



A Westelcom Solution

- 1) **Period of Agreement:** This agreement is for the period described in the Service Order (Initial Term) from the effective date and shall thereafter be automatically renewed for successive 1-year periods, unless written notice is received by Teo Communications, Inc. (“Teo”) a minimum of 30 days prior to the expiration date of the term of the agreement. In the event the Service Commitment Period of an additional Service Order extends beyond the Period of the Initial Term Date, the Service will remain in effect for the agreed upon Service Commitment Period, subject to all the terms and conditions of this agreement as if it were still in effect with respect to the Services.
- 2) **Privacy:** The terms of this agreement are the proprietary information of both Teo and the Customer, and are not to be disclosed under any circumstances without the written permission of both parties, unless so required by law.
- 3) **Assignment:** This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Upon written notice Teo may assign this agreement to any subsidiary, parent or to an entity affiliated with Teo, or to Teo’s successor pursuant to any reorganization or merger of its business, or pursuant to any sale or transfer of all or substantially all of its assets. No other assignment by Teo will be permitted without the prior written consent of the customer, which consent shall not be unreasonably withheld or denied.
- 4) **Services:** Teo will provide to Customer the use of the Services as ordered by Customer per this agreement. Customer may use the Services for all lawful telecommunications purposes, but Customer shall in no event be deemed to have a greater right to use the Services than that which Teo may legally provide under applicable Federal and State Laws and regulations.
- 5) **Service Charges:** Customer agrees to pay all monthly recurring charges (MRC), nonrecurring charges (NRC), taxes, fees and other similar charges that arise out of Customer’s use of the Services, or legally entitles to be collected by Teo as a direct result of Teo’s provision and/or arrangement for Service to customer. These monthly recurring and non-recurring charges are set forth in this agreement. These charges do not include applicable fees and charges such as access or egress (or related) charges imposed by third parties; tax, tax-related or tax-like surcharges; or similar charges. Customer agrees to pay all additional charges, to extent applicable, in addition to the charges set forth in this Agreement.
- 6) **Teo-Supported Equipment:** Teo will provide replacements for Teo Hardware that is covered by a separate monthly support charge and/or Teo Financed Equipment that includes Teo Support during the term of the Agreement (collectively “Teo-Supported Equipment”) on the following basis:
 - a. **Warranty:** Teo-Supported Equipment which is not performing to original manufacturer specifications under conditions of normal use and service will be replaced by Teo with like-equivalent equipment that will be in a like-new or refurbished condition (“Replacement Equipment”), subject to the following limitations. Teo shall have the right to reject any request for Replacement Equipment where, in Teo’s sole discretion, Teo-Supported Equipment has failed due to accidental damage, misuse, or lack of reasonable care by Customer. Further, Teo may decide, in its sole discretion, to reject any request for Replacement Equipment where Customer is not acting in good faith, or where Customer has a history of excessive unwarranted requests for replacement.

- b. Replacement Process: Customer must contact Teo to request Replacement Equipment. On-site troubleshooting to verify power, wiring, and programming must be accomplished by Customer before Replacement Equipment will be authorized. Teo Technical Support Engineers are available at 866-327-8832 to assist in troubleshooting and to approve requests for Replacement Equipment, if necessary. Please call from the installation site to facilitate troubleshooting. No on-site support is provided by Teo under this Agreement.

Subject to stock on hand, same-day Replacement Equipment can be requested from Teo Technical Support Monday through Friday, from 9:00 AM until 5:00 PM Eastern Time. Replacement Equipment requested at other times will normally ship the next business day. Replacement Equipment will be shipped free of charge via UPS Ground (or equivalent). Other shipping methods are available at additional cost.

Teo will ship the Replacement Equipment with a prepaid return shipping label and a Return Material Authorization Number ("RMA Number"). Failed Teo-Supported Equipment must be returned shipped within seven (7) days, clearly marked with the RMA Number and should be accompanied by a complete description of the nature of the defect. Failed Teo-Supported Equipment must be returned as originally supplied by Teo (including power supplies and cables). Missing Teo-Supported Equipment items may incur additional charges. Failed Teo-Supported Equipment that is not returned shipped within seven (7) days will be billed at the full replacement cost.

- 7) **Liability and Warranties:** Except as otherwise set forth in this agreement, Teo makes no warranties, representation, or other agreements, express or implied with respect to the Services, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose. In no event shall either party be liable for special, incidental, consequential, indirect or punitive damages, loss of revenue or profit, loss of goodwill, loss or use of any property, cost of substitute performance, equipment or services, downtime costs and claims of either party for damages, even if such party is advised of the possibility of such damages. Teo is not responsible for any warranty offered by the Customer to any third party. Teo's entire liability for any claim, loss expense of damage under this agreement or any Service Order shall in no event exceed the sum actually paid by the customer to Teo for the Services, which gives rise to the claim. Teo shall use all commercially reasonable efforts to maintain the service to the customer as specified herein.
- 8) **Invoice:** The MRC for the initial partial month of Service (if applicable) be prorated for that portion of said partial month of Service in which service is actually provided, and may be invoiced upon initiation of such Services. On an ongoing basis, Teo will invoice Customer for Services charges each month for that month, at the beginning of the month's Service. NRC shall be invoiced upon receipt by Teo of each Service Order. Customer shall pay all invoices (MRC, NRC) within 25 days of the date of the invoice (Due Date) without reduction, set-off or adjustment and send its payments to the address specified on the invoice. Teo may impose a late payment charge, if payment is not received by the due date, of the lower of one and one-half percent (1 ½%) per month or the maximum rate allowed by law on the non-disputed amounts due under any invoice not paid by the Due date.

- 9) **Teo Rented Equipment.** Customer agrees to pay a recurring monthly fee for Rented Equipment, if any, identified in the Services Agreement Services Summary (and subsequent amendments), over a specific Commitment Term. Monthly charges for Rented Equipment include Teo Support, as specified in Section 6. Upon termination of the Service Commitment Period, Customer agrees to return or purchase Rented Equipment (including all peripheral devices and accessories). When returning Rented Equipment, Customer agrees to return the Rented Equipment to Teo fully functional and non-damaged at Customer's risk and cost. Customer agrees to pay all shipping and handling charges related to any Rented Equipment returns. Any Rented Equipment not returned (subject to Teo's inspection and acceptance of the returned Rented Equipment) within thirty (30) days following the termination of the Commitment Term will be deemed to have been purchased at a purchase price equal to (1) 100% of the then current list price of the Rented Equipment during the first 12 months after Customer's receipt of the Rented Equipment, or (2) after such 12 month period, 80% of such list price, and Customer agrees to pay the applicable purchase price.

Teo is and will remain the owner of Rented Equipment unless title is conveyed to Customer in writing following Teo's confirmation to Customer of receipt of Customer's payment in full of the purchase price for the Rented Equipment. Unless Customer notifies Teo within five business days receipt Rented Equipment of any issue, Rented Equipment is deemed to be in good working order at the time of receipt. In the event that any Rented Equipment delivered to Customer is stolen, lost, damaged, or transferred to any third party, regardless of the circumstances or cause, Customer will immediately notify Teo in writing and pay Teo a purchase price equal to (1) 100% of the then current list price of the Rented Equipment during the first 12 months after Customer's receipt of the Rented Equipment, or (2) 80% of such list price after such 12 month period.

- 10) **Service Commencement:** Service Commencement shall be determined using the following criteria: a) completion of testing by Teo and acceptance by customer; or b) if after two (2) business days from completion and turn over to customer does not attach equipment or reject service, service will be deemed accepted, or c) in a multiple node network, Service Commencement will begin upon completion of a minimum of two nodes. Both parties, in writing, prior to contract signing, shall agree upon any exceptions. All Service Charges will begin on the Service Commencement Date. This date will be used to calculate service start date and service end date.
- 11) **Suspension of Service:** Teo may, at its sole discretion, but with at least 10 days of written notification to the customer, suspend service if payment has not been received by the due date. Teo will restore service if Teo receives payment of all current and overdue charges. Service will be restored after payment is received, and within 72 hours of said receipt. Teo may assess a Service restoration fee of up to \$750 to restore service after suspension of service for nonpayment.
- 12) **Early Termination:** If customer cancels or terminates this agreement prior to the end of the Initial Term, or terminates a Service Order prior to the end of its term, except if early termination is due to Teo's inability to deliver service level described in section 20, Customer agrees to pay Teo a termination charge, as liquidated damages and not as a penalty or forfeiture as follows (i) all applicable non-recurring charges (NRC) specified in this agreement,

plus (ii) all disconnection, early cancellation or termination charges payable to third parties incurred by Teo on Customer's behalf relating to the Services in this agreement plus (iii) all term discounts received from start of Services through the date of termination of Services received from Teo, plus (iv) 25% of the balance of the value of the MRC for the remaining term of the Agreement. All termination charges shall be due and payable within thirty (30) days of the effective date of termination. Customer shall be liable for any penalty incurred by Teo with respect to the third-party provider of Off-Net Service and any special construction and unrecoverable costs that Teo has incurred in efforts to establish and provide Services pursuant to the Service Order and this Agreement. Notwithstanding any provision or inference to the contrary contained herein, any monetary sums deemed to be due and payable under this Agreement or Service Order shall survive its termination indefinitely.

- 13) **Severability:** Except for sections 1, 5, 10, 11, 12 and 20 of this agreement which are the essence of this agreement and reflect the vital and central agreement of the parties with respect to the subject matter hereof and without which their bargain would not have been consummated, each provision of this agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.
- 14) **Material Change in Law:** If any regulatory requirement has the effect of canceling, changing or superseding any material term or provision of this agreement, then this agreement will be deemed modified in such a way as the parties mutually agree is consistent with the intent and purpose of this agreement and is necessary to comply with the regulatory requirement effective as of the date of notice by providing written notice to the other party.
- 15) **Choice of Law:** The parties agree that this agreement shall be governed by and construed in accordance with the laws of the state of New York. Parties agree that any action or suit commenced pursuant to or in respect of this agreement shall be brought in the State or Federal courts situated in Jefferson, Clinton, Essex or Franklin County, New York.
- 16) **Force Majeure:** Neither party shall have any liability to the other solely by virtue of the occurrence of a Force Majeure Event, whether such Force Majeure Event occasions a default or otherwise engenders a potential liability. A Force Majeure Event shall include, but not limited to, events such as vandalism, acts of God, fire, flood, storms and storm damage, acts of war, terrorism, sabotage, riot or other civil disorders, actions of civil or military authorities, accidents of all types, and any other acts which are out of the control of Teo. Lack of funds to make any required payment by Customer shall not be construed to be a Force Majeure Event.
- 17) **Indemnification:** Subject to the limitations set forth in Section II, above, each party shall indemnify and hold the other harmless from and against all liabilities, claims, damages, losses, costs, expenses and judgments (including reasonable attorney's fees) and causes of action arising out of or in connection with this Agreement or any Service Order.
- 18) **Notices:** All notice, demands, requests or other communications which may be, or are required to be, given or served, or sent by any party to any other party pursuant to this agreement shall be in writing and will be deemed to have been duly delivered or given when (i) delivered by hand (with written confirmation of receipt) before 5:00 p.m. EST on a business day (or otherwise on the next succeeding business day); or (ii) the next business day after being deposited for delivery with a nationally recognized overnight delivery service, such as a Federal Express, and addressed or sent, as the case may be, to the appropriate addresses set forth on the Cover

Sheet. Each party may designate by notice in writing a new address, to which any notice, demand, request or communication may thereafter be so given, served or sent.

- 19) **Hacking/Fraud:** Teo cannot be held liable for any Long Distance or international charges incurred as a result of hacking and/or fraudulent access into your phone system or account. All customers should take the necessary precautions to restrict unauthorized access that can result in charges from Teo or any other long distance carrier.
- 20) **Guarantee of Service:** Teo guarantees that its service will be online and available 98.9% of the time and measured over any 30 day period. In the event that 1.1% downtime is exceeded in any given month, Teo will credit Customer with one full days usage (1/30th of MRC). This guarantee applies to normal operating conditions, and does not cover service outages due to a Force Majeure Event as defined in Section 16. Teo is not responsible for business losses, loss of revenue, or other damages as a result of Service outages, regardless of the cause. Teo also provides service guaranteed to higher levels of reliability by establishing physically redundant network loops and/or networks with guaranteed backup protection links.
- 21) **Regulatory Costs:** Teo and Customer recognize that from time to time, Local, State, and Federal Government agencies may impose additional taxes, assessments, franchise fees and other forms of regulatory fees beyond the control of, or the scope of this agreement. Teo will pass on these additional costs in the form of a line item on Customer invoice entitled Regulatory Fees.
- 22) **Teo Software End User License**
 - a. **License Grant:** Teo grants to Customer a non-exclusive license to use Teo Software installed by Teo or its designees for the number of seats, stations, or sessions (or other similar metrics) paid for by Customer in accordance with the documentation for such software products. Teo Software shall also include any updates, upgrades, releases, patches, or corrections of such software provided under any Software Assurance Agreement between Teo and Customer.
 - b. **License Restrictions:** Teo Software is licensed to Customer for internal use only. Customer shall not (and Customer shall not allow any third party) to: (a) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of Teo Software by any means whatever, or disclose any of the foregoing; (b) provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use or allow others to use Teo Software for the benefit of third parties (through the Internet or otherwise); (c) modify, incorporate into or with other software, or create a derivative work of any part of Teo Software; (d) disclose the results of any benchmarking of Teo Software, or use such results for its own competing software development activities, without the prior written permission of Teo; or (e) attempt to circumvent any use restrictions on Teo Software.
 - c. **Ownership:** All intellectual property related to Teo Software or to any materials provided with Teo Software is proprietary to Teo or its licensors, and Teo and its licensors retain all right, title, and interest therein and thereto. All rights not expressly granted are hereby reserved to Teo and its licensors. Teo's licensors are intended third party beneficiaries of this Agreement and have the express right to rely upon and directly enforce the terms set forth herein.
 - d. **DISCLAIMER.** TEO AND ITS LICENSORS PROVIDE THE SOFTWARE "AS IS." EXCEPT AS EXPRESSLY SET FORTH ABOVE, NO OTHER WARRANTIES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, ARE MADE BY TEO OR ITS LICENSORS WITH RESPECT TO THE

SOFTWARE AND THE ACCOMPANYING DOCUMENTATION (STATUTORY OR OTHERWISE), AND TEO AND ITS LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES NOT EXPRESSLY STATED HEREIN, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW. TEO AND ITS LICENSORS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE SOFTWARE WILL BE CORRECTED.

- e. **TOLL FRAUD DISCLAIMER.** ALTHOUGH THE SOFTWARE MAY PROVIDE PASSWORDS AND BLOCKING OPTIONS FOR CONTROLLING TELEPHONE USE, SUCH SOFTWARE DOES NOT PROVIDE A SECURITY SYSTEM THAT WOULD PREVENT UNAUTHORIZED USE, AND TEO AND ITS LICENSORS EXPRESSLY DISCLAIM ANY WARRANTY THAT SUCH SOFTWARE WILL PREVENT, OR CAN PREVENT, UNAUTHORIZED AND/OR UNLAWFUL USE. TEO AND ITS LICENSORS WILL HAVE NO RESPONSIBILITY AND WILL NOT BE LIABLE FOR ANY UNAUTHORIZED OR UNLAWFUL USE, INCLUDING WITHOUT LIMITATION LONG DISTANCE CHARGES, CRIMINAL OR CIVIL LIABILITIES, OR DAMAGES.
- f. **Non-disclosure of Confidential Information.** Customer may not disclose or, except as expressly permitted in this Agreement, use Teo Software, accompanying documentation, or other technical information disclosed to it by Teo ("Confidential Information"). Customer shall use its best efforts to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of equal importance. Confidential Information does not include information that: (i) is in or enters the public domain without breach of this Agreement, (ii) Customer receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation, or (iii) Customer develops independently, which it can prove with written evidence.