

## **Standard Terms and Conditions**

These Standard Terms and Conditions ("Agreement") are entered into by **tw telecom holdings inc.**, a Delaware corporation, on behalf of itself and its wholly owned and state certified operating subsidiaries, (collectively "TWTC") and Lexington Fayette Urban Co Gov, a Kentucky Governmental Entity ("Customer") and are effective upon execution by both Parties. Customer and TWTC may be referred to individually as a "Party" or collectively as the "Parties". TWTC is responsible for the performance of its operating subsidiaries under this Agreement.

**1. Service Orders:** Customer may submit service orders to TWTC to purchase telecommunication and related services under this Agreement ("Service Orders"). The Service Orders describe the telecommunication and related services that are available for purchase ("Services"). Service Orders executed by the Parties together with this Agreement form the final written agreement between the Parties and can only be amended or modified in a written document executed by both Parties. Services are subject to availability. The "Service Term" means the committed service duration for a particular Service as set forth in the applicable Service Order, including renewal periods. Upon expiration of a Service Term for a particular Service, the Service Term will automatically renew for successive Month to Month terms unless terminated by either Party upon written notice provided in accordance with Section 20 below at least thirty days prior to expiration of the then existing Service Term.

**2. Term of Standard Terms and Conditions:** The term of these Standard Terms and Conditions will commence upon signature by both Parties and will continue to govern Service Orders entered into by the Parties unless and until the Agreement is terminated in accordance with Sections 12 or 13 herein, or is otherwise superseded by a subsequent written agreement between the Parties.

**3. Cancellation, Modification or Expedition of Orders:** "Cancellation", "Modification" and "Expedite Charges" referenced hereunder are posted to the TWTC Website ([www.twtelecom.com](http://www.twtelecom.com)) and are subject to modification by TWTC effective upon posting to the TWTC Website.

(a) **Cancellation.** Customer may cancel a Service Order if the request is received in writing by TWTC prior to the planned installation date, and TWTC shall have the right to assess a Cancellation Charge. If the request to cancel is received after installation has begun, Customer must pay full termination liability as set forth in Section 14 below.

(b) **Modification.** Customer may request in writing the modification of any Service Order(s). Such request shall result in a Modification Charge. If TWTC receives a written modification request for delay of installation less than 3 days prior to the planned installation date, Customer must pay, in addition to the Modification Charge, the monthly recurring charge ("MRC") applicable to the delayed Service for the shorter of one billing month or the period from the original due date to the requested installation date. TWTC reserves the right to limit the number of requests to delay the planned installation date.

(c) **Expedite.** Customer may request an expedited installation date. If TWTC accepts the expedited installation date, Customer must pay an Expedite Charge.

(d) **Third Party Charges.** In addition to the charges set forth in (a), (b) and (c) above, TWTC may bill Customer for third party charges it incurs in order to complete Customer's request to cancel, modify, or expedite the Service Order.

### **4. TWTC Network, Access and Interconnection:**

(a) **Responsibilities.** TWTC will own and control the telecommunications equipment, cable and facilities installed and operated by TWTC for provision of the Services to Customer ("TWTC Network"). The TWTC Network will remain TWTC's personal property regardless of where located or attached. TWTC has the right to upgrade, replace or remove the TWTC Network in whole or in part, regardless of where located, so long as the Services continue to perform. TWTC has the right to limit the manner in which any portion of the TWTC Network is used to protect its technical integrity. Customer may not alter, move or disconnect any parts of the TWTC Network and is responsible for any damage to, or loss of, the TWTC Network caused by Customer's (or its end users') breach of this provision, negligence or willful misconduct. TWTC has no obligation to install, maintain or repair any equipment owned or provided by Customer unless otherwise agreed to in a

writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

(b) Access. Customer must provide TWTC with access to its premises to install and maintain Services and TWTC's Network. Customer must provide, at its expense, the following (collectively "Premise Requirements"): (i) appropriate space, power and environmental conditioning; and (ii) reasonable access rights and/or rights of way from third parties, as may be required for the installation and maintenance of the TWTC Network at and into Customer's premises. Customer must pay a Modification Charge if Customer does not provide the Premise Requirements prior to the scheduled installation date. In addition to the Modification Charge, TWTC may charge Customer for the reasonable time and materials incurred and documented by TWTC that are incurred because of Customer's failure to timely provide the Premise Requirements plus any third party charges assessed against TWTC. Customer must provide TWTC with a contact and/or help desk number that can be reached 24 hours per day/7 days per week.

(c) Demarcation Point, Inside Wiring and Activation Support. TWTC shall be responsible for provisioning Service up to the Demarcation Point, and Customer is responsible for providing and maintaining any necessary wiring and facilities on Customer's side of the Demarcation Point. "Demarcation Point" means the TWTC-designated physical interface between TWTC's Network and Customer's equipment, which point shall be either (i) in the case of a Service terminating at a TWTC owned or controlled premise, TWTC's designated distribution panel or network interface device located within such TWTC premise or (ii) in the case of a Service terminating at a Customer's premise, the distribution panel or network interface device located at the common telecommunications ("telco") demarcation at the Customer's or end-user's premise (e.g., entry point for telco facilities, telco closet or common telco room). If requested by Customer, TWTC may install, coordinate or otherwise arrange for installing or obtaining from third parties, facilities on Customer's side of the Demarcation Point ("Inside Wiring") and/or assist Customer with activating and/or configuring equipment on Customer's side of the Demarcation Point ("Activation Support"). Customer agrees to pay Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com) for any Inside Wiring and Activation Support performed by TWTC personnel and agrees that TWTC may bill Customer for the third party charges TWTC incurs to provide Inside Wiring.

(d) Letter of Authorization / Carrier Facility Assignment. If Customer intends to connect the Services to facilities that it or TWTC does not own, it must provide TWTC with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

## **5. Installation and Maintenance:**

(a) Installation. TWTC will notify Customer when the Service has been successfully installed and is available for Customer's use ("Service Date"). Unless Customer notifies TWTC by the close of business on the Service Date that the Service is not operational, the Service Term will commence. If Customer so notifies TWTC, the Service Date will not occur and the Service Term will not commence until the Service is operating properly. The Service Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use the Service.

### **(b) Maintenance:**

(i) Scheduled Maintenance. TWTC will monitor TWTC's Network 24 hours per day, 7 days per week. Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. TWTC will endeavor to provide Customer with at least five business days notice before performing Scheduled Maintenance unless a shorter notice period is required under the circumstances.

(ii) Emergency Maintenance. If TWTC has to perform maintenance outside of the Scheduled Maintenance window set forth in Section 5(b)(i) above, then TWTC will provide as much prior notice to Customer as is practicable under the circumstances.

## **6. Charges, Billing, Taxes and Payment:**

(a) Services are billed on a monthly basis commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears. Any installation or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.

(b) TWTC may require a deposit prior to the provision of any new Service. TWTC also may require a deposit as a condition to its obligation to continue to provide Services if Customer has failed to timely pay for Services on two occasions during any six month period.

(c) TWTC will invoice Customer for applicable Taxes (as defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. Customer will be liable for Taxes which were assessed by or paid to an appropriate taxing authority within the applicable statute of limitations period. If Customer fails to pay any Taxes properly billed, then as between TWTC and Customer, Customer will be solely responsible for payment of the Taxes, and penalty and interest.

“Tax” or “Taxes” mean any federal, state or local excise, gross receipts, gross margin, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated, imposed, or sought to be imposed, on or with respect to purchases by Customer from TWTC for consideration under this Agreement, which TWTC is required or permitted by law or a tariff to collect from Customer; *provided, however*, that the term “Tax” will not include any tax on TWTC’s net income or payroll taxes.

If either Party is audited by a taxing or other governmental authority, the other Party agrees to cooperate reasonably by responding to the audit inquiries in a proper, complete and timely manner. TWTC will cooperate, at Customer’s expense, with reasonable requests of Customer in connection with any Tax contest or refund claim. The Customer will ensure that no lien is attached to or allowed to remain on any asset of TWTC as a result of any Tax contest. Customer will indemnify and hold TWTC harmless against any liabilities, damages, losses, costs or expenses arising out of such Tax proceedings, including without limitation any additional Taxes, interest, penalties and attorney’s fees.

If Customer claims an exemption for any Taxes, Customer must provide TWTC with a proper tax exemption certificate as authorized by the appropriate taxing authority. Customer must pay the applicable Taxes to TWTC until it provides TWTC with a valid tax exemption certificate. If applicable law exempts a Service under this Agreement from a Tax, but does not also provide an exemption procedure, then TWTC will not collect such Tax if Customer provides TWTC with a letter signed by one of its officers: (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold TWTC harmless from any tax, interest, penalties, loss, cost or expense asserted against TWTC as a result of its not collecting the Taxes from Customer.

(d) TWTC will invoice Customer for applicable Recovery Fees (as defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. “Recovery Fees” means a surcharge to recover certain fees imposed on TWTC by a regulatory assessing authority for such things as doing business in certain jurisdictions, paying for rights-of-way charges, and/or funding certain government sponsored or supervised programs.

(e) Payment for all undisputed amounts due under this Agreement must be received by TWTC on or before the due date specified on the bill (“Due Date”). Any payment or portion thereof not received by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law.

**7. Disputes:** If Customer disputes any charges, it must log the dispute by completing and submitting a dispute form via TWTC’s dispute website located at: <https://billing.twtelecom.com/disputes/>, or by contacting TWTC’s dispute telephone line at 1-800-829-0420. All disputes must be submitted to TWTC in the manner specified above within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Withheld disputed amounts determined in favor of TWTC must be paid by Customer within five (5) business days following written, electronic or telephonic notice of the resolution, and will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the Due Date until the date paid.

**8. Service Levels / Service Outage Credits:**

- (a) Service Level Agreement ("SLA"). The SLAs provided by TWTC are set forth at <http://www.twtelecom.com/SLAs>. The SLAs identify the applicable performance metrics and Service Outage credit tables. If a specific SLA is not identified on the website for a particular Service, then credits for Service Outages exceeding thirty (30) minutes will be calculated on a pro rata basis, i.e. credits will be calculated by multiplying the duration of the Service Outage by the applicable MRC, divided by the monthly period. Credits issued during a calendar month will not exceed the MRC associated with the Service that experienced the Service Outage(s).
- (b) Service Outage Definition. A "Service Outage" is defined as either: (a) material non-compliance with a specific performance metric in a SLA; or (b) a complete loss of transmission or reception capability for a Service caused by TWTC's Network.
- (c) Reporting and Tracking of Service Outages. If there is a Service Outage, Customer must contact TWTC's Customer Network Reliability Center ("CNRC") at 800-829-0420 and TWTC will open a trouble ticket and provide Customer with a trouble ticket number for tracking purposes.
- (d) Duration of Service Outage and Application of Credits. For the purpose of calculating applicable credits, a Service Outage begins when Customer reports the Service Outage to TWTC's CNRC and ends when the Service is restored. Service Outages do not include outages and failures caused by the equipment, acts or omissions of Customer, third parties, Force Majeure events, or outages occurring during scheduled or emergency maintenance. The duration of a Service Outage does not include any time during which TWTC is not allowed access to the premises necessary to restore the Service. Credits for Service Outages are only issued if requested by Customer, and such requests must be submitted to TWTC within 120 days from the date Service is restored.
- (e) Chronic Trouble Services. If two Service Outages have occurred on a particular Service during a 30-day period and a third Service Outage occurs within thirty days following the second Service Outage, Customer may terminate the applicable Service without early termination liability provided that Customer supplies TWTC with a written termination notice within thirty days following the third Service Outage.
- (f) Remedies. Notwithstanding anything to the contrary in this Agreement, the remedies set forth in the service level agreement and in Sections 8(a) and 8(e) of this Agreement constitute Customer's sole and exclusive remedy for Service Outages.
- (g) Service Outages Not Caused by TWTC's Network. If TWTC responds to a service call initiated by Customer, and TWTC reasonably determines that the cause of the problem is: (i) not due to TWTC's Network; or (ii) on Customer's side of the Demarcation Point, Customer must compensate TWTC for the service call at TWTC's then prevailing Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com).

#### **9. Governmental Regulation - Changes:**

- (a) This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.
- (b) TWTC may discontinue or impose additional requirements to the provision of Service, upon 15 days written notice, if necessary to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of TWTC providing the Service. Customer is not responsible for the termination liability set forth in Section 14 below if TWTC discontinues the Service under this subsection.

**10. Indemnification:** Each Party ("Indemnitor") shall indemnify, defend and hold the other Party ("Indemnitee") harmless from all losses or damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of Indemnitor. Customer shall indemnify, defend and hold TWTC harmless from all losses or damages arising from Customer's violation of third party intellectual property rights, all claims of any kind by Customer's end users, or any act or omission of Customer associated with any Service.

**11. Limitation of Liability:** Except for the Parties' respective obligations set forth in Section 14 herein, neither Party is liable to the other for indirect, consequential, special, incidental, or punitive damages of any kind or nature whatsoever (including without limitation lost profits, lost revenues, lost savings, lost opportunity or harm to business), whether or not foreseeable, whether or not the Party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. Indirect damages include, but are not limited to, damages of the kinds specified in the preceding sentence that are incurred by a third party and are asserted against a Party (including attorneys' fees and expenses). TWTC's liability to Customer for direct damages may not exceed one month's calculation of the applicable MRCs regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. TWTC has no liability for the content of information that Customer passes through TWTC's Network, Customer's transmission errors, or any failure to establish connections outside of the TWTC Network.

**12. Termination by TWTC:**

(a) Termination With Notice. TWTC may suspend or terminate all Services associated with a delinquent account if Customer fails to cure by paying the outstanding balance in full within ten (10) days following written notice by TWTC. TWTC also may suspend Services and terminate this Agreement if Customer, following thirty (30) days' written notice (or shorter period if mandated by the governing authority or if necessary due to threat of imminent harm) fails to cure: (i) Customer's material breach of any provision of this Agreement or violation of any law, rule or regulation governing the Services; or (ii) Customer's insolvency, bankruptcy, assignment for benefit of creditors, appointment of trustee or receiver.

(b) Termination Without Notice. TWTC may terminate or suspend Services without notice if: (i) necessary to protect TWTC's Network; (ii) TWTC has reasonable evidence of Customer's illegal, improper or unauthorized use of Services; or (iii) required by legal or regulatory authority.

(c) Post Termination. Any termination or disconnection shall not relieve Customer of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. TWTC retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Services in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. All requests for disconnection will be processed by TWTC in thirty (30) days or less. Customer must pay for Services until such disconnection actually occurs.

**13. Termination by Customer:** Customer may terminate this Agreement and/or any Services hereunder upon thirty (30) days prior written notice, without incurring termination liability, for TWTC's (i) breach of any material provision of this Agreement, or any law, rule or regulation that affects Customer's use of Services, which remains uncured at the end of the notice period and/or (ii) insolvency, bankruptcy, assignment for the benefit of creditors, appointment of trustee or receiver or similar event.

**14. Termination Liability:** If TWTC terminates this Agreement or any Service Orders pursuant to Section 12 above (other than subsection b(iii)), or if Customer terminates this Agreement or any Service Orders for any reason other than pursuant to Section 13 above, all MRCs associated with the terminated Services for the balance of the applicable Service Term shall become immediately due and payable.

**15. Assignment:** Neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably conditioned, withheld or delayed, except that: (1) TWTC may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries; (b) pursuant to a merger, acquisition, reorganization, sale or transfer of all or substantially all its assets; or (c) for purposes of financing; and (2) Customer may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries; or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, provided that any assignment by Customer pursuant to this exception is subject to the following conditions: (i) the proposed assignee satisfies TWTC's credit and deposit standards; (ii) Customer has fully paid for all Services through the date of assignment; and (iii) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

**16. Entire Agreement:** This Agreement, together with the Service Order(s) and applicable tariffs or price lists on file with the appropriate public utilities commission or similar regulatory body set forth the entire agreement with respect to the

subject matter hereof, and supersede all prior agreements, promises, representations, and negotiations between the Parties. If there is a conflict, the Service Order shall prevail over this Agreement and any applicable tariff or price list shall prevail over both. Modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by both Parties.

**17. Force Majeure:** Either Party shall be excused from performance if the inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for sixty days or longer, the other Party may terminate the affected Services. Customer's invocation of this clause does not relieve Customer of its obligation to pay for Services actually received.

**18. Governing Law - Litigation:** The interpretation of the rights and duties of the Parties and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and subject to the laws of the State of Kentucky excluding its principles of conflicts of law. If litigation is commenced to enforce this Agreement, the prevailing Party is entitled to reimbursement of its costs and attorneys' fees from the other Party.

**19. Headings:** Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.

**20. Notices:** Any notice required under this Agreement must be in writing and be delivered to the receiving Party at the addresses listed below (i) in person, (ii) by certified mail with return receipt requested, or (iii) by overnight courier. A notice is deemed given (i) when delivered, if personally delivered, (ii) at the time indicated on the return receipt, if delivered by certified mail, or (iii) at the time the party or its representative executes the delivery receipt, if delivered via courier. TWTC must provide such notice to Customer's billing address, and Customer must provide such notice to TWTC at 10475 Park Meadows Drive, Littleton CO 80124, Attn: Deputy General Counsel, **except that if Customer is disconnecting Services for any reason, it must deliver notice to TWTC either by facsimile to 303-803-9638 or by email to "CustomerCare@twtelecom.com"**. Notice by facsimile or email is deemed given when delivered.

**21. No Waiver:** A Party's failure to enforce any provision of this Agreement shall not be construed as a future or continuing waiver of such provision.

**22. Public Releases, Use of Name:** Neither Party may issue a news release, public announcement, advertisement or other form of publicity regarding this Agreement nor the Services provided hereunder without the prior written consent of the other Party. Customer may not use TWTC's name, logo or service mark without TWTC's prior written consent. TWTC may use Customer's name and logo in materials presented to analysts and investors.

**23. Representations and Warranties:** Each Party represents and warrants that it is fully authorized to enter into this Agreement. TWTC represents and warrants that the Services will be performed by qualified and trained personnel. TWTC does not guarantee, represent or warrant that the Services will be without interruption. TWTC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE.

**24. Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provisions legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

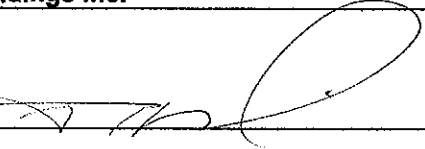
**25. Survival:** The terms and conditions of this Agreement will survive the expiration or termination of this Agreement to the extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

**26. Relationship of Parties; No Third Party Beneficiaries:** The Parties are independent contractors, and nothing herein creates or implies an agency, joint venture or partnership relationship between the Parties. This Agreement shall bind and

inure to the benefit of TWTC, Customer, and permitted successors and assigns. The Parties do not intend to create any rights for the benefit of any third parties.

**27. Confidentiality:** Each Party may disclose confidential information to the other Party in connection with this Agreement. Confidential information includes this Agreement, Service Orders, SLAs, all pricing information and any other information that is marked confidential or bears a marking of like import, or that the Party disclosing such information states is confidential and then confirms such confidentiality in writing within ten (10) days ("Confidential Information"). Confidential Information may only be used in connection with performance under this Agreement. Confidential Information may not be disclosed except to those employees or affiliates of the receiving Party who have a need to know, or to consultants or subcontractors of the receiving Party who agree to be bound by this section. Confidential Information does not include information that is generally available to the public through no wrongful act of the receiving Party or is independently developed by the receiving Party. Upon termination or expiration of this Agreement, the receiving Party will return the Confidential Information or destroy it. The obligations of this provision will survive for five years after the termination or expiration of this Agreement.

**Signature Block**

tw telecom holdings inc.	Customer: Lexington Fayette Urban Co Gov
Signature: 	Signature:
Name: Franklin Paulin	Name:
Title: V.P./General Manager	Title:
Date: 9.23.14	Date:
Sales Person: Roman Lind Jr/Brian Fox	

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.