

## TERMS AND CONDITIONS APPLICABLE TO DATA CENTER AND DATA MANAGEMENT SERVICES

This Service Order with Terms and Conditions constitutes the Agreement (the "Agreement" or "Sales Order") made between Midcontinent Communications®, a South Dakota General Partnership ("Midco"), with a principal place of business at 3901 N Louise Ave., Sioux Falls, SD 57107, and \_\_\_\_\_, with a principal place of business or residence at \_\_\_\_\_ ("Customer"); each a Party" and, collectively, the "Parties."

- 1. Midco Obligations.** Midco warrants it will perform its obligations in a professional manner with commercially reasonable efforts, subject to this Agreement. For data center services, Midco will provide diesel generator power backup to the facility, battery backup within the Midco facility, 24/7 security lockdown and badge access door locks, and provide technical support 24/7 via our trouble ticket system.
- 2. Additional Services.** Customer acknowledges neither Midco nor its affiliates are obligated to provide any consulting, development, or services to Customer outside of the Agreement, and without limiting the foregoing, Customer shall be solely responsible for the handling, processing and filling any orders or communication from its users generated during this Agreement. Midco is not obligated to register, resolve, maintain or protect any domain name for Customer.
- 3. Customer Property.** Customer's equipment, software, intellectual property rights, and data shall remain the property of Customer (the "Property"). Personal Property insurance on the Property shall remain the sole responsibility of the Customer. Midco has no ownership in the Customer data, nor any interest in the contents of Customer equipment.
- 4. Professional IT Services.** Midco may, from time to time at the request of Customer, provide support to Customer for hardware and/or software Midco does not manage ("Professional IT Services"). All professional IT services support instances are billed at a minimum of one (1) hour, at the current rate, card rate or negotiated package rate.
- 5. Smart Hands.** Midco may, from time to time, at the request of the Customer, provide support to the Customer for hardware Midco does not manage ("Smart Hands"). When the Customer's team is unavailable, Midco can help with reboots, hard drive replacements and other hardware support per the Customer's request. All Smart Hands Support instances are billed at a minimum of one (1) hour, at the current rate, card rate or negotiated package rate.
- 6. Emergency Smart Hands.** In the event Customer hires Midco for emergency (i.e. unplanned) Smart Hands support, Midco will use commercially reasonable efforts to perform the emergency Smart Hands support. Midco may request instructions or other support from Customer to complete the requested emergency Smart Hands support, and Customer will provide such requested assistance. Midco has no liability to Customer or Customer's equipment for performing emergency Smart Hands support or for the unavailability of emergency Smart Hands support. Midco will not be liable for any damages as a result of the support request unless the action(s) of Midco personnel are shown to be grossly negligent or contrary to industry standards. In no event will Midco be liable for any incidental or consequential damages.
- 7. Security.** No one can guarantee complete security at its facility. Midco will use its industry best efforts to provide industry standard security and will assist in security breach detection and identification, but Midco shall not be liable for any inability in doing so. Each Customer and any other persons visiting Midco facilities does so at his or her own risk. Midco shall not be liable for any harm to such persons unless it is grossly negligent. Customer agrees that it will not violate, or attempt to violate any system, or monitor or alter security on Midco hardware and/or software. Restricted activities hereunder include, but are not limited to: unauthorized access to or use of data, systems or networks, including any attempt to probe, damage, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of Midco; unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network; or interference with service to any user, host or network. Because it is impossible to maintain flawless security, Midco and Customer shall take reasonable steps to prevent security breaches.
- 8. Midco Software.** Customer agrees that it will not (directly or indirectly): copy, reverse engineer, decompile, disassemble, modify or otherwise attempt to derive source code from the Midco software, database(s), or Midco intellectual property; sell, lease, license, transfer, give possession of, or sublicense the Midco software, database(s), or Midco intellectual property; or copy the configuration of Midco hardware.
- 9. Content.** The Parties expressly recognize that Midco is not obligated to screen content or traffic. Midco has the right (with no affirmative obligation) to remove from Midco hardware or Midco software, or block access over the internet to any communications, data, programs, Customer equipment, or files that Midco believes, in its sole discretion, violate any of the policies of Midco or applicable law. Midco has no responsibility or liability whatsoever for the content, correctness, or usability of the information passing through the Customer equipment, which shall be the sole responsibility of Customer.
- 10. Insurance.**
  - a. Customer agrees to maintain, at its own expense, during the Term of this Agreement, Comprehensive General Liability Insurance in an amount not less than Two Million U.S. Dollars (\$2,000,000) per occurrence for bodily injury and property damage, Employer's Liability Insurance in an amount not less than One Million U.S. Dollars (\$1,000,000) per occurrence, and Worker's Compensation in an amount not less than that prescribed by statutory limits. Customer shall name Midco as an additional insured under its policy of insurance. Within ten (10) days of the execution of this Agreement, Customer agrees to furnish Midco with certificates of insurance which evidence the minimum levels of insurance set forth herein.
  - b. Customer agrees to waive any cause of action which it may have against Midco or its agents for damage or harm to the premises, the common areas, or the contents on the premises to the extent that such damage or harm is required to be insured against casualty insurance under the terms of this Agreement, whether such damage or harm is caused by the negligence or fault of either Party or its agent; and Customer agrees, to the extent it actually obtains casualty insurance coverage, such policy shall contain a waiver of subrogation rights on the part of such insurance company as against Midco.
  - c. Customer agrees to waive any cause of action which it may have against Midco or its agents injuries to person(s) on the premises to the extent that such damage or harm is required to be insured against workers compensation insurance under the terms of this Agreement, whether such injury is caused by the negligence or fault of either Party or its agent; and Customer agrees, to the extent it actually obtains worker's compensation insurance coverage, such policy shall contain a waiver of subrogation rights on the part of such insurance company as against Midco.
- 11. Customer Equipment.** The Agreement may include the placement of Customer equipment in a rack or other area located inside the Midco facility that may or may not be accessible depending upon the service. If the space is accessible, it will be referenced as the "Customer Accessible Space". In such event, the following terms shall apply:
  - a. **Midco obligation.** Midco shall provide Customer with Customer Accessible Space, subject to this Agreement, for the Customer equipment identified in the Agreement or as otherwise agreed upon by the Parties in writing.
  - b. **Customer obligation.** Customer warrants that it has unrestricted ownership of the Customer equipment and warrants that it owns or has a sufficient number of licenses for all software on the Customer equipment. Unless otherwise stated in the Agreement, Customer shall provide, maintain, repair and/or replace Customer

s equipment, as needed, at Customer's sole cost and expense. Customer shall setup, install, configure and generally make ready the Customer equipment necessary and Midco will cooperate with the Customer and assist the Customer as reasonably requested thereby with the installation of Customer equipment and the connection thereof to Midco hardware.

c. **Access.** The facility for the Customer equipment is a secure facility where physical access by Customer is only permitted when physically accompanied by a Midco representative. Customer shall have a reasonable amount of physical access, as Midco is willing and able to accommodate, to the Customer Accessible Space if Customer is placing Customer equipment with Midco. Midco reserves the right to monitor the amount and frequency of physical access, and physical access requests, by Customer to Customer Accessible Space, and to make adjustments to the fees.

d. **Changes.** On rare occasions, it may be necessary for Midco to change or modify the location of the Customer Accessible Space, either within the current facility or to a similar facility at a different location. In the event that Midco elects to make such a change (in its sole discretion), Midco shall notify Customer and provide at least ten (10) days' notice, if possible under the circumstances, of the new facility to where Customer shall move or transfer the Customer equipment.

e. **Removal: During Term.** Customer will provide Midco with at least two (2) business days' prior written notice before Customer removes a significant item of Customer equipment. Prior to any such removal, Midco must authorize the proposed action and Customer must make full payment of all amounts then due to Midco. Once Midco authorizes removal of the specified Customer equipment, Customer will remove such Customer equipment, and Customer will be solely responsible to leave area in good operating condition at its own expense.

f. **Removal: Post Term.** With fifteen (15) days written notice by either Party as may be authorized under this Agreement, Customer shall remove all Customer equipment for the Customer Accessible Space, under the supervision by a representative of Midco, and Customer must make full payment of all amounts then due to Midco (including any Early Termination Liability). In the event Customer fails to remove the equipment or make full payment to Midco within the fifteen (15) day period, Customer hereby offers to sell to Midco all Customer equipment located in the Customer Accessible Space for one dollar (\$1). Upon tender of the consideration described herein by Midco to Customer, Midco shall immediately destroy all software and data on the Customer equipment and may retain or transfer the Customer equipment as Midco determines in its sole discretion.

## **12. Miscellaneous.**

a. Customer agrees not to use nor disclose any confidential information that may be disclosed to it by Midco. The nature of the relationship of Midco and Customer shall at all times be that of an independent contractor.

b. The Term of this Agreement may be amended only with the written consent of both Midco and the Customer and no waiver shall be effective against the other party unless evidenced by a writing.

c. In the event, any provision of this Agreement is determined to be unenforceable in full, that provision will be considered deleted from this Agreement, and the other provisions of this Agreement will remain in full force and effect. In the event the Standard Terms and Conditions, in effect at that time, conflict with the terms of a Schedule, the terms of the Standard Terms and Conditions shall control.

d. During the Term of this Agreement and for a period of one (1) year thereafter, Customer shall not solicit or hire the services of any employee or subcontractor of Midco, without the prior written consent of Midco.

e. This Agreement is not intended to, and will not, constitute a lease of any real or personal property. In particular, Customer acknowledges and agrees that the Customer has not been granted any real property interest in the Midco premises, and Customer has no rights as a tenant or otherwise under applicable law.

**13. Viruses and Worms.** If Customer or Midco becomes aware of a virus or worm that has infected any files, such party shall notify the other party of the occurrence immediately. Midco shall take reasonable precautions to prevent, stop, find and eliminate the spread of all viruses and worms on Midco hardware. Midco may remove or delete infected Customer files from the Midco hardware or block access to affected Customer Equipment, with or without advance notice to Customer, in order to prevent additional damage to the Midco hardware and/or other data. Midco agrees to attempt to immediately contact Customer in this event, and Customer shall not be entitled to any setoff, discount, refund or other credit.

**14. Data Redundancy and Backup.** Unless priced as a Customer Term in the Service Order and paid for by Customer, Midco shall not be responsible for the redundancy or preservation of Customer data. Customer shall be responsible for preventing data loss, preparing for a possible data loss, and the creation and regular maintenance of an archive backup not stored on Midco Hardware. In the event backup services are listed as a Customer Term, Midco cannot guarantee the backup process or that all data will be recoverable in the event of any failure or loss.

**15. ACKNOWLEDGEMENT.** BY SIGNATURE HEREIN, I/WE ACKNOWLEDGE THAT I/WE ARE AUTHORIZED TO ORDER THE SERVICES DESCRIBED ABOVE AND TO BIND THE COMPANY TO THIS CONTRACT. I/WE HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF THIS SERVICE ORDER AND THE TERMS AND CONDITIONS COVERING THIS SERVICE ORDER AS POSTED AND UPDATED AT [WWW.MIDCO.COM/LEGAL](http://WWW.MIDCO.COM/LEGAL).