# Bandwidth.com Enterprise Two-Way SIP Trunk
## Service Agreement - **Terms and Conditions**

This Service Agreement (the "Agreement") is between Bandwidth.com, Inc. ("Bandwidth.com") and the Customer. Services provided are based on the Terms and Conditions contained herein and are subject to change with updated versions of this document available for viewing and download on http://www.bandwidth.com/content/legal. Updated versions of this document will take effect on the first date of the month following posting of the updated version, with updated versions identified with the month and year they become effective. Customer should therefore check the site regularly for updated versions. Customer accepts said Terms and Conditions, as acknowledged by signature on the relevant Service Order Form ("SOF"), and agrees to be bound by them.

**Definitions:**

"911 Services" means functionality that allows end users to contact emergency services by dialing the digits 911.

"Enhanced 911 Services" means the ability to route an emergency call to the designated entity authorized to receive such calls, which in many cases is a Public Safety Answering Point ("PSAP), serving the Customer's Registered Address or user-provided address and to deliver the Subscriber's telephone number and Registered Address information automatically to the emergency operator answering the call.

"Basic 911 Service" means the ability to route an emergency call to the designated entity authorized to receive such calls serving the Customer's Registered Address. With basic 911, the emergency operator answering the phone will not have access to the caller's telephone number or address information unless the caller provides such information verbally during the emergency call.

"ANI" means Automatic Number Identification.

"Customer VoIP Application" means the Class 5 VoIP application provided by Customer in connection with Bandwidth.com Two-Way SIP Trunk service.

"DID/DOD" means a telephone number assigned by Bandwidth.com to Customer for use by a Subscriber with Bandwidth.com Two-Way SIP Trunk service.

"Directory Listings" means the listing of a Subscriber's telephone number in the ILEC directory for a Market.

"International" means anywhere outside of the continental United States, including Alaska and Hawaii.

"IP" means Internet Protocol.

"LCA" means a geographical local calling area (determined by the applicable ILEC) containing one or more Rate Centers.

"LNP" means local number portability.

"NADP" means the North American Dialing (or Numbering) Plan.
"Operator and Directory Assistance" means live or automated operator assistance for the placement of Subscriber calls, listing services and/or related information.

"PSTN" means the public switched telephone network.

"Rate Center" means a geographic area (determined by the applicable ILEC) within a LCA or Market that is associated with one or more specific NPA/NXX codes.

"Registered Address" means the address provided by customer in either written format on (i) appropriate Bandwidth.com order forms, (ii) entered into appropriate Bandwidht.com portals or (iii) other written or verbal communication to Customer's Bandwidth.com sales or pos-sales representative, that represents the physical location from which Bandwidth.com's SIP Trunking service and TNs associated with this service will be used.

"SIP" is the signaling protocol used between VoIP networks to establish, control and terminate voice calls.

"Subscriber" means an individual, end-user or telephone device assigned a DID/DOD.

"TN" means a telephone number assigned by Bandwidth.com to Customer (or that Customer ports to Bandwidth.com) and used by Customer in connection with Bandwidth.com Two-Way SIP Trunk for service.

"Toll Free Number" or "TFN" means a telephone number that supports NADP and is assigned by Bandwidth.com to Customer or that Customer ports to Bandwidth.com for use with the Bandwidth.com Two-Way SIP Trunk.

"U.S. Domestic" means the continental United States (excluding Alaska and Hawaii).

"VoIP" means voice over IP.

**1. Services Provided.** Provided that Customer is not in default of its obligations stated herein, Bandwidth.com shall provide Customer with the Service ordered in the Bandwidth.com Service Order Form, which Service Order Form is incorporated herein by reference, for the Service Term, the Service Term being defined in Section 11. If Customer has purchased or leased Equipment from Bandwidth.com or its certified third party leasing company then the Customer must install Equipment in accordance with instructions provided by Bandwidth.com (or its third party vendor). In addition Bandwidth.com Equipment must be used solely for the purpose of Service utilization. Customer is solely responsible to obtain, use and operate any equipment not provided by Bandwidth.com that may be used in association with the Service.

**2. Service Description.** Bandwidth.com Two-Way SIP Trunks is a bundled virtual trunking service providing inbound, outbound local and long distance voice services via a Bandwidth.com assigned DID. The service will route between a Customer's IP address and either the PSTN or another IP address with Bandwidth.com delivering traffic to the Customer's gateway device or IP-PBX via an internet protocol connection using Session Initiation Protocol ("SIP") signaling. Each Two-way SIP Trunk enables a single concurrent call but can be oversubscribed with multiple Bandwidth.com assigned DIDs being accessible via a single trunk. Two-way SIP Trunks also include static 911 services, 411, Operator services, inbound caller id, caller location or white page listing. These services require Customer to provide their own legitimate service address. Only TNs or Toll-Free TNs provided by Bandwidth.com or ported to the Bandwidth.com network can be used in conjunction with this service.

**3. Service Limitations.** Bandwidth.com Two-Way SIP Trunk service does not include any Class 5 features (e.g. call waiting, call forwarding, voicemail, etc.), nor will the service provide any of the following call types: 976, 900, or 1010xxx. Outbound local, 911, outbound 800 calls or 411 calls are only available if the call's originating Automated Number Identification (ANI) is a Bandwidth.com assigned DID or a DID that has been ported to the Bandwidth.com network. All special configurations are subject to Bandwidth.com's approval and Bandwidth.com reserves the right to terminate this agreement where proper interoperability testing has not been completed when required. Any traffic deemed to jeopardize the integrity of Bandwidth.com's network may be blocked by Bandwidth.com.

> **Service Moves.** Bandwidth.com Service requires a contracted Service Address. Bandwidth.com Services may not be moved from a contracted Service address without written notification from the customer to Bandwidth.com. Should Customer fail to notify Bandwidth.com of a service move then Bandwidth.com, at its sole discretion, may immediately suspend Customer service until such time as a Customer Move Order is processed. Customer accepts that failure to properly notify Bandwidth.com of an intended service move may result in Customer service being E911 non-compliant. Customer understands that said failure may cause incorrect routing of Emergency Services and any consequences of such rest solely with the Customer. Additionally, customer understands that continuation of existing ELS DIDs may be restricted by the location of the moved service.

**4. Emergency Services Dialing.** Customer will have access to either basic 911 or Enhanced 911 (E911) as their default emergency calling service.

> **With E911 service**, when a caller from the Customer's Registered Address dials the digits 911, the Bandwidth.com telephone number and subscriber's registered address is automatically sent to the local emergency center serving your location. The emergency operators will have access to this information regardless of whether the caller is able to verbally provide such information to the emergency call-taker. Accordingly, with E911 service, the emergency call-taker will have the caller's call-back telephone number and registered address information just by virtue of the caller placing the call using the digits 911. In limited circumstances, Customers equipped with E911 may have their calls routed to the national call center. Please see the description below for an explanation of when this would occur and how this service operates.

> **With basic 911 service**, when a caller from the Customer's Registered Address dials the digits 911, the call is sent to the local emergency center serving your location. But operators answering the call will not have automatic access to the caller's call-back telephone number or the Registered Address because the emergency center will not be equipped to receive, capture or retain Customer's assigned Bandwidth.com telephone number and Registered Address. Accordingly, callers must be prepared to provide both call-back and address information. If the call is dropped or disconnected, or if the caller is unable to speak, the emergency operator answering the call will not be able to call the caller back or dispatch help to the caller's address. As additional local emergency centers become capable of E911 functionalities, Bandwidth.com will automatically upgrade customers from basic 911 to E911 service. We will not notify Customer of the upgrade. In limited circumstances, Customers equipped with basic 911 may have their calls routed to the national call center. Please see the description below for an explanation of when this would occur and how this service operates.

**National Call Center service** Certain Bandwidth.com customers do not have access to either basic 911 or E911.  If Customer does not have access to either E911 or basic 911, emergency calls placed using the digits 911 will be sent to a national emergency call center.  A trained agent at the emergency call center will ask for caller's name, telephone number, and location and then transfer the caller to the appropriate local emergency center or otherwise determine the best way to provide emergency services to the caller.  Like Basic 911, the trained operators answering calls in the national call center will not have automatic access to the caller's telephone number or Registered Address information because the national call center is not equipped to receive, capture or retain Customer's Bandwidth.com telephone number and Registered Address, so the caller must be prepared to provide this information.  **Customer's 911 calls may also be sent to Bandwidth.com's national emergency call center if there is a problem validating the Registered Address provided by Customer during provisioning, if Customer is located in an area that is not covered by the land line 911 network, or if Customer has basic 911 or E911 service but these call fails to complete and are routed to the national emergency call center for failover purposes**.

**DISCLAIMER OF LIABILITY:**
**CUSTOMER ACKNOWLEDGES AND AGREES THAT BANDWIDTH.COM'S SERVICE IS INTERNET BASED AND THAT 911 SERVICES ARE DIFFERENT THAN THAT OF TRADITIONAL WIRELINE SERVICE.  FOR BASIC 911 OR E911 TO BE ACCURATELY ROUTED TO THE APPROPRIATE EMERGENCY RESPONDER, THE CUSTOMER MUST PROVIDE THE TN ASSOCIATED WITH THE TWO-WAY SIP TRUNKING SERVICE FOR THE REGISTERED ADDRESS, IN THE 'USERPART' OF THE 'FROM URI' CONTAINED IN THE SIP 'FROM' HEADER.**

**CUSTOMER ACKNOWLEDGES THAT THE BANDWIDTH TWO-WAY SIP TRUNK SERVICE MAY NOT SUPPORT BASIC 911 OR E911 DIALING IN THE SAME MANNER AS TRADITIONAL WIRELINE PHONE SERVICE.  CUSTOMER AGREES TO INFORM OF THE POTENTIAL COMPLICATIONS ARISING FROM BASIC 911 OR E911 DIALING. SPECIFICALLY, CUSTOMER ACKNOWLEDGES AND AGREES TO INFORM ALL EMPLOYEES, GUESTS, AND OTHER THIRD PERSONS WHO MAY USE THE SERVICE THAT BASIC 911 AND E911 SERVICES WILL NOT FUNCTION IN THE CASE OF A SERVICE FAILURE FOR ANY OF THE FOLLOWING REASONS: (A) POWER FAILURES, (B) SUSPENDED OR TERMINATED BROADBAND SERVICE, (C) SUSPENSION OF SERVICES DUE TO BILLING ISSUES, AND/OR (D) ANY OTHER SERVICE OUTAGES NOT DESCRIBED HEREIN.  CUSTOMER FURTHER ACKNOWLEDGES THAT FAILURE TO PROVIDE A CORRECT PHYSICAL ADDRESS IN THE REQUISITE FORMAT MAY CAUSE ALL BASIC 911 OR E911 CALLS TO BE ROUTED TO THE INCORRECT LOCAL EMERGENCY SERVICE PROVIDER.  FURTHERMORE, CUSTOMER RECOGNIZES THAT USE OF THE SERVICE FROM A LOCATION OTHER THAN THE LOCATION TO WHICH THE SERVICE WAS ORDERED, I.E., THE "REGISTERED ADDRESS," MAY RESULT IN BASIC 911 OR E911 CALLS BEING ROUTED TO THE INCORRECT LOCAL EMERGENCY SERVICE PROVIDER.**

**CUSTOMER ACKNOWLEDGES AND AGREES THAT BANDWIDTH.COM, ITS UNDERLYING CARRIER, OR ANY OTHER THIRD PARTIES INVOLVED IN THE ROUTING, HANDLING, DELIVERY, OR ANSWERING OF EMERGENCY SERVICES OR IN RESPONDING TO EMERGENCY CALLS, NOR THEIR OFFICERS OR EMPLOYEES, MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, LOSS, FINE, PENALTY OR COST (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION, ARISING FROM OR RELATING TO THE PROVISION OF ALL TYPES OF EMERGENCY SERVICES TO CUSTOMER. CUSTOMER FURTHER AGREES AND ACKNOWLEDGES THAT IT IS INDEMNIFYING AND HOLDING HARMLESS BANDWIDTH.COM FROM ANY CLAIM OR ACTION FOR ANY CALLER PLACING SUCH A CALL WITHOUT REGARD TO WHETHER THE CALLER IS AN EMPLOYEE OF THE CUSTOMER.  CUSTOMER ACKNOWLEDGES AND AGREES TO HOLD HARMLESS AND INDEMNIFY BADNWIDTH.COM FROM ANY CLAIM OR ACTION ARISING OUT OF MISROUTES OFANY 911 CALLS, OR WHETHER LOCAL EMERGENCY RESPONSE CENTERS OR NATIONAL EMERGENCY CALLING CENTERS ANSWER A 911 CALL OR HOW THE 911 CALLS ARE HANDLED BY ANY EMERGENCY OPERATOR INCLUDING OPERATORS OF THE NATIONAL CALL CENTER.   THE LIMITATIONS APPLY TO ALL CLAIMS REGARDLESS OF WHETHER THEY ARE BASED ON BREACH OF CONTRACT, BREACH OF WARRANT, PRODUCT LIABILITY, TORT AND ANY OTHER THEORIES OF LIABILITY.**

**5.  Service Availability**.  The Service is available throughout the Service Term, except in the case of scheduled maintenance of the Bandwidth.com network and/or its underlying carrier's network. Bandwidth.com will use commercially reasonable efforts to provide prior notification via electronic mail ("email") to Customer regarding any scheduled maintenance of Service. Bandwidth.com may interrupt its provision of Service for unscheduled emergency maintenance without notice to Customer or Customer's customers.

**6.  Interoperability Requirement.** Customer shall review the appropriate "Solution Overview & Interface Specification" guide posted at www.bandwidth.com/content/legal, to identify all necessary interoperability requirements. Bandwidth.com takes no responsibility for installation or configuration of customer Phone System, or any responsibility related to connecting a customer's Phone System to any Bandwidth.com provided equipment.

**7.  IP originated traffic.**  All user traffic must be IP originated.  "IP Originated" shall mean voice traffic which Customer represents and certifies as utilizing TCP/IP as a transmission protocol from the Customer's originating equipment (i.e. SIP phones, SIP PBX, TDM to SIP Gateway, IP-adapter, etc.) to a TCP/IP gateway. Traffic identified as non-IP originated is subject to incremental $.05 per minute charges.

**8.  Porting Numbers.**  Bandwidth.com will require a completed and signed *Letter of Authorization* ("LOA") for any numbers or toll free numbers

the customer wishes to port. Applicable LOAs are attached hereto. In addition, Bandwidth.com will require a recent, applicable copy of the Customer's current phone bill which contains the Customer's *Billing Telephone Number* ("BTN") as well as a record of any numbers that need to be ported. Necessary LOA(s) and Bill Copy(s) must be received by Bandwidth.com before Bandwidth.com initiates the port request.

**9. Service Activation Date.** Bandwidth.com will work with the Customer to establish an initial activation date upon which their SIP Trunk solution will be activated. This date will be based on the Customer's requested date as well as the *Confirmed Port Date* Bandwidth.com receives from its underlying provider. The Confirmed Port Date is the date upon which the Customer's current voice provider has agreed to port the numbers to Bandwidth.com. The Confirmed Port Date typically cannot be set any earlier than two (2) to four (4) business weeks after the port request was initiated. Upon submission of the port request, Bandwidth.com will request a port date that coincides as closely as is reasonably possible with the initial activation date arrived at with the Customer. However, since the port interval is a product of the accuracy of the information provided to Bandwidth.com by the Customer as well as the processing speed of the Customer's current voice provider, Bandwidth.com makes no guarantees about how soon a Customer's number can be ported, but will work with its underlying carrier and the Customer to make sure the port date coincides as closely as possible with the activation date requested by the Customer. When Bandwidth.com receives the Confirmed Port Date, Bandwidth.com will assign a Service Activation Date based on the aforementioned criteria and will communicate this date to the customer. If the Customer wishes to change the requested service activation date, Customer must communicate, in writing, the new requested date to their VoIP Installation Specialist within forty-eight (48) hours of the issuance of the service activation date. Such further date changes by Customer will be met by Bandwidth.com on a best effort basis

**10. Service Activation Appointment.** Bandwidth.com will attempt to arrange an *Activation Appointment* with the Customer on the Service Activation Date, whereupon, a Bandwidth.com Service Activation Specialist will contact the Customer to provide relevant information and facilitate test calls. Such test calls will consist of outbound and inbound calls between the Customer site and Bandwidth.com . It is the customer's sole responsibility to ensure that their premise and all equipment is prepared for service activation by the Service Activation Date. The Service Commencement Date shall be the date when the voice components are delivered and confirmed by a Bandwidth.com SIP Trunking Confirmation email, whether or not an Activation Appointment has occurred. The Service Commencement Date shall equal the first date of billing for the services delivered.

**11. Service Agreement Term and Service Term.** The initial Service Agreement Term shall be at least one (1) year and up to three (3) years from the Effective Date of the unique, or any, Service Order Form(s) signed by Customer, with the specific initial Term of the Service Agreement as stated on each such Service Order Form. The term of the Service Agreement will automatically renew for successive one (1) year periods unless terminated in writing by Bandwidth.com or by Customer pursuant to the Termination Section of this Agreement at least forty (40) days prior to the expiration of the then existing Term of the Service Agreement. The initial Service Term for the, or any, specific Bandwidth.com Service(s) provided to Customer shall be at least one (1) year and up to three (3) years from the Service Commencement Date depending on the Service Term stated on the unique, or any, Service Order Form(s) signed by Customer. Upon expiration of a Service Term for a particular Service(s), the Service Term will automatically renew for successive one (1) year periods unless terminated in writing by Bandwidth.com or by Customer pursuant to the Termination Section of this Agreement at least forty (40) days prior to the expiration of the then existing Service Term. When the Term of the Service Agreement expires or is terminated, existing Services continue in effect for the remainder of the Service Term(s) and will continue to be governed by the Agreement. In the event of automatic renewal, Bandwidth.com reserves the right to: (i) maintain the same prices and rates for the Service(s) as stated on affected Service Order Form, or (ii) Terminate the Service(s) as stated on affected Service Order Form.

**12. Service Support.** Bandwidth.com provides support for the Services as described at www.bandwidth.com/content/support, as guaranteed by the applicable Service Level Agreement ("SLA"), posted at www.bandwidth.com/content/legal. BANDWIDTH.COM DOES NOT SUPPORT CUSTOMER SERVICES BEYOND THE BANDWIDTH.COM POINT OF DEMARCATION, DEFINED AT WWW.BANDWIDTH.COM/CONTENT/SUPPORT.

**13. CPE Maintenance, Support, and Repair.** If Customer has rented CPE from Bandwidth.com, then Customer shall allow Bandwidth.com reasonable access to the CPE as required to provide Service ordered by Customer. Equipment provided for service may be new or recertified. All CPE and CPE provider service purchased from Bandwidth.com is subject to the terms and conditions set forth in the Manufacturer's or Publisher's warranty, end-user license, or agreement applicable to such CPE or CPE provider service, with no warranty of any kind from Bandwidth.com. Customer shall reimburse Bandwidth.com, on a time and materials basis as documented in an invoice, for the entire cost to repair and/or replace CPE in the event of (a) misuse, (b) failure to exercise reasonable care, (c) altering original Bandwidth.com configuration, (d) damage, (e) theft, or (f) disaster. If Bandwidth.com CPE requires maintenance not caused by one of the events set out in the sentence above, Bandwidth.com or its agents shall either arrange to repair the CPE at Customer's premises or ship an equivalent pre-configured replacement to Customer. If replacement CPE is shipped to Customer, Customer shall return the faulty CPE to Bandwidth.com within ten (10) days of receiving the replacement CPE or pay for such CPE. Customer will not receive compensation for downtime associated with CPE replacement or repair. In addition, if Customer has rented CPE, Customer shall return (at Customer's own expense) Bandwidth.com CPE to Bandwidth.com within ten (10) days of termination. If this CPE is not returned in good working condition to Bandwidth.com Customer shall be invoiced and pay for this CPE. Should Customer terminate CPE rental prior to fulfillment of initial or renewal service term then Bandwidth.com may charge Customer a twenty percent (20%) restocking fee, as calculated according to the original purchase price of rented CPE.

**14. CPE Purchase.** All CPE and CPE Provider Service purchased from Bandwidth.com is subject to the terms and conditions set forth in the Manufacturer's or Publisher's warranty, End-User license or agreement applicable to such CPE or CPE Provider Service, with no warranty of any kind from Bandwidth.com. Should customer receive purchased CPE that is damaged or dead on arrival Customer must notify Bandwidth.com Customer Care within ten (10) days of receipt. Returns will only be accepted on brand new factory-packaged products within thirty (30) days of the date CPE was shipped. All products must be fully complete including all original manufacturer boxes with the UPC code and packing

materials, all manuals, blank warranty cards, accessories and any other documentation included with the original shipment. Products returned in used or altered condition will not be accepted. After thirty (30) days from initial product ship date, all sales are final. Customer is responsible for shipping charges to the Bandwidth.com distribution center for all products being shipped for return or exchange. Customer is responsible for all risk of loss and damage to products being shipped for return or exchange. Should Customer desire to return or exchange purchased CPE, pursuant to the above conditions, then Customer must e-mail Customer Care at customercare@bandwidth.com to request a Return Materials Authorization (RMA). All returns and exchanges will incur a twenty percent (20%) restocking fee, as calculated according to the original purchase price. If the RMA is in response to CPE delivered dead on arrival or damaged, and said CPE is found to be operating within manufacturer specifications upon return, said CPE shall be subject to the restocking fee outlined above.

**15. Charges for Service.** The monthly recurring charge(s) ("MRC") and any non-recurring charge(s) ("NRC") for Service is stated in said Service Order Form. Service charges are exclusive of applicable taxes and surcharges, including the Federal Universal Service Fund surcharge that Bandwidth.com passes on to its Customers if it is charged to Bandwidth.com. At its sole discretion, Bandwidth.com may require a security deposit to continue providing Service should Customer's credit profile yield insufficient credit. Additionally, at its sole discretion, Bandwidth.com reserves the right to demand immediate payment by wire and block Customer's voice traffic should Bandwidth.com determine Customer's usage exceeds their approved level of credit. Except for items outlined in this agreement, Bandwidth.com shall not increase pricing during the initial Term of a Customer Order, but thereafter Bandwidth.com may increase pricing upon at least thirty (30) days' written notice. All rates and charges are subject to change immediately in the event there are mandated surcharges or taxes imposed by federal, state or governmental agency. Notwithstanding the foregoing, in the event of Regulatory Activity, Bandwidth.com reserves the right, at any time with as much advance written notice as reasonably possible and without liability, to: (i) pass through to Customer all, or a portion of, any changes or surcharges or taxes directly or indirectly related to such Regulatory Activity; (ii) modify the Service, rates (including any rate guarantees), promotions, terms and/or conditions of this Agreement in order to conform to such action; or (iii) if such Regulatory Activity materially and adversely impairs the provision of Service under the Agreement, as reasonably determined by Bandwidth.com, terminate the Agreement.

**16. Billing Disputes**. In the event Customer disputes any invoiced charges, Customer shall pay in full all charges invoiced by the Due Date, and, submit written notification within 30 calendar days of the date on the invoice in question in the form of an email sent to customercare@bandwidth.com with "Notice of Billing Dispute" in the subject line of the email. Such email notification must include the Customer's contact information, the specific dollar amount in dispute, detailed supporting reasons for the dispute, and any supporting documentation if available. Bandwidth.com shall respond to Customer, in writing, within thirty (30) calendar days of receiving a dispute notification from Customer. Any dispute resolved in favor of Customer shall be credited as appropriate on the next available invoice. In the event that any disputed amounts are deemed to be correct as billed and in compliance with this Agreement, Customer shall be notified in writing that the charges have been deemed valid and legitimate, and the dispute will be considered resolved by both parties; in such cases, if there should be any amount due from Customer related to the dispute, then all such amounts shall be due and payable immediately. Provider reserves the right to deny or delay any and all billing disputes and/or credits if the Customer's account is in arrears or otherwise not in good standing.

**17. Specific Charges for Two-Way SIP Trunk Service.**

**Disconnect Charges:** For any request to disconnect or port out a Bandwidth.com assigned TN, a non-recurring charge of $5 per TN will be charged.

**LNP Charges:** For cancelled LNP request more than 48 hours before FOC, a non-recurring charge of $6 per TN will be charged. For cancelled LNP requests within 48 hours of FOC, a non-recurring charge of $75 per TN will be charged. For any request to reinstate, within 24 hours, a newly ported phone number to the original carrier, a non-recurring charge of $300 per number will be assessed.

**Payphone Surcharges:** In the event the Customer's 800/Toll-Free TN receives any inbound calls originating from a Payphone, these calls will be subject to a charge per call. The charges are based on regulated FCC Payphone Compensation rules. These regulatory charges (approximately $0.60 per call) will be passed through directly to the customer.

**Call Duration Thresholds:** All per minute rates (Interstate LD, Intrastate LD, Local if applicable, 800 Domestic) assume at least 95% of calls terminating will be of a call duration of no less than six (6) seconds in length. If 5% or more of Customer's completed calls are equal to or less than six (6) seconds in length during any billing cycle then Bandwidth.com reserves the right to charge, and Customer shall pay, a $0.03 charge per short duration call. This charge will be in addition to Customer's current rates.

**Local & Inbound Minute Thresholds:** Each Two-Way SIP trunk is subject to a monthly cap limiting the amount of inbound and local outbound minutes to two-thousand (2, 000) per trunk. Any inbound or local outbound minutes exceeding 2, 000 will be billed at $.018 per minute. This cap is a soft cap, meaning that its enforcement will not be automatic but will be at the discretion of Bandwidth.com should the customer's usage exceed this usage cap in any given month.

**Long Distance Minimum Threshold:** For any month in which the average sum of a Customer's Two-Way SIP Trunks' interstate, intrastate or international long distance traffic does not reach 300 minutes, Bandwidth.com reserves the right to enforce a minimum threshold of 300 minutes. The per-minute rate applied will be $.019. This threshold is a soft threshold meaning that its enforcement will not be automatic but will be at the discretion of Bandwidth.com should the customer's long distance usage not reach the minimum threshold in any given month.

**Call Rating:** Calls will be rated as local calls if they terminated within subscriber's Local Calling Area associated with the call's

originating ANI (which must be a Bandwdith.com assigned DID). All calls outside of a Subscriber's Local Calling area shall be rated as either intrastate, interstate or international long distance. This distinction of *inter* versus *intra*state versus international long distance will be determined based on the Originating Automatic Number Identification (ANI) and Terminating ANI provided in the call signaling. Bandwidth.com utilizes the value in the 'FROM' field in the SIP header as the Originating ANI for establishing the jurisdiction of the call (i.e. interstate versus intrastate versus international). However, in the event a value is present in any of the SIP header fields used for caller id (e.g. Remote Party ID, P-Assert-Identity), Bandwidth.com may use this in lieu of the "FROM" field as the Originating ANI to determine the jurisdiction of a call. If Bandwidth.com cannot accurately rate a call due to an invalid or omitted Originating ANI, and its rating jurisdiction is not international, Bandwidth.com will default to rating the call at the prevailing Intrastate long distance rate. Bandwidth.com will determine the originating or terminating carrier by evaluating the Terminating ANI down to the NPA-NXX-X level. Customer is also required to maintain the originating ANI for all outbound calls and abstain from any level of ANI manipulation in the call signaling.

**Local Call Rating Exclusion:** Rating outbound calls as Local only applies to calls that utilize telephone numbers (DIDs) assigned by Bandwidth.com or that have been ported to Bandwidth.com's service as the originating ANI. Termination of calls from DIDs not provided by Banwidth.com or ported to Bandwidth.com's service will be rated as either Interstate or Intrastate long distance. This distinction of *inter* versus *intra*state long distance will be determined based on the Originating Automatic Number Identification (ANI) and Terminating ANI provided in the call signaling. If Bandwidth.com cannot accurately rate a call due to an invalid or omitted Originating ANI, and its rating jurisdiction is not international, Bandwidth.com will default to rating the call at the prevailing Intrastate long distance rate.

**International Rates:** If no rate schedule is attached, international rates are available at www.bandwidth.com/content/legal. International per minute rates are subject to change. Bandwidth.com reserves the right to block all or a number of high cost, international routes. Customers may request to have this block removed by requesting in writing to customercare@bandwidth.com and copying their dedicated Bandwidth.com account executive.

**Interstate LD Rates:** All interstate dialing will be billed at the quoted flat, per-minute rate or rate schedule. LD interstate calls terminating to Alaska are an exception and will be billed at a $.30 per minute rate.

**Intrastate LD Rates:** Intrastate calls are rated and billed at a flat, per-LATA per-minute rate. These per-LATA rates can be viewed at http://www.bandwidth.com/content/legal and are subject to change every three (3) days.

**800 Domestic Rates**: Domestic 800 inbound calls are billed at the quoted flat, per-minute rate or rate schedule. 800 service is only available to 800/Toll-free DIDs provided by or ported to Bandwidth.com's network.

**800 Offshore Rates:** 800 inbound calls are rated at the quoted flat per minute rate or rate schedule with the exception of calls originating from the following locations:

| | | |
|---|---|---|
| 1. | Alaska | $.45 |
| 2. | Canada | $.06 |
| 3. | CNMI | $.30 |
| 4. | Guam | $.15 |
| 5. | Hawaii | $.07 |
| 6. | Puerto Rico | $.13 |
| 7. | USVI | $.10 |

The per-minute rates for these locations are subject to change every fifteen (15) days and updates shall be posted in a revised Terms and Conditions document which may be viewed at http://www.bandwidth.com/content/legal.

**Directory Assistance and Operator-Assisted Dialing:** Bandwidth.com's Two-Way SIP Trunk service may provide Directory Assistance (i.e. 411) and traditional Operator Assisted Dialing. Specific per call or per minute of use rates may apply.

**RBOC / Wireless Thresholds for Flat Rate Charges:** All flat-rate per-minute rates (Interstate LD, Intrastate LD, 800 Domestic) assume at least 75% of calls terminate (or originate for 800 domestic inbound) on either an RBOC or Wireless PSTN providers. If this threshold is not met, Bandwidth.com reserves the right to charge up to an additional $.06 per minute on the number of minutes needed to meet this threshold.

**Usage Charges Incurred with Bulk Forwarding Number Management to the PSTN:** Bandwidth.com provides the capability for inbound calls to a TN associated with this service to be forwarded to a number on the PSTN (i.e. landline or cell phone) or another VoIP line. Should Customer utilize this feature, Customer will incur any applicable usage charges for the inbound leg to the original TN in addition to usage charges for the outbound forwarded leg which may be rated as interstate or intrastate depending on the TN of the originating caller or value used in the caller-id field. It is important to note that if an inbound call is forwarded to another of Customer's Bandwidth.com provided TNs, the usage associated with the forwarding leg will be billed as either local, intrastate or interstate.

18.  **Billing Increments.**  Billing increments are set forth below.

| Terminating Destination | Initial Billing Increment (Seconds) | Additional Billing Increment (Seconds) |
|---|---|---|
| US Domestic | 6 | 6 |
| International (excluding Mexico) | 30 | 6 |
| Mexico | 60 | 60 |

**19. Billing and Payment.** Bandwidth.com shall bill Customer for Service rendered at the rates stated in said Service Order Form. Invoices shall include all applicable federal, state, and local taxes. all such taxes, and all use, sales, commercial, gross receipts, privilege, surcharges, or other similar taxes, license fees, miscellaneous fees, and surcharges, whether charged to or against Bandwidth.com, Inc., which shall be payable by the Customer. However, if Customer provides proof of its specific tax exempt status, Provider shall not charge applicable taxes due to such exemption. Customer shall supply Provider a valid and properly executed tax exemption certificate(s). In such cases the Customer remains responsible for, and agrees to pay, any and all remaining non-exempt charges; tax exemption status validation is solely the responsibility of the Customer and Provider will not be obligated to consider any retroactive tax exemption.  Bandwidth.com shall commence billing for the monthly recurring charges and usage (the Service) on the Service Commencement Date.  First and second month charges for the recurring Service(s) are billed upon Service Commencement. Where applicable, service charges for the first partial month of service will be pro-rated and billed. Call usage charges are billed after the actual calls and usage has occurred.  Payments are due within fifteen (15) days of the invoice date. After fifteen (15) days of non-payment, all 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 Bandwidth.com (including, without limitation, reasonable attorney's fees).  Some Customers installed prior to two-thousand-and-eight (2008) may be subject to payment terms whereby payments are due within thirty (30) days from the invoice date; Bandwidth.com reserves the right to amend said Customers to a fifteen (15) day payment term should they fail to make satisfactory payments pursuant to their current account payment term.  At any point beyond provided invoice due date, where Customer has failed to make satisfactory payment as so judged by Bandwidth.com, then Bandwidth.com may give Customer written notification, by email, that Customer has committed a material breach of the Agreement due to non-payment. Said notification will be provided five (5) business days prior to Service suspension or termination. Customer must pay all outstanding charges, within said notice period, to avoid suspension or termination of Service. If Service is terminated due to non-payment, then the Termination fees described in the Material Breach Section shall apply. In its sole discretion, Bandwidth.com may: (i) require a security deposit to continue the provisioning of Service(s) if Customer's approved level of credit is deemed insufficient; (ii) change payment terms, billing cycle, and/or Due Date; (iii) demand immediate payment by wire or other means and discontinue Service(s) without notice should Provider determine Customer's usage exceeds their approved level of credit; (iv) immediately block Customer's Service(s) if a Customer's pre-paid balance is depleted or is at a level that cannot cover Customer's estimated traffic during the time required for the Customer to replenish their prepaid balance, or if Customer refuses to make any requested  payments. Bandwidth.com retains the right to bill, including any amended or corrected billing, for the Service(s) for a period of up to twelve (12) months, commencing from the date the billed Service(s) were provided to Customer.  Bandwidth.com shall retain such billing rights for this twelve (12) month period notwithstanding any prior billing to Customer for the same period(s) and regardless of any otherwise conflicting billing conditions in this Agreement.  Customer agrees that for the duration of this twelve (12) month period, Bandwidth.com shall not be deemed to have waived any rights with regard to billing for the provided Service(s) that are subject to this period, nor shall any legal or equitable doctrines apply, including estoppel or laches.

**20.  Resumption of Service.**  If Customer requests that Service be restored after a suspension or termination, Bandwidth.com has the sole and absolute discretion to restore such Service and may condition restoration upon satisfaction of such conditions as Bandwidth.com determines is necessary for its protection, including requiring Customer to execute a new agreement, pay all past due statements in full, pass Bandwidth.com's credit approval, and/or make advance payments. New nonrecurring charges also may apply to restore Service.

**21.  Additional NRC (if applicable).**  In addition to the standard NRC listed above, the following NRC, if applicable, will apply:

Service Reinstatement Fee: $200.00 plus any charges imposed by underlying carrier(s)
Missed Appointment Fee: $200.00
Rejected Credit Card/Unpaid Check: $40.00 (or legal limit)
Relocation:  Relocation within same rate center is $75.00; Relocation to new rate center is $275.00
Upgrade Charge: Dependent on specific upgrade
Downgrade Charge: Dependent on specific downgrade

**22.  Inside Wiring for VoIP Component.**  It will be the customer's responsibility to provide any needed internal wiring or extensions (and required conduit, facilities, power, etc) for the Equipment and phones required to use the service.

**23.  Material Breach.**  Bandwidth.com or Customer may terminate this Agreement and the Service(s) provided hereunder in the event of a material breach that is not cured within thirty (30) days following the delivery of written notice specifying said breach, except in the case of serious material breaches, so judged by Bandwidth.com. Such notice from Customer must be in the form of an email sent to customercare@bandwidth.com, with "Notice of Material Breach" in the subject line of the email and Customer's contact information and detailed explanation, including supporting documentation if available, in the body of the email. Such notice from Bandwidth.com shall be in the form of an email to the Customer.  In the event of an uncured material breach by Bandwidth.com, the Agreement and Service(s) shall be terminated without early termination fees to the Customer, however, in all such cases Customer shall remain responsible for: (a) charges for Service(s) actually and

properly received prior and up to the date of actual termination for breach, (b) one hundred percent (100%) of the past due balance at the time of termination, and, (c) any non-recurring charges originally waived by Bandwidth.com. In the event of an uncured material breach by Customer, such as early termination of this Agreement, the following termination fees shall apply: (a) charges for Service(s) actually and properly received prior and up to the date of actual termination for breach, (b) the total of monthly minimum commitments for all components of the Service(s) for the remainder of the Service Order Term(s) and any additional early Termination fees included in any and all relevant Service Order Form(s), (c) one hundred percent (100%) of the past due balance at the time of termination, and, (d) any non-recurring charges originally waived by Bandwidth.com.

**24. Termination.**  Upon termination of the Service Agreement and/or the Service(s) not due to a material breach, Bandwidth.com will disconnect, or will cause to be disconnected, the Service(s) if notified by the Customer in writing via email to customercare@bandwidth.com with no less than forty calendar (40) days notice prior to termination of the Agreement and/or Service(s).  In all such cases, Customer retains the sole responsibility for notifying Bandwidth.com of any and all requests for termination or disconnection of Service(s), including but not limited to the porting out of billable telephone numbers (also referred to as "DIDs"), whether port outs are known or unknown by Customer; and, Customer remains responsible for all billable charges related to terminated Service(s) until Bandwidth.com is notified in writing as specified. Any request by Customer for cancellation or termination at any time within the Service Agreement Term and/or Service Term set forth in this Agreement, including: prior to installation, or at any time prior to the Service Commencement or Activation Date, or in the case of early termination by Customer, will be considered a Material Breach by the Customer and shall be subject to the applicable Material Breach provisions as outlined in the Material Breach section of this agreement. In the event Bandwidth.com determines, in its sole discretion, that Customer's ongoing use of Service(s) or the specific method or technology utilized by the Customer places Bandwidth.com's network, other customers, partners or the overall businesses of each in jeopardy, Bandwidth.com reserves the right to terminate Service(s) immediately without notification.

**25. Limitation of Liability.**  EXCEPT AS PROVIDED IN SECTION 26, IN NO EVENT WILL BANDWIDTH.COM OR CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) ARISING OUT OF OR IN RELATION TO THE  SIP TRUNK, DEDICATED INTERNET ACCESS SERVICE, CPE, AND/OR ANY PRODUCTS OR SERVICE PROVIDED BY THIRD PARTIES UNDER THIS AGREEMENT. BANDWIDTH.COM'S MAXIMUM LIABILITY UNDER THIS AGREEMENT IS LIMITED TO SERVICE CREDITS NOT TO EXCEED THE FEES PAID TO BANDWIDTH.COM BY CUSTOMER FOR THE SERVICE PROVIDED.

Bandwidth.com Two-Way SIP Trunk service does not include any Class 5 features (e.g. call waiting, voicemail, etc.), nor will the service provide any of the following call types:  976, 900, or 1010xxx.   Outbound local, 911, outbound 800 calls or 411 calls are only available if the call's originating ANI is a Bandwidth.com assigned DID or a DID that has been ported to the Bandwidth.com network.  All special configurations are subject to Bandwidth.com's approval and Bandwidth.com reserves the right to terminate this agreement where proper interoperability testing has not been completed when required.

**26. Indemnity.**  Customer shall indemnify and hold harmless Bandwidth.com, its Officers, Employees, Agents, and Affiliates from and against any and all alleged or actual losses, costs, claims, liability of any kind, damages (including to any tangible property or bodily injury to or death of any person), or expense of whatever nature, (including reasonable attorneys' fees) to or by any third party, relating to or arising from (a) the use of the Service provided to Customer, whether or not Customer has knowledge of or has authorized access for such use, (b) any damage to or destruction of CPE not caused by Bandwidth.com or its agents, and (c) any material breach of this Agreement by Customer.  Customer has the sole and exclusive responsibility for the installation, configuration, security, and integrity of all Customer systems, equipment, software, and networks (the "Customer Equipment") used in conjunction with or related to the Service(s) provided by Bandwidth.com.  Customer therefore shall indemnify and hold harmless Bandwidth.com from and against any actual or alleged losses, costs, claims, liability of any kind, damages, or expenses or fees (including reasonable attorneys' fees) on the part of or which may be incurred by Customer or a third-party relating to or arising from the use or operation of the Customer Equipment.  Customer's indemnification in this subsection includes any alleged or actual losses or claims in connection with unauthorized access to or use of the Service(s) by any third-party through Customer Equipment, regardless if such unauthorized access is unintentional, accidental, intentional or by fraud and regardless of whether Customer had knowledge of such unauthorized access.  In all such cases of unauthorized access Customer agrees that it retain full and sole responsibility for any and all charges for the Service(s) provided by Bandwidth.com. In the event Bandwidth.com grants Customer access, either by online access, by application programming interface (API), or access by any other means, to a service ordering/management system and other related electronic tools (collectively, the "Electronic Tools"), Customer agrees that it is fully and exclusively responsible for all information accuracy, charges, costs, transactions, and activities conducted through such Electronic Tools. Customer agrees that it is fully and exclusively responsible to safeguard, monitor, manage, and maintain access to the Electronic Tools, and to only allow authorized use of the Electronic Tools to persons that Customer designates.  Customer therefore agrees that it shall indemnify and hold harmless Bandwidth.com from and against any actual or alleged losses, costs, claims, liability of any kind, damages, or expenses or fees (including reasonable attorneys' fees) on the part of or which may be incurred by Customer, or a third-party, relating to or arising from the use or operation of the Electronic Tools. Customer's indemnification in this subsection includes any alleged or actual losses or claims in connection with unauthorized access to, use, transactions, or activity conducted through the Electronic Tools, regardless if such unauthorized access is unintentional, accidental, intentional, or by fraud, and regardless of whether Customer had knowledge of such unauthorized access.  In all such cases of unauthorized access Customer agrees that it retains full and sole responsibility for any and all charges for the Service(s) provided by Bandwidth.com.

**27. No Warranties and Customer Assumption of Risk.**  BANDWIDTH.COM MAKES SERVICE COMMITMENTS UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT ("SLA"); SAID SLA IS INCORPORATED HEREIN BY REFERENCE. HOWEVER, BANDWIDTH.COM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, FOR THE BANDWIDTH.COM SERVICE (INCLUDING BANDWIDTH.COM CPE) PROVIDED UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BANDWIDTH.COM DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. BANDWIDTH.COM EXERCISES NO CONTROL OVER, AND HEREBY DISCLAIMS ANY RESPONSIBILITY FOR, THE ACCURACY AND QUALITY OF ANY INFORMATION TRANSMITTED WITH THE USE OF THE SERVICE.  CUSTOMER HEREBY EXPRESSLY ASSUMES THE RISK OF ITS OR ITS CUSTOMERS' USE OF ANY INFORMATION TRANSMITTED VIA THE SERVICE.

**28. Miscellaneous.** Customer acknowledges and understands that Customer is to receive the Service detailed in this Agreement and the Customer is not relying on any affirmation of fact, promise or description from any person or entity, nor any other oral or written representation other than what is contained in this Agreement. Handwritten alterations or additions to this agreement made by Customer will not be considered part of this Agreement.  This Agreement may only be modified, or any rights under it waived, by a separate written document executed by both parties.  This Agreement shall be governed by, construed under, and enforced in accordance with, the laws of the State of North Carolina without reference to its choice of law principles. For any action or suit to enforce any right or remedy of this Agreement, (except for actions to enter or collect on judgments) the parties consent to exclusive jurisdiction and venue in the courts for Wake County, North Carolina and the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees. In the event of a conflict between this Agreement and any applicable tariff, the tariff shall prevail. Customer may not assign this Agreement without Bandwidth.com's prior written consent. This Agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors, and permitted assigns. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. Customer signatory certifies that (s)he is an officer or certified representative of the Customer, and as such is authorized to enter into this binding Agreement. In the event any specified time frame or deadline denotes calendar days, it is agreed that when the last date of required action or response falls on a weekend or holiday, the action and/or deadline shall automatically extend to the next business day. Agreement headings are provided for reference purposes only.

**THIS AGREEMENT, TOGETHER WITH ANY ATTACHMENTS, INCLUDING ANY SCHEDULES, ADDENDUMS, PRICE LISTS, SERVICE ORDERS, TERMS AND CONDITIONS, SERVICE LEVEL AGREEMENTS, AND ACCEPTABLE USE POLICIES, WHICH MAY BE POSTED AT: WWW.BANDWIDTH.COM/CONTENT/LEGAL, AND WHICH ARE INCORPORATED HEREIN BY REFERENCE, CONSTITUTE THE ENTIRE UNDERSTANDING BETWEEN THE CUSTOMER AND BANDWIDTH.COM, INC, WITH RESPECT TO THE SERVICE(S) PROVIDED HEREIN. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT CUSTOMER IS NOT RELYING ON ANY AFFIRMATION OF FACT, PROMISE OR DESCRIPTION FROM ANY PERSON OR ENTITY, NOR ANY OTHER ORAL OR WRITTEN REPRESENTATION OTHER THAN WHAT IS CONTAINED IN THIS AGREEMENT AND ANY INCORPORATED DOCUMENTS.**

**29**. **Acceptable Use Policy.** All use of Service must comply with Bandwidth.com's Acceptable Use Policy ("AUP"), which is posted at www.bandwidth.com, and is incorporated herein by reference. By accepting Bandwidth.com Service, Customer agrees to comply with this AUP and any subsequent modifications thereto. Bandwidth.com reserves the right to modify this AUP from time to time, effective upon posting the AUP as modified at the URL shown above. Violation of the AUP shall be considered a material breach of this Agreement pursuant to Section 23.

**30. RFC 3261 Compliance**.  This service is based on RFC 3261 – "SIP-Session Initiation Protocol" and requires Customer to conform to this standard.  In the event Bandwidth.com determines that Customer is in violation of RFC 3261 and this violation prevents Bandwidth.com from accurately rating or billing Customer's calls, Bandwidth.com reserves the right to bill the customer based on their estimated usage and rates, based on Bandwidth.com's discretion**.**

**31. Resale Prohibition.** The Service provided shall be for Customer use only with no authorization for the Customer to resale service to others. Customer agrees to comply with said prohibition and understands should Customer fail to adhere to this provision Bandwidth.com shall immediately terminate Customer service.  Additionally, Bandwidth.com shall find Customer in breach of contract with full termination penalties due as outlined in section 23 of this agreement. Customer will also be liable for any additional charges and damages which may be incurred as a result of unauthorized resale.

**32. Third Party Beneficiaries.** The Parties do not intend by the execution, delivery, or performance of this Agreement to confer any benefit, direct or incidental, upon any person or entity not a party to this Agreement.

**33. Dispute Resolution Process and Applicable Law.**
(a) It is the mutual desire of the parties to promptly and fully resolve any dispute arising in connection with this Agreement in good faith, confidentially, and informally with minimal transaction costs and no public statement may be made by any party regarding any such dispute. If either party determines that the dispute cannot be resolved informally, then such party shall initiate an escalation process by giving written notice ("Escalation Notice") to the other party.  Each party shall name one executive as its representative, to be a person knowledgeable of the subject matter in dispute and someone with authority to discuss the dispute (hereinafter the "Officers").  The Officers shall meet in person or by conference call, together with any persons assisting them, within fifteen (15) days after delivery of the Escalation Notice.  All negotiations conducted by the Officers are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state rules of evidence.  The Officers shall conduct such additional meetings as they deem necessary to exchange relevant information, will appoint staff to engage in resolution of any disputed facts, and will attempt to resolve the dispute.  Should the Officers be unable to resolve the dispute within such fifteen (15) days, or within such additional time as the parties may otherwise agree to in writing, either party may demand mediation, whereupon the parties shall, in good faith, mediate the dispute no later than thirty (30) days after such demand through the services of a mutually selected mediator, the cost of whom shall be borne equally by the parties, at a date and location selected by the mediator

after consultation with the parties. If the dispute is not resolved after applying the escalation procedures set forth above, the parties agree to waive any right to trial by jury in any judicial proceeding arising under or related to the subject matter of this Agreement, and agree to submit all controversies, claims and matters of difference to arbitration according to the commercial rules and practices of the American Arbitration Association ("AAA").  Arbitration hereunder shall occur within sixty (60) days of the date of submission before a single neutral arbitrator having significant experience in the subject matter of this Agreement and who will selected in accordance with AAA rules.   Arbitration proceedings shall take place in Wake County, North Carolina.  Discovery shall be permitted, including the use of interrogatories, requests for admission and production of documents and depositions.  If the amount claimed to be in dispute is less than $500,000 all applicable expedited procedures of the AAA shall apply.  The arbitrator's fees and costs of the arbitration shall be borne by the party against whom the award is rendered, except that if the arbitrator issues a split decision, granting partial relief to both parties, the arbitrator shall equitably allocate the arbitrator's fees and other costs.  Each party shall pay its attorney's fees related to any dispute related to this Agreement. The arbitration award shall be final and binding on both parties of this Agreement, shall not be subject to any appeal and shall be enforceable in any court of competent jurisdiction.

(b)This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of North Carolina without reference to its choice of law principles.  In the event any party brings a civil action or initiates judicial proceedings of any kind related to this Agreement (except for actions to enter or collect on judgments), the parties consent to the exclusive personal jurisdiction and venue of the courts in Wake County, North Carolina.