

## **TERMS AND CONDITIONS: GENERAL**

### Business Services

This agreement applies to business clients only.

These terms and conditions - along with the product-specific terms and conditions in the left sidebar of this page for those products purchased and listed on the Business Service Agreement – supplement and, along with the accompanying Master Service Agreement and Business Service Agreement, compose the entirety of the contract between the parties. Clients who contract for specific services should reference the left sidebar for applicable policies.

#### Agreement of Parties.

This set of terms and conditions and the accompanying product-specific terms and conditions, referenced in the MSA signed by the Client and referenced in the Business Service Agreement, are part of the MSA between the Provider and the Client. In case of a conflict between the terms of the MSA and these more specific terms and conditions, these more specific terms and conditions will prevail.

#### Ownership.

Leased property shall remain at all times the property of Provider, and Client shall have no right, title or interest therein or thereto, except as expressly set forth in this agreement. Client shall be responsible and allow Provider to substitute equipment in place of any inoperative or defective equipment. This means that Client agrees not to use the leased property for transmitting or receiving any communication or material of any kind when in Provider's sole judgment the transmission, receipt or possession of such communication or material (a) would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or internal law, or (b) encourages conduct that would constitute a criminal offense or give rise to civil liability, or otherwise violate any applicable local, state, national, or international law. Provider reserves the right to terminate Client's service immediately and without advance notice if Provider, in its sole discretion, believes Client has violated the above restrictions, leaving Client responsible for all unbilled charges plus a disconnect fee, all of which shall become immediately due and payable.

#### Use.

Client shall operate the leased equipment and use all services provided pursuant to this entire agreement in a lawful manner and shall comply with all federal, state and local statutes, regulations, and orders.

#### Rate and Charges.

Unless otherwise agreed by Provider, Client will be billed in advance for monthly access charges and in arrears for usage charges. The rates, charges, terms and conditions contained in this entire agreement can be changed with thirty (30) days' written notice by Provider to Client. Promotional rates and promotional discounts provided to Client will expire at the end of the Initial Term or earlier as set forth in the promotion language. All applicable tariffed terms and conditions shall apply to services rendered by Provider pursuant to this entire agreement. Client's obligation to pay all fees and expenses is unconditional and without any right of offset. If any federal, state, or local governmental entity with taxing authority over the services imposes a tax or usage fee directly on the services provided by Provider to Client under this entire agreement, then Provider may pass the amount of such cost on to Client, and Client shall

promptly pay such cost. If applicable to the service, Client shall pay sales taxes, use taxes, gross receipts taxes, excise taxes, access charges, universal service fund assessments, 911 fees, franchise fees, bypass, and other local, state, and federal taxes or charges imposed on the use of the services or equipment. Taxes will be separately stated on Client's invoice. Client shall reimburse Provider for pre-approved out-of-pocket expenses incurred in providing consulting services to Client.

Client will provide Provider with its name, address and telephone number for billing purposes. Client will also provide the name of a designated officer or agent who is authorized to act on behalf of the Client. All information provided will be accurate, and Provider has the right to access and verify credit information.

#### Deposit.

Provider may, from time to time, at its sole discretion, require Client to make deposits to be held by Provider as a guarantee of the payment of charges. The amount of such deposits will be determined solely at the discretion of Provider. At such time as the relationship between Provider and the Client is terminated, the amount of deposit, including any accrued interest required by law, shall be credited to Client's final bill, and any remaining amount of deposit will be refunded. No interest shall be paid on a deposit, or any portion of a deposit, after the day on which a refund is processed.

#### Termination.

Either Party may terminate the MSA if: (a) the other Party breaches any material term or condition of the MSA and fails to cure such breach within thirty (30) days after receipt of a written default notice reasonably specifying the nature of the default, except in the case of failure to pay fees or breach of Provider Policies, which must be cured within five (5) days after written notice from Provider; (b) the other Party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (c) the other Party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. In no event shall any termination relieve Client of its payment obligations to Provider for the period prior to the effective date of termination. Upon the effective date of the termination of the MSA or the expiration of the MSA Term: (a) Provider will immediately cease providing the services; (b) any and all payment obligations of Client under the MSA will immediately become due; and (c) within thirty (30) days of such termination, each Party will return all Confidential Information of the other Party in its possession (except as otherwise may be agreed in writing) and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement. At the time of termination of the agreement, any equipment owned by the Provider must be returned immediately. In case of failure to return upon termination of the MSA, Client agrees to pay for the full cost of the equipment.

#### Fraud.

Provider may disconnect service without notice if Provider believes the services are being used with the intent to defraud Provider or threaten the integrity or security of the Provider network or facilities. This fraudulent activity includes, but is not limited to, fraudulently placing and/or receiving calls and/or providing false credit information to Provider or its representatives. Client is responsible for payment of all charges for services furnished, including charges for services originated, or charges accepted, at Client's telephone number. Client's responsibility also

includes all charges associated with the fraudulent use of services either by Client, its employees, or any other users who gain access to Client's premises equipment including unauthorized users, who are able to "hack" or gain unauthorized access to Client's network or equipment. While Provider encourages use of the service within the United States to other countries, Provider does not presently offer or support the service to customers located in other countries. The equipment is intended for use only in the United States. If Client removes the equipment to a country other than the United States and uses the services from there, Client does so at its own risk including the risk that such activity violates the laws of the country where Client does so. Client is liable for any and all such use of the service and/or equipment by Client or any person making use of the service or equipment provided to Client and agrees to indemnify and hold harmless Provider from any and all liability for any such use. Should removal of the equipment from the United States violate any export control law or regulation, Client will be solely liable for such violation and agree to indemnify and hold Provider harmless from any and all liability associated with such violation. If Provider determines that Client is using the service from outside the United States, Provider reserves the right to terminate Client's service immediately and without advance notice, leaving Client liable for all outstanding charges, all of which shall be immediately due and payable.

#### Law Enforcement Information.

As a provider of internet and telecommunications services, Provider routinely receives legal requests for Client information from government and law enforcement personnel. Provider also receives discovery requests in civil litigation. In all such cases, Provider's policy is to cooperate as required by law, but to provide only such information as the law requires. This information is generally sought by subpoena served on Provider. Under current law, many criminal subpoenas require that Provider not disclose or notify Client of the request. Due to this fact and the volume of requests Provider receives, Provider cannot assume any duty to notify Client of any receipt of any legal requests. Note that the law does permit Provider to disclose to law enforcement, voluntarily and without prior notice, Client information, including the contents of any communications, if Provider reasonably believe that an emergency involving danger of death or serious physical injury requires such disclosure without delay.

#### Confidentiality.

Each Party acknowledges that it will have access to certain Confidential Information of the other Party concerning the other Party's business plans, Clients, technology, products, and other information held in confidence by the other Party ("Confidential Information"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to Provider technology, Client technology, Client Data Center Equipment, work, and the terms and conditions of the MSA. Each Party agrees that it will not use, for its own account or the account of any third party, unless expressly permitted by, or required to achieve the purposes of the MSA; nor disclose to any third party (except as required by law or to that Party's attorneys, accountants, and/or other advisors as reasonably necessary and with appropriately written confidentiality agreements), any of the other Party's Confidential Information; and will take reasonable precautions to protect the confidentiality of such information, at least as stringently as it takes to protect its own Confidential Information, but no less than a reasonable duty of care. A disclosing Party's Confidential Information shall not include information that: (a) is or becomes publicly available through no act or omission of the other receiving Party (b) was in the receiving Party's lawful possession prior to the disclosure and was not obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the receiving Party's disclosure, and where the receiving Party was not aware that the information was

the Confidential Information of the disclosing Party; or (d) is independently developed by the receiving Party without violation of the MSA. Immediately after any termination or expiration of the MSA, upon request, each Party shall provide to the other Party a signed written statement certifying that the Party has not retained any Confidential Information of the other Party. If the Parties have previously executed a nondisclosure agreement, then the terms and provisions of such nondisclosure agreement are hereby incorporated herein by this reference. To the extent that there is a conflict between the terms and provisions of the MSA and such nondisclosure agreement, the more restrictive terms and provisions shall control.

#### Internet Protocol Addresses and Numbers.

Provider maintains control and any ownership of any and all IP numbers and addresses, American Registry for Internet Numbers ("ARIN") space numbers and telephone numbers that may be assigned to Client and reserves, in Provider's sole discretion, the right to change or remove any and all IP numbers and addresses, provided that Provider shall provide to Client thirty (30) days' advance notice prior to such change or removal. Provider does not own a Client's domain name and Provider asserts no claim to such name(s).

#### Publicity and Marks.

Client agrees that during the MSA Term (a) Provider may publicly refer to Client, orally and in writing, as one of Provider's Clients, and (b) Client may publicly refer to Provider, orally and in writing, as its services provider. Neither Party may make any other reference to the other Party without such Party's prior written consent; except that Client agrees to be a reference account for Provider. Each Party agrees not to display or use, in advertising or otherwise, any of the other Party's trade names, logos, trademarks, service marks, or other indicia of origin without the other Party's prior written consent, provided that such consent may be revoked at any time.

#### Non-solicitation.

During the MSA Term and for one year thereafter, neither Party will, without the prior written consent of Provider or the other Party, offer employment to, employ, or subcontract work to, any person employed then, or within the preceding twelve (12) months, by Provider or the other Party, whose job responsibilities relate directly and substantively to the rendering of services. This provision shall also be binding upon affiliates and related entities of the other Party. Nothing herein shall preclude either Party from hiring an employee of the other Party if such hiring comes as a result of the employee's response to a publicly advertised job listing.

#### Liability.

In no event is Provider liable to any person for any cost, damage or harm whatsoever arising from: (a) Client's negligence or willful act; (b) the attachment or use of any equipment or wiring by Client which Client uses in conjunction with the service; or (c) the use of any facilities of other carriers by Provider in rendering the service to Client.

#### Indemnification.

In addition to the indemnification contained in the MSA, Client's indemnity of Provider also extends to: (a) any claims or damages arising out of or attributed, directly or indirectly, to service problems; (b) any claims or damages of the owner of Client's premises or equipment.

#### Testing and Inspections.

Without incurring any liability whatsoever, Provider may, at any time, interrupt the provision of service to Client in order to perform tests and inspections to assure compliance with this contract and/or the proper installation and operation of either Client's equipment and facilities or Provider's equipment and facilities. Provider may continue such interruption until any non-compliance or improper equipment or facilities identified is corrected.

#### No Waiver.

Based on the circumstances presented, Provider may waive certain requirements stated herein. Such waiver will be limited to that set of specific circumstances and will not eliminate Client's obligation to continue to comply with the terms and conditions stated herein.

#### Representations and Acknowledgements.

Client agrees that it will use the services only in accordance with the MSA and the applicable terms and conditions. Client will comply at all times with all applicable laws and regulations and the RTC policies as updated by Provider from time to time. The RTC policies are incorporated herein and made a part hereof by this reference. Provider may change the policies upon (fifteen) 15 days' notice to Client, which notice may be by publication on Provider's website. Client agrees that it has received, read and understands the current version of the RTC policies. Provider has no responsibility for any failure to meet its obligations under the MSA that relate, directly or indirectly, to Client's failure to perform its responsibilities and obligations specified in the MSA.