

ONESTREAM NETWORKS LLC

SERVICE TERMS AND CONDITIONS 4.1

1. **Terms and Conditions.** All terms and conditions contained herein are applicable to the Services provided by OneStream Networks either directly or as agent or reseller for other third party providers at OneStream Networks' sole discretion. The stated terms and conditions contained herein are not intended to supersede any other service and/or maintenance agreement(s) that may be executed for additional customer requirements, including, but not limited to the installation, maintenance, and/or warranty of customer equipment, such as data switches, routers, or end points as defined on separate Agreements. Any such Agreements shall remain independent from and shall not interfere with these Terms and Conditions, except where this Agreement enforces control over any conflict.
2. **Price and Payment.** (a) Customer is responsible for and agrees to pay OneStream Networks ("ONESTREAM NETWORKS") for OneStream Networks Services ("Services") at the rates specified on the Service Agreement or on an Addendum to the Service Agreement, or on any other amendment hereto executed by the parties. Services the parties agree to add hereto after the Effective Date shall be added to the Agreement at the ONESTREAM NETWORKS' list prices in effect at that time unless otherwise agreed by ONESTREAM NETWORKS. Usage charges including but not limited to above normal business use, inbound toll free, outbound long distance, outbound international calling, calling card calls and one-time charges shall be billed at the end of the month in which they are incurred. (b) Monthly recurring charges shall be billed in advance, in the month preceding the month to which such charges apply. All charges are due and payable immediately upon Customer's receipt of ONESTREAM NETWORKS' invoice. Failure to pay any sum when due may result in ONESTREAM NETWORKS issuing to Customer a five (5) day Service disconnect notice, interruption of Services or termination of this Agreement pursuant to Section 10 below. A charge of one and one-half percent (1.5%) of the amount owed shall be added to each full or partial month that payment is not made starting on the thirty-first day after the date of invoice. If Customer disconnects Services, or if OneStream Networks disconnects Customer's Services for Customer's Default, as defined herein, Customer shall still be responsible for a) the monthly fees for the balance of the remaining month; and b) any associated unpaid usage charges. The "remaining months" shall be defined by a) the term commitment as indicated on the customer's signed services agreement, and b) the date on which the service was actually rendered active "Acceptance Date"; which is typically the date that the customer's local circuit(s) (i.e. the T1) was accepted for service. This date is typically approximately 6 weeks after the signature date of the signed services Agreement. This "acceptance date" marks the commencement date for the customer's commitment term period for the purpose of determining early termination liability.
3. **Cost of Collection.** Customer shall be liable to ONESTREAM NETWORKS for any costs incurred by ONESTREAM NETWORKS in enforcing any payment or other obligation of the Customer under this Agreement including, without limitation, collection agency costs, reasonable attorney's fees, and court costs, if any.
4. **Guarantees and Advance Payments.** In the event that Customer fails to pay any invoice on or before its due date, if Customer is unable generally to pay its debts when due or ONESTREAM NETWORKS, in its sole discretion, determines it appropriate, ONESTREAM NETWORKS may require Customer to pay ONESTREAM NETWORKS an advance payment in the form of a cashier's or certified check, provide a letter of credit, or provide a satisfactory guarantee. Any advance payments may be applied against Customer's past due amounts.
5. **Maintenance.** ONESTREAM NETWORKS shall provide Customer notification of feature and function updates as they become generally available without additional charge to ONESTREAM NETWORKS' customers. The contents of all updates shall be decided upon by ONESTREAM NETWORKS in its sole discretion.
6. **Use of OneStream Networks Services.** (a) Customer shall use ONESTREAM NETWORKS Services in accordance with the guidelines, manuals or instructions provided by ONESTREAM NETWORKS. (b) Customer acknowledges that all Customer premise data and voice network infrastructure, LAN, and IP voice equipment including but not limited to routers, switches, firewalls, cable plant, analog converters, analog telephone adapters, modems, fax machines, music on hold devices, IVR devices, CTI devices, IP phones, IP soft phones, servers, and personal computers ("Customer Network") is the responsibility of Customer. OneStream Networks shall provide Customer IT point of contact or Customer IT vendor point of contact with Customer Network IP voice minimum system, compatibility and LAN configuration documentation outlining IP voice best practices. Unless contracted otherwise to do so, Customer acknowledges that ONESTREAM NETWORKS is not responsible for ongoing support and maintenance of Customer Network. A Customer Network that supports and is compatible with ONESTREAM NETWORKS Services is solely defined by defined by OneStream Networks. An example of which requires Customer Network infrastructure that consists of: Cisco 1751 Series Router or better, Cisco 3560-24 Switch or better and Cisco PIX 506E Firewall or better configured in accordance with OneStream Networks' Best Practices. CPU utilization of Cisco Routers must not exceed 50%. CPU utilization of Cisco 3560-24 switches must not exceed 30%. Customer must provide security policy and management of Cisco PIX Firewall (s). Cisco IOS for Router and Switch must be of a reasonable version (12.0 or later) and the Cisco PIX Firewall must be 6.2.2 or later. Customer Network configuration must include a VLAN for voice traffic processors and 64 Mb RAM or higher. PC Operating System must be Windows 98, 2000 or XP. Personal computers for use with Front Desk Software must be Pentium III with 500 MHZ processors and 128 MB RAM or higher. PC Operating Systems must be Windows 98, 2000 or XP. (c) ONESTREAM NETWORKS reserves the right to terminate, suspend and / or charge including but not

information within this sixty (60) day period, Customer's right to a billing adjustment shall be waived.

If Customer has a bona fide, good faith dispute with any of the amounts on an invoice ("Disputed Amounts") (not to exceed twenty percent (20%) of Customer's invoice), Customer must pay all amounts not in dispute as set forth above, and provide OneStream Networks with a written request for a billing adjustment together with all supporting documentation within sixty (60) days from the first day of the month of the invoice on which the disputed amount first appeared. If OneStream Networks does not receive this

ONESTREAM NETWORKS LLC

SERVICE TERMS AND CONDITIONS 4.1

limited to extended Long Distance Calling, Local Calling or unauthorized uses of Services. ONESTREAM NETWORKS also adheres to the common practices of Acceptable Use policies of major Internet Access Service Providers. Unauthorized out-bound telemarketing, SPAM, mass marketing via e-mail or other actions that are deemed excessive or unacceptable will be viewed as a violation of Acceptable Use and subject to termination of Service, suspension of Service or additional charges for each violation as determined by ONESTREAM NETWORKS. OneStream Networks will use all commercially reasonable methods to identify and report on any instances or indications of the dissemination of child pornography. Any suspected activities should be reported immediately to abuse@onestreamnetworks.com.

7. **Title to Equipment and Risk of Loss.** ONESTREAM NETWORKS shall retain title to all equipment, software and associated property residing in ONESTREAM NETWORKS' facilities used in connection with providing Services to the Customer. Upon expiration or termination of this Agreement for any reason, Customer shall surrender all ONESTREAM NETWORKS equipment, software and associated property, if any, to ONESTREAM NETWORKS in the same condition as installed, with the exception of ordinary wear and tear. Customer shall be liable to ONESTREAM NETWORKS for the cost of repair or replacement of equipment, software and associated property lost, stolen or damaged while in the care of Customer.
8. **Independent Obligation.** Customer hereby acknowledges that ONESTREAM NETWORKS and any value-added reseller (VAR), service provider or any other agent ("Contractor"), are not the same party, and that this Agreement constitutes a separate and independent obligation of Customer which is unrelated to the performance or non-performance of any Contractor. Customer shall not have any right to abate, decline to pay or otherwise fail to honor its obligations under any Contractor agreement as a result of ONESTREAM NETWORKS' performance or non-performance of any obligation under this Agreement, and Customer shall not have any right to abate, decline to pay or otherwise fail to honor its obligations under this Agreement as a result of any Contractor performance or non-performance of any obligations under any agreement with Customer.
9. **Software.** Any software incorporated into or provided for use in or with ONESTREAM NETWORKS Services (whether initially, as part of maintenance or support; or otherwise is not sold, but rather provided through licenses only, solely for Customer's internal use in or with any applicable product, strictly in accordance with documentation and any other use restrictions, that are applicable for that product. Such license (a) is non-exclusive, (b) is non-sub licensable, (c) is subject to the terms and conditions of this Agreement and (iv) does not include the right to (and Customer will not, directly or indirectly) modify, reverse engineer (except to the extent applicable statutory law expressly prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software (except as specifically authorized in documentation provided by ONESTREAM NETWORKS for purposes of installation, support or maintenance), display or disclosure of the software and accompanying documentation by the Government shall be governed solely

by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms herein.

10. **Warranties and Disclaimer.** ONESTREAM NETWORKS represents and warrants that, except for any outside material provided by Customer to ONESTREAM NETWORKS, the products are either original with ONESTREAM NETWORKS or have been fully licensed by ONESTREAM NETWORKS, and that neither the products nor Customer's use of the products as contemplated by this Agreement will infringe or violate any rights of any person or entity, nor shall Customer be required to pay or incur any sums to any person or entity as a result of our ownership, acquisition or use of the products, except as herein provided.
11. **Term.** The term of this Agreement shall commence upon the date of Customer's execution of the Service Agreement Order Form ("Effective Date") and shall continue thereafter for the initial Term of Service as specified in the aforementioned Service Agreement Order Form. Following the expiration of the initial Term of Service, this Agreement shall be automatically renewed for successive one (1) year terms (each a "Renewal Term"), unless terminated with written notice by Customer to ONESTREAM NETWORKS at least thirty (30) days prior to the expiration of the initial Term of Service. Upon renewal, all pricing, fees, rate classifications and charges related to Service are subject to change by ONESTREAM NETWORKS upon thirty (30) days notice to Customer.
12. **Termination.** By customer: (a) Customer may terminate portions of Services and substitute other Services without incurring a termination charge provided that the total monthly recurring charge (s) for the substituted Services are equal to or higher than the terminated Services. (b) Customer may terminate this Agreement if ONESTREAM NETWORKS fails to perform any material condition of this Agreement and such failure remains uncured for a period of thirty (30) days following ONESTREAM NETWORKS' receipt of written notice from Customer specifying the nature of such failure. In no circumstance shall Customer be relieved of its' obligation to make payments for all unpaid and outstanding amounts due ONESTREAM NETWORKS that have been accrued as of the date of termination or expiration of this Agreement provided Customer shall pay in full all charges for Services rendered through the termination date. By ONESTREAM NETWORKS: Services may be terminated by ONESTREAM NETWORKS in the event Customer: (c) fails to perform any obligation to make payments under this Agreement and such failure continues uncured for a period of five (5) days after Customer's receipt of written notice from ONESTREAM NETWORKS specifying the nature of such failure, or (d) fails to perform any other material condition or obligation under this Agreement and such failure continues uncured for a period of thirty (30) days after customer's receipt of written notice from ONESTREAM NETWORKS specifying the nature of such failure. In the event Services are terminated pursuant to this section (11.), Customer shall be liable for all applicable charges resulting from said termination including but not limited to deactivation of T carrier network access circuits. (e) Services may be terminated by ONESTREAM NETWORKS in the event ONESTREAM NETWORKS determines that the Services are no longer commercially feasible, provided that ONESTREAM NETWORKS shall

ONESTREAM NETWORKS LLC

SERVICE TERMS AND CONDITIONS 4.1

provide ninety (90) days written notice to Customer prior to such termination. (f) Services may be terminated by ONESTREAM NETWORKS in the event Customer denies ONESTREAM NETWORKS access to the Customer Local Area Network over which ONESTREAM NETWORKS Services are being delivered, including access to Customer premises, to examine, maintain and / or effect corrective actions deemed necessary by ONESTREAM NETWORKS to fulfill ONESTREAM NETWORKS obligations as enumerated herein.

13. **Effect of Termination.** The termination or expiration of this Agreement shall not relieve Customer of its obligations under this Agreement, or any Service Agreement Order Form, including without limitation, Customer's obligation to make payments for all unpaid and outstanding amounts due ONESTREAM NETWORKS that have been accrued as of the date of termination or expiration of this Agreement.
14. **Indemnification.** (a) Customer shall defend and indemnify ONESTREAM NETWORKS and its officers, directors, agents and employees from and against all third party claims, liabilities, damages, settlements, attorney's fees and expenses resulting from any breach by Customer of its representations, warranties and undertakings hereunder. (b) ONESTREAM NETWORKS shall defend and indemnify Customer and its officers, directors, agents and employees from and against all third party claims, liabilities, damages, settlements, attorneys' fees and expenses resulting from any breach by ONESTREAM NETWORKS of its representations, warranties and undertakings hereunder. The foregoing obligation of ONESTREAM NETWORKS does not apply with respect to product or portions or components thereof: (c) made in whole or in part in accordance to Customer specifications or requests, (d) which are modified after shipment, if the alleged infringement relates to such modification, and provided that ONESTREAM NETWORKS does not know that such modification may subject Customer to liability and fail to so advise Customer (e) combined, processed or used with other products, processes or materials where the alleged infringement relates to such combination, process or use, and provided that ONESTREAM NETWORKS does not know that such combination may subject Customer to liability and fail to so advise Customer or (f) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement. Customer will indemnify ONESTREAM NETWORKS and its officers, directors, agents and employees from all damages, settlements, attorneys' fees and expenses: related to a claim of infringement or misappropriation excluded from ONESTREAM NETWORKS' indemnity obligation by the immediately preceding sentence.
15. **Termination, Survival, and Termination Liability.** Sections 1, 2 and 11 and any ONESTREAM NETWORKS accrued rights to payment shall survive the termination or expiration of this Agreement. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination of this Agreement by such party which complies with terms of the Agreement whether or not such party is aware of any such damage, loss or expenses.
16. **Confidentiality and Intellectual Property.** Each party agrees that it will not, directly or indirectly, during or after the Term, disclose in any manner, or use or permit others to use, any information or material regarding the disclosing party, any of its parent, subsidiary or affiliated companies, employees and / or businesses, which information or material is compiled by, obtained by, or furnished to the recipient party by the disclosing party. It is understood that the foregoing obligation shall not apply to any part of the information which: (a) is or becomes generally available to the public (other than by disclosure by the recipient party; or (b) becomes available to the recipient party on a non-confidential basis from a source which is entitled to disclose it to recipient party. The parties acknowledge and agree that any proprietary property or content, including any copyrights, trademarks, service marks, patents or other intellectual property, that has been or will be provided by either party to the other party shall remain the sole and exclusive property of the providing party, and no license or other interest with respect thereto is hereby granted to the other party except as expressly provided herein.
17. **Force Majeure.** ONESTREAM NETWORKS shall not be responsible for any nonperformance or delay in performance of any of its obligations under this Agreement due to any cause beyond its reasonable control.
18. **Taxes & Fees.** Customer shall pay any taxes and regulatory fees imposed on or based upon the provision or use of the Services.
19. **Regulatory Changes:** If the FCC, a state PUC, a court of competent jurisdiction, or any other agency with jurisdiction over the services covered by this Agreement issues a rule, regulation, law or order which has the effect of canceling, changing, or superseding any material term or provision of this Agreement (collectively, "Regulatory Requirement"), then this Agreement shall be deemed modified in such a way as the Parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with such Regulatory Requirement. Should the Parties not be able to agree on modifications necessary to comply with a Regulatory Requirement within 30 days after the Regulatory Requirement is effective, then upon written notice either Party may, to the extent practicable, terminate that portion of this Agreement impacted by the Regulatory Requirement. The Parties acknowledge and agree that termination of this Agreement may not terminate certain of the Services, such as Internet Access, associated local loop charges, and any third party services render directly to the Agent.
20. **Limitation of Liability.** (a) ONESTREAM NETWORKS SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST INCOME OR LOST REVENUE (WHETHER SUCH DAMAGES WERE FORESEEN OR NOT AT THE TIME THIS AGREEMENT WAS ENTERED INTO) SUSTAINED. THIS LIMITATION APPLIES TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT, INCLUDING BOTH THE ACTIVE AND PASSIVE NEGLIGENCE OF ONESTREAM NETWORKS, OR ANY OTHER THEORY OF LIABILITY. (b) CUSTOMER'S EXECUTION OF THIS AGREEMENT CONSTITUTES A WAIVER OF RECOURSE TO THE VAR FOR ANY LIABILITY CLAIMED UNDER THIS AGREEMENT. (c) The liability of ONESTREAM NETWORKS for direct damages including, without limitation, injuries to persons or property, arising out of

ONESTREAM NETWORKS LLC

SERVICE TERMS AND CONDITIONS 4.1

ONESTREAM NETWORKS' performance hereunder, including mistakes, interruptions, delays, or defects in transmission during ONESTREAM NETWORKS' provision of Services, shall not exceed an amount equivalent to the proportionate charge to the Customer for the period of time during which such mistake, interruption, delay or defect in transmission adversely affects the Services. **(d)** ONESTREAM NETWORKS shall not be liable for any defacement of or damage to Customer's premises or the equipment of Customer or others resulting from ONESTREAM NETWORKS' furnishing of the Services on such premises or by the installation or removal of any equipment included in the Services, unless such defacement or damage is the result of negligence of ONESTREAM NETWORKS' agents or employees, **(e)** Customer hereby holds ONESTREAM NETWORKS and its agents and employees harmless from, and agrees to be responsible for, all losses, damages and liabilities resulting from unauthorized use of the Services, including Customer's 800 or 888 Inbound Long Distance Service number(s), if any. Customer shall not, without prior written consent of ONESTREAM NETWORKS, transfer or sell any such 800 or 888 number.

21. **Warranty Disclaimer.** ALL SERVICES HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S OR ITS END USERS' USE THEREOF IS AT SUCH PARTIES' OWN DECISION. ONESTREAM NETWORKS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
22. **Emergency 911 Services.** Customer agrees and acknowledges that due to the unique nature and portability and mobility of voice services provided over data networks ("IP telephony" et al) and including ONESTREAM NETWORKS Services, emergency 911 operator services cannot be provided to Customer by ONESTREAM NETWORKS with certainty, consistency and reliability. Customer agrees to defend, indemnify and hold ONESTREAM NETWORKS and ONESTREAM NETWORKS personnel harmless from any and all claims, damages, fines, penalties, and any other liabilities, including attorney fees, arising out of inaccuracy of any information of the inadequacy of any procedure or personnel shall not be liable for civil damages to any person, corporation, or other entity for any loss or damage caused by any act or omission in the design, development, installation, maintenance or provision of 911 services other than an act or omission constituting gross negligence or willful misconduct.
23. **Liquidated Damages.** Customer agrees that the termination charges specified in subsections 11(a) and 11(b) above shall constitute liquidated damages and not a penalty since the precise amount of such damages cannot be determined in advance.
24. **Assignment.** This agreement is not assignable by Customer without the prior written consent of ONESTREAM NETWORKS whose consent will not be reasonably withheld. ONESTREAM NETWORKS may subcontract any or all of the work to be performed by ONESTREAM

NETWORKS under this Agreement but shall retain responsibility for the work subcontracted.

25. **General.** **(a)** If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term and provision hereof shall be valid and enforced to the fullest extent permitted by law. **(b)** This Agreement shall be construed in accordance with and governed by the laws of the State of New York. **(c)** ONESTREAM NETWORKS and Customer each represent that it has the power and authority to enter into this Agreement.
26. **Billing and Charges.** Customer agrees to a volume of "minutes" for long distance calling ("committed volume"), billed in 1000 minute blocks for domestic U.S. calling, and 100 minute blocks for International calling. For any billing period that Customer's actual usage exceeds the committed volume, OneStream Networks shall add any necessary number of domestic and/or International "blocks" of usage to cover the actual usage that exceeds the committed volume for that billing period, and increment the customer's monthly billing at the then prevailing rate times the total number of additional blocks on a recurring monthly basis.
27. **Termination Charges.** If the Customer Service Agreement is terminated before the end of its respective Initial Term or a renewal term, either by OneStream Networks or by the Customer, then Customer agrees to pay a termination fee in accordance with the following provisions:
 - 27.1 For termination of any Service within the Initial Term for which Service was ordered, Customer agrees to pay (i) 100% of the monthly recurring charges (the "MRCs") for the terminated Service(s) payable for the remainder of the Initial Term, (ii) 100% of the MRCs for any terminated local access circuits payable for the remainder of the initial term, and (iii) a pro rata portion of any installation and other non recurring charges previously waived by OneStream Networks (if any).
 - 27.2 The provisions of this Section 27 apply in addition to any specific obligations Customer may have under the terms of any agreed Minimum Usage Guarantee (MUG).
 - 27.3 Any notice of termination of Service Agreement, or a Service, or any request of disconnection of a Service, (i) will be effective only if addressed and sent to OneStream Networks at the address specified on the Customer's invoice(s) for Services under the signed Service Agreement and (ii) will be deemed to take effect forty five (45) days after its receipt by OneStream Networks at that address.
 - 27.4 Customer agrees that the termination fees provided under this Section 27 are based on an agreed and contracted revenue expectation and are not a penalty.