

Commercial Service Terms and Conditions

- 1. Agreement.** This “Agreement” shall mean the Commercial Service Agreement entered into between Customer and BendBroadband, which includes and incorporates by reference these Commercial Service Terms and Conditions. The Customer hereby agrees to purchase from BendBroadband and BendBroadband agrees to sell the Services (“Services”) identified in this Agreement or any future Amendments agreed to by the parties pursuant to the terms and conditions set forth herein. Executed Amendments and Addenda are included herein by reference as integral parts of this Agreement. If Customer wishes to change the Services or add additional Services, Customer and BendBroadband shall execute an Amendment describing such changes or additions. Unless specifically set forth on any Amendment, if the terms of any documents incorporated by reference are inconsistent with this Agreement, the terms of this Agreement will control. Customer agrees that the BendBroadband Internet Service Disclosures (including the Acceptable Use Policy for Internet Services and the other documents referenced therein) and Privacy Notice [together referred to as the “Internet Terms of Service”] as stated on www.BendBroadband.com/business will apply to any Internet Services provided under this Agreement. The Internet Terms of Service are included herein by reference as integral parts of this Agreement. Customer acknowledges certain duties and obligations of BendBroadband under this Agreement may be performed by certain affiliates of BendBroadband.
- 2. Service Period.** The Term commences on the Service Commencement Date for the applicable Service and continues for the number of months specified in this Agreement for such Service following the Service Commencement Date. Upon expiration of any Service Term, this Agreement shall continue in effect with respect to the Service on a month-to-month basis until canceled by either party on 30 days written notice; provided, however, that the charges for the Service during any renewal period shall be at the then-current monthly rate charged by BendBroadband for such Service.
- 3. Billing.** Compensation to be paid by Customer to BendBroadband (or to any of its designated affiliates) for Services provided under this Agreement shall be established at the rate and terms provided in this Agreement. The Customer agrees to pay the contract amount committed to under this Agreement. Customer may be required to remit payment for certain Services to an affiliate of BendBroadband. All invoices are due within 30 days from date of invoice. A late charge of \$5 or 1 ½% per month, not to exceed the highest permissible amount chargeable by law, may be charged on any unpaid balance owed to BendBroadband or any of its affiliates which remains unpaid for 30 days or more after the date of the invoice. BendBroadband may adjust the Video Base Rate up to 10% once in each calendar year. BendBroadband may also adjust the Video Base Rate more than 10% once in each calendar year due to increases in programming, copyright, and retransmission costs. In the event the Video Base Rate increases above 10% in a calendar year (excluding increases due to changes in the type or quantity of Services purchased by Customer), the Customer will have the ability to terminate this Agreement within 30 days of written notice of the increase. The Video Base Rate shall be exclusive of taxes and external fees including, but not limited to, franchise or other governmental fees. In addition to the above, in the event that any action taken by any legislative, judicial or regulatory body directly or indirectly causes a reduction in revenue or an increase in expenses with respect to the provision of the Services, BendBroadband shall have the right to increase the amount of Recurring Charges set forth in this Agreement upon 30 days’ notice and, except with regard to increases in the Video Base Rate that are 10% or less, the Customer will have the ability to terminate this Agreement within 30 days of written notice of the increase in Recurring Charges. Customer agrees that any unlimited service is being provided based on reasonable usage, and that use of the service for auto dialers, long distance dialup access to the Internet or other information services, call centers, certain switching applications or other high volume calling applications is not permitted and will entitle BendBroadband to terminate the Service upon written notice of the violation. BendBroadband reserves the right to monitor Customer’s usage to determine compliance with these limitations. Bundled prices represented on this Agreement may be billed separately on Customer’s bill. The separate pricing may not be used with any other product or bundled products. It is the Customer’s responsibility to review the monthly invoices for accurate representation of charges. Disputes concerning the accuracy of any invoice that has been paid must be brought in writing within three (3) months of the due date of the invoice.
- 4. Subsequent Additions/Deletions.** For each new product or service added to this Agreement after a 60-day grace period, installation charges will apply. Installation charges for advanced business products will be quoted at the time of request on an individual case basis. Subsequent feature deletions, after a 60-day grace period, will be assessed a service order charge per account. Any preferred customer discounts, volume discounts or promotional discounts are subject to change if Customer deletes Services from the original service agreement. Any adjustments in special discounts will be quoted at the time of the request on an individual case basis.

5. **Special Construction.** Where facilities are not available or if equipment, new facilities or changes to existing facilities are required for the provision of additional Services, a special construction charge will apply in addition to the monthly service charge. Customer may be required to pay additional charges or to contract for Services beyond the normal service term, or both.
6. **Service Installation / Equipment; Customer Requirements and Responsibilities.** BendBroadband shall only be responsible for bringing the lines ordered by Customer to the Customer designated demarcation point at Customer's premises where BendBroadband equipment terminates. In no event shall BendBroadband be responsible for connecting, installing or wiring past the demarcation point. Customer agrees and acknowledges that it shall be Customer's sole responsibility to provide and arrange for all necessary wiring and equipment. At the time of service installation and during maintenance and repair, Customer agrees to provide at no charge, access to any equipment, right to make use of all existing poles, conduits, wiring and other facilities on the premises which Customer owns or controls (the "Premises"), a safe working environment and adequate storage space for a reasonable quantity of replacement parts, electrical power to operate the Services and adequate space in Customer's Premises to house any equipment used in connection with provision of the Services, and shall take all other actions reasonably required for the performance of Services by BendBroadband under this Agreement. Neither Customer nor the owner or any resident of the Premises shall have any right, title or interest in the equipment. The equipment shall always be owned by BendBroadband and shall not be a fixture of the Premises. Upon the expiration or termination of this Agreement, or the expiration of BendBroadband's legal right to provide service to the Premises, BendBroadband shall remove reasonably accessible equipment from the Premises within a reasonable time. If BendBroadband installs wiring on the Premises, the following clause applies: Upon the expiration or termination of this Agreement, or the expiration of BendBroadband's legal right to provide Service to the Premises, at BendBroadband's option upon notice to Customer, BendBroadband may: (i) remove the wiring from the Premises within a reasonable time; or (ii) Customer shall purchase from BendBroadband the wiring on the Premises at the fair market value for the full replacement of such wiring, including labor. Customer is responsible for the security of all passwords, equipment or systems that allow access to the Services provided by BendBroadband. Customer acknowledges that they are responsible for actions on their account performed by others who have acquired Customer's passwords or access to Customer's equipment or systems with or without Customer's knowledge and Customer agrees to pay any charges that are incurred regardless of any claim the Customer may have against third parties based on unauthorized access to Customer's passwords, equipment or systems. Customer is also responsible for providing to BendBroadband accurate, specific address and location information for all BendBroadband telephone numbers provided (including any and all changes to such information) so that 911 calls can be properly directed to the appropriate PSAP (public safety answering point). If Customer moves the location of its voice service without the approval of BendBroadband, then 911 calls may not transmit any information, or may otherwise send incorrect address information and/or be directed to the incorrect emergency services provider, which may result in a delay or failure of emergency services being dispatched to Customer's location.
7. **Insecurity of the Internet. CONNECTION TO THE INTERNET CREATES INSECURITY.** Security and disruption problems are inherent in the Internet. The very openness of the Internet creates risks that the Internet is insecure, and vulnerable to both intentional and unintentional disruption. Security breaches can occur for technical and other reasons, and, despite the implementation of security measures, we cannot guarantee that our networks are not vulnerable to unauthorized and illegal access, computer viruses and other disruptive problems. Our ability to provide our services depends in part on the reliability of the Internet and the networks of our partners, and our services can also be negatively affected by limitations inherent in the technology infrastructure supporting the Internet and the internal networks of Internet users. Customer must provide adequate information security for their own networks by using appropriately complex passwords, firewalls, and updated anti-virus and anti-spyware software. Availability of Internet service varies and speeds advertised may not be available at all service addresses. Certain speeds are only offered in areas served by BendBroadband Fiber. Actual speeds experienced by customers vary and are not guaranteed. Speed ranges advertised are expressed as "up to" to represent network capabilities between customer location and the BendBroadband network. Speeds vary due to factors, including: distance from switching locations and external/internal network conditions.
8. **Term and Termination.** BendBroadband will provide Customer with the Services pursuant to the rates, terms and conditions specified herein, commencing on the latter of the requested service date or the day following the date in which BendBroadband notifies Customer that the Service is ready for use (the "Service Commencement Date"). Upon any termination of the Services herein, Customer shall return all BendBroadband-owned equipment in good working condition to BendBroadband, or Customer will be responsible for the full cost of the equipment. Customer is responsible for any damage to equipment provided by BendBroadband. Customers who terminate their Service prior to the expiration of the Term shall be liable for the repayment of any promotional credits, discounts or fee waivers including but not limited to installation fee waivers and for reimbursement of any special construction or non-recurring charges for Services or related facilities requested by Customer. If the Customer terminates this Agreement or disconnects Services before the end of the committed Term, Customer shall pay BendBroadband an early termination charge equal to: (a) fifty percent (50%) of the unpaid balance

of the Base Rate that would have been due throughout the remainder of the Term plus one hundred percent (100%) of the outstanding balance for Services provided up to the date of termination; plus (b) the full purchase price of any equipment as shown above, minus the amounts already paid on a per month basis up to the date of termination; plus (c) any and all waived one-time charges. Customer agrees that the forgoing early termination fees are fair and reasonable and that BendBroadband's provision of the Services would not be commercially viable but for these Customer commitments. This Agreement shall remain effective until terminated in accordance with the provisions set forth herein.

9. **Customer's Representations and Agreements.** Customer represents to BendBroadband that Customer is the legal owner or tenant of the Premises, and that no other person has any rights in the Premises that conflict with BendBroadband's rights under this Agreement. Customer shall not attach to or use, and shall not allow anyone else to attach to or use, the equipment for any purpose without BendBroadband's prior written consent. Customer shall use its best efforts to comply with all applicable theft of service laws. At BendBroadband's request, Customer, or a representative designated by Customer, shall accompany BendBroadband's employees or agents into any part of the Premises for the purpose of installing equipment. The person signing this Agreement on behalf of Customer represents that he/she is Customer's authorized agent and has full authority to bind Customer to the terms and conditions of this Agreement. If Customer is not the owner of the premises, Customer represents that he/she has obtained all necessary permissions from the owner to enter into this Agreement.
10. **Warranty.** BENDBROADBAND WARRANTS THAT THE SERVICES SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT WITH RESPECT TO THE FOREGOING WARRANTY, BENDBROADBAND IS PROVIDING ALL SERVICES TO THE CUSTOMER "AS IS" AND BENDBROADBAND MAKES NO WARRANTY AS TO THE CONTINUOUS OPERATION OF THE SERVICE OR ANY SPECIFIC FEATURE OF THE SERVICE. ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE ARE DISCLAIMED. BENDBROADBAND DOES NOT WARRANT THAT THE SERVICES OR RELATED PRODUCTS WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO YOUR COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES ON ANY OF THEM. CONNECTIONS (SYNC-RATES) ARE RATE ADAPTIVE AND MAY BE LOWER DUE TO THE LENGTH AND CONDITION OF THE LINE. ACTUAL THROUGHPUT MAY BE LOWER DUE TO INTERNET CONGESTION, NETWORK UTILIZATION, PROTOCOL OVERHEADS OR OTHER FACTORS, WHICH CAN NOT BE CONTROLLED BY BENDBROADBAND. IN THE EVENT OF A POWER OUTAGE AT CUSTOMER'S LOCATION OR IF CUSTOMER'S BROADBAND SERVICE IS DOWN, SERVICES THAT ARE NOT LINE-POWERED (SUCH AS managedIP) WILL NOT OPERATE AND CUSTOMER WILL NOT HAVE ACCESS TO EMERGENCY SERVICES SUCH AS 911.
11. **Limitation of Liability.** BENDBROADBAND SHALL NOT BE LIABLE IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF THE USE OF THE SERVICE, LOSS OF DATA, CUSTOMER'S INABILITY TO USE THE SERVICE, INTERRUPTIONS OR CLAIMS BY THIRD PARTIES. THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, FOR DISPUTES RELATED TO THE ACCURACY OF INVOICES, THE MAXIMUM CREDIT OR REFUND A CUSTOMER MAY RECEIVE SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO BENDBROADBAND OVER THE MOST RECENT THREE MONTH PERIOD FOR THE SPECIFIC SERVICES IN DISPUTE; FOR ALL OTHER CLAIMS BENDBROADBAND LIMITS LIABILITY RELATED TO THE PROVISION OF SERVICES TO THE AMOUNT PAID BY CUSTOMER IN THE PREVIOUS TWELVE (12) MONTHS FOR SERVICES GIVING RISE TO, OR WHICH ARE THE SUBJECT OF, THE CLAIM WHETHER SUCH CLAIM ALLEGES BREACH OF CONTRACT, OR TORTIOUS CONDUCT INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR ANY OTHER THEORY. BENDBROADBAND SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO CUSTOMER FOR ANY OMISSION OR ERROR WITH RESPECT TO CUSTOMER'S TELEPHONE DIRECTORY LISTINGS. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE PROVISION OF SERVICES OR ITS PERFORMANCE MAY BE BROUGHT BY CUSTOMER MORE THAN SIX (6) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.
12. **Default.** An event of default ("Event of Default") shall occur upon the occurrence of all or any one of the following events: (a) the Customer does not pay when due any invoice; (b) the Customer ceases doing business as a going concern; (c) the Customer makes an assignment for the benefit of its creditors or admits in writing to its inability to pay its debts as they become due; (d) the Customer files, or has filed against it, a petition in bankruptcy or for its reorganization, arrangement, composition or readjustment under any state insolvency law or the Customer liquidates all or a substantial part of its assets not in the ordinary course of its business, dissolves or takes other similar action; or (e) the Customer shall default in the performance of any of its obligations to BendBroadband or any assignee arising under this Agreement, or any other

agreement between the Customer and BendBroadband and such default is not cured within 30 days of BendBroadband providing notice of same, unless prohibited by relevant federal, state or local law.

13. **Remedies.** Upon the occurrence of an Event of Default, unless prohibited by relevant federal, state or local law, BendBroadband may, at its option and without notice or demand, exercise all or any one or more of the following remedies: (a) declare immediately due and payable all invoices and all other sums due, including termination charges, or to become due hereunder or under any other agreement between the Customer and BendBroadband; (b) terminate all of its obligations arising under this Agreement, and any other agreement between Customer and BendBroadband; (c) enter the premises where any of BendBroadband's equipment is located and repossess all or any part of the equipment; (d) offset any amounts due BendBroadband under this Agreement against any amounts BendBroadband or any of its affiliates owes the Customer (or the Customer's affiliates) under any other agreement; or (e) exercise all other legal and equitable remedies which BendBroadband may have. The foregoing remedies shall be deemed cumulative and may be exercised successively or concurrently as permitted by law.
14. **Interruption of Services.** For any interruption of Service that is not due to negligence or non-compliance with any term or condition of this Agreement by Customer or the failure of operation or malfunction of facilities, power or equipment provided by the Customer, Customer will be entitled to a credit against the monthly Recurring Charge for such Service. Service will be deemed to be interrupted from the time BendBroadband receives notice from Customer that the Service is not working until the time the Service is working. Unless provided otherwise by law, credits shall be calculated on the basis of a 30-day month and shall be credited upon Customer request against the monthly Recurring Charge for such Service as follows:
- First 30 minutes: none
 - 30 minutes to 3 hours: 1/10 day
 - Each additional 3 hour period (or fraction thereof): 1/5 day

If the duration of the outage is more than 24 hours, then the credit shall be the daily pro-rated amount of the Customer's monthly Recurring Charge for the applicable Service for each day thereafter, in an aggregate amount not to exceed the monthly Recurring Charge for such Service. Credits under this provision shall be the Customer's sole remedy and BendBroadband's sole liability for any Service outage.

15. **Support.** The following outlines BendBroadband support boundaries and procedures for BendBroadband Internet connectivity and access.
- 15.1 **Warranty.** Internet access equipment and/or Polycom[®] telephone sets purchased or leased from BendBroadband is fully supported per the manufacturer's warranty period (individual manufacturer's warranties vary; check specific manufacturer for the warranty period). Extended warranty support programs may be available through BendBroadband. Equipment leased or purchased from third party vendors, including vendors recommended by, are ***not*** supported by BendBroadband.
- 15.2 **Boundaries**
- 15.2.1 Purchased Equipment from BendBroadband – The boundary is the Ethernet port on the router. Please note that the inside wiring between the Network Interface Device and the equipment is not supported.
- 15.2.2 Customer Provided Equipment – The boundary is the Network Interface Device. When BendBroadband is able to verify circuit integrity the support boundary is met.
- 15.2.3 NOTE: Firewalls, Virtual Private Networks (VPN) and network management are beyond the support boundaries provided by BendBroadband for dedicated Internet services.
- 15.3 **Activation**
- 15.3.1 Equipment Purchased from BendBroadband – Customer is responsible for the configuration of equipment purchased from BendBroadband.
- 15.3.2 Customer Provided Equipment – Configuration and installation of equipment not purchased or leased from BendBroadband is the Customer's responsibility. BendBroadband will provide the Customer with a list of relevant IP addresses for use in the configuration of the Customer's equipment. However, it is the Customer's responsibility to configure the equipment.
- 15.4 **Unsupported Routers.** Routers not purchased through BendBroadband are unsupported. **BendBroadband will not provide support services for unsupported routers.**

- 16. Insurance.** Each party shall maintain Commercial Workers' Compensation Insurance as required by law and Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence covering personal injury and property damage.
- 17. Miscellaneous**
- 17.1 **Confidentiality:** The parties will hold the pricing and other non-public terms and conditions of this Agreement in confidence, and will not reveal the same to any person or entity except with the written consent of the other party; to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); as part of either party's standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; or in order to enforce its rights pursuant to this Agreement.
- 17.2 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State where the Services are performed (without giving effect to conflicts of law).
- 17.3 **Attorney's Fees and Costs:** In any action by a party to enforce its rights hereunder, the non-prevailing party shall pay the prevailing party's cost and expenses (including reasonable attorney's fees).
- 17.4 **Extraordinary Circumstances:** BendBroadband shall not be liable for any failure to perform its obligations under this Agreement to the extent such failure is due to "Force Majeure". Force Majeure includes, but is not limited to, acts of God, strike, lockout or other interference with work, war, declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, network or other telecommunications failures, including suppliers, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses and any other cause whether of the kind specified above or otherwise which is not reasonably within the control of BendBroadband.
- 17.5 **Entire Agreement:** This Agreement, and any executed Amendments, Addenda, and Statements of Work shall constitute the entire Agreement between Customer and BendBroadband notwithstanding inconsistent or additional terms and conditions in Customer's purchase orders or other documents submitted to BendBroadband. Any and all representations, promises, warranties or statements by BendBroadband's agent(s) that differ in any way from the terms and conditions of this Agreement shall have no force or effect. This Agreement shall at all times be subject to such modifications as the FCC may, from time to time, require under their respective jurisdictions and otherwise, this Agreement may be amended only by a written instrument executed by both parties.
- 17.6 **Severability and Survival of Terms:** Any term or condition of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating any of the remaining terms or conditions of the Agreement. The following provisions shall survive any termination or expiration of this Agreement: Disclaimer of Warranties (in Section 10), Limitation of Liability (Section 11) and the Miscellaneous provisions (Section 17).
- 17.7 **Assignment** This Agreement may be assigned by either party without the consent of the other party. An assignment by BendBroadband shall release BendBroadband from any and all obligations arising after the latter occurrence of the effective date of such assignment and the date Customer is first notified of the assignment or pending assignment. This Agreement shall be automatically assigned by Customer to the transferee in the event of the sale, assignment or transfer of all or any part of the Premises or upon the assignment or transfer of any management contract that may exist for the Premises. Customer shall provide BendBroadband with at least thirty (30) days' prior written notice of any sale, assignment or transfer of Customer's interest in the Premises, including any assignment or transfer of any management agreement existing on the Premises. Such notice shall include the name and address of the prospective transferee and the anticipated effective date of the sale, assignment or transfer. Customer further agrees to provide a copy of this Agreement to any prospective transferee.
- 17.8 **Taxes:** In addition to the payments required hereunder, Customer shall pay all sales, use, transfer and other taxes whether federal, state or local, however designated which are levied or imposed by reason of the transactions contemplated by this Agreement excluding, however, any income taxes on fees paid to BendBroadband by Customer.
- 17.9 **Waiver:** A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder.
- 17.10 **Electronic Documents:** BendBroadband hereby gives notice of its right to convert this Agreement to electronic format and retain this Agreement solely in an electronic format. BendBroadband may provide this Agreement in electronic form or may provide a reproduction of this Agreement from its electronic copy in the event of any dispute regarding the rights and obligations of the parties under this Agreement. The parties agree that any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability and shall meet any requirement to provide an original or hard copy.

17.11 **Notices:** Any notice to be given by Customer to BendBroadband under this Agreement shall be in writing and shall be delivered personally, sent postage prepaid by U.S. certified mail, or by facsimile with electronic confirmation to the local BendBroadband office or to such other address as BendBroadband may designate in writing. Delivery of any notice shall be effective five days after mailing for U.S. certified mail, on the facsimile confirmation date for facsimile, or on the date delivered for personal delivery.