



## NU-TEL COMMUNICATIONS OF NEW JERSEY, INC.

### Sales, Licensing and Installation Terms and Conditions

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These Terms and Conditions are between Nu-TEL Communications of New Jersey, Inc. (“Nu-TEL”) and Customer. The Terms and Conditions apply to the entire Agreement as of the Effective Date.

**1. SCOPE.** The Terms and Conditions are applicable to Nu-TEL provided: (a) equipment, materials and software (“Products”) and (b) installation, implementation and warranty services (“Services”). These Products and/or Services are detailed on the Nu-TEL Sales Agreement. Services do not include Nu-TEL Support Services that are available post warranty and are made available under a separate Support Services Agreement.

#### **2. ORDERS**

**2.1 Orders.** Customer may order Products and 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 and countersigned by an authorized representative of Nu-TEL.

**2.2 Changes to Orders.** Any changes to an Order can be made by both parties signing and accepting a modified Sales Agreement and will be deemed a Change Order.

**2.3 Acceptance of Orders.** All orders are subject to acceptance by Nu-TEL. Nu-TEL may accept an order by shipping Products or starting an installation.

**2.4 Cancellations.** Customer may cancel accepted orders subject to cancellation charges. The initial deposit will be returned in its entirety if the cancellation of the order is within (30) days of Agreement signing. A 20% restocking fee will be deducted from the deposit should the cancellation of the order happen beyond (30) days of Agreement signing.

**2.5 Purchase Orders.** Customers’ who need to generate purchase orders may submit them to Nu-TEL. Customer will deliver the purchase order together with a signed Sales Agreement. The Sales Agreement however, will be binding as an order and any other terms and conditions on Customer's purchase order inconsistent with the Sales Agreement, will not apply.

#### **3. PAYMENT TERMS**

**3.1 Invoicing and Payment.** Nu-TEL will invoice Customer all Fees as provided in the Sales Agreement. An initial down payment as indicated on the Sales Agreement is immediately due upon signing of the Agreement. All other Fees are due within thirty (30) days from the date of Nu-TEL's invoice.

**3.2 Late Charges.** Unpaid invoices 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.

**3.3 Taxes.** Customer will pay Nu-TEL for all applicable sales taxes detailed on the Sales Agreement unless Customer is exempt and provides Nu-TEL with a valid tax exemption certificate prior to Nu-TEL's invoice date.

**4. SECURITY INTEREST.** Nu-Tel reserves a purchase money security interest in the Equipment covered by this Agreement in the amount of any unpaid balance due herein, until full payment is made, including any costs or fees. A financing statement may be filed with the appropriate public authorities and Customer agrees to sign any such financing statements or any other documents necessary for Nu-Tel to perfect Nu-Tel's security interest in said Equipment.

## **5. INSTALLATION**

**5.1 Approvals and Permits.** The Customer warrants that they have satisfied their sole responsibility to obtain the proper permits and the consent of its landlord or building owner for the installation of the Equipment and any other necessary approvals and permits and is solely responsible for any charges or costs associated with the installation of Nu-TEL's Equipment. Customer shall defend, indemnify and hold Nu-TEL harmless from any action, fines, summons, or any other cost or fee incurred as a result of the Customer failing to secure proper permits, permission or compliance with any applicable codes and regulations relating to Nu-TEL's installation of the Equipment.

**5.2 Suitable Work Environment.** The Customer is solely responsible for providing a suitable area for the installation of the Equipment, including all necessary electrical work and the maintenance of all necessary environmental conditions. The Customer will pay an additional charge for any required plenum cable or conduit and for any additional installation costs incurred in connection with complying with any state or local regulations relating to standards for earthquake or seismic safety. Customer shall provide a safe place to work and will be defend, indemnify, and hold Nu-TEL harmless from any injuries arising from any injury at Customer's location.

**5.3 Failure to Meet Obligations.** If Customer fails to meet 3.1 and/or 3.2 obligations under this Section, Nu-TEL may delay or suspend its performance and charge Customer for resulting reasonable out-of-pocket expenses. If the failure continues for thirty (30) days, Nu-TEL may treat the order as if Customer cancelled the order after delivery.

**5.4 Additional Repairs.** Nu-TEL will not be responsible for replacing ceiling tiles, floor or wall panels, painting, plastering, or making any other repairs to Customer's premises resulting from the installation of Equipment.

**5.5 Cutover Date.** The Cutover Date, as the term is used herein, shall mean the date upon which the Equipment is first connected by Nu-TEL in the Customer's location. The Cutover Date shall not be postponed as a result of minor omissions or variances in the performance of the Equipment which does not materially affect the operation of the system as a whole. If the Site is not ready for the installation within 90 days of the Sales Agreement date, Nu-TEL may (a) request that the Purchase Price be adjusted by mutual agreement, (b) provide the Products and Services at the original

Purchase Price, or (c) terminate the applicable Order and collect from Customer any restocking charges or other costs incurred by Nu-TEL. To memorialize the Cutover Date, Customer shall execute a Delivery and Acceptance Certificate confirming Customer's inspection and acceptance of the Equipment at the time of installation.

5.6 **Third Party Information.** The Customer is to provide Nu-TEL with information or access to any third party products in Customer's network in a timely manner and at Customer's expense. Upon delivery of the information or access, Customer represents and warrants to Nu-TEL that it has obtained all such necessary consents and licenses.

## 6. CONFIDENTIALITY

6.1 **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.

6.2 **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.

## 7. LIMITED WARRANTY.

7.1 Nu-Tel warrants that, for a period of one year (12 months), from the Cutover Date, unless any particular Equipment is expressly warranted by manufacturer for a shorter period of time, the Equipment and its installation will be free from defects in material and workmanship. If Nu-Tel is notified by Certified Mail, Return Receipt Requested, at its address written above, or at any subsequent address supplied to Customer, of any defects within the above twelve month period,

Nu-Tel will have the option of repairing or replacing the Equipment or its installation at its own expense and in its sole discretion. Such repair or replacement shall be Customer's exclusive remedy for any warranty claim. This warranty does not extend to any Equipment which has been subjected to: (a) misuse, neglect, accident, fire, lightening, or other casualty; (b) wired, installed, repaired, or altered by anyone other than Nu-Tel or its authorized representatives, or; (c) moved from its original location or which is no longer owned and/or used by the Customer named herein. All warranties herein are non-transferable and non-assignable.

**7.2 Cordless Telephones.** Nu-Tel warrants that for a period of 3 months from acceptance by the Customer, unless the particular cordless Equipment is expressly warranted by the manufacturer for a shorter period of time, the cordless Equipment and its installation will be free from defects in material and workmanship. If Nu-Tel is notified by Certified Mail, Return Receipt Requested, at its address written above, or at any subsequent address supplied to Customer, of any defects within the above 3 month period, Nu-Tel will have the option of repairing or replacing the Equipment or its installation at its own expense and in its sole discretion. Such repair or replacement shall be Customer's exclusive remedy for any warranty claim. This warranty does not extend to any such Equipment which has been subjected to: (a) misuse, neglect, accident, fire, lightening, or other casualty; (b) wired, installed, repaired, or altered by anyone other than Nu-Tel or its authorized representatives, or; (c) moved from its original location or which is no longer owned and/or used by the Customer named herein. All warranties herein are non-transferable and non-assignable.

## **8. WARRANTY SUPPORT LIMITATIONS**

**8.1** Nu-TEL does not warrant uninterrupted or error free operation of the Products. Should Customer modify the Products in any way that prohibits Nu-TEL from receiving manufacturer support, then Nu-TEL is not required to provide further warranty support of the Products.

**8.2** Nu-TEL does not warrant that Products will prevent fraudulent intrusion, unauthorized use or loss of proprietary information. Certain features of the Product such as Call Recording, Monitor Mailbox and Silent Monitoring, could be improperly used and in violation of privacy laws. By purchasing Products with these features, Customer assumes all responsibility for ensuring their proper and lawful use.

**8.3 Voice Over Internet Protocol (VoIP).** Nu-Tel disclaims any express or implied warranty regarding VOIP and its performance based on conditions beyond our control. Nu-Tel can only warranty the equipment that it provides and installs. 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).

**8.4 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.

**8.5 Emergency 911.** It is understood that some equipment connected to the telephone system may be located at another location other than the location where the main telephone system is installed. The remote users may have access to originating calls from the main location. The purchaser understands and accepts sole responsibility that emergency calls to a 911 operator need to be routed over telephone lines that are located where the emergency is occurring. However remote telephone users need to use a phone line that is specific to the location where

they are, when calling the emergency 911 operator. The purchaser assumes the responsibility to inform its remote users of the condition described above.

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.

## 9. MANUFACTURER SOFTWARE LICENSING AND WARRANTIES.

THE CUSTOMER MUST OBSERVE THE TERMS OF THE LICENSES, LICENSE AGREEMENTS, SUPPORT POLICIES AND WARRANTIES OF THE MANUFACTURERS OF THE PRODUCTS.

9.1 **Avaya EULA Acceptance Requirement:** Customer acknowledges it has read and agrees to comply with and be bound by the Avaya Software License Terms ("EULA") incorporated herein by reference. The EULA can be found at <http://support.avaya.com/Licenseinfo>.

## 10. SOFTWARE LICENSE TERMS

10.1 **License Grant.** Subject to Customer's payment of all applicable Fees and charges set forth herein and compliance with the terms of this Section 10 ("Software License Terms") and any other license terms and restrictions in the applicable Order, Nu-TEL grants Customer a non-sublicenseable, non-exclusive, non-transferable license to use Software and Documentation provided under the Agreement for Customer's internal business purposes.

10.2 **All Rights Reserved.** Except for the limited license rights expressly granted in these Software License Terms, Nu-TEL reserves all rights in and to the Software and Documentation and any modifications thereto, including title, ownership, intellectual property rights, and any other rights and interests. Customer will own only the Hardware or physical media on which the Software and Documentation are stored, if any.

10.3 **General Restrictions.** To the extent permissible under applicable law and without the prior written consent of Nu-TEL, Customer agrees not to: (i) decompile, disassemble, or reverse engineer the Software, (ii) modify or create any derivative works (including, without limitation, translations, transformations, adaptations or other recast or altered versions) based on the Software or Documentation, or alter the Software, (iii) merge the Software with any other software other than as expressly set forth in the Documentation; (iv) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Software or Documentation except as expressly authorized by the Agreement; (v) distribute, disclose or allow use of the Software or Documentation, in any format, through any timesharing service, service bureau, network or by any other means, to or by any third parties, (vi) enable any Software features or capacity (e.g. additional storage hours, agents, ports or mailboxes) which Nu-TEL licenses as separate products without Nu-TEL's prior written consent, (vii) violate any obligations with regard to Nu-TEL's Confidential Information; or (viii) permit or encourage any third party to do any of the foregoing. To the extent that Customer is

expressly permitted by applicable mandatory law to undertake any of the activities listed in the preceding sentence, Customer will not exercise those rights until Customer has given Nu-TEL twenty (20) days written notice of Customer's intent to exercise any such rights.

**10.4 Backup Copies.** Customer may create a reasonable number of archival backup copies of the Software and Documentation on the condition and understanding that and as long as Customer (i) stores backup copies separately from any actively used computer programs; (ii) keeps a written record of all backup copies indicating the location of the storage; and (iii) provides such record to Nu-TEL upon request. Customer will not remove any product identification, trademark, copyright or other proprietary rights notices from the Software or Documentation and will duplicate and display all names, logos and notices of Nu-TEL and its licenses on each copy of the Software and Documentation made by Customer.

**10.5 Compliance.** Customer will make the Software available only to employees, contractors, or consultants with a need to know, who are obligated to comply with all license restrictions contained in the Agreement and to maintain the secrecy of the Software and all other Confidential Information. Customer will advise any and all users of the license restrictions contained in this Agreement and will be responsible for the compliance of all users with those obligations.

**10.6 User-Defined Applications.** To the extent that any Software contains modules or development tools that permit Customer to create user-defined applications, workflows or processes for use with the applicable Software ("User-Defined Applications"), Customer agrees to indemnify Nu-TEL and its officers, directors, employees, agents and Affiliates against, and hold each of them harmless from any and all costs, expenses, liabilities and claims arising from Customer's use or distribution, either directly or indirectly, of any User-Defined Applications.

**10.7 Third-Party Software.** Third-Party Software provided by Nu-TEL to Customer shall be subject to the license terms and conditions of such Software. In the event of a conflict between the terms of this Agreement and the license terms and conditions of such Third-Party Software, the license terms and conditions of the Third-Party Software shall control.

**10.8 Termination of License.** Nu-TEL may terminate the Agreement and the Software licenses granted under it and exercise all available rights by giving written notice, effective immediately, if within thirty (30) days of Customer's receipt of a reasonably detailed written request to cure, Customer has not cured all breaches of license limitations or restrictions. Upon such termination, Customer will immediately pay all Fees outstanding (including applicable termination charges), cease use of all Software, return to Nu-TEL or at Nu-TEL's written request, delete with written acknowledgement to Nu-TEL, all Copies of the Software in Customer's possession, and certify compliance with all of the obligations in this paragraph to Nu-TEL in writing.

**11. Risk of Loss.** Customer shall bear all risk of loss and damage to the Equipment commencing with the delivery of the Equipment to the Customer's premises.

**12. 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 cease to perform its obligations under this Agreement, including but not limited to any obligations to install, service, repair, or replace the Equipment, and may, as its sole option and without further notice, render the Equipment unusable 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. Upon such Default of payment(s) Nu-Tel will be entitled to the return of any and all Equipment. Any Equipment returned will be offered for resale and the Customer is entitled to mitigation of damages in the amount of the purchase price of said Equipment at the market value of the Equipment as determined by three offers for purchase of the Equipment by anyone, however, excluding Customer, or Nu-Tel.

13. **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.
14. **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.
15. **Lease/Finance.** If "Lease / Finance" is checked on the front of this Agreement, Nu-Tel will endeavor to assist the Customer in making leasing or financing arrangements on the terms specified. Customer acknowledges that Nu-Tel has no control over the interest rate or other fees charged by the leasing or financing companies which Nu-Tel may approach on behalf of Customer. It is the Customer's sole obligation to supply any and all financial information necessary or requested by any leasing or financing company. The warranty contained in Sections 2 or 2A shall remain unimpaired in the event the Equipment is leased or financed.
16. **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.

17. **Execution.** This Agreement may be executed in counterparts and by facsimile, each such part shall be considered an original for all intents and purposes.