

Terms of Service

1) Application of Terms of Service: These Terms of Service are incorporated by reference in the Master Service Agreements (“MSAs”) between New Horizon Communications Corp. (“NHC”) and Customer whenever an MSA incorporating the Terms of Service is effective. In addition, they are incorporated by reference in Addenda between NHC and Customer. Whenever NHC makes a change in these Terms of Service, the date the change is posted on this website will be noted, and the change will become effective 30 days from such date.

2) Services: NHC agrees to provide Customer the telecommunications and/or data services described in each Service Order Addendum that is attached to the MSA or otherwise entered into by the parties (“SOA”) (MSA and SOAs, collectively the “Agreement”). During the term of any SOA, NHC reserves the right to modify pricing as set forth in the SOA or elsewhere upon 30 days written notice to Customer; in such event, Customer shall be free, by providing written notice to NHC during the 30-day notice period, to terminate the service(s) for which pricing was increased. Any changes to the Agreement must be made in writing and signed by both parties. Services provided under any SOA shall be governed by the terms and conditions set forth in the Agreement, as well as the terms and conditions found in applicable NHC tariffs or price lists on file with state regulatory agencies and/or with the Federal Communications Commission (the “FCC”) and these Terms of Service posted on NHC’s website (<http://www.NHCTermsOfService.com>), as may be modified from time to time. If there is any conflict between the rates, terms and conditions set forth in the Agreement and those in the applicable tariff or price list or the Terms of Service posted on NHC’s website at <http://www.NHCTermsOfService.com>, the terms and conditions of the applicable filed tariff shall have first precedence, the Terms of Service posted on NHC’s website shall have second precedence, and the terms and conditions set forth in this Agreement shall have third precedence. NHC reserves the right, in its sole reasonable discretion, to reject any SOA prior to NHC’s signature. The Agreement is fully binding and enforceable as of the date the SOA is/are signed by both parties. NHC will use reasonable efforts to install services ordered under the SOA; however, NHC does not guarantee that services will be installed and provisioned on Customer’s desired date for installation. Quotes and pricing specified in NHC’s SOA’s (Service Order Addendums) do not include non-recurring charges associated with additional equipment, cabling or pre-installation work such as extending wall jacks or demarcation, added features, shipping, optional features or services that may have been added at the customer’s request prior to installation or billing.

3) Important Information Regarding Emergency Services: NHC newVoice family of Voice over Internet Protocol (“VoIP”) Services supports E911 Service in much the same way as traditional circuit-based local telephone service, with certain exceptions. Under certain circumstances, E911 Service may not be available through your VoIP service. For example, E911 Service may not be available in the event that you relocate and use your VoIP-compatible equipment at a location other than premises and you do not inform NHC of the new location information. E911 Service will also not be available through your VoIP Service if (i) your VoIP-compatible equipment fails, (ii) your broadband connection fails, (iii) you lose electrical power to your VoIP-compatible equipment, or (iv) your VoIP, broadband or ISP service is suspended or terminated. Network congestion may cause your E911 call to route slowly or to fail to connect at all. Finally, E911 Service may not be available through your VoIP service (i) if you use a telephone number with your VoIP service which is not associated with the geographic area in which you are located; or (ii) during the period in which the physical location at which you are registered to VoIP service is being uploaded into pertinent databases.

Every newVoice telephone number is associated with a unique customer address. This way, emergency services know precisely where the caller is located. If the telephone number is moved to another location because the Customer moved its phone system, Customer must update its address with NHC or emergency calls will go to the emergency call center associated with the previous location. E911 Service may not function outside of the Customer’s calling area. Even if such calls route to the emergency call center associated with the prior location, the emergency operator may not be able to: (i) transfer the emergency call to the correct emergency call center; (ii) dispatch emergency personnel to your new location; and (iii) may not get automatic call-back and automatic location information. In the event the Customer moves its phone system, it can take up to thirty (30) days to activate E911 Service to the new location.

For new (newVoice) VoIP installations, NHC will notify the customer via email that 911 service has been programmed to the customer’s address. The customer will email orders@nhcgrp.com with any changes of address affecting any NHC newVoice telephone number or endpoint. Change orders may take up to five (5) business days to complete. An email will be sent to the customer confirming the change.

By using the VoIP Services or NHC Equipment, Customer acknowledges the limitations of emergency services in this Section 3. Customer is advised to read thoroughly and understand this disclosure. Customer acknowledges that it has received the VoIP E911 Disclosure in this Section 3, has read, understands and agrees to the terms and conditions of this VoIP E911 Disclosure, and assumes the risks associated with the Services.

CUSTOMER ACKNOWLEDGES AND AGREES THAT NHC DISCLAIMS ANY AND ALL LIABILITY FOR ANY SERVICE OUTAGE OR INABILITY TO COMPLETE EMERGENCY 911 CALLS FROM ANY CUSTOMER LINE OR DEVICE OR THE SERVICES OR TO ACCESS EMERGENCY SERVICE OPERATORS. CUSTOMER SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS NHC, ITS OFFICERS, DIRECTORS,

EMPLOYEES, AFFILIATES, CONTRACTORS, AND AGENTS AND ANY OTHER SERVICE PROVIDER THAT FURNISHES SERVICES TO CUSTOMER IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LAWSUITS, LOSSES, DAMAGES, LIABILITY, FINES, PENALTIES, COSTS, AND EXPENSES INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND COSTS, ARISING FROM, OR RELATED TO, ANY ABSENCE, FAILURE, OR OUTAGE OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, EMERGENCY 911 CALLING AND/OR INABILITY OF CUSTOMER OR ANY CUSTOMER EMPLOYEE, THIRD PERSON OR PARTY, OR USER OF THE SERVICES TO BE ABLE TO CALL 911 OR TO ACCESS EMERGENCY SERVICE OPERATOR. IN NO EVENT SHALL NHC BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES RELATED TO CUSTOMER'S (OR ANY CUSTOMER EMPLOYEE, AGENT, OR CONTRACTOR, OR THIRD PERSON OR THIRD PARTY OR USER OF THE SERVICES) USE OF OR INABILITY TO USE THE 911 CALLING SERVICES.

4) Term Commitment: Customer shall utilize NHC's service(s) as specified in each SOA for the duration of the term(s) specified in the associated SOA for such services. The term of any SOA will commence on the service start date. The service start date shall mean the date when NHC tests and initiates the service associated with a SOA and notifies the Customer that service has been initiated. On the service start date, NHC will begin billing Customer for such services. The service will be declared ready by NHC (a) for voice services, once NHC or one of its underlying carriers has installed the service and tested new telephone numbers or (ii) if such service is being transferred to NHC from another carrier, when Customer's current carrier has transferred or ported service to NHC or one of its underlying carriers, (iii) or passing voice traffic or (b) for non-voice services, when NHC or its underlying carriers can successfully communicate with the carrier access device at the customer's premises. In the absence of a carrier or customer provided access device, NHC will commence billing on the fifth (5th) day after NHC or its underlying carrier completes the network order. NHC is not responsible for any delays that impede the Customer's ability to use the installed service, including but not limited to, delays requested by the Customer or caused by third party delays incurred as a result of problems connecting the installed service to the Customer's LAN, WAN, PBX or other customer premise equipment ("CPE") by Customer or third party. Customer will bear the costs of any additional apparatus reasonably required to be installed because of the use of NHC's network or facilities. The initial term of services provided pursuant to each SOA will automatically renew for successive one (1) year periods, unless Customer notifies NHC in writing of Customer's desire not to renew at least ninety (90) days prior to the expiration of the then current term. Except as set forth in NHC's applicable tariff(s), the minimum period for services provided is ninety (90) days ("Minimum Period"). During the term of any and all services provided under this Agreement, NHC reserves the right to modify pricing as set forth in the SOA or elsewhere upon a 30 days written notice to customer.

5) Termination without Cause: Following expiration of any applicable Minimum Period, either party to an Agreement may terminate any service provided under a month-to-month service option with sixty (60) days prior written notice. In the event Customer terminates or discontinues any service provided under a term plan with NHC prior to the expiration of the then-current term, Customer shall pay NHC within 90 days of termination or discontinuance: (1) the monthly recurring charges and minimum monthly usage amount (if applicable) multiplied by the number of months remaining in the service term period and (2) any previously waived installation, monthly access charges and special promotional credits given, in one lump sum (collectively, the "Early Termination Fee"). Customer acknowledges that NHC's damages for early termination would be difficult to determine and the termination charge(s) constitutes liquidated damages and are not intended as a penalty but as a mutually-agreed upon amount representing, but not limited to, lost revenue, proportionate or actual third party costs and capital expenditures, and internal costs. All such amounts will become due and payable by Customer to NHC within 30 days of receipt of NHC's invoice for the Early Termination Fee.

6) Termination for Cause: Customer shall be in default of an Agreement if (a) Customer fails to pay any undisputed amount due hereunder within thirty (30) days of the payment due date; (b) Customer provides inaccurate, false or otherwise misleading information in its application for service; (c) Customer utilizes NHC's services for any unlawful purpose or for any other purpose than that for which the service is intended; or (d) Customer violates any provision of the NHC Acceptable Use Policy (AUP), as amended from time to time, (<http://www.nhcgrp.com/legal-notices/>).

7) Property to be Returned Upon Termination: When any service provided under any SOA or the Agreement is terminated, all public IP Addresses assigned by NHC to Customer that are associated with the SOA service being terminated shall revert back to NHC, and Customer shall return all NHC property or the property of NHC's underlying carriers (including but not limited to NHC routers, switches, equipment, facilities and software) to NHC that is associated with the SOA service being terminated. If the property is not returned and received within 30 days of the service termination date, NHC will bill Customer for the non-returned property within two monthly billing cycles following the service termination date, which Customer shall pay in full, within 30 days of receipt of such bill.

8) Order Cancellation: Customer shall pay an order cancellation fee (a minimum of \$250.00 or equivalent to the actual cost of equipment, lines and installation, whichever is greater) should the Customer or NHC initiate the cancellation of Customer's service order associated with a particular SOA prior to test and turn up of the service, to compensate NHC for the time, money and resources spent to prepare and procure Customer's service order request associated with a particular SOA. Because there may be circumstances under which NHC may not be able economically to provide or continue to provide services, NHC reserves the right, in such instances, to immediately cancel/discontinue service without liability or further obligations to the Customer.

9) Payments: Customer shall pay all service charges and fees as set forth in each SOA, including, but not limited to, nonrecurring incidental charges (such as charges associated with installation, line maintenance, expedites, moves, adds, changes, deletions and cancellations), equipment purchases, surcharges, regulatory fees, taxes, and other charges required by law. Charges for maintenance and repair shall be billed to Customer pursuant to the NHC Maintenance and Repair Program, Section 38 below, and any applicable tariffs. Customer will indemnify NHC for any and all costs, claims, taxes, charges, and surcharges levied against NHC relative to a proof of exemption that Customer provides NHC. Customer shall pay all service charges promptly upon the completion of installation for each specified service associated with each SOA. For the avoidance of any doubt, for installations associated with a service provided under a SOA that includes multiple locations or an installation process that is phased in over a period of time, Customer shall pay service charges promptly upon the completion of each installation for each specified service associated with each SOA at each particular location or the conclusion of each phase of the installation process, whichever is earlier. Additional fees for changes may apply to changes in the service order associated with a particular SOA that is requested by Customer after the Agreement is signed. Upon Customer's receipt of a NHC invoice, all payments associated with the NHC invoice shall be due and the Customer shall pay such amounts. Payment options include: wire transfer, check, money order, AMEX, Visa or MasterCard. Payments by AMEX, Visa, or MasterCard are subject to a 1.5% surcharge. NHC reserves the right to assess a late fee of the lesser of one and one-half percent (1.5%) per month or the maximum allowed by law for any payment not received within thirty (30) days of invoice. Customer shall be liable for all charges associated with the use of NHC's services, including charges that result from theft, abuse, or misuse, as well as fraudulent, and/or unauthorized use of such service. All Customer payments to NHC shall be in U.S. currency.

10) Billing Disputes:

- a. Customer shall undertake a reasonable good faith effort to review each invoice received from NHC under this Agreement on or before the payment due date to determine whether there are any amounts it disputes ("Disputed Amounts"). Customer shall pay on or before the payment due date all undisputed amounts. If any portion of an amount invoiced to Customer under this Agreement is subject to a good faith dispute between the Parties, Customer shall within 90 days of the date of the invoice give written notice, with all supporting documentation, to NHC of the Disputed Amounts through the NHC claims submission process and include in such notice the specific details and reasons for disputing each item. All current NHC Customers have access to NHC's Customer portal called MAP. MAP requires a user name and password that was emailed to the Customer as part of NHC's initial Customer welcome package. The portal can be accessed at: www.nhgrp.com. It contains online billing information, repair and order status as well as access to a variety of specialized tools for Customer use. Customers can access NHC's billing dispute system via MAP under the Online Bill tab and Invoice section then a subsection called "Billing Ticket Dispute". Follow the instructions and submit the dispute. A billing ticket number will be generated instantly. Please use the ticket number as a reference for all future correspondence. NHC will respond to your dispute within 5 business days. Customers can also email NHC at: billing@nhgrp.com with dispute information and a billing dispute ticket number will be sent back within two (2) business days. Once the billing ticket has been issued, NHC will respond to the dispute within five (5) business days. NHC shall undertake a reasonable good faith effort to review Customer's disputes within thirty (30) days of the date NHC issues a billing dispute ticket number.
- b. Should NHC deny a dispute submitted by Customer, Customer shall have ten (10) business days by which either to pay the Disputed Amounts or to escalate the dispute to the level of the NHC Vice President. Customer's failure to utilize the escalation process in this Section 8.b. shall operate as a waiver of Customer's right to pursue any further relief with respect to the Billing Dispute. NHC shall undertake a reasonable good faith effort to review Customer's disputes within thirty (30) days of the date of the submission and NHC will timely provide Customer with written notice of its acceptance or rejection, in whole or in part, of the billing dispute.
- c. All disputed charges must be received by NHC within the time period specified in paragraph (a) above. Failure to timely dispute a charge shall operate as a waiver of a charge on the invoice which could have been disputed. Any disputed amount which is not resolved in Customer's favor shall be paid within 10 days of receipt of the final notice of denial of the billing dispute.

- d. Should, disputed amounts in any three (3) consecutive months exceed twenty-five percent (25%) of invoiced charges, then Customer shall be required in each succeeding month to pay on or before the payment due date the greater of all undisputed charges or seventy-five percent (75%) of the total charges invoiced in that month, pending final resolution of the disputed amounts through the Dispute Resolution process. Any disputed amounts that are finally resolved in Customer's favor that were overpaid to NHC as a result of the foregoing seventy-five percent (75%) minimum payment requirement shall be refunded or, at NHC's option, credited to Customer by NHC.

11) Jurisdiction and Venue:

- a. In the event of a customer's non-payment of invoices due and owing for services provided to Customer or for early termination charges where a Customer has terminated services in violation of this Agreement or the SOA, NHC may institute legal action within the Commonwealth of Massachusetts in a court of competent jurisdiction to collect upon the outstanding balance due to NHC, including any amounts due and owing together with interest, late payment charges, including reasonable costs and attorney's fees associated with collection of unpaid obligations of Customer.
- b. Customer consents to the jurisdiction of the Courts of the Commonwealth of Massachusetts, County of Middlesex or the United States District Court of the Commonwealth of Massachusetts as sole and proper venue for any dispute between the Parties arising out of the terms of this Agreement or SOA.

12) Suspension of Service: Should Customer fail to keep its account current, NHC has the right to suspend Customer's service upon (10) days written notice (except as specified by FCC or state regulations, where applicable) and continue billing until sufficient payment has been received to bring Customer's account current. If the service is suspended due to Customer's non-payment, NHC will not restore service until all charges are paid in full. A minimum \$100.00 restoration fee will be charged by NHC. Should Customer fail to pay NHC all outstanding amounts due within 10 days following suspension, NHC may disconnect service, reclaim all NHC owned IP addresses, all public IP Addresses assigned by NHC to Customer, and hardware, and charge all applicable Early Termination Fees specified in this Agreement. If service is disconnected but can be restored, NHC will only do so at Customer's written request after all charges, including but not limited to, a minimum \$500.00 restoration charge are paid.

13) Credit Inquiries/Deposits: Customer authorizes NHC to inquire into Customer's credit history, including asking consumer reporting agencies and/or other references for Customer credit information. Notwithstanding any applicable laws or regulations to the contrary, NHC reserves the right, at its sole discretion and at any time, to (a) refuse to provide the service requested or provisioned under any SOA or (b) require a non-interest bearing security deposit that will be refunded upon expiration or termination of the Agreement and the payment in full of all outstanding invoices, based on Customer's credit worthiness. If Customer fails to pay any amount due to NHC under the Agreement, NHC shall have the right, but not the obligation, to apply the security deposit to the outstanding amounts due and may demand, as a condition of continued service, that Customer provide an additional non-interest bearing security deposit.

14) Access to Customer Premises and Equipment: Customer shall provide NHC with reasonable access to Customer's premises, internal wiring, CPE, and other facilities and equipment to allow NHC to install, maintain and repair Customer's service, as reasonable and necessary. With respect to any installation, NHC reserves the right to bill Customer a \$250.00 fee for each missed scheduled appointment date. Should NHC repeatedly be unable to access the Customer's premises for required installation and service, NHC reserves the right to cancel the service request. NHC is not responsible for any delays that impede the Customer's ability to use the installed service, including but not limited to delays requested by Customer or caused by a third party or delays incurred as a result of problems connecting the installed service to Customer's LAN, PBX or other CPE by Customer or a third party.

15) Use of Service: Customer shall not use the service in any manner other than that for which the service was intended and shall refrain from using the services in any manner that would adversely affect the equipment or network of NHC and/or its underlying carrier, or the service that NHC and/or its underlying carrier provides to others. NHC reserves the right to discontinue service without notice in the event of any such unlawful or adverse use. Customer understands and agrees that it is liable for all use of this service and/or device by the Customer or any person making use of the service or device. Customer may not use this service or device for any unlawful, abusive or fraudulent purpose, or in a manner that violates NHC's Authorized Use Policy (AUP).

16) Interruption of Service Caused By Force Majeure: NHC shall not be liable for any delay or failure of performance of any part of this Agreement and services provided under the SOA to the extent that such failure or delay is caused by Acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, cable cuts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of common carriers or other causes beyond NHC's reasonable control, including, but not limited to, any full or partial failure of any third party communications or computer network or any other cause beyond such party's reasonable control. Under such circumstances, NHC shall not be responsible for providing services. Such services shall be resumed by NHC when service can reasonably be restored.

17) Equipment: Equipment may be provided for lease, rent or purchase by NHC Resources, an affiliate of NHC or as service associated with one of NHC's underlying carrier partners. All equipment charges will be combined with service charges in Customer's monthly invoice generated by NHC.

- a) **Equipment Lease:** Terms and conditions of leased equipment are determined by a Master Lease Agreement and applicable supplements between Customer and NHC Resources.
- b) **Equipment Rental:** equipment rental is subject to the terms and conditions of the Agreement.
- c) **Return of NHC Equipment:** Within ten (10) days of the termination of services for any reason, Customer agrees to return to NHC any and all equipment via a secured delivery service. If Customer does not return the equipment in good working order, Customer will be liable for the full purchase price of the equipment to be invoiced by NHC. Customer is not permitted to alter or repair any equipment obtained from NHC without the express written authority of NHC.
- d) **Equipment Purchase:** All equipment purchased by Customer from NHC Resources and billed by NHC, will remain Customer's property upon the expiration of the Agreement. The customer will be billed for equipment purchases once the equipment has been shipped to the customer.

18) Disclaimers. Customer shall defend, indemnify and hold harmless NHC against any and all claims, damages, costs, attorney's fees and liabilities arising out of the use of this service, the inability to use this service for any reason. The service is provided on an "as is" or "as available" basis. NHC does not provide any warranty, either express or implied, regarding or concerning the service or device, including any warranty of merchantability, fitness for a particular purpose, or that the Service will function without failure, delay, interruption, error, degradation of voice content, or loss of content, data, or information.

19) Limitation of Liability: NHC will not be liable under any contract, tort, negligence, strict liability or other theory for any incidental, consequential, indirect, exemplary, punitive or special damages or any nature, or for any lost revenues, lost profits or loss of business or potential business or data or services, loss of goodwill, or work stoppage, in each case whether or not such losses were foreseeable by such party. NHC's liability for any damages arising from errors, mistakes, omissions, interruptions or delays caused by it, its agents, employees or underlying carriers in the course of establishing, furnishing, rearranging, moving, terminating, maintaining, restoring or changing service or facilities provided hereunder, or NHC's failure to perform any other duty arising out of the Agreement shall not exceed an amount equivalent to the actual proportionate charge for the service applicable to the period during which the service was affected. NHC shall not be liable for any consequential, indirect, punitive or special damages with respect to any claims regarding the services to be provided hereunder. Customer acknowledges that NHC has entered into this agreement and has set its prices in part in reliance on these liability and remedy limits, and that they form an essential basis of the bargain between the parties.

20) Warranties: NHC makes no warranty, express or implied, as to the description, completeness, quality, merchantability or fitness for a particular purpose of any service provided pursuant to this agreement or any SOA issued hereunder, or that any such service shall be uninterrupted or error-free, unless expressly provided in an SOA executed by both NHC and the Customer. NHC DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR FREE, UNINTERRUPTED OR SECURE FROM THIRD-PARTY ATTACKS. THE PRECEDING DISCLAIMERS INCLUDE AN EXPRESS ACKNOWLEDGEMENT BY CUSTOMER THAT, AMONG OTHER THINGS, NHC DOES NOT MAKE ANY PROMISE TO CUSTOMER THAT: (1) THE SERVICES OR PRODUCTS ARE FIT TO BE SOLD; (2) THE SERVICES OR PRODUCTS ARE FREE FROM DEFECTS; (3) THE SERVICES OR PRODUCTS WILL PERFORM IN ANY SPECIFIC MANNER, AT A PARTICULAR SPEED, OR TO ANY PARTICULAR STANDARD; (4) MANAGED OR OTHER SECURITY SERVICES WILL PROVIDE ANY PARTICULAR LEVEL OF PROTECTION FOR CUSTOMER'S COMPUTERS, NETWORKS OR SYSTEMS; (5) HOSTED SERVICES WILL MEET ANY PARTICULAR LEVEL OF SECURITY, RELIABILITY OR COMPLIANCE, OR (6) THE SERVICES OR PRODUCTS CAN BE USED FOR A SPECIFIC PURPOSE.

21) Indemnification: Customer shall indemnify, defend, and hold NHC, its parent, affiliates, employees, directors, officers, agents, underlying carriers, and sub-contractors, harmless from any claim, loss or damages, including actual attorneys' fees, resulting from Customer's breach of any term of this Agreement, the AUP, Customer's placement of any material or content on NHC's network, or from Customer's use of NHC's services or third party's use of services, regardless of Customer's knowledge or consent.

22) Customer Warranties:

- a) Customer represents and warrants that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.
- b) Customer represents and warrants that neither its equipment nor facilities will pose a hazard to NHC's equipment or facilities or create a hazard to NHC's personnel or customers or the public in general.

- c) Customer represents and warrants that its use of the services will comply and conform with NHC's AUP along with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and Customer will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities.
- d) Customer represents and warrants that it will not resell all or a portion of the service(s) provided by NHC under this Agreement. Customer will indemnify and hold NHC harmless from any and all loss, liability, claim, demand, and expense (including reasonable attorneys' fees) related to Customer's violation of this Section.

23) Assignment: Customer may not assign its rights or delegate its responsibilities under the Agreement without NHC's express written permission; except pursuant to the sale of Customer's business, or all or substantially all of Customer's assets. NHC may, at any time, assign its rights or delegate its obligations hereunder in accordance with the law of the Commonwealth of Massachusetts.

24) Entire Agreement and Amendments: The terms and conditions set forth in this Terms of Service, the Agreement, applicable NHC tariffs or price lists, the AUP, and the Statement of Privacy; <http://www.nhcgrp.com/tariffs/>; <http://www.nhcgrp.com/legal-notices/> represent the entire UNDERSTANDING of the parties with respect to the services provided hereunder, and supersede any prior agreements, promises, offers, communications, representations, statements, negotiations, understandings, or proposals, oral or written between Customer and NHC, any related entity or any of their respective employees, contractors or agents with respect to any services or products offered by NHC. Customer acknowledges and agrees that Customer has not relied upon any statement, promise or representation by NHC, any related entity or any of their respective employees, contractors or agents, including that relating to the performance, pricing, specification or other aspects of any service or product offered by NHC and not expressly set forth in this Agreement. If any provision of this Agreement is held to be invalid, void, or unenforceable, the remainder of the provisions will nevertheless remain unimpaired and in effect. Nothing in the Agreement or these Terms of Service is intended to, or shall be construed, as creating a partnership or any third-party beneficiaries.

25) Survival: Any accrued rights to payment, any remedies, and all sections of the Agreement that by their nature would survive including without limitation, indemnification, remedies, warranty disclaimers and limits of liability, shall survive any expiration or termination of the Agreement.

26) Governing Law: The law of the Commonwealth of Massachusetts, without giving effect to its conflicts of law provisions, shall govern these Terms of Service, the Agreement and any dispute arising out of the Agreement. Failure of either party to insist upon the strict compliance by the other with any of the terms, covenants or conditions of these terms of Service or the Agreement shall not be construed as a waiver of any subsequent breach.

27) Compliance with Law: These Terms of Service and the Agreement are subject to all applicable law and the obtaining and continuance of any required approvals, authorizations, or tariffs or price lists filed with the FCC or any other governmental agency. NHC will use good faith reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any applicable law adversely affects the services or requires NHC to provide services other than in accordance with the terms of these Terms of Service and the Agreement, NHC may, without liability to Customer, terminate the affected services upon thirty (30) days prior written notice to Customer. In performing their obligations under these Terms of Service and the Agreement, the parties will comply with all applicable law, specifically including, but not limited to, applicable law governing 911/E-911 and any other emergency services. Customer shall fully indemnify, defend, and hold harmless NHC, its officers, directors, parent, and affiliated companies, employees, agents and subcontractors from all liabilities, claims, fees, expenses, costs or damages of any kind arising out of personal injury or death or damage to property related to E911 services.

28) Confidential Information: Customer Proprietary Network Information ("CPNI") shall only be disclosed in accordance with applicable law and NHC's policies and procedures. See also, NHC's Statement of Privacy (<http://www.nhcgrp.com/legal-notices/>).

29) Third-Party Charges: NHC shall not be liable for any third party charges arising from or related to the termination of any previous agreement for services or the failure of Customer to terminate any previous agreement for services. If any property owner, under which Customer is a tenant, assesses a fee against NHC in order to, or as a result of, the provisioning of any services to Customer, NHC may pass through such charges to Customer.

30) Telephone Numbers: Telephone numbers are assigned to the business entity (Customer) named on the SOA and not to any individual owner or operator of the business. Customer shall designate those individuals authorized to make changes to the Customer's account with NHC, including changes to the services or to the telephone numbers in conformity with applicable law. NHC shall be held harmless for any changes authorized by the individuals designated by Customer. NHC shall take all reasonable measures to provide Customer with continuation of existing telephone numbers. However, if Customer is changing location at the time of conversion or taking service for the first time at a location, NHC makes no warranties regarding assignment of particular telephone numbers to Customer.

NHC shall not be liable to Customer for any change in telephone numbers due to actions of any vendor or supplier of services to NHC. Customer's reliance upon and/or use of any service numbering information prior to installation and acceptance of service is at the Customer's sole risk.

31) Directories: NHC shall not be liable for any inaccurate or dropped listings of any publisher/directory database. NHC shall not be liable for any errors or omissions, whether arising through negligence or otherwise, in the information furnished to a publisher or to a directory database(s). Additional costs may be assessed for publisher/directory database listing charges.

32) Maintenance, Repair, and Upgrade of Facilities: Except as otherwise provided in these Terms of Service or in the Agreement, NHC will maintain its network and perform any network upgrades at its sole discretion. NHC will repair service to Customer as necessary to provide the services ordered by Customer on an ongoing basis. Customer shall be required to pay a monthly service charge for maintenance and repair pursuant to the policies and procedures of NHC's Maintenance and Repair Program, the terms of which, as updated from time to time, are incorporated by reference in this Agreement. The NHC Maintenance and Repair charge will cover the cost of any NHC carrier dispatch and repair visits required to repair service provided to the Customer by NHC or its underlying carrier(s). NHC will not be responsible for any third party repair fees from Customer's voice and or data equipment vendors. The NHC Maintenance and Repair charge does not cover the cost of any materials, equipment or other goods required for repairing service to the Customer; any such charges will be billed to the Customer as one-time charges.

33) NHC Property: NHC equipment and the equipment of NHC's underlying carriers will remain the sole and exclusive property of NHC, its underlying carriers, or NHC's assignee, as may be applicable. Customer will not tamper with, remove or conceal any NHC identifying plates, tags or labels. Customer will indemnify, hold harmless and defend NHC and its underlying carriers against any liens placed on NHC equipment or the equipment of NHC's underlying carriers due to Customer's action or inaction. Any lien will be discharged by Customer within ten (10) days of notice of filing. Failure to discharge any such lien is a material breach of this Agreement, and may result in immediate termination. NHC reserves the right to substitute, change or rearrange any equipment used in delivering services that does not affect the quality, cost or type of services.

34) Service Management: NHC will manage its network in NHC's sole discretion. Customer will provide all reasonable information, authorizations, and access required by NHC for the purpose of installing services, performing routine network grooming, maintenance, upgrades, and addressing emergencies.

FEES AND SURCHARGES

35) General Description of Fees and Surcharges: Fees and surcharges are imposed or permitted by a government agency under a rule or regulation. In most cases they are designed to support a specific program (e.g. universal service fund, 911, deaf relay services, etc.). Other fees and surcharges cover our costs associated with providing certain aspects of our service such as repair, network components and long distance access.

36) Contract Rates / Individual Case Basis (ICB) Arrangements: In lieu of the rates otherwise set forth in our posted rate schedules by state or state tariffs, rates and charges, including minimum usage, installation, special construction and recurring charges for Carrier's services may be established at negotiated rates on an individual case basis (ICB). ICB rates, terms and conditions will be set forth in individual Customer contracts. However, unless otherwise specified, the terms, conditions, obligations and regulations set forth in Terms of Service shall be incorporated into, and be part of, said contract, and shall be binding on NHC and Customer. An ICB Arrangement is in response to the specific, individual requirements of the customer and/or a competitive bidding process. It differs from the Company's standard offering in that it contains a customer service arrangement and/or term and/or volume commitments. The ICB customer is not "under like circumstances" as other customers, the ICB arrangement complies and is consistent with the statutory and regulatory requirements.

37) NHC's Interstate Carrier Cost Recovery Fee: The Interstate Recovery Fee is a percentage (currently 8%) of all recurring charges to the customer, excluding certain taxes and surcharges that are a direct pass-through of a tax on the user that is collected by the Company or where the Company chooses to state a surcharge separately. The Interstate Recovery Fee recoups NHC's costs associated with purchasing certain network components used to provide access service as a result of FCC rule changes which have dramatically increased the costs of these components. Interstate Carrier Cost Recovery fees and surcharges are used commonly by most carriers to recoup these costs.

38) NHC's Maintenance and Repair Program: The Maintenance and Repair Program Surcharge covers the cost of repair dispatches, regardless of whether the trouble is determined to be network based, Customer Premise Equipment, or inside wiring (including the jack). This monthly surcharge, computed as a percentage of recurring and usage charges, eliminates the need for one time charges associated with dispatch and repair visits. The surcharge is currently 2.75% of all charges and all usage except one-time charges / NRCs & Wireless services and Collaboration and Conference Calling services. This surcharge is not applied to taxes or other surcharges.

39) NHC's Interstate Telecom Surcharge (ITS):

NHC's Interstate Telecom Surcharge (ITS) rate varies by region. In CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT and WV, the Interstate Telecom Surcharge applies only to lines that are not presubscribed to the Company's long-distance service. This surcharge applies to basic telephone lines (POTS), business trunks and Centrex lines. This monthly surcharge is \$4.50 per line.

In all other continental US states: AL, AR, AZ, CA, CO, FL, GA, IA, ID, IL, IN, KS, KY, LA, MI, MN, MO, MS, NC, ND, NE, NM, NV, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI and WY the ITS surcharge applies to every basic telephone line (POTS), business trunk and Centrex line. The Surcharge in these states is \$4.50. For lines in these states not presubscribed to NHC, an additional surcharge of \$4.00 is applied.

40) NHC's OSS Cost Recovery Charge: Regulatory agencies have allowed NHC's underlying carriers to charge "wholesale value added resellers" (like NHC) for access into their provisioning and maintenance systems. The OSS (Operating System Support Charge) reflects a portion of that monthly charge which is incurred by NHC per billing account.

NHC OSS Cost Recovery Charge is \$8.99 per billing account.

41) NHC's P-Bill (\$6) and E-Bill (\$3) Charges: NHC's Paper Bill is \$6.00 per month per invoice to cover the cost of generating, printing, and mailing of the invoice(s) to customers. Additional shipping fees may apply for full call detail.

NHC's electronic E-Bill is \$3.00 per month, to cover the cost of generating and maintaining a feature rich on-line bill with query tools and reports, and e-mailing of the invoice(s) to customers.

42) Local Number Portability Surcharge (LNP): Local Number Portability (LNP) is a service that provides residential and business traditional (wired) telephone customers with the ability to retain at the same location, their existing local telephone numbers when switching from one local telephone service provider to another. LNP was mandated by the Telecommunications Act of 1996. The FCC allows local telephone companies to pass certain costs of implementing and maintaining long term number portability on to their customers.

NHC's LNP Rate per line for basic phone line (POTS), business trunk line or Centrex line = \$0.69

NHC's LNP Rate for circuits (T1 PRI, Integrated/Dynamic DS1's) = \$0.99

43) Presubscribed Interexchange Carrier Charge (PICC): PICC is a monthly fee that is applied to each basic phone line (POTS, business trunk line or Centrex line) to allow for routing of long distance service to a long- distance provider. This fee is charged by the long distance provider. NHC applies this fee when it is the long distance provider.

NHC's rate for PICC on a POTS line or business trunk line is \$4.50

44) FCC Line Charge: This federally-permitted charge billed by NHC as your local telephone company pays for part of the cost of supplying a phone line into a home or business. It is designed to help local phone companies recover the cost of providing "local loops" which refers to outside telephone wires, underground conduit, telephone poles, and other equipment and facilities connecting a telephone user to the telephone network. This is not a tax. It is a charge that is part of the price paid for local telephone service. The FCC line charge applies to basic telephone lines (POTS), business trunk lines, Centrex lines. It also applies to traditional T1 based voice circuits such as PRI or Integrated T1 services:

NHC's FCC Line Charge per POTS, business trunks and Centrex line = \$8.59

NHC's FCC Line Charge per Circuit = \$60.00

45) For convenience, the following are descriptions of common taxes and fees collected on behalf of local, state and federal entities. It is a representative list only. Any given customer's taxes and fees may not include all these items and may include additional items not described below.

State and Local Sales Tax – Taxes paid by consumers and directly submitted to appropriate state, county or city authorities. Typically applies to all services including all surcharges and fees except the E911 charge. May include town, city or school district taxes.

Municipal Tax – This Tax recovers expenses associated with municipal revenue taxes, which apply to calls originating and terminating within a village or municipality. Typically applies to all local charges, LNP Surcharge, FCC Line Charge and Federal USF Surcharge

Transportation Tax Surcharge – This state surcharge, covers mandated taxes collected to fund or support state wide transportation such as local transportation or state highways.

State Gross Revenue Tax – This tax recovers expenses associated with mandated corporation franchise taxes and excise taxes on telecommunications services. Typically applies to all services except E-911 surcharge.

Public Utility Tax – A mandatory tax collected in some states imposed on telecommunications users to fund the operation of the telecommunications utility Authority.

E911 Tax – This is a fee to compensate local agencies for the costs of establishing, upgrading and operating the emergency telephone system. The tax is applied to each access line that appears on a NHC telephone services bill.

Federal Excise Tax – The Federal Excise Tax was introduced in 1898 by the federal government as a temporary tax to support the nation’s efforts in the Spanish-American War. The Tax revenue from the FET goes directly into the Federal General Fund. The tax is applied to all telecommunications services including local, long distance and wireless bills.

Federal Universal Service Fund Recovery Surcharge – USF provides funding for low income services, schools, libraries and high cost rural service. All telecommunications companies are required to pay a specific percentage of Interstate and International usage into the USF and are permitted to recoup this cost from customers.

Federal Universal Service Fund Surcharge for VoIP Services – similar to above but established and rated specifically for Voice over Internet Protocol (VoIP) services such as hosted PBX and SIP trunks.

46) Service Order and Change Charges

- a) Non-recurring charges apply to processing Service Orders for new service, and for changes in service:

New Line Install Charge (Centrex, POTS)	\$75.00
Remote Call Forwarding Activation	\$75.00
Change Charge (moves, adds, changes)	\$75.00
Service Order Charge	\$75.00

- b) Restoration of Service

Should a customer fail to keep its account current, the Company has a right to suspend the Customer’s service and continue billing until sufficient payment has been received to bring the Customer’s account to current. If the service is suspended due to a Customer’s non-payment, the Company will not restore service until all charges are paid in full. A minimum \$100.00 restoration fee will be charged by the Company. Should the Customer fail to pay the Company all outstanding amounts due within ten (10) days following suspension, the Company may disconnect service, reclaim all Company owned IP addresses, all public IP addresses assigned by the Company to the Customer, and hardware, and charge all applicable Early Termination Fees, as referenced in Section 5. If service is disconnected but can be restored, the Company will only do so at the Customer’s written request after all charges including a minimum \$500.00 restoration charge are paid.

47) Non-Recurring Charges: Non-recurring charges apply to each line for the Customer. Non-recurring charges are in addition to applicable service order charges contained in Section 46, above.

Non-recurring charges for Business lines, per line, are:

Calling Feature Change Charge	\$ 7.99
Suspension Charge	\$ 75.00
Billing Discontinuation – Simple	\$ 8.99
Billing Discontinuation – Complex	\$ 89.99
Directory Listing Change Charge	\$ 75.00
Establish Toll Restriction Charge	\$ 75.00
Long distance carrier PIC Charge, per line	\$ 5.00
New Private Line and or Internet Broadband	ICB
PRI, Integrated and or Dynamic Voice, Data and Internet Service	ICB
Other services such as IP voice and Data	ICB
All other NHC billable services	ICB

The following charges are per order, per location:

Premise Visit for New Service Charge	\$ 35.00
Move, Addition or Change (MAC) Traditional Telephone Services	\$ 75.00
Complex/Project Management based Changes	ICB
newVoice Hosted or Connect Simple MAC	\$ 50.00
newVoice Hosted or Connect Complex MAC	\$ 150.00

NOTES:

**Additional Line installation charges apply only when 2 or more lines are installed at the same time and at the same Customer Premises.*

48) Allowances for Interruptions in Service

a) General

- i. A credit allowance will be given when service is interrupted, except as specified in Section (48)(b) following. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this schedule.
- ii. An interruption period begins when Customer reports a service, facility, or circuit to be interrupted through the opening of a trouble ticket and makes it available for testing and repair. NHC's 7x24 Repair Center is available via telephone at 866-241-9423 and email repairs@nhcgrp.com. An interruption period ends when the service, facility or circuit is operative.
- iii. If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, or refuses access to its premises for test and repair by the Company, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.
- iv. The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

b) Limitations on Allowances

No credit allowance will be made for any interruption in service:

- i. Due to the negligence of or noncompliance with the provisions of this schedule by any person or entity other than the Company, including but not limited to the Customer;
- ii. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- iii. Due to circumstances or causes beyond the reasonable control of the Company;
- iv. During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- v. A service will not be deemed to be interrupted if a Customer continues to voluntarily make use of the service. If the service is interrupted, the Customer can get a service credit, use another means of communications provided by the Company (pursuant to Section (48)(c)), or utilize another service provider;
- vi. During any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- vii. That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction;
- viii. That was not reported to the Company within thirty (30) days of the date that service was affected or;

- ix. Due to any delay or failure of performance of any service to the extent that such failure or delay is caused by Acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of common carriers or other causes beyond the Company's reasonable control, including, but not limited to, any full or partial failure of any third party communications or computer services. Under such circumstances, the Company shall not be responsible for providing services. Such services shall be resumed by the Company when service can reasonably be restored.
- c) Use of Another Means of Communications
 - i. If the Customer elects to use another means of communications provided by the Company during the period of interruption, the Customer must pay the charges for the alternative service used.
- d) Application of Credits for Interruptions in Service
 - i. Credits for interruptions in service that are provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
 - ii. For calculating credit allowances, every month is considered to have thirty (30) days.

49) Notices: All notices to Customer required by these Terms of Service or the Agreement will be in writing and will be made by one or more of the following methods: regular mail, overnight delivery, certified mail, electronic mail, on Customer's invoice, or by facsimile transmission with receipt verification. Notices will be sent to the address of record, and in the event of multiple addresses, to the address of the parent account. In the case of a notice to NHC, all notices under these Terms of Service or the Agreement except as otherwise specified in these terms of Service or the Agreement will be in writing and will be made by personal delivery, overnight delivery, or certified mail to: New Horizon Communications Corp, 200 Baker Avenue, Suite 300, Concord, MA 01742 Attn: Customer Notices.

50) Broadband Speeds: NHC provisions its customers' modems and engineers its network to enable customers to enjoy the speeds to which they subscribe. However, NHC does not guarantee that a customer will achieve those speeds at all times. Unless a customer purchases a dedicated Internet connection, no Internet Service Provider ("ISP") can guarantee a particular speed at all times. NHC advertises its speeds as "up to" a specific level based on the tier of service to which a customer subscribes. The "actual" speed that a customer will experience while using the service depends upon a variety of conditions, many of which are beyond the control of an ISP. These conditions include:

- a) Performance of a customer's computer.
- b) Type of connection between a customer's computer and modem.
- c) The distance packets travel (round trip time of packets) between a customer's computer and their final destination on the Internet, including the number and quality of the networks of various operators in the transmission path.
- d) Congestion or high usage levels at the website or destination.
- e) Gating of speeds or access by the website or destination.
- f) The performance of the modem you have installed.