

## **Midwest Telecom of America, Inc Commercial Service Agreement**

This Agreement is between you as our Customer (“You”, “your”, or “Customer”) and Midwest Telecom of America, Inc. (“MTA” “We” “us” or “Our”) and sets forth the terms and conditions under which you agree to use, and we agree to provide services including Local Exchange Voice Services, Interexchange Voice Service, and Data Services, (“hereinafter referred individually or collectively as “Service” or “Services”).

The Customer identified on the Commercial Service Agreement and Order Form and Midwest Telecom of America, Inc. agree that the terms and conditions on the Commercial Service Agreement and Order Form and its accompanying addendums, as well as the terms and conditions contained within this document, together constitute the agreement (“Agreement”) for the use of Services selected by the Customer and provided by MTA.

The terms and conditions Sections 1-7 and Sections 10-11 in this Agreement are applicable to all MTA Services. Section 8 contains additional terms and conditions which are applicable to Local Exchange Voice Services and Interexchange Voice Services. Section 9 contains additional terms and conditions which are applicable to Data Services.

### **1. GENERAL TERMS AND CONDITIONS**

- A. You will have accepted this Agreement and be bound by its terms and conditions upon your signature of the MTA Commercial Service Agreement and Order Form, and by your use of the Services.
- B. You agree that term of the Agreement begins on the date of service installation, otherwise known as “service commencement date”. If you have subscribed to separate MTA services each of which are installed on different dates, then each separate MTA service shall be deemed to have a separate service commencement date, and in this event, each separate MTA service may have a service term which expires on a separate date.
- C. You are responsible for all use of your Service and account, whether by you or someone using your account with or without your permission, including all secondary or sub-accounts associated with your primary account. You are responsible for securing your telephone and computer equipment against fraudulent activities and you agree to assume all risk and financial responsibility associated with MTA service charges which

may be incurred as a result of fraudulent or unauthorized activities. You agree to comply with all applicable laws, regulations and rules regarding use of the Service.

- D. You agree the Service is a commercial grade service and is not designed for or intended to be used for any residential consumer purpose. You may not resell, re-provision or rent the Service to other entities (either for a fee or without charge). You may use the service to provide Wi-Fi based internet access services to your customers or guests, subject to Section 9 of this agreement.
- E. **Acceptable Use of Services and Prohibited Activities.** You may use Services for lawful purposes only. You are prohibited from using the Services while providing deceptive or false information about the identity of the caller or the origin of a message or phone call. You are prohibited from using the Services to violate any applicable local, state, or federal law, or to violate applicable industry accepted guidelines. You are prohibited from using the Services to engage in, or in connection with, any fraudulent activities. Any use or suspected use of the Services for prohibited activities as described herein will result in suspension or termination of Services with or without notice by us. Any use or suspected use of Services for prohibited activities will be reported by us to the FCC and/or to applicable law enforcement authorities. *Revised 6-30-2021.*
- F. Unless otherwise agreed to in writing by MTA, you may not use the Services for the purpose of sending bulk or spam email messages, telemarketing, continuous or excessive chat line access, or fax or voice mail broadcasting.
- G. We reserve the right to modify the terms and conditions of this Agreement including service charges and will provide thirty (30) days prior notice of such changes via invoice notice, US mail, email, website, or other legally acceptable means. If you disagree with the modification to the terms and conditions of this Agreement, you have the right to cancel the affected services within the 30 day notice period by serving written notice as described in section 1F of this Agreement. The right to cancel does not apply to any changes in the Agreement that occur as a result of changes to government required fees or charges that are assessed separately from the service pricing, and does not apply to any services whose pricing or associated terms and conditions have been unchanged by the modification to the terms and conditions of this agreement. In the event that you continue to receive or use our services after the end of the 30 day notice period, you will be considered to have accepted the changes and you agree to be bound by such modifications to this Agreement.
- H. **Notices.** All Customer notices pursuant to this agreement, including any notice of non-renewal or notice of service termination, shall be delivered in writing and provided to Midwest Telecom of America, Inc at 1567 E. 93<sup>rd</sup> Avenue, Merrillville, IN 46410 via certified mail or overnight delivery service requiring signature verification. Any attempted notice not delivered via the methods described herein is deemed to be invalid.

## 2. INVOICE PAYMENT, TERMINATION OF SERVICES FOR NON-PAYMENT AND INVOICE DISCREPANCIES.

- A. **Charges, Fees and Taxes.** You agree to pay all charges associated with the Services as invoiced by MTA. Invoices are due upon receipt. Charges may include but are not limited to installation charges, monthly service charges, toll charges, technician service call charges, equipment charges, applicable federal, states and local taxes and fees, regulatory recovery fees imposed upon MTA including municipal, state, or federal government assessed fees or surcharges, early termination charges if applicable, and late fees if applicable. You agree to pay any all taxes and or government mandated fees that may be assessed retroactively. You agree that service charges begin on the date of service installation.
- B. **Discontinuation of Service for Nonpayment.** We may discontinue your Service with or without notice if you fail to make payment for any undisputed balances 45 days past the date of the invoice. Discontinued service may be reinstated upon payment in full of all outstanding MTA invoices and a \$30 reconnection charge. If services are discontinued for non-payment, and if payment is not remitted by you within 7 days of the date of disconnection, you will be deemed to have cancelled the services and, if applicable, the early termination fee will apply.
- C. **Late Fees.** If any portion of your bill is not paid within 30 days, we may charge you a late fee on unpaid balances. The late fee will be the greater of 1.5 % per month or the highest rate permitted by law. In the event we utilize a collection agency or legal action to recover monies due, you agree to reimburse us for all expenses we incur to recover such monies, including court costs and attorneys' fees.
- D. **Termination of Services.** You may terminate this Agreement and the services provided hereunder by serving written Notice to us as described in the Commercial Service Agreement and Order Form. If services are terminated prior to your completion of the initial term of the Agreement or prior to the completion of any subsequent renewal term of the Agreement, whether due to your decision to change service providers, due to your non payment of our invoices, or due to a move of your location to a location outside of the MTA service area, MTA will incur damages that may be difficult to quantify or calculate. Therefore, liquidated damages payable

to MTA in the form of early termination charges, due upon the date of the invoice, will apply. Customer and MTA agree that liquidated damages will be the amount of one hundred percent (100%) of the remaining pre-tax monthly service charges that would have been payable if the terminated service had been provided until the end of the applicable service term. For the avoidance of doubt, the early termination fee shall be calculated as the Order Estimated Monthly Revenue (as it appears on the Commercial Service Agreement and Order Form) multiplied by the number of months remaining on the term of the Agreement.

- E. **Billing Disputes and Inquiries.** In the event you dispute an MTA invoice and/or request an invoice credit, you must contact us within sixty (60) days of the date of the invoice. Any such disputes to your invoice shall be delivered to MTA in written format. You agree to waive any disputes or credits that you do not report within sixty (60) days of your receipt of invoice. If you dispute a portion of your invoice, you agree to fully and promptly pay any undisputed portion of your invoice.

### **3. ACCESS TO YOUR PREMISES, REPAIR AND MTA/CUSTOMER RESPONSIBILITIES.**

- A. **Access.** You agree to allow us and/or our agents the right to enter your property at which the Service and Equipment will be provided for the purpose of installing, configuring, maintaining, upgrading, repairing, replacing, or removing the equipment. You warrant that you are the owner of the premise or that you have the authority to provide us access to the premise. If you are not the owner, you warrant that you are responsible for, and have obtained, approval from the owner to allow us onto the premise to perform activities as described herein.
- B. **Company Equipment.** The term “Company Equipment” means any hardware, antenna, router, gateway, wiring, or other device installed by us at your premise to enable the Services to function. You agree that Company Equipment shall remain the property of MTA at all times. You agree that Company Equipment installed at your premise shall be used only for the purpose of rendering the Service under this Agreement. You agree you will not tamper with Company Equipment or attempt to move or maintain the equipment, nor will you allow any third parties to do. You agree that you will not attach anything to Company Equipment which impairs the integrity of our network or degrades the networks strength or signal quality. At your request, we may relocate the Company Equipment upon your premise for an additional charge, and at a time agreeable to you

and us. You agree to either return Company Equipment to us, or to allow us access to the premise to remove Company Equipment upon termination of services, and you agree to compensate us at our replacement cost if our access to the premise is refused for the purpose of equipment removal and/or if you fail to return any Company Equipment within ten (10) business days from the date the Services are terminated. In addition, if any Company Equipment is stolen or damaged while in your possession, you agree to pay its replacement cost. Replacement cost is found at [http://www.pickmta.com/pdf/other\\_charges\\_and\\_fees.pdf](http://www.pickmta.com/pdf/other_charges_and_fees.pdf) . We recommend the Company Equipment we install at your premise be covered by your insurance policy, however in any such event of damaged, lost, or stolen equipment it is solely your responsibility to compensate us directly at our replacement cost whether Company Equipment was covered by insurance or not, whether reimbursed by your insurance company or not.

- C. **Customer Equipment.** MTA shall have no obligation to install, maintain, or repair any customer owned or customer provided equipment. You as our customer shall be solely responsible for providing the maintenance, repair, operation, and replacement of all inside telephone wiring, your router, computer equipment, and all other facilities owned and controlled by you.
- D. **Service Calls.** In the event of a service affecting matter whereby services do not function according to reasonable expectations, you may contact our service center at 1-800-935-2181. If upon remote diagnosis we are able to determine that the network signal and Company Equipment are properly functioning, we will recommend that you trouble shoot your own computer, your telephone equipment and/or your internal wiring. If you request that an MTA technician come to your premise to diagnose the trouble in person, and if the MTA technician is unable reproduce the issue directly from MTA equipment, then service technician charges will be assessed to you for dispatch. If the MTA technician is able to reproduce the issue from MTA equipment, then MTA will be responsible for repair of services at our expense.
- E. **MTA responsibility.** Our responsibility for the function of service ends at the point of MTA's network interface, which may be an MTA analogue to telephone adapter, MTA router, ISDN PRI Interface Port, or Ethernet Interface Port. If Services are effectively functioning up to the point of the MTA network interface, then the MTA Service is deemed to be functional and working properly per the terms of our Agreement. If MTA service is functional up to the point of our network interface, but you are unable to access the internet or make telephone calls, MTA recommends you repair your internal equipment. MTA does not work on or repair Customer

owned equipment unless such equipment was originally sold and installed by MTA.

- F. **Inside Wiring.** You may install wiring inside your Premises ("Inside Wiring"), such as additional cable wiring and outlets, provided it does not interfere with the normal operations of our network. If you have us install Inside Wiring, we will charge you for that service. Regardless of who installed it, we consider the Inside Wiring your property or the property of whomever owns the Premises. If you have us repair or maintain the Inside Wiring, we will charge you for that service.

#### 4. DISCLAIMER OF WARRANTY AND SERVICE LIMITATIONS

- A. **No warranty.** You understand that Services under this Agreement are provided "as is" and without warranty whether express or implied. You agree that your use of the Services under this Agreement is at your sole risk. Neither MTA nor its affiliates, suppliers, employees, or agents warrant that the Equipment or the Services will provide uninterrupted use, meet your needs, or operate error free.
- B. **Not Failsafe.** You understand and agree that Services under this Agreement are not failsafe and are not designed or intended for any uses that require failsafe performance or for which any error or interruption of Services could lead to injury to persons or property.
- C. You understand and agree if there is an electrical power outage at your premise or to the MTA network in your area, the services will cease to function during the outage. Such outages may be beyond the control of MTA.
- D. You agree that MTA shall not be liable for any loss, liability, inconvenience, or damage resulting from any interruption of Service under this Agreement, whether directly or indirectly caused by, or whether resulting from the failure of any radio signal, failure of any equipment, failure of any fiber optic transmission circuit, failure of any 3<sup>rd</sup> party service suppliers to MTA, failure of any utility facilities, strike, labor dispute, riot or insurrection, malicious mischief, war, explosion, fire, flood, earthquake, wind, tornado, ice, extreme weather conditions or other acts of God, failure or reduction of power, or any court order, act or order of government restricting or prohibiting the operation or delivery of the Service. In all other cases of an interruption of the Service, you shall be entitled upon request made within thirty (30) days of such interruption, to a pro rated credit for the period any Service interruption. Such credit shall not exceed the fixed monthly charges for the month of Service interruption and excludes non-recurring charges, one time charges, regulatory fees or

surcharges or other government imposed fees. EXCEPT AND AS OTHERWISE PROHIBITED BY LAW, SUCH CREDIT SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICE.

- E. THERE ARE NO WARRANTIES EITHER EXPRESS OR IMPLIED ASSOCIATED WITH SERVICE PROVIDED BY MTA, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED TO THE EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MTA DOES NOT WARRANT THAT THE SERVICES AND/OR COMPANY EQUIPMENT WILL OPERATE UNINTERRUPTED, WILL BE ERROR FREE OR THAT THE SERVICES WILL MEET YOUR NEEDS, OR THAT THE SERVICES, MTA EQUIPMENT, OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.
  
- F. YOU AGREE THAT IN NO EVENT SHALL MTA, ITS AGENTS, SUPPLIERS OR CONTRACTORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING FROM OR RELATED TO: (1) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (2) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS, OR THIRD PARTIES; (3) ANY LACK OF OPERABILITY OR INTERCONNECTION OF MTA SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, OR NETWORKS PROVIDED BY ANY THIRD PARTIES OR THE CUSTOMER; OR (4) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS, COMPUTER WORMS, MALWARE, OR INTRUSION INTO YOUR COMPUTER NETWORK.
  
- G. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER MTA NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TRESPASS, CONVERSION, TORT OR CONTRACT) HAVE ANY LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS: (1) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES, OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN

CONNECTION WITH (a) YOUR RELIANCE ON OR USE OF OUR EQUIPMENT OR SERVICE(S); (b) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, OR REMOVAL OF THE SERVICE(S) (INCLUDING, BUT NOT LIMITED TO, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE BREACH, FAILURES OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE SERVICE(S), THE MTA EQUIPMENT, OR THE CUSTOMER EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, LOSS OF CALL DETAIL, EMAIL, VOICEMAIL, OR OTHER INFORMATION OR DATA); (c) THE USE OF MTA EQUIPMENT OR CUSTOMER EQUIPMENT TO PROVIDE THE SERVICES, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM OTHERS ACCESSING YOUR EQUIPMENT, OUR NETWORK, OR THE CONTENTS OF YOUR TRANSMISSIONS MADE THROUGH THE SERVICE(S), OR YOUR USE OF FILE SHARING, PRINT SHARING, OR OTHER CAPABILITIES THAT ALLOW OTHERS TO GAIN ACCESS TO YOUR COMPUTER NETWORK.

## 6. INDEMNIFICATION

You agree to indemnify and hold MTA including its officers, directors, employees, stockholders, partners, providers, and independent contractors harmless from and against any and all third party claims, damages, losses, liabilities, judgments, expenses, fines, and settlements including but not limited to indirect and consequential damages, attorney's fees and expenses that MTA may sustain or incur by reason of your use or misuse of the Services or the use or misuse of the Services by anyone else through your account including, but not limited to, use or misuse of the Services (i) in violation of applicable laws or regulations or the terms of this Agreement; (ii) in connection with any claims for infringement of any intellectual property rights arising from or in connection with such use or misuse; or (iii) in any manner that harms any person or results in the personal injury or death of any person or in damage to or loss of any tangible or intangible property (including data).

## 7. DISPUTE RESOLUTION

Most Customer concerns can be resolved by calling 1-800-PICKMTA. If we are unable to resolve your complaint to your satisfaction (or if MTA has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through an alternative dispute resolution process, or via small claims court, instead of in courts of general jurisdiction. Arbitration uses a neutral arbitrator or panel of arbitrators instead of a judge or jury, allows for more limited discovery than in court, and is subject to limited review by courts. Generally speaking, arbitrators can award the



same damages and relief that a court can award. Any arbitration under this Agreement will take place on an individual basis; class arbitrations are not permitted.

### 7.1 Agreement to Arbitrate

MTA and you agree to resolve all disputes and claims between us through binding arbitration by the American Arbitration Association ("AAA"). This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to, claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory.

This agreement to arbitrate does not preclude you from bringing issues to the attention of federal or state regulatory agencies. Such agencies can, if the law allows, seek relief against us on your behalf.

Notwithstanding the foregoing, either party may bring an individual action in small claims court rather than by arbitration if such claim is within the jurisdiction of the small claims court. In this event, the parties agree that the proper venue for any small claims court filing is Lake County, Indiana. MTA shall be entitled to recover court costs and reimbursement of reasonable attorneys' fees as a result of any action MTA may undertake in small claims court to collect any unpaid invoices for services rendered and/or collect any unpaid liquidated damages invoiced to you in the form of early termination charges.

You agree that, by entering into this Agreement, you and MTA are each waiving the right to a trial by jury or to participate in a class action. The Federal Arbitration Act ("FAA") and similar statutes in each state in which MTA operates govern the interpretation and enforcement of this provision. Applicable Federal law or the law of the state where you receive the service from MTA may apply the substance of any Disputes.

### 7.2 Informal Dispute Resolution Prior to Arbitration

A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). A Notice to MTA should be addressed to: General Counsel (Arbitration), Midwest Telecom of America, Inc., 1567 E. 93<sup>rd</sup> Avenue, Merrillville, IN 46410. Notice to you will be addressed to the billing address that MTA has on file for you. The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand").

### 7.3 Failure to Reach Resolution

If MTA and you do not reach an agreement to resolve the claim or dispute within 30 days after the Notice is received, you or MTA may commence an arbitration proceeding.

### 7.4 Commencement of Arbitration

You may initiate arbitration by submitting a Demand for Arbitration under the rules of the American Arbitration Association (“AAA”) and delivering copies of such Demand for Arbitration to MTA at the Notice Address. You can access a description of the process of submitting a Demand for Arbitration at the AAA’s website located at [https://www.adr.org/sites/default/files/document\\_repository/A%20Guide%20to%20Commercial.pdf](https://www.adr.org/sites/default/files/document_repository/A%20Guide%20to%20Commercial.pdf)

## 7.5 Arbitration Procedures

The arbitration will be governed by the Commercial Arbitration Rules and Mediation Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the AAA, as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [https://www.adr.org/sites/default/files/CommercialRules\\_Web.pdf](https://www.adr.org/sites/default/files/CommercialRules_Web.pdf). One arbitrator, who is selected under the AAA Rules, will conduct the arbitration. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provisions of this Agreement are for a court to decide. Unless MTA and you agree otherwise, any arbitration hearings will take place in the county of your address where MTA service is provided. The right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

## 7.6 Appeal

If an award issued by the arbitrator exceeds \$75,000, either party can appeal that award by submitting, within thirty (30) days from the effective date of the Underlying Award, a Notice of Appeal in accordance with AAA’s Optional Appellate Arbitration Rules (“Appellate Rules”), available online at <https://www.adr.org/sites/default/files/AAA%20ICDR%20Optional%20Appellate%20Arbitration%20Rules.pdf>. The process of such appeal will be governed, and the appeal heard, under the Appellate Rules. If an award issued by the arbitrator does not exceed \$75,000, any appeal rights from the award will be governed by the FAA.

## 7.7 Arbitration Fees

Except as otherwise provided for herein, each party will pay one-half (½) of all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse MTA for all monies previously disbursed by it that are

otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA Rules and Appellate Rules. If the arbitration proceeding is determined in your favor, you will not be required to reimburse MTA for any fees advanced by MTA.

#### 7.8 Attorney's Fees

You are responsible for all costs you may incur in arbitration including but not limited to fees for attorneys or expert witnesses.

#### 7.9 Waiver of Class Actions; Limits of Scope of Arbitrator's Authority

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND MTA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and MTA agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision will be null and void and all disputes will be heard by a court.

#### 7.10 Continuation

This arbitration provision shall survive the termination of this Agreement and the provisioning of services thereunder.

### 8. **ADDITIONAL PROVISIONS APPLICABLE TO MTA VOICE SERVICES**

- A. The Local Exchange Voice Services Addendum and/or The Inter-Exchange Voice Services Addendum shall be utilized to designate the specific type of voice communication services selected by you and provided by us.
- B. **Exclusivity.** You agree to route and deliver exclusively to MTA, all of your outbound voice communications traffic from your telephone facilities, during the initial term of this Agreement and during any subsequent renewal terms. If you use toll free numbers to enable inbound calling to your telephone facilities, you agree to select MTA as your exclusive provider of inbound toll free services during the initial term of

this Agreement and any subsequent renewal periods. The term “Exclusivity” means you agree to route and deliver all of your voice communications services to us, regardless of the technology or method of rendering services.

### **C. Service Pricing.**

- (1) Term Agreement Pricing - You agree that service pricing for MTA On-Net service shall be subject to a separate service quotation with a unique quote number identified on the Local Exchange Services Addendum. Service pricing for any ILEC resold local telephone services shall mirror the current rates as published in the local exchange tariffs or local exchange service guides of the applicable Incumbent Local Exchange Carrier, less the promotional discount designated on the Local Exchange Services Addendum. Service Pricing for Inter-Exchange Voice Services shall be designated on the Inter-Exchange Voice Service Addendum.
- (2) Month to Month Pricing – Month to Month pricing is only available if you have provided notice of non-renewal of the applicable MTA Commercial Service Agreement while continuing to utilize MTA voice services beyond the applicable term of agreement. In the case of On-net Local Exchange Voice Services, month to month rates shall be term agreement rates multiplied by a factor of 2. In the case of ILEC resold Local Exchange Voice Services and/or ILEC Commercial Agreement Services, month to month rates shall mirror the applicable standard published rates of incumbent local exchange carrier without promotional discount. In the case of Inter-Exchange Voice Services, month to month rates shall be the term agreement rates multiplied by a factor of 2.
- (3) Service Pricing for International Calling is an optional service offered to Customers which have signed an International Calling Addendum and can be found at [http://www.pickmta.com/pdf/international\\_rate\\_guide.pdf](http://www.pickmta.com/pdf/international_rate_guide.pdf)
- (4) Other charges and fees are found at [http://www.pickmta.com/pdf/other\\_charges\\_and\\_fees.pdf](http://www.pickmta.com/pdf/other_charges_and_fees.pdf)

- D. **E911 service.** E911 may function differently for MTA On-Net Voices than E911 services furnished by other providers. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS OF 911 / E911 SERVICE ASSOCIATED WITH YOUR USE OF MTA VOICE SERVICES. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY HAVE OCCASION TO PLACE CALLS OVER MTA SERVICES.
- B. **Correct Address.** You must provide your correct address in order for 911/E911 calls to be properly directed to emergency services.
- C. **Service Interruptions.** You understand and accept that MTA Voice Services cannot function if there is an electrical power outage, and that 911 calling may not be functional in this situation. If you have a battery backup, 911 calling may not be functional if the battery backup fails, if the Company Equipment locks up due to power failure. In addition, you understand and accept that calls, including calls to E911, may not be completed if there is a problem with network equipment and facilities, network or equipment power failure, or other technical problem.
- D. **Limitation of Liability and Indemnification.** YOU ACKNOWLEDGE AND AGREE THAT MTA WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICE, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL USING THE SERVICE. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS MTA AND ITS AFFILIATES, EMPLOYEES, SUPPLIERS OR AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES INCLUDING THOSE RELATED TO 911/E911.
- E. **Directory Listings.** IF WE MAKE AVAILABLE AN OPTION TO LIST YOUR NAME, ADDRESS, AND/OR TELEPHONE NUMBER IN A PUBLISHED DIRECTORY (WHETHER IN PRINT OR ONLINE) OR DIRECTORY ASSISTANCE DATABASE, AND ONE OR MORE OF THE FOLLOWING CONDITIONS OCCURS: (1) YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE OMITTED FROM A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS INCLUDED IN EITHER OR BOTH; (2) YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE INCLUDED IN A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS OMITTED FROM EITHER OR BOTH; OR (3) THE

PUBLISHED OR LISTED INFORMATION FOR YOUR ACCOUNT CONTAINS MATERIAL ERRORS OR OMISSIONS, THEN THE AGGREGATE LIABILITY OF MTA AND ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL NOT EXCEED THE MONTHLY CHARGES, IF ANY, WHICH YOU HAVE ACTUALLY PAID TO US TO LIST, PUBLISH, NOT LIST, OR NOT PUBLISH THE INFORMATION FOR THE AFFECTED PERIOD. YOU SHALL HOLD US HARMLESS AND ANY AFFILIATES, SUPPLIERS OR AGENTS AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS REFERENCED ABOVE.

## 9. ADDITIONAL PROVISIONS APPLICABLE TO MTA DATA SERVICES

- A. The Data Services Addendum including its accompanying Service shall be utilized to designate the specific type of data services selected by you and provided by us.
- B. Term Agreement Pricing – You agree that service pricing for MTA Data Service shall be subject to a separate service quotation with a unique quote number identified on the Data Services Addendum.
- C. Month to Month Pricing – Month to Month pricing is applicable only if you have provided notice of non-renewal of the applicable MTA Commercial Service Agreement while continuing to utilize MTA Data Services beyond the conclusion of the term of agreement. Month to Month pricing shall be the term agreement rates multiplied by a factor of 2.
- D. **Speed.** If you have selected “Non-SLA Service” or non-guaranteed Internet Access service, you agree that MTA bandwidth is provided without a written service level agreement for bandwidth, latency, packet loss, jitter, service availability and meantime to repair. Under “Non-SLA” or non-guaranteed Internet Access service, you acknowledge that MTA does not guarantee any particular speed or amount of bandwidth will be continuously available to you, and you agree and understand that your actual speeds may vary depending on various factors including the number of simultaneous users connected to the network at any given point in time. If you have selected “SLA”, or guaranteed Internet Access service, MTA will provide a written guarantee for bandwidth, latency, packet performance and mean time to repair, subject to a separate MTA Service

Level Agreement which is posted at [http://www.pickmta.com/pdf/38783\\_REV\\_2015\\_On-Net\\_Data\\_Service\\_Addendum.pdf](http://www.pickmta.com/pdf/38783_REV_2015_On-Net_Data_Service_Addendum.pdf) MTA reserves the right to modify the SLA from time to time in accordance with Section 1F of this Agreement.

- E. **Acceptable Use Policy.** The Acceptable Use Policy (“AUP”) governs use of MTA Internet Services and is posted at [http://www.pickmta.com/pdf/Acceptable\\_Use\\_Policy\\_-\\_Addendum\\_B.pdf](http://www.pickmta.com/pdf/Acceptable_Use_Policy_-_Addendum_B.pdf) (or an alternative website if we so notify you). You agree your use of the Service is conditioned upon adherence to the AUP and you agree to comply with its terms and conditions. You further agree MTA may modify the AUP or other policies from time to time. Notwithstanding anything to the contrary in this Agreement, YOU ACKNOWLEDGE AND AGREE THAT THE TERMS OF THE AUP MAY BE REVISED FROM TIME TO TIME WITH OR WITHOUT NOTICE BY POSTING A NEW VERSION OF THE AUP OR POLICY AS SET FORTH ABOVE.
- F. **Static IP Addresses.** Any Static IP Addresses assigned to a Customer for the purpose of delivering Data Services under this Agreement, shall belong to us and may be reclaimed by us upon termination of Services. We will provide one static IP address to you for each separate Data Service that you subscribe to, at no cost to you. If you request additional Static IP Addresses, we will charge you for additional addresses.

## 10. ASSIGNABILITY

This Agreement and the Service(s) furnished hereunder may not be assigned by you, except that it may be assigned to a purchaser of your business. You agree to notify us immediately of any changes of ownership or occupancy of the Premises. We may assign our rights and obligations under this Agreement with or without notice to you.

## 11. AGREEMENT SCOPE AND SEVERABILITY

- A. **Entire Agreement.** This Agreement and any other documents incorporated by reference herein constitute the entire agreement between you and us, and shall replace any prior written or verbal agreements. If any portion of the Agreement is unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible

to reflect the original intentions of both parties to this Agreement, and the remainder of the provisions shall remain in full force and effect.

B. **Severability.** If any clause or section of this agreement is found to be illegal or unenforceable, that clause will be severed from this Agreement, and the remainder of the Agreement shall be given full force and effect.