

Additional Terms and Conditions for Non-Tariff Services

1. **Lightpath's Duties and Obligations:** Lightpath shall be responsible for provisioning and installing Service to Customer's premises subject to these terms and conditions and subject to the policies and rules of Lightpath and its affiliated entities, including its Acceptable Use Policy (AUP). Any and all access to other networks must be in compliance with all policies and rules of those networks. Lightpath exercises no control whatsoever over the content of any information provided over the network.
2. **Customer's Duties and Restrictions:** Customer will be responsible for the costs of installation as set forth in this Agreement. In addition, Customer must provide reasonable access to its premises to enable any acts required by this Agreement. Services are only to be used for lawful purposes. Customer is responsible for complying with all local licenses or permit requirements, and all laws and regulations, including but not limited to copyright, trade secret, patent, trademark, obscenity, export, import and customs laws and regulations. Customer may not sell, assign or transfer Services without prior written consent of Lightpath. The provision of Services and/or products is subject to Lightpath's continuing approval of Customer's credit-worthiness.
 - a. **Restriction on the Use of the Service.** Customer agrees not to (i) rent, lease, or loan the Service or any part thereof, or provide or use the Service on its own behalf, except as provided herein, or a third party's behalf; (ii) permit third parties to benefit from use of the Service; (iii) reverse engineer, decompile, or disassemble any software or hardware that provides the Service, or otherwise attempt to derive the source code of such software; (iv) download, export, or re-export any software or technical data received hereunder, regardless of the manner in which received, without all required United States and foreign government licenses; or (v) remove any part of the Service from the premises where Lightpath has provisioned the Service.
 - b. **Customer Cooperation.** Customer agrees to provide all information, access to its premises, and full, good faith cooperation reasonably necessary for Lightpath to deliver and provide Service. Lightpath shall bear no liability or otherwise be responsible for delays or failure in the provision of Service caused by Customer's failure to provide such cooperation, assistance, or access.
 - c. **Licensed Technology.** Customer agrees to provide Lightpath with any information, materials, and technology owned, licensed, or controlled by Customer that is reasonably required for the purpose of enabling Lightpath to perform Service.
 - d. **Software License.** Customer acknowledges that it may receive software as a result of Service provided under this Agreement. Customer shall agree that it is licensed to use such software only on hardware supplied by Lightpath (except as otherwise authorized in the software documentation) and subject to the terms and conditions of the software license contained in the agreement pursuant to which the software, or the hardware to which such software relates. Customer shall not (i) copy, in whole or in part, software or documentation; (ii) modify the software, reverse compile or reverse assemble all or any portion of the software; or (iii) rent, lease, distribute, sell, or create derivative works of the software. When Customer upgrades software to a new release, it shall not be permitted to continue to use a previous release and the new release concurrently (e.g., only one licensed copy of the software may be used at a time, except for a limited amount of time for parallel testing, but under no circumstances may more than one release be in production at any one time).
 - e. **Proprietary Rights.** Customer acknowledges that Lightpath and/or its third party licensors owns and retains all right, title and interest, worldwide, in any and all proprietary software, technology, ideas, methods, processes and know-how ("Lightpath's Supplied Technology") used by Lightpath in the provision of Service to Customer. Customer agrees that any Customer personnel that may have access to Lightpath Supplied Technology shall not resell, repackage or redistribute, etc., in any way, any information that may be gained by Customer or its personnel during the delivery of Service by Lightpath to Customer. Upon termination or expiration of this Agreement, Customer shall remove all copies or embodiments of Lightpath's Supplied Technology from Customer's network and Customer shall cease its use. Customer shall be responsible for any loss or damage to any equipment until returned to Lightpath. Customer shall also comply with all third-party software and technology licenses utilized in the provisioning of Service.
 - f. Customer shall be responsible for any loss or damage to any equipment ("Lightpath Equipment") (i.e. handset, routers, etc.) supplied to Customer or installed at Customer's premises. Customer shall not, without prior written permission by Lightpath, alter the Lightpath Equipment, including but not limited to, its configuration, or physically move the Lightpath Equipment from Customer's premises. Further, Customer shall only permit certified technicians designated by Lightpath to work on Lightpath Equipment.
 - g. The following services are not supported under maintenance or remediation for the Hosted Voice Service product: (i) support or replacement of Lightpath Equipment that is altered, modified, mishandled, destroyed, or damaged by natural causes or damaged due to a negligent or willful act or omission by Customer or use by Customer other than as specified in the applicable Lightpath or manufacturer-supplied documentation; or (ii) services, software, or hardware required for problem resolution resulting from any third-party products or any unforeseen circumstances.

3. **Prohibited Uses of Lightpath Internet Service:** Customer shall not use the Internet Service provided by Lightpath, if any, for illegal or inappropriate activities as outlined in the AUP. The AUP will be updated from time to time and the latest version will supersede all prior versions. The current AUP is posted at www.optimumlightpath.com/media/aup.pdf.

In addition to the AUP, all Internet Service customers may NOT:

- a. Send any communication that meets the AUP definition of SPAM. Lightpath does not recognize any purchased "Opt In" list as true "Opt-In" and therefore does not allow customers to use these lists in any type of communication. "Opt-In" requests made by internet users must have the following information logged by Customer: email address (or other identifying means depending on communication format), date of request, time of request, and IP address of the requestor at the time or the full header of the email request. Customer will be asked to present such information to Lightpath should a SPAM issue arise. Failure or refusal to provide such information will be considered a violation to these terms and the AUP. It is highly recommended that Customer use a double verification method before adding a user to a mailing list to avoid malicious subscriptions.
- b. Distribute marketing, newsletter, or similar communications from Customer unless there are at least two (2) different ways for the user to "Opt Out" of future mailings. Furthermore, Customer must practice appropriate list management and honor all removal requests made by recipients immediately upon receipt. Logs of the removal process should also be kept by the subscriber and be made available to Lightpath upon request.
- c. Host any website or service on the Lightpath network that uses or benefits from SPAM marketing techniques regardless of where the communication originated.
- d. Register or point a domain, sub-domain, or hostname to any Lightpath IP address using false, inaccurate, or fictional contact information on the domain registration. Additionally, Customer must adhere to RFC 2142 "Mailbox Names for Common Services, Roles, and Functions."

Failure to comply with the above may result in Service interruption without notice or termination of this Agreement for cause and termination charges will apply.

4. **Commercial Use:** All products and Services offered hereunder are for commercial (business) use by Customer. Resale of internet access, use of the equipment, products, services, hardware and software provided hereunder, whether provided by Lightpath at no charge or for charge, is prohibited and Customer shall use its best efforts to ensure that the equipment, products, services, hardware and software offered hereunder are used only for the purposes intended. Resale of internet access (acting as an internet service provider), without the express written consent of Lightpath, will subject Customer to termination of this Agreement.
5. **Indemnification:** Customer shall indemnify and hold Lightpath, its licensors, affiliates and subcontractors harmless from and against any and all claims or costs arising out of or in connection with a breach by Customer of any of its obligations under this Agreement or the use of Service that causes damage to Customer, Lightpath or any other third party to the extent directly or indirectly caused by Customer or Customer's breach of any of its obligations under this Agreement.
6. **Hardware and Software Not Provided by Lightpath:** Physical equipment and/or software products NOT provided by Lightpath are the sole responsibility of Customer. Customer is responsible for installation, compatibility, maintenance, and service of such hardware and/or software, and if Customer is unable to use Service as a result of installation or attempted installation of said software and/or hardware, Customer will nevertheless remain liable for its customary and regular annual or monthly payments to Lightpath. Upon notice from Lightpath that hardware or software not provided by Lightpath is causing, or in the sole opinion of Lightpath, is likely to cause hazard, interference, or service obstruction to anyone, Customer shall eliminate the hazard, interference or service obstruction immediately. Lightpath reserves the right to terminate Service in the event Customer hardware and/or software is interfering with other Lightpath customers or with Lightpath's network. Lightpath is not responsible if any changes in hardware, software, or services cause equipment and/or software not provided by Lightpath to become obsolete, or requires modification or alteration, or in any other way affects the total performance of Lightpath on an end-to-end basis.
7. **Warranty Limitations:** LIGHTPATH MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT ANY SOFTWARE MAY CONTAIN ERRORS AND MAY BE INCOMPLETE OR CONTAIN INACCURACIES. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT ALL SOFTWARE IS USED AT CUSTOMER'S OWN RISK. THE SOFTWARE IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND.

8. **Limitation of Liability:** Except as expressly set forth herein, Lightpath shall not be liable to Customer for any claims or damages related to this Agreement to the full extent permitted by law. Lightpath shall not be liable for any failure or delay of Lightpath in provisioning the Service under this Agreement. It is expressly understood and agreed that Lightpath has not made any guarantees or promises with regard to the exact date of the complete installation and operational status of Customer. Customer should not terminate any other network or alternative service currently in use without prior written notification of a confirmed installation date from Lightpath. Lightpath shall not be liable for any claims or damages arising out of the inaccuracy or incorrectness of the databases or the information contained therein, even if Lightpath has been advised of the possibility thereof. Lightpath shall not be liable for any claims or damages arising out of the impropriety or inaccuracy of information passing through its Services. The use of any information is at Customer's own risk. Lightpath shall not be liable for any claims or damages for loss of data resulting from delays, non-deliveries, misdirected deliveries, and any and all Service interruptions.

Lightpath shall not be liable for any loss resulting from unauthorized access to, or alteration, theft, destruction, corruption or use of Customer's equipment, software, data or systems. Customer shall undertake, at its own expense, to secure and protect all its equipment, software, data and systems used in connection with Service. This list of specifically enumerated claims for which Lightpath shall not be liable is not intended to be exhaustive. Should Customer wish to pursue any claim or legal action arising from this Agreement, it shall be brought within a period of one (1) year following the occurrence, or said claim shall be deemed waived.

9. **NO CONSEQUENTIAL DAMAGES.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, LIGHTPATH'S LIABILITY FOR DAMAGES ARISING OUT OF THE FURNISHING OF SERVICES HEREUNDER, INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR OTHER DEFECTS, REPRESENTATIONS OR USE OF THESE SERVICES OR ARISING OUT OF THE FAILURE TO FURNISH THE SERVICE, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, SHALL BE LIMITED TO THE TOTAL AMOUNT PAYABLE BY CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL LIGHTPATH BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF LIGHTPATH HAD BEEN ADVISED OF SUCH DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS.

10. **Service Limitations:** Customer acknowledges and agrees that (i) criminals, terrorists, or others may commit or attempt to commit unlawful, disruptive, violent, terrorist and/or warlike acts at times and places, and in manners, that cannot be predicted or prevented; (ii) information technology developments, configuration or implementation changes, software modifications (including routine maintenance, patches, enhancements and upgrades), human factors and other circumstances can create new, unknown and unpredictable security exposures; and (iii) information technology "hackers" and other third parties continue to develop and employ increasingly sophisticated and powerful techniques and tools which result in ever-growing security risks and potential for causing damage to persons and property. Lightpath does not make any representation or warranty that Customer's or any third party's information technology, software, information, equipment, facilities, or personnel are, or will be, secure or safe from harm or secure or safe from intrusion, disruption, interception, viruses, or other security exposures, or damage to persons or property caused by the preceding and that Customer has a responsibility to actively monitor the functions of its systems and to back up its data regularly. Lightpath does not provide or represent or warrant that Services or products Lightpath provides will ensure Customer's compliance with any particular law, including but not limited to any law relating to security or privacy. Customer is solely responsible for complying with the legal obligations of all data protection legislation, in particular with the legality of transmission of data to Lightpath and the legal requirements for processing of data.

11. **Confidential Information:** "Confidential Information" consists of all information disclosed, whether written or oral, by one party (the "Disclosing Party") to the other party (the "Receiving Party") in connection with this Agreement which is non-public and (i) which is either marked or otherwise communicated as being "proprietary" or "confidential"; or (ii) where such information is, by its nature, confidential. Confidential Information includes but is not limited to the Disclosing Party's customers or prospective customers, business plans, pricing, optimization recommendations and network designs. Information that (iii) is independently developed by the Receiving Party; (iv) is lawfully received by the Receiving Party free of any obligation to keep it confidential; or (v) becomes generally available to the public other than by breach of this Agreement, shall not be Confidential Information. Confidential Information is the property of the Disclosing Party and shall be destroyed or returned to the Disclosing Party upon request provided that either party may retain Confidential Information to the extent required by applicable rule, regulation or law.

The Receiving Party shall (vi) use such Confidential Information only for the purposes of performing this Agreement and using Services; (vii) reproduce such Confidential Information only to the extent necessary for such purposes; (viii) restrict disclosure of such Confidential Information to employees, agents and subcontractors that have a need to know for such purposes; (ix) advise those employees, agents and subcontractors of the obligations of this Agreement; (x) not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in this Agreement; and (xi) use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information.

12. **Emergency Calling Services (E911):** Customer is responsible for complying with all applicable emergency calling service laws. Lightpath's responsibilities end at the point of demarcation, the Lightpath LIT location where Customer's premises equipment ("CPE") is located (physical primary service address). Customer is responsible for the registration of this physical address with Lightpath. Customer is also responsible for the provision of E911 for all interconnected end users behind the CPE and notification of any limitations to all of its end users.

Access Limitations: Common events that can limit access to E911 include but are not limited to:

- a. Loss of electric service. Service including access to E911 will be interrupted if there is a loss of electric service. Customers are urged to implement a battery backup system for Service. Following a power failure or disruption, the equipment, including Devices for Hosted Voice Service, may need to be reset or reconfigured prior to utilizing the Service including access to E911.
- b. Loss of access service. Service including access to E911 will be interrupted if the attendant connection is not available.
- c. Failure of equipment. The malfunction or failure of equipment, software or hardware necessary for end-to-end IP voice communications functionality could potentially limit access to E911.
- d. Service outage due to disconnection of Customer account.
- e. Other service outages. If there is a Service outage for any reason, such outage may interrupt all Service, including access to E911. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

Customers purchasing Hosted Voice Service are also subject to additional obligations for 911 compliance found in the Hosted Voice Service Agreement.

13. **Export Control Regulations:** Lightpath Equipment and software, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Lightpath Equipment and software.
14. **Force Majeure:** Lightpath shall not be liable for any failure or delay in performance caused by anything or event beyond its control such as, but not limited to, acts of God, labor disputes, natural disasters or the actions of a third party.
15. **Alarm System Restrictions:** Hosted Voice Service does not support a central station monitoring systems including (i) medical alert systems, (ii) any high security monitoring systems (UL 681 or similar), or (iii) fire alarm systems (UL 864 or similar). If Customer desires to utilize the central station monitoring systems, Customer must maintain an alternate connection.
16. **Miscellaneous:**
- a. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions shall not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed in such a manner as to carry out the full intention of the parties.
 - b. Internet protocol addresses for Internet Service allocated by Lightpath to Customer will remain the property of Lightpath and are non-portable. IP allocation is dependent on approval of Customer's network configuration requirements as documented on the Lightpath IP Justification Form. Lightpath will allow Customer to announce internet protocol addresses for a maximum of sixty (60) days after termination of Service, provided that Customer will be responsible to pay the monthly fees associated with Services.
 - c. This Agreement and all causes of action arising out of this Agreement shall be governed by the domestic law of the State of New York without regard to its choice of law principles. The parties agree that New York shall be the proper place of jurisdiction for the determination of any disputes arising from this Agreement and the parties consent to jurisdiction of the Courts of the State of New York. The parties agree to waive any right to a jury trial for disputes arising hereunder.