

# Basic Service Agreement

- 1. Payment Terms.** BBCOM shall bill Customer for services rendered at the agreed upon rate of such services at the time rendered. Unless otherwise specified on a Service Order or other document, recurring charges are billed monthly prior to the month in which the services are provided. All non-recurring charges, including, but not limited to customer premise equipment and installation charges must be paid in full at the time the service is ordered. Unless otherwise specified on a Service Order or other document, all amounts stated on each monthly invoice are due and payable thirty (30) days from the date of the invoice ("**Due Date**"). Customer agrees to remit payment to BBCOM at the remittance address provided on the invoice. In the event Customer fails to make full payment to the proper address by the Due Date, Customer shall also pay finance charges in the amount of the lesser of one and one-half percent (1 1/2%) of the unpaid balance per month or the maximum lawful rate under applicable law, which will accrue from the Due Date. In the event that payment is not received in full from Customer on or before the Due Date, BBCOM shall have the right, after giving the Customer twenty-four (24) hours notice, to suspend either temporarily or permanently, all or any portion of the Services to the Customer. Customer will remain liable for the full term commitment as set forth in Sec 14. Customer will also remain liable for any costs incurred by BBCOM, including legal fees, to collect Past Due amounts. BBCOM may request a Security Deposit or other forms of security acceptable to BBCOM. BBCOM reserves the right to request new or additional Security Deposit, (i) if Customer's monthly charges exceed their projected monthly charges or their credit limit or (ii) if Customer demonstrates poor payment history by failing to submit payments by the Due Date.
- 2. Disputes; Arbitration.** If Customer, in good faith, disputes any portion of an invoice, it must pay the entire amount of the invoice on or before its Due Date and provide written notice and documentation to BBCOM of the billing dispute within fourteen (14) days from the Due Date. Customer's failure to notify BBCOM of a dispute shall be deemed to be Customer's acceptance of such charges. The parties will make a good faith effort to resolve billing disputes as expeditiously as possible. If a dispute is resolved in favor of Customer, Customer shall receive a credit on their next bill for the amount settled upon. If a dispute is resolved in favor of BBCOM, Customer shall remit payment within three (3) business days of resolution notification (the "**Alternate Due Date**"). If a billing dispute or any other dispute arising from or relating to this Agreement is not resolved, it shall be decided by neutral, binding arbitration conducted in the State of California. The arbitrator shall be a retired judge or justice, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. In all other respects, the arbitration shall be conducted in accordance with Part 3 Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. A party's failure to appear and participate in arbitration proceedings will permit the participating party to obtain a default award. The parties shall have the right to discovery in accordance with Code of Civil Procedure Section 1283.05. The arbitrators do not exceed their powers (per California Code of Civil Procedure Sections 1286.2 or 1286.6) by committing an error of law or legal reasoning. The decision of the arbitrators shall be final and un-reviewable for error of law or legal reasoning of any kind.
- 3. Responsibility for Fraudulent Usage.** Customer shall be solely and exclusively responsible for the use and control of access to BBCOM facilities and for all usage attributable to Customer's account including unauthorized or fraudulent usage. Customer shall not be relieved from its obligation to make timely and full payment hereunder as a result of fraudulent usage of the service.
- 4. Prevailing Party.** The prevailing party in any litigation or arbitration arising under this Agreement shall be entitled to recover from the losing party its expenses, including reasonable attorneys' fees and costs.
- 5. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the choice of laws and conflicts of law rules and principles of such State.
- 6. Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement.
- 7. Disclaimer of Warranty.** BBCOM shall use commercially reasonable efforts under the circumstances to remedy any delays, interruptions, omissions, mistakes, accidents or errors in the Services and restore such Services to comply with the terms hereof. **BBCOM MAKES NO WARRANTY WITH RESPECT TO THE SERVICES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 8. Limitation of Liability.** IN THE EVENT OF ANY BREACH OF THIS AGREEMENT OR ANY FAILURE OF THE SERVICES, WHATSOEVER, BBCOM SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER. **NEITHER CUSTOMER NOR BBCOM SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR ANY OTHER SIMILAR DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER WITH RESPECT TO THIS AGREEMENT OR FOR THE LOSS OR FAILURE OF THE SERVICES.**
- 9. Events of Default.** A Default shall occur if (a) Customer fails to make payment as required under this Agreement and such failure remains uncorrected for five (5) calendar days after written notice from BBCOM or (b) either party fails to perform or observe any material term or obligation (other than making payment) contained in this Agreement and any such failure remains uncorrected for fifteen (15) calendar days after written notice from the non-defaulting party informing the defaulting party of such failure. If Customer uses the Services for any unlawful purpose or in any unlawful manner, BBCOM shall have the right to immediately suspend any or all Services hereunder without notice to Customer until the unlawful use ceases. If Customer terminates this Agreement due to BBCOM's breach, Customer shall not be liable to BBCOM for cancellation charges above. If BBCOM terminates this Agreement due to Customer's breach, Customer will remain liable for the full term commitment as set forth in Sec. 14. Any controversy or claim arising out of or relating to this Agreement that has not been resolved between the parties themselves may be resolved by binding arbitration as set forth in Section 2.
- 10. Force Majeure.** In no event shall a Party have any claim or right against the other Party for any failure of performance due to causes beyond its control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over Service Provider or of any department, agency, commission, bureau, corporation, or other instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots; wars; fiber-cuts or strikes, lock-outs, work stoppages, or other labor difficulties.
- 11. Confidentiality.** Customer understands and agrees that the terms and conditions of this Agreement and all documents referenced herein (including invoices to Customer for Services provided hereunder) are confidential as between Customer, BBCOM and its affiliates and shall not be disclosed by Customer to any party other than the directors, officers, and employees of Customer or agents of Customer who specifically agree to non-disclosure of the terms and conditions hereof. Violation by Customer or its agents of the foregoing provision shall entitle BBCOM, at its option, to discontinue Services to Customer without further obligation or liability to Customer. Customer further agrees that any Customer generated press release, advertisement or publication regarding this Agreement, Services provided hereunder or in which BBCOM or its affiliates are to be mentioned, will be submitted to BBCOM for its written approval prior to publication. It is

agreed that a violation of any of the provisions of this Confidentiality agreement will cause irreparable harm and injury to the non-violating Party and that Party shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining the violating Party from doing or continuing to do any such act and any other violations of this Agreement. The Parties agree, however, that absent a showing of willful violation of this Agreement, neither Party shall be liable to the other, whether in contract or in tort or otherwise, for special indirect, incidental, or consequential damages. Customer understands and agrees that BBCOM may disclose such information as may be required under applicable law including, without limitation, filing of tariffs.

12. **Customer Responsibilities.** Customer is responsible for protecting all account passwords and for any authorized or unauthorized use made of Customer's account. Customer agrees to comply with the rules appropriate to any network to which Customer may gain access via the services of BBCOM. Customer acknowledges the risks associated with transmitting or making available any proprietary, confidential, or otherwise valuable information that Customer desires to keep confidential over any part of the Internet without encryption, nor reside without firewall protection on computers connected to the Internet. Customer will not transmit or make available to the Internet any material that is illegal, libelous, tortuous, or likely to result in action against BBCOM or its Customers. BBCOM reserves the right to suspend, either temporarily or permanently, Customer's services in the event of any attack against Customer that affects BBCOM's network or its Customers. Customer agrees that, under no circumstances, will the Customer use BBCOM's equipment and/or electronic mail addresses in connection with the sending of unsolicited electronic mail messages, commercial or otherwise, including, but not limited to, the sending of unsolicited mass mailings from another service which in any way implicates the use of BBCOM's service, equipment or any BBCOM electronic mail address. In the case of such violations, BBCOM shall have the right to suspend, either temporarily or permanently, all or any portion of the Services to the Customer. BBCOM services are intended for internal use only and are not for resale purposes. BBCOM voice services are not for use in conjunction with automatic dialing systems. Customer must disclose the use of automatic dialing systems to BBCOM at the time of the Service Order placement. BBCOM reserves the right to cancel the Agreement in the event that they become aware that automatic dialers are being utilized. Such cancellation shall not relieve the Customer of their responsibilities under this Agreement. Customer has sole responsibility for installation, testing and operation of facilities, services and equipment ("**Customer Facilities**") other than those specifically provided by BBCOM as part of the Services as described in this Agreement. In no event will the untimely installation or non-operation of Customer Facilities relieve Customer of its obligation to pay charges for the Services after the start of Services as set forth in this Agreement.
13. **Title to Equipment.** This Agreement shall not, and shall not be deemed to, convey to Customer title of any kind to any of the customer premise equipment including, but not limited to, routers, VPN boxes, Integrated Access Devices, muxes, transmission facilities, digital encoder/decoders, telephone lines, microwave facilities or other facilities supplied or leased by BBCOM in connection with the Services. In the event that Customer purchases equipment through BBCOM, Customer shall have title to the equipment and it shall become their own. BBCOM shall not be obligated to provide any services for Customer's own equipment. Customer's own equipment shall be expressly excluded out of any and all service agreements.
14. **Service Plans and Term Commitment.** All accounts have a term commitment specified on the contract. Due to the fact that BBCOM may order ancillary services from third party providers, the cancellation of services prior to the Activation date may result in charges to BBCOM. If Customer terminates any service prior to the Activation Date, Customer shall reimburse BBCOM for all costs associated with the ordering and implementation of such service, including but not limited to, installation charges that may have previously been waived. If Customer terminates Activated Service prior to completion of the term commitment, Customer agrees to pay the monthly fee times the number of months remaining in the term commitment. Cancellation requests must be sent in writing directly to BBCOM'S Provisioning Department. Monthly minimum commitments for usage shall be set forth on the service order and shall be in effect for the length of the term. If Customer terminates Activated Service prior to the completion date of the term commitment, Customer agrees to pay the regular monthly fees plus the monthly minimum usage commitment times the number of months remaining in the term commitment. Verbal cancellation requests or requests provided to any third party, including but not limited to BBCOM agents, will not be considered valid. Customer agrees to use services purchased from BBCOM in the way the account is intended. Upon expiration of the term commitment, service will be provided on a month to month basis and this Agreement shall renew on a month to month basis unless terminated by thirty (30) days written notice by one of the Parties.
15. **Minimum Charge Commitment.** Any minimum charge commitments shall be set forth in the applicable Service Order and/or Pricing Schedule.
16. **Charges:** Due to circumstances beyond BBCOM's control (ie: regulatory modifications, underlying carrier modifications), BBCOM reserves the right to revise the Voice Termination rates and charges set forth in the Service Order(s) or Pricing Schedule(s) upon five (5) days written notice to Customer. Revised rates may be posted on BBCOM's website at [www.bbcominc.com](http://www.bbcominc.com). Upon receiving notification of the revised rates, Customer shall have the option of re-directing the affected voice traffic. For voice services, traffic is rated on a per call basis and some variance, due to billing increment and decimal billing rounding may be introduced. Charges for any services not set forth in a Customer Service Order shall be billed at BBCOM's then current retail rates. A copy of BBCOM's Ancillary Fee Schedule may be found on BBCOM's website at [www.bbcominc.com/forms.htm](http://www.bbcominc.com/forms.htm).
17. **Miscellaneous.** Any notice to be given by one party to the other shall be given in writing and shall be properly served if sent by pre-paid first class mail, overnight courier such as UPS, Federal Express or Airborne Express, or facsimile to the registered office or last known business address of the party to be served and if such notice is sent by mail it shall be deemed to have been received on the second business day after mailing and if sent by facsimile shall be deemed to have been received at the time of dispatch. Where Customer comprises two or more persons their liabilities and obligations to BBCOM shall be joint and several. The headings of the preceding clauses shall not affect the interpretation of this Agreement. The singular shall include the plural and vice versa. This Agreement may not be modified or amended except by a written agreement executed by both parties and only to the extent set forth therein.