

Outbound Calling – Terms and Conditions



These Outbound Calling - Terms and Conditions (the “**Terms and Conditions**”) supplement the Master Service Agreement (the “**MSA**”) (including any Exhibits, SOFs, Rate Sheet(s), and any other attachments to the MSA, all of which are fully incorporated by reference within these Terms and Conditions). Capitalized terms not elsewhere defined in these Terms and Conditions will have the meaning ascribed to them in the MSA or any applicable SOF.

1. Service Description. Outbound Calling is an outbound call service only. Outbound Calling excludes: (a) Inbound Calling; (b) 911/E911; (c) Operator Services; (d) Collect Calling; (e) all other operator, assisted or intercept calling services; (f) Class 5 Features; and/or (g) 976, 900, and 1010xxx calling.

If applicable, Bandwidth will exercise commercially reasonable efforts to provide N11 Services, including, but not limited to, 411, 511, 711, 811 and NPA-555-xxxx (“**N11 Services**”) as follows: (i) Bandwidth will provide Customer with a valid telephone number for any published business or residential listing within the United States and Canada; Bandwidth also may provide “reverse lookup” information, including the name or owner of a particular TN, upon caller’s request; (ii) Director Assistance Services will be available 24 hours a day, seven days a week, 365 days a year; (iii) calls for Directory Assistance Services will be answered within six seconds of connection, regardless of time of day, 85% of the time; (iv) Bandwidth will maintain a minimum database accuracy rating of 95%; and (v) Bandwidth will maintain a successful fulfillment rate of 93%. Bandwidth will route all calls for N11 Services based on the originating ten-digit number received to determine the appropriate receiving party for the type of call for N11 Services place; Bandwidth is not responsible for the routing of calls to an incorrect receiving party if the originating ten-digit number received is not located or associated with the given local or regional receiving party.

Call Recording: Outbound Calling may provide a function that allows the recording of individual telephone conversations. Bandwidth will retain any recording for thirty (30) days from the date of any applicable recording, unless the MSA and/or the SOF earlier expire or terminate, in which event Bandwidth will have no further obligation to retain any recording thereafter. The laws regarding the notice, notification, and consent requirements for recording conversations vary from state to state. In some states, one must obtain consent from all parties to record a conversation. Customer (and any applicable Subscriber or End User) is solely responsible for complying with all federal, state, and local laws in any relevant jurisdiction when using this feature. Bandwidth expressly disclaims all liability with respect to the recording of telephone conversations. Customer agrees to fully, finally, and forever release, discharge, hold harmless, and fully indemnify Bandwidth from and against any damages or liabilities of any kind related to the recording of any telephone conversations using Outbound Calling.

Call Transcriptions: Outbound Calling may provide a function that allows a transcription of recorded individual telephone conversations. Bandwidth will retain any transcription for thirty (30) days from the date of any applicable transcription, unless the MSA and/or the SOF earlier expire or terminate, in which event Bandwidth will have no further obligation to retain any transcription. For clarity, the foregoing provisions regarding “Call Recording” apply to any call recorded and subsequently transcribed.

Media Service: Outbound Calling may provide a function that allows Customer to upload and store media for Customer’s use in connection with Outbound Calling. Bandwidth will retain any such media uploaded and stored until the expiration or termination of the MSA and/or the SOF, in which event Bandwidth will have no further obligation to retain any such media. Customer grants Bandwidth a non-exclusive, non-transferable (except to the extent the MSA is assigned or transferred by Bandwidth in accordance with its terms) license to use such media solely in connection with Bandwidth’s performance of the Services for Customer during the Term. Customer represents and warrants to Bandwidth that Customer has full right, title and interest in any media uploaded and/or stored by Customer from time to time.

2. 911 / E911 MATTERS. CUSTOMER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT THESE TERMS AND CONDITIONS WILL BE STRICTLY LIMITED TO THE PROVISION TO CUSTOMER OF OUTBOUND CALLING. CUSTOMER FURTHER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT OUTBOUND CALLING DOES NOT CONSTITUTE “INTERCONNECTED VOIP SERVICE” AS DEFINED WITHIN 47 C.F.R. PART 9. CUSTOMER WILL NOT (AND WILL NOT PERMIT ANY OF ITS SUBSCRIBERS OR END USERS TO) CONFIGURE OUTBOUND CALLING IN ANY WAY THAT WOULD CONSTITUTE “INTERCONNECTED VOIP SERVICE” AS DEFINED WITHIN 47 C.F.R. PART 9. THEREFORE, **NO E911 SERVICE OR BASIC 911 SERVICE WILL BE PROVIDED BY BANDWIDTH TO CUSTOMER, ANY END-USERS, OTHER CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY PURSUANT TO THESE TERMS AND CONDITIONS OR THE OUTBOUND CALLING CONTEMPLATED BY THESE TERMS AND CONDITIONS.** CUSTOMER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT BANDWIDTH HAS NO INTENT TO AND WILL NOT PROVIDE E911 SERVICE OR BASIC 911 SERVICE PURSUANT TO THESE TERMS AND CONDITIONS OR THE OUTBOUND CALLING CONTEMPLATED BY THESE TERMS AND CONDITIONS. CUSTOMER WILL NOT REPRESENT IN ANY WAY OR THROUGH ANY MEANS TO ANY END-USERS, CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY THAT BANDWIDTH PROVIDES ANY 911 / E911 SERVICE PURSUANT TO THESE TERMS AND CONDITIONS OR THE OUTBOUND CALLING CONTEMPLATED BY THESE TERMS AND CONDITIONS. CUSTOMER REPRESENTS AND WARRANTS TO BANDWIDTH THAT, IF CUSTOMER IS AT ANY TIME REQUIRED TO PROVIDE ANY 911 / E911 SERVICES DUE TO ANY TELECOMMUNICATIONS RELATED SERVICES CUSTOMER SELLS OR PROVIDES TO CUSTOMER’S END-USERS, CUSTOMERS, SUBSCRIBERS, OR ANY PERSON OR ENTITY AT ANY TIME THAT ARE, IN WHOLE OR IN PART, ENABLED BY THE

OUTBOUND CALLING CONTEMPLATED BY THESE TERMS AND CONDITIONS, THEN CUSTOMER WILL ENSURE THAT 911 / E911 SERVICES ARE FULLY PROVIDED IN COMPLIANCE WITH SUCH 47 C.F.R. PART 9.

Customer is strictly prohibited from displaying on any outbound caller ID any number for which Customer has not obtained from either Bandwidth or any other third party 911 services with respect to such number. By displaying any number in any outbound caller ID, Customer represents and warrants to Bandwidth that Customer has obtained from either Bandwidth or any other third party 911 services with respect to such number.

3. IP Originated Usage. Customer represents and warrants to Bandwidth that all Customer termination calls and/or Usage will be IP Originated.

(i) **Customer represents and warrants to Bandwidth that all the services and capacity to be purchased from Bandwidth will be used by Customer to provide an “enhanced service” as defined in 47 C.F.R. Section 64.702(a) and/or an “information service” as defined in 47 U.S.C. Section 153(24).**

(ii) If any ruling, decision or determination by the FCC, a PUC, any state regulatory agency, or any court concerning internet-enabled calls is inconsistent with the description of an IP Originated call as described in these Terms and Conditions, Bandwidth reserves the right to modify or amend the description to be consistent with such ruling, decision or determination. If any such modification or amendment materially adversely affects Customer, then Customer will have thirty (30) calendar days after such amendment or modification to notify Bandwidth in writing of such material adverse effect. Section 14 of the MSA will apply upon Customer’s delivery of such notice to Bandwidth. If Customer fails to notify Bandwidth in writing within such thirty (30) calendar day period, Customer will have accepted such amendment or modification.

(iii) If any third-party asserts at any time that any of Customer’s calls and/or Usage is not IP Originated, Customer will, at Customer’s sole expense, cooperate with Bandwidth and provide reasonable evidence (including but not limited to providing [or causing Subscribers and/or End Users to provide] Bandwidth with call detail records) to demonstrate that any applicable calls are IP Originated.

(iv) If it is determined at any time that any calls and/or Usage sent to Bandwidth by Customer for termination are not IP Originated, in addition to any applicable Rates, Customer will pay Bandwidth the Non-IP Originated Surcharge provided in any applicable SOF or Rate Sheet.

4. Connection. Customer must connect to Bandwidth’s network in a manner and at locations determined by Bandwidth. Customer will, at Customer’s sole cost, be responsible for providing all equipment (including proxy servers), software, facilities and IP connectivity (including, without limitation, connectivity to Customer’s Subscribers or End Users) necessary for Customer’s Outbound Calling applications and Customer’s network to operate with Outbound Calling, and for providing and ensuring the successful installation of all equipment and software necessary for Customer’s Subscribers or End Users to use services sold to such Subscribers or End Users. Customer will have the sole responsibility to input, validate and maintain accurate information with respect to Customer’s Subscribers or End Users; Customer will furthermore be solely responsible for all support of and for Customer’s Subscribers or End Users as it relates to Outbound Calling. For clarity, with respect to all Class 5 Features Customer may offer to Customer’s Subscribers or End Users from time to time, Customer will provide to Bandwidth all accurate information required to support Outbound Calling with respect to such services, even if Customer obtains such information from Customer’s applicable Subscribers or End Users.

5. Interoperability. If applicable, Customer and Bandwidth will reasonably cooperate with each other to test to ensure interoperability between Bandwidth and Customer’s networks and systems. All necessary interoperability testing will be completed within a reasonable time. If after completion of initial interoperability, Customer plan to make upgrades, updates and/or enhancements (collectively “**Configuration Changes**”), Customer will notify Bandwidth prior to implementing a Configuration Change so that Customer and Bandwidth may work together in good faith to determine how best to proceed regarding such Configuration Change. If at any time an interoperability condition occurs that adversely affects Bandwidth’s network that cannot be adequately remedied within a reasonable period, taking into consideration the severity of the interoperability condition and the effect on Bandwidth’s network, Bandwidth may, at its sole discretion, suspend the provision of Services pursuant to these Terms and Conditions. The Parties will communicate as reasonably necessary to isolate and repair any problems in their respective networks; provided, however, each Party will remain solely responsible for any costs or liabilities incurred in connection with the repair of any problem with respect to such Party’s network.

6. Charges and Rates. All Services are provided pursuant to the Rate Sheet.

7. Call Completion. Bandwidth reserves the right to block or otherwise restrict termination of calls to all termination calling destinations, whether or not included in Rates provided to Customer, and without notice to Customer, in accordance with applicable law. Bandwidth does not guarantee call completion, and the failure to complete any or all calls, regardless of reason in accordance with applicable law, will not constitute a breach of these MSA, the SOF and/or these Terms and Conditions.

8. Responsibility to Control and Manage Traffic. In addition to any other terms and conditions of the MSA and/or these Terms and Conditions, Customer will: (i) manage the integrity of the traffic egressing Customer's network, (ii) manage and correct, as necessary, any fraudulent calling patterns or calling patterns perceived as fraudulent that may harm Bandwidth's network; and (iii) screen and block calls destined to (x) invalid single numbers, (y) unassigned NPA-NXX-X, and/or (z) numbers with invalid formats. If Customer fails to comply with the foregoing obligations of this Section 8, Bandwidth will have the right (but not the obligation) to take protective action against Customer to protect Bandwidth's egress network. Bandwidth's protective actions may include, without limitation, the temporary blocking of Customer's traffic until the applicable problem is resolved in Bandwidth's reasonable discretion.

9. Fraud. Customer will not participate in or assist in any fraudulent Usage, in any form or by any means, either Customer, Customer's Users, Customer's Subscribers and/or any End Users. If Customer suspects, knows of, or should have known of any fraudulent Usage, Customer will immediately stop all fraudulent Usage and notify Bandwidth. Customer acknowledges, understands and agrees that Bandwidth does not provide, is not required to provide, and does not warrant, any fraud prevention. If Bandwidth becomes aware of unusual Usage volumes or patterns, Bandwidth will make commercially reasonable attempts to notify Customer; provided, however, Bandwidth will have no obligation to notify Customer of any such volumes or patterns. Bandwidth's sole obligation to Customer with respect to any actual, alleged or suspected fraudulent Usage will be to reasonably cooperate with Customer, upon Customer's request and at no expense to Bandwidth, to assist Customer's efforts to stop any fraudulent Usage that Customer report to Bandwidth. Customer will be solely responsible for all risks, expenses and liabilities arising from or relating to fraudulent Usage by Customer, Customer's Users, Customer's Subscribers or End Users, or any other person or entity directly or indirectly utilizing Outbound Calling. Notwithstanding anything in this Section 9 to the contrary, Customer is and will remain solely responsible for all Usage, fraudulent or otherwise.

10. Regulatory Responsibilities of Customer. Customer (i) will be solely responsible for and will undertake all required action(s) before the FCC, any PUC, any state regulatory agency, any court or any other controlling regulatory bodies, agencies, commissions or other authority, (ii) will obtain any required governmental approval(s), and (iii) will fully comply with all applicable laws, regulations, including, without limitation, all applicable and/or FCC requirements, such as CALEA and CPNI, in each case as such actions, approvals and/or laws and regulations apply or relate to the utilization of Outbound Calling by Customer, Customer's Users, Customer's Subscribers or End Users, or any other person or entity to which Customer provide any services utilizing Outbound Calling.

11. Relationship. Bandwidth has no relationship with or obligation to any of Customer's Subscribers or End Users or any other person or entity to which Customer provide any services utilizing Outbound Calling, none of whom is a third-party beneficiary of the MSA or these Terms and Conditions. Customer is solely responsible for all pricing, billing and collections, and/or compliance with any applicable laws or regulations related to any services Customer provide to Customer's Subscribers or End Users or any other person or entity to which Customer provide any services utilizing Outbound Calling. Customer will provide technical support to Customer's Subscribers and End Users and will conduct customary problem resolution and troubleshooting activities directly with Customer's Subscribers and End Users to determine whether any condition affecting any Service(s) is attributable to Bandwidth's network prior to reporting a Service Outage pursuant to Section 11 of the MSA.

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