



## IP TRUNKING SERVICE AGREEMENT

### CUSTOMER COMPANY/ENTITY NAME & NOTICE INFORMATION:

COMPANY: \_\_\_\_\_

Attn: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Fax Number: \_\_\_\_\_

This IP Trunking Service Agreement (including any attachments) is entered into between the entity named above ("Customer") and COMTEL TELCOM ASSETS LP d/b/a EXCEL TELECOMMUNICATIONS ("EXCEL"), (collectively "the Parties" and each singularly as a "Party"), and consists of this IP Trunking Service Agreement, the current rates offered by EXCEL, any state or federal tariffs filed by EXCEL, and Customer's completed and accepted Service Order Form and Credit Application (the "Agreement"). The Agreement is not binding on EXCEL unless and until EXCEL accepts Customer's Service Order form, Credit Application and other applications associated with ordering services.

**SERVICES AND CUSTOMER AUTHORIZATION:** The Agreement authorizes EXCEL to provide and select local, long distance and/or other services for the Customer, as noted on the Service Order Form. Customer understands and agrees that EXCEL utilizes various underlying carriers to provide network services for its Customers and reserves the right, without consent of Customer, to change underlying carriers at any time during the term of the Agreement. In order for Customer to begin to receive service under the Agreement, the Customer will cooperate in good faith with EXCEL as may be reasonably necessary for EXCEL to provide Service under the Agreement. EXCEL will use its commercially reasonable efforts to commence service, but in no event will EXCEL nor any of its Affiliates incur any liability whatsoever to Customer for any inability to commence services by the anticipated proposed start of service date for up to thirty (30) days delay, after which Customer may terminate this Agreement without penalty or fee. Upon written notice to EXCEL not less than five (5) business days prior to the anticipated start of service date, Customer may delay the start of service date for up to thirty (30) days, without payment of any penalty or fee.

**TERM OF THE AGREEMENT:** This Agreement is effective on the date of execution of this Agreement by EXCEL (the "Effective Date") and continues in effect for the period set forth in the Service Order Form (the "Initial Term"). Upon completion of any Initial Term or Renewal Term commitment as provided for in the Service Order Form, any cancellation request by Customer or EXCEL must be provided in writing thirty (30) calendar days prior to cancellation. Upon expiration of the Initial Term, if Customer is not then in default under this Agreement, the term of this Agreement may renew automatically on a month-to-month basis (the "Renewal Term"), until either Party terminates this Agreement by providing thirty (30) days prior written notice of termination to the other Party.

**RATES AND CHARGES:** By enrolling in, using or paying for EXCEL's services, Customer agrees to the rates, charges and terms and conditions in the Agreement, including any state or federal tariffs filed by EXCEL. EXCEL may revise the rates, monthly recurring and other charges under the Agreement at any time upon written notice to Customer. In no event shall a rate for a category in any given year increase more than ten percent (10%) over the prior year's rate charged to Customer in that same category unless such increase is caused by an external factor beyond EXCEL's control, in which case any increase above ten percent (10%) shall be proportional to EXCEL's increased expense. Unless a later date is stated in the notice, domestic rates are effective within thirty (30) days, international rates are effective within seven (7) days, other rate increases are effective within thirty (30) days of the date of EXCEL's notice. Notification of any such change may be in the form of a bill insert or message within an invoice, by postcard or letter or by phone message, or by postings on our website or via email. During the minimum usage period (if any, as noted on the Service Order Form), if Customer's net charges (after any available discounts under the Agreement) for the Services are less than the minimum usage, Customer shall pay the shortfall. Governmental assessments and surcharges, non-recurring charges, operator assistance charges and local loop and third party and regulatory pass-through charges are not included when calculating the minimum usage commitment shortfall charge.

**EQUIPMENT RENTAL AND SECURITY INTEREST:** Customer understands and agrees that any Customer Premises Equipment ("CPE") [which may consist of an Integrated Access Device ("IAD")], installed by EXCEL or its contractors on the premises of the Customer in order to provide the IP Trunking services belongs exclusively to EXCEL and is provided to Customer on a rental basis only. Neither Customer, its creditors, nor any third-party has any property interest in the CPE; title and interest in the CPE remains exclusively with EXCEL at all times. Customer agrees to maintain the premises using good business judgment in a manner that protects the CPE from excessive wear and tear and overheating, and keeps the CPE functional. Upon termination of the Agreement, all CPE must be returned in good working order, or Customer must pay the full replacement cost. Rental fees for the CPE may be waived by EXCEL, in writing, in exchange for certain contract duration commitments.

**TOLLFREE DIRECTORY ASSISTANCE:** Upon Customer request and to the extent available to EXCEL, Toll-Free Directory Assistance (TFDA) listing is available for those Toll Free numbers provided to Customer by EXCEL. Since TFDA is provided either via EXCEL's underlying network provider or via a third-party, provisioning is subject to the applicable terms and conditions and/or policies and procedures of such other parties. Customer understands that Toll Free numbers listed with TFDA is only available

either on a call-in basis or online, and not via a directory publication. Charges for the per-call or per online look-up and the monthly listing fee for the TFDA service are set forth in the EXCEL Service Order Form or EXCEL tariffs. These charges are subject to change without notice to the Customer.

**BILLING AND PAYMENT AND SECURITY DEPOSIT:** EXCEL agrees to take commercially reasonable efforts to invoice Customer via a mutually agreeable transmission method on or about the fifth (5<sup>th</sup>) business day after the close of each Billing Cycle for the Services and for any other sums due EXCEL under this Agreement. Customer shall pay each invoice upon receipt in immediately available U.S. funds. Any invoice not properly disputed as provided for herein, and not paid by the due date, will bear late payment fees at the lower of one and one-half percent (1-1/2%) per month or the highest rate legally permissible, until paid. An invoice is past due if it is not paid within thirty (30) calendar days after the date of the invoice. Further, EXCEL may suspend the Services, apply cash deposit or exercise letter of credit if any invoice not properly disputed is not paid by its due date and this failure remains uncorrected for five (5) business days after receipt of written notice that the payment is past due. Notwithstanding anything in this Agreement to the contrary, no payment due under this Agreement (with the exception of amounts properly disputed) is subject to reduction, set-off or adjustment of any nature by Customer. Customer shall pay EXCEL for the Services furnished to Customer at the rates, fees and charges set forth in the Agreement. Customer is liable for all charges for the Services, including, without limitation, charges associated with activating, or deactivating, Customer's traffic on EXCEL's network, any fraudulent usage charges, short duration calls or use of the Services by End Users (whether or not Customer collects from its End Users). The responsibility for payment is not altered by virtue of any use, misuse, or abuse of Customer's service, systems, equipment or facilities undertaken or caused by third parties, including without limitation Customer's employees. Customer represents that the address provided to EXCEL for billing purposes is either Customer's residential or business street address.

Customer must have and maintain credit satisfactory to EXCEL to receive and continue to receive services. Customer agrees that EXCEL may request credit information from third parties and authorizes the release of such information as part of this application. Customer further authorizes EXCEL to investigate Customer's credit history at any time and to share credit information about Customer with credit reporting agencies. Upon the initial Service Order EXCEL will review the Customer's credit and EXCEL may assign a security amount and will notify the Customer by fax or e-mail. Upon notification of the Security Amount the Customer **shall provide EXCEL with security amount in the form of 1) a cash deposit, or 2) an irrevocable, stand-by letter of credit from a financial institution and in a format acceptable to EXCEL.** EXCEL is not obligated to provide or continue to provide any Services, until EXCEL receives the required security.

**Customer will be notified of any initial credit limit per month after EXCEL reviews the Customer's credit Application.** If Customer's charges for the Services are projected to exceed (based on EXCEL's measurement of Customer's daily usage run rate), or do exceed, its credit limit, EXCEL may require additional security of its choice from Customer in an amount equal to Customer's highest invoice over the prior six (6) month period (or such lesser period if this Agreement has not been in effect for six (6) months) as a condition to continuing to provide the Services. In addition, if Customer is delinquent in payment of an invoice and EXCEL does not have security from Customer in an amount equal to Customer's highest invoice over the prior six (6) month period (or such lesser period if this Agreement has not been in effect for six (6) months), EXCEL may require additional security of its choice from Customer in this amount. Customer must provide this additional security to EXCEL within five (5) business days.

EXCEL reserves the right at any time, upon notice to Customer, to withdraw credit approval for Customer, limit the amount of credit EXCEL may make available to Customer, change the length of Billing Cycle and/or Due Date and/or change the security requirements applicable to Customer from time to time hereunder in EXCEL's sole discretion. EXCEL shall be entitled to suspend or terminate, in whole or in part, any or all Service hereunder if EXCEL has withdrawn its credit approval of Customer, Customer has exceeded or, in EXCEL's sole determination, will soon exceed its credit limit, or Customer has failed to comply with the then applicable security requirements hereunder. Additionally, if at any time EXCEL determines that, in its sole and absolute discretion, payment for services may not be made when due, EXCEL may suspend services. Notwithstanding anything to the contrary herein, Customer hereby authorizes EXCEL, directly or indirectly, (i) to collect, obtain, or exchange any information reasonably desired by EXCEL as to the creditworthiness of Customer from any source, including Customer's lenders, financial institutions, and trade suppliers, and (ii) to represent to each possible source of information on the creditworthiness of Customer that EXCEL is authorized to request, and such source is authorized to provide, such information to EXCEL.

**PAYMENTS VIA CREDIT CARD:** If Customer's account with EXCEL is set up to be paid by Customer's credit card, Customer understands and agrees that the credit card account will be automatically charged for the full amount of each bill when rendered. Customer agrees to maintain valid and current credit card information on file with EXCEL at all times. EXCEL is not responsible for any charges or expenses (for example, for overdrawn accounts or exceeding credit card limits) resulting from charges billed by EXCEL. EXCEL reserves the rights to charge credit card handling fees of 3% of the bill or any higher industry standard rate as may become applicable.

**BILLING DISPUTES:** Customer shall have the affirmative obligation of providing written notice of any dispute with an invoice within thirty (30) days from the invoice date (which notice shall include sufficient detail for EXCEL to investigate the dispute). Customer may withhold payment only on amounts so disputed within such thirty (30) day period and may not withhold payment of amounts disputed after this thirty (30) day period. If Customer does not report a dispute with respect to an invoice within the thirty (30) day period, Customer is deemed to have waived its dispute rights for that invoice and to have agreed to pay that invoice. If Customer has provided sufficient detail for investigation of the dispute, EXCEL will use reasonable good faith efforts to resolve and communicate its resolution of the dispute within thirty (30) days of its receipt of the dispute notice. If the dispute is resolved in EXCEL's favor any amounts to be paid by Customer is subject to the late payment charges under the Agreement retroactive to the due date of the disputed invoice. Notwithstanding anything in this Agreement to the contrary, Customer shall not withhold any disputed amounts while its EXCEL account is delinquent, and claims of fraudulent usage shall not constitute a valid basis for a dispute. If dispute is resolved in Customer's favor, EXCEL will apply a credit for the amount disputed on the Customer's invoice.

**TERMINATION RIGHTS AND MATERIAL DEFAULTS:** In the event of a breach of any material term or condition of this Agreement by Customer (other than a payment default addressed elsewhere herein), EXCEL may terminate this Agreement upon thirty (30) calendar days written notice, unless the Customer cures the breach during the thirty (30) day period. EXCEL may, upon written notice, immediately terminate this Agreement and/or suspend Service for Customer's failure to pay (i) an invoice and this failure remains uncorrected for fifteen (15) business days after receipt of written notice that a payment is past due; or (ii) any security or additional security within the time-frame required under this Agreement (in either case, sometimes referred to as a "Payment Default").

At any time after providing Customer with fifteen (15) days notice and opportunity to cure if possible, EXCEL may limit, suspend or discontinue service, cancel an application for service, or require Customer to deposit funds as security without incurring any liability for any of the following reasons: (a) usage by Customer beyond the credit limit without the written consent of EXCEL; (b) if Customer provides false or misleading Customer credit, billing or other information; (c) the filing of any voluntary or involuntary Petition in the bankruptcy court which names Customer as the debtor or upon the dissolution or cessation of Customer's business operations; (d) if Customer terminates this Agreement prior to the end of the initial term or any renewal thereafter, or has service discontinued for failure to pay; (e) if EXCEL is ordered or requested to terminate service by a governmental entity (f) if EXCEL, in its sole and absolute discretion, detects fraudulent or illegal use of its services, or EXCEL, in its sole and absolute discretion, believes that Customer has materially violated the Agreement.

Customer agrees that a breach of any other agreement it may have with EXCEL or an EXCEL Affiliate shall be deemed to be a material breach of this Agreement. Upon any material default hereunder or upon any payment default not cured after expiration of the applicable notice and cure periods, EXCEL may, in its sole discretion, do any or all of the following: (a) Draw on any letter of credit, security deposit or other assurance of payment provided by Customer; (b) Terminate this Agreement and Service without liability to EXCEL; (c) Collect from Customer an amount equal to the Minimum Charge for the remaining portion of the Initial Term or any Renewal Term of this Agreement; and (d) Pursue any other legal or equitable remedy or relief as may be appropriate.

In the event of expiration or termination of this Agreement, the Parties shall use commercially reasonable efforts to work cooperatively to minimize any potential interruptions of Service and/or other disruptions or inconveniences to Customer and its End Users. Customer may request that EXCEL continue to provide Service for reasonable period of time to transition Service, but in no event shall such period exceed three (3) months. EXCEL may agree to continue performing the terminated Service(s) during the transition period mutually agreed upon by the Parties in accordance with the terms of this Agreement provided that Customer shall pay EXCEL for the terminated Service(s) performed during the agreed upon transition period at agreed upon rates. EXCEL reserves the right to require payment in advance for services during the transition period.

**TAXES AND ASSESSMENTS:** Customer agrees to pay to EXCEL as a result of Services provided to Customer, any and all local exchange carrier assessed charges (other than access charges otherwise included under the pricing in this Agreement) and governmental and regulatory taxes (except for taxes on the net income of EXCEL), fees, charges, surcharges, impositions or assessments including, but not limited to (a) all sales, use, excise, gross receipts, privilege or other similar taxes, (b) those mandated or imposed on EXCEL by regulatory agencies or others, plus any reasonable administrative charge EXCEL may establish for its customers for administering these pass-through charges, (c) applicable ancillary fees and charges as may be added from time to time by EXCEL upon written notice to Customer. Additionally, EXCEL may impose a reasonable recovery fee in order to recover costs associating with regulatory compliance. Such a fee is not a tax. If Customer is exempt from payment of any Taxes, Customer may provide EXCEL with an original Tax Exempt Document. Tax exemption will only apply to Taxes incurred after the date EXCEL receives the Tax Exempt Document. Customer will not receive credit for any Taxes already paid by EXCEL prior to processing a valid Tax Exempt Document. If Customer provides EXCEL with a valid original Tax Exempt Document, Customer is responsible for the collection and remittance of all federal, state and local sales, use, excise or utility taxes and governmental assessments, surcharges or fees pertaining to Customer's use of the Services, as may be applicable.

**COMPLIANCE WITH LAWS:** Customer represents and warrants that (i) it shall be responsible for all End Users serviced under this Agreement. Customer shall, during the term of the Agreement, comply with all local, state and federal laws and regulations applicable to this Agreement and its business and that of its End Users, including, without limitation, data protection, privacy, do-not-call restrictions, CAN-SPAM, unsolicited faxes, pornography, and acceptable use policies of EXCEL and underlying network providers and third parties as applicable. **Customer acknowledges and agrees to be bound by EXCEL's Acceptable Use Policy and Privacy Policy, including any amendments.**

**VALID ANI:** Where Customer's equipment allows for manipulation or changing of the outpulsed Automatic Number Identification (ANI) or Calling Party Number (CPN), Customer is required to pass a valid originating ANI or CPN that is owned by the Customer. For purposes of this paragraph, "valid" ANI or CPN shall mean ANI or CPN in an industry standard format that correctly identifies the call as originating from the geographic area where the Customer is physically located and other applicable industry standard requirements.

**WARRANTIES:** THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEL DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES, OR OTHER HARMFUL COMPONENTS. THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THIS AGREEMENT. SUCH WARRANTIES ARE IN LIEU OF, AND EXCEL EXPRESSLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY OR CONTRACTUAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, COMPLETENESS, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

**LIMITATION OF LIABILITY:** THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY AND LIMITATIONS ON WARRANTIES SET FORTH IN THE AGREEMENT ARE INTEGRAL TO THE AMOUNT OF FEES LEVIED IN CONNECTION WITH THIS AGREEMENT, AND THAT, WERE EXCEL TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER. IN NO EVENT WILL EXCEL OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE DIRECTORS, PARTNERS, OFFICERS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES AND AGENTS BE LIABLE TO CUSTOMER OR ANY OF ITS AFFILIATES, EMPLOYEES, OTHER PERSONS OR ENTITIES, OR TO ANY THIRD PARTY FOR: (1) ANY LOSS OF PROFIT OR REVENUE, OR FOR ANY GENERAL, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES, WHETHER INCURRED OR SUFFERED AS A RESULT OF THE UNAVAILABILITY OF FACILITIES, PERFORMANCE, NON-PERFORMANCE, TERMINATION, BREACH, OR OTHER ACTION OR INACTION UNDER THE AGREEMENT, FAILURE OF 911 OR OTHER FEATURES OR FOR ANY OTHER REASON, EVEN IF CUSTOMER ADVISES EXCEL OF THE POSSIBILITY OF LOSS OR DAMAGE, (2) FOR ANY OUTAGE OR INTERRUPTION, OR INCORRECT OR DEFECTIVE TRANSMISSIONS, OR ANY DIRECT OR INDIRECT CONSEQUENCES THEREOF, OR (3) FOR ANY ACT OR OMISSION OF ANY OTHER COMPANY OR COMPANIES FURNISHING ANY PORTION OF THE SERVICES TO CUSTOMER HEREUNDER OR OTHERWISE, INCLUDING BUT NOT LIMITED TO CONTRACTORS INVOLVED IN ON PREMISES INSTALLATIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, UNDER NO CIRCUMSTANCES WILL EXCEL OR ANY OF ITS AFFILIATES HAVE ANY LIABILITY TO CUSTOMER FOR INTERRUPTIONS AFFECTING THE SERVICES FURNISHED UNDER THIS AGREEMENT THAT ARE ATTRIBUTABLE TO CUSTOMER'S INTERCONNECTION FACILITIES, OR TO CUSTOMER'S EQUIPMENT FAILURES, OR TO CUSTOMER'S BREACH OF THIS AGREEMENT, OR FOR ANY ACT OR OMISSION OF ANOTHER TELECOMMUNICATIONS COMPANY OR OTHER VENDOR PROVIDING ANY SERVICE OR PRODUCT THAT IMPACTS THE SERVICES PROVIDED UNDER THIS AGREEMENT.

CUSTOMER SHALL BE LIABLE TO EXCEL FOR 1) ANY LOSS OR THEFT OR DAMAGE TO ANY OF EXCEL'S EQUIPMENT LOCATED ON CUSTOMER'S PREMISES, HOWEVER CAUSED, AND 2) FOR ANY FRAUD ARISING FROM CUSTOMER'S USAGE. CUSTOMER IS LIABLE FOR ALL COMPLETED CALLS MADE UTILIZING CUSTOMER'S EQUIPMENT, WHETHER AUTHORIZED OR UNAUTHORIZED, AND REGARDLESS OF SUITABILITY FOR CUSTOMER'S APPLICATIONS, AND/OR ANY FAILURE OF OTHER NETWORK ELEMENTS OR SERVICES WHICH MAY IMPACT CUSTOMER'S ABILITY TO OPERATE. CUSTOMER SHALL NOT HOLD EXCEL LIABLE FOR ANY FRAUDULENT CALLS THAT MAY OCCUR ON CUSTOMER'S SWITCHED, DEDICATED OR CALLING CARD SERVICES, INCLUDING ANY FRAUD RELATED TO UNAUTHORIZED ACCESS OF CUSTOMER'S TELECOMMUNICATIONS EQUIPMENT. EXCEL OR ITS UNDERLYING CARRIERS RESERVE THE RIGHT TO DISCONTINUE FURNISHING SERVICES, CANCEL THE CUSTOMER'S ACCOUNT, AND/OR BLOCK THE CUSTOMER'S ACCESS TO THE UNDERLYING CARRIER NETWORK, WITHOUT INCURRING ANY LIABILITY, IMMEDIATELY AND WITHOUT NOTICE, IF EXCEL DEEMS THAT SUCH ACTION IS NECESSARY TO PREVENT OR TO PROTECT AGAINST FRAUD OR TO OTHERWISE PROTECT THE COMPANY'S PERSONNEL, AGENTS, FACILITIES OR SERVICES. REGARDLESS OF WHETHER OR NOT EXCEL BLOCKS SERVICE, CUSTOMER SHALL STILL BE FULLY LIABLE FOR ALL FRAUDULENT CALLS MADE.

**INDEMNIFICATION:** Customer shall defend, indemnify and hold harmless EXCEL and its Affiliates and their respective directors, partners, officers, shareholders, employees, representatives and agents from any and all loss, claims, taxes, penalties, interest, expenses, damages, lawsuits, actions, demands or other liabilities whatsoever (including without limitation, reasonable attorneys' fees and court costs) (a) whether suffered, made, instituted or asserted by Customer or by any other party or person, for any personal injury to or death of, any person or persons, and for and loss, damage, defacement or destruction of the premises of Customer or any other property, whether owned by Customer or others, caused or claimed to be caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of terminal(s) or other equipment that is not the direct result of EXCEL's gross negligence or willful misconduct, (b) whether relating to or arising out of any breach of any covenant or agreement of Customer contained in this Agreement, or any misrepresentation or breach of any of the representations and warranties of Customer contained in this Agreement, (c) whether asserted by parties other than Customer who have use of or access to the Services through Customer, including, but not limited to, Customer's End Users, and (d) in particular, those relating to libel, slander, infringement of copyright, trademark, trade name or trade secret arising out of the contents of Customer's transmissions using EXCEL's service and equipment. Customer shall be liable to EXCEL for reimbursement of any legal fees and all other associated costs incurred to enforce the terms of this Agreement, including those fees and costs incurred for the collection of the delinquent accounts of Customer.

**EXCLUSIVE REMEDY:** EXCEL is acting only as a reseller of services and equipment provided by third parties. EXCEL's sole liability under the Agreement for interruption of service or failure of equipment shall be limited to that amount of EXCEL's actual fixed charges incurred by Customer during the period of such interruption NOTWITHSTANDING THE FOREGOING, CUSTOMER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT UPON ANY BREACH OF THE WARRANTIES DESCRIBED HEREIN OR OTHER TERMS OF THIS AGREEMENT BY EXCEL, OR BY ITS SUBCONTRACTORS, SHALL BE TERMINATION OF THIS AGREEMENT.

**OPTIONAL MONITORING:** EXCEL has no obligation to monitor the services, but may do so and disclose information regarding the use of the services for any reason if EXCEL, in its sole and absolute discretion, believes that it is reasonable to do so, including, without limitation, to: satisfy laws, regulations, or governmental or legal requests; operate the services properly; or protect itself and its customers. EXCEL may immediately remove Customer's material or information from EXCEL's servers, in whole or in part, where EXCEL, in its sole and absolute discretion, determines to possibly infringe another's property rights or to possibly violate this Agreement or other policies or laws.

**CONFIDENTIALITY:** Each Party agrees that: (i) all information furnished by the other Party that is labeled "confidential;" (ii) all information with respect to which the recipient is notified in writing that the information is being transmitted on a confidential basis; (iii) the provisions of this Agreement; (iv) any information whatsoever with respect to the Services or other confidential information related to the EXCEL Intellectual Property; and (v) the course of dealing between EXCEL and Customer under this Agreement, is

the confidential and proprietary information or trade secrets (collectively, "Proprietary Information") of the disclosing Party and will remain the sole and exclusive property of the disclosing Party. Except as provided for in this Agreement, each Party shall: (i) not make any disclosure of the Proprietary Information to anyone other than its employees and agents who have a need to know in connection with the performance of the such Party's obligations under this Agreement; (ii) take measures to protect the confidentiality of the other Party's Proprietary Information that, in the aggregate, are no less protective than those measures it uses to protect the confidentiality of its own proprietary information, and in no event shall less than due care be used; (iii) advise those to whom disclosure of Proprietary Information is made of the confidential nature of the Proprietary Information and of the prohibitions contained herein; (iv) not duplicate such Proprietary Information, except as reasonably necessary to perform the Party's duties under this Agreement; (v) not remove or destroy any proprietary or copyright notice appearing on the Proprietary Information; and (vi) return all Proprietary Information (including all copies thereof in any media) to the disclosing Party at the disclosing Party's request and in any event on the termination or expiration of this Agreement. If the receiving Party is requested or legally compelled by a governmental agency by a court order or as otherwise required by law, or in any legal or arbitration proceeding relating to this Agreement; to disclose any of the Proprietary Information of the disclosing Party, the receiving Party agrees that it will provide the disclosing Party with prompt written notice of these requests so that the disclosing Party has the opportunity to pursue its legal and equitable remedies regarding potential disclosure.

**NO PUBLICITY:** Customer agrees not to issue any publicity materials, press releases or other public statements that refer to, or describe any aspect of, the Agreement or any Services, without the prior written approval of EXCEL.

**INTELLECTUAL PROPERTY RIGHTS:** EXCEL shall retain all right, title, and interest in the Services and Intellectual Property rights associated therewith. Customer shall not use or distribute any publicity materials, press releases or other public statements that refer to, or describe any aspect of such EXCEL Intellectual Property for any purpose without EXCEL's prior written consent, which consent may be denied or given in EXCEL's sole discretion. Unless approved by EXCEL in writing, Customer shall not copy, modify, or decompile any EXCEL Intellectual Property; make derivative works thereof; or transfer, assign, or sublicense the EXCEL Intellectual Property to any third party. Any benefits occurring from use of such Services and Intellectual Property by and to Customer shall automatically vest in EXCEL. On or following any termination or expiration of this Agreement, Customer shall not have any continuing right to use any EXCEL Intellectual Property thereof; shall immediately cease all use; and shall not retain any copies thereof, if any, in any media format.

**NOTICES:** All notices or other communications under the Agreement, except as provided for elsewhere herein, must be in writing and will be deemed to have been duly delivered or given when: (i) delivered by hand (with written confirmation of receipt) before 5:00 p.m. EST on a business day (or otherwise on the next succeeding business day); (ii) sent by facsimile before 5:00 p.m. EST on a business day (or otherwise on the next succeeding business day) and a written confirmation of the transmission is received by the sender; or (iii) the next business day after being deposited for delivery with a nationally recognized overnight delivery service, such as Federal Express, UPS, DHL, and addressed or sent, as the case may be, to the appropriate addresses or facsimile numbers set forth below (or to such other addresses or facsimile numbers as a Party may designate by notice to the other Party). In the case of Customer, to the attention of the Party listed at the top of this document. **In the case of EXCEL to: EXCEL Contracts Department, Comtel Telcom Assets LP d/b/a EXCEL Telecommunications, 433 East Las Colinas Blvd., Suite 1300, Irving, Texas 75039, Facsimile No.: (972) 910-1490, and a copy to: EXCEL Legal Department, at the same address and fax number as set forth above.**

**FORCE MAJEURE:** Other than with respect to failure to make payments due or provide any required security under this Agreement, neither Party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by, or due to any cause beyond its reasonable control, including, but not limited to, fire, earthquake, flood, water, the elements, acts of God, third party labor disputes, utility curtailments, cable cuts, power failures, explosions, civil disturbances, vandalism, governmental actions, shortages of equipment or supplies, or unavailability of transportation.

**NO AUTHORITY TO BIND THE OTHER:** Nothing in this Agreement, or in the course of dealing between the Parties pursuant to this Agreement, shall be deemed to create between the Parties (including their respective directors, officers, employees and agents) a partnership, joint venture, association, employment relationship or any other relationship. Neither Party shall have the authority to commit or legally bind the other Party in any manner whatsoever, including, but not limited to, the acceptance or making of any agreement, representation or warranty.

**NO AGENTS:** No agents, representatives or employees of other carriers shall be deemed to be agents or employees of EXCEL.

**WAIVERS AND AMENDMENTS:** No waiver of any term or condition of this Agreement will be enforceable unless it is in writing and signed by the Party against whom it is sought to be charged. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver of this right, power or remedy, unless otherwise provided in this Agreement. The waiver by either Party of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not operate or be construed as a waiver of any subsequent breach of this covenant, condition or Agreement. No waiver of any rights under this Agreement, nor any modifications or amendment of this Agreement will be effective or enforceable, unless in writing and signed by both Parties.

**ASSIGNMENT:** EXCEL may assign or transfer in whole or in part its rights or duties under the Agreement without prior notice to or consent from Customer and upon such assignment or transfer EXCEL shall be released from all liability hereunder. Customer may assign the Agreement only with EXCEL's prior written consent, where such consent shall not be unreasonably withheld. Any assignment or transfer without the required consent is void. Subject to this restriction, the Agreement shall inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective parties.

**INTEGRATION:** The Agreement, including the rates charged by EXCEL and the application for service and order form, represents the entire agreement between the Parties, and supersedes and merges all prior representations, understandings, promises, statements, representations, warranties, indemnities, inducements or agreements to the making of the Agreement that may have been relied upon by either Party in any way related to the subject matter of the Agreement, whether written or oral.

**MODIFICATIONS:** EXCEL may change this Agreement at any time with fifteen (15) days notice to customer.

**REGULATORY MODIFICATIONS:** If the FCC, a state Public Utility or Service Commission, a court of competent jurisdiction or other governmental entity issues a rule, regulation, law or order that has the effect of canceling, changing or superseding any material term or provision of this Agreement (collectively, "Regulatory Requirement"), then this Agreement will be modified in such a way as the Parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with the Regulatory Requirement. If the Parties cannot agree to modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then upon written notice the Party adversely impacted by the Regulatory Requirement may, to the extent practicable, terminate that portion of this Agreement impacted by the Regulatory Requirement, or the entire Agreement.

**RELOCATION OF SERVICES.** If Customer desires to transfer Service for any location to a different location, Customer must request that move in writing to Excel at least 6 weeks in advance. If Customer's new location is within Excel's service area, then Customer and Excel must enter into a new contract with a term of no less than the Initial Term. The new contract may include additional or different installation, recurring and other charges and fees, including without limitation non-recurring fees for circuit and the premise installation. If Customer's new location is not within Excel's service area, or Services end at the prior service location and a new agreement for the new location is not entered into by the parties, then Customer will be deemed to have terminated this Agreement and early termination charges will apply.

**CUMULATIVE RIGHTS AND REMEDIES:** Except as may otherwise be provided in this Agreement, the rights and remedies set forth in this Agreement are cumulative and the assertion by a Party of any right or the obtaining of any remedy under this Agreement shall not preclude this Party from asserting or obtaining any other right or remedy, at law or in equity, under this Agreement.

**DISPUTE RESOLUTION; ARBITRATION:** In the event that either Party believes that the other Party is in breach or default of this Agreement or has not otherwise satisfied its obligations under this Agreement, such Party shall provide written notice to the other Party stating with particularity the nature of the breach, default or failure to satisfy the obligations by such Party (a "Dispute Notice"). Within fifteen (15) days after receipt of Dispute Notice, the Parties shall meet to discuss and attempt to resolve the basis for the Dispute Notice. In the event that the Parties are unable to resolve the basis for the Dispute Notice within fifteen (15) days from such meeting, each Party shall be entitled to commence arbitration under Section 20.2 below or to any other remedy available under the Agreement, at law or in equity. Nothing in this Section 20 will prevent (i) EXCEL from exercising any or all of its rights under Section 6.4 upon any Payment Default; or (ii) either Party from resorting to judicial proceedings (a) good faith efforts to resolve the dispute under this Section 20 have been unsuccessful; or (b) interim relief from a court is necessary to prevent material irreparable injury to a Party or to third parties, including, without limitation, any breach of Sections 11 or 12.

If the Parties are unable to resolve a Dispute Notice within the time set forth in Section 20.1 above, the dispute shall be finally settled by arbitration conducted in Dallas, Texas. Any arbitration will be in accordance with the then-current Commercial Rules of Arbitration of the American Arbitration Association. The Parties shall appoint one arbitrator experienced in conducting arbitrations in the U.S telecommunications industry, whose selection may be facilitated by AAA. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq., not state law, and Texas law, without regard to choice of law principles, will otherwise govern and apply to any and all claims. The arbitrator shall also determine matters of arbitrability. The costs of the arbitration, including the arbitrator's fees, shall be shared equally by the Parties; provided, however, that each Party shall bear the cost of preparing and presenting its own claims and/or defenses (including its own attorneys' fees and expert fees). The arbitrator has no authority to award any indirect, incidental, special, reliance, exemplary, punitive, or consequential damages, including damages for lost profits. At the conclusion of the arbitration, the arbitrator in his/her written decision shall require that the non-prevailing Party pay all fees, costs and expenses (including reasonable attorneys' fees) of the prevailing Party. If no Party has prevailed in whole or in significant part on its claim(s), the arbitrator shall be free to allocate among the Parties the fees, costs and expenses (including reasonable attorneys' fees) of the Parties and all arbitration-related expenses. Except for misapplication of law, the arbitrator's decision shall be final, binding, and any court having jurisdiction may enter judgment upon the award. If either Party fails to comply with the dispute resolution process set forth herein (including without limitation, non-payment of an arbitration award) and a Party is required to enforce such compliance in court or elsewhere, then the non-complying Party shall reimburse all of the costs and expenses incurred by the Party seeking such enforcement (including reasonable attorneys' fees).

**GOVERNING LAW AND INTERPRETATION:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to any choice of law principles that could result in the application of the laws of any other jurisdiction. In the event of a conflict in any term of any documents that govern the provision of service hereunder, the following order of precedence will apply in descending order of control: tariff, this Service Agreement, the current rates offered by EXCEL and Customer's completed and accepted application for service and order form; provided however, if the express terms of any application for service and order form conflicts with the terms of this Service Agreement, then the conflicting terms of such application for service and order form shall govern.

**JURISDICTION, VENUE, JURY WAIVER AND CLASS ACTION WAIVER:** In the event of a dispute that is not subject to arbitration, Customer hereby irrevocably submits to the personal jurisdiction of any state or federal court sitting in the State of Texas, County of Dallas, in any suit, action or proceeding arising out of or relating to this Agreement. Customer hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which such party may raise now, or hereafter have, to the laying of

the venue of any such suit, action or proceeding brought in such court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. CUSTOMER HEREBY EXPRESSLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT AGAINST CUSTOMER RELATING TO THE AGREEMENT. The Parties may only bring claims against each other in an individual capacity and not as a class representative or a class member in a class or representative action.

**SURVIVAL OF PROVISIONS:** All sections necessary to interpret this Agreement shall survive the termination or expiration of this Agreement.

**SEVERABILITY:** If any term or condition of this Agreement is held to be invalid or unenforceable by a government body of competent jurisdiction, the holding shall not affect any other term or condition of this Agreement, and the Agreement shall be construed as if it did not contain the invalid or unenforceable term or condition.

**CONSTRUCTION:** This Agreement is the joint work product of both Parties. Accordingly, in the event of ambiguity, no presumption will be imposed against any Party by reason of document preparation.

**ATTORNEYS FEES:** If suit is brought or an attorney is retained by either Party to enforce the terms of this Agreement or to collect any moneys due under this Agreement or to collect money damages for breach of this Agreement, then the prevailing Party will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, witness fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

**THIRD PARTIES:** The provisions of this Agreement and the rights and obligations created under this Agreement are intended for the sole benefit of EXCEL and Customer, and do not create any right, claim or benefit on the part of any person not a Party to this Agreement, including End Users.

**UNENFORCEABILITY OF PROVISIONS:** The illegality or unenforceability of any provision of this Agreement does not affect the legality or enforceability of any other provision or portion. If any provision or portion of this Agreement is deemed illegal or unenforceable for any reason, there will be deemed to be made such minimum change in this provision or portion as is necessary to make it valid and enforceable as so modified.

**AUTHORITY:** Each individual executing below on behalf of a Party hereby represents and warrants to the other Party that this individual is duly authorized to so execute, and to deliver, this Agreement. By its signature below, each Party acknowledges and agrees that sufficient allowance has been made for review of this Agreement by respective counsel and that each Party has been advised by its legal counsel as to its legal rights, duties and obligations under this Agreement.

**COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.

**IN THE WITNESS WHEREOF,** the Parties have executed this Agreement on the dates noted by EXCEL's signature and Customer's initials, to be effective as of the Effective Date designated by EXCEL.

**Customer Name**

**By: Comtel Telecom Assets LP d/b/a Excel Telecommunications**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_