



## Hosted PBX Service Agreement Term and Conditions

### 1. Rates and Service

Block Line Systems (Telesystem) shall provide the Customer with the services indicated on the attached Service Agreement. During the term of these Services, Telesystem will comply with all applicable rules and regulations filed with appropriate federal and state regulatory agencies which govern the tariffs associated with the services. In the event of a conflict between this Agreement and such tariffs, the tariffs shall control. If any portion of this Agreement shall at any time violate any law, the same shall not affect the remainder of this Agreement, which shall be construed as if such portion had not been contained herein. Any additional services as required by the Customer shall become part of this Agreement and subject to the same terms and conditions. Customer agrees to cooperate with Telesystem's representatives by allowing access to premises for installation of any equipment necessary to accomplish proper operation of the services. Customer acknowledges that Telesystem will provide one month of complimentary support after the installation has been completed to the Customer's satisfaction. Support rendered thereafter would be billable at \$85/hour and invoiced in fifteen-minute increments. Customer acknowledges that Telesystem is subject to any and all regulated charges and fees, which are approved by state, federal, or any other applicable agencies, and that customer charges are subject to these changes. Telesystem reserves the right to alter Customer pricing with seven (7) days written notice in the event that there is an increase in cost to provide any service referenced in this Agreement.

### 2. Service Term

This Agreement shall become effective upon complete execution by the parties. The term set forth on the Service Agreement shall commence on the Service Activation Date and shall automatically renew for successive term(s) unless cancelled prior to the expiration of a term. Because time is of the essence, timely notice is a necessity with cancellations requiring 60 days notice. Customer must inform Telesystem of its intention to cancel said service by certified mail, return receipt requested at least 60 days prior to the expiration of the then current term. In the event of the early termination of this Agreement by customer or termination by Telesystem for material breach, Customer shall pay Telesystem all non-recurring charges plus all recurring charges and the average monthly usage charges projected through the end of the then current term; and, to the extent not covered by other amounts due Customer's pro-rata share of any third-party license and other fees incurred by Telesystem to provide the Services. In the event of a customer caused delay in the Service Activation Date, Telesystem reserves the right to apply charges, and customer agrees to pay such charges, prior to activation. If the customer cancels service prior to the Service Activation Date, Telesystem shall bill customer all contracted monthly recurring charges (MRCs) through the life of the term, plus any incremental non-recurring charges (NRCs) charged to Telesystem for service implementation. Subject to aforementioned, the customer may elect to opt into a month to month term; Telesystem reserves the right to increase the recurring and usage charges effective the date the month to month term begins.

### 3. E911 Service and Acknowledgement Statement

Telesystem's dedicated service supports E911 in much the same way as traditional circuit-based local telephone service with certain exceptions. This notification, issued pursuant to FCC Order, is to inform Telesystem's dedicated customers of limitation in the E911 service associated with their dedicated services. Under certain circumstances, E911 service may not be available through your dedicated service. For example, E911 service may not be available in the event you relocate and use your VoIP compatible equipment at a location other than your premise (e.g. soft phone or remote HBPX). E911 will also not be available through your dedicated service if (i) your VoIP compatible equipment fails, (ii) your broadband connection fails, (iii) you lose electrical power to your VoIP compatible equipment, or (iv) your VoIP broadband or ISP service is suspended or terminated. Finally, E911 service may not be available through your dedicated service (i) if you use a telephone number with your VoIP service which is not native to the

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geographic area in which you are located or (ii) during the period in which the physical location at which you registered to use your VoIP service is being uploaded into pertinent databases. The FCC mandates that Telesystem obtain an affirmative acknowledgement that its dedicated customers have read and understand this notification. Please acknowledge you have read this notification and understand the limitations associated with your VoIP services by signing this Agreement. By signing this Agreement you also acknowledge you are authorized to represent and make decisions regarding the telecommunication services provided to this account.

#### **4. Electrical power, Internet Access and Non-Voice Systems**

Customer acknowledges that the services (including E911) will not function without electrical power and that an interruption of the Customer's broadband Internet access or LAN will disrupt the Customer's phone service. Customer also acknowledges that the services are not set-up to function without dialing systems, including security systems, medical monitoring equipment, TTY equipment and entertainment or satellite televisions systems. Customer has no claim against Telesystem for interruption or disruption of such systems by the services.

#### **5. Equipment**

Telesystem retains all rights, title and interest in the Telesystem provided equipment located at your site. Customer will provide Telesystem access to this equipment, as needed, to ensure operation and for any required maintenance. On the day of the equipment delivery, a Telesystem technician will dispatch to the service location to extend the loop or BYOB connection and install the necessary hardware. The first hour of both travel and labor is covered under this Agreement; any additional time will be billed at the rate of \$150/hour. Upon termination or expiration of the Service Agreement, Customer agrees to return equipment as directed by Telesystem or to allow Telesystem to remove the equipment. Failure to return the equipment within 30 days of disconnect or usage/destruction above normal wear and tear will result in a onetime charge equaling the replacement value of the equipment plus and any other costs associated with the recovery of the equipment. Furthermore, any damage or destruction to the equipment during the term of the Agreement will result in a charge to the customer if it was determined by the equipment manufacturer or Telesystem the equipment was not defective. Telesystem shall not be responsible for or maintain or service any customer owned equipment. Customer provides all LAN and wiring. Any additional cost incurred to install wiring or other computer infrastructure to accommodate the new services will be responsibility of the customer.

#### **6. Local Number Portability**

Normal porting hours are Monday-Friday, 8AM-4PM. Any ports requested outside of this window can be accommodated in most cases but will be billed a one-time charge of \$150. We do not honor port requests for any voice services on Fridays unless otherwise approved by Telesystem management and the Customer.

#### **7. Billing and Payment Obligation**

Billing for the service component will begin on the Service Activation Date, as specified, for the specific service type. The Service Activation Date is the date: (i) Equipment is installed and tested at the Customer's locations, and (ii) IP connectivity to Provider has been established, OR (iii) 30 calendar days after the loop install is tested and accepted. Customer Premise Equipment (CPE) related costs and installation fees will be billed upon CPE activation per location. Customer shall be billed for services monthly by Telesystem or its duly appointed billing agent, and Customer agrees to pay for services and any applicable federal, state and local taxes, regulatory surcharges and/or applicable fees associated with the services, within 25 days of the bill date. These credit terms will be provided when a routine credit check has been performed by Telesystem. This credit check procedure may result in a deposit or prepaid terms required by Telesystem. Telesystem may, at its discretion, change credit terms assigned. All billing disputes must be submitted in writing within 60 days of the date of the invoice on which the error or problem first appeared. Failure to comply with this timeframe

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requirement will result in a denied claim. The invoice shall be considered past due after 25 days of the bill date. Payment shall be remitted in U. S. funds to the current address of Telesystem. Interest of 1.5% (or as permitted by law) per month will be assessed on past due amounts. Telesystem will notify Customer by mail that the account is past due. If payment with interest has not been received within 30 days of the bill date service could be suspended and a reactivation fee will be assessed prior to reactivation of service. Telesystem reserves the right to charge a return check fee. Customer shall pay all collection costs including reasonable attorney's fees. All system implementation and training fees will be billed immediately following contract execution. If Telesystem is given an incomplete list of phone numbers or is provided with inaccurate service address information, the Customer maybe subject to an additional fee.

#### **8. Quality of Service**

No quality of service commitment is express or implied. Customer acknowledges and agrees that the Services are provided in adherence within the attached Service Level Agreement.

#### **9. Unlimited Local and LD Package**

To be eligible, Customer must select and retain Telesystem as its local, regional toll, and long distance provider. The use of dialers or equipment for the purpose of auto calling, call center, telemarketing or other high call volume purposes is prohibited. In the event that usage exceeds double that of the average customer in the same area, Telesystem reserves the right to move customer to a different pricing plan. This plan only relates to domestic outbound usage and excludes offshore, international, Mexican, Canadian, calling card or inbound usage.

#### **10. Short Duration Calls**

If ten (10) percent or more of the Customer's completed calls during any billing cycle are equal to or less than six seconds in length (Short Duration Calls), Telesystem reserves the right to charge and Customer shall pay an additional surcharge of \$0.01 per Short Duration Call during such billing cycle. The Short Duration surcharge will be in addition to the Customer's usage rates.

#### **11. Use of Customer Information**

In the course of providing service to Customer, Telesystem will obtain certain usage-related information about the type, quantity or amount of telecommunications services that Customer uses. This information is referred to as customer proprietary network information ("CPNI") under federal law. Telesystem policy regarding CPNI information and changes when calling into support will require you to provide your Telesystem account number as part of the verification process. Telesystem also obtains and possesses information regarding the number called or the number from which a call was placed and the time, location or duration of any calls. This information is referred to as Call Detail Records. The use of the term CPNI includes Call Detail Records. You have the right, and we have a duty, to protect the confidentiality of Customer's CPNI. Under federal law, we may use your CPNI to provide service to you, to bill and collect for such services, to protect our property rights and as otherwise permitted or required by law. In addition, Telesystem may use CPNI to offer you better prices or packages of the types of services you currently receive from Telesystem and to market other services as well. Telesystem will seek your approval in accordance with FCC rules prior to using CPNI to market other services to you. Telesystem will not disclose CPNI to independent contractors or joint venture partners without obtaining your prior approval in accordance with FCC rules. If you obtained service from Telesystem with the assistance of an independent Sales Agent, you hereby consent to Telesystem sharing CPNI with the Sales Agent(s) so that Sales Agent may use this information in marketing additional products and services to Customer offered by Telesystem or its affiliates. You may withdraw this consent at any time by contacting Telesystem directly. Except as described above, Sales Agent will not share this information with any third parties nor use this information.

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## **12. Liability, Indemnification and Warranty**

Telesystem will respond promptly upon notification of any disruption of service and will promptly restore equipment and/or services under its control to a proper working condition. If it is determined that the disruption of service is the responsibility of others, Telesystem will notify Customer and, if it can be determined, notify the responsible party and continue to monitor and diligently solicit the responsible party to properly repair affected equipment or condition. In no event shall Telesystem and/or its third party providers be liable to Customer for damages or loss of any kind resulting from the use of the system or service(s). The services provided by Telesystem and/or its third party providers are without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Telesystem and/or its third party providers will not be responsible or liable for, including but not limited to, any damages whatsoever arising out of or in connection with the use or performance of the service(s), including but not limited to, loss of use, data or profits, whether or not advised of the possibility of damage. Customer agrees to indemnify and hold harmless Telesystem and/or its third party providers. No defect, unfitness, or other condition of system equipment or service(s) shall relieve Customer of the obligation to pay any charges hereunder or perform any other obligations under this Agreement.

## **13. Governing Law**

The Agreement and the relationship between Telesystem and the customer shall be governed by the laws of the Commonwealth of Ohio without regard to its conflict of law provisions. Telesystem and Customer agree to submit to the personal and exclusive jurisdiction of the courts within the Commonwealth of Ohio, to the extent possible in Wood County, and waive any objection as to venue or inconvenient forum. The failure of Telesystem to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provisions, and the other provisions of the Agreement remain in full force and effect. Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the service or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## **14. Prohibited Usage**

You agree not to use the service or allow the services to be used for any illegal activities. You are responsible for all use and misuse, with or without your knowledge or consent, of the services. You understand and agree that the use of Telesystem's services without payment, as well as any attempt to avoid payment for service by fraudulent means is prohibited. You shall not use the services to disseminate any materials which Telesystem, in its sole discretion, deems to be offensive or inappropriate, including, but not limited to, materials which violate the rights of other parties, which are obscene or pornographic or which advocate hatred of or violence against any person or group. You shall immediately cease dissemination of any such materials upon demand by Telesystem. You shall not disclose any information provided by Telesystem to you, including any login names, passwords or other security devices, to any other person or entity, or allow use of the services by or for the benefit of any other person or entity, including resale or redistribution of the services for profit or otherwise. You shall comply with any reasonable rules imposed by Telesystem in connection with the services at any time hereafter immediately following your receipt of notice thereof. You agree not to use Telesystem's services in the course of any criminal activity. You agree not to use Telesystem's services in the course of any conduct that constitutes tortious activity, including but not limited to activity that constitutes defamation; fraud; false advertising; or violation of copyright, trademark, service mark, trade dress, or trade secret rights. You agree not to use Telesystem's services in the course of any conduct intended to harass, threaten, or abuse, or that is designed to harass, threaten or abuse, or that actually harasses, threatens, or abuses any person. You agree not to use Telesystem's services to distribute unsolicited commercial e-mail (UCE or SPAM). You agree not to use Telesystem's services to post or distribute obscene materials or other sexually explicit or violent materials, display or distribution of which is restricted by local, state, or federal law. In the event Customer participates in or carries out any of the aforementioned items Telesystem may immediately terminate this Agreement and any other service being provided to Customer, without notice.

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### **15. Consultation**

Telesystem may offer consultation services from time to time. You understand that Telesystem's sole responsibility under this Agreement is to perform the Services (which include without limitation consulting services, if any) in good faith. You further understand and agree that Telesystem is not responsible for any actions or consequences whatsoever that result from following or declining to follow any advice or recommendation of Telesystem, it being acknowledged and agreed by the Customer that Telesystem's services provided under this Agreement are consulting only. You understand and agree that the Customer is solely responsible for its own conduct and action, including without limitation whether or not to follow any advice or consultation, and that Telesystem's sole liability will be for acts constituting bad faith by Telesystem or its willful misfeasance or reckless disregard of its duties. The parties hereto recognize and agree that the effectiveness of the Services and the success of any actions undertaken by Customer are not guaranteed or warranted by Telesystem in any respect whatsoever.

In addition, from time to time Telesystem may use 3rd party companies to help with consulting services, and you agree and understand that in these cases, Telesystem will not be liable for any advice provided by such 3rd parties.

### **16. Entire Agreement**

This Agreement sets forth the entire understanding between the parties and supersedes all prior understandings and oral arrangements, unless there is a written modification, amendment or rider executed by both parties and signed by both parties. It is agreed and acknowledged that this Agreement was complete on its face when executed and that this Agreement is made and accepted on the express warranty and representation that the Customer has the authority to negotiate this Agreement. The waiver by any party of any term or condition of this Agreement at any time shall not be construed as a waiver of that or any other term or condition at any other time.

### **17. Force Majeure**

Telesystem shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers, or other difficulties Telesystem as may occur in spite Telesystem's best efforts.

**Customer Initials:** \_\_\_\_\_

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