

**XeComm Corporation**  
**SERVICE TERMS AND CONDITIONS v.1.1**

1. **Price & Payment.** Customer is responsible for and agrees to pay XeComm™ Corporation ('XECOMM') for Customer Won™ Services ('Services') at the rates specified in the Service Agreement, Order Form or on an Addendum to the Service Agreement or Order Form ("Agreement"), or on any other amendment hereto executed by the parties. Services the parties agree to add hereto after the Effective Date shall be added to the Agreement at PIC's list prices in effect at that time unless otherwise agreed by XECOMM. Usage charges including but not limited to Metered Services, Directory Assistance, Above Normal Business Usage, Inbound Toll Free Service, Outbound International Calling, Calling Card Services and One-time Charges shall be billed at the end of the month in which they are incurred. Monthly recurring charges shall be billed in advance, in the month preceding the month to which such charges apply. All charges are due and payable upon Customer's receipt of XECOMM's invoice. Failure by Customer to pay any sum within fifteen (15) days following receipt of invoice may result in XECOMM (a) suspending Services; (b) issuing Customer a five (5) day Service Disconnect Notice; (c) terminating this Agreement pursuant to Section 11 herein. A charge of one and one-half percent (1.5%) of the amount owed shall be added to each full or partial month that payment is not made starting on the thirty-first day after the date of invoice.
2. **Cost Of Collection.** Customer shall be liable to XECOMM for any costs incurred by XECOMM in enforcing any payment or other obligation of the Customer under this Agreement including, without limitation, collection agency costs, reasonable attorney's fees, and court costs, if any.
3. **Guarantees and Advance Payments.** In the event that Customer fails to pay any invoice on or before its due date, if Customer is unable generally to pay its debts when due or XECOMM, in its sole discretion, determines it appropriate, XECOMM may require Customer to pay XECOMM an advance payment in the form of a cashier's or certified check, provide a letter of credit, or provide a satisfactory guaranty. Any advance payments may be applied against Customer's past due amounts.
4. **Maintenance.** XECOMM shall provide Customer notification of feature and function updates to as they become generally available without additional charge to XECOMM's customers. The contents of all updates shall be decided upon by XECOMM in its sole discretion.
5. **Use of Customer Won™ Services.** Customer represents, covenants, and warrants that Customer will use the Services only in compliance with XECOMM's privacy policies as published at the [www. XeComm.com](http://www.XeComm.com) or otherwise furnished to Customer (the "Policy") and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). Customer may not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited e-mail to any third party. Customer hereby agrees to indemnify and hold harmless XECOMM against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in

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connection with any claim or action that arises from an alleged violation of the foregoing. Although XECOMM has no obligation to monitor the content provided by Customer or Customer's use of the Services, XECOMM may do so and may remove any such content or prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

6. **Title To Equipment and Risk of Loss.** XECOMM shall retain title to all equipment, software and associated property residing in XECOMM's facilities used in connection with providing Services to the Customer. Upon expiration or termination of this Agreement for any reason, Customer shall surrender all XECOMM equipment, software and associated property, if any, to XECOMM in the same condition as installed, with the exception of ordinary wear and tear. Customer shall be liable to XECOMM for the cost of repair or replacement of equipment, software and associated property lost, stolen or damaged while in the care of Customer.
7. **Software.** Any software incorporated into or provided for use in or with XECOMM Services (whether initially, as part of maintenance or support or otherwise) is not sold, but rather is licensed solely for Customer's internal use in or with any applicable product strictly in accordance with the documentation and any other use restrictions applicable for that product. Such license (a) is non-exclusive, (b) is non-sub licensable, (C) is subject to the terms and conditions of this Agreement and (iv) does not include the right to (and Customer will not, directly or indirectly) modify, reverse engineer (except to the extent applicable statutory law expressly prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software (except as specifically authorized in documentation provided by XECOMM for purposes of installation, support or maintenance), or to use the software or product for the benefit of any third party. Any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms herein.
8. **Warranties and Disclaimer.** XECOMM represents and warrants that, except for any outside material provided by Customer to XECOMM, the products are either original with XECOMM or have been fully licensed by XECOMM, and that neither the products nor Customer's use of the products as contemplated by this Agreement will infringe or violate any rights of any person or entity, nor shall Customer be required to pay or incur any sums to any person or entity as a result of our ownership, acquisition or use of the products, except as herein provided.
9. **Term.** The term of Agreement shall commence upon the activation of the then current Services by XECOMM as ordered by Customer in the Service Agreement Order Form ("Effective Date") and shall continue thereafter for the initial Term of Service as specified in the aforementioned Service Agreement Order Form. Excluding Month-to-Month Terms of Service, following the expiration of the then

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current Term of Service, this Agreement shall be automatically renewed for successive one (1) year terms (each a Term of Service), unless terminated in a written communication (“Written Notice”) by Customer sent to XECOMM at least sixty (60) days prior to the expiration of the then current Term of Service. Written Notice shall be delivered to XECOMM via Certified U.S. Mail or traceable Overnight Delivery Service. Email, fax or other electronic transmission will not be accepted by XECOMM and shall not constitute delivery of Written Notice to XECOMM. Upon renewal, all pricing, fees, rate classifications and charges related to Services are subject to change by XECOMM upon thirty (30) days notice to Customer.

10. **Termination.** Customer may terminate portions of Services and substitute other Services during the Term of Agreement provided that the total monthly recurring charges(s) for the substituted Services are equal to or higher than the terminated Services. XECOMM may terminate Services in the event Customer: (a) fails to perform any obligation to make payments under the Agreement and such failure continues uncured for a period of five (5) days following Written Notice from XECOMM sent to Customer specifying the nature of such failure; (b) fails to perform any material condition or obligation under the Agreement and such failure continues uncured for a period of thirty (30) days following Written Notice from XECOMM to Customer specifying the nature of such failure; (c) in the event XECOMM determines that the Services are no longer commercially feasible, provided that XECOMM shall provide ninety (90) days Written Notice to Customer prior to such termination. In the event Services are terminated pursuant to Section “10(a)” and/or “10(b)” herein, Customer shall be responsible for: making payments to XECOMM for Services through the end of the then current Term of Service; all unpaid and outstanding amounts due XECOMM.
11. **Effect of Termination.** The termination or expiration of this Agreement shall not relieve Customer of its obligations under this Agreement, or any Service Agreement Order Form, including without limitation, Customer’s obligation to make payments for all unpaid and outstanding amounts due XECOMM that have been accrued as of the date of Termination or expiration of this Agreement.
12. **Indemnification.** (a) Customer shall defend and indemnify XECOMM and its officers, directors, agents and employees from and against all third party claims, liabilities, damages, settlements, attorneys’ fees and expenses resulting from any breach by Customer of its representations, warranties and undertakings hereunder. (b) XECOMM shall defend and indemnify Customer and its officers, directors, agents and employees from and against all third party claims, liabilities, damages, settlements, attorneys’ fees and expenses resulting from any breach by XECOMM of its representations, warranties and undertakings hereunder.
13. **Termination, Survival, and Termination Liability.** Sections 1, 2 and 11 and any XECOMM accrued rights to payment shall survive the termination or expiration of this Agreement. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any

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compensation to the other) arising from or incident to any termination of this Agreement by such party which complies with the terms of the Agreement whether or not such party is aware of any such damage, loss or expenses.

14. **Confidentiality and Intellectual Property.** “Confidential Information” means information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”). Each party agrees that it will not, directly or indirectly, during the Term of Agreement or for two (2) years following termination or expiration of Agreement, disclose in any manner or use or permit others to disclose or use any written or oral Confidential Information. It is understood that the foregoing obligation shall not apply to any part of Confidential Information which: (a) is or becomes generally available to the public (other than by breach of this Agreement); (b) becomes available to the recipient party on a non-confidential basis from a source which is entitled to disclose it to the recipient party; (c) is required by U.S. law or regulation to be disclosed but only to the extent of such required disclosure. The parties acknowledge and agree that any proprietary property or content, including any copyrights, trademarks, service marks, patents or other intellectual property, that has been or will be provided by either party to the other party shall remain the sole and exclusive property of the providing party, and no license or other interest with respect thereto is hereby granted to the other party except as expressly provided herein.
15. **Force Majeure.** XECOMM shall not be responsible for any nonperformance or delay in performance of any of its obligations under this Agreement due to any cause beyond its reasonable control.
16. **Taxes & Fees.** Customer shall pay any taxes and regulatory fees imposed on or based upon the provision or use of the Services.
17. **Limitation Of Liability.** (a) XECOMM SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST INCOME OR LOST REVENUE (WHETHER SUCH DAMAGES WERE FORESEEN OR NOT AT THE TIME THIS AGREEMENT WAS ENTERED INTO) SUSTAINED OR INCURRED IN CONNECTION WITH THE EQUIPMENT AND SERVICES FURNISHED UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT, INCLUDING BOTH THE ACTIVE AND PASSIVE NEGLIGENCE OF XECOMM, OR ANY OTHER THEORY OF LIABILITY. (b) CUSTOMER’S EXECUTION OF THIS AGREEMENT CONSTITUTES A WAIVER OF RECOURSE TO THE VAR FOR ANY LIABILITY CLAIMED UNDER THIS AGREEMENT. (c) The liability of XECOMM for direct damages including, without limitation, injuries to persons or property, arising out of XECOMM’s performance hereunder, including mistakes, interruptions, delays, or defects in transmission during XECOMM’s provision of the Services, shall not exceed an amount equivalent to the proportionate charge to the Customer for the period of time during which such mistake, interruption, delay or

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defect in transmission adversely affects the Services. (d) XECOMM shall not be liable for any defacement of or damage to Customers premises or the equipment of Customer or others resulting from XECOMM's furnishing of the Services on such premises or by the installation or removal of any equipment included in the Services, unless such defacement or damage is the result of negligence of XECOMM's agents or employees, (e) Customer hereby holds XECOMM and its agents and employees harmless from, and agrees to be responsible for, all losses, damages and liabilities resulting from unauthorized use of the Services.

18. **Liquidated Damages.** Customer agrees that the termination charges specified in subsections 10(a) and 10(b) above shall constitute liquidated damages and not a penalty since the precise amount of such damages cannot be determined in advance.
19. **Assignment.** This Agreement is not assignable by Customer without the prior written consent of XECOMM whose consent will not be reasonably withheld. XECOMM may subcontract any or all of the work to be performed by XECOMM under this Agreement but shall retain responsibility for the work subcontracted.
20. **General.** (a) If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term and provision hereof shall be valid and enforced to the fullest extent permitted by law. (b) This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia. (C) XECOMM and Customer each represent that it has the power and authority to enter into this Agreement.