



## TERMS AND CONDITIONS

These Terms and Conditions (this "Agreement") apply to any services you receive from CMS Telecom or its representatives, affiliates, subsidiaries, successors, or assignees ("CMS Telecom"); are pursuant to your CMS Telecom Service Agreement(s); apply to each Service (whether offered on a stand-alone basis or in an integrated package); and shall take precedence in any conflict with your Service Agreement(s).

**1. Payment Policy.** You agree to pay all Service fees, incidental charges (including but not limited to charges associated with Installation, expedites, moves, adds, changes, deletions and cancellations), federal, state and local taxes, surcharges, and other charges incurred on or through your account, including charges specified on the Service Agreement and any equipment purchases made through your account. Billing for each Service provided by CMS Telecom shall commence upon the completion of Installation of such Service, which shall be defined as the date on which CMS Telecom tests and turns up such Service and notifies you that Service is available for use. CMS Telecom is not responsible for any delays that impede your ability to use the Installed Service, including but not limited to delays requested by you or caused by a third party or delays incurred as a result of problems connecting the Installed Service to your LAN, PBX, or other customer premises equipment ("CPE") by you or a third party. Furthermore, CMS Telecom may charge additional fees for changes made by you to orders after the Service Agreement is signed by you, but before the Service is installed.

Initial charges from CMS Telecom for Services with recurring monthly fees will include any start-up or Installation fees and shall be invoiced at the beginning of the first full month after this Agreement and the accompanying Service Agreement are signed. All payments hereunder to CMS Telecom shall be due upon your receipt of CMS Telecom's invoice. For your convenience, payment options include check, money order, or credit card (Visa, MasterCard, or American Express). Interest charges will be added to any past due amounts at the lower of 1.5% per month or the maximum rate allowed by law, prorated for each day past 30 days that payment is due.

Should you fail to keep your account balance current, CMS Telecom has the right to suspend your Service upon ten (10) business days after receipt of written notice (except as specified otherwise by FCC or state regulations, where applicable) and continue billing until sufficient payment has been received by CMS Telecom to bring current your account balance. If the Service is suspended due to your non-payment, it will not be restored until all charges (including any interest charges) and a \$100 per-Service Restoration Fee are paid in full. Should you fail to bring current your account balance within 10 days following suspension, CMS Telecom has the right to completely disconnect Service, reclaim all CMS Telecom-owned phone numbers, IP addresses, and hardware, and charge all applicable Early Termination fees specified in this Agreement or the Service Agreements. If Service is disconnected but can be restored, CMS Telecom will only do so at your request and after all charges (including any interest charges) and a \$500 per-Service Restoration Fee are paid in full.

CMS Telecom may use any reasonable collection methods (including but not limited to sending your account to a third party collections agency and/or submitting your company to a credit rating agency for notation on your credit profile) to obtain payment for outstanding balances. You agree to reimburse CMS Telecom for its reasonable costs (including but not limited to reasonable attorneys' fees and/or collections agency fees associated with collecting delinquent or dishonored payments) and for additional fees assessed by CMS Telecom for any check returned for insufficient funds.

**2. Credit Inquiries/Deposits.** You authorize CMS Telecom to inquire into your credit history, including asking consumer reporting agencies or any other references for your credit information, and CMS Telecom reserves the right, at its sole discretion, to at any time, based on your credit worthiness, refuse you additional Service, not subject to the original Managed PBX Service Agreement or require a non interest bearing security deposit that will ultimately be refunded upon expiration or termination of the Service Agreement, assuming all amounts owed or due have been paid in full.

**3. Billing Disputes.** Notification from you of any dispute regarding your bill must be submitted to CMS Telecom's National Customer Care Center or Billing Department within 45 days of the invoice date and have a corresponding open trouble ticket (please retain trouble ticket number for verification), or you will be deemed to have waived any objection to such payment. Once such disputes are identified, CMS Telecom will research such disputes in a reasonable amount of time and will not hold you liable to the charges until CMS Telecom has reached a conclusion on the validity of the claims. However, regardless of any billing disputes, all non-disputed balances must be paid in full and in accordance with the Payment Policy.

**4. Refund Policy.** Any refunds issued by CMS Telecom to Customer will be issued as service credits.

**5. Privacy.** CMS Telecom does not rent, sell, or share personal information about you with other people or nonaffiliated companies. Customer agrees with CMS Telecom's full Privacy Policy as posted at [www.callcms.com](http://www.callcms.com).

**6. Access to Customer Premises and Equipment.** With respect to any Installation, maintenance, or repair provided by CMS Telecom in connection with the Service, you agree to provide CMS Telecom with all necessary access to your premises, internal wiring, CPE, and other facilities and equipment and to allow CMS Telecom to perform such Installation, maintenance and repair.

**7. Term and Termination.** For ongoing Services, the term specified on the applicable Service Agreement shall commence on the date of Installation. Notwithstanding the

foregoing, this Agreement shall become effective on the date it is accepted by CMS Telecom and shall remain in effect for successive one-month periods until the end of the Term set forth in the Service Agreement for each of the Services. Where a term longer than one month has been specified, and except as set forth in the Service Agreement or Schedules hereto, the initial Term will automatically renew for successive one (1) year periods, unless you notify CMS Telecom of your desire not to renew at least ninety (90) days prior to the expiration of the then-current Term. In the event of any disconnection by us for non-payment by you or if you terminate early, except in response to a material breach of this Agreement by CMS Telecom (before which CMS Telecom shall be given written notice and 30 days to cure), you will be obligated to pay the Early Termination Fee, which shall be calculated as the sum of (a) the number of months remaining in the then current term of the Service Agreement multiplied by the agreed-upon monthly recurring fees for fixed recurring charges, and (b) the number of months remaining in the then current term of the Service Agreement multiplied by the average monthly usage charges over the two most recent 30-day billing periods or minimum revenue commitment associated with the Service, whichever is greater, for usage-based charges. Any termination of Service or of this Agreement will result in all IP addresses assigned to you by CMS Telecom reverting back to CMS Telecom. In addition, all CMS Telecom property (including but not limited to CMS Telecom equipment, facilities, and software) shall be returned to CMS Telecom. CMS Telecom reserves the right to terminate this Agreement (or restrict or suspend Service) in the event you violate this Agreement. During the term of this Agreement, CMS Telecom reserves the right to modify its pricing as set forth in the Service Agreement or elsewhere upon 30 days written notice.

**8. Acceptable Use.** You agree not to use or allow the use of the Service to in any way transmit or post material that, as CMS Telecom determines in its sole discretion: (a) is prohibited by any law or regulation, or facilitates or encourages the violation of any law or regulation; (b) disrupts third parties' use or enjoyment of any services; (c) invades the privacy of third parties, or violates the intellectual property rights or other rights of CMS Telecom or any third party; (d) is abusive, profane, libelous, slanderous, obscene, threatening, misleading, harassing, discriminatory, or otherwise harmful or objectionable; (e) causes the transmission or propagation of any virus, worm or other harmful or disruptive component; (f) violates or tampers with the security of any computer equipment, network, or program; (g) constitutes, facilitates, or encourages unsolicited commercial email or "spam"; (h) violates any other use requirement of which CMS Telecom may notify you from time to time or that is contained in any acceptable use policy posted on CMS Telecom's website. This Agreement together with the actual removal of material or denial of access to material by CMS Telecom is deemed notice to you within the meaning of the Digital Millennium Copyright Act. YOU REPRESENT AND COVENANT THAT ANY CURRENT OR PLANNED WEBSITE CMS TELECOM OR ITS PARTNERS WILL BE HOSTING ON YOUR BEHALF (THE "HOSTED WEBSITE") DOES NOT AND WILL NOT VIOLATE THE AFOREMENTIONED ACCEPTABLE USE POLICY. IF YOU VIOLATE THESE POLICIES, CMS TELECOM RESERVES THE RIGHT TO IMMEDIATELY SUSPEND OR DISCONNECT SERVICE AND CHARGE ALL APPLICABLE TERMINATION FEES.

**9. Capacity Limitations.** Your Service may have certain voice mail storage space and bandwidth utilization limitations. You agree that CMS Telecom may measure your storage space and bandwidth usage and in other ways enforce such limitations without further notice including a refusal to store incoming email or further download or upload traffic.

**10. Protection of Systems or Business.** You agree that CMS Telecom may also monitor use of the Service and disclose such use or other information related to your account as CMS Telecom reasonably feels is necessary to maintain, repair, and protect its systems or business. In addition, although CMS Telecom does not systematically monitor the content on the Hosted Website, CMS Telecom reserves the right to require content that CMS Telecom determines in its sole discretion violates its acceptable use policy (as set forth in Section 6) be promptly removed and, if it is not, to suspend or terminate the Service without further notice.

**11. Unauthorized and Authorized Third Party Use.** You are responsible for ensuring the confidentiality of any password you obtain from CMS Telecom and for the consequences of any unauthorized use of your Service. If you have reason to believe that your account with CMS Telecom is no longer secure, you must promptly notify your CMS Telecom Customer Service Representative. You shall also be responsible for ensuring compliance with any Service obligations or restrictions under this Agreement by any customers of yours or other third parties authorized by you to use your account, including but not limited to being fully liable to CMS Telecom for any charges incurred as a result of such usage.

**12. General and Specific Disclaimer of Warranties; Limitation of Liability; and Remedies.** YOU EXPRESSLY AGREE THAT THE SERVICES, INCLUDING ANY ASSOCIATED INSTALLATION, MAINTENANCE, OR REPAIR AND ANY ASSOCIATED EQUIPMENT, SOFTWARE, OR CONTENT, IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, ALL SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CMS TELECOM SPECIFICALLY DOES NOT WARRANT BUT WILL TAKE REASONABLE MEASURES TO AVOID OUTAGES (A) THAT THE SERVICES INCLUDING SECURITY SERVICES

Customer Initial \_\_\_\_\_

WILL BE (1) UNINTERRUPTED AND CONTINUOUS, (2) ERROR OR VIRUS FREE AND SECURE FROM THIRD PARTY INTRUSIONS, AND (3) COMPATIBLE WITH YOUR EQUIPMENT; (B) THAT YOUR SERVICES WILL BE AVAILABLE FOR THE TERM OF YOUR SERVICE AGREEMENT, OR WILL CONTINUE TO BE AVAILABLE; AND (C) THAT CMS TELECOM WILL CONTINUE TO HAVE ALL NECESSARY ACCESS RIGHTS TO YOUR BUILDING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CMS TELECOM ALSO DOES NOT WARRANT ANY SERVICE, EQUIPMENT, OR SOFTWARE PROVIDED BY A THIRD PARTY FOR WHICH CMS TELECOM IS A RESELLER OR SALES AGENT.

CMS TELECOM SHALL NOT HAVE ANY LIABILITY FOR INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES SUFFERED BY YOU OR ANY OTHER PARTY, REGARDLESS OF WHETHER OR NOT YOU OR SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CMS TELECOM' LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL SERVICE FEES PAID TO CMS TELECOM IN THE PRIOR FOUR (4) MONTHS OF THE AGREEMENT.

THE DISCLAIMERS OF WARRANTY, LIMITATIONS OF LIABILITY AND REMEDIES SET FORTH IN THIS SECTION ALSO APPLY TO CMS TELECOM' SUPPLIERS AND SUBCONTRACTORS. THE REMEDIES SET FORTH IN THIS SECTION ARE THE MAXIMUM FOR WHICH CMS TELECOM AND ITS SUPPLIERS AND SUBCONTRACTORS ARE COLLECTIVELY RESPONSIBLE. UNDER NO CIRCUMSTANCES SHALL CMS TELECOM OR ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR LOSS OF PROFITS, LOSS OR INACCURACY OF DATA, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF CMS TELECOM OR ITS SUPPLIERS OR SUBCONTRACTORS HAVE BEEN ADVISED OF THEIR POSSIBILITY. CUSTOMER COVENANTS NOT TO SUE OR OTHERWISE MAKE A CLAIM AGAINST CMS TELECOM' SUPPLIERS OR SUBCONTRACTORS FOR ANY ALLEGED OR ACTUAL FAILURE, DELAY, OR NONPERFORMANCE OF THE SERVICE. SPECIFICALLY, WITHOUT LIMITATION, YOU ACKNOWLEDGE AND AGREE THAT THE "LOCAL LOOP" MAY BE PROVIDED BY AN INDEPENDENT THIRD PARTY PROVIDER, IN WHICH CASE ITS SERVICE IS INDEPENDENT OF THE SERVICE PROVIDED BY CMS TELECOM. CUSTOMER AGREES THAT CMS TELECOM'S SUPPLIERS AND SUBCONTRACTORS ARE INTENDED THIRD PARTY BENEFICIARIES OF THE PROVISIONS CONTAINED IN THIS PARAGRAPH AND SHALL BE ENTITLED TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH IN ANY ACTION BROUGHT AGAINST THEM.

YOU ALSO AGREE THAT ELECTRONICALLY STORED DATA IS HIGHLY SENSITIVE AND SUBJECT TO UNFORESEEN LOSS DUE TO A VARIETY OF CAUSES; THAT THE PROPER OPERATION OF ANY COMPUTER SYSTEM INCLUDES THE MAKING OF REGULAR BACKUPS; AND THAT CMS TELECOM SHALL NOT BE LIABLE FOR ANY LOSS OF DATA IN CONNECTION WITH THE SERVICES, INCLUDING ANY RELATED INSTALLATION OR REPAIR ACTIVITY.

YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE, NONPERFORMANCE, OR UNAVAILABILITY OF THE SERVICE SHALL BE FOR CMS TELECOM TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR OR RESTORE THE SERVICE, OR FOR YOU TO TERMINATE THIS AGREEMENT ACCORDING TO ITS TERMS, AS DESCRIBED IN SECTION 7.

**13. Special Disclaimer on Behalf of Building Owners and Managers.** YOU ACKNOWLEDGE AND ACCEPT THAT THE FACILITIES AND SERVICES ARE NOT BEING PROVIDED OR MAINTAINED BY THE BUILDING OWNER OR MANAGER; THAT THE OWNER OR MANAGER HAS NO RESPONSIBILITY OR LIABILITY FOR THE INSTALLATION, OPERATION, MAINTENANCE, USE, REPAIR OR REPLACEMENT OF THE FACILITIES, OR THE PROVISION, QUALITY OR SUFFICIENCY OF THE SERVICES; AND THAT BY SUBSCRIBING TO AND ACCEPTING SUCH SERVICE, YOU RELEASE THE OWNER AND MANAGER FROM ANY SUCH LIABILITY. THIS PROVISION IS EXPRESSLY INTENDED FOR THE BENEFIT OF OWNER AND MANAGER.

**14. Indemnification.** You agree, at your own expense, to defend, indemnify, and hold harmless CMS Telecom, its affiliates, suppliers, subcontractors, and representatives from and against any and all claims or liabilities including, without limitation, reasonable attorneys' fees, arising from or relating to the use of the Service by you or someone using your account (whether authorized or unauthorized) or any violation of this Agreement or applicable law, including without limitation any claims against CMS Telecom relating to the content on, or goods or services provided through, the Service, such as defamation claims, copyright claims, privacy claims, obscenity claims, etc. You acknowledge and agree that CMS Telecom takes no responsibility for the content on, or goods or services provided through, the Service.

**15. Tariffs.** Notwithstanding any provision to the contrary in this Agreement or accompanying Service Agreement, in the case of services governed by a tariff and/or by federal and state rules and regulations, where there is conflict between the tariff and/or rules and regulations and any provision in this Agreement or accompanying Service Agreement, and where required by law, such tariff and/or rules and regulations shall control.

**16. Miscellaneous.**  
**Assignment.** You may not assign any of your rights or obligations hereunder without the prior written consent of CMS Telecom. Notwithstanding the foregoing, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties' respective successors and permitted assigns.

**Independent Contractors.** Each party hereto is acting as an independent contractor and not as an agent, partner, employer, employee, or joint venture partner of the other.

**Force Majeure.** The failure of CMS Telecom to perform any obligation shall be excused as a result of any governmental actions of any kind, wars, strikes, fires, floods, acts of

God, or any causes of like or different kind beyond the reasonable control of CMS Telecom.

**Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict-of-laws principles. Prior to submitting any formal complaints to governmental/regulatory/trade agencies and prior to commencing any lawsuit against CMS Telecom, you must notify CMS Telecom of your grievances and engage CMS Telecom in a good faith negotiation towards resolution. Any action to enforce this Agreement shall be brought exclusively in the United States District Court for the Southern District of New York, or if there is no jurisdiction in such court, then in a state court in New York County.

**Amendment.** No amendment or modification of this Agreement shall be valid or binding upon the parties unless in writing and signed by each party.

**Headings.** All headings are for the convenience of the parties only and shall be given no legal effect.

**Waiver.** No failure or delay on the part of CMS Telecom in the exercise of any right or privilege hereunder shall operate as a waiver thereof or of the exercise of any other right or privilege hereunder, nor shall any single or partial exercise of any such right or privilege preclude other or further exercise thereof or of any other right or privilege.

**Entire Agreement.** This Agreement, including any associated Service Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, whether oral or written.

**Severability.** If any provision of this Agreement is held to be ineffective, unenforceable or illegal for any reason, such decision shall not affect the validity or enforceability of any or all of the remaining portions thereof.

**17. Notice.** Any notice to be given hereunder by you to CMS Telecom shall be in writing via email to both [support@callcms.com](mailto:support@callcms.com) and [info@callcms.com](mailto:info@callcms.com) or via mail to our Company address, 1211 Hamburg Turnpike Suite 306, Wayne, New Jersey 07470. Notices to you shall be sent to either your Service e-mail address or to the Company address supplied below.

The signatory below represents and warrants his or her authority to execute, deliver and perform this Agreement on behalf of the Company named below. CMS Telecom shall be entitled to rely on any apparent or implied authority of such signatory, which shall result in a binding and enforceable agreement between CMS Telecom and the Company. Once the Company accepts Installation or actually uses any of the Services hereunder, Company waives any right to thereafter object to the validity and enforceability of this Agreement due to an alleged lack of authority by the signatory. Company expressly agrees to this Agreement and to timely pay the charges set forth on the accompanying Service Agreement.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Billing Contact Name: \_\_\_\_\_

Tax ID#: \_\_\_\_\_

CMS Telecom Representative: \_\_\_\_\_