

## TELMEX USA BUSINESS SERVICES AGREEMENT

Please read this agreement carefully.

YOUR USE OF THE TELMEX USA WEBSITE AND SERVICES IS  
CONDITIONED UPON YOUR COMPLIANCE AND ACCEPTANCE OF THIS  
AGREEMENT.

**Your signing a service order or term Agreement referencing this Agreement or Your use of the Telmex USA Services provided under this Agreement constitutes Your acceptance of the terms of this Agreement.**

This Agreement (the "Agreement") is between Telmex USA, L.L.C. and/or its affiliates providing Services hereunder ("Telmex USA") and "You" ((i) the individual or legal entity purchasing or opening an account for Services under this Agreement; or as the case may be (ii) the individual accessing or using the Services). Please read this Agreement carefully before installing, accessing, or otherwise using the Services. By installing, accessing, or otherwise using the Services You agree to be bound by this Agreement. Please maintain a copy for Your records. If You do not agree with the terms of this Agreement, do not use the Services and immediately contact Your customer service center or sales representative to cancel the Service.

### 1. Services

**a. Services Covered.** This Agreement applies to the Customer's purchase of international, interstate, and intrastate Telmex USA business communications and related products and services ("Services") either not covered under a tariff or signed agreement or covered under a term agreement referencing this Agreement. This Agreement does not apply to Telmex USA services that You purchase under any other separate contract or Telmex USA Tariff. Customer shall remain solely responsible for the access and use of Services by any user permitted by Customer to use the Services ("Permitted Users").

**b. Additional Terms.** Telmex's provision of Services to Customer will be governed by Telmex's applicable international, interstate and state tariffs ("Tariff(s)") and Telmex USA's "Service Guides" ("Guides"). The Telmex USA Service Guides include prices, service descriptions and other terms pertaining to Your Services. This Agreement incorporates by reference the terms of each such Tariff and Guides. The contractual relationship between Telmex USA and Customer shall be governed by the following order of precedence: (a) Tariffs, to the extent applicable; (b) the provisions of this Agreement; and (c) the Guides. You can review the Telmex USA Service Guides at <http://www.Telmexusa/regulatory> and at Telmex USA's offices during regular business hours at 3350 SW 148th Avenue, Miramar, Florida 33027. If You do not have access to the Internet, You may call Your Telmex USA customer service center for assistance.

**2. Changes.** Telmex USA may, at any time, amend the provisions and the prices of this Agreement. CHANGES WILL BE POSTED AT THE TELMEX USA INTERNET SITE SPECIFIED ABOVE BEFORE THE BILLING PERIOD IN WHICH THE CHANGES BECOME EFFECTIVE. Your use of the Services after the changes are effective constitutes Your acceptance of them. Therefore, You agree to periodically visit the Website to examine the then-current Agreement.

### 3. Responsibilities of the Parties.

**a. Telmex USA.** Telmex USA agrees to provide Services to You subject to the availability of the required service components and in accordance with this Agreement.

**b. Customer.** You warrant that use of the Services and Content of communications by You and those who access or use the Services purchased by You ("Users") will at all times comply with all applicable laws, regulations and instructions for use. "Content" includes information made available, displayed or transmitted in connection with the Services. No actions or inaction by Telmex USA shall constitute review or approval of Your or Users' use or Content. You are responsible for ensuring that all of the equipment that You and Users use is compatible with the Services.

**c. Responsibility For Your Account.** You are responsible for maintaining the confidentiality of Your account and any codes, passwords and personal identification numbers used in conjunction with the Services and for all uses of the Services in association with Your account whether or not authorized by You. You agree to immediately notify Telmex USA of any unauthorized use of Your account of which You become aware.

**d. Responsibility for Communications.** You are the sole owner of content and solely responsible for the content of all communications (visual, written or audible) using Your account. You shall comply with all laws while using the Services, shall not transmit any communication that violates any law, court order, or regulation, shall not violate any third party rights in using the Services, and shall not use the Services in any way that damages Telmex USA property or interferes with or disrupts Telmex USA's system or other users. Although Telmex USA is not responsible for any such communications, Telmex USA may suspend any such communications of which Telmex USA is made aware. You acknowledge and agree that Telmex USA does not control nor monitor Your content nor guarantee the accuracy, integrity, security or quality of such content.

**e. Fraudulent Use.** If You suspect that the Services provided to You have been fraudulently used, You must immediately notify Telmex USA.

**f. Indemnity.** Telmex USA grants to You the right to permit Users to access and use the Services, provided that You shall remain solely responsible for the access and use by any User of the Services. You shall defend, indemnify and hold harmless Telmex USA from and against all Damages arising out of third party claims relating to Your or Users' use of the Service or Content or performance of the Service.

**g. IP Addresses and Domain Names.** Except for IP addresses, domain names and telephone numbers expressly registered in Customer's name, all IP addresses, Telmex USA -based domain names and telephone numbers shall remain, at all times, property of Telmex USA and shall be nontransferable and Customer shall have no right to use such IP addresses, Telmex USA -based domain names or telephone numbers upon termination or

expiration of the applicable Service. Customer will indemnify Telmex USA for cost or liability arising from Customer's use of any domain name registered or administered on Customer's behalf that violates the service mark, trademark or other intellectual property rights of any third party. Customer irrevocably waives any claims against Telmex USA that may arise from the acts or omissions of domain name registries, registrars or other authorities. Any violation of this Section is deemed a material breach establishing Cause for termination.

**h. Access.** Customer grants Telmex USA access rights to access the service location property and premises that Customer controls. Customer shall cooperate with Telmex USA's efforts to procure such access rights for the portions of the property not under Customer's control. Access rights include (i) the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as the use of ancillary equipment space within the building, for the connection of customer to Telmex USA's network using Telmex USA-owned or Telmex USA-leased facilities; and (ii) 24 hours a day, 7 day a week access to the access lines and network facilities on the property.

**i. Acceptable Use Policy.** If a Service is provided over or includes access to the Internet, Customer and its Users shall comply with then-current version of the Telmex USA Acceptable Use Policy ("Policy"), as revised by Telmex USA from time to time, located at <http://www.telmexusa.com/regulatory>. Telmex USA reserves the right to suspend or terminate Service effective upon notice for a violation of the Policy. If Customer fails to rectify a violation of the Policy within five (5) days after receiving notice thereof, then Telmex USA may suspend the applicable portions of the Service. Telmex USA reserves the right, however, to act immediately and without notice to suspend or terminate service in response to a court order or government notice that certain conduct must be stopped or when Telmex USA reasonably determines: (i) that it may be exposed to sanctions or prosecution; (ii) that such violation may cause harm to or interfere with the integrity or normal operations or security of Telmex USA's network or networks with which Telmex USA is interconnected or interfere with another customer's use of Telmex USA Services or the Internet; or (iii) that such violation otherwise presents imminent risk of harm to Telmex USA or Telmex USA's customers or their respective employees. Customer will indemnify and hold harmless Telmex USA from any losses, damages, costs or expenses resulting from any third-party claim or allegation, which if true, would constitute a violation of the Policy. Each party will promptly notify the other of any such claim.

**j. Privacy and Data Use.** The information we hold about You will be used to provide the Services requested and for identification, account administration, analysis and fraud/loss prevention purposes. More details about how that information is used are in our privacy policy which governs Your visit to Telmex USA's Website and use of the Services.

#### **4. Service Commitments**

**a. General.** As a condition of obtaining a specific Service, promotion, or a specific optional pricing plan, a You may be required to (1) make a minimum annual revenue commitment

(MAC) with a specific Service Commitment Period for service such as one or two years or (2) make a minimum monthly revenue commitment (MMC).

**b. Service Commitment Period.** The Service Commitment Period (“SCP”) is the specified length of time You commit to remaining a Customer of Telmex USA for the Service subscribed to and selected by You and agreed to by the Company. The Service Commitment Period is the period contained in the Service Guides for the Service selected by You and shown on any standard order form, which includes all pertinent billing, technical, and other descriptive information which will enable Telmex USA to provide a communication Service(s) as required.

**c. Minimum Annual/Monthly Commitment (“MAC”/“MMC”).** MAC and MMC is the amount of service which You commit to purchase during each year or each month for the Service You selected. Your MAC/MMC includes charges for all services identified in the customer’s Agreement or in the Service Guides or promotion description as contributory. The promotional offer or Service Guides also specifies whether the MAC/MMC charges are calculated before or after applicable discounts. The MAC/MMC does not include non-usage charges, such as taxes, interest, surcharges, access facilities charges and other charges associated with access, fixed recurring charges, installation charges, and other non-recurring charges. If You fail to satisfy the MAC/MCC, You shall pay to Telmex USA, in addition to all other charges, the difference between the MAC/MCC and the actual charges for Your Services for each year or month in which You do not achieve the MAC/MCC.

**d. Service Commitment Period Renewal.** If You do not notify Telmex USA in writing of Your intent to cancel the existing Agreement ninety (90) days prior to the expiration date, the Agreement will automatically renew for the same MAC and Service Commitment Period.

**e. Early Termination Charges.** If: (a) You terminates this Agreement during the Service Commitment Period other than Cause; or (b) TELMEX USA terminates this Agreement for Cause pursuant to the Sections entitled “Termination for Cause” or “Termination by TELMEX USA,” then You will pay, within thirty (30) days after such termination: (i) all accrued but unpaid charges incurred through the date of such termination, plus any early termination penalties set forth in the specific Service Guide(s) for Your Service(s) and (ii) a pro rata portion of any and all credits received by You.

**5. Rates and Charges.** Customer agrees to pay the rates and charges set forth in this Agreement. In the event (i) Customer receives any services that are not the subject of rates, charges and discounts expressly set forth in this Agreement, or (ii) Customer purchases any services after the expiration of the Term, Customer shall pay Telmex USA’s standard rates as set forth in the Service Guides or Tariffs, if applicable, for those services. The rates and charges set forth in this Agreement do not include (without limitation) charges for all possible non-recurring charges, network access service, local exchange service, access/egress (or related) charges imposed by a third party other than Telmex USA or a Telmex USA affiliate, Internet service, on-site installation, applicable sales, use, excise, utility, and gross receipts taxes and other similar

tax-like surcharges, governmental charges, network application fees, customer premises equipment or extended wiring to or at Customer premises.

**6. Credit Allowances for Interruptions.** If an interruption or failure of Services is caused solely by Telmex USA and not by You or a third party or other causes beyond Telmex USA's reasonable control, You may be entitled to a Credit Allowance as specified in the Telmex USA Service Guides.

## **7. Charges/Payments.**

**a. General.** You agree to pay Telmex USA for Your and Users' use of the Services at the charges specified in the Telmex USA Service Guides, as amended from time to time, without deduction, setoff or delay for any reason. At any time, Telmex USA may require You to pay a deposit or increase an existing deposit as a condition of providing Services. You authorize Telmex USA to investigate Your credit history at any time and to share credit information about You with credit reporting agencies. Each month, Telmex USA will invoice You for the total monthly cost of all Services. Payment will be due on the due date stated in the invoice.

**b. Taxes/Regulatory Surcharges.** Charges as stated in the Telmex USA Service Guides are exclusive of any applicable taxes, tax-like charges and surcharges now or hereafter attributable to Your Services and included on Your invoice. You are responsible for and agree to pay all taxes, gross receipts taxes, fees and surcharges relating to the sale, transfer of ownership, installation, license, use or provision of the Services. However, if applicable, Telmex USA will exempt You in accordance with law, effective on the date You receives a valid tax exemption certificate from Customer before Telmex USA provides Services to You. No retroactive credit will be given for amounts billed prior to receipt of the valid tax exemption documentation accepted by Telmex USA. Telmex USA may adjust its rates and charges or impose additional rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs. Examples of such charges include, but are not limited to, Universal Service funding, and compensation payable to payphone service providers for use of their payphones to access Telmex USA's service. You are responsible for payment of all such charges,

**c. Payment.** Payments must be made at the address designated on the invoice or other such place as TELMEX USA may designate. Payment of all charges via electronic funds transfer or credit card is due within fifteen (15) days after the date of invoice in U.S. currency. If accepted by Telmex USA, a check drawn on a U.S. financial institution may be used for payment. Restrictive endorsements or other statements on checks accepted by Telmex USA will not apply. You will be responsible for reimbursing Telmex USA for all costs (including reasonable attorney fees) associated with collecting delinquent or dishonored payments. If Telmex USA does not receive payment by the due date, You may be charged interest on any unpaid balances at the rate of up to 1 1/2% per month or the maximum rate allowed by law.

**d. Unpaid Charges.** Unpaid invoices will be subject to a late charge on the delinquent amount. not paid within thirty (30) days from the invoice date. In the event charges due are not paid in full, for any reason, within thirty (30) days from the Invoice date, a late charge of 1.5% per month will be assessed on the outstanding balance or the maximum legally allowable interest rate.

**e. Billing Disputes.** IF YOU DISPUTE CHARGES ON YOUR INVOICE, YOU MUST NOTIFY TELMEX USA IN WRITING OF THE DISPUTE WITHIN SIX (6) MONTHS OF THE DATE ON THE AFFECTED INVOICE, OR ELSE YOU WAIVE THE DISPUTE. AND SUCH INVOICE SHALL BE DEEMED TO BE CORRECT AND BINDING UPON YOU AND. YOU WILL BE DEEMED TO AGREE TO SUCH CHARGES AND TELMEX USA WILL NOT BE SUBJECT TO MAKING ADJUSTMENTS TO CHARGES ON THE AFFECTED INVOICE.

## **8. Default/Termination.**

**a. General.** You can cancel this Agreement at any time just by giving us notice and Telmex USA can do the same. You shall provide prior written notice for the disconnection of service, as follows. For service provided exclusively within the United States, You must provide 30 days' written notice. For all other service, You must provide written notice, conspicuously titled "Request for Service Disconnection", either (a) of 60 days or (b) equal to the cancellation period required by third parties (such as PTTs) for the non-U.S. Mainland portion of the service You are canceling, whichever is longer.

**b. Notice.** For a service disconnect notice to be effective, Customer must receive a confirmation from Telmex USA's Customer Service organization stating that the disconnect notice was received and accepted. Notice is deemed effective only if You receive a written confirmation of receipt from Telmex USA; If You do not receive such a confirmation within 5 business days, You should contact Your account representative or Customer Service.

**c. Charges.** You shall pay for all charges for all Services rendered up to the date of termination and any future amounts due under this Agreement and/or any Order Form through the effective date of termination including any applicable termination charges set forth in this Agreement.

**d. Termination by Telmex USA.** Telmex USA may immediately discontinue, terminate, restrict or suspend Your Services and/or terminate this Agreement immediately without notice to You if: You fail to provide a bond or security deposit as requested; You fail to pay Telmex USA any charges when due; You provide any false information to Telmex USA; to prevent or protect against fraud, abuse or misuse by You, Users or third parties or otherwise protect Telmex USA's personnel, facilities or services; Telmex USA believes Your or Users' use or Content may violate this Agreement or any laws or regulations or interferes in any way with Telmex USA's provision of Telmex USA services to its customers or its business operations; or You become insolvent or are subject to any proceeding under bankruptcy or similar laws.

**9. Confidential Information.** Commencing on the date Customer executes this Agreement and continuing for a period of three (3) years from the termination of this Agreement, each party shall protect as confidential, and shall not disclose to any third party, any Confidential Information received from the disclosing party or otherwise discovered by the receiving party during the term of this Agreement, including, but not limited to, the pricing and terms of this Agreement, and any information relating to the disclosing party's technology, business affairs, and marketing or sales plans (collectively the "Confidential Information"). The parties shall use Confidential Information

only for the purpose of this Agreement. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (a) is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (b) is or becomes publicly known, through no wrongful act or omission of the receiving party; (c) is received without restriction from a third party free to disclose it without obligation to the disclosing party; (d) is developed independently by the receiving party without reference to the Confidential Information, or (e) is required to be disclosed by law, regulation, or court or governmental order. Notwithstanding the foregoing, the parties acknowledge that Recipient shall not be required to return to Discloser or destroy those copies of Information residing on Recipient's backup, disaster recovery or business continuity systems and the obligations hereunder with respect to such Information shall survive until such Information is destroyed.

**10. Customer Premises Equipment.** The provisions of the Guides relating to the purchase, maintenance (including installation) and rental (including maintenance) of Customer Premises Equipment ("CPE") will apply, unless otherwise stated, to any Customer order to purchase, maintain, or rent (as applicable) CPE, in the U.S. Mainland only,

**11. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY. TELMEX USA MAKES NO EXPRESS OR IMPLIED WARRANTY AND EXPRESSLY DISCLAIMS, WITHOUT LIMITATION, ALL WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO ANY TELMEX USA SERVICES, RELATED PRODUCTS, EQUIPMENT, SOFTWARE OR DOCUMENTATION. TELMEX USA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. TELMEX USA DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THE SERVICES WILL PREVENT UNAUTHORIZED ACCESS. EQUIPMENT PROVIDED BY TELMEX USA IN CONJUNCTION WITH A SERVICE IS PROVIDED ON AN "AS IS" BASIS. TELMEX USA DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND YOU SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS.

**12. Infringement Indemnity.**

a. Telmex USA agrees to defend or settle any claim against You and to pay all Damages that a court may award against You in any suit alleging that a Service furnished under this

Agreement infringes any United States patent, trademark, copyright or trade secret, except where the claim or suit arises out of or results from: Your or User's Content in connection with the Service; modifications to the Service made by or combinations of the Service with services or products provided by You or others; Telmex USA's adherence to Your written instructions or specifications; or use of the Service in violation of this Agreement. You agree to defend or settle at Your own expense all claims or suits against Telmex USA covered by the exceptions in the preceding sentence and to immediately cease any activity which gives rise to the alleged infringement. The indemnifying party will also pay all Damages and costs

that by final judgment may be assessed against the indemnified party due to infringement by the indemnifying party.

b. In the event of a claim of infringement for which Telmex USA is the indemnifying party under Section 12.a., Telmex USA may at its option either procure the right to continue using, or replace or modify, the alleged infringing Service so that the Service becomes non-infringing and substantially compliant with the requirements in this Agreement. Upon inability to reasonably perform either of the foregoing options, Telmex USA may terminate this Agreement, without liability other than as stated in Section 12.a.

c. With respect to the indemnification obligations in this Section 12: (i) the indemnified party will notify the indemnifying party in writing promptly upon learning of any claim or suit for which indemnification may be sought; (ii) the indemnifying party shall have control of the defense or settlement, provided that the indemnified party shall have the right to participate in such defense or settlement with counsel of its own selection and at its expense; and (iii) the indemnified party shall reasonably cooperate with the defense, at the indemnifying party's expense.

### **13. Limitations of Liability.**

a. For purposes of all indemnity obligations, exclusive remedies and limitations of liability set forth in this Agreement, "Telmex USA" shall be defined as Telmex USA, its affiliates, and its and their employees, directors, officers, agents, representatives, subcontractors, interconnection service providers and suppliers; "You or Customer" shall be defined as Customer, its affiliates, and its and their employees, directors, officers, agents and representatives; and "Damages" will refer collectively to all injury, damage, liability, loss, penalty, interest and expense incurred.

b. You shall indemnify, defend and hold Telmex USA harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorneys' fees, which arise out of or relate to Your use of the Services (including without limitation, any person accessing the Services using Your account), any actual or alleged

violation of this Agreement or applicable law, or any actual or alleged infringement or violation by You or any person accessing the Services using Your account of any intellectual property or privacy or other right of any person or entity.

c. TELMEX USA'S TOTAL LIABILITY TO YOU IN CONNECTION WITH THIS AGREEMENT, FOR ANY AND ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, SHALL BE: (A) DIRECT DAMAGES PROVEN BY THE CUSTOMER; OR (B) THE AMOUNT PAID BY YOU TO TELMEX USA UNDER THIS AGREEMENT FOR THE ONE (1) MONTH PERIOD PRIOR TO ACCRUAL OF THE MOST RECENT CAUSE OF ACTION. NOTHING IN THIS SECTION SHALL LIMIT TELMEX USA'S LIABILITY: (A) IN TORT FOR ITS WILLFUL OR INTENTIONAL MISCONDUCT; OR (B) FOR BODILY INJURY OR DEATH PROXIMATELY CAUSED BY TELMEX USA'S NEGLIGENCE; OR (C) LOSS OR DAMAGE TO REAL

PROPERTY OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY TELMEX USA'S NEGLIGENCE.

b. EITHER PARTY'S ENTIRE LIABILITY, AND THE OTHER PARTY'S EXCLUSIVE REMEDIES, FOR ANY DAMAGES CAUSED BY ANY SERVICE DEFECT OR FAILURE, OR FOR OTHER CLAIMS ARISING IN CONNECTION WITH ANY SERVICE OR PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT SHALL BE:

(i) FOR BODILY INJURY OR DEATH TO ANY PERSON OR REAL OR TANGIBLE PROPERTY DAMAGE NEGLIGENTLY CAUSED A PARTY, OR FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF PARTY OR FROM A BREACH OF THE PROVISIONS OF SECTION 10.h., THE OTHER PARTY'S RIGHT TO PROVEN DIRECT DAMAGES;

(ii) FOR INDEMNITY, THE REMEDIES STATED IN SECTIONS 3.d. AND 9;

(iii) FOR ALL OTHER DAMAGES OTHER THAN THOSE SET FORTH ABOVE AND NOT EXCLUDED UNDER THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED IN THE AGGREGATE DURING ANY TWELVE (12) MONTH PERIOD AN AMOUNT EQUAL TO THE TOTAL NET PAYMENTS PAYABLE BY CUSTOMER FOR THE AFFECTED SERVICE DURING THE ONE (1) MONTH PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ANY AND ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT OR THE SUM OF \$1,000 WHICHEVER IS LESS.

c. EXCEPT FOR SECTIONS 3.d. and 9.a., IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, OR DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, UNDER ANY THEORY OF TORT,

CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH

DAMAGES AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

d. TELMEX USA ALSO SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION, ACCESS OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS NOT PROVIDED BY TELMEX USA SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS (EXCEPT TO THE EXTENT CREDIT ALLOWANCES ARE SPECIFIED IN THE TELMEX USA SERVICE GUIDES); OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS

OR DESTRUCTION OF YOUR, USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.

e. The limitations of liability set forth in this Section 6 shall apply: (i) regardless of the form of action, whether in contract, tort, strict liability, equity or otherwise; and (ii) whether or not damages were foreseeable. These limitations of liability shall survive failure of any exclusive remedies provided in this Agreement.

#### **14. General Provisions.**

**a. Acts Beyond Control.** NEITHER YOU NOR TELMEX USA SHALL BE LIABLE FOR ANY DELAY, FAILURE IN PERFORMANCE, LOSS OR DAMAGE DUE TO (WITHOUT LIMITATION): ACCIDENTS, ACTS OF TERRORISM, CIVIL COMMOTION, FIRE, FLOOD, FORCE OF NATURE, EXPLOSION, HOSTILITIES, REVOLUTIONS, POWER BLACKOUT, EARTHQUAKE, VOLCANIC ACTION, THE ELEMENTS, STRIKE, EMBARGO, LABOR DISPUTES, ACTS OF CIVIL OR MILITARY AUTHORITY, NATIONAL EMERGENCY, RIOTS, WARS, ACTS OF GOD, ACTS OR OMISSIONS OF CARRIERS OR SUPPLIERS, ACTS OF REGULATORY OR GOVERNMENTAL AGENCIES, OR STABILITY OR AVAILABILITY OF THE INTERNET, OR OTHER CAUSES OR PORTION THEREOF BEYOND THEIR REASONABLE CONTROL, EXCEPT THAT YOUR OBLIGATION TO PAY FOR CHARGES INCURRED FOR SERVICES RECEIVED BY YOU SHALL NOT BE EXCUSED.

**b. No Third Party Rights.** This Agreement does not provide any third party, including Users, with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

**c. Assignment.** Either party may assign this Agreement or any of its rights hereunder to an affiliate or successor without the prior written consent of the other party, provided that if You assign this Agreement to an affiliate or successor, then such affiliate or successor must meet Telmex USA's creditworthiness standards. Otherwise, this Agreement may not be assigned by You without Telmex USA's prior written consent. Telmex USA may assign all or part of our rights and duties under this Agreement to a present or future affiliate or successor. Telmex USA may subcontract work to be performed under this

Agreement, but will retain responsibility for all such work. Any attempted transfer or assignment of this Agreement by either party not in accordance with the terms of this Section shall be null and void.

**d. Notices.** Notices from You to Telmex USA shall be made by following the customer service instructions on Your invoice. You are responsible for notifying Telmex USA of any changes in Your authorized billing address and other contact information. All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, or certified or registered mail, postage prepaid and return receipt requested to the following address. Notices to Telmex USA will be deemed to have been given when received.

Telmex USA, L.L.C.  
3350 SW 148th Avenue, Suite 400  
Miramar, FL 33027  
Attn: Customer Service  
Email: notice@telmexusa.com

**e. Severability.** If any part of this Agreement is found invalid or unenforceable, the rest of the Agreement remains enforceable. Such invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risks, and the remainder of the Agreement will continue in effect. If any provision(s) is found to be contrary to law, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Telmex USA's failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision unless agreed to by Telmex USA's in a non-electronic writing manually signed by a duly authorized representative of Telmex USA's.

**f. Governing Law.** State law issues concerning the construction, interpretation and performance of this Agreement shall be governed shall be governed by the substantive laws of the State of New York, excluding its choice of law principles.

**g. Two Year Limit on Actions.** Any legal action arising in connection with this Agreement must begin within two (2) years after the cause of action arises.

**h. Trademarks and Publicity.** Neither Telmex USA nor Customer shall: (a) use any service mark or trademark of the other party; or (b) refer to the other party in connection with any advertising, promotion, press release or publication unless it obtains the other party's prior written approval, provided that such consent may be revoked at any time.

**i. Waiver of Rights.** We may from time to time waive the enforcement of any of the provisions of this Agreement. If we do, this will not affect our ability to enforce that provision in our dealings with other customers or in our future dealings with You, nor will it be considered an amendment of this Agreement.

**j. Survival of Obligations.** The respective obligations of You and Telmex USA, which by their nature would continue beyond the termination of this Agreement, such as the obligations regarding limitations of liability, shall survive termination.

**k. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the Services provided hereunder. The contractual relationship between Telmex USA and Customer shall be governed by the following order of precedence: (a) Tariffs, to the extent applicable; (b) the provisions of this Agreement; and (c) the Guide(s). In the event of any inconsistencies between this Agreement and the Telmex USA Service Guides, this Agreement will govern. This Agreement supersedes all other prior representations, agreements, proposals, statements or understandings, whether written or oral, concerning the Services or the rights and obligations relating to those Services. This Agreement shall not be contradicted, explained or supplemented by

any written or oral statements, proposals, representations, advertisements or service descriptions not expressly set forth in this Agreement.

Thank You for using Telmex USA