

TNCI

General Terms and Conditions of Service

1. SERVICES

Customer may order from TNCI Operating Company LLC ("TNCI") telecommunications or information services (the "Services") which shall consist of those Services described in, and subject to the Service Schedule(s), Letters of Agency, Service Exhibits, attachments, addenda or credit documents ("Service Documents") between Customer and TNCI. All Services ordered by Customer shall be provided upon the terms and conditions that are set forth in this document and associated Service Documents (collectively, the "Agreement").

2. AGREEMENT

- a) TNCI offers Service(s) to the Customer pursuant to these Terms & Conditions in consideration for Customer's remittance of applicable Charges and the mutual covenants, warranties, and representations herein. Usage of Services(s) by Customer, or an affiliate of Customer, shall be deemed to be acceptance of the terms of the Agreement.
- b) Customer enters into this Agreement with TNCI when Customer accepts the Agreement by executing any Service Document(s) or by requesting, using or paying for the Service(s) covered by this Agreement and offered by TNCI. This Agreement sets forth the Customer's and TNCI's legal rights concerning payments, credits, limitations of liability, and other important topics associated with the Service(s) TNCI provides to the Customer that are not covered under tariff. For those Service(s) provided under tariff, the tariff prevails. By enrolling in, subscribing to, or using TNCI's Service(s), Customer agrees to abide by the rates, charges and terms and conditions of this Agreement.
- c) In the event that Customer and TNCI have executed a valid term agreement, TNCI may not unilaterally increase rates during the term of the agreement. TNCI may be forced to increase its rates beyond those identified herein as a result of increased rate(s), install fees, or newly implemented underlying carrier charges. In such an event, where applicable, TNCI shall provide a thirty (30) calendar day written notice, beginning at the post mark date to the Customer and the Customer then shall be released from the term agreement relative to the Service(s) directly impacted by the rate increase with no early termination fee assessed. In addition, Customer must notify TNCI within thirty (30) calendar days of such notice in writing if Customer elects to terminate applicable Service(s). Any account balances and charges shall remain due and payable to TNCI by Customer through the termination of Service(s) as referenced in the Cancellation section. If Customer does not notify TNCI in the required timeframe, as stated above, Customer will remain contractually obligated to fulfill the Service Term with TNCI for all originally contracted services, and all usage, MRCs and NRCs will continue to be billed and payable through termination..
- d) No agents or employees of any other service provider shall be deemed to be agents or employees of TNCI. TNCI is not liable for any acts, omissions or claims made by non-TNCI employees, including any independent sales agents, unless they are expressly approved by an officer of TNCI in writing or contained in a Service Document provided by TNCI to the Customer.

3. SERVICE TERMS

- a) Unless otherwise stipulated in another Service Document, the Service(s) shall be provided in accordance with these terms & conditions.
- b) The initial Service Term shall be for one month, unless the Customer has entered into a term plan with TNCI. At the conclusion of the initial Service Term, the Service Term shall be automatically renewed in month-to-month increments at the prevailing rates and terms then applicable to the Services
- c) In the event Customer had entered into a term plan upon the conclusion of the initial Service Term, the Service Term shall be automatically renewed in one (1) year increments at the prevailing rates and terms then applicable to the Services.
- d) If Customer elects to reterm Service with TNCI subsequent to the initial Service Term, then each subsequent reterm period shall apply.
- e) The Service(s) provided may be terminated by either party upon thirty (30) calendar days' written notice.
- f) If TNCI makes a change to the Agreement which materially impacts Customer adversely or increases the rates to a Customer under a term plan, excluding rates or adjustments as described in 7(d) herein, then Customer shall have the opportunity to terminate the Agreement for the applicable Service(s) provided that the Customer notifies TNCI in writing within thirty (30) calendar days from date of notice. If Customer elects to terminate applicable Service(s), Customer continues to be responsible for all usage and other Charges until the Service(s) cease to bill by TNCI. Continued usage of Services(s) by Customer, or an affiliate of Customer, after this time period shall be deemed to be acceptance of the changes.
- g) Either party may terminate the Services upon written notice of its election to terminate at least sixty (60) calendar days prior to the expiration of the initial or retermed Service Term.

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4. SERVICE TERMINATION

- a) Customer shall be responsible for all Charges that accrue through disconnection. Should Customer, after requesting to disconnect Service(s), continue to generate usage after ninety (90) business days following the disconnect request, all such Service(s) shall be automatically reactivated; any applicable charges, including MRCs and surcharges, and fees that applied prior to the disconnect request shall be reinstated and be due in full.
- b) Upon notification to TNCI of termination, the Customer is responsible for transferring services to a new provider within thirty (30) calendar days for Domestic services and sixty (60) calendar days for International services from termination. Customer will be responsible for billings until the Services cease to bill and are disconnected.
- c) As a cost and not a penalty, if Customer and TNCI have executed a valid term plan agreement which the Customer terminates before the end of the term, a Term Liability Assessment ("TLA") shall be assessed. The TLA is calculated based on the average billing of the Customer's usage for the previous six (6) month period (or weighted if 6 months are not available) plus all other Charges, multiplied by the number of months remaining in the valid term plan agreement for each Service.

5. SERVICE INTERRUPTION

Notwithstanding anything contained herein, TNCI may immediately block and/or disconnect Service(s) to Customer without incurring any liability whatsoever when Customer is in default. Customer may be in default as a result of the following:

- Nonpayment of any sums due TNCI for Service(s) provided to Customer after the Due Date.
- Underutilization or failure of Customer to generate usage for 3 consecutive months.
- Violation by Customer of any law, rule, or regulation of any governing authority having jurisdiction.
- Breach by Customer of any term or condition in any Service Document.
- Misrepresentation by Customer or an affiliate of the Customer, in any Service Document submitted to TNCI.
- Usage or Charges by Customer beyond the credit limit established by TNCI.
- Failure to provide an Additional Security as prescribed by TNCI.
- Violation of the TNCI Acceptable Use Policy located at www.tncii.com.
- The imposition by the Federal Communications Commission ("FCC"), state, federal or local regulatory authority of any amendments, revisions, deletions, supplements and/or decisions which impair, modify or prevent TNCI from fulfilling its obligations to Customer.

6. CREDIT

- a) TNCI reserves the right to require that Customer establish, re-establish, and/or maintain creditworthiness to TNCI's satisfaction. As such, and as a condition of Service(s) and/or application for Service(s), Customer authorizes TNCI to examine, at anytime, available credit and reference records for the purpose of assessing Customer's creditworthiness. If Customer's financial condition is unknown or unacceptable by TNCI, TNCI reserves the right to decline or suspend Service(s). TNCI also reserves the right to evaluate, from time to time, Customer's creditworthiness and to require, at its sole discretion, a deposit or increase in a deposit ("Additional Security").
- b) If Customer believes that TNCI has reported inaccurate information about an account to a credit reporting agency, Customer may send to TNCI a written notice describing the specific inaccuracy.
- c) In the event TNCI takes an adverse action with respect to Customer, based in whole or in part on information contained in a credit report, TNCI will provide Customer with the following:
 - A notice of the adverse action in oral, written, or electronic form.
 - The name, address, and telephone number of the agency that furnished the report.
 - A statement of a Customer's rights as contained in the Fair Credit Reporting Act, as applicable.

7. BILLING, CHARGES, AND PAYMENT

- a) TNCI invoices are due upon receipt. Full payment of standard invoices must be received by TNCI within twenty-one (21) calendar days from the invoice date ("Due Date"), unless otherwise agreed to by TNCI or in the case of fraud. Interest at the rate of 1.5% per month (or the highest allowed by law, if less) will accrue on unpaid account balances after the Due Date. Where any undercharge in billing of a Customer has occurred, TNCI will backbill Customer for applicable charges up to twenty-four (24) months.
- b) Invoice detail can be accessed at the TNCI Customer Portal located at www.tncii.com. Charges are billed on a monthly basis (unless otherwise stipulated in another Service Document) beginning on the date billing becomes effective.

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- c) Customer is responsible for payment of all applicable Service usage charges, monthly recurring charge ("MRC") fees, non-recurring charge ("NRC") fees, surcharges, and taxes billed to Customer and its affiliates under any Service Document (collectively, the "Charges").
- d) TNCI may adjust Charges or impose additional Charges, in order to: (i) recover amounts it may be required or allowed by government authority to collect from or pay to others to support statutory or regulatory programs during the course of the service period; or (ii) collect on relocation charges including, but not limited to, relocation and installation charges should Customer elect to move to another geographic location serviced by TNCI and TNCI permits such deactivation and relocation; or (iii) adjust for additional fees, surcharges, or taxes by TNCI's underlying providers or local, State, and Federal bodies. For adjusted or additional Charge related to the reasons stated in 7(d), a TLA continues to apply.
- e) If Customer wishes to dispute account Charges, the Customer must notify TNCI in writing within sixty (60) calendar days of the invoice date of the invoice containing disputed Charges. In the absence of an express dispute of a TNCI billing statement, TNCI will deem the Charges valid and binding upon the Customer. In the event a dispute is resolved in Customer's favor, TNCI shall apply a corresponding credit to Customer's future invoice. Such credit shall not exceed sixty (60) calendar days of Charges. In the event TNCI refunds any amounts paid for Service(s), TNCI is not liable for refunding the amount of taxes paid by Customer. Customer is responsible for seeking refunds for such taxes from the appropriate taxing authority.
- f) In the event TNCI determines that Customer is using the Service(s) for an application that is at a higher rate or higher usage from the application represented by Customer, TNCI shall charge Customer the higher rate for the Service(s) from the date of first use of the Service(s) at the higher rate or usage.
- g) If Customer has unpaid past due Charges, TNCI reserves the right not to honor Customer's request for any change in Service(s).
- h) In the event of a business downturn beyond Customer's control that significantly reduces the volume of Services required by the Customer, with the result that Customer will be unable to meet its revenue and/or volume commitments under the Service Documents (notwithstanding Customer's best efforts to avoid such a shortfall), Customer shall notify TNCI in writing of the downturn accompanied by documentation supporting such downturn. If TNCI determines that such event occurred then TNCI at its discretion (but with no obligation to do so) may develop an alternative proposal that will satisfy the concerns of both parties and comply with all applicable legal and regulatory requirements. By way of example and not limitation, such alternative proposals may include changes in rates, nonrecurring charges, revenue and/or volume commitments, discounts, length of term plan service period, and other provisions. This provision shall not apply to a change resulting from a decision by Customer to transfer portions of its traffic or projected growth to providers other than TNCI. This provision does not constitute a waiver of any charges, including shortfall charges, incurred by the Customer prior to the time the parties mutually agree to amend or replace the Service Documents.

8. FRAUDULENT USAGE

- a) As a measure to help prevent fraudulent usage, TNCI shall preemptively block all international calling in Service territories where TNCI has the technical ability to do so, unless otherwise noted by Customer in the Service Documents or in future written correspondence to TNCI. Customer may either remove a block or re-initiate a block on international calling by notifying TNCI in writing. A separate fee may apply for each change.
- b) Customer shall indemnify and hold TNCI harmless for any and all costs, expenses, claims, or actions (including Legal Expenses) in all proceedings arising from fraudulent usage, of any nature, of the Service(s), including, but not limited to costs arising from international usage or long duration calls. Customer shall not be excused from paying TNCI for Service(s) provided to Customer or any portion thereof on the basis that fraudulent usage comprised a portion of the Charges or on the basis that TNCI did not block Customer's international calling ability. In the event TNCI discovers fraudulent usage, nothing contained herein shall prohibit TNCI from taking immediate action that TNCI deems to be reasonably necessary to prevent such fraudulent usage from taking place including, without limitation, blocking, re-blocking, or terminating Service(s) to or from specific locations, provided that TNCI shall not be required under any circumstances to take such action. The parties agree that Customer shall be responsible for any fraud, unauthorized use, and is required to provide total payment of Charges associated with such fraud and unauthorized use within two (2) calendar days of notification.

9. PROHIBITION OF RESALE

Except as explicitly authorized in a written agreement between TNCI and Customer, the Service(s) and Equipment provided hereunder to Customer shall not be resold, assigned, or subleased to any third parties.

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10. TAXES AND SURCHARGES

Customer will be responsible for the payment for all Service(s) billed by TNCI and for payment of all excise, Federal, state and local sales, use, gross receipts, or other taxes and surcharges, which shall be billed separately from Charges for Service(s). During the course of the service period, TNCI may adjust Charges or immediately impose additional surcharges on Customer to recover amounts it is required by governmental or quasi-governmental authorities to collect from, or to pay others in support of statutory or regulatory programs (e.g., Universal Service Fund).

During the course of the service period, TNCI will monitor Customer monthly call distribution and identify excessive traffic originating from or terminating to a high cost area ("HCA") defined as high-cost LATA's/OCN's and certain non-Regional Bell Operating Company areas. If the total amount of HCA minutes exceeds 30% in a given month, then a surcharge of up to \$0.04 will be applied to all minutes in excess of 30% in the following invoice.

11. TAX EXEMPTION

In order to be granted tax-exempt status, Customer shall provide TNCI with copies of all tax exemption certificates and other documentation required by TNCI. Customer will be billed for all applicable taxes and will be responsible for their payment until such time as TNCI has ceased billing the applicable taxes. TNCI is not liable for refunding the amount of taxes paid by Customer. Customer is responsible for seeking refunds for such taxes from the appropriate taxing authority.

12. LIMITATIONS ON SERVICE

TNCI may refuse to provide Service(s) to any customer, potential customer, or location. Service(s) is/are subject to the following limitations:

- TNCI reserves the right to discontinue or limit Service(s) when necessitated by conditions beyond its control or when Service(s) is/are used in violation of the Service Documents or the law.
- Service(s) is/are offered subject to the availability of the necessary systems, facilities, and equipment, and where TNCI provides Service(s).
- TNCI reserves the right to refuse to process travel card or calling card billed calls when authorization cannot be validated.
- TNCI reserves the right to discontinue or limit Service(s), or to impose requirements, as required, to meet changing regulatory or statutory rules and standards.
- Service(s) offered by TNCI is/are available only in states where TNCI has obtained authority to provide Service(s).
- TNCI shall block "976" calls and "900" calls.
- TNCI reserves the right to add, change, or delete Service(s) at any time.

13. CANCELLATION

In order for Customer to have Service(s) disconnected, Customer must send a written request thirty (30) calendar days in advance of intended cancellation date to TNCI via fax at (800) 800-8874 or email customercare@tncii.com. Customer is responsible for all Charges incurred through termination. As an expense recovery and not as a penalty, in the event of cancellation, TNCI shall charge Customer, and Customer shall pay TNCI for cancellation Charges as determined by the Service(s) to be terminated. See the applicable Service Exhibit for each Service to determine proper cancellation procedures.

14. ASSIGNMENT OR TRANSFER

Customer shall not transfer or assign the rights, benefits, obligations, or use of Service(s) without the express written consent of TNCI, which shall not be unreasonably withheld, as determined by TNCI. The rights, benefits, and obligations arising hereunder shall incur to the benefit of the proper assignees and transferees.

15. INDEMNIFICATION

Customer shall indemnify and hold TNCI and its suppliers of Service(s) and suppliers of any applicable equipment harmless from any and all damages, claims, actions, costs, or expenses (including Legal Expenses): (i) for libel, slander, infringement of copyright, or unauthorized use of any trademark name or service mark arising out of transmitted material, or other content; (ii) for patent infringement arising from combining or connecting facilities of a supplier with apparatus and systems of Customer; (iii) for any loss or damage arising out of or in any way connected with the Service Documents and/or the installation, provisioning, operation (or failure to operate) and maintenance of the Service(s) and/or Equipment contemplated therein; (iv) for any errors or omissions in Directory Listings, including any loss of business; or (v) for Customer's failure to comply with the terms of the AUP.

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16. CONSTRUCTION

The laws of the Commonwealth of Massachusetts shall govern the Agreement and the Service(s) provided by TNCI to Customer. Customer agrees that any action brought by Customer is only proper in the state and federal courts located in Suffolk County, Massachusetts, which shall have exclusive jurisdiction for resolution of those disputes. Should any part or portion of the Agreement be found invalid, the balance of the Agreement shall remain unaffected and shall be enforceable. It is understood and agreed to by the parties herein that the Service Documents contain the entire agreement by the parties and supersede all prior agreements, written or oral. The waiver by TNCI of any breach, default or right under the Agreement does not constitute the waiver of any subsequent breach or default. Headings used in the Agreement are inserted for convenience only. Nothing in the Agreement, whether express or implied, will be construed to give any person or entity other than Customer and TNCI, any legal or equitable right, remedy or claim under or in respect to the Agreement.

Where TNCI's terms and conditions are regulated by the FCC or a state regulatory authority, if there is any inconsistency between this Agreement and those regulations, federal or state regulations shall govern and this Agreement shall survive and be deemed amended as necessary to conform to such regulations. To the extent this Agreement is not subject to such regulations, Customer agrees that this Agreement and the relationship between TNCI and Customer are governed by the laws of the Commonwealth of Massachusetts. TNCI and Customer expressly waive any right to a trial by jury. In the event Customer, or an affiliate of Customer, defaults in the payments set forth herein and/or breaches any other term(s) or condition(s) of a Service Document, then Customer shall be liable to TNCI for all expenses reasonably incurred by TNCI, including, but not limited to, attorney's fees (of in-house and outside counsel), accounting fees, court costs, and other expenses incurred in all collection and/or legal actions at all judicial and alternative dispute levels ("Legal Expenses"). TNCI will impose Charges for payments returned for insufficient funds at a rate not to exceed the highest rate provided for by law.

17. NOTICES

Notices of changes to the Agreement by TNCI shall be given in writing and sent: (a) via reputable overnight delivery; (b) certified mail, return receipt requested; (c) hand delivered; (d) regular mail, or (e) bill message. Such notices shall be effective when sent by TNCI to Customer. Notices of administrative changes, including changes to the Terms and Conditions documents and Service Exhibits, shall be deemed delivered and effective if notice is by: (a) email or facsimile to authorized personnel of the parties; (b) or if provided by TNCI in a bill message within any invoice; (c) or other communication from TNCI to Customer; (d) or if posted by TNCI to www.tncii.com and/or the Customer Portal.

18. PRIVACY

TNCI will not share Customer's personal identifiable information with others without Customer's express permission, unless TNCI is subpoenaed for that information by a law enforcement agency or the transfer of such information is required by law. TNCI reserves the right to use Customer's personal identifiable information in order to prevent unlawful activity or potential harm to TNCI, or to collect money owed to TNCI. TNCI shall not be liable for any lack of privacy that may be experienced with regard to the Service(s) or while undertaking investigations to comply with governmental requests. Customer authorizes TNCI's monitoring and recording of all calls between TNCI concerning Customer's account or the Service(s).

19. LIABILITY LIMITATIONS AND DISCLAIMER OF WARRANTIES

WHERE TNCI DOES NOT EXERCISE ULTIMATE CONTROL OVER THE SERVICE(S) OR EQUIPMENT FURNISHED, THEREFORE, TNCI SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION OF ANY ENTITY FURNISHING THE ACTUAL TRANSMISSION SERVICE(S) OR EQUIPMENT. IN ANY EVENT, AND FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, CUSTOMER'S EXCLUSIVE REMEDY AND THE TOTAL LIABILITY OF TNCI TO CUSTOMER ARISING OUT OF OR IN ANY WAY CONNECTED, DIRECTLY OR INDIRECTLY, WITH THE SERVICE(S) PROVIDED BY TNCI, INCLUDING, BUT NOT LIMITED TO, ANY FAILURE, DELAY, ERRORS, MISTAKES, DEFECTS, OR DISRUPTION OF SERVICE(S) PROVIDED HEREUNDER SHALL BE LIMITED TO PAYMENTS MADE BY CUSTOMER TO TNCI IN AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO THE CUSTOMER FOR THE PERIOD OF SERVICES DURING WHICH SUCH MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN TRANSMISSION OCCUR.

IN NO EVENT SHALL TNCI AND/OR ANY SUPPLIER OF SERVICE(S) OR EQUIPMENT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOSSES INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, CUSTOMERS OR CLIENTS, GOODWILL, OR PROFITS ARISING IN ANY MANNER FROM THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS HEREUNDER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALL SERVICE(S) AND EQUIPMENT PROVIDED BY TNCI ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND TNCI, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR ASSIGNEES MAKE NO WARRANTIES TO CUSTOMER OR TO ANY OTHER THIRD PARTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BY WAY OF EXAMPLE AND NOT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE AND NON-

INFRINGEMENT, RELATING TO ANYTHING PROVIDED OR USED OR DESCRIBED IN A SERVICE DOCUMENT, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

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20. FORCE MAJEURE

TNCI shall not be liable for any failure of performance hereunder, if such failure is due to any cause or causes beyond TNCI's reasonable control. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, terrorism, cable cut, natural disaster, or other similar occurrence, any law, order, regulation, direction, action, or request by the U. S. or other government, civil or military authority,

national emergencies, insurrections, riots, wars, police actions, labor disruption supplier failures, or preemption of existing Service(s) to restore Service(s) in compliance with FCC Rules. To the extent such an event interferes with TNCI's performance, TNCI will be excused from performance during the period of such interference.

21. SURVIVAL

Those provisions of the Service Documents which by their nature should survive termination or expiration of the Service Documents, shall so survive. This includes but shall not be limited to the provisions of the Service Documents applicable to Billing, Services, Indemnification, and Limits of Liability.

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