

Standard Terms And Conditions For Thunder Mountain Wireless Services

The following terms and conditions, shall apply to the Services identified on the Thunder Mountain Wireless Service Order Form. By signing the Service Order Form, Customer acknowledges having reviewed and accepted the Terms and Conditions contained herein. This Agreement shall supersede any prior representations, understanding, or agreements, whether verbal or written.

1. **Service Date and Term.** This Agreement shall be effective upon execution by Customer. Services shall be provided for the applicable Term set forth on the Service Order Form. Thunder Mountain shall make reasonable efforts to make Services available to Customer by the requested service date. Thunder Mountain shall not be responsible for any damages whatsoever resulting in delays from meeting any service dates.

2. **Payment.** Unless stated otherwise herein, billing shall commence immediately upon activation of Customer's Services. Customer hereby agrees to pay for all monthly service charges, plus one-time set up charges by the invoice due date. Any amount not received by the due date will be subject to interest or a late charge. Late interest capped at 10% per annum or maximum allowable by Law, whichever is less and does not accrue until an invoice has been overdue for 30 days.

3. **Billing.** All Services provided to Customer are provided on a pre-paid basis. As such, payment for all Services shall be due no later than the first day of the service period. (For example, if service period is June 1st thru June 30th, payment in full for Services shall be due no later than June 1st.) All set-up or installation charges shall be due and payable immediately upon receipt of invoice.

4. **Suspension.** If Customer, for any reason, has not paid any outstanding invoices within fifteen (15) days of the invoice due date, Thunder Mountain shall have the sole right to suspend, in whole or in part, the Services provided to Customer, with or without notice. All suspended Services shall incur a one time charge when reactivated. Such service reactivation charge shall be due and payable immediately upon receipt of invoice. If Customer fails to reactivate suspended services within fifteen (15) days of the suspension date, Thunder Mountain shall terminate Services, which includes removal of any Thunder Mountain owned equipment to provide services, and charge Customer for any applicable Termination liability as outlined below.

5. **Service and Installation.** Thunder Mountain shall provide Customer with the Services (and any equipment necessary to receive such Services). If Thunder Mountain determines that a Customer location is not serviceable under Thunder Mountain's normal installation guidelines, Thunder Mountain may terminate this Agreement. Customer may use the Services for any lawful purpose, provided that such purpose (a) does not interfere or impair the Thunder Mountain network, equipment or facilities and (b) complies with the applicable Acceptable Use Policies ("AUP") which are incorporated herein by reference. Customer shall use the Equipment solely for the purposes of receiving the Services. Customer shall not make any connections to the equipment which are not expressly authorized in writing by Thunder Mountain or permit tampering, altering, or repair of the Equipment by any person other than Thunder Mountain's authorized personnel. Unless provided otherwise herein, Thunder Mountain shall use reasonable efforts to maintain the Services in accordance with applicable performance standards; however, Thunder Mountain shall have no responsibility for the maintenance or repair of equipment which it does not furnish. Use of the Services shall be governed by Thunder Mountain's AUPs which is available online

at www.tmwireless.com. The AUPs may be amended from time to time during the Term of this Agreement. Thunder Mountain shall give customer 15 days written notice before the effectiveness of any AUP amendment as applied to Customer. In the event an AUP amendment has a material adverse impact on Customer's ability to use the service as intended, then Customer may terminate the Agreement and all associated Service Order Forms without payment due of any kind, except for any invoices for Services utilized up to the termination date. Customer's continued use of the Services following an amendment shall constitute acceptance. Thunder Mountain is not responsible for the networks or facilities of third parties which may be necessary to provide the Services.

6. **Customer Responsibilities.** Customer is responsible for arranging all necessary rights of access for Thunder Mountain within Customer's premises, including space for cables, conduits, equipment, and roof rights as necessary for Thunder Mountain authorized personnel to install, repair, inspect, maintain, replace or remove any and all facilities and equipment provided by Thunder Mountain. Customer shall use the Services in compliance with all applicable laws and ordinances, as well as applicable leases between Customer and third parties. Customer is responsible for ensuring that Customer's equipment is compatible for the Services selected and with the Thunder Mountain network. Customer shall be solely responsible for any third party charges incurred from use of the Services, including but not limited to, any telephone or long distance charges.

7. **Equipment.** Unless provided herein, Customer agrees that Thunder Mountain shall retain all rights, title and interest to facilities and Equipment installed by Thunder Mountain, and that Customer shall not create or permit to be created any liens or encumbrances on such equipment. Internal wiring shall not be considered Equipment, and shall become property of Customer upon initiation of Services. Customer shall not modify or relocate Equipment installed by Thunder Mountain or any other equipment, including servers in connection with data/internet without the prior written consent of Thunder Mountain. Upon expiration or termination of this Agreement, Customer shall return all Equipment in good condition, ordinary wear and tear from proper use excepted. In the event Equipment is lost, stolen or damaged, Customer shall be responsible for the full replacement value of such Equipment. Thunder Mountain shall repair or replace Equipment at no charge to Customer provided that damage is not due to misuse, abuse, or other disaster, including acts of God. If additional equipment, including but not limited to, monitors, computers, circuits, software or other devices, are required by Customer to use Services, Customer shall be responsible for such equipment.

8. **Spam Filtering.** Customer acknowledges that any anti-spam or spam filtering Services provided by Thunder Mountain are not guaranteed to block all undesired email from senders and that Customer may continue to receive such emails. Further, Customer understands and acknowledges that despite the exercise of commercially reasonable efforts on the part of Thunder Mountain, Customer's emails may be delayed or inadvertently lost.

9. **Resale of Service.** Customer may not resell any portion of the Services to any other party unless Customer has entered into an authorized reseller program with Thunder Mountain.

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Default. If Customer fails to comply with any material provision of this Agreement, including but not limited to, failure to make payment as specified, then Thunder Mountain, in its sole discretion, may elect to pursue one or more of the following courses of action upon proper notice to Customer as required by law: (i) terminate service whereupon all sums then due and payable shall become immediately due and payable; (ii) suspend all or any part of Services; and/or (iii) pursue any other remedies, including reasonable attorney's fees, as may be provided at law or in equity, including the applicable termination fees. Thunder Mountain shall give Customer a 60-day cure period prior to terminating Services for Customer default. In the event of a material breach of the Agreement by Thunder Mountain, Customer may terminate this Agreement and all associated Service Order Forms without payment due of any kind, except for any invoices for Services utilized up to the termination date.

10. IP Address and Domain Name Registration. Thunder Mountain will allocate IP addresses to Customer according to ARIN guidelines. All IP addresses assigned by Thunder Mountain must be relinquished by Customer upon expiration, termination or cancellation of this Agreement. IP Addresses shall be subject to the AUP. If Customer requests, Thunder Mountain will register an available domain name on behalf of customer, and such registration shall be subject to the rules promulgated by the domain name registrar. Customer is responsible for payment and maintenance of the domain name registration.

11. Termination. If Customer terminates this agreement for any reason (except for breach by Thunder Mountain) before end of Term, or if Thunder Mountain terminates this Agreement for Customer's breach of this Agreement or the AUPs, Customer will be subject to a termination liability. Termination liability shall equal 100% of the monthly recurring charges for the terminated Services multiplied by the number of full months remaining in the initial Term commitment and shall be due and payable immediately upon such termination; except for breach by Thunder Mountain or Customer's exercise of right to terminate following an amendment to the AUP by Thunder Mountain which has a material adverse impact on Customer's ability to use the Services as intended. After the initial term, this Agreement shall automatically renew on a month to month basis and shall be subject to the terms of this Agreement. Termination by Customer shall require thirty (30) days notice.

12. LIMITATION OF LIABILITY. NEITHER THUNDER MOUNTAIN NOR CUSTOMER SHALL BE LIABLE FOR DAMAGES FOR FAILURE TO FURNISH OR INTERRUPTION OF ANY SERVICES, NOR SHALL THUNDER MOUNTAIN OR CUSTOMER BE RESPONSIBLE FOR FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE REGARDLESS OF THE CAUSE. NEITHER THUNDER MOUNTAIN NOR CUSTOMER SHALL BE LIABLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION OR REMOVAL OF EQUIPMENT UNLESS CAUSED BY GROSS NEGLIGENCE OF THE OTHER PARTY. UNDER NO CIRCUMSTANCES SHALL THUNDER MOUNTAIN OR CUSTOMER BE RESPONSIBLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS ARISING FROM THIS AGREEMENT.

13. Assignment. Neither party may assign, in whole or in part, this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

14. WARRANTIES. EXCEPT AS PROVIDED HEREIN, THERE ARE NOT AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE SERVICES. SERVICES PROVIDED ARE A BEST EFFORTS SERVICE AND

THUNDER MOUNTAIN DOES NOT WARRANT THAT SERVICES, EQUIPMENT OR SOFTWARE SHALL BE ERROR-FREE OR WITHOUT INTERRUPTION.

15. Indemnity. Customer and Thunder Mountain shall mutually indemnify and hold one another and their respective affiliates, subcontractors, employees or agents harmless (including payment of reasonable attorney's fees) from and against any claim, actions or demands relating to or arising out of use of the Service including, without limitation (i) any content or software displayed, distributed or otherwise disseminated by the Customer, its employees, or users of the Services; (ii) any claim that use of the Service including the registration and maintenance of domain name(s), infringes on the patent, copyright, trademark or other intellectual property right of any third party; (iii) any malicious act or act in violation of any laws committed by Thunder Mountain or Customer and their respective employees or users of the Services; and/or (iv) violation by Customer, its employees or authorized users of the Thunder Mountain AUPs.

16. Viruses, Content and Customer Information. Software or content obtained from the use of the Services may contain viruses or other harmful features and Customer is solely responsible for protecting its equipment and software from such matters. Through the use of the Services, Customer may obtain or discover content that is offensive or illegal and Customer assumes the risk and is solely responsible for its access to such content.

17. Miscellaneous. This Agreement, along with the documents referenced herein and the Service Order Form constitute the entire agreement between Thunder Mountain and Customer for the Services. The invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of any other provision herein. This Agreement may be modified, waived or amended only by a written instrument signed by the parties; provided Thunder Mountain may modify the AUP and if customer continues to use the Services, Customer shall be bound by such AUP as modified. Thunder Mountain shall give customer 15 days written notice before the effectiveness of any AUP amendment as applied to Customer. In the event an AUP amendment has a material adverse impact on Customer's ability to use the service as intended, then Customer may terminate the Agreement and all associated Service Order Forms without payment due of any kind, except for any invoices for Services utilized up to the termination date. The rights and obligations of the parties under this Agreement shall be governed by the laws of the state of California. The failure of either party to exercise one or more rights provided in this Agreement shall not be deemed a waiver of the right to exercise such right in the future. Notices required by this Agreement shall be in writing and shall be delivered either by personal delivery or by mail. If delivered by mail, notices should be sent by any express mail service; or by certified or registered mail, return receipt requested; with all postage and charges prepaid. All notices and other written communications under this Agreement shall be addressed to the parties at the address as identified on the Service Order Form, or as specified by subsequent written notice delivered by the party whose address has changed.

Regulatory Authority – Force Majeure. This Agreement and the obligations of the parties shall be subject to modification to comply with all applicable laws, regulations, court rulings, and administrative orders, as amended. In no event shall either party have any claim against the other for failure of performance if such failure is caused by acts of God, natural disasters, including fire, flood, or winds, civil or military action, including riots, civil insurrection or acts of terrorists or the taking of property by condemnation

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