

TERMS and CONDITIONS

THESE TERMS AND CONDITIONS govern all Service Orders, service tickets and other contracts, agreements and invoices by or between VERTICAL TELEVISION, INC. ("VTV") and its Customers to which these Terms and Conditions relate. Capitalized terms used in these Terms and Conditions shall have the meaning given to such terms in Section 23 of these Terms and Conditions.

1. Services and Equipment.

1.1 For each Service Order, VTV shall install and maintain the Equipment, and provide the Services, contemplated by such Service Order during the Term of the Service Order. VTV retains the right, in its sole discretion, to add, delete and/or change any Equipment or Services upon at least 30 days notice to Customer. If any such addition, deletion, or change will materially and adversely impact the Customer, and Customer notifies VTV within 10 days after receiving notification from VTV of such addition, deletion or and Customer's desire to terminate the impacted Service(s), Customer may terminate the impacted Service(s) (but not the remainder of the Services provided to Customer), effective 30 days after written notice to VTV.

1.2 Customer will only use the Equipment and Services only in the manner contemplated by the applicable Service Order. Customer will not use the Equipment or Services for any unlawful purpose, Customer will not resell any of the Services, and Customer will not permit any third party to use the Services or access the Equipment without VTV's prior written consent.

2. Payments.

2.1 Each month, VTV will submit invoices to Customer. Customer must pay all amounts set forth in each invoice, without any set-off, within 30 days of the invoice date. In addition, Customer is responsible for, and Customer shall pay, all federal, state, municipal, local or other governmental excise, sales, value-added, use, personal property, and occupational taxes, withholding taxes and obligations and other levies now in force or enacted in the future, that arise from Customer's subscription or payment for the Equipment and Services.

2.2 Notwithstanding anything in these Terms and Conditions to the contrary, except as otherwise expressly provided under Section 4 below with respect to certain repairs, any requested moves, additions, changes, or repairs to the Equipment or Services requested by the Customer, if approved by VTV, shall be performed and/or provided by VTV at VTV's standard rates. The parties agree that no moves, additions, changes or repairs to the Equipment or Services will be performed unless approved or initiated by VTV.

2.3 A late payment charge equal to the lesser of 1.5% per month or the highest percentage permitted by law will be added to any amount due under any Service Order between VTV and Customer or these Terms and Conditions that is not received when due. In addition, Customer agrees that VTV has the right to collect from the Customer any fees incurred by VTV in collecting any amount due under any Service Order between VTV and Customer or these Terms and Conditions including reasonable attorneys' fees, collection agency costs, and court costs.

3. Repairs and Maintenance.

3.1 Subject to Section _ set forth below, VTV agrees to repair and/or replace the Equipment located in Customer's premises when the failure of the Equipment is caused by defects in materials or workmanship or by ordinary wear and tear from the use (but not misuse or improper use) of such Equipment for the purposes provided hereunder or under any Service Order. Customer will provide reasonable assistance with respect to any testing that VTV performs. Customer shall not permit anyone other than VTV or the Equipment manufacturer to perform maintenance, service or other work on the Equipment without VTV'S prior written consent. If any maintenance or service work is performed on the Equipment by anyone other than VTV or the Equipment manufacturer without VTV'S prior written consent, or if the Equipment or any part thereof is moved without VTV'S prior written consent, then (i) Customer shall be deemed in default under these Terms and Conditions, (ii) at the election of VTV, the repair obligations set forth above in this Section 4 will become null and void, and (iii) VTV may exercise any of the remedies provided in these Terms and Conditions. In addition, Customer shall indemnify and hold VTV harmless from and against any and all damages arising out of any breach by Customer under this Section 4 of the Agreement. Repairs for which VTV is not responsible under these Terms and Conditions may be performed by VTV its discretion if Customer agrees to pay VTV'S then standard charges for such repairs.

3.2 Customer represents and warrants that it will take all commercially reasonable steps necessary to ensure that neither Customer nor third parties move, modify, disassemble or interfere with the Equipment. To the extent that Customer is aware that any third party interferes with or seeks to interfere with such Equipment, Customer further represents and warrants that it will use diligent best efforts to stop or prevent such interference. Upon notice from VTV that hardware or software not provided by VTV is causing or likely to cause damage to, or interference with, the Equipment or Services, Customer shall immediately cure such damage or interference, or take steps to

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prevent such damage or interference. In addition, if, and to the extent that, Customer engages VTV personnel or other VTV resources to cure any such interference caused by equipment or software not provided by VTV, Customer shall pay VTV all costs and expenses associated with the provision of such resources. VTV is not responsible if any changes in Equipment or Services causes equipment and/or software not provided by VTV to become obsolete or require modification.

3.3 VTV's Service Guarantee shall be as follows: (i) upon receipt of Customer service request, VTV shall respond by phone within four (4) hours of such request, and (ii) if necessary, VTV shall provide on-site service within 24 hours. VTV may, from time to time, modify this service guarantee. VTV will promptly notify Customer of any changes in the Service Guarantee.

4. Term and Termination.

4.1 Each Service Order will commence on the effective date of that Service Order. Unless earlier terminated in accordance with these Terms and Conditions, each Service Order will terminate on the later of (i) the Termination Date of that Service Order, and (ii) the Termination Date of any Renewal Term (as defined below) for that Service Order where the Service Order is not renewed beyond that Renewal Term. Each Service Order shall automatically renew for successive one (1) year periods ("Renewal Term(s)") from the Termination Date of the Service Order unless either party notifies the other party at least 60 days before the end of the Initial Term, or applicable Renewal Term, that it wishes to terminate the Service Order.

4.2 VTV may terminate any Service Order between VTV and Customer, effective immediately upon notice to Customer, if (i) Customer becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (ii) Customer becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

4.3 VTV has the right to terminate one or more Service Orders if (i) regardless of the cause or reason, VTV cannot legally provide some or all of the Equipment or Services for a period exceeding thirty (30) days, including, without limitation, loss of federal, state, or local authorizations required to provide the Equipment or Services; (ii) changes in law or regulations make the provision of some or all of the Services unprofitable to VTV or make it impracticable or illegal for VTV to install, maintain, or operate any of the Equipment or provide any of the Services; or (iii) the license or other agreement between VTV and the landlord, owner, or representative of the owner of the Building, is terminated for any reason.

4.4 Except as otherwise expressly provided herein, neither party will be liable to the other for properly terminating a Service Order in accordance with its terms, but Customer will be liable to VTV for any accrued amounts owed prior to the termination.

5. Limitations and Exclusions of Liability.

5.1 NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS OR ANY SERVICE ORDER TO THE CONTRARY, IN NO EVENT WILL VTV BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR OF ANY EQUIPMENT OR BUSINESS, OR ANY OTHER TYPE OF DAMAGES OTHER THAN DIRECT DAMAGES (AND WITH DIRECT DAMAGES, ONLY TO THE EXTENT PERMITTED IN THESE TERMS AND CONDITIONS). IN ADDITION, VTV WILL HAVE NO LIABILITY TO CUSTOMER WHERE THE CLAIMS ARISE OUT OF, RELATE TO, ARE CAUSED BY, OR INVOLVE OR CONCERN ANY OF THE FOLLOWING: (I) ANY LAWFUL CONDUCT OF THE VTV PARTIES THAT IS PERMITTED UNDER THESE TERMS AND CONDITIONS; (II) ANY FORCE MAJEURE EVENT (AS DEFINED BELOW) OR OTHER CAUSES THAT ARE BEYOND VTV'S CONTROL; (III) THE FAILURE OR MALFUNCTION OF CUSTOMER'S EQUIPMENT OR FACILITIES; OR (IV) THE FAILURE OF POWER, EQUIPMENT, SYSTEMS, CONNECTIONS OR SERVICES NOT PROVIDED BY VTV, OR THE UNAVAILABILITY, INADEQUATE, UNTIMELY OR POOR PERFORMANCE OR NON-PERFORMANCE OF ANY FACILITIES UNDER THE CONTROL OF OTHER PERSONS OR ENTITIES.

5.2 In no event shall VTV'S aggregate liability to Customer (including, without limitation, liability to any person or persons whose claim or claims are based on or derived from a right or rights claimed by Customer) or to any third parties (including, without limitation Customer's Parties) with respect to any and all claims arising from or relating to any Service Order between VTV and Customer or these Terms and Conditions, in contract, tort, or otherwise, exceed the aggregate amount paid by Customer to VTV under such Service Order.

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5.3 Without limiting the foregoing, with respect to any data or Internet Services provided by VTV, VTV shall not be liable for any claims or damages arising out of or relating to (i) the quality, accuracy, propriety, decency, utility or correctness (or lack thereof) of content, data or information transmitted across VTV'S network or received by Customer, (ii) loss of content, data or information due to delay, non-delivery, mis-delivery or service interruptions however caused, or (iii) unauthorized access to, or misuse, alteration, theft, destruction or corruption of, Customer's data, software, hardware or other systems, including that data protected by a firewall product, whether or not that firewall product is provided by VTV or by a 3rd party.

6. **EXCLUSION OF WARRANTIES.** THE EQUIPMENT AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE EQUIPMENT AND SERVICES IS AT ITS OWN RISK. EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN ANY APPLICABLE TARIFF, VTV DOES NOT MAKE, AND HEREBY DISCLAIMS AND EXCLUDES, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, OR TRADE PRACTICE.

7. **Indemnification.** Customer will indemnify, defend and hold VTV and the other VTV Parties harmless from and against any and all losses, damages, liabilities, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees) arising by virtue of, or relating to, (i) Customer's operations or services; (ii) any act, omission, fault, negligence or misconduct of Customer, any of the Customer Parties, or any persons on the Premises other than VTV and the VTV'S Parties; (iii) any material breach by Customer of the terms of any Service Order or these Term and Conditions or of any warranty, representation or covenant in any Service Order or these Term and Conditions; (iv) any claim by any employee of Customer other than a claim based on the gross negligence or willful misconduct of VTV; or (v) any claim by customers or end-users of Customer relating to, or arising out of, Customer's services or VTV'S Services or Equipment.

8. **Video Services.**

8.1 VTV may provide multi-channel video services to the Customer pursuant to the terms of a Service Order and in accordance with these Terms and Conditions. At the request of VTV, Customer shall make available one or more representatives of Customer for purposes of training such employees regarding the operation of DBS Equipment at times and locations to be mutually agreed upon by the parties. The video and/or audio programming which comprises the multi-channel video services is subject to change at any time at VTV'S sole discretion. As a component of the multi-channel video services, VTV may, but is not obligated to, offer DBS programming to the Customer as such DBS programming is provided by a DBS provider (such as, but not limited to, DIRECTV). Customer's receipt of DBS programming is subject to the approval of the DBS provider at the sole discretion of such DBS provider. The DBS provider may require that the Customer enter into some form of subscription agreement directly with the DBS Provider as a condition of the Customer's reception of DBS Programming. Customer shall comply in all respects with the rules, terms and conditions governing the reception of DBS programming imposed by the DBS provider, including without limitation any and all restrictions on the precise locations within the Building or Customer premises which are authorized to receive and/or display such DBS programming. A breach by the Customer of such rules, terms or conditions imposed by the DBS provider shall constitute a breach of the Service Order relating to such Services and these Terms and Conditions.

8.2 VTV may terminate without any liability its provision of multi-channel video services to the Customer upon thirty (30) days written notice, provided however that such termination of the shall not in any way alter VTV'S rights and obligations to provide any other Services and Equipment under this or any other Service Order between the parties. Upon the completion of the thirty (30) day notice period, VTV may remove the video Equipment from the Customer premises in accordance with these Terms and Conditions.

8.3 Customer shall not make any modification, addition or deletion to any programming provided by VTV or any DBS provider. Customer shall not resell, retransmit, or rebroadcast any DBS programming unless Customer is specifically authorized by the DBS provider to do so; and Customer shall not resell, retransmit, or rebroadcast any other multi-channel video services unless Customer is specifically authorized by VTV to do so.

8.4 VTV'S sole liability to Customer for interruption of multi-channel video services is to make a credit allowance in the form of a pro rata adjustment of the charge applicable to the multi-channel video services, except that no credit shall be given for interruptions of less than twenty-four (24) hours duration. No credit allowance will be given for interruptions caused by Customer's negligence or willful act,

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failure of equipment or service not provided by VTV, or acts of God or other circumstances beyond the control of VTV (e.g., earthquake, fire, flood, war, riot, hurricane, tornado, heavy rain).

9. Miscellaneous.

9.1 The owner of the Building ("Owner") is not a party to the Service Order(s) between VTV and Customer or these Terms and Conditions. Owner will have no obligations or liabilities whatsoever under the Service Order(s) between VTV and Customer or these Terms and Conditions with respect to any Services or Equipment, and no representations or warranties are being made by Owner with respect to any Services or Equipment provided thereunder. Customer acknowledges and agrees that Owner is not a partner, agent, representative or affiliate of VTV, and Owner is not a provider of communications services under the Service Order(s) between VTV and Customer or these Terms and Conditions. Any cessation or interruption of the Services shall not constitute a default or constructive eviction by Owner under the lease agreement between the Customer and Owner. Owner shall have no responsibility or liability to Customer with respect to the provision, maintenance, failure, or quality of any Services or Equipment provided by VTV under any Service Order to which Owner is not a party, and Customer agrees to hold Owner harmless from any claims that Customer may have against VTV arising hereunder.

9.2 Customer will obtain all approvals for access into the Premises by VTV necessary for VTV to fully perform under the Service Order(s) between VTV and Customer or these Terms and Conditions. VTV shall not be in breach of these Terms and Conditions if VTV is unable to comply with any term of these Terms and Conditions due to Customer's refusal or inability to secure such access. At no cost to VTV, Customer will provide reasonable assistance with respect to any testing that VTV performs with respect to the Services or Equipment to the extent requested by VTV.

9.3 Nothing in these Terms and Conditions shall be construed as preventing VTV from using independent contractors or other third-parties to perform any of VTV'S obligations under the Service Order(s) between VTV and Customer or these Terms and Conditions.

9.4 Customer may not sell, assign or transfer any Service Order(s) without VTV'S prior written consent, except where Customer desires to assign or otherwise transfer same, in whole or in part, to any parent or subsidiary of Customer or to any purchaser of all or substantially all of Customer's assets, or to a purchaser of Customer's business as a going concern, in which case Customer shall not be released of any obligations hereunder. VTV may assign or otherwise transfer any Service Order(s) to any third party with written notice to Customer.

9.5 VTV and Customer are independent contractors and any Service Order(s) and these Terms and Conditions will not establish any relationship of partnership, joint venture, employment, franchise or agency between VTV and Customer. Neither VTV nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

9.6 These Terms and Conditions, together with all Service Orders (whether now or hereafter executed), supersede all prior oral or written statements and represent the sole and entire agreement of the parties with respect to the subject matter. Except as the result of a revision of an applicable tariff, no amendment, revision or modification of these Terms and Conditions shall be effective unless it is in writing, signed by authorized representatives of both parties.

9.7 These Terms and Conditions and the rights and obligations of the parties under any Service Order will be construed in accordance with and will be governed by the laws of the State of Georgia, without reference to the choice of law provisions thereof.

9.8 No Service Order shall be effective (i.e. become a Service Order) unless executed by both parties. If Customer and VTV execute multiple Service Orders, each additional Service Order will supplement rather than replace the prior Service Orders.

9.9 Special Stipulations between VTV and Customer, if any, are set out in the Service Orders. To the extent that the terms and conditions set forth in the Special Stipulations differ from those set forth in the main Agreement, the Special Stipulations shall govern.

9.10 The covenants, undertakings, and agreements set forth in these Terms and Conditions will be solely for the benefit of, and will be enforceable only by, the parties hereto or their respective successors or permitted assigns.

9.11 If any provision of these Terms and Conditions, as applied to either party or to any circumstance, is adjudged by a court to be invalid, illegal or unenforceable, the same will not affect the validity, legality, or enforceability of the portion of the provision, if any, that is not invalid, illegal or unenforceable, the application of such provision in any other circumstances, or the validity, legality, or enforceability of any other provision of these Terms and Conditions. Further, all terms and conditions of these Terms and Conditions will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court in any action between the parties is requested to reform any and all terms or conditions to give them as much effect as possible.

9.12 The section headings throughout these Terms and Conditions are for convenience and reference only, and will not be used to construe these Terms and Conditions.

9.13 The waiver of any breach or default of these Terms and Conditions will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

9.14 Notices must be in writing and are deemed given when received at the respective address set forth below.

10. **Definitions.** The following terms shall have the definitions ascribed to them unless otherwise indicated.

"Building" means the building or buildings identified in the Services Order(s) to which these Terms and Conditions relate.

"Customer Parties" means Customer, its owners, parent, subsidiaries, affiliates, officers, directors, employees, partners, and agents.

"VTV Parties" means VTV, its owners, parent, subsidiaries, affiliates, officers, directors, employees, partners, and agents.

"Equipment" means the equipment provided by VTV or the VTV Parties that is located on the Premises and is used in, or relates to, the provision of the Services to Customer, including any horizontal fiber.

"Force Majeure" means any act or event which is beyond VTV'S reasonable control, including, but not limited to, national emergencies; acts of war or other civil commotion; acts of God; earthquakes; fires; flood; adverse weather conditions; explosions; other catastrophes; embargo; insurrections; riots; sabotage; strikes; lockouts; work stoppages or other labor difficulties; any law, order, regulation or other action of any governing authority or agency thereof; or failure of the Internet.

"MAC Request" means a single move, add or change with respect to Services or Equipment provided by VTV to Customer.

"Premises" means the area in the Building which Customer has leased from the owner, landlord, or other representative of the Building.

"Service Orders" means all "Service Orders," "Move, Add, Change Requests," and other orders or invoices executed by the parties from time to time that are, by their terms or pursuant to the terms of these Terms and Conditions, governed by and subject to, and incorporated by reference in, these Terms and Conditions.

"Services" means all services, products, goods or offerings of any type provided, or required to be provided, by VTV to Customer under these Terms and Conditions, including the Service Orders.

"Term" means, as to each Service Order, the Term for such Service Order plus any Renewal Terms for such Service Order.