

MANAGED SERVICES

Terms and Conditions

(GTA Teleguam)

These General Conditions, together with any Services Agreement, Service Quotation (“Quotation”) or any Addenda attached hereto, constitutes the entire agreement (“Agreement”) between the parties pertaining to the Service and supersedes all prior oral and written proposals, correspondence and memoranda. GTA will provide Customer with the Service described in this Agreement, and the Addenda attached hereto. The Service will be provided, either directly or in conjunction with such subcontractors as GTA may select, under the terms and conditions specified in the Services Agreement, Quotation, and the applicable Addenda. In the event of a conflict between these General Terms and Conditions, any Services Agreement, Quotation, or Addenda, the order of precedence shall be as follows: (1) General Terms and Conditions; (2) Services Agreement; (3) Quotation; and (4) Addenda.

1. **Fees and Payment.** Service fees are set forth in the applicable quotation for the specified Service Period or Contract Term. In addition, Customer is responsible for any applicable taxes, tariffs, telecommunications surcharges, or other governmental charges. Unless otherwise stated in the Services Agreement, Quotation or Addenda, invoices shall be paid within thirty (30) days of the invoice date (the “Due Date”). Payments not received by GTA by the Due Date shall be subject to a late payment charge. Should Customer dispute an amount invoiced, Customer shall pay the undisputed portion of that invoice and promptly notify GTA in writing of the amount and nature of the dispute and the parties shall cooperate to resolve the dispute pursuant to Section 13 of this Agreement. GTA reserves the right to suspend or terminate any or all Service or terminate the provision, installation or repair of any or all equipment subject to this Agreement immediately if customer is more than sixty (60) days overdue for payments that have not been disputed in good faith. GTA may assign unpaid delinquent charges to a collection agency for action. In the event GTA resorts to legal action to recover monies due, Customer agrees to reimburse GTA for all expenses incurred to recover such monies (including attorney’s fees).

1.1. Customer authorizes GTA to conduct a credit inquiry that GTA may use to determine the credit worthiness of the customer. GTA reserves the right to modify the terms of the Services Agreement, Quotation or Addenda executed by the parties, require additional assurances, or reject such Services Agreement, Quotation or Addenda following credit inquiry if the parties cannot mutually agree to new terms.

1.2. In the event suitable facilities are not available to provide the Service at a specific location, GTA will inform Customer of the additional charges required to install suitable facilities. GTA will install such facilities only upon mutual written agreement that Customer will pay such additional charges. If Customer does not agree to pay such additional charges, then GTA may terminate this Agreement, in whole or in part, without application of the termination charges described below for the affected Services.

2. **Terms and Termination.** The Term of the Service Period, termination rights and renewal terms, if any, are set forth below and in the attached Services Agreement, Quotation or Addenda.

2.1. Unless otherwise stated in the Services Agreement, Quotation or Addenda, this Agreement will be automatically renewed for 1 year successive terms beginning on the day immediately following the end of the initial Service Period (or successive Service Period), unless either party gives the other party ninety (90) days prior written notice for colocation services, or thirty (30) days prior written notice for all other services, of its intent not to renew this Agreement at the end of the then current term. On or before 100 days prior to the expiration of the initial Service Period (or any subsequent Service Period), GTA shall notify Customer of any increase to the monthly fees paid for the Services.

2.2. Customer may terminate the Service at any time by contacting the Account Manager. If Customer terminates during a Service Period or any renewal Service Period, Customer agrees to pay GTA (a) all Service fees accrued as of the termination date; (b) an early termination fee equal to one hundred percent (100%) of the Service fees due for the remaining first 12 months of service, and fifty percent (50%) of the Service fees due for the terminated portion of the Service Period; (c) any third party termination charges; (d) any non-recurring fees not already paid, including those fees that were waived by GTA and (e) any outstanding fees due for non-standard components identified in the quotation. Notwithstanding the foregoing, in the event of customer termination due to an uncured material breach by GTA, or due to a change of the Service that adversely impacts customer's use of the Service, customer will not be responsible for the early termination fee.

2.3. Either party may terminate this Agreement immediately by written notice in the event the other party (i) materially breaches this Agreement and fails to cure such breach within thirty (30) days following written notice thereof, or if such breach cannot reasonably be cured during that time, fails to use commercially reasonable efforts to cure such breach as soon as practicable but in any event within ninety (90) days; (ii) engages in fraud, criminal conduct or willful misconduct in connection with the business relationship of the parties; or (iii) becomes insolvent, becomes involved in any liquidation or termination of its business, enters bankruptcy proceedings or effects an assignment for the benefit of creditors. In the event this Agreement is terminated pursuant to this Section, Customer shall promptly pay GTA for the Service provided up to the date of termination.

2.4. GTA reserves the right to terminate this Agreement upon sixty (60) days prior written notice for its convenience. GTA also reserves the right to suspend Service immediately if Customer is more than sixty (60) days overdue in payments. GTA may also suspend or terminate the Service to Customer as provided in other sections of this Agreement or immediately, in GTA's sole discretion, if required by regulation, statute, judicial action or another applicable legal requirement.

2.5. If either party terminates this Agreement, GTA will assist customer in the orderly termination of Service, including timely transfer of Service to another designated provider. customer agrees to pay GTA the actual costs of rendering such assistance.

2.6. Cancellation. If customer terminates this agreement subsequent to the execution of this agreement by the Parties but prior to the in-service date, customer shall pay to GTA (a) all costs incurred by GTA for contract and service preparation; (b) any non-recurring fees not already paid, including those fees that were waived by GTA; and (c) any outstanding fees due for non-standard components set forth in a Quotation.

3. **Third Party Access.** Subject to the terms and conditions of this Agreement, Customer has the non-exclusive right to authorize access to the Service to Customer's employees and/or to any third party for its internal business purposes.

4. **Responsibilities of Customer and Use of Service.** Customer acknowledges and agrees that:

4.1. **General.**

4.1.1. Customer is responsible for Customer's choice, configuration, and maintenance of Customer's equipment, software, and online content; and all other matters related to how Customer uses the Service.

4.1.2. GTA reserves the right to prohibit incidences of unacceptable use of e-mail and other unacceptable use of the Service.

4.2. **Security.**

4.2.1. Customer is responsible for the manner in which Customer and its end users use the Service, including establishing the policies and procedures Customer uses to protect the security of Customer's data, computer network and other facilities.

4.2.2. It is Customer's ultimate responsibility to design, implement and enforce a comprehensive security program, policies, and security violation response procedures.

4.2.3. The Services by themselves do not guarantee network security or prevent security incidents, and GTA is not responsible for unauthorized access to Customer's facilities or for damages arising out of unauthorized access, and GTA shall be held harmless and not liable for any damages or losses.

4.2.4. Customer shall provide GTA advanced written notification (no less than 4 hours) prior to Customer conducting penetration testing or staging simulated attacks, reconnaissance, or compromises against Customer's network to test GTA's monitoring and response capabilities. Service Level Guarantees shall not apply during the period of such penetration testing or staging.

4.3. **End Users.**

4.3.1. To the extent any Service includes managed security services, Customer shall not resell the Service or give access to the Service, directly or indirectly, to third parties, unless expressly permitted by GTA.

4.3.2. Customer will not use or permit the Services to be used in ways that infringe the rights of others or interfere with other users of GTA's network or other networks.

4.3.3. Customer agrees to be responsible for all communications to and business relationship with Customer's end users.

4.3.4. Customer assumes all responsibility with regard to supporting its end users including, but not limited to, technical and business support, inquiries, problem resolution, installation and maintenance.

4.3.5. Customer will be responsible for any violation of the terms of this Agreement by any end user.

4.3.6. Customer will defend, indemnify and hold harmless GTA and its Service Supplier from and against any claims arising out of unauthorized representations made by Customer to its end users and/or any claims made by an end user asserting warranties, liabilities or damages.

4.3.7. Customer is responsible for authenticating and authorizing its end users to the Service.

5. **Service Level Guarantee.** If applicable, GTA will provide Customer with the Service Level Guarantee described in the applicable addendum. Service Level Guarantees shall not be applicable during periods of scheduled or emergency maintenance.

EXCEPT FOR CUSTOMER'S RIGHT TO TERMINATE AS SET FORTH IN THE AGREEMENT, THE SERVICE LEVEL GUARANTEE IS THE SOLE AND EXCLUSIVE REMEDY FOR FAILURE OR DEFECT OF SERVICE AVAILABILITY.

6. **Software Provided.** In the event GTA provides any software to Customer in connection with the Service, GTA grants Customer a personal, non-exclusive, non-transferable license, for the duration of the Service Period, to use such software in object code form only on the hardware on which it is installed for the sole purpose of enabling Customer's end users to use the Service. Customer acknowledges that the software is copyrighted, that title to such software remains with GTA or its suppliers and that the content and design of such software are valuable trade secrets. Customer agrees not to a) disclose or make available to third parties any portion of such software without GTA's advance written permission; b) copy or duplicate such software; c) reverse engineer, decompile or disassemble such software; or d) modify or make derivative works of such software. Customer further agrees not to use such software after the Service Period without obtaining a valid license from GTA or the third-party supplier.

7. **Compliance with Law.** Customer agrees to comply with any applicable federal, state or local laws or regulations and any export law, including, but not limited to U.S. Export laws and regulations concerning the transmission of technical data and other regulated materials via the Service. GTA reserves the right to suspend or terminate the Service (or any portion thereof) without notice in the event that Customer's or its end user's use of the Service is in violation of this Section or Section 8.

8. **Content Responsibility.** Customer understands that neither GTA nor its Service Supplier is responsible for content of transmissions that may pass via the Service. Customer agrees that it will not use the Service in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the network. GTA reserves the right to terminate the Service in the event of chronic or uncured violations of this Section. GTA shall be under no obligation to monitor the compliance of Customer and its end users.

9. **Warranty and Limitation of Liability.** CUSTOMER AGREES THAT THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. GTA DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GTA DOES NOT WARRANT THAT THE SERVICE WILL BE AVAILABLE ON A SPECIFIED DATE OR TIME OR THAT THE SERVICE WILL HAVE THE CAPACITY TO MEET THE DEMAND OF END USERS DURING SPECIFIC HOURS. END USERS MAY BE UNABLE TO ACCESS THE SERVICE AT ANY TIME, AND DISCONNECTION FROM THE SERVICE MAY OCCUR FROM TIME TO TIME. GTA WILL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO CUSTOMER'S OR END USER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR

DESTRUCTION OF CUSTOMER'S OR END USER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF GTA'S NEGLIGENCE.

10. **Indemnification.** GTA shall defend, indemnify, and hold harmless Customer, its employees, officers, directors, agents and affiliates for damages, costs and attorneys' fees incurred from any claim that the Service infringes any U.S. patent, copyright, trademark, trade secret or other intellectual property right. Customer shall defend, indemnify and hold harmless GTA, its employees, officers, directors, agents and affiliates for damages, costs and attorney's fees GTA incurs from any claim arising from Customer's use of the Service, Customer's combination of the Service with other products or services not provided by GTA, Customer's modification of the Service, Customer's access or use of the Service and related equipment, and GTA's installation or removal of the Services and related equipment. The indemnifying party shall conduct the defense and shall have control of the litigation. The other non-indemnifying party shall give prompt notice of claims and shall cooperate in defense against such claim.

11. **Disclaimer of Consequential Damages.** IN NO EVENT WILL GTA BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE SERVICES OR PRODUCTS PROVIDED HEREUNDER.

12. **Limitation of Damages.** THE ENTIRE LIABILITY OF GTA, AND THE CUSTOMER'S EXCLUSIVE REMEDY, UNDER THIS AGREEMENT, FOR ANY CLAIM, WHETHER IN CONTRACT, OR IN TORT, SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO GTA UNDER THIS AGREEMENT FOR ONE(1) YEAR OF THOSE SERVICES UPON WHICH THE LIABILITY IS BASED. THIS LIMITATION IS IN ADDITION TO, AND NOT IN PLACE OF, OTHER LIMITATIONS.

13. **Dispute Resolution.** The parties agree to try and resolve disputes and claims arising under this Agreement in good faith and escalate disputes to senior management when appropriate. In the event the parties are unable to reach a resolution, then the claim shall be resolved by binding arbitration pursuant to the Arbitration Rules, Procedures & Protocols of Dispute Prevention. Each party shall pay its own costs and fees. The arbitration shall be held at a mutually agreed to location and shall be final and binding on them both. Judgment may be entered on any award by any court of competent jurisdiction. The parties expressly waived the right to trial by jury on this Agreement.