

## tw telecom STANDARD TERMS AND CONDITIONS

**This Agreement** is by and between **tw telecom holdings inc.**, a Delaware corporation, by and through its wholly owned subsidiaries that are certified to provide the services being ordered hereunder, (collectively "TWTC" or "the Company") and Customer, and is effective upon execution both by Customer and TWTC ("Effective Date"). Customer and TWTC may be referred to individually as a "Party" or collectively as the "Parties". TWTC will remain responsible for the performance of its subsidiaries under this Agreement, which own and operate the telecommunications facilities.

**1. Service Orders:** Customer may submit service orders to TWTC to purchase telecommunication and related services under this Agreement ("Service Orders"). The Service Orders describe the telecommunication and related services that are available for purchase ("Services"). When fully executed by both Parties, the Service Orders and these Standard Terms and Conditions form the final written agreement between the Parties ("Agreement"). The Agreement can only be amended or modified in a written document that is signed by both Parties. All Services are offered subject to availability, and TWTC has the right not to accept a Service Order submitted by Customer. If a Service Order has been accepted by TWTC, TWTC will provide Services for the term agreed to in such Service Order and renewal periods ("Service Term").

**2. Term:** The term ("Term") of this Agreement commences on the Effective Date. The Term will automatically renew for successive one year periods unless terminated by either Party upon written notice given at least thirty days prior to expiration of the then existing Term. Upon expiration of a Service Term for a particular Service, the Service Term will automatically renew for successive one year terms unless terminated by either Party upon written notice delivered in accordance with Section 20 below at least thirty days prior to expiration of the then existing Service Term. When the Term of this Agreement expires, existing Services continue in effect for the remainder of their respective Service Terms and will continue to be governed by this Agreement.

**3. Cancellation, Modification or Expedition of Orders:** "Cancellation", "Modification" and "Expedite Charges" referenced hereunder are posted to the TWTC Website ([www.twtelecom.com](http://www.twtelecom.com)) and are subject to modification by TWTC effective upon posting to the TWTC Website.

(a) Cancellation. Customer may cancel a Service Order(s) if the request is received in writing by TWTC prior to the planned installation date, and

TWTC shall have the right to assess a Cancellation Charge (a Service Order can only be cancelled one time; the execution of a new Service Order restarts the cancellation process). If the request to cancel is received after installation has begun, Customer must pay full termination liability as set forth in Section 14 below.

(b) Modification. Customer may request in writing the modification of any Service Order(s). Such request shall result in a Modification Charge. If TWTC receives a written modification request for delay of installation less than 3 days prior to the planned installation date, Customer must pay, in addition to the Modification Charge, the monthly recurring charge ("MRC") applicable to the delayed Service for the shorter of one billing month or the period from the original due date to the requested installation date. TWTC reserves the right to limit the number of requests to delay the planned installation date.

(c) Expedite. Customer may request an expedited installation date. If TWTC accepts the expedited installation date, Customer must pay an Expedite Charge.

(d) Third Party Charges. In addition to the charges set forth in (a), (b) and (c) above, TWTC may bill Customer for any third party charges it incurs in order to complete Customer's request to cancel, modify, or expedite the Service Order(s).

#### **4. TWTC Network, Access and Interconnection:**

(a) Responsibilities. TWTC will own and control the telecommunications equipment, cable and facilities installed and operated by TWTC for provision of the Services to Customer ("TWTC Network"). The TWTC Network will remain TWTC's personal property regardless of where located or attached. TWTC has the right to upgrade, replace or remove the TWTC Network in whole or in part, regardless of where located, so long as the Services continue to perform. TWTC has the right to limit the manner in which any portion of the TWTC Network is used to protect the technical integrity of the Network. Customer may not alter, move or disconnect any parts of the TWTC Network and is responsible for any damage to, or loss of, the TWTC Network caused by Customer's (or its end users') breach of this provision, negligence or willful misconduct. TWTC has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless otherwise agreed to in a writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is

responsible for any special interface equipment or facilities necessary to achieve compatibility.

(b) Access. TWTC may require access to Customer's premises to install and maintain the Services and the TWTC Network. Customer must provide TWTC with a contact and/or help desk number that can be reached 24 hours per day/7 days per week. Customer also must provide reasonable access rights and/or rights of way from third parties, space, power and environmental conditioning as may be required for the installation and maintenance of the TWTC Network at Customer's premises.

(c) Letter of Authorization / Carrier Facility Assignment. If Customer intends to connect the Services to facilities that neither it nor TWTC owns, it must provide TWTC with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

#### **5. Installation and Maintenance:**

(a) Installation. TWTC will notify Customer when the Service has been successfully installed and is available for Customer's use ("Service Date"). Unless Customer notifies TWTC by the close of business on the Service Date that the Service is not operational, the Service Term will commence. If Customer so notifies TWTC, the Service Date will occur and the Service Term will commence when the Service is operational. The Service Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use Service.

(b) Maintenance:

(i) Scheduled Maintenance. TWTC will monitor TWTC's Network 24 hours per day, 7 days per week. Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. TWTC will endeavor to provide Customer with at least five business days notice before performing Scheduled Maintenance unless a shorter notice period is required under the circumstances.

(ii) Emergency Maintenance. If TWTC has to perform maintenance outside of the Scheduled Maintenance window set forth in Section 5(b)(i) above, then TWTC will provide as much prior notice to Customer as is practicable under the circumstances.

#### **6. Charges, Billing, Taxes and Payment:**

(a) Services are billed on a monthly basis commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears. Any installation or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.

(b) TWTC may require a deposit prior to the provision of any new Service. TWTC also may require a deposit as a condition to its obligation to continue to provide Service(s) if Customer has failed to timely pay for Service(s) on two occasions during any six month period.

(c) Taxes, as defined below, will be invoiced as a line item charge separate from the MRCs for the Services. Customer will be liable for Taxes which were assessed by or paid to an appropriate taxing authority within the applicable statute of limitations period. If Customer fails to pay any Taxes properly billed, then as between TWTC and Customer, Customer will be solely responsible for payment of the Taxes, and penalty and interest.

**"Tax" or "Taxes"** mean any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated, imposed, or sought to be imposed, on or with respect to purchases by Customer from TWTC for consideration under this Agreement or for TWTC's use of public streets or rights of way, which TWTC is required or permitted by law or a tariff to collect from Customer; *provided, however*, that the term "Tax" will not include any tax on TWTC's corporate existence, status, income, corporate property or payroll taxes.

If either Party is audited by a taxing or other governmental authority, the other Party agrees to cooperate reasonably by responding to the audit inquiries in a proper, complete and timely manner. TWTC will cooperate, at Customer's expense, with reasonable requests of Customer in connection with any Tax contest or refund claim. The Customer will ensure that no lien is attached to or allowed to remain on any asset of TWTC as a result of any Tax contest. Customer will indemnify and hold TWTC harmless against any liabilities, damages, losses, costs or expenses arising out of such Tax proceedings, including without limitation any additional Taxes, interest, penalties and attorney's fees.

If Customer claims an exemption for any Taxes, Customer must provide TWTC with a proper tax exemption certificate as authorized by the appropriate taxing authority. Customer must pay the applicable Taxes to TWTC until it provides TWTC with a valid tax exemption certificate. If applicable law exempts a Service under this Agreement from a Tax, but does not also provide an exemption procedure, then TWTC will not collect such Tax if Customer provides TWTC with a letter signed by one of its officers: (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold TWTC harmless from any tax, interest, penalties, loss, cost or expense asserted against TWTC as a result of its not collecting the Taxes from Customer.

(d) Payment for all undisputed amounts due under this Agreement must be received by TWTC on or before the due date specified on the bill ("Due Date"). Any payment or portion thereof not received by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law.

**7. Disputes:** Customer may dispute charges invoiced by TWTC by logging onto TWTC's online customer portal at

<https://customerportal.twtelecom.com/>

and completing a dispute form, or by contacting TWTC's dispute telephone line at 1-800-829-0420. All disputes must be submitted to TWTC in the manner specified above within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Withheld disputed amounts determined in favor of TWTC must be paid by Customer within five (5) business days following written, electronic or telephonic notice of the resolution, and will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the Due Date until the date paid.

## **8. Service Levels / Service Outage Credits:**

(a) Service Level Agreement ("SLA"). The SLA for a particular Service, which specifies the applicable performance metrics and outage credit schedule, is contained in each Service Order. If no SLA is included with a Service Order, then credits for Service Outages (defined below) will be issued at 1/1440 of the applicable MRC per 30 minute outage for up to a 24-hour period, but if a Service Outage lasts greater than 24 hours, at 1/144 of the applicable MRC per 3 hour period. Credits issued

during any calendar month will not exceed the MRC associated with the affected Service that experienced the Service Outage(s).

(b) Service Outage Definition. A "Service Outage" is defined as either: (a) material non-compliance with a specific performance metric in a service level agreement and such non-compliance is caused by TWTC's Network; or (b) a complete loss of transmission or reception capability for a Service caused by TWTC's Network.

(c) Reporting and Tracking of Service Outages.

If there is a Service Outage, Customer must contact TWTC's Customer Network Reliability Center ("CNRC") at 800-829-0420, and TWTC will open a trouble ticket and provide Customer with a trouble ticket number for tracking purposes.

(d) Duration of Service Outage and Application of Credits. For the purpose of calculating applicable credits, a Service Outage begins when Customer reports the Service Outage to TWTC's CNRC, and ends when the Service is restored. The duration of the Service Outage only includes outages that are caused by TWTC's Network and do not include outages caused by the equipment, acts or omissions of Customer, third parties, Force Majeure events, or outages occurring during scheduled or emergency maintenance. The duration of a Service Outage also does not include any time during which TWTC is not allowed access to the premises necessary to restore the Service. Credits for Service Outages are only issued if requested by Customer, and such requests must be submitted to TWTC within 120 days from the date Service is restored.

(e) Chronic Trouble Services. If two Service Outages have occurred on a particular Service during a 30-day period, and a third Service Outage occurs within thirty days following the second Service Outage, Customer may terminate the applicable Service without early termination liability provided that Customer supplies TWTC with a written termination notice no later than thirty days following the third Service Outage.

(f) Remedies. Notwithstanding anything to the contrary in this Agreement, the remedies set forth in the service level agreement and in Sections 8(a) and 8(e) of this Agreement constitute Customer's sole and exclusive remedy for Service Outages.

(g) Service Outages Not Caused by TWTC's Network. If TWTC responds to a service call initiated by Customer, and TWTC reasonably determines that the cause of the problem is not

due to TWTC's Network, but is due to Customer's equipment or facilities, or a third party, Customer must compensate TWTC for the service call at TWTC's then prevailing rates.

#### **9. Governmental Regulation - Changes:**

(a) This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.

(b) TWTC may discontinue or impose additional requirements to the provision of Service, upon 15 days written notice, if necessary to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of TWTC providing the Service. Customer is not responsible for the termination liability set forth in Section 14 below if TWTC discontinues the Service under this subsection.

**10. Indemnification:** Each Party ("Indemnitor") shall indemnify, defend and hold harmless the other Party ("Indemnitee") from all losses or damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of Indemnitor. Customer shall indemnify, defend and hold TWTC harmless from all losses or damages arising from Customer's violation of third party intellectual property rights, all claims of any kind by Customer's end users, or any act or omission of Customer associated with any Service.

**11. Limitation of Liability:** Except for the Parties' respective obligations set forth in Section 14 herein, neither Party is liable to the other for indirect, consequential, special, incidental, or punitive damages of any kind or nature whatsoever (including without limitation lost profits, lost revenues, lost savings, lost opportunity or harm to business), whether or not foreseeable, whether or not the Party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. Indirect damages include, but are not limited to, damages of the kinds specified in the preceding sentence that are incurred by a third party and are asserted against a Party (including attorneys' fees and expenses). TWTC's liability to Customer for direct damages may not exceed one month's calculation of the applicable MRCs regardless of the form of action, nature of the claim

asserted or the frustration of either Party's purpose. TWTC has no liability for the content of information that Customer passes through TWTC's Network, Customer's transmission errors, or any failure to establish connections outside of the TWTC Network.

#### **12. Termination by TWTC:**

(a) Termination With Notice. TWTC may disconnect all Service(s) associated with a delinquent account upon ten (10) days written notice for Customer's failure to pay amounts due under this Agreement which remain uncured at the end of the notice period; or upon thirty (30) days written notice for: (i) Customer's breach of a non-economic, material provision of this Agreement or any law, rule or regulation governing the Services which remains uncured at the end of the notice period; (ii) Customer's insolvency, bankruptcy, assignment for benefit of creditors, appointment of trustee or receiver; and/or (iii) any governmental prohibition or required alteration of the Services.

(b) Termination Without Notice. TWTC may terminate or suspend Services without notice if: (i) necessary to protect TWTC's Network; (ii) TWTC has reasonable evidence of Customer's illegal, improper or unauthorized use of Services; or (iii) required by legal or regulatory authority.

(c) Post Termination. Any termination or disconnection shall not relieve Customer of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. TWTC retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Service(s) in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If TWTC terminates Service in accordance with this Section, and Customer wants to restore such Service, Customer first must pay all past due charges, a reconnection charge and a deposit equal to 2 months' recurring charges. All requests by Customer for disconnection of On-Net Services will be processed by TWTC in 30 days or less, and for disconnection of long haul Off-Net Services in 45 days or less, following delivery of the written notice. Customer must pay for Services until such disconnection actually occurs. Customer must submit requests to disconnect or terminate Services to TWTC's Order Entry department in accordance with Section 20 below.

**13. Termination by Customer:** Customer may terminate this Agreement and/or any Service Order hereunder upon thirty (30) days prior written notice, without incurring termination liability, for TWTC's (i) breach of any material provision of this Agreement, or any law, rule or regulation that affects Customer's use of Service(s), which remains uncured at the end of the notice period and/or (ii) insolvency, bankruptcy, assignment for the benefit of creditors, appointment of trustee or receiver or similar event.

**14. Termination Liability:** If TWTC terminates this Agreement or any Service Order(s) pursuant to Section 12 above (other than subsections a(iii) and/or b(iii)), or if Customer terminates this Agreement or any Service Order(s) for any reason other than as set forth in Section 13 above, all MRCs associated with the terminated Service(s) for the balance of the applicable Service Term shall become immediately due and payable.

**15. Assignment:** Neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably conditioned, withheld or delayed, except that: (1) TWTC may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing; and (2) Customer may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, provided that any assignment by Customer pursuant to this exception is subject to the following conditions: (i) the proposed assignee satisfies TWTC's credit and deposit standards; (ii) Customer has fully paid for all Services through the date of assignment; and (iii) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

**16. Entire Agreement:** This Agreement, together with the Service Order(s) and applicable tariffs set forth the entire agreement with respect to the subject matter hereof, and supersede all prior agreements, promises, representations, and negotiations between the Parties. If there is a conflict, the Service Order shall prevail over this Agreement and any applicable tariff shall prevail over both. Modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by both Parties.

**17. Force Majeure:** Either Party shall be excused from performance if inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire,

explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for sixty days or longer, the other Party may terminate the affected Services. Customer's invocation of this clause does not relieve Customer of its obligation to pay for Services actually received.

**18. Governing Law - Litigation:** This Agreement is governed by and subject to the laws of the State in which Services are being provided, excluding its principles of conflicts of law. If litigation is commenced to enforce this Agreement, the prevailing Party is entitled to reimbursement of its costs and attorneys' fees from the other Party.

**19. Headings:** Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.

**20. Notices:** Any notice required under this Agreement must be in writing and be delivered to the receiving Party at the addresses listed below (i) in person, (ii) by certified mail with return receipt requested, or (iii) by overnight courier. A notice is deemed given (i) when delivered, if personally delivered, (ii) at the time indicated on the return receipt, if delivered by certified mail, or (iii) at the time the party or its representative executes the delivery receipt, if delivered via courier. TWTC must provide such notice to Customer's billing address, and Customer must provide such notice to TWTC at the address of the local TWTC office, Attn: General Manager, ***except that if Customer is disconnecting Services for any reason, it must deliver notice to TWTC either by facsimile to 303-803-9638 or by email to "CustomerCare@twtelecom.com"***. Notice by facsimile or email is deemed given when delivered.

**21. No Waiver:** Either Party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.

**22. Public Releases, Use of Name:** Neither Party may issue a news release, public announcement, advertisement or other form of publicity regarding this Agreement or the Services provided hereunder without the prior written consent of the other Party. Customer may not use TWTC's name, logo or service mark without TWTC's prior written consent. TWTC may use Customer's

name and logo in materials presented to analysts and investors.

**23. Representations and Warranties:** Each Party represents and warrants that it, and the person signing on its behalf, is fully authorized to enter into this Agreement. TWTC represents and warrants that the Services will be performed by qualified and trained personnel. TWTC does not guarantee, represent or warrant that the Service(s) will be without interruption. TWTC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE.

**24. Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

**25. Survival:** The terms and conditions of this Agreement will survive the expiration or termination of this Agreement to the extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

**26. Relationship of Parties; No Third Party Beneficiaries:** The Parties are independent contractors, and nothing herein creates or implies an agency, joint venture or partnership relationship between the Parties. This Agreement shall bind and inure to the benefit of TWTC, Customer, and permitted successors and assigns. The Parties do not intend to create any rights for the benefit of any third parties.

**27. Confidentiality:** Each Party may disclose confidential information to the other Party in connection with this Agreement. Confidential information includes this Agreement, Service Orders, Service Level Agreements, all pricing information and any other information that is marked confidential or bears a marking of like import, or that the Party disclosing such information states is confidential and then confirms such confidentiality in writing within ten (10) days ("Confidential Information"). Confidential Information may only be used in connection with performance under this Agreement. Confidential Information may not be disclosed except to those employees or affiliates of the receiving Party who have a need to know, or to

consultants or subcontractors of the receiving Party who agree to be bound by this Section. Confidential Information does not include information that is generally available to the public through no wrongful act of the receiving Party or is independently developed by the receiving Party. Upon termination or expiration of this Agreement, the receiving Party will return the Confidential Information or destroy it. The obligations of this provision will survive for five years after the termination or expiration of this Agreement.