



# Hosted Services Terms & Conditions

This Transcom Telecommunications Terms and Conditions agreement is entered in to by, and between Transcom Telecommunications, a California Corporation located at 1390 E. Burnett Street Suite B, Signal Hill, CA 90755 ("Transcom"), Transcom Hosted Services products including all optional features and related services, hereafter referred to as "the Service," as provided to a customer of Transcom Telecommunication's Hosted Services, hereafter referred to as "the Customer." The parties agree to as follows:

## Section A: Payments and Charges

The Customer's Initial Payment for the Service will be due upon the processing of the Customer's order and may include a Deposit amount equal to 50% of all One Time Charges, which may include Hardware, Software, Installation and Setup Fees. This Deposit will be due prior to the Order being processed. The Service Start Date is the date Services have been provisioned and are available for the Customers use. Any costs for new features, equipment, or services added to the Service between the receipt of the Deposit and the Customer's Service Start Date will be billed on the most current available billing cycle and be due upon receipt.

On subsequent monthly intervals after the Service Start Date, the Customer will be charged the ongoing monthly charges, the cost of any overflow long distance used during the previous month, the monthly costs for any hardware being rented, not already included in the Service, and for any international calls. Included in the calling plans are calls to the Continental U.S., Alaska, Hawaii, and Canada. The allotted long distance minutes are pooled across all lines in the Service (number of lines x 1,000 minutes = total pool of local and long distance calling).

## Section B: Additional Charges and Price Changes

Calls from pay phones to any of the Customer's toll-free numbers carry a surcharge per call, mandated by the FCC, which is passed on to the Customer at cost. Customers will be notified in writing of any price changes. Continued use of the Service following notice of the price changes will constitute the Customer's consent to such changes.

## Section C: Service Level Commitment

Transcom's intent is to deliver 99.99% uptime. If there are any issues, our Customer needs to report issues to Transcom's service department. Contact info can be found on our website @ [www.TranscomLA.com](http://www.TranscomLA.com).

Virtually all Transcom Hosted Services require a commercial grade high speed Internet connection. Events beyond Transcom's control may affect the Service, such as power outages, fluctuations in the Internet, or maintenance.

Transcom will act in good faith to minimize disruptions to the Customer's use and access to the Services, but due to the susceptibility of the Public Internet, we cannot guarantee the quality of the service beyond items out of our control. To request a credit, Customer must send a written request (with sufficient detail to identify the affected Service) within 30 days after the end of the month in which the event occurred. Credits are calculated by the total outage time divided by the number of services hours of the effected month, and will never exceed the charges for the Service for that month. If, in responding to a Customer-initiated service ticket, Transcom reasonably determines that the cause of such service ticket is a failure, malfunction or inadequacy of internal wiring, equipment, or software (including Customer owned system equipment), or due to unauthorized equipment attached to the Transcom equipment/managed network or unauthorized modifications to the Transcom equipment/managed network, Customer will pay Transcom for its troubleshooting service at Transcom's then prevailing rates.



## Section D: Site Access

Customer will grant access to all areas needed to install, maintain, and service equipment provided by Transcom. Customer will ensure that our representatives will have reasonable and timely access to the premises. If any 3<sup>rd</sup> parties are needed to grant access, Customer will make arrangements with 3<sup>rd</sup> party to accommodate access.

## Section E: Account Balance

Monthly service/rental fees are payable in advance of each month's Service; additional call charges and any other applicable charges are billed subsequent to the end of each month's Service. If the Customer chooses to pay for the Service by credit card or ACH direct payment, all charges will be automatically deducted following the generation of any invoice. It is the Customer's responsibility to maintain sufficient balance on the provided credit card or bank account to allow for charges for the Services.

If the Customer chooses to pay for the Service by check, the Customer is responsible for payment of all invoices (Net 15). To pay by check, a payment is required equal to the monthly rental/service fee on the account in advance. Returned checks will result in a \$55 fee applied to the Customer's account balance. Any Customer disputes of the amounts invoiced or charged must be submitted in writing to Transcom within fifty-five (55) days of the date of the disputed charges. If not so disputed, the Customer waives any objection and further recourse with respect to such charges.

The Customer understands and agrees that awaiting any pending credit(s) to the Customer's account is not sufficient cause to withhold payment for invoices. We reserve the right to disconnect the Service at any time without notice due to non-payment, unlawful use, or inappropriate use of the Service. All charges owed at the time of disconnection will be immediately payable. We will pursue collection for unpaid amounts on disconnected accounts. Reinstating any service deactivated for non-payment of fees shall result in a reinstatement fee up to \$75. In the event Service is disconnected due to non-payment, Customer grants Transcom access to premises to remove any equipment provided for the delivery of services provided under this agreement.

## Section F: 911 Softphones and Mobile Devices

As a provider of phone service accessible via softphones and mobile devices, Transcom has a responsibility to inform its customers that by not providing Transcom the Customer's current address, all 911 calls made through Transcom Hosted Services service from a softphone may not be transferred to an emergency center near the Customer. Instead, all 911 calls made through softphones will be transferred to an emergency center near the Customer's **last registered address**. For this reason, it is important for the Customer to provide Transcom with the Customer's current address every time the softphone or mobile device is used from a fixed location. Transcom cannot guarantee the quality of softphones and are considered "as-is no warranty". Service cannot be cancelled per Section L as a result of soft phone quality related issues.



## Section G: Service Issues – Scope of Responsibility

In the event of any service issues, Transcom will assist the Customer with troubleshooting the problem's source. However, some elements key to proper performance, including LAN, wiring, power, firewall, CPE, and ISP, are beyond the scope of Transcom's responsibility to effect repairs. The sole exception to the above is in the case where Transcom is providing the Customer with a managed router, whereupon the CPE and ISP do fall within the scope of Transcom Hosted Services' responsibility. While Transcom will offer telephone support to the Customer in diagnosing service issues outside the direct scope of its responsibility, such as those listed above, their ultimate repair will remain the responsibility of the Customer, their Installer, and/or the Customer's 3rd-party IT vendor.

Transcom can travel on site to attempt to resolve issues outside the scope of our responsibility. Such support would be subject to our current service call rates and charges. Some WAN issues, such as poor performance by Internet providers, are not the direct responsibility of Transcom. However, in these cases, Transcom will assist the Customer, their Installer, and/or the Customer's 3rd-party IT vendor in working with any such providers to eliminate these issues, billed at our current rates.

## Section H: Lawful and Appropriate Use

It is specifically understood and agreed that the Customer shall be using the Service solely for lawful and appropriate purposes and the Customer hereby agrees to indemnify and hold Transcom, its officers, & employees harmless from any and all claims, damages, losses or liabilities of any nature whatsoever arising out of or concerning the Customer's use in any manner of the Service provided herein. In the event that Transcom is brought into or required to respond to any action arising from or concerning the Customer's activities, the Customer agrees to indemnify and hold Transcom harmless from all arbitration, court and attorney's costs and fees.

Transcom reserves the right to immediately discontinue, disconnect, limit, or revoke the Service without warning to the Customer should the Customer, at the sole discretion and determination of Transcom, cause any type of activity or load which is incompatible with the Transcom Hosted network, causes quality of service issues, or otherwise impairs the ability of Transcom Hosted to maintain or provide service to other customers. In the case that the Service is suspected of being misused by the Customer, including fraudulent activity, Transcom reserves the right at its sole discretion to immediately terminate the Service and inform the authorities that the Service is believed to have been used for inappropriate business. Transcom shall not be liable for any direct or indirect damages resulting from a decision to discontinue, disconnect, limit, or revoke the Service with or without warning or for informing the authorities about the possibility of inappropriate business activities.

## Section I: Limited Warranty; Exclusions

For equipment purchased directly from Transcom by the Customer, Transcom will pass on to the Customer any applicable manufacturer's warranty with respect to such equipment. For warranty repairs contact Transcom Hosted customer service.



EXCEPT AS PROVIDED ABOVE, TRANSCOM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR EQUIPMENT FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

IN ADDITION, TRANSCOM DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, OMISSION, DEGRADATION OF VOICE QUALITY, LOSS OF CONTENT, DATA, OR INFORMATION. ANY CLAIM AGAINST TRANSCOM MUST BE MADE WITHIN ONE YEAR OF THE EVENT GIVING RISE TO THE CLAIM OR 90 DAYS FROM THE TERMINATION OF SERVICE, WHICHEVER IS EARLIER, AND TRANSCOM SHALL HAVE NO LIABILITY THEREAFTER.

## Section J: Limitation of Liability

Transcom Hosted Services reserves the right to interrupt the Service for maintenance and systems upgrades at its discretion. These tasks normally occur after normal business hours.

CUSTOMER AGREES THAT TRANSCOM SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE, OR DATA ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, NOR SHALL TRANSCOM BE LIABLE FOR ANY CLAIM BY ANY THIRD PARTY.

FURTHER, TRANSCOM SHALL NOT BE LIABLE TO ANY CUSTOMER OR ANY THIRD PARTY FOR ANY CLAIM ALLEGING PROPERTY LOSS OR DAMAGE, PERSONAL INJURY, OR DEATH ARISING FROM THE USE OR MISUSE OF THE EQUIPMENT OR SERVICES PROVIDED BY TRANSCOM.

THE LIABILITY OF TRANSCOM TO CUSTOMER OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THE SERVICES, EQUIPMENT, OR MATERIALS PROVIDED OR AGREED TO BE PROVIDED BY TRANSCOM SHALL BE LIMITED TO SUCH AMOUNTS AS HAVE BEEN PAID TO TRANSCOM FOR SUCH SERVICES, EQUIPMENT, OR MATERIALS, (NOT TO EXCEED 90 DAYS SERVICE). CUSTOMER AGREES TO HOLD HARMLESS AND INDEMNIFY TRANSCOM FROM ANY AND ALL CLAIMS (INCLUDING THE COST AND ATTORNEYS FEES OF DEFENDING SUCH CLAIMS) WHICH MAY BE BROUGHT AGAINST TRANSCOM BY ANY THIRD PARTIES AND ARISING FROM THE PERFORMANCE OF SERVICES OR THE PROVIDING OF MATERIALS OR EQUIPMENT BY TRANSCOM, THE USE OR MISUSE OF SUCH EQUIPMENT, OR FROM CUSTOMER'S BREACH OF ANY OF THE TERMS OF THIS AGREEMENT.

Transcom shall not be liable for any delay in the Service or performance directly or indirectly caused by or resulting from acts of nature, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, power failure, equipment failure, interruption of broadband or high-speed internet access, late delivery by suppliers, or other causes beyond the reasonable control of Transcom.



## Section K: Changes to Service and Terms and Conditions

Transcom reserves the right to make changes to these Terms and Conditions or the Service as a result of changes in applicable regulations or for other reasons in Transcom reasonable discretion. In the event of such changes the Customer will be notified in writing and the Customer's continued use of the Service following notice of the changes will constitute the Customer's consent to such changes.

## Section L: Contract Term and Cancellation

You are entering into a "Term" agreement to maintain the Services for the period of time indicated on the "Order" that was signed to establish the Service. If you cancel the Services without replacing or upgrading services of an equal or greater value, you will be charged an Early Termination Charge. The Early Termination Charge will be 100% of the remaining number of months left in the Service Term multiplied by the Monthly Recurring Total of the Services. The Term shall begin on the Service Start Date.

Customer may cancel this agreement within the first ninety (90) days of the Service Start Date without incurring Early Termination Charges. If customer experiences service interruptions or service related problems that Transcom is unable to correct within thirty (30) days of written notice by Customer, the Customer can cancel without incurring Early Termination Charges. Hardware and other one-time charges will not be refunded or credited if Services are canceled, once such hardware is delivered to Customer site.

**Services shall continue under the terms and conditions of the agreement after expiration of the Term on a month to month basis at Transcom's current monthly rates until each respective service is cancelled by either Party upon thirty (30) days written notice to the other Party. Customer must provide thirty (30) days prior written notice for any termination of any circuit, facility and/or service.**

## Section M: Governing Law, Arbitration, and Venue

These Terms and Conditions shall be governed by the laws of the State of California and any disputes or controversy arising hereunder shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be held in Long Beach, California. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator(s), all its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. This contract shall be construed under the laws of the State of California.

## Section N: Entire Agreement

These Terms and Conditions contain the entire understanding and agreement of the parties with respect to its subject matter and supersede all prior understandings or agreements regarding such subject matter. In the event of any conflict between these Terms and Conditions and the terms of any purchase order or acknowledgment, these Terms and Conditions shall control.



## 911 Disclaimer

The Federal Communications Commission (“FCC”) requires Transcom Hosted Group, like all Voice Over Internet Protocol (“VoIP”) service providers, inform its customers of any differences between the E911 access capabilities available with Hosted VoIP as compared to the E911 access capability available with traditional telephone service. The FCC order is available at <http://www.fcc.gov/cgb/voip911order.pdf>. We ask that you carefully read this E911 Disclosure Addendum and understand how these differences affect your ability to access E911 services. If you have any questions or concerns about the information contained in this notice, or if you do not understand anything discussed in this notice, please contact our Customer Service at 562-663-2001 during the hours of 7:30 AM to 5:00 PM PDT, Monday – Friday.

The FCC’s E911 VoIP decision also requires Transcom Hosted to obtain and keep a record on file showing that your company has received and understood this E911 Disclosure Addendum. Please respond IMMEDIATELY to this Addendum. If you fail to acknowledge to the 911 disclaimer, we may be required by the FCC Order to suspend your service until we do receive your acknowledgment.

By using Transcom Hosted VoIP Services you agree to the terms of this 911 Disclaimer in the Transcom Hosted Quote and Sales Order, you are affirmatively acknowledging that (1) you have read and understood this E911 Disclosure Addendum, (2) you understand that you may not be able to contact emergency services by dialing 9-1-1 using Hosted VoIP, and (3) you understand that you must inform users of Hosted VoIP that they may not be able to contact emergency services by dialing 9-1-1 using Hosted VoIP. You may obtain a copy of the FCC regulation and accompanying E911 VoIP decision in Docket No. 05-196 at the following link: <http://www.fcc.gov/cgb/voip911order.pdf>.

## HOSTED VOIP E911 SERVICES MAY NOT OPERATE DURING A POWER OUTAGE.

Although equipment installed by Transcom placed on your premises may be equipped with back-up battery power, in the event of a commercial power outage lasting longer than the battery life, the equipment will lose power causing

a loss of voice and data services, including access to E911 services. Once power service is restored, you may be required to reset or reconfigure your equipment before you will be able to use Hosted VoIP to contact E911 services. You are responsible for providing an uninterruptible backup power supply if you wish to ensure continued operation of electrical equipment in the event of a power outage.

## HOSTED VOIP E911 SERVICES WILL NOT OPERATE IF YOUR INTERNET CONNECTION IS DISRUPTED OR HOSTED VoIP HAS BEEN SUSPENDED FOR ANY REASON, INCLUDING, FOR EXAMPLE, NON-PAYMENT.



Once your Internet connection and Hosted VoIP have been restored, you may be required to reset or reconfigure your equipment before you will be able to use Hosted VoIP service to contact E911 services.

**YOU MUST PROVIDE TRANSCOM WITH YOUR CORRECT SERVICE ADDRESS OR HOSTED VoIP E911 SERVICES CALLS MAY BE ROUTED TO EMERGENCY PERSONNEL WHO WILL NOT BE ABLE TO ASSIST YOU.**

If you notice that the service address information identified in your contract or bill is inaccurate, you can make corrections by calling our Customer Service at 562-663-2001 during the hours of 7:30 AM to 5:00 PM Pacific Time, Monday – Friday (excluding holidays). Accordingly, You agree that Transcom shall not be responsible or liable for—and agree to fully, finally, and forever release, discharge, indemnify, and hold harmless Transcom from and against any claim based on, resulting from, or relating to—any acts or omissions related to the handling of, or not handling of, or response, or lack of response, to any emergency call or other communication in connection with the service.

**HOSTED VOIP E911 SERVICES CALLS MAY NOT COMPLETE OR MAY BE ROUTED TO EMERGENCY PERSONNEL WHO WILL NOT BE ABLE TO ASSIST YOU IF YOU DISABLE, DAMAGE OR MOVE THE EQUIPMENT TO A LOCATION OTHER THAN THE SERVICE ADDRESS YOU PROVIDED TO TRANSCOM WHEN SERVICE WAS INITIATED.**

If you wish to move to a new service address or report damage to equipment provided by Transcom, please call our Customer Service at 562-663-2001 during the hours of 7:30 AM to 5:00 PM Pacific Time, Monday – Friday (excluding holidays).

**HOSTED VOIP E911 SERVICES CALLS MAY BE DELAYED OR DROPPED DUE TO NETWORK ARCHITECTURE.**

Due to network congestion or problems, calls to E911 services made using Hosted VoIP may be dropped, in which case you will not be connected to emergency services, or your E911 calls may take longer to connect than E911 calls made using traditional telephone service.

**IN ADDITION, YOU MAY MAINTAIN ALTERNATE MEANS OF CONTACTING 911 SERVICES.**