

Terms of Service

By using and/or accessing the Big Bend Telephone ("Company") Site, you are agreeing to comply with and be bound by the following Terms and Conditions of Service (the "Agreement"). The Agreement governs your use of the websites, content, software, equipment and services offered by Big Bend Telephone. Please review the following terms of this Agreement carefully. If you do not agree to this Agreement in its entirety, you are not authorized to use this Site in any manner or form.

1. **Acceptance of Agreement.** You agree to the terms and conditions outlined in this Agreement.. This Agreement, together with the Site Privacy Policy, constitute the entire and only agreement between you and the company and supersede all prior or contemporaneous agreements, representations, warranties and/or understandings. We may amend this Agreement from time to time in our sole discretion, without specific notice to you. The latest Agreement will be posted on the Site, and you should review this Agreement prior to using the Site. By your continued use of the Site, you hereby agree to all the terms and conditions contained within the Agreement effective at that time. Therefore, you should regularly check this page for updates and/or changes.
2. **Requirements.** The Site is available only to individuals who can enter into legally binding contracts under applicable law. The Site is not intended for use by individuals under eighteen (18) years of age. If you are under eighteen (18) years of age and/or not a citizen of the United States, you do not have permission to use and/or access the Site.
3. **Fees and Charges.** You agree to pay all charges and fees associated with the use of the services offered by Big Bend Telephone, which charges may include, without limitation, monthly service fees, charges for the use of the company's equipment, installation charges, charges for service calls and other charges. The company shall have the right to change the amount of fees and charges from time to time at its discretion and upon reasonable advance notice. Monthly service, equipment and other fees shall be payable monthly in advance. Installation and other charges will be billed according to our then current billing policies.

Your Big Bend Telephone invoice may also contain charges for other services provided by us or our subsidiaries or affiliates. If we receive partial payment of any such invoices, we will apply such payment in the amounts and proportions to the outstanding charges as we determine. Our acceptance of any partial payment by you does not mean that we waive our rights to collect the full balance owed to us.

4. **Taxes.** You are responsible for, and shall pay, any applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the service. Such amounts are in addition to payment for the service. If you are exempt from payment of such taxes, you shall provide Big Bend Telephone with an original certificate that satisfies the applicable legal requirement attesting to tax-exempt status. Tax exemption will only apply from and after the date the company receives such certificate.
5. **Termination/Discontinuance of Service.** Big Bend Telephone reserves the right to suspend or discontinue providing its services generally, or to terminate your service, at any time in its sole discretion. If the company discontinues providing its services generally, or terminates your service in its discretion without a stated reason, you will only be responsible for charges accrued through

the date of termination, including a pro-rated portion of the final month's charges. If your service is terminated for any stated reason, including without limitation violation of your Agreement, including these Terms and Conditions, or because of any improper use of the service (such as, but not limited to, your attempts to disrupt or misuse the service or your acts or omissions that violate any acceptable use policy of the company or of a third party provider to which the company is subject), you will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, disconnect fees, and equipment charges as set forth herein these Terms and Conditions, all of which immediately become due and payable. Other fees may also apply.

6. Disconnect Fees. In addition, labor charges and/or service order charges may be incurred if any on-premises or central office work is performed to restore any of the services offered by Big Bend Telephone where such services are disconnected for non-payment, as defined below:

- A. The customer will incur labor and/or service charges if Big Bend Telephone performs on-premise or central office work to restore any of the services offered by the company due to customer moving or changing their location.

- B. The customer will incur labor and/or service charges if Big Bend Telephone performs on-premise or central office work to restore any of the Service due to disconnection as a result of non-payment.

- C. The customer will incur labor and/or services charges if a Big Bend Telephone technician is required to come out on a trouble call and the customer does not have the inside wire maintenance plan and if the trouble is not found in the company's equipment.

7. Terms/Early Termination for Term Commitment Services. Where Big Bend Telephone may offer Services on a term commitment basis ("Term Commitment"), the customer may choose voluntarily. Services may be offered on a twelve (12) month or twenty-four (24) month basis.

Twelve (12) Month Service Term

Customers that purchase a twelve month Term Commitment will be required to pay the full first month's charge and an installation fee in advance of service activation. In addition, such customers will receive a partial waiver of the modem retail purchase price, and will be responsible for paying an amount towards the purchase of the modem. Partial waiver of the modem price with the twelve month Term Commitment, however, is void upon early termination and customer must pay the balance of the full retail value of the modem.

Twenty (24) Month Service Term

Customers purchasing the twenty-four month Term Commitment will be required to pay half of the first month's charge and an installation fee in advance of activation. Customers purchasing the twenty-four month Term Commitment will receive a full waiver of the modem purchase requirement. Full waiver of the modem price with the twenty-four month Term Commitment, however, is void upon early termination and customer must pay the balance of the full retail value of the modem.

Early Termination of the Service Term

In the event that you terminate your Service prior to expiration of the term, you may be subject to an early termination fee ("Early Termination Fee"). In addition to any applicable Early Termination Fees, you will be required to pay applicable equipment charges. Other charges may also apply. Customers may migrate between Services without early termination penalties or additional charges, however, your Term Commitment will be renewed.

Once your Term Commitment has expired, Big Bend Telephone may give you the option to enter into a new agreement for a new Term Commitment subject to the terms and conditions of the Term Commitment and Service in effect at that time. Term Commitment subscribers who move to

a new location may sign up for a new Term Commitment at the new location of the service, where available. Your existing Term Commitment cannot be carried over to a new service location.

If you terminate a Service prior to the end of a calendar month, you will be responsible for the full month's charges, as well as any other applicable fees, including without limitation unbilled charges, disconnect fees, equipment charges and Early Termination Fees, all of which immediately become due and payable. Expiration of the term or termination of the service does not excuse the Customer from paying all unpaid, accrued charges due in relation to the Agreement. Failure to pay the full price in any calendar month is grounds for automatic termination of the service, and applicable Early Termination Fees, equipment charges, and other fees and penalties may apply.

8. **Technical Support.** Big Bend's Internet Help Desk is available 24 hours a day via telephone at (800) 520-0092 or via email at helpdesk@bigbend.net. Due to the wide range of hardware and software configurations and compatibility, it may not be possible for Big Bend Telephone to solve all technical support issues for your current set of products. While the company will use its best efforts to provide support, in certain circumstances, it may be necessary to refer you to the manufacturer of your hardware or software vendor for technical support of their products.
9. **Account Password and Security.** Upon registration, you will receive a username, password, and other account information. You and members of your household or business are the only authorized users of your Big Bend Telephone account and all such users must comply with this Agreement. You must keep your password confidential so that no one else may access the Services through your account. You must notify Big Bend Telephone immediately upon discovering any unauthorized use of your account.

Unless you purchase a Static IP address, you will be allocated a Dynamic IP address. Big Bend Telephone technical support may be limited to Big Bend-provided services, software and/or unmodified hardware. If your email or webspace exceeds storage limits, you may be required to reduce the size or purchase additional space. Usage and webspace exceeding the allotted amount of bandwidth may be billed for excess traffic. Email, webspace, and bandwidth limits are posted at www.bigbend.net. These limits may also be obtained by calling (800) 520-0092. The company reserves the right to change limits at any time upon thirty (30) days prior notice.

10. **Additional Terms for Personal Web Space Hosting.** In addition to the applicable terms above, the following terms apply specifically to Big Bend Telephone's Personal Web Space Hosting where different from Sections 1-14. Personal Web Space Hosting is a general hosting service intended for personal use. With this service, Big Bend Telephone assigns your URL or web space domain to you. In order to access and use Big Bend's Personal Web Space Hosting, you must subscribe to Big Bend Telecom's Internet Access Service. Big Bend Telephone also offers virtual domain hosting services for personal, business, or commercial use for an additional monthly fee. Virtual domain hosting services are detailed in a separate Terms of Service agreement for that service.
11. **Prohibited Uses.** You agree to use the services only for lawful purposes. This means that you agree not to use them for transmitting or receiving any communication or material of any kind when in Big Bend Telephone's sole judgment the transmission, receipt or possession of such communication or material (i) would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law or (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law.

Big Bend Telephone reserves the right to terminate your service immediately and without advance notice if the company, in its sole discretion, believes that you have violated the above restrictions, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately

become due and payable and may at the company's discretion be immediately charged to your credit card. You are liable for any and all use of the service by yourself and by any person making use of the service provided to you, and agree to indemnify and hold harmless the company against any and all liability for any such use. If the company in its sole discretion believes that you have violated the above restrictions, the company may forward the objectionable material, as well as your communications with the company and your personally identifiable information to the appropriate authorities for investigation and prosecution and you hereby consent to such forwarding.

12. License Grant. As a user of this Site, you are granted a non-exclusive, non-transferable, revocable and limited license to access and use the Site and associated Site content in accordance with this Agreement. We may terminate this license at any time for any reason. You may use the Site on one computer for your own personal, non-commercial use. No part of the Site may be reproduced in any form or incorporated into any information retrieval system, electronic or mechanical. You may not use, copy, emulate, clone, rent, lease, sell, modify, decompile, disassemble, reverse engineer or transfer the Site, Site content or any portion thereof. We reserves any rights not explicitly granted in this Agreement. You may not use any device, software or routine to interfere or attempt to interfere with the proper working of the Site. You may not take any action that imposes an unreasonable or disproportionately large load on the sites infrastructure. Your right to use the Site is not transferable.
13. Proprietary Rights. The content, organization, graphics, design, compilation, magnetic translation, digital conversion, software, services and other matters related to the Site are protected under applicable copyrights, trademarks and other proprietary (including, but not limited to, intellectual property) rights. The copying, redistribution or publication by you of any part of the Site is strictly prohibited. You do not acquire ownership rights to any content, document, software, services or other materials viewed at or through the Site. The posting of information or material at the Site does not constitute a waiver of any right in such information and/or materials.
14. Editing, Deleting and Modification. We reserve the right in our sole discretion to edit and/or delete any documents, information or other content appearing on the Site.
15. This agreement is governed by the laws of the State of Texas.
16. Disclaimer of Damages. IN NO EVENT SHALL BIG BEND TELEPHONE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR PROFITS. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT BIG BEND TELEPHONE WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.
17. Indemnification. Customer agrees to defend, indemnify, and hold harmless Big Bend Telephone, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees) by, or on behalf of, Customer or any third party or user of Customer's

Service, relating to this Agreement, or the services being provided by the company. This paragraph shall survive termination of this Agreement.

18. No Warranties on Service. BIG BEND TELEPHONE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF ANY OF THE SERVICES FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT ANY OF THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, THE COMPANY DOES NOT WARRANT THAT ANY OF BIG BEND TELEPHONE'S SERVICES WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER BIG BEND TELEPHONE NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR ANY COMPANY SERVICE WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO BIG BEND TELEPHONE'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF THE COMPANY'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY THE COMPANY OR THE COMPANY'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.
19. Service Provider Affiliate Websites. The Site provides links to Service Provider Affiliate and other third party Internet websites and/or resources. Because this site has no control over such websites and/or resources, you hereby acknowledge and agree that this site is not responsible for the availability of such websites and/or resources. Furthermore, this site does not endorse, and is not responsible or liable for, any terms and conditions, privacy policies, content, advertising, services, products and/or other materials at or available from such Service Provider Affiliate and/or other third party websites or resources, or for any damages and/or losses arising therefrom.
20. Limitation of Liability. Big Bend Telephone shall not be liable for any delay or failure to provide the service, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:
 - 1.) act or omission of an underlying carrier, service provider, vendor or other third party;
 - 2.) equipment, network or facility failure;
 - 3.) equipment, network or facility upgrade or modification;
 - 4.) force majeure events such as (but not limited to) acts of god; strikes; fire; war; riot; government actions;
 - 5.) equipment, network or facility shortage;
 - 6.) equipment or facility relocation;
 - 7.) service, equipment, network or facility failure caused by the loss of power to Customer;
 - 8) outage of Customer's ISP or broadband service provider;
 - 9) act or omission of Customer or any person using the Big Bend Telephone 's service(s) provided to Customer; or
 - 10) any other cause that is beyond Big Bend Telephone's control, including without limitation a failure of or defect in any device, the failure of an incoming or outgoing communication, the inability of communications to be connected or completed, or degradation of voice quality. Big

Bend Telephone's aggregate liability for (i) any failure or mistake; (ii) any claim with respect to the company's performance or nonperformance hereunder or (iii) any company act or omission in connection with the subject matter hereof shall in no event exceed service charges with respect to the affected time period.

21. **Legal Warning.** Any attempt by any individual, whether or not an customer, to damage, destroy, tamper with, vandalize and/or otherwise interfere with the operation of this Site, is a violation of criminal and civil law and this site will diligently pursue any and all remedies in this regard against any offending individual or entity to the fullest extent permissible at law and in equity.
22. **Miscellaneous.** This Agreement shall be treated as executed and performed in the State of Texas and shall be governed by and construed in accordance with the laws of the State of Texas (without regard to its conflict of law principles). Should a dispute arise concerning the terms and conditions of this Agreement or the breach of same by either party hereto, the parties agree to submit their dispute for resolution by arbitration according to item 23 below. Should any part of this Agreement be held invalid or unenforceable, that portion shall be construed consistent with applicable law and the remaining portions shall remain in full force and effect. This Agreement is personal between you and this site and governs your use of the Site and/or any service, superseding any and all prior and/or contemporaneous agreements between you and this site. To the extent that anything in or associated with the Site and/or any service is in conflict or inconsistent with this Agreement, this Agreement shall take precedence. Our failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision. The parties do not intend that any agency or partnership relationship be created through operation of this Agreement.
23. **AUTHORIZATION BY OBTAINING, OR ATTEMPTING TO OBTAIN, SERVICES THROUGH USE OF THE THIS SITE, YOU REPRESENT AND WARRANT THAT YOU ARE AT LEAST EIGHTEEN (18) YEARS OF AGE.**
24. **No Third Party Beneficiaries.** No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.
25. **Content.** You are liable for any and all liability that may arise out of the content transmitted by or to you or Users using the services. You shall assure that your or Users' use of the services and content will at all times comply with all applicable laws, regulations and written and electronic instructions for use. Big Bend Telephone reserves the right to terminate or suspend affected services, and/or remove your or Users' content from the services, if the company determines that such use or content does not conform with the requirements set forth in this Agreement or interferes with the company's ability to provide services to you or others or receives notice from anyone that your or Users' use or Content may violate any laws or regulations. Big Bend Telephone's actions or inaction under this paragraph shall not constitute review or approval of your or Users' use or content. You will indemnify and hold the company harmless against any and all liability arising from the content transmitted by or to you or to Users using the services. For purposes of this paragraph, the term "User" means any person, whether authorized or unauthorized, using the service provided to you.
26. **Governing Law / Resolution of Disputes - Mandatory Arbitration.** Any dispute or claim between you, the Customer, and Big Bend Telephone arising out of or relating to the service provided in connection with these General Terms and Conditions shall be resolved by arbitration ("Mandatory Arbitration"), with the Terms and Policies of the individual services being applicable. The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. The parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the

award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. CUSTOMER ACKNOWLEDGES THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL.

Governing Law / Resolution of Disputes - Governing Law. The Agreement and the relationship between you and Big Bend Telephone shall be governed by the laws of the State of Texas without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with the Mandatory Arbitration provision herein, you and Big Bend Telephone agree to submit to the personal and exclusive jurisdiction of the courts located within the state of Texas and waive any objection as to venue or inconvenient forum. The failure of the company to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

27. Severability. If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.
28. Privacy. Big Bend Telephone utilizes, in whole or in part, the public Internet and third party networks to transmit communications. Big Bend Telephone is not liable for any lack of privacy which may be experienced with regard to the service. Please refer to our Privacy Policy applicable to you at www.bigbend.net for additional information.