

## Carrier "B" -- Off Net Terms & Conditions

1. **Overview of Off Net Services.** The customer ("Customer") purchasing the Off Net Services under the Service Order to which these terms are either attached or as they are posted on Supplier's website agrees that the following terms and conditions (collectively, the "Off Net Terms") apply to the portion of the Off Net Services that are provided by Alpheus Communications, L.P. ("Supplier") over the telecommunications network facilities owned and/or operated by a third party carrier (collectively, the "Off Net Services"). In the event of a conflict between these Off Net Terms and the terms of the Master Service Agreement (the "Agreement") controlling the Service Order to which these Off Net Terms apply and are made a part of, these Off Net Terms shall control with respect to the Off Net Services. Customer acknowledges and agrees that these Off Net Terms may be modified from time to time and that such changes shall be posted on Supplier's website at [www.alpheuscommunications.com](http://www.alpheuscommunications.com). Customer acknowledges that it is Customer's responsibility to refer to such website from time to time and that Customer's receipt of Off Net Services after the effective date of any such change constitutes Customer's acceptance of each such change.
2. **Service Order Term.** (a) Each Service Order shall have its own term as indicated on the Service Order ("Service Term"). Unless Customer is in default at the end of the Service Term, the Service Order shall continue on a month-to-month basis ("Extension Period") unless either party gives written notice to the other party of non-renewal, such notice to be delivered at least ninety (90) calendar days before the end of the Service Term or sixty (60) calendar days before the end of an Extension Period. (b) Customer's service and charges either following a termination or during the Extension Period shall continue as determined by these Off Net Terms.
3. **Payment Terms and Charges.** (a) Supplier provides and charges for Off Net Service on a monthly basis in U.S. Dollars. (b) Usage sensitive charges are billed in arrears; whereas, fixed monthly recurring charges, if any, are billed one (1) month in advance. (c) All amounts stated on each monthly invoice are due and payable within twenty (20) calendar days of the date of the invoice ("Due Date"). Customer agrees to remit payment in immediately available funds by wire transfer (or check, if requested by Supplier) to Supplier to such bank or account or to such location as Supplier may from time to time in writing direct Customer to remit payment. In the event Customer fails to make full payment of undisputed amounts by the Due Date, Customer shall also pay a late fee in the amount of the lesser of (i) one and one-half percent (1-1/2 %) per month or (ii) the maximum lawful monthly rate under applicable state law, of the unpaid balance which amount shall accrue from the Due Date. (d) Supplier may make billing adjustments for Off Net Services for a period of one (1) year after the Due Date of the invoice, or after the date a Service is rendered, whichever is later. Supplier may make billing adjustments for certain third party Services for a period of two (2) years after the Due Date of the invoice or after the date a Service is rendered, whichever is later.
4. **Billing Disputes.** (a) If Customer disputes amounts payable hereunder regarding the Off Net Services, such disputed amounts shall not be due for forty-five (45) calendar days following the Due Date provided that Customer: (i) pays all undisputed charges on or before the Due Date; (ii) presents a written statement of any billing discrepancies to Supplier in reasonable detail together with supporting documentation by the Due Date; and, (iii) negotiates in good faith to resolve any dispute within forty-five (45) calendar days. (b) Disputed charges mutually agreed upon and in favor of Supplier, with any applicable late fee, will be paid within three (3) business days of the resolution. Disputed charges mutually agreed upon and in favor of Customer will be credited to Customer and no late fees shall apply. (c) If the Parties fail to resolve the dispute within such forty-five (45) day period (unless Supplier agrees to extend such period), all disputed amounts and late fees will be due and payable on the forty-fifth (45<sup>th</sup>) calendar day following the Due Date ("Alternate Due Date").
5. **Validation of Credit.** Supplier reserves the right to determine the creditworthiness of Customer through available verification procedures or sources. Customer hereby consents to Supplier obtaining credit information regarding Customer, its owners and affiliates.
6. **Supplier's Right to Assurance.** If Customer suffers a material adverse change in its financial condition, Supplier may request adequate assurance of Customer's performance per applicable law; or if Customer fails to provide such assurance to Supplier within five (5) calendar days of receiving Supplier's request, Supplier shall have the right to decline to accept any Service Order submitted by Customer.
7. **Taxes.** If any sales taxes, value added taxes or other charges or impositions (other than taxes, charges, or impositions based upon Supplier's net income, capital, or net worth) are asserted against Supplier after, or as a result of, Customer's use of Off Net Services by any local, state, national, international, public or quasi-public governmental entity or foreign government or its political subdivision, including without limitation, any tax or charge levied to support the federal Universal Service Fund contemplated by the Telecommunications Act of 1996, or any state or foreign equivalent ("Additional Charges"), Customer agrees to pay any such Additional Charges, and hold Supplier and any applicable third party carriers harmless from any liability or expense associated with such Additional Charges. Notwithstanding the foregoing, if any tax or charge related to the Universal Service Fund or any state or foreign equivalent is asserted against Supplier after, or as a result of, Customer's use of Off Net Services, Customer also agrees to pay to Supplier a one percent (1%) administrative fee equal to 1% of such Universal Service Fund contribution.
8. **Suspension of Service.** (a) If payment in full is not received from Customer on or before the Due Date or Alternate Due Date, as applicable, Supplier shall have the right with three (3) business days notice ("Suspension Notice") to suspend or block all or any portion of all the Off Net Services provided to Customer, to cancel or to place any pending Service Orders on hold immediately, and to decline to accept any new Service Orders or other requests for Service, including Off Net Service. (b) Suspended Services shall be reinstated upon receipt of payment in full including reinstallation charges and/or late fees. (c) Suspension of Services shall not affect Customer's obligation to pay for the Service or relieve Customer's obligations to pay any minimum revenue commitment or other charges or amounts that are part of these Off Net Terms or the Agreement.
9. **Termination of Service.** (a) With respect to voice Off Net Services, Supplier may, without incurring any liability, cancel or suspend such Service, in whole or in part, immediately and without notice if Supplier deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or Off Net Services. (b) Supplier may upon three (3) days' prior written notice, suspend or disconnect any Off Net Services, in whole or in part, if Supplier determines that such Off Net Services violate any law, statute, or ordinance, including the Communications Act of 1934 (as amended), or that the imposition of any statute, or promulgation of any rule, regulation, or order of the Federal Communications Commission or other governing body makes Supplier's performance under these Off Net Terms commercially impracticable, impossible or illegal, or otherwise materially, adversely affects such performance.

**10. Termination of these Off Net Terms for Cause.** Either party may terminate these Off Net Terms if the other party is in default of any material obligation hereunder which has not been cured within twenty-five (25) calendar days following the receipt of notice of the specifics of the default. Termination, any applicable service credits as provided expressly in these Off Net Terms and receipt of any applicable refund, to the extent provided expressly in these Off Net Terms, are Customer's sole remedies in the event of any Supplier default hereunder. Termination of these Off Net Terms for cause does not relieve Customer of any obligations to pay Supplier for charges accrued for Service or applicable cancellation and/or disconnection charges. Except as otherwise set forth in these Off Net Terms, Supplier shall at all times be entitled to all rights available to it under either law or equity.

**11. Early Termination Charge.** If Customer disconnects any Off Net Service after installation, Customer may do so by providing written notification to Supplier seventy (70) days in advance of the effective date of the disconnection. In the event of disconnection, Customer shall pay to Supplier an "Early Termination Charge" in an amount equal to (i) 100% of the monthly charge for each such disconnected Off Net circuit, multiplied by the remaining payments through month 12; (ii) 50% of the monthly charge for each such disconnected Off Net circuit, multiplied by the remaining payments for months 13-24 if applicable; (iii) 25% of the monthly charge for each such disconnected Off Net circuit, multiplied by the remaining payments for months 25-36 if applicable; (iv) and 10% of the monthly charge for each such disconnected Off Net circuit, multiplied by the remaining payments for months 37-60 if applicable. In addition to such Early Termination Charge, Customer shall be liable for any termination liability associated with Local Access or any other third party provided Service. Notwithstanding the foregoing, in the event Customer disconnects any Off Net circuit due to a Supplier default hereunder, Customer shall have no obligation to pay an Early Termination Charge for the terminated Off Net Services. The parties agree that the actual damages in the event of such disconnection would be difficult or impossible to ascertain, and that the disconnection charge in this Section is intended, therefore, to establish liquidated damages and is not intended as a penalty.

**12. Revenue Commitment Termination Charge.** If Customer has made a Revenue Commitment under the Service Order for the Off Net Services, the rates for Off Net Services and associated discounts are based on Customer's agreement to purchase such Service for the entire Term of the Service Order. If Customer terminates the Service Order or the Agreement or breaches the Service Order, the Off Net Terms or the Agreement prior to the end of the Term of the Service Order, Customer shall pay to Supplier a "Revenue Commitment Termination Charge" in an amount equal to (i) Customer's monthly Revenue Commitment multiplied by the number of months left in the Term of the Service Order and (ii) any non-recurring payments not yet paid together with any termination liability associated with local access Service or any other Third Party Facilities or Service. This amount is intended as liquidated damages and not as a penalty.

**13. Limitation of Liability. IN THE EVENT OF ANY BREACH OF THESE OFF NET TERMS, THE APPLICABLE SERVICE ORDER, ANY FAILURE OF THE OFF NET SERVICES WHATSOEVER, THE PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATIONS HEREUNDER, OR ANY ACT OR OMISSION RELATING TO THESE OFF NET TERMS OR THE APPLICABLE SERVICE ORDER, NEITHER PARTY NOR ANY THIRD PARTY CARRIER SHALL BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR ANY OTHER INDIRECT DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, INTERRUPTIONS IN SERVICE OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS, LOST OR DESTROYED APPLICATIONS, CONTENT, DATA PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS OF ANY PARTY, OR LIKE ITEMS, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS, AND EACH PARTY HEREBY RELEASES THE OTHERS THEREFROM. NOTHING HEREIN PROHIBITS SUPPLIER FROM COLLECTING ALL AMOUNTS DUE FOR SERVICES RENDERED UNDER THESE OFF NET TERMS OR THE AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF SUPPLIER TO CUSTOMER HEREUNDER OR UNDER ANY SERVICE ORDER FOR ANY REASON SHALL BE LIMITED IN EACH INSTANCE AS SET FORTH IN SECTION 8.4 OF THE AGREEMENT.**

**14. Exclusive Remedies. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED FOR HEREIN, THE REMEDIES SET FORTH IN THESE OFF NET TERMS WITH RESPECT TO THE OFF NET SERVICES COMPRISE THE EXCLUSIVE REMEDIES AVAILABLE TO EITHER PARTY AT LAW OR IN EQUITY.**

**15. Warranty and Disclaimer of Warranty. NEITHER SUPPLIER NOR ANY THIRD PARTY CARRIER MAKES ANY WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE OFF NET SERVICE, PERFORMANCE UNDER THESE OFF NET TERMS OR AS TO ANY OTHER MATTER, UNLESS EXPRESSLY SET FORTH IN THESE OFF NET TERMS, INCLUDING THE ATTACHED SERVICE SCHEDULES. NEITHER SUPPLIER NOR ANY THIRD PARTY CARRIER MAKES ANY WARRANTY WITH RESPECT TO SWITCHED AND CARRIER VOICE OFF NET SERVICES. WITH THE EXCEPTION OF THE EXPRESS WARRANTIES, IF ANY, SET FORTH IN THE SERVICE SCHEDULES. SUPPLIER AND THE APPLICABLE THIRD PARTY CARRIER EACH DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**16. Compliance with Law.** The provision and use of the Off Net Services shall be in accordance, and comply, with all applicable laws, regulations, and rules, and each party shall obtain all approvals, consents and authorizations necessary to conduct the transactions covered by these Off Net Terms.

**17. Indemnity.** (a) Customer and Supplier shall defend, indemnify and hold harmless the other against and from any and all claims for damage to tangible property or bodily injury, including claims for wrongful death, to the extent that such claim arises out of the negligence or willful misconduct of the respective indemnifying party, its employees, agents, or contractors in connection with these Off Net Terms or the provision of Off Net Services hereunder. (b) Customer will defend, indemnify and hold harmless Supplier, Supplier's Providers, and each of their respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation, all reasonable costs and expenses incurred including all reasonable litigation costs and attorneys' fees (collectively, "Damages") arising out of, resulting from or based upon any complaint, claim, action, proceeding or suit of any third party arising from these Off Net Terms,

including any governmental authority, (a "Claim"), including any Claim based on Customer's violation of any law or any rule or regulation. For purpose of this subsection, "Supplier's Providers" shall mean Supplier and any third party carrier or supplier or any affiliated provider, operator, or maintenance/repair contractor of facilities employed in connection with the provision of Off Net Services. (c) The indemnified party shall promptly notify the indemnifying party in writing of any claims which are subject to the terms of this Section. The indemnified party shall have the right at its own expense to appoint its own counsel who shall be entitled to participate in any settlement negotiations or litigation regarding any matter for which it is entitled to be indemnified hereunder. The indemnifying party shall not agree to any settlement or consent to any decree, order or judgment without obtaining the consent of the indemnified party which consent shall not be unreasonably withheld.

**18. Force Majeure.** (a) If either party's performance of these Off Net Terms or any obligation (other than the obligation to make payments) hereunder is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, power outage, storm or other similar occurrence including rain fade or other atmospheric conditions, any law, order, regulation, direction, action or request of any government, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, acts of terrorism, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, then the party that is unable to perform or meet its obligations due to such causes shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference. (b) The party that is unable to perform or meet its obligations due to such causes shall use commercially reasonable efforts under the circumstances to avoid and remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes cease.

**19. Proprietary Information.** The terms and conditions of these Off Net Terms and all documents referenced herein including invoices are confidential and shall not be disclosed without prior written consent of the other.

**20. Title to Equipment.** These Off Net Terms shall not convey to Customer title of any kind to any of the equipment or transmission facilities used to provide the Off Net Services.

**21. Publicity and References.** Subject to Section 19, Proprietary Information, the parties contemplate and agree that publication of information relating to these Off Net Terms may occur through press releases, articles, interviews, marketing materials, online materials, and/or speeches ("Publicity"). Supplier must approve the content and the timing of any such Publicity prior to its publication, which approval shall not be unreasonably withheld.

**22. Interstate Service Representation.** Unless Supplier specifically offers an intrastate Service, or an information service as defined in 47 U.S.C. Section 153(20) ("Information Service"), as identified in each applicable Service Schedule attached hereto, Supplier requires that more than ten percent (10%) of the transmissions on each circuit shall be interstate transmissions or foreign transmissions as those terms are defined in 47 U.S.C. Sections 153(17) and 153(22). Supplier and its affiliates and its Providers shall not be obligated to make available intrastate Service, e.g., any Service on a circuit with end points within a single state or service on a circuit which originates/terminates at points both of which are situated within a single state unless Customer represents in writing that such Service or circuits shall be used to carry more than ten percent (10%) interstate or foreign telecommunications. If it is determined at any time that such Service or circuit is subject to regulation by a U.S. State regulatory agency, the Service or circuit may be provided by Supplier or its affiliates or Providers pursuant to applicable state laws, regulations and applicable tariffs, or Supplier and its affiliates may discontinue provision of the affected Service or circuit.

**23. Subject to Laws.** These Off Net Terms are subject to, and Customer agrees to comply with, all applicable federal, state and local laws and regulations, rulings, and orders of governmental agencies, including, but not limited to, the Communications Act of 1934, the Telecommunications Act of 1996, the Rules and Regulations of the Federal Communications Commission ("FCC"), state public utility or service commissions ("PSC"), and any applicable tariffs. Customer further agrees to obtain and maintain any and all required certifications, permits, licenses, approvals, and authorizations of the FCC and/or PSC and/or any governmental body, including, but not limited to, regulations applying to feature group termination and Letter of Agencies.

**24. Change-in-Law.** If any federal or state statute or regulation or order by a court of law or regulatory authority directly (a) prohibits performance under these Off Net Terms, (b) makes such performance illegal, impossible or impractical, or (c) effects a change which has a material adverse impact upon either party's performance of its obligations under these Off Net Terms, then the parties will use all reasonable efforts, to either (1) revise or amend such conflicting state statute or regulation or order by a court of law or regulatory authority or (2) revise these Off Net Terms so that (a) performance under these Off Net Terms is no longer prohibited, illegal, impossible or is no longer impacted in a material adverse fashion, and (b) these Off Net Terms are revised in a manner that preserves, to the maximum extent possible, the respective positions of the parties. Each party will provide reasonable and prompt notice to the other party as to any proposed law, regulations or any regulatory proceedings or actions that could affect the rights and obligations of the parties. If the parties are unable to revise these Off Net Terms in accordance with the above, then the party whose performance is rendered prohibited, illegal, impossible, impractical or is impacted in a material adverse manner shall have the right to, at its sole discretion, to cease performance of any such obligations that are so prohibited, impossible, impractical or material and adversely affected upon thirty (30) days' prior written notice (or less if required by law). The parties will continue to perform all such obligations under these Off Net Term that are not so prohibited, impossible, impractical or material and adversely affected; provided if a material part of the rights and obligations under these Off Net Terms are suspended in accordance with the above and the performance of the remaining obligations would not reasonably maintain the respective positions of the parties or would not serve the essential purpose of these Off Net Terms, then either party shall have the right to, at its sole discretion, to terminate these Off Net Terms upon thirty (30) days' prior written notice.

**25. Miscellaneous.** (a) The provision of Off Net Services shall not create a partnership or joint venture between Supplier and Customer. The parties hereto are independent contractors. (b) Customer shall not assign or otherwise transfer its rights or obligations under these Off Net Terms without the prior written consent of Supplier, which shall not be unreasonably withheld. No such assignment or transfer will release Customer from its obligations hereunder, including, but not limited to, payment. Any assignment or transfer of Customer's rights or obligations inconsistent with this paragraph shall entitle Supplier to terminate the Services, Off Net Services, Local Access Services or

Ancillary Services provided hereunder at its option upon five (5) days prior written notice to Customer. In the event of such termination by Supplier, Customer shall not be relieved of its payment obligations hereunder. (c) These Off Net Terms shall be governed by the laws of the State of Oklahoma, U.S. without regard to choice of law principles. Customer hereby consents to the non-exclusive jurisdiction and venue of the federal and state courts having a situs in Tulsa County, Oklahoma, U.S. (d) No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of these Off Net Terms. (e) In the event of any inconsistency between or among a Service Order, a Service Schedule, these Off Net Terms, and any applicable tariff, the following order of precedence shall prevail (from highest priority to lowest): the applicable tariff, if any, these Off Net Terms, a Service Schedule, and a Service Order. (f) Except as otherwise expressly provided herein, the provisions of these Off Net Terms are for the benefit only of the parties hereto, and no third party may seek to enforce or benefit from these provisions. (g) In any action related to these Off Net Terms, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses. (h) If any term or provision of these Off Net Terms shall be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then: (a) both parties shall be relieved of all obligations arising under such provision and these Off Net Terms shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent; and (b) the remainder of these Off Net Terms shall be valid and enforceable. (i) The failure of either party to enforce any provision hereof shall not constitute the permanent waiver of such provision. (j) No termination of these Off Net Terms shall affect the rights or obligations of either party: (a) with respect to any payment for Off Net Services rendered before termination; or (b) pursuant to other provisions of these Off Net Terms that, by their sense and context, are intended to survive termination of these Off Net Terms, including without limitation, indemnification and limitation of liability. (k) These Off Net Terms consists of all the terms and conditions contained herein and in documents incorporated herein specifically by reference. These Off Net Terms constitute the complete and exclusive statement of the understanding between the parties with respect to the Off Net Services and supersede all proposals and prior agreements (oral or written) between the parties relating to the Off Net Services provided hereunder. (l) The covenants and agreements of Customer contained in these Off Net Terms with respect to payment of amounts due, liability and indemnification shall survive any termination of these Off Net Terms and the Agreement.