



## Time Warner Cable Business Class Terms and Conditions

*Version 6.17.2008*

1.0 **AGREEMENT.** The Time Warner Cable Business Class Services Agreement executed by the parties and these Terms and Conditions, including all documents incorporated herein by reference (collectively referred to as the "Agreement") set forth the entire agreement between the Customer and Time Warner Cable ("TWC") and together with Customer, (the "Parties" or each individually a "Party") for the delivery and use of and payment for the services ("Services") identified on an Order(s) (as defined in Section 2.2 below) and further described on the applicable attachments to this Agreement (including Attachment A (National Teleworker Service and Branch Office Connectivity Service), Attachment B (Cable TV Service), Attachment C (Business Class Phone Service), and Attachment D (Metro Ethernet Solutions/Dedicated Access Service)).

### 2.0 SERVICES AND ORDERS.

2.1 Subject to the terms and conditions of this Agreement (including, without limitation, Customer's compliance with its obligations set forth in Section 5), TWC shall provide Customer with the Services, pursuant to and in conformance with any Order accepted in accordance with Section 2.2 below during the Term (as defined in Section 6 below). Customer understands and agrees that certain Services may not be available in all TWC service areas and that TWC, upon entering into an Order with Customer may, at its own discretion, utilize one or more of its affiliates or another party or parties to deliver the applicable Service. Unless otherwise set forth on an applicable Attachment, TWC shall use commercially reasonable efforts to provide each Service identified in an Order seven (7) days a week, twenty four (24) hours a day, excluding scheduled maintenance, required repair and events beyond TWC's reasonable control.

2.2 Customer shall request Services hereunder by issuing to TWC one or more proposed service and/or work order(s) (each an "Order") pursuant to this Agreement (in the form provided or approved by TWC) or via a mutually agreed electronic order entry system. Upon TWC's acceptance of a proposed service and/or work order(s), such proposed service and/or work order(s), shall be deemed an "Order" hereunder and shall be deemed incorporated into this Agreement. A proposed service and/or work order shall be deemed accepted upon the earlier of (a) TWC's acceptance of such proposed service and/or work order in writing; or (b) TWC's commencement of delivery of the Service(s) set forth in such proposed service and/or work order.

3.0 **SERVICE & EQUIPMENT INSTALLATION.** Customer shall obtain and maintain, or ensure that each Customer employee or branch office to whom the Service will be provided, or who shall use the Service, as applicable (each an "End User"), shall obtain and maintain, throughout the Term such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, TWC personnel to install, deliver, operate and maintain the Service and TWC Equipment (as defined in Section 4 below) as contemplated herein at Customer's and any Customer End User's facilities. Customer shall permit TWC reasonable access to the Customer and any End User facilities at any time as needed to install, configure, upgrade, maintain or remove the TWC Equipment and other Service components collocated at Customer's or an End User's facilities. Customer shall make and maintain throughout the Term all reasonable site preparations necessary to permit the installation, maintenance and operation of the Service and any TWC Equipment as specified by TWC and that is required to provide the Services hereunder. In addition, Customer will provide TWC with floor space, rack space, other space and clean power as is reasonably necessary for the installation and operation of TWC Equipment at the Customer locations identified in an Order, for the term of the applicable Order. Customer shall not charge TWC, and shall ensure that TWC does not incur, any fees or expenses whatsoever in connection with Customer's provision of space, power, or access as described herein, or otherwise in connection with Customer's performance of its obligations pursuant to this Section 3; and any such fees or expenses charged by a Customer End User shall be borne solely by Customer. Provided that Customer properly performs all necessary site preparation and provides TWC with all required consents, TWC shall use commercially reasonable efforts to install the Service in accordance with the requested Service start date indicated on an Order. TWC shall provide Customer with a completion notice ("Completion Notice") upon completion of the installation of a Service. In the event that TWC is unable to install the Service in accordance with the agreed upon schedule as a result of (i) Customer's (or its End User's) failure to deliver any required materials, support or information to TWC; or (ii) TWC not being able to obtain access to equipment or software at the installation location as necessary for installation of the Service, then Customer shall pay TWC the standard installation fee as identified on the applicable Attachment hereto for any installation trip made by TWC and an additional installation fee for each subsequent trip necessitated to perform the Service installation. Interconnection of the Service and TWC Equipment with Customer's or an End User's, as applicable, equipment will be performed by Customer unless otherwise agreed in writing between the Parties. If any equipment is damaged, destroyed, lost or stolen while in Customer's possession, Customer shall be liable for the cost of the repair or replacement of any such Equipment. The Equipment or any portion thereof is not returned to TWC upon termination of the Service Package, Customer shall pay TWC, the sum of One Hundred Thirty-Five Dollars (\$135.00).

**4.0 SUPPORT & MAINTENANCE.** TWC shall use commercially reasonable efforts to maintain the TWC-provided and installed equipment, including as applicable, any cabling, cable modems, related splitters, routers or other items, (collectively, the "TWC Equipment") on TWC's side of the demarcation points used by TWC to provide the Service. Notwithstanding any contrary provision set forth in this Agreement, equipment and services on Customer's side of the demarcation points, as well as any other Customer-provided equipment, are the responsibility of Customer. TWC shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided only to Customer's designated personnel, as mutually agreed upon by TWC and Customer. Customer is responsible for all communications and interfaces with its End Users. In no event shall TWC be responsible for providing support for any network, equipment or software not provided and installed by TWC under this Agreement or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, TWC shall use commercially reasonable efforts to restore any cable cuts on the TWC network and shall keep Customer reasonably advised of such restoration progress. Customer agrees to provide routine operational Service support for TWC Equipment and Service components collocated at Customer's or an End User's facility, including without limitation by performing reboots, as requested by TWC.

#### **5.0 CUSTOMER OBLIGATIONS.**

5.1 Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of this Agreement. Customer agrees not to resell or redistribute (whether for a fee or otherwise) the Service, or any portion thereof, or make any use of the Service other than for Customer's internal business purposes, unless otherwise agreed in writing by TWC. Customer shall ensure that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and any applicable Terms of Use (which are incorporated herein by this reference). "Terms of Use" means all applicable Service policies, including without limitation acceptable use policies, and other terms and conditions established by TWC and available on the TWC web site, [www.twcbc.com/legal](http://www.twcbc.com/legal), as may be modified from time to time by TWC, at its sole discretion. TWC may audit Customer's use of the Service remotely or otherwise, to ensure Customer's compliance with this Agreement.

5.2 Customer shall ensure that all TWC Equipment at Customer's and Customer's End Users' facilities remains free and clear of all liens and encumbrances and Customer shall be responsible for loss or damage to the TWC Equipment while at Customer's or an End User's facilities. As between the Parties, Customer is solely responsible for (a) all use (whether or not authorized) of the Service by Customer, an End User or any unauthorized person or entity, which use shall be deemed Customer's use for purposes of this Agreement; (b) all content that is viewed, stored or transmitted via the Service, as applicable; and (c) all third party charges incurred for merchandise and services accessed via the Service, if any. Customer agrees to conform its equipment and software, and to ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by TWC from time to time.

6.0 **TERM.** The Agreement shall commence on the date of full execution by the Parties (the "Effective Date") and shall remain in effect for (the "Initial Term") as defined in the Commercial Service Agreement ("Cover Sheet"). Unless terminated earlier in accordance with the provisions stated herein, upon the expiration of the Initial Term this Agreement shall automatically renew on a month-to-month basis, unless either Party notifies the other Party thirty (30) days prior to the expiration of the then-current Term of such Party's intent not to renew (the Initial Term and any renewal term collectively referred to as the "Term"). If an Order Term (as set forth in an applicable Order) extends beyond the expiration of the Term, then this Agreement and the respective Order(s) will continue in effect until the expiration or termination of the applicable Order Term, but only as to the applicable Order(s), and subject to the termination rights of TWC and Customer under this Agreement.

7.0 **PAYMENT.** For each Service, Customer agrees to pay TWC the non-recurring Service installation fees and monthly recurring Service fees (collectively the "Service Charges") set forth on the applicable Order in accordance with the following payment terms: Service Charges will be billed to Customer on a monthly basis, in accordance with TWC's regular billing schedule, and are payable within thirty (30) days after the date appearing on the invoice. TWC shall have the right to increase Service Charges for each Service after the initial Order Term for such Service upon thirty (30) days advance written notice to Customer. TWC may charge a late fee for any amounts which are not paid when due. The late fee will be the lesser of one and one-half percent (1.5%) per month or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts.

8.0 **TAXES.** Customer shall pay all federal, state, and local taxes, fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of this Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. Further, TWC shall have the right to recover from Customer the amount of any state or local fees or taxes arising as a result of this Agreement, which are imposed on TWC or TWC's services, or measured on TWC's receipts. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer's invoice. TWC shall be responsible for and shall pay all taxes measured by TWC's net income. To the extent that a dispute arises as to which Party is liable for fees or taxes under this Agreement, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon TWC's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on TWC's net income. Customer shall be responsible for providing TWC any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under this Agreement. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse TWC for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.

8.1 Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services TWC provides and, consequently, uncertainty about what fees, taxes and surcharges are due from TWC and/or its customers. Customer agrees that TWC has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to me. Customer hereby waives any claims it may have regarding TWC's collection or remittance of such fees, taxes and surcharges. Customer understands that it may obtain a list of the fees, taxes and surcharges that TWC currently collects or passes through by writing to TWC at the following address and requesting same: Time Warner Cable, 7800 Crescent Executive Drive, Charlotte, North Carolina, 28217; Attention: Subscriber Tax Inquiries.

9.0 **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** (a) TWC's Proprietary Rights. All materials including, but not limited to, any TWC Equipment (including related firmware), software, data and information provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "TWC Materials") shall remain the sole and exclusive property of TWC or its suppliers. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for herein. Customer may use the TWC Materials solely for Customer's use of the Service. Customer may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the TWC Materials, in whole or in part, or use them for the benefit of any third party. All rights in the TWC Materials not expressly granted to Customer herein are reserved to TWC. Customer shall not open, alter, misuse, tamper with or remove the TWC Equipment as and where installed by TWC, and shall not remove any markings or labels from the TWC Equipment indicating TWC (or its suppliers) ownership or serial numbers. (b) Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the TWC Materials and any other information and materials provided by TWC in connection with this Agreement, including but not limited to the content of this Agreement, that are identified or marked as confidential or are otherwise reasonably understood to be confidential. (c) Software. If software is provided to Customer hereunder, TWC grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.

10.0 **MONITORING, EQUIPMENT UPGRADES AND MODIFICATIONS.** TWC shall have the right, but not the obligation, to upgrade, modify and enhance the TWC Equipment (including related firmware) and the Service and take any action that TWC deems appropriate to protect the Service and its facilities. TWC also shall have the right to add to, modify or delete any provision of this Agreement (including the Terms of Use). TWC will notify Customer of any material adverse change in this Agreement (including the Terms of Use) or Service descriptions by posting notice of such change on the TWC web site or by email, or, if applicable, in the appropriate TWC tariff. In any event, if TWC modifies this Agreement (including the Terms of Use) and such modification has a material adverse impact on Customer's ability to use the Service, Customer may, within the thirty (30) day period following the date of such modification, terminate without penalty the Order relating to the affected Service.

11.0 **TERMINATION.** Either Party may terminate an applicable Order (a) upon thirty (30) days written notice of the other Party's material breach, provided that such material breach is not cured within such thirty (30) day period, or (b) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, is removed or delisted from a trading exchange or its long term debt is downgraded more than two levels from its rating as of the Effective Date. In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of this Agreement or the Terms of Use, TWC may upon thirty (30) days written notice suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, TWC may immediately suspend Customer's or its End User's use of the Service if such use is determined by TWC, at its sole discretion, to be resulting in a material degradation of the TWC network, until such time as such degradation has been remedied. TWC will use commercially reasonable efforts to assist Customer in remedying such degradation. In the event of a suspension, TWC may require the payment of reconnect or other charges before restarting the suspended Service. Upon the termination or expiration of this Agreement and the Order(s) hereunder: (i) TWC's obligations hereunder shall cease; (ii) Customer promptly shall pay all amounts due and owing to TWC for Service delivered prior to the date of termination or expiration and any applicable deinstallation fees identified in Order(s), if any; (iii) Customer promptly shall cease all use of any software provided by TWC hereunder, and shall return such software to TWC; and (iv) Customer shall return to TWC or permit TWC to remove, in TWC's discretion, the TWC Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing TWC for the reasonable and documented costs of the repair or replacement, at TWC's discretion, of any TWC Equipment not returned in accordance with this Section 11. In addition, notwithstanding anything to the contrary herein, upon early termination of an Order by Customer for any reason other than as set forth in Section 11(a) or 11(b) above or by TWC for any reason set forth in Section 11(a) or 11(b) above, Customer shall, at TWC's discretion, (1) promptly pay TWC a termination fee equal to the Service Charges that would have been due for the remainder of the Initial Term or the then-current renewal term or (2) reimburse TWC for all volume, term or other discounts and credits provided in anticipation of full performance of Customer's obligations, as applicable, and any unpaid portion of the installation fee set forth in the applicable Order(s). The foregoing shall be in addition to any other rights and remedies that TWC may have under this Agreement or at law or equity relating to Customer's material breach.

12.0 **INDEMNIFICATION.** Customer agrees to defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to (a) the use of the Service, including but not limited to a breach of Section 5 herein; or (b) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents.

**13.0 DISCLAIMER OF WARRANTY.** CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICE, TWC EQUIPMENT AND TWC MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY TWC, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATE OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME, EXCEPT AS SET FORTH IN THIS AGREEMENT. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR AN END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, CUSTOMER'S OR ITS END USERS USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO CUSTOMER'S OR END USER'S SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

**14.0 LIMITATION OF LIABILITY.** IN NO EVENT SHALL TWC BE LIABLE TO CUSTOMER, AN END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TWC'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CUSTOMER UNDER THE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL TWC'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER.

**15.0 DISCLOSURE OF CUSTOMER INFORMATION.** Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act (the "Telecommunications Act"), the Federal Cable Communications Act (the "Cable Act"), the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Customer proprietary network information and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Subscriber Privacy Notice provided by TWC in writing, and, if applicable, in TWC's tariff, which are incorporated herein by reference. Customer acknowledges receipt of the Subscriber Privacy Notice. In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers ("ARIN") or any similar agency, or in accordance with TWC's Subscriber Privacy Notice or, if applicable, tariff. In addition, TWC shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril.

**16.0 FORCE MAJEURE.** Notwithstanding anything to the contrary contained herein, a Party shall have no liability to the other hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a "Force Majeure Event"). Notwithstanding anything to the contrary herein, Customer may terminate the affected Order(s) in its entirety and without penalty if a Force Majeure Event continues for more than ten (10) consecutive days and prevents TWC from delivering the Service subject to such Order(s).

**17.0 REGULATORY AND LEGAL CHANGES, POLE ATTACHMENT AND CONDUIT CHARGES, TARIFFS.** In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in universal service fees or other government- or quasi-government-imposed charges that increases the costs or other terms of TWC's delivery of Service to Customer, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used by TWC in providing the Service, Customer acknowledges and agrees that TWC may pass through to Customer any such increased fees or costs, but only to the extent of the actual increase, provided TWC notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees or charges due by Customer hereunder for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies TWC at least fifteen (15) days in advance of Customer's requested termination date. Further, in the event that TWC is required to file tariffs or rate schedules with a regulatory agency or otherwise publish its rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and TWC is required under applicable law to apply those rates to Customer's purchase of Service under this Agreement, then the terms set forth in the applicable tariff or rate schedule shall govern TWC's delivery of, and Customer's use or consumption of the Service. Upon thirty (30) days written notice to TWC Customer may terminate without liability any Order affected by such tariff if such tariff, or any subsequent

revision to such tariff, materially increases the fees due by Customer thereunder. In addition, if TWC determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then TWC may terminate this Agreement as to any or all of the Service and may terminate any affected Orders, without liability by giving Customer thirty (30) days prior written notice or any such notice as is required by law or regulation applicable to such determination.

17.1 This Agreement, its Attachments and the Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which TWC provides the Services. If any provision of this Agreement, its Attachments, or the Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of this Agreement, its Attachments, and/or the Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided hereunder, then such law or regulation will take priority over the relevant provision of this Agreement, its Attachments, and the Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this Agreement, nothing contained in this Agreement shall constitute a waiver by TWC of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

18.0 **ENTIRE AGREEMENT.** This Agreement, including without limitation all Attachments that are attached hereto and incorporated herein by this reference, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect hereto.

19.0 **ORDER OF PRECEDENCE.** Each Service shall be provisioned pursuant to the terms and conditions of this Agreement. In the event that TWC permits a Customer to use its own standard purchase order form to order the Service, the Parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Attachment or Order are inconsistent with the terms of this Agreement, the terms of this Agreement shall control.

20.0 **COMPLIANCE WITH LAWS.** As between the Parties, TWC will obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to TWC's operation and provision of the Services as contemplated herein, and Customer will obtain and maintain at its own expense all license, approvals and regulatory authority required by law with respect to Customer's use of the Services as contemplated herein. Unless specified otherwise in this Agreement, each Party will give all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified herein.

21.0 **ARBITRATION.** EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THIS AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE

22.0 **MISCELLANEOUS.** This Agreement shall be governed and construed in accordance with the laws of the State of New York, excluding its conflicts of law principles (other than Section S-1401 of the New York General Obligations Law). In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein and the remainder of this Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer may not assign this Agreement without the prior written consent of TWC, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under this Agreement including, without limitation, in whole or in part, to any affiliate without the prior written approval of or notice to Customer. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC herein may accrue to, or be fulfilled by, any affiliate, as well as by TWC and/or its subcontractors. Customer may not issue a press release, public announcement or other public statements regarding this Agreement without TWC's prior written consent. Excluding any third party claims, claims under this Agreement must be initiated not later than two (2) years after the claim arose. There are no third party beneficiaries to this Agreement. The Parties to this Agreement are independent contractors. Any notice under this Agreement shall be given in writing and shall be deemed to have been given when actually received by the other Party. Notices shall be delivered to Customer and TWC at the respective addresses set forth above, or to such other address as is provided by one Party to the other in writing. The provisions of sections 7, 8, 9, 11, 12, 13, 14, 15, 21 and 22 shall survive the termination or expiration of this Agreement. No modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both Parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

## Attachment A

### Business Class Connectivity Service

#### **Service Description:**

**Business Class Service ("BC Service"):** If Customer selects to receive the BC Service, TWC shall provide connectivity from the number of Customer branch offices set forth in an accepted Order to the Customer's data network. Subject to Customer's payment of the Service Charges assessed hereunder, Customer shall be permitted to connect any number of computers within Customer's identified branch offices to the Service, provided that use does not exceed the standard bandwidth provided by TWC.

#### **Customer's use of the BC Service is subject to the following additional terms and conditions:**

TWC shall allow Customer employees to use (however in no event shall TWC be responsible for) a Virtual Private Network (VPN) and to allow the VPN to pass through the cable modem of any NTW Service or BOC Service, as applicable, provided that TWC shall have the right to disconnect (or demand the immediate disconnection of) any such service that degrades the TWC Service for other subscribers on the TWC network.

Customer shall not upload, post, transmit or otherwise make available on or via the BC Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. TWC may remove content that in its judgment violates these standards.

TWC shall have the right, but not the obligation, to (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by TWC) as TWC deems appropriate to efficiently manage its network.

In the event that any TWC audit reveals that Customer's usage of the BC Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage. In addition, TWC shall have the right, but not the obligation, to (i) review content in public areas of the BC Service, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and any rules now or hereafter established by TWC; and (ii) remove (or demand the removal of) any such content that TWC determines to be unacceptable or to violate the terms of this Agreement, any bandwidth utilization limitations or other Terms of Use.

**Attachment B**  
**Cable TV Service**

**Service Description:**

**Cable TV Service:** If Customer selects to receive the Cable TV Service, TWC shall provide Basic and Standard Cable services, on \_\_\_ outlet(s). Customer understands and agrees that premium program services, such as HBO, Cinemax, Showtime, and The Movie Channel, may not be received or shown on any television receivers located in any public areas, such as lounges, dayrooms, visiting areas or other common areas used by groups or the general public, nor shall Customer authorize or approve of any copying, taping or duplicating thereof.

**Customer's use of the Cable TV Service is subject to the following additional terms and conditions:**

In the event that changes in technology require the use of specialized equipment to continue to receive Cable TV Services provided by this Agreement, TWC agrees to provide such equipment and Customer agrees to pay for such equipment at the same rate charged by TWC to commercial customers in the municipality in which Customer's property receiving the Cable TV Service is located.

In the event that any TWC audit reveals that Customer's usage of the Cable TV Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

The monthly service charges set forth in an Order for Cable TV Service do not include applicable taxes, regulatory fees, franchise fees and public access fees. Notwithstanding anything to the contrary in this Agreement, the monthly service charges for the Cable TV Service are subject to change in accordance with commercial Cable TV rate increases applied to commercial customers.

**Attachment C**

**Business Class Phone Service**

***Coming Soon***

**Service Description:**

**Business Class Phone Service:** If Customer selects to receive the Business Class Phone Service, Customer will receive telephone service consisting of up to twelve lines, including a variety of features, as described more fully in the applicable Order.

**Customer's use of the Business Class Phone Service is subject to the following additional terms and conditions:**

- Customer acknowledges that the voice-enabled cable modem used to provide the Business Class Phone Services is electrically powered and that the Business Class Phone Services, including the ability to access 911 services and alarm, security, medical and other monitoring services, may not operate in the event of an electrical power outage or if Customer's TWC broadband connection is disrupted or not operating. Customer also acknowledges that, in the event of a power outage at Customer or any End User's facility, any battery or back-up power supply included with the TWC-provided voice-enabled cable modem may enable back-up service for a limited period of time or not at all, depending on the circumstances, and that inclusion of the battery or back-up power supply does not ensure that Business Class Phone Service will be available in all circumstances. Customer also acknowledges that, in the event of a loss of power that disrupts the local TWC cable system, the battery or back-up power supply included with the TWC-provided voice-enabled cable modem will not provide back-up service and the Business Class Phone Service will not be available.
- Customer agrees that TWC will not be responsible for any losses or damages arising as a result of the unavailability of the Business Class Phone Service, including the inability to reach 911 or other emergency services, or the inability to contact a security system or remote medical or other monitoring service provider. Customer acknowledges that TWC does not guarantee that the Business Class Phone Service will operate with alarm, security, medical and/or other monitoring systems and services, and that Customer must contact (at Customer's sole expense) any applicable alarm, security, medical or other monitoring system and service provider in order to test Customer's system's operation with the Business Class Phone Service.
- The location and address associated with the Business Class Phone Service will be the address identified on the Order. Customer is not permitted to move TWC Equipment from the location and address in which it has been installed. Furthermore, if Customer moves its voice-enabled cable modem to an address different than that identified on the Order, calls from such modem to 911 will appear to 911 emergency service operators to be coming from the address identified on the Order and not the new address.
- Customer acknowledges that the existing telephone wiring inside Customer's and/or its End User's facility (as applicable) may not support both the Business Class Phone Service and digital subscriber line (DSL) service or other services provided by other service providers. Therefore, Customer intends to obtain service from other providers in addition to Business Class Phone Service, Customer must maintain separate wiring, not provided by TWC, specifically for use with such other services provided by other service providers and must ensure that any existing DSL service or other service is properly disconnected from all wiring to be used for Business Class Phone Service prior to installation of Business Class Phone Service on Customer's existing wiring.
- Customer agrees to provide TWC and its authorized agents with access to Customer's internal telephone wiring at the network interface device or at some other minimum point of entry in order to facilitate the installation and operation of Business Class Phone over existing wiring. Customer hereby authorizes TWC to make any requests from Customer's landlord, building owner and/or building manager, as appropriate and to make any requests necessary to other or prior communications service providers as necessary and appropriate to ensure that TWC has all access to inside wiring and cabling necessary and sufficient to efficiently and securely install Business Class Phone Service and all related equipment.
- In the event of a material error or omission in Customer's directory listing information, regardless of form, caused by TWC, Customer's sole and exclusive remedy shall be a partial service credit in an amount set by TWC's then-current standard policies or an amount prescribed by applicable regulatory requirements, whichever is greater. Notwithstanding the foregoing, TWC shall have no liability for any error or omission in any directory listing information caused by a Force Majeure Event.

**Attachment D**

**Metro Ethernet Solutions/Dedicated Access Service**

**Services Description:**

**Metro Ethernet Solutions/ Dedicated Access Service:** If Customer selects to receive the metro ethernet solutions/dedicated access service ("Metro Ethernet Solutions Service"), TWC shall provide Customer with a dedicated circuit connection between Customer's data network identified on an Order and the TWC facility identified on an Order.

**Customer's use of the Metro Ethernet Solutions Service is subject to the following additional terms and conditions:**

TWC's provision of the Metro Ethernet Solutions Service is subject to availability.

The Metro Ethernet Solutions Service shall be limited to the capacity set forth on an Order, and Customer must purchase any additional capacity separately.

Customer agrees to use the Metro Ethernet Solutions Service solely for transmitting data in IP form.

Customer shall not upload, post, transmit or otherwise make available on or via the Metro Ethernet Solutions Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. TWC may remove or demand the removal of, content that in its judgment violates these standards.

TWC shall have the right, but not the obligation, to monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters).

In the event that any TWC audit reveals that Customer's usage of the Metro Ethernet Solutions Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage. In addition, TWC shall have the right, but not the obligation, to (i) review content in public areas of the Metro Ethernet Solutions Service, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and any rules now or hereafter established by TWC; and (ii) remove (or demand the removal of) any such content that TWC determines to be unacceptable or to violate the terms of this Agreement, any bandwidth utilization limitations or other Terms of Use.