



TERMS AND CONDITIONS FOR DELIVERY OF SERVICE

TelNet Worldwide, Inc. ("TelNet") is pleased to provide you, (the "Customer"), with quality TelNet products, services and enhancements ("Services") as ordered in the "Customer Order" in accordance with TelNet "Terms". TelNet Terms include and incorporate the Terms and Conditions for Delivery of Service noted here, the terms of the Customer Order, and any TelNet Service Addendums that may be issued by TelNet and/or jointly approved. The Terms are considered a part of any Customer Order signed by the Customer for Services delivered by TelNet.

SECTION 1. DEFINITIONS

- 1.1 Accepted Order Date:** The date TelNet accepts Customer Order based on credit approval and receipt of proper order documentation.
- 1.2 Colocation Area:** The location within a Gateway in which Colocation Space ordered by Customer is located.
- 1.3 Colocation Space:** The location(s) within the Colocation Area of a TelNet Gateway where Customer is permitted to colocate communications equipment pursuant to a Customer Order accepted by TelNet.
- 1.4 Connection Notice:** Written notice from TelNet that the Service ordered has been installed by TelNet pursuant to the Customer Order, and has been tested and is functioning properly.
- 1.5 Customer:** The person or entity identified as the "Customer" on any Customer Order.
- 1.6 Customer Order:** A request for TelNet Service submitted and authorized by Customer in the form designated by TelNet.
- 1.7 Customer Premises and/or Service Address:** The location or locations occupied by Customer or its end users to which Service is delivered.
- 1.8 Excused Outage:** Any outage, unavailability, delay or other degradation of Service related to, associated with or caused by scheduled maintenance events, Customer actions or inactions, Customer provided power or equipment, any third party, including, without limitation, Customer's end users, third party network providers, traffic exchange points controlled by third parties, or any power, equipment or services provided by third parties, or an event of force majeure as defined in Section 7.1.
- 1.9 Facilities:** Property owned or leased by TelNet and used to deliver Service, including terminal and other equipment, wires, lines, ports, routers, IAD, switches, channel service units, data service units, cabinets, racks, private rooms and the like.
- 1.10 Gateway:** Buildings owned or leased by TelNet for the purpose of, among others, locating and collocating communications equipment.
- 1.11 Local Loop:** The connection between Customer premises and the TelNet network.
- 1.12 Off-Net:** Traffic that originates from or terminates to any location that is not on the TelNet network.
- 1.13 On-Net:** Traffic that originates from and terminates to a location that is on the TelNet network.
- 1.14 Revenue Commitment and/or Make Up To Minimum:** A commitment by Customer to order and pay for a minimum volume of Services during an agreed upon Service Term, as set forth in a Customer Order.
- 1.15 Service or Services:** Any service offered by TelNet pursuant to a Customer Order.
- 1.16 Service Commencement Date:** The date upon which Service is installed, tested and turned up, or is otherwise deemed available to Customer by TelNet.

1.17 Service Ready Date: The date upon which TelNet anticipates that Service will be available to Customer, as set forth in the Customer Welcome or such other written notice from TelNet.

1.18 Service Term: The duration of time (measured starting on the Service Commencement Date) for which Service is ordered, as specified in the Customer Order. The Service Term shall continue on a month-to-month basis after expiration of the stated Service Term at the then-current month-to-month rate, until terminated by either TelNet or Customer upon thirty (30) days' written notice to the other.

SECTION 2. DELIVERY OF SERVICE

2.1 Submission of Customer Order. To order any Service, Customer may submit a Customer Order requesting Service. The Customer Order and its backup detail must include a description of the Service, the nonrecurring charges and monthly recurring charges ("**Monthly Fees**") for Service and any applicable Service Term and/or Revenue Commitment. Upon receipt, TelNet has sole discretion to accept the Customer Order.

2.2 Credit Approval and Deposits. TelNet takes into consideration a satisfactory credit standing, timely payment and general payment record when providing Services. Customer will provide TelNet with credit information as requested, and agrees that TelNet may obtain credit reports and other information from credit reporting agencies and other sources at any time. Delivery of Service is subject to credit approval. TelNet may require Customer to make a deposit, (which will not exceed Customer's estimated charges for two months' Service) as a condition to TelNet's acceptance of any Customer Order, or as a condition to TelNet's continuation of Service. TelNet will hold the deposit as security for payment of Customer's charges and reserves the right to apply a deposit amount to any past due charges for Services, with prior notice.

2.3 Services and Installation; Commitment for TelNet Services. TelNet will provide the Services identified on the Customer Order for the Service Term and Monthly Fees at the Service Address as defined in the Customer Order. Customer is responsible for the Install/Setup Fees as defined in the Customer Order for each applicable Service. Should special set-up or installation be required, TelNet may terminate the Customer Order or cancel any Services without any obligation or liability.

2.4 Rush and Expedited Service Requests. Normal installation turnaround for TelNet T1-based Services within TelNet's on-net service area is 35-45 calendar days from the Accepted Order Date ("**AOD**") Customer may request that Services be turned up or installed earlier than TelNet deems normal, in which case Customer agrees to pre-pay associated TelNet rush and/or expedite charges. Payment of rush and/or expedite charges guarantees TelNet's best efforts to deliver Services as requested but does not guarantee that services will be delivered on the date/s requested. Rush charges may be refunded if date is not met; expedite charges are non-refundable. Expedite Service is not available for all products in all areas.

2.5 Porting Service Standard. In the event the migration and activation of Customer's telephone numbers (porting) requires more than one hour of activity/testing by a TelNet provisioner or technician, due to reasons beyond TelNet's control, (e.g., due to Customer, or Customer's technician or phone vendor,) Customer is responsible for TelNet time and material (T&M) charges for any additional time beyond the first scheduled hour of porting for each TelNet representative required to complete the migration. This additional T&M charge will be billed at a rate of \$125 per hour, per involved TelNet employee, with a 30-minute minimum.

2.6 Customer Premises. Customer shall allow TelNet or TelNet's designated representative access to the Customer Premises to the extent reasonably determined by TelNet for the installation, inspection and scheduled or emergency maintenance of Facilities relating to the Service. TelNet shall notify Customer two (2) business days in advance of any regularly scheduled maintenance that will require access to the Customer Premises. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises. In the event Customer fails to do so, Customer shall reimburse TelNet for the actual and reasonable cost of repairing or replacing any Facilities damaged or destroyed as a result of Customer's failure. Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises.

2.7 Connection to Customer Premises. Customer Order for Service assumes that such Service will be terminated at a pre-established demarcation point in the building within which the Customer Premises is located, as determined by the local access provider. TelNet may charge Customer additional non-recurring charges and/or monthly recurring charges not otherwise set forth in the Customer Order for such Off-Net Service where the local access provider determines that it is necessary to extend the demarcation point through the provision of additional infrastructure, cabling, electronics or other materials necessary to reach the Customer Premises. TelNet will notify Customer of any additional non-recurring charges and/or monthly recurring charges as soon as practicable after TelNet is notified by the local access provider of the amount of such charges.

2.8 TelNet Facilities. Title to all Facilities shall remain with TelNet. TelNet will provide and maintain the Facilities in good working order. Customer shall not, and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Facilities, without the prior written consent of TelNet. The Facilities shall not be used for any purpose other than that for which TelNet provides them. Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities. In no event will TelNet be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused or related to improper use or maintenance of the Facilities by Customer or third parties provided access to the Facilities by Customer in violation of these Terms, and Customer shall reimburse TelNet for any damages incurred as a result thereof. Customer agrees (which agreement shall survive the expiration, termination or cancellation of any Customer Order) to allow TelNet to remove the Facilities from the Customer Premises, both: i) after termination, expiration or cancellation of the Service Term in connection with which the Facilities were used; and ii) for repair, replacement or otherwise as TelNet may determine is necessary or desirable; TelNet will use reasonable efforts to minimize disruptions to the Service caused thereby.

2.9 Customer-Provided Equipment. TelNet may, at Customer expense, install certain Customer-provided communications equipment upon installation of Service, but TelNet shall not be responsible for the operation or maintenance of any Customer-provided communications equipment. TelNet undertakes no obligations and accepts no liability for the configuration, management, performance or any other issue relating to Customer's routers or other Customer-provided equipment used for access to or the exchange of traffic in connection with the Service.

SECTION 3. BILLING AND PAYMENT

3.1 Charges. The Customer Order will set forth the applicable non-recurring charges ("**Install Fees**" and/or "**Set Up Fees**") and recurring charges ("**Monthly Fees**") for the Service. In the event such Service requires TelNet to install additional infrastructure, cabling, electronics or other materials in the provision of the Service, such Customer Order may include (as specified therein) non-recurring charges. If Customer requests and TelNet approves (in its sole discretion) any changes to the Customer Order or Service after acceptance by TelNet, including, without limitation, the Service installation date or Service Commencement Date, additional non-recurring charges and/or Monthly Fees not otherwise set forth in the Customer Order may apply.

3.2 Commencement of Billing. Monthly Fees and other charges begin on the earlier of: (a) when the Services are made available to Customer; or (b) no later than thirty (30) days after TelNet circuit has been delivered to Customer Service Location (whether or not Services have been activated). Applicable Install Fee and Setup Fees for Services are due upon completion of installation. Customer is responsible for all Monthly Fees and other charges invoiced for the Services even if someone other than the Customer uses or shares the Service Address or the Services. TelNet is not obligated to invoice or provide Services to anyone other than the Customer.

3.3 Invoices, Payment and Late Payments. Invoices are delivered electronically or in paper form monthly. TelNet bills in advance for Service to be provided during the upcoming month, except for charges which are dependent upon usage of Service, which are billed in arrears. Billing for partial months is prorated based on a calendar month. All invoices are due twenty-four (24) days after the date of invoice. Past due amounts incur late fees at an interest rate of 1.0% per month.

3.4 Taxes and Fees. Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Service.

3.5 Regulatory and Legal Changes. In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Service, TelNet may pass such increased costs through to Customer.

3.6 Disputed Invoices. If Customer reasonably disputes any portion of a TelNet invoice, Customer must pay the undisputed portion of the invoice and submit a written claim for the disputed amount. All claims must be submitted to TelNet within ninety (90) days of receipt of the invoice for those Services. In the event that the dispute is resolved against Customer, Customer shall pay such amounts plus interest at the rate referenced in Section 3.3.

3.7 Revenue Commitment. In the event that Customer makes a Revenue Commitment in any Customer Order, then Customer will be billed for and be responsible to pay the greater of (a) the recurring charges for Service ordered and delivered, or (b) the amount of the Revenue Commitment.

3.8 Termination Charges.

- (A) Customer may cancel a Customer Order following TelNet's acceptance of the same and prior to the Service Commencement Date upon prior written notice to TelNet. In the event that Customer does so, or in the event that the delivery of such Service is terminated by TelNet prior to delivery of a Connection

Notice due to a failure of Customer to comply with these Terms, Customer shall pay TelNet a cancellation charge equal to the sum of:

- (a) any third party cancellation/termination charges and other TelNet out of pocket expenses related to the installation and/or cancellation of Service, and
- (b) as the case may be:
 - (i) one (1) month's monthly recurring charges (MRCs) for the cancelled Service if written notice of cancellation is received by TelNet more than five (5) business days prior to the Service Ready Date; or
 - (ii) two (2) months' MRCs for the cancelled Service if written notice of cancellation is received by TelNet five (5) business days or less prior to the Service Ready Date, and
- (c) in the case of Colocation Space, the costs incurred by TelNet in returning the Colocation Space to a condition suitable for use by third parties.

Customer's right to cancel any particular Service under this Section 3.8 (A) shall automatically expire and shall no longer apply upon TelNet's delivery to Customer of a Connection Notice for such Service.

- B) In addition to Customer's right of cancellation under Section 3.8(A) above, Customer may terminate Service prior to the end of the Service Term upon thirty (30) days' prior written notice to TelNet, subject to the early termination charge/s ("**Early Termination Charge**") noted here. In the event that, after either the Service Ready Date or Customer's receipt of the Connection Notice for a particular Service (whichever occurs first) and prior to the end of the Service Term, Customer terminates Service, or in the event that the delivery of Service is terminated due to a failure of Customer to comply with these Terms, Customer shall pay TelNet an Early Termination Charge equal to the sum of the MRC multiplied by the number of months remaining in the customer contract.
- C) If all or part of the Customer's Service is terminated or switched to another carrier without prior notice to TelNet, TelNet will continue to invoice the Customer until Customer personally requests that their Service be discontinued. Customer shall pay any charges invoiced prior to Customer notifying TelNet of change in Service, in addition to an Early Termination Charge, as noted above.

3.9 Fraudulent Use of Services. Customer is responsible for all charges attributable to Customer incurred respecting Service, even if charges incurred as the result of fraudulent or unauthorized use of the Service.

3.10 Service Term. Except as otherwise set forth herein, TelNet shall deliver the Service for the entire duration of the Service Term, and Customer shall pay all charges for delivery thereof through the end of the Service Term.

3.11 Unacceptable Use of Services. Services with unlimited usage offerings may not be used in conjunction with auto dialers, call centers, telemarketing or other automated dial devices. TelNet reserves the right to terminate unlimited usage offering or change Service to metered service if average usage per line exceeds acceptable business usage averages.

SECTION 4. DISCONTINUANCE OF CUSTOMER ORDERS

4.1 Discontinuance of Customer Order by TelNet. TelNet may terminate any Customer Order and discontinue Service without liability:

- (A) if Customer fails to pay a past due balance for Service (other than amounts reasonably disputed under Section 3.6), (i) within thirty (30) days after written notice from TelNet respecting charges invoiced in arrears, or (ii) within thirty (30) days after written notice from TelNet respecting charges invoiced in advance;
- (B) if Customer violates any law, rule, regulation or policy of any government authority related to Service; if Customer makes a material misrepresentation to TelNet in connection with the ordering or delivery of Service; if Customer's Service is delivered by TelNet within a third party colocation facility and TelNet's rights to provide Service therein is terminated; if Customer engages in any fraudulent use of Service; or if a court or other government authority prohibits TelNet from furnishing Service;
- (C) if Customer files bankruptcy, for reorganization, or fails to discharge an involuntary petition therefore within sixty (60) days;
- (D) if Customer's use of Service materially exceeds Customer's credit limit, unless within thirty (30) day written notice thereof by TelNet, Customer provides adequate security for payment for Service; or

- (E) if Customer fails to cure its breach (other than as addressed in sub-Sections A, B, C or D of this Section (4.1) of any of these Terms or any Customer Order within thirty (30) days after written notice thereof provided by TelNet.

4.2 Effect of Discontinuance. Upon TelNet's discontinuance of Service to Customer, TelNet may, in addition to all other remedies that may be available to TelNet at law or in equity, assess and collect from Customer any applicable termination charge.

SECTION 5. LIABILITIES

5.1 No Special Damages. Notwithstanding any other provision hereof, neither party shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including but not limited to damages for lost profits, lost revenues or the cost of purchasing replacement services) arising out of the performance or failure to perform under any Customer Order.

5.2 Disclaimer of Warranties. TELNET MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN ANY APPLICABLE SERVICE LEVELS.

SECTION 6. PUBLICITY

6.1 Publicity. Neither party shall have the right to use the other party's or its affiliates' trademarks, service marks or trade names or to otherwise refer to the other party in any marketing, promotional or advertising materials or activities without prior written consent. Neither party shall issue any publication nor press release relating to any contractual relationship between TelNet and Customer without prior written consent, except as may be required by law or agreed between the parties.

SECTION 7. GENERAL TERMS

7.1 Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any delay or failure of equipment or performance due to causes beyond such party's reasonable control ("Force Majeure"). Events of Force Majeure include, without limitation, fire; flood; weather; acts of God; labor disputes; utility curtailments; power failures; cable cuts; failure caused by telecommunications or other Internet provider(s); CPE, battery backup equipment or other Services-related products; worms, viruses or other destructive code, malware or software; explosions; civil disturbances; terrorism; vandalism; governmental actions; or shortages of equipment or supplies. In the event TelNet is unable to deliver Service as a result of force majeure, Customer shall not be obligated to pay TelNet for the affected Service for so long as TelNet is unable to deliver.

7.2 Assignment and Resale. Customer may not assign its rights and obligations under a Customer Order without the express prior written consent of TelNet. Customer shall remain liable for the payment of all charges due under each Customer Order.

7.3 Notices. Notices hereunder shall be deemed properly given, if delivered in person, or via overnight courier, electronic mail or when deposited with the U.S. Postal Service, (a) with respect to Customer, to the address and/or email address listed on any Customer Order, or (b) with respect to TelNet, to: Customer Services, TelNet Worldwide, Inc., 1175 W. Long Lake Road, Suite 101, Troy, MI 48098, email: admin@telnetww.com. Customer shall notify TelNet of any changes to its addresses/contact information listed on any Customer Order.

7.4 Indemnification. Each party shall indemnify the other from any claims by third parties and expenses (including legal fees and court costs) respecting damage to tangible property, personal injury or death caused by such party's negligence or willful misconduct.

7.5 Application of Tariffs. TelNet may elect or be required to file tariffs with the appropriate regulatory agency respecting the delivery of certain Services. In the event that such tariffs are filed respecting Service ordered by Customer, then (to the extent such provisions are not inconsistent with the terms of a Customer Order) the terms set forth in the applicable tariff shall govern TelNet's delivery of, and Customer's consumption or use of, such Service.

7.6 Contents of Communications. TelNet shall have no liability or responsibility for the content of any communications transmitted via the Service, and Customer shall defend, indemnify and hold TelNet harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third parties relating to Customer's use of Service. TelNet provides only access to the Internet and/or Public Service Telephone Network (PSTN); TelNet does not operate or control the information, services, opinions or other content of the Internet and/or PSTN. Customer agrees that it shall

make no claim whatsoever against TelNet relating to the content of the Internet/PSTN or respecting any information, product, service or software ordered through or provided by virtue of the Internet.

7.7 Entire Understanding. These Terms, including any Customer Orders executed hereunder, constitute the entire understanding of the parties related to Service. In the event of any conflict between these Terms and the terms and conditions of any Customer Order, these Terms shall control. These Terms shall be governed and construed in accordance with the laws of the state of Michigan.

7.8 No Waiver. No failure by either party to enforce any rights hereunder shall constitute a waiver of such right(s).

SECTION 8. Overriding Provisions

If applicable, an attachment section to these Terms is listed in Addendum A. The purpose of the appendix is to add, subtract, modify or clarify aspects of the Service.