provide CDRs, regardless of reason, will not constitute a breach of the MSA or these Terms and Conditions.
13. **Provider Right to Modify Terms and Conditions.** Provider may amend or modify these Terms and Conditions and/or Wholesale Voice Origination pursuant to Section 8(b) of the MSA at any time.
14. **Conflicting or Controlling Terms.** In the event of any conflict between the MSA (exclusive of these Terms and Conditions) and these Terms and Conditions, then these Terms and Conditions will control with respect to any matter related to Wholesale Voice Origination.

## 15. Additional Terms:

### The following applies to Toll Free Service only:

General: Provider is the Responsible Organization for TFNs for Toll Free Service. Toll Free Service may be used only as a toll-free inbound-only service and does not provide any outbound calling, 911 / E911 service, 411 or any Operator Services. Customer will not use (or reconfigure to support such use) either Toll Free Service or any TFN obtained from Provider in connection with Toll Free Service for any outbound calls placed by Customer or Customer's End Users, or any Improper Calls. In addition to any rights or remedies that may be available pursuant to the MSA and/or the AUP, Provider may immediately take any action to prevent Improper Calls, including, without limitation, denying Toll Free Service to particular numbers or terminating any Toll Free Service. If Customer uses or reconfigures Toll Free service to place outbound calls, Customer will pay Provider for any such calls at Provider's then-current applicable Rates. CUSTOMER WILL INDEMNIFY AND HOLD HARMLESS PROVIDER, ITS OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, COSTS OR DAMAGES OF WHATEVER NATURE ARISING FROM OR RELATING TO CUSTOMER'S USE (AND/OR THE USE BY ANY CUSTOMER AND/OR RESELLER OF CUSTOMER) OF TOLL FREE SERVICE

IN VIOLATION OF THESE TERMS AND CONDITIONS.

**Regulatory Matters:** If any calls placed to Customer via Toll Free Service contain a privacy indicator imposed by the originating telephone subscriber, Provider will provide call detail information to Customer, notwithstanding the privacy indication; provided, however, Customer acknowledges and agrees that (i) Customer will use the telephone number and billing information for billing and collection, routing, screening and completion of the originating telephone subscriber's call or transaction; (ii) Customer will not reuse and/or sell the TFN or billing information without first notifying the originating telephone subscriber and obtaining affirmative written consent of such subscriber for such reuse or sale; and (iii) except as permitted in (i) or (ii) above, Customer is prohibited from using any information derived from ANI, CPN or the charge number service for any purpose other than (A) performing services or transactions that are the subject of the originating subscriber's telephone number, (B) ensuring network performance, security and the effectiveness of call delivery; (C) compiling, using and disclosing aggregate information, and (D) complying with applicable law or legal process.

Billing increments are set forth below:

Originating Destination	Initial Billing Increment (Seconds)	Additional Billing Increment (Seconds)
Continental US, Alaska, Hawaii, Puerto Rico, US Virgin Islands, Guam and Saipan	6	6
International	30	6

Provider will determine the terminating carrier based on the terminating ANI.

**The following applies to Directory Listing and Related Services only, which are available with Full Feature Inbound only:** Customer may request Directory Listing, LIDB and/or CNAM. Upon the submission of any request for Directory Listing, Customer represents and warrants that Customer has obtained all necessary approvals for Directory Listing from the applicable subscriber in such request; Customer will promptly provide Provider with documentation evidencing Customer's receipt of such subscriber approval upon Provider's request. Customer will retain such documentation for at least twelve (12) months after submission of the applicable request for Director Listing. Provider may, in its sole discretion, refuse to submit the applicable subscriber information for Directory Listing if Customer fails to timely provide such documentation to Provider. CUSTOMER WILL INDEMNIFY AND HOLD PROVIDER HARMLESS AGAINST ANY AND ALL CLAIMS AND EXPENSES RESULTING FROM THE FAILURE OF CUSTOMER TO COMPLY WITH THIS SECTION, INCLUDING, WITHOUT LIMITATION, CLAIMS MADE BY SUBSCRIBERS AND/OR ANY GOVERNMENTAL AUTHORITY.

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## TERMINATION – TERMS AND CONDITIONS

bandwidth

900 Main Campus Drive, Suite 500  
Raleigh, NC 27606

These Termination - Terms and Conditions (the “**Terms and Conditions**”) supplement the Master Service Agreement (the “**MSA**”) (including any Exhibits, SOFs, Rate Sheet(s), Service Agreement(s), and any other attachments to the MSA, all of which are fully incorporated by reference within these Terms and Conditions). Capitalized terms not elsewhere defined in these Terms and Conditions will have the meaning ascribed to them in the MSA or any applicable SOF.

- 1. Service Description.** Wholesale Voice Termination (“**Wholesale Voice Termination**”) provides the termination of IP voice traffic from Customer’s premises to the PSTN or an On-Net IP-enabled endpoint. **WHOLESALE VOICE TERMINATION IS AN OUTBOUND CALL TERMINATION SERVICE ONLY AND DOES NOT INCLUDE 911 / E911. WHOLESALE VOICE TERMINATION EXCLUDES THE FOLLOWING:**

- a) Inbound Calling;
- b) 911 / E911;
- c) Operator Services;
- d) Collect Calling;
- e) Any and all other operator, assisted, or intercept calling services;
- f) Class 5 Features; and/or
- g) 976, 900, and 1010xxx calling.

If applicable, Provider will exercise commercially reasonable efforts to provide N11 Services, including, but not limited to, 411, 511, 711, 811 and NPA-555-xxxx (“**N11 Services**”) as follows: (i) Provider will provide Customer with a valid telephone number for any published business or residential listing within the United States and Canada; Provider also may provide “reverse lookup” information, including the name or owner of a particular TN, upon caller’s request; (ii) Director Assistance Services will be available 24 hours a day, seven days a week, 365 days a year; (iii) calls for Directory Assistance Services will be answered within six seconds of connection, regardless of time of day, 85% of the time; (iv) Provider will maintain a minimum database accuracy rating of 95%; and (v) Provider will maintain a successful fulfillment rate of 93%. Provider will route all calls for N11 Services based on the originating ten-digit number received to determine the appropriate receiving party for the type of call for N11 Services place; Provider is not responsible for the routing of calls to an incorrect receiving party if the originating ten-digit number received is not located or associated with the given local or regional receiving party.

- 2. 911 / E911 MATTERS.** CUSTOMER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT THESE TERMS AND CONDITIONS WILL BE STRICTLY LIMITED TO THE PROVISION OF WHOLESALE VOICE TERMINATION TO CUSTOMER. CUSTOMER FURTHER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT WHOLESALE VOICE TERMINATION DOES NOT CONSTITUTE “INTERCONNECTED VOIP SERVICE” AS DEFINED IN 47 C.F.R. PART 9 AND, THEREFORE, **NO E911 SERVICE OR BASIC 911 SERVICE WILL BE PROVIDED BY PROVIDER TO CUSTOMER, ANY END-USERS, OTHER CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY PURSUANT TO THESE TERMS AND CONDITIONS OR THE WHOLESALE VOICE TERMINATION CONTEMPLATED BY THESE TERMS AND CONDITIONS.** CUSTOMER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT PROVIDER HAS NO INTENT TO AND WILL NOT PROVIDE 911 / E911 SERVICE PURSUANT TO THESE TERMS AND CONDITIONS OR THE WHOLESALE VOICE TERMINATION CONTEMPLATED BY THESE TERMS AND CONDITIONS. CUSTOMER WILL NOT REPRESENT IN ANY WAY OR THROUGH ANY MEANS TO ANY END-USERS, CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY THAT PROVIDER PROVIDES ANY 911 / E911 SERVICE PURSUANT TO THESE TERMS AND CONDITIONS OR THE WHOLESALE VOICE TERMINATION CONTEMPLATED BY THESE TERMS AND CONDITIONS. CUSTOMER REPRESENTS AND WARRANTS TO PROVIDER THAT, IF CUSTOMER IS AT ANY TIME REQUIRED TO PROVIDE ANY 911 / E911 SERVICES DUE TO ANY TELECOMMUNICATIONS RELATED SERVICES CUSTOMER SELLS OR PROVIDES TO CUSTOMER’S END-USERS, CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY AT ANY TIME THAT ARE, IN WHOLE OR IN PART, ENABLED BY THE WHOLESALE VOICE TERMINATION CONTEMPLATED BY THESE TERMS AND CONDITIONS, THEN CUSTOMER WILL ENSURE THAT 911 / E911 SERVICES ARE FULLY PROVIDED IN COMPLIANCE WITH SUCH 47 C.F.R. PART 9.

**The terms and conditions applicable to the Service and/or any DID, DID/DOD, TFN and/or TN at any time will be identified through an Electronic Tool, the ordering process and/or other means.**

**Customer is strictly prohibited from displaying on any outbound caller ID any number for which Customer has not obtained from either Provider or any other third party 911 Services with respect to such number. By displaying any number in any outbound caller ID, Customer represents and warrants to Provider that Customer has obtained from either Provider or any other third party 911 Services with respect to such number.**

Customer understands the inherent limitations in the Service(s) provided by Provider, including, without limitation, the fact that the Service(s) does not include inbound calling and does not provide 911 / E911. Customer will advise in writing all End Users obtaining service by or through Customer of the inherent limitations in the Service(s) provided by Provider, including, without limitation, the fact that the Service(s) does not include inbound calling and does not provide 911 / E911. **CUSTOMER WILL INDEMNIFY AND HOLD HARMLESS PROVIDER, ITS OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES FROM AND AGAINST ANY AND ALL**

LOSSES, CLAIMS, COSTS OR DAMAGES OF WHATEVER NATURE ARISING FROM OR RELATING TO THE END USER OF ANY SERVICES FOR OUTBOUND CALLING. CUSTOMER WILL INDEMNIFY AND HOLD PROVIDER HARMLESS AGAINST ANY AND ALL CLAIMS AND/OR EXPENSES RESULTING FROM THE FAILURE OF CUSTOMER OR ANY RESELLER TO COMPLY WITH THIS SECTION.

**3. IP Originated Usage.** Customer represents and warrants to Provider that all Customer termination calls and/or Usage will be IP Originated.

(i) Customer represents and warrants to Provider that all of the services and capacity to be purchased from Provider will be used by Customer to provide an “enhanced service” as defined in 47 C.F.R. Section 64.702(a) and/or an “information service” as defined in 47 U.S.C. Section 153(24).

(ii) If any ruling, decision or determination by the FCC, a PUC, any state regulatory agency, or any court concerning internet-enabled calls is inconsistent with the description of an IP Originated call as described in these Terms and Conditions, Provider reserves the right to modify or amend the description to be consistent with such ruling, decision or determination. If any such modification or amendment materially adversely affects Customer, then Customer will have thirty (30) calendar days after such amendment or modification to notify Provider in writing of such material adverse effect. Section 14 of the MSA will apply upon Customer’s delivery of such notice to Provider. If Customer fails to notify Provider in writing within such thirty (30) calendar day period, Customer will have accepted such amendment or modification.

(iii) If any third party asserts at any time that any of Customer’s calls and/or Usage is not IP Originated, Customer will, at Customer’s sole expense, cooperate with Provider and provide reasonable evidence (including but not limited to providing [or causing End Users to provide] Provider with call detail records) to demonstrate that any applicable calls are IP Originated.

(iv) If it is determined at any time that any calls and/or Usage sent to Provider by Customer for termination are not IP Originated, in addition to any applicable Rates, Customer will pay Bandwidth the Non-IP Originated Surcharge provided in any applicable SOF or Rate Sheet.

**4. Connection; Customer’s Responsibilities.** Customer must connect to Provider’s network in a manner and at locations determined by Provider. Subject to Provider’s prior written approval, the connection may be made: (i) via the Public Internet, and/or (ii) via a dedicated interconnection to Provider’s network if Customer has been approved for and has executed an agreement for such connection. Customer will, at Customer’s sole cost and liability as between Customer and Provider, be solely responsible for (i) providing and successfully installing any and all equipment, software and the like necessary for End Users to use any service offered or sold by Customer; (ii) obtaining and providing to Provider, prior to installation of any applicable Wholesale Voice Termination services, the IP address(es) for any applicable proxy server, Customer application and/or any other applicable hardware/software solution; and (iii) any and all support for any End User to which Customer offers or sells services. For clarity, with respect to any and all Class 5 Features Customer may offer to Customer’s End Users from time to time, Customer will provide to Provider any and all accurate information required to support Wholesale Voice Termination with respect to such services, even if Customer obtains such information from Customer’s applicable End Users. CUSTOMER WILL INDEMNIFY AND HOLD PROVIDER HARMLESS AGAINST ANY AND ALL CLAIMS AND EXPENSES RESULTING FROM THE FAILURE OF CUSTOMER OR END USERS TO COMPLY WITH THIS SECTION.

**5. Interoperability.** Customer and Provider will reasonably cooperate with each other to test to ensure interoperability between Provider and Customer’s networks and systems. All necessary interoperability testing will be completed within a reasonable time not to exceed thirty (30) calendar days after Customer’s execution of the SOF to which these Terms and Conditions is attached. If after completion of initial interoperability, Customer plans to make upgrades, updates and/or enhancements (collectively “**Configuration Changes**”), Customer will notify Provider prior to implementing a Configuration Change so that Customer and Provider may work together in good faith to determine how best to proceed regarding such Configuration Change. If at any time an interoperability condition occurs that adversely affects Provider’s network that cannot be adequately remedied within a reasonable period of time, taking into consideration the severity of the interoperability condition and the effect on Provider’s network, Provider may, at its sole discretion, suspend the provision of Wholesale Voice Termination.

**6. Charges and Rates.** Customer represents and warrants to Provider that Customer has received the Rates described in the Rate Sheet.

**If the Rate Sheet does not include Flat Rates, this paragraph will apply:** Such Rates will apply if Customer commences using Wholesale Voice Termination within seven (7) calendar days of the “as of” (ao) date in the electronic file name of such Rates. If such “as of” (ao) date in the electronic file name of such Rates is more than seven (7) calendar days prior to Customer’s receipt of such electronic file, then such Rates may not be valid and Customer must obtain a new electronic file of Rates from Customer’s sales or support contact with Provider. **All Rates are subject to change upon seven (7) calendar days prior notice.** Provider will send such prior notice to Customer via email to Customer’s “Contact Name” as recorded in the “Customer Contacts for Rate Change Notice” section on the SOF. Customer will be deemed to have received and accepted such changed Rates upon Provider’s transmission of the email(s) containing the electronic file(s).

**Call Rating:** Wholesale Voice Termination only provides Interstate, Intrastate, and, if expressly contracted in writing, International call Termination. No outbound local calling or inbound calling service is provided. Provider will determine the distinction and jurisdiction of Interstate versus Intrastate versus International call Termination based on (i) (x) the originating Automatic Number Identification (“ANI”) as determined by Provider in accordance with customary industry standards, and (y) the dialed TN as determined in accordance with customary industry standards, or (ii) if the Rates provided to Customer pursuant to any applicable Rate Sheet include Rate Decks based on Location Routing Number(s) (“LRN”), (x) the originating ANI as determined by Provider in accordance with customary industry

standards, and (y) (1) the LRN associated with the dialed TN as determined by Provider in accordance with customary industry standards, or (2) if the dialed TN does not have an associated LRN, then the dialed TN itself in accordance with customary industry standards. If Provider determines, in its sole discretion, that Provider cannot accurately apply Rates due to an invalid or omitted originating ANI, and the terminating rating jurisdiction is not International, Provider will apply the prevailing Intrastate Termination Rate associated with the dialed TN. If an invalid or omitted originating ANI results in Provider incurring access charges, local exchange carrier “DIP” fees or other similar fees or charges from or by any third party, Provider will invoice Customer for any and all such fees and charges in addition to any applicable Usage Rates.

**Interstate Termination Rates:** Provider will invoice all Interstate Termination pursuant to the applicable Rates set forth in the SOF. Rates set forth in the SOF may be provided on either a NPA-NXX-X or LATA/OCN basis; provided, however, for billing purposes, Provider will rate and invoice for all calls based upon NPA-NXX-X Rate Type. Unless otherwise expressly agreed in the SOF, all Interstate Rates are subject to change upon seven (7) calendar days prior notice from Provider. Provider does not guarantee call delivery and may block specific routes at any time in accordance with applicable law.

**Intrastate Termination Rates:** Provider will invoice all Intrastate Termination pursuant to the applicable Rates set forth in the SOF. Rates set forth in the SOF may be provided on either a NPA-NXX-X or LATA/OCN basis; provided, however, for billing purposes, Provider will rate and invoice for all calls based upon NPA-NXX-X Rate Type. Unless otherwise expressly agreed in the SOF, all Intrastate Rates are subject to change upon seven (7) calendar days prior notice from Provider. Provider does not guarantee call delivery and may block specific routes at any time in accordance with applicable law.

**International Rates:** If Customer and Provider have executed an agreement providing for International Call Termination, applicable Rates will be as set forth in any such agreement. If Customer terminates a call to an International Call Termination destination, and Customer and Provider have not executed an agreement providing for International Call Termination, and/or Provider has not provided Customer with Rates applicable to such call(s), then Provider’s then-prevailing applicable Rates as posted at [www.bandwidth.com/resources/legal](http://www.bandwidth.com/resources/legal) will apply. Unless otherwise expressly agreed in the SOF, all Rates applicable to International Call Termination are subject to change upon five (5) calendar days prior notice from Provider. Provider does not guarantee call delivery and may block specific routes at any time in accordance with applicable law.

Billing increments are set forth below:

Terminating Destination	Initial Billing Increment (Seconds)	Additional Billing Increment (Seconds)
US Domestic	6	6
International	30	6

7. **Call Completion.** Wholesale Termination service is generally available to the termination calling destinations for which Customer has been provided Rates. Subject to compliance with applicable law, Provider reserves the right to block or otherwise restrict termination of calls to any and all termination calling destinations, whether or not included in Rates provided to Customer, and without notice to Customer. Provider does not guarantee call completion, and the failure to complete any or all calls, regardless of reason, will not constitute a breach of this Agreement. Wholesale Voice Termination pursuant to these Terms and Conditions does not include International Call Termination unless expressly agreed in writing. Provider does not guarantee call completion, and the failure to complete any or all calls, regardless of reason, shall not constitute a breach of the MSA, the SOF and/or these Terms and Conditions. NO SERVICE LEVEL AGREEMENT OR SLA APPLIES TO WHOLESALE VOICE TERMINATION.
8. **Forecasting.** From time to time, Provider may request from Customer a forecast of expected termination Usage volumes. Customer will cooperate with such requests. If Customer anticipates changes in termination Usage volumes, Customer will proactively contact Provider to review such changes. Provider will use commercially reasonable efforts to maintain adequate capacity to meet Customer provided forecasts. Provider’s failure to adequately provide capacity, regardless of reason, will not constitute a breach of the MSA or these Terms and Conditions.
9. **Customer Responsibility to Control and Manage Traffic.** In addition to any other terms and conditions of the MSA, the SOF and/or these Terms and Conditions, Customer will bear the following responsibilities in connection with Provider’s provision of Wholesale Voice Termination: (i) Customer will manage the integrity of the traffic egressing Customer’s network, (ii) Customer will screen and block calls destined to (x) invalid single numbers, (y) unassigned NPA-NXX-X, and/or (z) numbers with invalid formats; (iii) in addition to Customer’s obligations pursuant to Section 10 below of these Terms and Conditions, Customer will manage and correct, as necessary, any fraudulent calling patterns or calling patterns perceived as fraudulent that may harm Provider’s network. If Customer fails to comply with the foregoing obligations of this Section 9, (i) Provider will have the right (but not the obligation) to take protective action against Customer to protect Provider’s egress network. Provider’s protective actions may include, without limitation, the temporary blocking of Customer’s traffic until the applicable problem is resolved in Provider’s reasonable discretion, and (ii) Provider will not be obligated to meet any Service Level Agreement, if any.
10. **Fraud.** Customer will not participate in or assist in any fraudulent termination Usage, in any form or by any means, either by itself or any of its End Users. If Customer suspects, knows of, or should have known of any fraudulent termination Usage, Customer will immediately stop all fraudulent termination Usage and notify Provider. Customer acknowledges, understands and agrees that Provider does not provide, is not required to provide, and does not warrant, any fraud prevention. If Provider becomes aware of unusual Usage volumes or patterns, Provider will make commercially reasonable attempts to notify Customer; provided, however, Provider will have no obligation to notify Customer of any such volumes or patterns. Provider’s sole obligation to Customer with respect to any actual, alleged or suspected fraudulent termination Usage will be to reasonably cooperate with Customer, upon Customer’s request and at no expense to Provider, to

assist Customer's efforts to stop any fraudulent termination Usage that Customer reports to Provider. Customer will be solely responsible for all risks, expenses and liabilities arising from or relating to fraudulent termination Usage by Customer, Customer's End Users, or any other person or entity directly or indirectly utilizing Wholesale Voice Termination. Notwithstanding anything in this Section 10 to the contrary, Customer is and will remain solely responsible for any and all termination Usage, fraudulent or otherwise, and the terms and conditions of the MSA, including, without limitation, Section 10 of the MSA, will apply.

- 11. Regulatory Responsibilities of Customer.** Customer (i) will be solely responsible for and will undertake all required action(s) before the FCC, any PUC, any state regulatory agency, any court or any other controlling regulatory bodies, agencies, commissions or other authority, (ii) will obtain any required governmental approval(s), and (iii) will fully comply with any and all applicable laws and regulations, including, without limitation, all applicable FCC requirements, such as CALEA and CPNI, in each case as such actions, approvals and/or laws and regulations apply or relate to the utilization of Wholesale Voice Termination by Customer, Customer's End Users, or any other person or entity to which Customer provides any services utilizing Wholesale Voice Termination.
- 12. Relationship.** Provider has no relationship with or obligation to any of Customer's End Users or any other person or entity to which Customer provides any services utilizing Wholesale Voice Termination, none of whom is a third party beneficiary of the MSA or these Terms and Conditions. Customer is solely responsible for all pricing, billing and collections, and/or compliance with any applicable laws or regulations related to any services Customer provides to its End Users or any other person or entity to which Customer provides any services utilizing Wholesale Voice Termination. Customer will provide technical support to Customer's End Users and will conduct customary problem resolution and troubleshooting activities directly with Customer's End Users to determine whether any condition affecting any Service(s) is attributable to Provider's network prior to reporting a Service Outage pursuant to Section 11 of the MSA.
- 13. Call Detail Records.** If Provider makes CDRs available to Customer via an API at any time, Customer will obtain API documentation from Provider. Provider does not guarantee CDR availability, nor does it warrant the accuracy of the data available via API; the failure to provide CDRs, regardless of reason, will not constitute a breach of the MSA or these Terms and Conditions.
- 14. Provider Right to Modify Terms and Conditions.** Provider may amend or modify these Terms and Conditions and/or Wholesale Voice Termination pursuant to Section 8(b) of the MSA at any time.
- 15. Conflicting or Controlling Terms.** In the event of any conflict between the MSA (exclusive of these Terms and Conditions) and these Terms and Conditions, then these Terms and Conditions will control with respect to any matter related to Wholesale Voice Termination.

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# Telesmart - MSA, SOF, Rate Sheet, T&Cs

Adobe Sign Document History

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-  Signed document emailed to Brian Lynott (blynott@telesmart.com), jlundein@telesmart.com, Eric Brummond (ebrummond@bandwidth.com), ejuhl@bandwidth.com, Stephen Leonard (sleonard@bandwidth.com) and Bandwidth Contracts (wandecontracts@bandwidth.com)  
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