

## Standard Terms and Conditions for Service

**P.A. DOMINGUEZ, INC., HEREINAFTER REFERRED TO AS 'PAD', SELLS ALL OF ITS SERVICES, WHETHER DESCRIBED ON PAD'S WEBSITE, IN SUBSCRIBER'S ORDER FORM, IN A VALID AGREEMENT, ATTACHMENT OR EXHIBIT OR OTHERWISE ONLY AS PART OF A VALID SUBSCRIBER RELATIONSHIP WITH PAD. ALL PAD SERVICES ("SERVICES") ARE SUBJECT TO THESE STANDARD TERMS AND CONDITIONS ("TERMS OF SERVICE"). BY USING ANY OF THE SERVICES SUBSCRIBER IS CONSENTING TO BE BOUND BY THESE TERMS OF SERVICE. IF THESE TERMS OF SERVICE ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS OF SERVICE AS SUPPLEMENTED BY THE APPLICABLE SERVICES EXHIBIT OR SEPARATE WRITTEN AGREEMENT (COLLECTIVELY SUBSCRIBER'S "AGREEMENT").**

**1. Ordering Services.** Subscriber shall submit orders for Services in compliance with PAD's prescribed procedures in effect at the time each order is placed. PAD may reject any order not in compliance with these procedures; or that diverges in any respect from the Agreement, or if PAD is technically unable to provision the Service as ordered. PAD deems Services accepted upon notification to Subscriber that the Service is activated. PAD reserves the right to require Subscriber to utilize the most recent version of Services, hardware, or software to continue to receive support

**2. Services Term.** Each Service shall have the minimum Service or Circuit Term specified in the relevant Exhibit or Order, which commences upon activation. Cancellation or termination of a Service is subject to the notice requirements, procedures and cancellation or early termination fees ("ETFs") set forth in the relevant Exhibit or Order. Upon expiration of a Service Term, PAD shall continue to provide the Service on a month-to-month basis pursuant to this Agreement until Subscriber either enters into a new Service Term or cancels the Service with 30 days notice.

**3. Agreement Term & Termination.** This Agreement remains in effect until terminated by either party with 30 days written notice, or immediately on the other party's material breach that is not cured within 10 days notice of such breach. After termination Subscriber cannot order new Services or extend existing Service Terms, but unless termination is for Subscriber's material breach PAD will continue to provide existing Services until the end of their respective Service Terms according to the terms of this Agreement; if Subscriber terminates such existing Services or if PAD terminates for Subscriber's material breach Subscriber will pay all applicable ETFs.

**4. Prices, Fees, Invoices, Payment & Default.** The relevant Exhibit, Order, or Fee Schedule specifies the one-time, recurring and optional prices and associated fees that Subscriber shall pay for each Service during the Service Term. Prices and fees are fixed for the Service Term. Thereafter, PAD may modify such prices or fees at any time upon notice to Subscriber, with modifications taking effect at the start of the next month. PAD will invoice Subscriber one-time installation, equipment and other fees and the first month's Monthly Recurring Charges ("MRCs") upon activation of each Service. Thereafter, PAD will invoice MRCs one month in advance. PAD bills other fees and charges per the relevant Exhibit or Order. Unless superseded by the terms of an Exhibit or Order, Subscriber shall pay all invoices in U.S. dollars within thirty (30) days of the invoice or consolidated statement date. Late payment shall be subject to any collection

costs (including reasonable legal fees) and interest at the lesser of 1.5% per month (prorated) or the maximum rate permitted by law. Subscriber shall pay \$25, or the maximum permitted by law, for each returned check or other rejected payment. Subscriber is responsible for submitting and collecting mail-in rebates associated with any order (if applicable). Subscriber is also responsible for providing adequate written notice to PAD for any service cancellation, and is responsible for payment of any fees accrued prior to PAD's receipt of such cancellation notice, including any cancellations associated with upgraded or downgraded circuits. Subscriber's failure to pay all amounts when due, or if Subscriber files for insolvency protection of any sort, shall be a default by Subscriber. In addition to any other remedies permitted by this Agreement or in law or equity, upon a Subscriber default PAD may suspend or terminate any or all Services without any liability to Subscriber.

**5. Sales & Use Taxes, Federal Universal Service Fee (FUSF) & Other Fees & Taxes.** Prices and fees do not include sales, use, value added, excise, utility or other State or Federal taxes, or FUSF, 911, or other telecommunications service or handling charges. PAD will bill (and Subscriber shall pay) these amounts monthly based on gross Services provided. Third party providers of underlying telecommunications networks and services assess charges such as FUSF on PAD on a bulk basis, not a circuit-by-circuit or Service basis, and PAD prorates them based on the gross Services ordered.

**6. Disputed Charges.** Subscriber may dispute any or all of an invoice by providing notice to PAD within sixty (60) days from the invoice date provided, however, that any disputed amounts remain due and payable according to terms. PAD will attempt to respond to any dispute within ten (10) days of receipt of valid notice with its determination of the validity of the dispute and if an adjustment to the disputed invoice is required. Adjustments will only be made to invoices disputed within the established time frame.

**7. Credit Check & Deposit.** As a material condition of providing Services, PAD reserves the right to examine Subscriber's creditworthiness, and Subscriber shall cooperate with any such examination. PAD further reserves the right, at its sole discretion, to decline new Service orders and to require Subscriber to post appropriate advance deposits for new and existing Services.

**8. Warranty and Disclaimer.** PAD warrants it provides Services in a professional manner, pursuant to generally accepted industry standards. PAD further warrants that, where applicable, the Services shall conform with the current Service Level Assurances ("SLA's") posted at

## Standard Terms and Conditions for Service

[http://PAD.com/pdfs/service\\_level\\_assurances.pdf](http://PAD.com/pdfs/service_level_assurances.pdf);

provided, however, that Subscriber's exclusive remedy for a failure of the Services to conform to the foregoing shall be for PAD to provide Subscriber with the applicable credits pursuant to the terms of its SLA's. Subscriber acknowledges that PAD may interrupt Services for scheduled maintenance or for unscheduled emergency maintenance, either by PAD or third-party providers, that PAD will use reasonable efforts to provide Subscriber with email notice of such interruptions, but that PAD shall not have any liability to Subscriber for such interruptions beyond what may be provided in the SLA's. **EXCEPT FOR THE FOREGOING, PAD PROVIDES THE SERVICES AND ANY EQUIPMENT "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, SECURITY, PERFORMANCE OR FREEDOM FROM INTERRUPTION, INTRUSION OR ERRORS. PAD DOES NOT WARRANT THAT BROADBAND SERVICES WILL PERFORM AT A PARTICULAR SPEED, OR THAT MANAGED SECURITY SERVICES WILL PROVIDE ANY PARTICULAR LEVEL OF PROTECTION FOR SUBSCRIBER'S COMPUTERS, NETWORKS OR SYSTEMS.. SUBSCRIBER ACKNOWLEDGES THAT PAD HAS ENTERED INTO THIS AGREEMENT AND HAS SET ITS PRICES IN PART IN RELIANCE ON THESE WARRANTY DISCLAIMERS, AND THAT THEY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.**

**9. Limitation of Liability & Liquidated Damages. UNDER NO CIRCUMSTANCES OR LEGAL THEORY, INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, SHALL PAD OR ITS SUPPLIERS BE LIABLE TO SUBSCRIBER OR ANY OTHER PERSON FOR: (A) INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, DATA LOSS, SYSTEMS INTRUSION OR COMPUTER OR SECURITY FAILURE; (B) FOR CLAIMS RELATING TO THE FAILURE OF A SERVICE THAT PROVIDES REMEDIES UNDER SERVICE LEVEL AGREEMENTS (SLA'S), AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, ANY AMOUNTS EXCEEDING THREE (3) MONTHS OF THE MONTHLY RECURRING CHARGES FOR THAT SERVICE (WHICH AMOUNT SHALL BE THE EXCLUSIVE REMEDY); OR (C) FOR CLAIMS NOT RELATING TO THE FAILURE OF A SERVICE THAT PROVIDES REMEDIES UNDER SLA'S, ANY AMOUNTS EXCEEDING THE FEES SUBSCRIBER PAID FOR THAT SERVICE IN THE THREE (3) MONTHS PRECEDING THE CONDUCT THAT GAVE RISE TO THE CLAIM. SUBSCRIBER ACKNOWLEDGES THAT PAD HAS ENTERED INTO THIS AGREEMENT AND HAS SET ITS PRICES IN PART IN RELIANCE ON THESE LIABILITY AND**

**REMEDY LIMITS, AND THAT THEY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.**

**10. Acceptable Use and Privacy Policies.** Subscriber shall comply with PAD's Acceptable Use Policy posted at [www.PAD.com/AcceptableUse.asp](http://www.PAD.com/AcceptableUse.asp) and Privacy Policy posted at [www.PAD.com/PrivacyStatement.asp](http://www.PAD.com/PrivacyStatement.asp), which are hereby incorporated in this Agreement. PAD may suspend or permanently cancel any or all of the Services if Subscriber or any of its end users violates either policy. Subscriber further acknowledges that PAD may amend such policies from time to time without notice and Subscriber is responsible for compliance with the current versions of the policies.

**11. Force Majeure.** PAD shall not be liable for any performance delay or failure, loss, or damage due to fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, acts of God, acts, omissions, or failures of carriers, communications services, acts of regulatory or governmental authorities, or other causes beyond PAD's reasonable control.

**12. Miscellaneous.** Subscriber may not assign or transfer this Agreement, in whole or part, without PAD's consent; any such assignment or transfer shall be void. Any notice or consent required or permitted under this Agreement shall be in writing, and may be sent by email (effective when sent), facsimile or overnight courier (effective the day after sending), or by first class United States mail (effective 3 days after sending). This Agreement is the entire agreement between the parties concerning the subject matter hereof and supercedes any prior agreements, representations, negotiations, understandings, proposals, or undertakings, oral or written. Any amendment to, or waiver of any part of, this Agreement shall be in writing and duly executed by both parties. Any provision of this Agreement held to be illegal, invalid or unenforceable shall not affect any other provision, and shall be enforced to the maximum extent permissible so as to effect the intent of the parties. Failure of a party to enforce the performance of any provision of this Agreement shall not be a waiver of that party's right to enforce such provision or any other provision. This Agreement shall be construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions and exclusive jurisdiction (which Subscriber hereby consents to) is proper only in the State or Federal courts of Alameda County, California. The parties to this Agreement shall be independent contractors and nothing herein shall establish any joint venture, agency or other relationship between them. Neither party has the right or authority to create an obligation or responsibility on behalf of the other. Subscriber acknowledges that PAD may subcontract some or all of the Services to third parties but will remain primarily responsible for their performance. PAD shall provide any Services not listed in the Exhibit or Order at its then current rates for such Services, or at such other rates as to which PAD and Subscriber may mutually agree in writing. Any accrued rights to payment, remedies, warranty disclaimers and limits of liability shall survive any expiration or termination of this Agreement.