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## Terms and conditions

(For use with **Managed Voice Services (VoIP), Hosted PBX and PRI**)

This is an agreement ("Agreement") for Managed Voice Services, Hosted PBX and PRI services ("Service") between you and Telnes Broadband and may include Service related to you. Any of the following actions constitutes your agreement, without limitation or qualification, to be bound by, and to comply with, the terms of this Agreement; your initialization of the Service, either order completion or through the use of Service or Services.

1. **Service Description:** Subject to the terms and conditions of the agreement. In any event, use of the services shall constitute acceptance of this Agreement. Telnes agrees to provide, and Customer agrees to purchase, the "Service", defined to include Managed Voice Services over IP ("VoIP") calling and certain calling and call management features or advanced features, including additional features or advanced features which may be offered at additional costs, and which Telnes, in its sole discretion, may add, modify, or delete from time to time. In order to utilize certain Telnes VoIP Services, Telnes will install and configure a VoIP gateway. The gateway interconnects with Customer's existing PBX phone system and Telnes' data connection to Customer's premise.

If Customer's business requires the use of Facsimile machine(s) (Fax machines) Customer should be aware that both the data line and/or the Fax machine itself may not be capable of delivering satisfactory Fax operation with VoIP. In addition, fax may not work at all.

2. **Term.** The term of this Agreement begins on the date we activate Service for you. SERVICE AGREEMENTS REQUIRE A FIXED TERM OF A MINIMUM OF ONE -YEAR, YOU AGREE TO PURCHASE SERVICE FOR THE FULL TERM. After the term expires, this Agreement will continue from month to month until terminated by either party upon 30 days written notice.
3. **Use of Service.** You agree not to use the Service for any unlawful or abusive purpose or in any way which interferes with our ability to provide Service to our customers, or damages our property. You agree not to use the Service for any illegal activities. Resale of your Numbers, the Service, or any part thereof, is prohibited without prior contractual arrangements with us and any required regulatory approvals. If your Service is fraudulently used, you must

immediately notify us. We have the right to interrupt or restrict Service to you, without notice to you, if we suspect fraudulent or abusive activity. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we prescribe. Upon termination of the Service, Customer's right to use the Service immediately ceases.

Customer understands that the use of the Services requires passage through customer's network firewall. This may introduce exploitable weaknesses. Those customers especially concerned about their security are advised to deploy firewalls specifically designed to enhance security for SIP-based VoIP applications and services. Customer hereby indemnifies Telnes against any responsibility for damages, consequential or otherwise that arise from such an introduced exploitable weakness.

4. **Charges.** You represent and warrant that you are at least 18 years of age and that you possess the legal right and ability to enter into this Agreement. You are responsible for paying all charges to your account for Service, including but not limited to, long distance and directory assistance charges and for all taxes and surcharges imposed on you or us as a result of your use of the Service. Long distance usage on each call is as otherwise stated by your plan. 800/888/877 Numbers are charged on the in-bound call only. Calls originating from Canada, Hawaii, Alaska, Puerto Rico, the U.S. Virgin Islands or other nearby island groups will have special, higher, per minute rates that will vary by each of these regions normal business usage.

Customer acknowledges that certain of Telnes Broadband suppliers established the prices charged to Telnes based on governmental laws, rules, laws or regulations or pursuant to new decisions or orders issued by applicable regulatory bodies, Telnes reserves the right to increase the price charged to customer, effective thirty days following notice to customer. If customer does not agree to accept new pricing, customer may terminate the agreement without penalty within thirty days of the date of such notice. Any continued use of the services thirty days after the notice date shall be deemed acceptance of the new prices.

5. **Fees and Payments.** Customer shall pay for all services and products that Telnes Broadband furnishes to Customer at the applicable prices set forth in customer's order. Customer shall also pay any repair, telephone additional charges set forth in the customer policy. Upon installation Customer shall pay all up front fees and the first month of all monthly fees for services for which installation has occurred. Telnes shall bill Customer once a month. Telnes will bill Customer for recurring charges on the first day of the month in which Telnes provides Services. For example, Telnes' July 1 invoice will bill Customer for Services to be received from July 1 thru July 31. For new Customers installed during a month, Telnes will invoice on a prorated basis for that month's services as well as fees associated with installation, set up, equipment, sales tax

and shipping. Accounts will be considered late if payment is not in our office within thirty (30) days of the date of the invoice. After thirty (30) day period, all unpaid fees will accrue interest at a rate of one and one-half percent (1.5%) per month or any part thereof, or the highest rate allowed by applicable law; and customer shall pay all collection costs incurred by Telnes (including, without limitation, reasonable attorney's fees). Telnes reserves the right to charge credit card on file if your check payment is cancelled, fails to process, or if your account remains past due. A twenty-five dollar (\$25.00) returned check fee will be charged for any payment being returned from your financial institution.

6. **Billing Dispute.** By no later than sixty (60) calendar days following the invoice date, Customer must submit all Bona Fide Disputes along with Complete Documentation, to: support@telnesbroadband.com or to Telnes Broadband, P O Box 1246, Everett, WA, 98206-1246, Attn: Dispute Dept or by e-fax to 208-978-9253. Notwithstanding the foregoing, if Customer has submitted a Bona Fide Dispute, Customer shall, by the Due Date, pay to Telnes all invoiced amounts due within the due date. An amount will not be considered in dispute until Customer has submitted A Bond Fide Dispute in the manner described herein, and the Parties will promptly address and attempt to resolve the claim. Telnes, in its discretion exercised in good faith, may request additional supporting documentation or reject Customer Bona Fide Dispute as inadequate. If Telnes rejects such Bona Fide Dispute, Telnes will so notify Customer. If Telnes determines that the Customer is entitled to credits or adjustments for Service outages pursuant to provisions of applicable credits, than Telnes will credit customer invoice for such amount on the next appropriate billing cycle.
7. **Taxes.** Customer shall be responsible for and shall pay all applicable federal, state and local taxes, fees, charges, surcharges or other similar exaction (hereinafter called "taxes") imposed on or with respect to the services and/or products that are the subject of this agreement whether such taxes imposed directly upon customer or upon Telnes broadband. For purposes of this section, taxes do not include any taxes that are imposed on or measured by the net income of Telnes broadband.
8. **Default/Termination.** If you fail to pay any amount owed to us within 5 days after the due date, or if you breach any representation to us or fail to perform any of the promises you have made in this Agreement, or if you are subject to any proceeding under the Bankruptcy Act or similar laws, you will be in default and we may, in our sole discretion and with or without prior notice, suspend or restrict Service and/or terminate this Agreement, in addition to all other remedies available to us. We may require reactivation charges to renew Service after termination or suspension. Upon termination, you are responsible for paying all amounts and charges owing under this Agreement, including any applicable cancellation fee. You agree to pay all costs including attorney's fees, collection costs and court costs we incur in enforcing this Agreement through any appeal.

9. **Deposits/Credit Reports.** You represent and warrant that all information you have provided to us in connection with your Service is true, accurate, current and complete. You authorize us to ask consumer reporting agencies or trade references to furnish us with credit information, and you consent to our rechecking and reporting personal and/or business payment and credit history. We may require a deposit, or increase an existing deposit, to establish or maintain Service which will be held as a partial guarantee of payment and cannot be used by you to pay your bill or delay payment. Unless otherwise required by law, deposits may be mixed with other funds and will not earn interest. If you default or this Agreement is terminated, we may, without notice to you, apply any deposit towards payment of charges due.
10. **Cancellation Fees.** IF THIS AGREEMENT OR YOUR SERVICE IS TERMINATED BEFORE THE END OF YOUR TERM BY YOU OR BY US FOLLOWING YOUR DEFAULT (INCLUDING A FAILURE BY YOU TO MAKE PAYMENT OF AMOUNTS YOU OWE US), YOU WILL BE IN MATERIAL BREACH OF THIS AGREEMENT. YOU AGREE OUR DAMAGES WILL BE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND YOU AGREE TO PAY US, AS A REASONABLE ESTIMATE OF OUR DAMAGES AND IN ADDITION TO ALL OTHER AMOUNTS OWING, A CANCELLATION FEE EQUAL TO THE MONTHLY FEE TIMES THE NUMBER OF MONTHS REMAINING IN YOUR TERM.
11. **Title to Assets:** Telnes retains all rights and title to that deployed equipment. Upon Termination of the Agreement for any reason or suspension or cancellation of delivery of the Services to Customer, Customer agrees to return equipment to Telnes in its original condition (excepting normal wear and tear) within five (5) days of Customer's receipt of a written request for the return of the equipment from Telnes. If Customer fails to return the equipment within thirty (30) days of receipt of the request or refuses Telnes access to such equipment, then Telnes will add the full original purchase cost of that equipment to Customer's next invoice
12. **Account Changes.** You may change Service features or Service plan by notifying us and paying our standard charges, including any applicable early cancellation fee, and by complying with any other requirements we include to accomplish the change. Changes will take effect by your next billing cycle.
13. **Ownership of Number.** You understand and agree that you are not the owner of any telephone number assigned to you by Telnes. Ownership of any such phone number is vested solely in Telnes (who will assign or re-assign such numbers to you for your use during the term of this Agreement). You understand and agree that (a) Telnes may from time to time need to change the number assigned to you (due to an area code split or for any other reason outside of Telnes's control) and (b) following the termination of your Telnes account for any reason you will no longer have access to such number. In either case, such phone number may

be re-assigned immediately to another customer and you agree that Telnes will not be liable for damages (including consequential or special damages) arising out of any such re-assignment and you hereby waive any claims with respect to any such re-assignment, whether based on contract, tort or other grounds, even if Telnes has been advised of the possibility of damages. In the event that the Number assigned to you by Telnes is a Toll-Free number and the Service associated with that number being terminated, then Telnes will, upon your written request, allow you to move that Toll-Free number from Telnes to an alternate Toll-Free carrier, provided that (a) the termination of Service is not due to a default, and (b) all fees and charges for the Services, whether or not then due, have been paid in full.

In the event that you have moved a Number, either local or Toll-Free, from a previous service provider or carrier to Telnes, then you will retain ownership of that Number. In the event the Service associated with that number being terminated, Telnes will, upon your written request, allow you to move that local or Toll-Free number from Telnes to an alternate, only if (a) the termination of the Service is not due to a default, and (b) all fees and charges for the Services, whether or not then due, have been paid in full.

14. ***Modification; Assignment.*** We may change or modify this Agreement from time to time, but any such change (a) will be made in good faith, and (b) if significant (as determined in the sole discretion of Telnes), will only be made after first providing you with notice of the change. You can review the most current version of this Agreement at any time at [www.telnesbroadband.com](http://www.telnesbroadband.com). If you do not agree to a significant change, you may terminate this Agreement by giving us written notice within 15 days of receipt of our notice of such significant change and you will not be charged an early cancellation fee. No hand-marked changes on this Agreement or any amendment will be valid unless we accept the changes in writing. Delivery by facsimile transmission (fax) of a copy of a modification of this Agreement shall be effective as delivery of an original. We may assign all or part of our rights or duties under this Agreement in connection with a sale of all or substantially all the assets of Telnes to a third party without notice to you; provided any such third party shall be obliged to honor the terms of this Agreement. You may not assign this Agreement without our prior written consent.
15. ***NO WARRANTIES.*** THE SERVICES ARE PROVIDED "AS IS." WE MAKE NO WARRANTIES REGARDING THE SERVICE WHATSOEVER AND EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT. Some jurisdictions do not allow the disclaimer of implied warranties. In such jurisdictions, the foregoing disclaimers may not apply to you insofar as they

relate to implied warranties. If you rely on the representations or warranties of any third persons with respect to the Services (including without limitation by dealers or resellers of the Services) beyond those made by Telnes, your sole remedy for such reliance is against the third person making such representation or warranty.

16. **LIMITATION OF LIABILITY.** WE SHALL NOT BE LIABLE IF OUR NONPERFORMANCE OR A FAILURE OF THE SERVICE IS CAUSED BY ACTS OR OMISSIONS OF ANOTHER SERVICE PROVIDER, EQUIPMENT OR SOFTWARE FAILURE OR MODIFICATION, TELECOMMUNICATIONS OR COMPUTER EQUIPMENT FAILURES, ACTS OF GOD, OR OTHER CAUSES BEYOND OUR REASONABLE CONTROL. WE ASSUME NO LIABILITY FOR SERVICE OUTAGES OR FOR FAILURE TO STORE, DELIVER OR TIMELY DELIVER ANY INFORMATION, MESSAGES OR CONTENT. IN NO EVENT SHALL OUR LIABILITY TO YOU FOR ANY REASON EXCEED OUR SERVICE CHARGES DURING THE AFFECTED PERIOD GIVING RISE TO SUCH LIABILITY. WE SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE OR CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS, EVEN IF TELNES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF THE SERVICE, RELIANCE ON THE SERVICE, INABILITY TO USE THE SERVICE, OR FROM THE INTERRUPTION, SUSPENSION OR TERMINATION OF THE SERVICE. WE SHALL NOT BE LIABLE FOR INJURIES TO PERSONS OR PROPERTY ARISING FROM USE OF THE SERVICE, OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICE.

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS TELNES AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, EMPLOYEES AND ANY UNDERLYING CARRIER, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, EXPENSES OR DAMAGES (INCLUDING ATTORNEYS' FEES), WHETHER KNOWN OR UNKNOWN, ARISING FROM (A) YOUR USE OF THE SERVICE, (B) ANY OTHER PERSON'S USE OF ANY ACCOUNT, REGARDLESS OF WHETHER SUCH USE IS AUTHORIZED BY YOU, OR (C) YOUR PROMISES OR STATEMENTS MADE IN THIS AGREEMENT. YOU HEREBY AGREE TO WAIVE ALL LAWS THAT MAY LIMIT THE EFFECTIVENESS OF THE FOREGOING RELEASES.

NOTWITHSTANDING THE FOREGOING, YOU SHALL NOT BE LIABLE FOR CLAIMS, EXPENSES OR DAMAGES ARISING FROM THE INTENTIONAL OR GROSSLY NEGLIGENT ACTS OF TELNES OR ITS EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES.

THIS LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW AND SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

17. **EMERGENCIES.** IN THE EVENT OF AN EMERGENCY WHILE USING YOUR SERVICE, HANG UP AND DIAL "911."
18. **Force Majeure.** Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond such party's reasonable control, including but not limited to acts of god, changes in governmental laws, rules, regulations or orders, war, terrorist acts, insurrection, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages in transportation, facilities, fuel, energy, labor or materials
19. **Privacy.** You authorize our monitoring and recording of your calls to us concerning your account or the Service and you consent to our contacting you from time to time.
20. **Notices.** Notices to you shall be effective when sent by email to the email address provided to us. You are responsible for notifying us of any changes in your address. Written notice to us shall be effective when directed to Support Department and received at our address. Your notice must specify your name and Order Number. All notice must be in writing.
21. **Disclaimer of Emergency 911 Services.** Telnes is subject to an FCC requirement to provide notification of any E911 limitations that may be associated with the service provided to your company. As is the case with E911 service provided by a traditional telephone service provider, you are advised that the E911 service provided by Telnes 1) may not function with the loss of electrical power, including the loss of power to telephone equipment or other equipment necessary to route E911 calls to the appropriate emergency call center; 2) will not function if the broadband connection is not operational; 3) will not function at a remote location or may transmit incorrect physical location information for the caller if internal users are allowed to use their IP-based phones remotely; 4) will not function if the telephone equipment or other equipment necessary to place calls is not correctly configured; 5) may not transmit the correct physical address for the E911 call due to incorrect information provided by you, use of a non-native telephone number or delays in loading or updating automatic number identification and location information into the E911 databases 6) may not be capable of being received and/or processed by an emergency call center due to the center's technical limitations; and 7) may be affected by other factors or force majeure events, such as the quality of the broadband connection and network congestion. Your signature on the Telnes service agreement will serve as your acknowledgement that Telnes has advised you of these potential limitations. The physical location which you provided to us prior to the initiation of service and at which our service is first

used by you, shall be the registered location that will be provided to the emergency call center when you place a 911 call.

CUSTOMER HEREBY ACKNOWLEDGES THAT TELNES RECOMMENDS THAT A PLAIN OLD TELEPHONE SERVICE ("POTS") LINE BE AVAILABLE AS A BACK-UP FOR 911 CALLING IN EACH PHONE SYSTEM LOCATION.

22. **General Information.** Choice of law and binding arbitration. This agreement shall be deemed to have been made in, and shall be constructed pursuant to the laws of the state of Washington and the United States without regard to conflicts of laws provisions thereof. Any waivers or amendments shall be effective only if made in writing. This agreement is the complete and exclusive statement of the natural understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to any subject matter of this agreement. Binding arbitration shall be the sole and exclusive remedy for resolution of disputes between the parties. Such dispute shall be submitted for arbitration in Seattle, Washington under the rules of the American Arbitration Association ("AAA"). The arbitrators' decision will be final and entered into any court of competent jurisdiction. The prevailing party will be entitled to recover its attorney's fees and costs in connection with such arbitration. Should either party bring a dispute in a forum other than AAA, the arbitrator may award the other party its reasonable costs and expenses, including attorney's fees, incurred in staying or dismissing such other proceedings or in otherwise enforcing compliance with this dispute resolution provision. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the federal arbitration act, 9 U.S.C. section 1, et seq. For the purpose of this section, the term "dispute" means any dispute, controversy, or claim arising out of or relating to (I) this agreement, its interpretation, or the breach, termination, applicability or validity thereof. "Telnes Broadband" includes its subsidiaries, affiliates, directors, officers, employees, beneficiaries, agents or assigns; the term "customer" means you, the original account holder, its agents, employees, directors, and officers.
23. **Assignment:** Neither party may assign or otherwise transfer its rights or delegate its duties hereunder without the prior written consent of the other; provided however, either party may assign its rights and obligations in connection with a merger or sale of all or substantially all of the assets of such party.