



# Alluvion Communications

## Internet/Voice Terms of Service

These **Internet/Voice Terms of Service**, along with the Alluvion Business Service Agreement and each order submitted thereunder and the Alluvion Terms and Conditions shall constitute the Agreement ("Agreement") between Gila Local Exchange Carrier, Inc. d/b/a Alluvion Communications ("Alluvion") and Customer. By signing the Business Services Agreement, Customer agrees to these Internet/Voice Terms of Service, which may be modified by Alluvion from time to time. By continuing to use the Service after receiving notice of changes to the Agreement, Customer is agreeing to accept those changes. The current version of this Internet/Voice Terms of Service is available on [www.alluvion.net/resources](http://www.alluvion.net/resources)

### **SECTION 1: INTERNET SERVICES**

During the term of this Agreement, Alluvion shall provide the high-speed Internet service ("Internet Service") indicated by Customer and to locations described in the Business Services Agreement ("Premises"). Customer support for Internet Services is available 24 hours a day, seven days a week, by calling 844-453-5129 Option 1;

### **SECTION 2: VOICE SERVICES**

Alluvion shall provide the local exchange, intrastate and interstate voice services ("Voice Service") as indicated by Customer and to locations described in the Business Services Agreement.

### **SECTION 3: ENGINEERING REVIEW**

The activation of Internet Service and Voice Service, as applicable, are subject to Alluvion's engineering review for distribution availability by copper or fiber plant as well as review of other external factors and may require additional fees. In the event Alluvion determines that Internet Service is not available to the Premises of Customer, this Agreement shall be void, and Customer shall be entitled to a refund of all prepaid charges in accordance with Alluvion's refund policies.

### **SECTION 4: INSTALLATION & MAINTENANCE OF ALLUVION EQUIPMENT**

Customer hereby grants to Alluvion (subject to any necessary governmental or third-party approvals) the right to install all necessary equipment for receiving Internet Service. Customer, at no cost to Alluvion, shall secure throughout the term of service from building owners, managers, government authorities or any other parties any easements, leases, licenses, right of entry agreements or any other agreements necessary to allow Alluvion to use existing pathways into and in each building. Alluvion-owned equipment provided to Customer hereunder shall be maintained by Alluvion in good operating condition. Such maintenance obligation is contingent upon Customer notifying Alluvion, in a timely manner, when repair or maintenance is necessary. Except for Alluvion's maintenance obligations as set forth herein, Customer shall indemnify Alluvion and hold it harmless from and against any and all losses, claims and expenses relating to the equipment provided hereunder to Customer, including without limitation, losses caused by accident, fire, theft or misuse of equipment. Customer shall provide Alluvion with reasonable access to the Premises during normal hours for purposes of performing required maintenance. Alluvion shall retain ownership of all equipment provided hereunder, including all data transmission equipment, drop and fiber optic material required to provide Service to the business.

Customer shall not, directly or indirectly, sell, mortgage, pledge, or otherwise dispose or encumber any Alluvion-owned equipment provided to Customer, nor shall it change the location of, tamper with, damage, mishandle or alter in any manner such equipment. Customer also shall not relocate Alluvion-owned equipment within its Premises. In addition, if Customer decides to move Premises, Customer shall notify Alluvion of its move. Alluvion will relocate the Alluvion-owned equipment for Customer within Customer's Premises or to another Premises; Customer acknowledges that it may incur additional charges for such relocation. Customer shall, upon the expiration or earlier termination of this Agreement, promptly return to Alluvion all of such equipment in good condition (or pay the full

replacement value therefore). If services are no longer provided to the Customer's Premises, Customer shall provide Alluvion with reasonable access to such Premises for purpose of removing any Alluvion-owned equipment. Alluvion shall have no obligation to install, operate or maintain Customer provided facilities or equipment.

## **SECTION 5: USE OF INTERNET SERVICE AND EQUIPMENT**

Customer's use of the Internet Service and equipment is subject to adherence to all relevant laws and Alluvion's acceptable use policy. (<https://www.alluvion.net/acceptable-use>). Customer is responsible for all use of the Service, whether by Customer or someone using the Service with or without Customer's permission. Customer shall not use the Internet Service or equipment to directly or indirectly:

- a) invade another person's privacy, unlawfully use, possess, post, transmit or disseminate obscene, profane or pornographic material; post, transmit, distribute or disseminate content that is unlawful, threatening, abusive, libelous, slanderous, defamatory, materially false, inaccurate or misleading or otherwise offensive or objectionable; unlawfully promote or incite hatred; or post, transmit or disseminate objectionable information, including, without limitation, any information constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any municipal, provincial, federal or international law, order, rule, regulation for policy or any network accessed using the Service;
- b) access any computer, software, data, or any confidential, copyright protected or patent protected material of any other person or entity, without the knowledge and consent of such person or entity, nor use any tools designed to facilitate such access;
- c) upload, post, publish, deface, modify, transmit, reproduce, or distribute in any way, information, software or other material obtained through Alluvion that is protected by copyright, or other proprietary right, or related derivative works, without obtaining permission of the copyright owner or right holder; or otherwise violate the rights of any person or entity, including the misuse, misappropriation or other violation of any intellectual property of any person or entity;
- d) alter, modify or tamper with the equipment or any feature of the Internet Service, including, without limitation, attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, sublicense, distribute or use the equipment for any purpose other than as expressly permitted; restrict, inhibit or otherwise interfere with the ability of any other person to use or enjoy the Internet Service or the Internet generally or create an unusually large burden on Alluvion's network, including, without limitation: posting or transmitting any information or software that contains a virus, lock, key, bomb, worm, Trojan horse or other harmful or debilitating feature, distributing mass or unsolicited messages, chain letters, surveys, third party advertising or promotional materials, commercial solicitations or mass chat room or bulletin board posts, or otherwise generating levels of traffic sufficient to impede others' ability to send or retrieve information;
- e) interfere with computer networking, cable or telecommunications services to or from any Internet user, host or network, including but not limited to denial of service attacks, overloading a service, improper seizure and abuse of operator privileges ("hacking") or attempting to "crash" a host; or
- f) falsely assume the identity of any other individual or entity, including, without limitation an employee or agent of Alluvion, for any purpose, including, without limitation, accessing or attempting to access any account for which Customer is not an authorized user.
- g) resell or share any portion of this Internet Service to a third party.

In addition to termination rights set out elsewhere in this Agreement and otherwise available at law, Alluvion may suspend service or terminate this Agreement if Customer engages in one or more of the above prohibited activities. Alluvion reserves the right to charge Customer for any direct or indirect costs incurred by Alluvion or its affiliates in connection with Customer's breach of any provision of this Agreement, including costs incurred to enforce Customer's compliance with the Agreement.

## **SECTION 6: CONTENT AND PURCHASES**

Alluvion does not assume any responsibility for or exercise any control over the content accessible through the Internet Service. Customer accesses and uses all content obtained through the Internet Service at Customer's own risk, and Alluvion will not be liable for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to Customer's access to or use of such content. Customer understands and agrees it is Customer's responsibility to impose any restrictions determined appropriate to limit access to objectionable material and agrees to supervise usage of the Services. Alluvion shall not be responsible for any of Customer's purchases or charges on

the Internet.

#### **SECTION 8: CUSTOMER'S RESPONSIBILITY FOR SECURITY**

Customer shall be solely responsible for taking the necessary precautions to protect itself and its equipment, files and data against any risks inherent in the use of Internet Services. Customer acknowledges that any manipulation of passwords, accounts, or number forwarding injects an additional possibility of outside party intrusion and Customer undertakes such action at its own risk and will hold Alluvion harmless from all problems, costs, expenses and damages that result. Alluvion will not be liable for any claims, losses, actions, damages, suits or proceedings resulting from, arising out of or otherwise relating to Customer's failure to take appropriate security measures.

#### **SECTION 9: RIGHT TO MONITOR AND DISCLOSE CONTENT**

Alluvion has no obligation to monitor content provided through the Internet Service. However, Customer agrees that Alluvion has the right to monitor content electronically to disclose any information as necessary to: (a) ensure compliance with the law or comply with legal process served on Alluvion, (b) protect and defend the rights or property of Alluvion, its Internet Service or the users of the Internet Service, whether or not required to do so by law, or (c) protect the personal safety of users of Alluvion's Internet Service or the public.

#### **SECTION 10: CUSTOMER PRIVACY**

Alluvion is committed to protecting the privacy of Customer's personal information. Accepting this Agreement means that Customer also agrees to Alluvion's Privacy Policy regarding the collection, use and disclosure of personal information which is available at ([https://firebasestorage.googleapis.com/v0/b/alluvion-prod.appspot.com/o/docs%2FAlluvion%20Privacy%20Policy%20July%202022\\_VTKLaw.pdf?alt=media&token=5f93b888-d3ac-4454-97fa-318c76bd8e45](https://firebasestorage.googleapis.com/v0/b/alluvion-prod.appspot.com/o/docs%2FAlluvion%20Privacy%20Policy%20July%202022_VTKLaw.pdf?alt=media&token=5f93b888-d3ac-4454-97fa-318c76bd8e45)). Customer acknowledges that he or she has read and accepted the terms and conditions of the Alluvion Privacy Policy, which may be updated from time to time.

#### **SECTION 11: ASSIGNMENT**

Customer shall not assign its rights or delegate its duties under this Agreement without the prior written consent of Alluvion, which consent shall not be unreasonably withheld. Any assignment of this Agreement by Customer without Alluvion's written consent shall be void and shall, at the Alluvion's option, constitute a breach hereof by Customer. In the event Customer is a business entity and ceases to do business at the Premises, Customer shall return to Alluvion all Alluvion-owned equipment installed at the Premises; such cessation shall not, however, reduce Customer's payment obligations hereunder unless Alluvion otherwise agrees in writing. This Agreement shall be fully assignable by Alluvion. Subject to the foregoing, this Agreement shall be binding upon and shall insure to benefit of the parties and their respective successors, representatives, and assigns.

#### **SECTION 12: TERMINATION BY ALLUVION**

If Customer fails to perform any of its obligations hereunder, does not cure such breach within thirty (30) days after written notice thereof from Alluvion, or if Customer becomes insolvent or bankrupt, Alluvion, in addition to all other rights it may have under law or its Agreement, shall have the right (a) to declare all amounts to be paid by Customer during the remaining term hereof immediately due and payable, (b) to cease providing services to Customer, and (c) immediately to enter the Premises and take possession of all Alluvion-owned equipment without liability to Customer therefore and without relieving Customer of its obligations under this Agreement. Customer shall reimburse Alluvion for all costs and expenses, including reasonable attorney's fees and court costs, incurred in connection with Alluvion's exercise of its rights under this Agreement.

Alluvion may, in its sole discretion, immediately and without notice terminate this Agreement in the event Customer uses the Service for an unlawful or harmful purpose or Alluvion is unable to provide service due to any law, rule, regulation, Force Majeure event, or judgment of any court or government agency. If requested by law enforcement, a subpoena, or a court order, Alluvion will provide the requested information including Customer's identity. Customer hereby consents to Alluvion forwarding any such communications and information to these authorities.

#### **SECTION 13: TERMINATION BY CUSTOMER**

If Alluvion fails to perform any of its obligations hereunder, does not cure such breach within thirty (30) days after written notice thereof from Customer, or if Alluvion becomes insolvent or bankrupt, Customer, in addition to all other rights it may have under law or its Agreement, shall have the right to terminate this Agreement without penalty and

will only be responsible for any fees it incurs prior to cessation of service. If Customer exercises its termination right, Alluvion shall remove all Alluvion-owned equipment without cost or fee to Customer. Should Customer engage in early termination of the Agreement but without the justification of an Alluvion breach, Customer will be required to pay an early termination penalty consisting of 100% of the monthly fees for the remaining period of the term.

#### **SECTION 14: INTERNET SERVICE, VOICE SERVICE AND EQUIPMENT ARE PROVIDED “AS IS” AND “AS AVAILABLE”**

- a) ALLUVION’S INTERNET SERVICE, VOICE SERVICE AND EQUIPMENT ARE PROVIDED “AS IS”, “AS AVAILABLE” WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. ALLUVION DOES NOT WARRANT THAT CUSTOMER’S USE OF THE INTERNET SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, BUG- FREE OR VIRUS-FREE. IN ADDITION, ALLUVION DOES NOT WARRANT THAT ANY DATA OR FILES SENT BY OR TO CUSTOMER WILL BE TRANSMITTED IN A SECURE OR UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. IN THE EVENT THAT CUSTOMER’S BUSINESS REQUIRES CONTINUOUS AND UNINTERRUPTED SERVICE, CUSTOMER MAY WISH TO OBTAIN A SECONDARY SERVICE FROM AN ALTERNATE PROVIDER. ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED ARE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY EXCLUDED.
- b) Alluvion’s liability for mistakes, errors, omissions, interruptions, delays, outages, or defects in transmission or switching of any Service (individually or collectively), excluding any Instance caused by force majeure events or Customer actions, omission or equipment, shall be limited solely to a credit of 1/30th of the Monthly Recurring Charge, for the affected portion of the Service, for one or more instances of at least four (4) hours in duration in any 24-hour period that is not coincident with any other instance, provided that the Instance is reported by Customer within 24 hours.

#### **SECTION 15: FRAUDULENT USE OF LONG DISTANCE OR TOLL SERVICES**

Customer is responsible for all charges attributable to Customer incurred by the Service including but not limited to authorized or unauthorized charges placed by or through Customer’s equipment or software via any remote access features, or transferring capability or call forwarding, even when such calls are placed fraudulently. In the case of usage-based Services, Customer is responsible for all usage charges even if incurred as the result of fraudulent or unauthorized use of Service.

#### **SECTION 16: CALL MONITORING**

Customer consents that Voice over Internet-Protocol calls may be captured and monitored for troubleshooting purposes. A review of call-captures and recordings will be done only by authorized Alluvion technical staff and only for the purposes of identifying VoIP problems.

#### **SECTION 17: SCHEDULED MAINTENANCE**

Scheduled maintenance of the Alluvion network will not normally result in service interruption or outage. However, in the event scheduled maintenance should require a Service interruption or outage, Alluvion will exercise commercially reasonable efforts to (i) provide Customer with seven (7) days prior written notice of such scheduled maintenance, (ii) work with Customer in good faith to attempt to minimize any disruption in Customer’s services that may be caused by such scheduled maintenance, and (iii) to perform such scheduled maintenance during the non-peak hours of 11:00 p.m. until 6:00 a.m. MST. Emergency maintenance is excluded from notifications and scheduling described above in this section.