



Provided by Nu-TEL Communications of NJ, Inc.

Service Terms & Conditions

These Terms and Conditions, together with any policies, price schedules, or other additional documents expressly incorporated, published from time to time, or referenced herein constitutes the entire Agreement between Nu-TEL Communications of New Jersey, Inc. ("Nu-TEL") and Customer. The Terms and Conditions apply to the entire Agreement and supersedes all prior agreements, discussions and writings between the parties regarding the subject matter of this Agreement. Any one of the following actions constitutes Customer's acceptance and Agreement: (1) Submission of an order (2) Logging on to use your VoIP Speed BPS service (3) Use of the services described herein.

1. **SCOPE.** The Terms and Conditions are applicable to Nu-TEL provided VoIP Speed BPS subscription services ("Services").

The VoIP Speed BPS Service is a voice communications service that uses a data network (example; the Internet) to transport voice packets. The Service includes features and products under the pricing plan selected.

2. **CUSTOMER REPRESENTATION.** Customer represents that you possess the legal right and ability to enter into this Agreement and are authorized to act on behalf of your company. You also agree to provide Nu-TEL with your company name, address, phone number, email addresses, and other such company information and that this information is correct and for business use only. You understand that Nu-TEL relies on this accurate information to register phone numbers for the purposes of E911 routing to the proper emergency personnel (fully detailed below). You agree to immediately provide Nu-TEL with any information changes that may occur such as, but not limited to, physical address, email addresses, contact information, and credit card numbers and expiration dates. Failure to provide this information may result in the termination of Service.

3. **USE OF SERVICE.** Nu-TEL does not currently offer the VoIP Speed BPS Service outside of the United States. The Services are for use only by persons or entities whose primary physical address resides in the United States.

4. **USE POLICIES.** Customer acknowledges and agrees that the Service will not be used for any improper, abusive, fraudulent, or illegal activity. If Nu-TEL discovers the use of the Service for any other reason other than permitted by in this Agreement, Nu-TEL, at its sole discretion, can terminate the Service without notification and at any time. Prohibited use of the Service includes, but is not limited to, the following:

- Illegal, obscene, threatening, deceptive, malicious behavior.
- Creating false caller ID ("ID Spoofing") or forged email/SMS address or header.
- Transmitting any material that contains viruses, worms, malware, spyware, or any other programs that may be harmful and/or dangerous.
- Sending unsolicited messages (spamming)
- Using the Service and Application to non-temporarily store PHI

- 5. NUMBER PORTING, AVAILABILITY, PORT OUT and PREVIOUS CARRIER TERMINATION.** The Customer authorizes Nu-TEL to process number transfers at the Customer's request and to also notify the local service provider of Customer's decision to switch services to VoIP Speed BPS. Customer also represents that you are authorized to take these actions on behalf of your company. Port numbering processes may require a Letter of Authorization from the Customer that you agree to supply.

Nu-Tel will make reasonable efforts to promptly facilitate number transfers and the Customer understands that there are 3rd Party companies involved in the process which may delay the order and you agree that Nu-TEL will not be liable in any way, for any such delays in this process.

Customer agrees to provide Nu-TEL with very detailed and specific information regarding numbers that the 3rd Party Carriers require to port numbers.

Customer understands that Nu-TEL cannot guarantee that a number will be available for transfer and that it is a requirement for Nu-TEL to check the availability first. Customer understands and acknowledges that if the number is used in any marketing materials, business cards, press releases, or for any other purpose prior to confirmation, the Customer will be fully responsible for all incurred costs should you find out after-the-fact that the number is not available. Customer agrees to hold Nu-TEL harmless and not liable for any such incurred costs.

Port Out Fee: Customers will be charged a port out fee for each number that is removed from our network. Port Out fee is \$55.00 per number currently. This is subject to change without notice. This will be invoiced on the final invoice.

It is the customers responsibility to terminate all services from the previous carrier. Nu-TEL can not terminate any service for the customer.

- 6. SERVICE DEFINITION.** Customer acknowledges and understands that the VoIP Speed BPS broadband Service is not a traditional telephone service. The primary difference is the transport network and technology, whereby traditional phone service operates along a wire-line dedicated voice network, and the VoIP Service operates over the public (Internet) and private data networks. Additionally, VoIP service is assessed certain and specific government fees and charges that are different from traditional phone service fees and charges. Nu-TEL provides the VoIP Speed BPS service on a best efforts basis, and from time to time, and reasons out of our control, the Service may be compromised by power outages, fluctuations with the Internet, the Customer's ISP service, or general maintenance. Nu-TEL will make every reasonable effort to coordinate between parties to resolve any such issues and minimize customer disruption.

6.1 Emergency Services – 911 Dialing. Customer acknowledges and understands that VoIP Speed BPS 911 dialing is different than traditional and cellular 911 service. With VoIP technology, users are no longer limited to one specific physical location, which expands the functionality of a solution, but also creates challenges with 911 emergency services. The VoIP Speed BPS Service provides the Customer with the ability to register telephone numbers together with a physical address (only one physical address per telephone number). When 911 is dialed from a device on a system, the enhanced E911 information will be routed to the appropriate local Public Safety Answering Point (PSAP).

Any or all telephone numbers in a Customers system can be registered with E911, each having a unique physical address. Within the VoIP Speed BPS system configuration, Nu-TEL will associate extension numbers with the appropriate registered E911 telephone numbers. Therefore, if a particular extension has been configured and associated with a particular E911 number and dials 911, the VoIP Speed BPS system will send the proper associated telephone number and unique address to the PSAP.

PC Softphones and a Smart Phone apps may also be available on some systems. The Customer acknowledges and understands that when 911 is dialed from these devices, the system will send out the E911 information *associated with that particular extension regardless of where it is physically*. Furthermore, the same holds true for an IP Telephone that is moved to a different location by simply plugging it in to another.

It is incumbent upon the Customer to notify their employees and publish documentation that explains the operability of the VoIP Speed BPS 911 Services. It is recommended that the Customer provides alternative methods of dialing 911 when a user or device is not located in the same physical location as the E911 registered number. As an alternative, either a wired line or cellular service should be used when users are away from the physical registered address.

You acknowledge and understand that your failure to provide current and accurate addresses and locations, and your failure to report changes to addresses and locations may result in emergency calls being routed to incorrect local PSAP's.

VoIP Speed BPS 911 will not be available, or not function properly under these conditions:

1. Internet Connection Failures
2. Electrical Failures
3. Relocation of the System without updating physical location information. Calls will be routed based on previous information.
4. Adding new numbers and porting new numbers to your Service without registering the physical location associated with the new numbers.
5. On-premise Equipment Failures – Routers, Telephones, Software, Networks and any other equipment associated with your Service that is required for the entire Service to operate appropriately.
6. Termination of the VoIP Speed BPS Service (Either by the Customer or by Nu-TEL).

It is the responsibility of the Customer to provide alternative methods for emergency service calls if you are uncomfortable with any of these conditions. You acknowledge and accept that it is your responsibility to arrange such alternative methods (such as landline or wireless) from a third-party source as a backup solution to 911 services.

6.2 Operated Assisted Calling. The VoIP Speed BPS Service *does not* include operated assisted calling, collect calling, 900 calling, calling cards, or third-party billing calls.

6.3 Origination and Termination of telephone calls. Customer understands that they will be charged for both incoming and outgoing calls based on the minutes of usage. Billed in 6 second increments. Most calling plans start with a 5000-minute bucket for domestic calls. If customers calling for the billing period exceed the plans base amount the customer will be charged the additional minutes in a True up invoice stating the overage cost with associated taxes and fees. Additionally, if the customer continually exceeds the monthly bucket amount Nu-TEL may automatically increase the base minutes on future invoices that will become the customers new monthly charge.

6.4 International Calls. Customer understands that international calls if provided will be additionally charged on a per call and country rate.

6.5 Toll Free /Call Forwarding Services. Customer understands that these types of calls may have additional cost and are not included in the base 5000-minute bucket plan.

6.6 Directory Listings. Any phone numbers supplied to you from Nu-TEL *will not* be included in any directories. Transferred telephone numbers that are ported to the VoIP Speed BPS Service may be associated and listed in local directories for a fee if available.

6.7 Other Incompatibilities. The VoIP Service is not compatible with any home or office security systems that are set up to make outgoing calls should their system be tripped. There may be some other broadband service providers, cable modems, and other services that are not compatible with the VoIP Speed BPS Service that may prevent transmission of communications. Nu-TEL does not warrant that the Service will be compatible with all broadband services.

7. ORDERS

7.1 Orders. Customer may order Services under the Sales Agreement by either signing and faxing or signing and scanning the Sales Agreement to the Nu-TEL Sales Representative. The Sales Agreement must be signed by an authorized representative of Customer.

7.1.1 Service Term. The Service Term is based on the sales agreement. At minimum all service is based on an annual term that commences when the Service is functional and ready to use, and the initial Payment has been accepted and successfully processed by Nu-TEL (see Billing and Payment Terms below). The subscription for the VoIP Services will automatically renew for the same term or otherwise stated period unless the Customer provides in writing, the cancellation of the Services to Nu-TEL 60-days prior to the anniversary date.

7.2 Changes to Orders. Changes to an Order can be made by the Customer signing, and Nu-TEL accepting, a modified Sales Agreement that will be deemed a Change Order.

7.3 Acceptance of Orders. All orders are subject to acceptance by Nu-TEL. Nu-TEL may accept an order by starting the registration process.

7.4 Cancellations. Customer may cancel accepted orders within (5) business days subject to cancellation charges. Up-front charges (if processed) will be credited against the credit card number provided less any processing fees. If equipment was ordered by Nu-TEL based on the original signed Sales Agreement, Nu-TEL will charge the Customer a 20% restocking fee.

8. BILLING AND PAYMENT TERMS

8.1 Billing. When Customer subscribes to the Services, Customer will provide a completed Credit Card Billing Form with valid payment method (credit card) that Nu-TEL accepts. Customer agrees to notify Nu-TEL of any changes to the payment method such as a new credit card number or credit card expiration dates. If the payment method is declined or fails for any reason, Nu-TEL will use its best efforts to contact the Customer and disclose this information and attempt to rectify the failure. Nu-TEL reserves the right to continue to attempt to collect against the credit card for outstanding charges and applicable fees. Nu-TEL also reserves the right to suspend or disconnect the Service if the credit card on file is declined or fails for any reason. If the credit card fails at any time during a billing cycle, the Customer is granted a 48-hour period to provide a remedy. If a satisfactory remedy has been provided within this time-frame, the billing cycle and Customer calling plan will not be interrupted.

Nu-TEL will charge Customer in advance for each term of service as provided in the Sales Agreement. The initial charge will include two (2) months of Service, (1) payment for services and (1) payment for security. No interest will be paid on the security payment. In addition to any other applicable fees and any other up-front costs detailed in the Sales Agreement.

8.2 Payment. When Customer subscribes to the Service, you authorize Nu-TEL to collect from your payment method (detailed on the Credit Card Billing Form with signature) on a monthly basis without additional notice or consent. This authorization will remain valid until thirty (30) days after you terminate Nu-TEL's authority to charge against your payment method.

8.3 Cancellation Policy for Subscription services (Voice Phone Services, Collocation, and Rentals)

Should the Customer elect to cancel the services within the annual subscription period, the following policies will be used to satisfy early termination;

- All prior past due balances must be paid in full.
- The service will be terminated thirty (30) days from the next billing day.
- An early termination fee will be calculated in the following manner:

Total Months of Subscription (X) minus Total Months Paid = Balance of Remaining Months (Less 1 Month to account for the initial payment up front if paid) times the Total Monthly Recurring payments due (Not to include FUSF, 911 Fees, and Sales Tax) times fifty percent (50%) equals the Balance of Remaining payments.

8.4 Late Charges. Unpaid services beyond 30 days will be charged interest, compounded at one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law, whichever is less. Nu-TEL may suspend any or all service activities for which payment is overdue until the overdue amounts are paid in full. Customer will reimburse Nu-TEL for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

8.5 Billing Disputes. Customer must inform Nu-TEL in writing within (7) business days of receipt of invoice, credit card statement, or from the time a debit appears on your bank account, of any disputes of any charges. Notification of all billing disputes will be sent billing@nu-tel.com or our current address, Nu-TEL Billing, 376 Hollywood Ave, STE 108 Fairfield NJ 07004-1807

8.6 Taxes & Fees. Customer is responsible for all applicable state sales taxes, Federal Universal Service Fund, State E911 fees detailed on the Sales Agreement and administrative fees. These fees are subject to change from time to time and are applicable to ALL Customers regardless of a Minimum Commitment Agreement. The Customer may be exempt from paying taxes and fees and will provide Nu-TEL with a valid tax exemption certificate prior to Nu-TEL's billing cycle.

8.7 Canceling Services from Nu-TEL. The customer must send to NU-TEL in writing a notice of cancelation for services. This can be emailed or mailed to NU-TEL at Billing@nu-tel.com or our current address, Nu-TEL Billing, 376 Hollywood Ave, STE 108 Fairfield NJ 07004-1807. Porting your number out does not stop the billing process. We will not stop billing the client until this is cancelation notice is received by NU-TEL.

9. CONFIDENTIALITY

- 9.1 **Confidential Information.** The term "Confidential Information" as set forth herein means Software (in object and source code form), Documentation, any technical information related to Products or Services, any work product and deliverables of Services, the terms (but not the existence) of the Agreement, and, if marked or otherwise expressly identified as confidential in writing, pricing and discounts and any other information or data, regardless of whether in tangible, electronic or other form. Information communicated verbally will qualify as Confidential Information if designated as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after verbal disclosure. Confidential Information does not include materials or information that (i) is generally known by third parties as a result of no act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information and without restriction on disclosure, (iii) was already known by the receiving party prior to receiving it from the other party and was not received from a third party in breach of that third party's obligations of confidentiality; (iv) was independently developed by the receiving party without use of Confidential Information of the disclosing party; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent so ordered, and provided that the receiving party promptly notifies the disclosing party of the pending disclosure in writing so that the disclosing party may attempt to obtain a protective order. In the event of a potential disclosure in the case of subsection (v) above, the receiving party will provide reasonable assistance to the disclosing party where the disclosing party attempts to obtain a protective order.
- 9.2 **Protection of Confidential Information.** Each party to this agreement will protect the secrecy of all Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. Neither party will use or disclose the other party's Confidential Information, except as permitted in this Section or for the purpose of performing obligations under the Agreement. The confidentiality obligations of each party under the Agreement will survive any expiration or termination of the Agreement or of any order. Upon termination of the Agreement, each party will cease all use of the other party's Confidential Information (except for Software and Documentation in accordance with the applicable license granted under the Agreement) and will promptly return, or at the other party's request destroy, all Confidential Information in tangible form and all copies of Confidential Information in that party's possession or under its control, and will destroy all copies of Confidential Information on its computers, disks and other digital storage devices. Upon request, a party will certify in writing its compliance in this Section.

10. WARRANTY SUPPORT LIMITATIONS

- 10.1 **Voice-over Internet Protocol (VoIP).** Nu-Tel disclaims any express or implied warranty regarding VoIP and its performance based on conditions beyond our control. VoIP utilizes both the client's data network and the public network. Nu-Tel will work with the persons responsible for your information technology with regard to the telephone system to implement the purchased application(s).
- 10.2 **Toll Fraud.** Nu-Tel disclaims any express or implied warranty regarding security against any unauthorized use of or access to all intrastate, interstate or international long-distance services or such access, for the use of voice mail, direct inward system access (DISA), auto- attendant or 800 and 900 services by any users of this equipment. Customer is responsible for payment of all calls made through the system associated with there account.

CUSTOMER ACKNOWLEDGES THAT IT IS AWARE OF THESE EXCLUSIONS AND RISKS AND HAS DETERMINED THEY ARE ACCEPTABLE FOR ITS APPLICATION OF THE PRODUCT.

THE ABOVE WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS OR LIMITED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL NU-TEL BE LIABLE FOR LOSS OF PROFITS, BENEFITS, INDIRECT, CONSEQUENTIAL OR ANY OTHER DAMAGES, EVEN IF NU-TEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NU-TEL'S LIABILITY EXCEED THE TOTAL PURCHASE PRICE FOR THE EQUIPMENT IN QUESTION REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION OR CLAIM MAY BE BROUGHT AGAINST NU-TEL.

11. **Defaults.** If the Customer fails to cure any breach or fails to fulfill any other provision of this Agreement, including, without limitation, its payment obligations, Customer shall be in Default hereunder, and all unpaid amounts shall become immediately due and payable and Nu-Tel shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws. Upon any such Default and until any such Default is cured, Nu-Tel may elect to terminate the Services as its sole option and without further notice until Nu-Tel receives payment in full. Nu-Tel shall be entitled to recover from Customer all costs and expenses, including reasonable attorney fees and any costs of collection associated with enforcing its rights hereunder. Interest shall accrue on all overdue amounts at the rate of 1.5% per month, but, in no event in excess of the highest rate permitted by law. Upon Default in any payment herein, the buyer will be Default of the terms and conditions of this Agreement and Customer shall have 10 days from written notice by Nu-Tel, to cure said default by payment in full. If such payment in full is not received within 10 days of such written notice of Default, the entire balance of this Agreement shall become immediately due and payable. Interest will begin to accrue on the entire balance at a per annum rate as set forth in this Agreement.
12. **Uncontrollable Circumstances.** If the performance of any part of this Agreement by Nu-Tel is prevented, hindered, delayed, or otherwise made impractical by reason of any flood, riot, fire, earthquake, strike, war, act of God, or any other cause beyond the control of Nu-Tel, Nu-Tel shall be excused from its performance hereunder, to the extent that it is prevented, hindered, or delayed by such causes.
13. **Miscellaneous.** This Agreement is not binding upon Nu-Tel until accepted and executed, in writing, by an authorized corporate representative of Nu-Tel. Any deposit or other acceptance of payment tendered herewith shall not constitute acceptance of this Agreement by Nu-Tel, until such Agreement is accepted and so executed. Customer's offer made hereby shall be irrevocable for a period of 30 days from the Customer's execution hereof. This Agreement constitutes the entire agreement between the parties concerning the Equipment, its sale and installation and supersedes and merges herein all prior Agreements, negotiations and statements. This Agreement may not be amended or supplemented except by an instrument in writing duly executed by the parties. In the case of Nu-Tel, such execution may only be made by a general manager or a corporate officer. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired.

14. **Non-Solicitations.** Buyer agrees that it will not solicit for employment for itself, or any other entity, or employ, in any capacity; any employee of Nu-Tel assigned by Nu-Tel to perform any service for or on behalf of Buyer for a period of two years after Nu-Tel has completed providing service to Buyer. In the event of Buyer's violation of this provision, in addition to injunctive relief, Nu-Tel shall recover from Buyer an amount equal to such employee's salary based upon the average three months preceding employee's termination of employment with Nu-Tel, times twelve, together with Nu-Tel's counsel and expert witness fees.
15. **Execution.** This Agreement may be executed in counterparts and by facsimile or email, each such part shall be considered an original for all intents and purposes. After the first payment this agreement will be considered accepted by customer.