



## **Standard AFS Terms and Conditions**

Customer Care Center 1-800-239-3000

**Agreement** Customer hereby agrees to i) all the rates, terms and conditions of the Agreement for Service ("AFS") signed by the Customer, including these Standard AFS Terms and Conditions incorporated therein (collectively, the "Agreement"); ii) the rates, terms and conditions of the state and federal tariffs of Deltacom, Inc. ("Deltacom"); and/or iii) the rates, terms and conditions that appear on Deltacom's website ([www.deltacom.com](http://www.deltacom.com)) to the extent that state and/or federal tariff do not otherwise apply, in each case as the same exist or may be modified in the future by Deltacom, including limitations on Deltacom's liabilities. The Service is intended only for the non-residential use of Customer, its authorized agents and employees, and may not be resold without the prior written consent of Deltacom.

**Initial Term and Renewal Term (together "Term")** The initial term of a Service provided under the Agreement ("Initial Term") shall commence on the following date, as applicable: (i) for long distance service, the date of Customer's first usage; (ii) for all other services, the date the Service first becomes available to Customer; or (iii) if Customer purchases more than one service, the date the final Service becomes available to Customer. Customer agrees to an Initial Term of no (month-to-month), one (1), two (2), three (3) or four (4) year(s), as indicated on the AFS. Upon expiration of the Initial Term (if one year or longer), the Agreement shall automatically renew for successive one (1) year terms (each one (1) year term, a "Renewal Term") unless either party notifies the other of its intention to terminate the Agreement at the end of the Initial Term or Renewal Term, as the case may be, which such notice (the "Notice") shall be in writing and provided to the other party at least thirty (30) days prior to expiration of the Initial Term or the Renewal Term, as the case may be. In the event of such Notice, the Agreement shall terminate upon the expiration of the Initial Term or Renewal Term, as the case may be. Customer shall notify Deltacom in writing if the Customer contact person is changed. Deltacom reserves the right to reject any Customer termination request received from any person other than the designated Customer contact person.

**Our Best Guarantee** If Customer is not satisfied with any Service provided by Deltacom under the Agreement, Customer shall provide written notice specifying the performance deficiency in the Service and allow Deltacom twenty (20) business days from Deltacom's receipt of notice ("Notice Period") to bring the deficient performance to customarily acceptable industry performance standards ("Cure"). The written notice must cite this provision

and reasonably detail the deficient performance, and must be submitted by mail, registered, or certified mail, return receipt requested to Customer Care Center, Attn: Disconnect Processing Team, P.O. Box 1301 Arab, AL 35016; or by email with confirmed receipt by Deltacom, to disconnect@deltacom.com; or by facsimile transmission, with confirmed receipt by Deltacom, to 1-800-488-1386. Should Deltacom fail to Cure within the Notice Period, Deltacom will terminate the applicable Service upon the written request of Customer and Customer will not be charged the Discontinuance Charge; however, Customer shall be responsible for paying all accrued charges for any Service used by Customer through the date of termination.

**Termination Notices** Any Customer notice of termination of the Agreement or any Service hereunder, other than for deficient performance under the Our Best Guarantee provision, must be received by Deltacom at least thirty (30) days and no more than sixty (60) days prior to the termination becoming effective. The notice must be in writing and submitted by mail, registered, or certified mail, return receipt requested to Customer Care Center, Attn: Disconnect Processing Team, P.O. Box 1301 Arab, AL 35016; or by email with confirmed receipt by Deltacom, to disconnect@deltacom.com; or by facsimile transmission, with confirmed receipt by Deltacom, to 1-800-488-1386.

**Discontinuance Charge** If Customer terminates the Agreement or any Service hereunder, for any reason, after execution by Customer and before the expiration date of the Initial Term or Renewal Term, as applicable, even if prior to commencement of the Initial Term, Customer shall be in breach of the Agreement and shall incur a "Discontinuance Charge" calculated as the sum of the following: (A) for long distance service, the Annual Usage Commitment (defined below) amount, if applicable, for the Initial Term or Renewal Term, as applicable; and (B) for all other Services (except for Simpli-Business and Simpli-Mobile Services for which the charge for early termination is provided in their Supplemental Terms and Conditions below), the product of (i) the monthly recurring charge for the terminated Services; multiplied by (ii) the number of months remaining in the Initial Term or Renewal Term, as applicable, following the termination date for such Services; multiplied by (iii) fifty percent (50%). In addition, the Discontinuance Charge shall apply if Customer moves to a location and does not transfer Deltacom's Services to such new location or relocates outside of Deltacom's service area. Because damages resulting from early termination would be difficult to determine, the parties agree that the Discontinuance Charge is a reasonable approximation of such damage and shall be considered a liquidated damage and not a penalty; provided that in the event that the foregoing is unenforceable, in whole or in part, for whatever reason, Deltacom will be entitled, in addition to any other remedy available at law or in equity, to recover the costs, both internal and external, it incurred to implement and discontinue the Services, including, without limitation, the following: (x) the costs incurred by Deltacom in installing and servicing Customer's account, including any waived installation charges; (y) the cost of

any Incentives (defined below); and (z) any miscellaneous charges incurred for dedicated access, including but not limited to engineering fees, expedite fees, carrier and local exchange service order fees, change order charges, miscellaneous configuration charges, etc. ("Dedicated Access Fees").

**Move of Service.** Customer may request a Service be moved to a new location by contacting Deltacom's Customer Care Center 1-800-239-3000, at least forty-five (45) days in advance of the intended move date. So long as the new location is in an area served by Deltacom, Deltacom will move the Service to such location. If the date the Service is moved (the "Move Date") is (a) during the first eighteen (18) months of the Initial Term, Customer agrees to (i) pay a move fee of \$1,000, and (ii) a new Initial Term of equivalent length of the original Initial Term (e.g., original Initial Term was for 3 years, then upon a move of the Service, Customer agrees to a new Initial Term of 3 years commencing when the Service becomes available at the new location); or (b) after the first eighteen (18) months of the Initial Term, Customer agrees, at Customer's option, to either (i) pay a move fee of \$1,000, or (ii) a new Initial Term of equivalent length of the original Initial Term. The rates, taxes, fees and other charges for any moved Service are subject to change to reflect the change of the cost to Deltacom of providing the Service at the new location.

**Use of Service.** Customer may not resell any Service without Deltacom's written consent or use, or attempt to use, any Service for any fraudulent, unlawful, improper, harassing, excessive, harmful, or abusive purpose ("Improper Uses"), or so as to adversely or negatively impact Deltacom's customers, employees, business, ability to provide quality service, reputation, or network, or any other person. Deltacom may determine on a case-by-case basis what constitutes Improper Uses. Improper Uses may include, without limitation: (a) using an automatic dialer or program; (b) sending unsolicited messages or calls; (c) attempting to interfere with the access of any user, host, or network; (d) identity theft; (e) attempting to decipher, decompile, or reverse engineer any software; (f) posting or transmitting unlawful, infringing, or objectionable content as determined by us; (g) Caller ID spoofing; (h) probing, or attempting to tamper with or harm Deltacom's systems, network, or customers; or (i) reselling or attempting to resell any aspect of the Service, whether for profit or otherwise. Customer shall indemnify and hold Deltacom harmless for any costs incurred by Deltacom relating to such Improper Uses. If Deltacom suspects a violation of this provision, Deltacom may: (i) begin legal action; (ii) suspend or terminate Service immediately and without prior notice; (iii) suspend or terminate service provided to Customer under any other agreement with us; and (iv) cooperate with law enforcement in prosecuting offenders. Customer agrees to cooperate with Deltacom in investigating suspected violations. Deltacom may terminate Customer's Service or change Customer's rate plan at any time, with notice, if Deltacom determines, in Deltacom's sole discretion, that Customer's use of the Service is excessive, unusually burdensome, or unprofitable to Deltacom. Deltacom reserves the right to

block international calling and calls to 900, 976, 700 numbers and other "pay-as-you call" services unless special arrangements have been made with Deltacom. Customer is liable for all unauthorized and/or fraudulent use of Service and Deltacom retains the right to analyze any and all information at its disposal, including credit surveys, call detail records and any other information to confirm unauthorized use. Customer shall pay for unauthorized or fraudulent use of service at Deltacom's highest usage charges applied to network usage and attempted network usage, whether or not a terminating connection was achieved, plus all costs incurred by Deltacom to detect, discover, observe, investigate, analyze, examine and locate the party responsible for unauthorized or fraudulent use.

**Vendor Charges** Customer is responsible for the payment of all charges for the services provided by Customer's phone system and other vendors, even if the AFS shows that installation charges are waived.

**Incentives** "Incentive(s)" include, but are not limited to, free or discounted services under a term discount, waiver of any fees (i.e., installation charges, loop charges), waived rental or other charges for the use of equipment, etc. The amount of the Incentives shall be calculated as the difference between the fees paid by Customer and the fees Customer would have incurred without the Incentive plus the then current purchase price for any equipment received under an Incentive (i.e., data CPE: multiplexers, CSU/DSU, routers, etc.) if Deltacom is unable to retrieve the equipment.

**Underlying Facilities** Deltacom will generally be required to provision part of the Service using "last-mile" or "local loop" facilities from the provider of Deltacom's choice, Deltacom's charges to the Customer will be based upon actual tariffed rates filed by the dominant Local Exchange Carrier ("LEC") operating in each LATA or charges by other "last-mile" or "local loop" service providers used by Deltacom, and are subject to change upon notice to Customer. Deltacom cannot guarantee rates from third-party providers until orders are placed and availability is confirmed. If, prior to commencement of Service, the rates for the underlying facility, based on actual circuit configuration or provider, changes from the rate used in calculating the price reflected in the AFS, then Deltacom may revise the pricing provided to Customer (including all resulting monthly recurring and non-recurring charges) and will provide Customer with notice of such new pricing for approval to proceed with the Service; provided that Customer may cancel an order for a Service without a Discontinuance Charge within ten (10) days of Deltacom's notice if Customer does not want the Service at the new pricing. Customer shall be solely responsible for payment of any charges or termination liability levied by Customer's equipment vendor or underlying facility provider associated with any special construction or equipment needed to provide facilities into Customer's premises or the cancellation thereof. In the event that the nonrecurring costs to be incurred by Customer associated with the delivery and installation of the underlying facility and establishment of Service are estimated to exceed an amount equal to the

monthly recurring charge of the Deltacom Service, Customer may terminate the Agreement without a Discontinuance Charge within the earlier of (i) thirty (30) days of execution of the Agreement, or (ii) ten (10) days from the notification by Deltacom of the need for special construction or equipment for the provider of the underlying facility and the estimated cost thereof.

**Idle Service Charge** (if applicable) Customer shall accept the Service no more than ten (10) business days after the underlying facility has been installed or within ten (10) business days of a reasonable attempt by Deltacom to install the Service. If the Service is not accepted within this time frame, an idle service fee of \$195 per T-1 may be assessed and applied to the Customer's account on a monthly basis until the Service is accepted. Acceptance is denoted by the completed installation of all Services ordered. Upon Service acceptance, the monthly charge will cease.

**Internet Access** (if applicable) If Customer elects to receive Deltacom Internet Access and/or Email Access ("Access") as part of the Agreement, Customer covenants that none of Customer's internet content, Email content, transmission or any other internet activities will be in violation of any local, state, federal or international laws, regulations or treaties or Deltacom's Acceptable Use Policies. Any such violations may be grounds for termination of the Access. Customer agrees to abide by Deltacom's Acceptable Use Policies, which are available for review by Customer at [http://www.deltacom.com/terms\\_conditions.asp](http://www.deltacom.com/terms_conditions.asp), or any successor URL which may be located on the Deltacom website. • Deltacom provides no user access security with respect to any of Customer's facilities or facilities of others. Customer shall be responsible for user access security and network access. Data transmitted over wireless devices may not be secure and may be intercepted by others unless Customer takes appropriate security measures. Deltacom will assist in network security breach detection or identification at Deltacom's standard rate, but shall not be liable for any inability, failure, or mistake in doing so. • Viruses and other malicious code, are common on the Internet and on email. Deltacom cannot protect Customer's equipment against viruses and strongly recommends Customer obtain up-to-date anti-virus and firewall software to protect Customer's equipment. • Deltacom does not control, nor is Deltacom responsible or liable for, data, content, services, or products (including software) that Customer accesses, downloads, receives or buys via the Service. The Internet may provide access to content Customer considered harmful to minors, or otherwise offensive or inappropriate. If Customer wishes to limit access to such content, there are a number of commercially available products that can help Customer do so. Deltacom may, but does not have to, block information, transmissions or access to certain information, services, products or domains to protect Deltacom, its network, the public or Deltacom's users. Therefore, messages and other content may be deleted before delivery. The Internet contains unedited materials, some of which may be offensive to Customer. Deltacom is not a publisher of third party content accessed through the Service and is not responsible for the content, accuracy, timeliness or

delivery of any opinions, advice, statements, messages, services, graphics, data or any other information provided to or by third parties as accessible through the Service. • Customer is responsible for paying all fees and charges of third party vendors whose sites, products or services Customer accesses, buys or uses via the Service. If Customer chooses to use the Service to access web sites, services or content, or purchase products from third parties, Customer's personal information may be available to the third-party provider. How third parties handle and use Customer's personal information related to their sites and services is governed by their security, privacy and other policies (if any) and not Deltacom's. Deltacom has no responsibility for third party provider policies, or their compliance with them.

- If Customer elects to download into Customer's equipment or otherwise enable any software, including any "client" designed to facilitate Customer's access of the Service, Customer shall be solely responsible for, and shall be deemed to have reviewed and, to the extent applicable, acknowledged, accepted or waived, any disclosures, notices or options otherwise made available to Customer for viewing as part of the log-in process for the Service. Customer agrees that sharing the Service with another party breaches the Agreement and may constitute fraud or theft, for which Deltacom reserves all rights and remedies. Customer has no proprietary or ownership rights to a specific IP or other address, log-in name, or password that Customer uses on Deltacom's network. Deltacom may change Customer's address, login name or password at any time. Customer agrees that Deltacom may access Customer's devices and information stored on it (such as drivers, software, etc.) to troubleshoot issues related to the Service; enable, operate and update the Service and software; investigate activity that may be in violation of the Agreement; or to comply with law.
- If Customer provides or receives services through other networks, Deltacom accepts no responsibility for authorization of such networks. Use of other networks may require approval of the respective network authorities and use will be subject to any acceptable usage policies such networks establish. Deltacom does not own or control networks outside of Deltacom, nor is Deltacom responsible for performance (or nonperformance) within or over those networks or within non-Deltacom-operated interconnection points between Deltacom and other networks.
- Deltacom shall provide to Customer technical consultation and instruction regarding network hardware, software, access techniques and commands at Deltacom's standard rates. Deltacom is not responsible to Customer for the cost or expense of administrative, technical, emergency, or support personnel at Customer's location necessary for dealing with Deltacom and for providing and maintaining Customer's own computer equipment, or Deltacom's or other network access. Consultation Services that are extended to Customer over the phone and which exceed the customer support commitments as described in this paragraph will cost \$100.00 per hour; or \$150.00 per hour, if performed on the Customer's site.
- Customer agrees to give Deltacom polling rights to its router for the duration of the Agreement. This information will be kept in confidence and used for network polling and monitoring.
- Deltacom warrants that the Access will pass data packets from Customer's Router to the Internet. Use of

any information obtained through the Access is at Customer's risk. Deltacom specifically denies any responsibility for the speed, accuracy or quality of information obtained through the Access. • Deltacom is not responsible for the reliability of equipment which Deltacom did not install or configure or for the Customers' local networks or other hardware. Customer is responsible for assessing its own computer and transmission network needs, and is solely responsible for the results obtained therefrom. • If Deltacom is listed as the billing contact for Customer's domain name, customer hereby consents to Deltacom's annual renewal of Customer domain name unless otherwise instructed. • (for Simpli-Voice and Select 100 customers) If a Deltacom point- of- presence ("POP") fails due to failure of its equipment or circuit(s) between POPs (except in the case of fire, flood or other Force Majeure event), and this failure results in disruption of the Access, then the following adjustment will be made: If the disruption is not resolved within 12 hours, Deltacom will provide an additional Access day to Customer beyond the Access Term for each calendar day (or portion thereof) of the Access disruption. The foregoing represents the sole remedy available to Customer for Access disruptions.

**Secure Access and/or IP/VPN** (if applicable) The Secure Access Service provided hereunder is the delivery via Internet protocol of the Customer's data between two remote points utilizing Secure Access equipment. Deltacom's Secure Access Service includes the provision of the equipment as set forth in the Agreement necessary to encode and decode the Customer's data, but excludes the provision of the Local Loop, which must be contracted for separately. Customer acknowledges that Deltacom does not represent or warrant that the Secure Access Service will ensure uninterrupted or error-free operation.

**Customer Premise Equipment** (if applicable) In the event Deltacom furnishes customer premise equipment of any sort ("CPE") to Customer for use in connection with the Services, Customer shall, unless waived as an Incentive, pay the aggregate rental charge for each item of CPE for the full Term of the Agreement. Should Customer return any item of CPE ordered by Customer and that has been used or taken out of its box, Customer will pay Deltacom a Restocking charge. Customer shall provide all consumables (e.g., paper, toner, ink) used by any CPE. Deltacom, through its employees or other repair personnel, will provide maintenance as required to keep CPE in good operating condition as a result of Customer's normal use. Any manufacturer's warranties or maintenance contracts will be for the benefit of Deltacom. Deltacom reserves the right to substitute another type of CPE of similar functionality at its discretion. Any substituted CPE or repair and replacement parts may be new or like new. Customer shall provide Deltacom or other repair personnel reasonable access to the CPE. Customer agrees to assume and bear the entire risk of any partial or complete loss with respect to the CPE from any and every cause whatsoever including theft, loss, damage, (including damage caused by Acts of God, or Force Majeure), destruction or governmental taking, whether or not such loss is covered by

insurance or caused by any fault or neglect of Customer. If Customer's CPE is so equipped, wireless service within Customer's premise, is available to Customer's device only when it is within the operating range of the CPE. Connection speed is an estimate and is no indication of the speed at which Customer's device or the Service sends or receives data. Actual connection speed will vary based on device configuration, compression, distance, network congestion, interference and other factors. The accuracy and timeliness of data received is not guaranteed; delays or omissions may occur. Deltacom may, but does not have to, change or improve the CPE by, among other things, changing or upgrading the 802.11b/g standard. If Customer is receiving CPE at no rental cost to Customer, then Customer shall be billed a Monthly Equipment Maintenance Coverage charge and payment of such charge shall relieve Customer of liability for Acts of God, including lightning, power surge, fire, wind, flood and earthquake. Damage caused by power surge, fire, and flood, which is not the result of an Act of God, is specifically excluded from coverage. Customer agrees to give Deltacom prompt notice of any damage to or loss of any CPE, or any abandonment or relocation from Customer's premise. CPE furnished by Deltacom, including all Simpli-Business products, remain the property of Deltacom. For Deltacom-furnished CPE that cannot be recovered from Customer's site, Customer will pay Deltacom the listed purchase price for such CPE. Customer shall pay any charges at Deltacom's normal time and materials rates for installation of or work on any inside wiring by Deltacom in Customer's premises. CUSTOMER SHALL DEFEND AND

INDEMNIFY DELTACOM FROM ANY AND ALL CLAIMS, ACTIONS, LOSSES, DAMAGES, (INCLUDING REASONABLE ATTORNEYS FEES) ARISING OUT OF THE PURCHASE, POSSESSION, OPERATION, CONDITION, RETURN, USE OR MISUSE OF THE CPE, THE SOFTWARE OR BY OPERATION OF LAW, EXCLUDING, HOWEVER, ANY OF THE FOREGOING RESULTING SOLELY AND DIRECTLY FROM THE NEGLIGENT OR WILLFUL ACTS OF DELTACOM. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON CUSTOMER UNDER UNIFORM COMMERCIAL CODE SECTIONS 2A-303, 2A-401, 2A-402 AND 2A-508 THROUGH 2A-522; PROVIDED HOWEVER THAT THE FOREGOING WAIVER WILL IN NO EVENT IMPAIR OR DIMINISH ANY RIGHT OR REMEDY OTHERWISE CONFERRED UPON CUSTOMER UNDER THE AGREEMENT.

**Software** (if applicable) Customer may be required to use special software to use some of the Services and software may be embedded in some of the CPE used by Customer. Customer is granted a limited, non-exclusive, non-transferable license under the software manufacturer's copyrights to use the software (in executable code form) as specifically configured by the software manufacturer solely in connection with Deltacom's Services. All rights not specifically granted to Customer herein are expressly reserved by Deltacom and/or the software manufacturer. The installation, operation, maintenance, repair or removal of any software, program, or other hardware ("Service Related Products") related to the Services on Customer's computer(s), network(s) or other hardware may result in service outage, loss or damage

to that equipment or any data, information or files on Customer's equipment. Customer agrees to be solely responsible for all data and software back up and to otherwise protect Customer's computer and network data, information and files. Customer assumes all responsibility for impacts, loss or damage to Customer's computer or network hardware, data, information, files, peripherals, mobile devices, or Service Related Products associated with installing, operating or removing any Service Related Products. Any warranty covering Customer's computer, network or other equipment may become void when Customer opens that computer or equipment to install any Service Related Products, whether or not Customer elects to install and run any of those Service Related Products. Deltacom does not commit or warrant that Customer's installation or use of any Service Related Products will permit Customer to access, operate, or use any Service. Customer will perform regular backups using the Software and will report any errors in executing such backups promptly by fax or e-mail to software manufacturer. Customer will arrange for and maintain communication services used to connect to software manufacturer's site. The security mechanisms implemented by the software manufacturer may have inherent limitations and Customer is solely responsible for determining that this mechanism sufficiently meets Customer's security and operational needs. The Customer is responsible for any communication costs associated with the connection between the Customer site and software manufacturer's site. Customer further agrees that it shall not place any data or program on the Server or CPE that: (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, antidiscrimination or false advertising); (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (d) is obscene, child pornographic or indecent; or (e) contains any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. Customer shall defend, indemnify and hold Deltacom and the software manufacturer harmless against any third party claim, action, suit or proceeding alleging any breach of the covenants contained herein. Customer agrees not to: (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) merge the Software with other software; (c) sublicense, lease, rent, loan, or otherwise transfer the Software to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; (e) use the Software to process data or provide any service bureau activity for any third party; or (f) otherwise use or copy the Software, except as expressly allowed by this provision. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of or on the Software. Any additional terms and conditions that are applicable to the use of such software may be found on Deltacom's web site at [www.deltacom.com](http://www.deltacom.com) and/or the applicable software or CPE manufacturer's website, and Customer agrees to abide by all such terms and conditions.

**Taxes and other Fees** In addition to the charges for Customer's Services, Customer is responsible for all federal, state and local sales, use and excise taxes and any new or increased fees, assessments, taxes or other charges for the Services, including any Universal Service Fund, Telecom Relay, E911 and LNP charges that may apply. Customer is responsible for collect call, mobile usage and any other charges that may be billed to Customer after Customer's Service end date. Customer is also responsible for any charges from third parties that arise when Customer uses Customer's phone number as a billing mechanism for third-party services (such as 900 or other information charges). Should Customer request any third-party services, Customer agrees that Deltacom may release Customer's name and billing information to that third party so that it can bill Customer directly for those services.

**Shared Tenant Service Provider Agreement** If Customer intends to resell or rebill Deltacom Services, Customer hereby certifies that it has all necessary state, federal, legal and regulatory authority to resell or rebill any telecommunication services to its tenants or customers. In no event will Deltacom directly bill any tenant or other customer of Customer. If Customer is found to be in violation of any federal, state or local law or regulation for reselling or rebilling telecommunications services, Customer shall indemnify Deltacom for any related claims by any third party against Deltacom, including attorneys' fees and costs. All such indemnity obligations of Customer shall survive termination or expiration of the Agreement.

**Default** Should Customer fail to pay any invoiced item within thirty (30) days of the date of invoice, Deltacom reserves the right to cease providing the Service invoiced until such time as the invoice is paid. Such interruption of Service shall not be a breach of the Agreement, and shall not afford Customer any relief outlined in the Agreement or any other document. If, after ten (10) days written notice to Customer, the invoice shall remain unpaid, Deltacom, at its election, may declare Customer in default. If Customer defaults, all amounts remaining to be paid under the Term of the Agreement shall immediately become due and payable, including the Discontinuance Charge. The remedies contained in this paragraph are cumulative and in addition to all other rights and remedies available to Deltacom under the Agreement, by operation of law or otherwise. In addition, in the event of default, Customer shall pay Deltacom for installation and removal of any CPE in the amount of Five Hundred and 00/100 Dollars (\$500.00) per unit (i.e., per CPE router); such amount shall be immediately due and payable. Further, Deltacom, at its option, may, upon written notice thereof, take immediate possession of any and all of the items of CPE owned by Deltacom, wherever situated, and for such purpose enter upon any premises without liability for so doing and sell, dispose of, hold, use or lease any items of CPE which have not been fully paid for as Deltacom in its sole discretion may decide. If Deltacom is unable to retrieve any items of CPE, Customer shall be invoiced for the full, then current, sales price of such CPE.

**Disclaimer of Emergency 9-1-1 services** IF CUSTOMER USES VoIP (VOICE over INTERNET PROTOCOL)-BASED PHONES, CUSTOMER IS ADVISED THAT EMERGENCY 9-1-1 SERVICE MAY NOT FUNCTION OR BE AVAILABLE TO CUSTOMER WITH THE LOSS OF ELECTRICAL POWER OR IF THE BROADBAND CONNECTION IS NOT OPERATIONAL. EMERGENCY 9-1-1 SERVICE WILL NOT BE AVAILABLE AT ANY REMOTE LOCATION IF INTERNAL USERS ARE ALLOWED TO USE THEIR VoIP-BASED PHONES REMOTELY. CUSTOMER'S SIGNATURE ON THE AGREEMENT WILL BE CUSTOMER'S ACKNOWLEDGMENT THAT DELTACOM HAS ADVISED CUSTOMER OF THESE LIMITATIONS AND THAT CUSTOMER ACCEPTS THE SERVICES WITH THESE LIMITATIONS. DELTACOM WILL ALSO PROVIDE LABELS TO CUSTOMER THAT ALERT USERS TO THE LIMITATIONS. THE FEDERAL COMMUNICATIONS COMMISSION RECOMMENDS THAT CUSTOMER PLACE THESE LABELS ON OR NEAR THE TELEPHONE AND OTHER EQUIPMENT ASSOCIATED WITH CUSTOMER'S VoIP-BASED PHONES.

**Incorrect Charges** If Customer believes an invoice contains an incorrect charge, Customer has thirty (30) days from the date of the first invoice that contains the charge to notify Deltacom or Customer waives any right to dispute the charge. To notify Deltacom, please contact the Customer Care Center at 1-800-239-3000, or in writing to Customer Care Center, Attn: Customer Escalation Group, P.O. Box 1301 Arab, AL 35016; or by email with confirmed receipt by Deltacom, to [customerrequests@deltacom.com](mailto:customerrequests@deltacom.com); or by facsimile transmission, with confirmed receipt by Deltacom, to 1- 877 264 2877. Deltacom may require Customer to describe the dispute in writing. If Customer accepts a credit to resolve an issue, Customer agrees the issue is fully resolved. If Customer Care does not resolve Customer's dispute and Customer still wishes to pursue the matter, Customer must follow the dispute resolution process described in the Arbitration section.

**Dispute Resolution** Other than for deficient performance where all of the requirements of the Our Best Guarantee provision above have been followed, as a condition precedent to any claim or defense regarding deficient performance, nonpayment, incorrect billing, or any controversy or claim arising out of, connected with or relating to the Agreement, Customer must exhaust all administrative remedies available to them in addition to providing at least thirty (30) days notice to Deltacom in writing by registered or certified mail to: Deltacom Customer Care Center, Attn: Customer Care, P.O. Box 1301 Arab, AL 35016; or by email with confirmed receipt by Deltacom, to [CustomerRequests@deltacom.com](mailto:CustomerRequests@deltacom.com); or by facsimile transmission, with confirmed receipt by Deltacom, to 256-264-9906 to allow Deltacom to cure any alleged breach. If the parties are unable to resolve any dispute and Customer still wishes to pursue the matter, Customer must follow the dispute resolution process described in the Arbitration provision.

**Arbitration** Any dispute, controversy or claim arising out of, connected with or relating to the Agreement, its performance or the breach thereof which cannot be settled by mutual agreement of the Parties shall be resolved by final and binding arbitration by a panel of one (1) arbitrator in accordance with and subject to R-11 (Appointment from National Roster) or, if proceeding under the Expedited Procedures, E-4 (Appointment and Qualifications of Arbitrator) of the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect with such arbitration to be conducted in Huntsville, Alabama. The Parties may, only by mutual written agreement, use an arbitrator not presented on the roster submitted by the AAA. Discovery as permitted by the Federal Rules of Civil Procedure then in effect will be allowed to the extent consistent with the purpose of the arbitration and as allowed by the arbitrators. The Federal Rules of Evidence will apply to any arbitration hearing. Judgment upon the award rendered in any arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an enforcement, as the law of the state having jurisdiction may require or allow. The fact that arbitration is or may be allowed will not impair the exercise of any termination rights under the Agreement. The Parties agree that this arbitration provision has been included to rapidly and inexpensively resolve any disputes between them with respect to the Agreement, and that this provision shall be grounds for dismissal of any court action commenced by either Party with respect to the Agreement, other than (i) actions to compel a Party to comply with these dispute resolution procedures; (ii) actions specified in this provision; (iii) post-arbitration actions seeking to enforce an arbitration award; (iv) a dispute, controversy or claim relating to a breach or alleged breach on the part of either Party regarding confidential information; (v) a suit, action or proceeding to compel a Party to comply with its obligations to indemnify the other party pursuant to the Agreement; or (vi) a suit, action or proceeding arising out of or related to any Party's intellectual property rights. The Parties shall keep confidential, and shall not disclose to any person, except as may be required by law, the existence of any controversy hereunder, the referral of any such controversy to arbitration or the status or resolution thereof. The procedures specified in this provision shall be the sole and exclusive procedures for the resolution of an arbitrable dispute; provided, however, that a Party, without prejudice to these procedures, may file a complaint or seek a temporary restraining order, preliminary injunction, or other provisional judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Each party will indemnify the other party for any costs associated with such party's violation of this Arbitration provision.

**General** Customer acknowledges that it has not been induced to enter into the Agreement by any representation or warranty not set forth in the Agreement. • The Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all other oral, written or other communications between them concerning its

subject matter. • Except as provided above and for modifications to the features of the Service verbally requested by Customer on the day of installation or called into Deltacom's Customer Care Center which Deltacom is hereby authorized to accept, the Agreement shall not be modified in any way except by a writing subscribed to by both parties. • The Agreement is not assignable by Customer except with Deltacom's express written consent, without which, any such assignment or attempted assignment shall be void. • If any provisions of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby. • The headings in the Agreement are intended for convenience of reference and shall not affect its interpretation. • The waiver or failure of Deltacom to exercise in any respect any right provided for in the Agreement shall not be deemed a waiver of that right or any other right under the Agreement. • The individual executing the Agreement on behalf of Customer hereby represents and warrants that he or she is duly authorized by all necessary action to execute the Agreement on behalf of Customer. • All notices to Deltacom shall be in writing and shall be delivered or sent by registered mail, return receipt requested, to Customer Care Center, P.O. Box 1301 Arab, AL 35016 or to such other address as Deltacom shall specify by notice given pursuant hereto; PROVIDED THAT ALL COMMUNICATIONS CONCERNING DISPUTED DEBTS, INCLUDING INSTRUMENTS TENDERED AS FULL SATISFACTION OF SUCH DEBTS, MUST BE DELIVERED OR SENT BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO 7037 Old Madison Pike, Huntsville, AL 35806, ATTN: Assistant General Counsel. • Customer may be charged additional fees for payments made by means other than by check. • Deltacom shall not be liable or deemed to be in default for any delay or failure to perform under the Agreement or for interruption of service resulting directly or indirectly, from Acts of God or any other cause beyond Deltacom's reasonable control ("Force Majeure"). • EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. • NEITHER DELTACOM NOR ANY CPE, SERVICE, OR SOFTWARE PROVIDER TO DELTACOM WILL BE LIABLE FOR ANY LOST OR ANTICIPATORY PROFITS OR REVENUES, OR SPECIAL OR PUNITIVE DAMAGES, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY, EVEN IF DELTACOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. • IN NO EVENT SHALL DELTACOM BE LIABLE FOR DAMAGES GREATER THAN THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO DELTACOM DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED. • In any action for injunctive relief or to collect any debt, each party consents to the exclusive jurisdiction of the state and federal courts having jurisdiction in the county of Customer's Service Address or Madison County, Alabama. This Agreement will be governed by and interpreted in accordance with the laws of the State of Alabama, without

regard to conflict of laws principles, and is subject to any federal, state or local tariffs that may apply. • Customer authorizes Deltacom to conduct an investigation of Customer's credit history for the purpose of determining Customer's creditworthiness for payment for the Service(s) and options. • Customer agrees to pay all costs, including a reasonable attorney's fee, incurred by Deltacom in collecting amounts due or otherwise enforcing its rights under the Agreement whether incurred by suit or otherwise. • Only an authorized officer of Deltacom may agree to modifications to the terms and conditions of the Agreement and any modifications must be set forth in an addendum prepared and approved by Deltacom's legal department. • The Agreement may only be executed by a Deltacom Branch Manager or other authorized Deltacom management person, and is subject to final credit approval; provided however that Deltacom's provision of the Services will be deemed an acceptance of this Agreement in the absence of a Deltacom signature.

**Customer Eligibility** (for Simpli-Voice customers)

Simpli-Voice Local

Single line locations are allowed but may not be a facsimile line.

Simpli-Voice Unlimited LD

If Deltacom determines that the Customer's long distance usage is excessive (i.e., ten (10) times the average for all customers under the plan), the Customer may be subject to migration to another long distance plan or to an excess usage fee.

The Service shall not be used in call centers; auto-dialers; online services; internet access; broadcast facsimile services or similar applications; multi-party conference calls; calls to 900, 976, 700 numbers; toll free calling; calling card; international calling; or Directory Assistance or Operator Services.

The Service shall not be used by businesses that aggregate end user traffic.

Unlimited usage applies to domestic outbound, interLATA and intraLATA toll traffic.

**Long Distance Rates** (for Simpli-Voice and Select 100 customers) The rates for long distance services proposed to Customer under the Agreement are contingent upon Customer's election to receive Deltacom's local service. If Customer cancels its local service, Customer's rates under the Agreement will automatically convert to EZ LD rates (for Simpli-Voice customers) or "Business Connections" rates (for Select 100 customers) for long distance service found in Deltacom's state and federal tariffs filed with the respective regulatory bodies and/or as the same may appear on Deltacom's website [www.deltacom.com](http://www.deltacom.com).

**Volume Level Commitment** (for EZ LD, LD Rewards and Simpli-Voice LD customers)

- The Volume Level Commitment is based on total Long Distance usage charges during a monthly billing period. Eligible usage includes the Customer's inbound, outbound, international, calling card and directory assistance charges originating or terminating to Customer's local Service. The total usage for the elements described above will contribute to the Volume Level Commitment. No other charges including taxes on the Customer's account will be eligible for attaining the commitment. Application of Volume Level Commitment will be on an account level basis. If the total usage from these charges does not meet the minimum Volume Level Commitment then the customer will be billed for the difference. The charge will appear as a line item on the Customer's bill identified as volume level shortfall amount or "Shortfall Charge". Taxes will be applied to the shortfall amount. The customer will not be assessed the minimum Volume Level Commitment on their first partial invoice. Customers with multiple locations and/or multiple accounts in a group account will be evaluated at the individual account level.
- Ramp-Up Period Customer shall have a ninety (90) day ramp-up period from the commencement of the Service during the first year of the Term ("Ramp-Up Period") to attain the monthly Volume Level Commitment.
- Seasonal Traffic Deltacom will conduct a review of the Customer's account upon request to determine total eligible charges attributable to the Volume Level Commitment. In the event Customer's Usage in any month is less than the Volume Level Commitment, Deltacom shall determine if Customer has earned any excess Usage in any previous months of the Agreement and whether the excess Usage in any previous months of the Agreement and whether the excess usage will cover Customer's failure to achieve the current Volume Level Commitment. If Customer has a sufficient amount of excess usage, Deltacom will apply such excess usage to Customer's current Volume Level Commitment and Customer shall not incur any Shortfall Charges. In the event Customer fails to achieve its specified Volume Level Commitment and there are insufficient Usage amounts, Customer will incur a Shortfall Charge.

**Distribution of Traffic** (for EZ LD customers) In the event that 60% or greater of outbound or inbound long distance billed amounts and/or minutes during a monthly billing cycle originate and terminate intrastate, Deltacom reserves the right to review and/or change the rate structure and contract terms.

**Annual Usage Commitment Level** (for EZ LD and Horizon customers) Customer agrees to an "Annual Usage Commitment" which is calculated as follows: (A) a monthly amount equal to (i) the Volume Level Commitment for EZ LD Service, and (ii) for Horizon Service is established using the third (3rd) month's actual toll usage, excluding directory assistance; multiplied by (B) twelve (12) months, (C) multiplied by fifty percent (50%). For Horizon

Service, by the end of the twelfth month of the Initial Term of the Agreement, the Customer's usage must be at or above the established Annual Usage Commitment. If the Customer's usage for Horizon Service does not meet this requirement, in the 13th month, and at the end of each 12 month

period remaining in the Initial Term or Renewal Term as applicable, the Customer will be billed the difference between the actual usage level and the predetermined Annual Usage Commitment. The Annual Usage Commitment as described is used in the calculation of the Discontinuance Charge for early termination of an Initial Term or Renewal Term, as applicable.

### **Simpli-Business<sup>SM</sup> Supplemental Terms and Conditions**

The following Simpli-Business Supplemental Terms and Conditions ("Simpli-Business T&C's") are in addition to the Standard AFS Terms and Conditions above, and to the extent of any conflict these Simpli-Business T&C's will apply.

**Initial Term** The Initial Term for Simpli-Business T, Simpli-Business PRI and Simpli-Business IP products is three (3) or four (4) years, as indicated on the AFS.

**Simpli-Business Discontinuance Charge** The "Discontinuance Charge" for the Simpli-Business T, Simpli-Business PRI and Simpli-Business IP products calculated as the sum of the following: (A) for long distance service, the Annual Usage Commitment amount, if applicable, for the Initial Term or Renewal Term, as applicable; and (B) the product of (i) the monthly recurring charge for the terminated Services; multiplied by (ii) the number of months remaining in the Initial Term or Renewal Term, as applicable, following the termination date for such Services; multiplied by (iii) seventy percent (70%). Except as modified hereby, all other terms of the Discontinuance Charge provision in the Standard AFS Terms and Conditions section above apply.

**Conversion** (for Simpli-Business product customers) Customer must convert to the Simpli-Business T product within twenty four (24) months of the commencement of the Initial Term. If the Customer has not made the conversion, commencing the twenty-fourth (24th) month of the Initial Term, Deltacom shall begin to charge the rates as if Customer had converted to the Simpli-Business T product for Customer's configuration, plus any additional charges under the Elements Program, and Customer shall be required to pay such additional charges. If Customer terminates the Agreement after execution by Customer and prior to conversion to the Simpli-Business T product, Customer shall incur a Discontinuance Charge calculated as follows: seventy percent (70%) of (x) the product of (i) the monthly recurring charge calculated at the rates for the Simpli-Business T product for Customer's configuration; multiplied by (ii) thirty-six (36) months; minus (y) the monthly charges actually paid by Customer prior to termination. Except as

modified hereby, all other terms of the Discontinuance Charge provision in the Standard AFS Terms and Conditions section above apply.

**Renewal Discount** If Customer under a three-year Initial Term renews a Simpli-Business family of products Service for a minimum one (1) year term, Customer shall receive a twenty percent (20%) discount on the charges for those products. If Customer under a four-year Initial Term renews a Simpli-Business family of products Service for a minimum one (1) year term, Customer shall receive a ten percent (10%) discount on the charges for those products. Thereafter, Customer shall be entitled to the applicable Renewal Discount for so long as Customer purchases a product in the family of Simpli-Business Services, however Customer shall not be entitled to receive an additional discount upon any subsequent renewals.

**Elements Program** Customer may use the units for additional devices to be used in conjunction with the Simpli-Business family of products Service. Customer may select any of the items displayed in the Simpli-Business Elements Program Catalog, which may be found on Deltacom's web site at <http://www.deltacom.com>, as it may be amended from time to time. The units shown for each element are on a per unit basis. Each unit represents an incremental amount in the monthly recurring charge (MRC) and may only be purchased in packages in multiples of five (5). The devices remain the property of Deltacom and Customer's use of the devices are governed by the Customer Premise Equipment provision in the Standard AFS Terms and Conditions section above. Units purchased under a Simpli-Business family of products Service are for the entire length of the Term (e.g. four 5-Unit packages, for a total of twenty (20) units, purchased at signing are committed to for the Term of three years or four years, as applicable, referred to as the "unit pool"). Customer may add additional devices and/or Services by purchasing additional unit packages for the remainder of the Term. However, if Customer desires to replace a hardware device prior to 24-months into the Term, Customer must pay a replacement charge calculated by taking the units associated with the old device multiplied by 12 months multiplied by the monthly charge per unit (e.g., \$5.00) and begin paying the unit value associated with the new device. In addition, upon any replacement of a hardware device at any time during the Term, Customer is committed to a new Term of three years or four years, as applicable, from the date of the replacement. Example:

**Upgrade** Customer under a three-year Initial Term purchased a Simpli-Business family of products Service and ten (10) units - selecting a 7-unit and 2-unit element. In the 3rd month of the Term, Customer replaces the 7-unit element with a 23-unit element. Upon the replacement date, Customer must pay the replacement charge of \$420 (7 units X 12 months X \$5 per unit) and would begin to pay for 25 units on a monthly basis. Customer would also be committed to a new three-year Term commencing on the date the replacement was completed.

**Addition** As an alternative, Customer may avoid the replacement charge and new term commitment by purchasing an additional 25 units for the remainder of Customer's Term and adding the 23-unit element. Customer's monthly payment for units would be increased from a \$50 to \$175 (assuming \$5 per unit) and Customer can continue the use of the 7-unit element.

Units purchased are co-terminous with the Simpli-Business family of products Service. Units purchased, including units added during the Term, cannot be reduced during the initial 36-month Term. At the end of the Term, the hardware device can be returned or the Service discontinued, the associated units removed, and a lower unit package purchased. Examples:

**End of Term Return:** Customer purchased a Simpli-Business family of products Service and thirty-five (35) units - selecting a 23-unit and 11-unit element. At the end of the Term, Customer can return the 11-unit element to Deltacom and lower the units to 25 units and maintain the 23-unit element. Customer may also return the other or both devices and reduce the units to the corresponding amount required.

**No Credit for Early Return:** Customer purchased a Simpli-Business family of products Service and thirty-five (35) units - selecting a 23-unit and 11-unit element. In the 16th month of the Term, even if Customer returns the 11-unit element for whatever reason, Customer must continue to pay for thirty-five (35) units until the expiration of the Initial Term.

**Simpli-Business PC** (applicable only to the Simpli-Business PC product)  
The Equipment and applicable Software remains the property of Deltacom and Customer's use of the Equipment is governed, without limitation, by the Customer Premise Equipment and Software provisions in the Standard AFS Terms and Conditions section above. The Equipment and Software is subject to the limited warranties of, and any additional terms and conditions required by, the applicable manufacturer, which are available upon written request made to Deltacom. To obtain service from Deltacom, Customer is required to complete troubleshooting computer issues (e.g., diagnostics, restoring software backups). Deltacom will provide service and support for non-hardware issues via telephone. Deltacom will only support Deltacom preloaded software issues. Deltacom will not support, and is not responsible for, software added by Customer. Deltacom will only provide on site service when Deltacom determines in its sole discretion there is a manufacturer defect in the Deltacom provided hardware. Deltacom does not warrant 3rd party non-Deltacom installed devices (e.g., 3rd party wireless network card). Deltacom may require that Customer replace certain hardware parts. Deltacom will not send a technician on site to replace customer replaceable parts but will provide phone support to assist Customer in replacing these parts. In the event the

Equipment is stolen or lost, Customer must file a police report immediately with the appropriate authorities and provide Deltacom with a copy of the report. Customer hereby agrees to indemnify and hold harmless Deltacom and the software and hardware manufacturers (together, the "Indemnified Parties") from and against all losses, damages, liabilities, debts, demands, claims, actions, causes of action, costs, charges and expenses, including legal fees and any amount paid to settle any action or to satisfy a judgment, in any way incurred by an Indemnified Party in respect of any actual or threatened civil, criminal or administrative action or proceedings to which the Indemnified Party is made a party by reason of or in connection with the undertaking of any operation or action authorized by any representative of Customer, including, without limitation, deletion of data from lost or stolen Equipment. The indemnity provided hereby also includes, without limiting the generality of the foregoing, all payments which may be made by an Indemnified Party under which indemnity may be sought from Customer regardless of whether the Indemnified Party has any defense in respect of the undertaking.

### **Simpli-Mobile<sup>SM</sup> Supplemental Terms and Conditions**

The following Simpli-Mobile Supplemental Terms and Conditions ("Simpli-Mobile T&C's") are in addition to the Standard AFS Terms and Conditions and Simpli-Business T&C's above, and to the extent of any conflict these Simpli-Mobile T&C's will apply.

**Usage Plans** Any Simpli-Mobile Plan that Customer selects is part of this Agreement. Customer's Plan includes Customer's monthly service allowances and features, the coverage areas in which those allowances and features may be used, and the recurring access and pay-per-use charges associated with those allowances and features, all as described in the materials made available to Customer at the time Customer accepted the Agreement. If at any time Customer change its Service (by accepting a promotion, for example), Customer will be subject to any requirements, such as a new minimum term, Deltacom set for that change. Customer may change its Simpli-Mobile Plan at anytime during the Term. Usage of the mobile device to call internationally will be blocked unless special arrangements have been made with Deltacom. Customer's connectivity charges may vary depending on the calling plan selected, time, location, network area, number dialed and services used. Additional charges will also apply upon Customer's use or activation of additional features, multiple simultaneous calls for certain services (including call-waiting, call-forwarding, or 3-way calling), and for excessive, illegal or improper mobile data usage (as more fully described in Deltacom's Acceptable Use Policy). If Customer uses its mobile device outside the rate area as set forth in Customer's Plan, or use another company's mobile network for any reason, Customer will be responsible for any extra charges, including long distance, toll, and roaming charges. Airtime and other measured usage charges are billed in full-minute or such other increments as Deltacom determines to use from time to time, and Deltacom

may round up any such usage charges to the next minute in billing those increments. If Customer gives its personal account validation information to a third party, such third party can access and make changes to Customer's account just as Customer can. Customer may request to switch to another rate plan, and if Deltacom authorizes the change, a transfer fee may apply and the new rates will become effective by the start of Customer's next billing cycle. **Changes may require Customer's agreement to a new Term (if Customer selects a promotional rate plan or special mobile device pricing) or new terms and conditions.** Customer may be charged for data sent or received (including, without limitation, "free" software downloads, messaging, unsolicited information and advertisements), regardless of whether the data is requested, actually or completely delivered, received or stored. In some cases data packets will be resent to ensure complete delivery; Customer may be billed for these resent packets. Customer understands that mobile data Service connection (and billing) starts at the time Customer logs on to the Service and does not end until Customer properly logs off and the network terminates the connection (after log off). If Customer (a) does not properly log off, (b) leaves the coverage area during a session, or (c) loses Customer's connection for any reason, then billing will not terminate until at least several minutes after Customer loses Customer's connection and Customer will be charged for this period. If Customer exceeds any applicable allotment of minutes or megabytes ("Mb") under Customer's rate plan, Customer will pay the per minute and/or per-Mb overage fees applicable to Customer's rate plan. UNUSED MINUTES, MB'S, OR OTHER ALLOCATED SERVICES FROM ANY RATE PLANS OR FEATURES DO NOT CARRY OVER TO SUBSEQUENT BILLING CYCLES. ALL MINUTES OF USE ARE BILLED IN FULL MINUTE INCREMENTS; ALL MB'S OF USE ARE BILLED IN FULL MB INCREMENTS; ANY FRACTION OF A MINUTE OR MB OF USAGE IS ROUNDED UP AND CHARGED, OR DEDUCTED FROM ANY ALLOCATED MINUTES OR MB'S, AS A FULL MINUTE OR MEGABYTE ON A PER SESSION BASIS. ANY TAXES, ASSESSMENTS, FEES, COSTS OR CHARGES IMPOSED ON US OR CUSTOMER AS A RESULT OF PROVIDING THE SERVICE WILL BE ADDED TO CUSTOMER'S CHARGES AND ARE SUBJECT TO CHANGE OR INCREASE AT ANY TIME WITHOUT NOTICE.

## **Data Plans and Features**

**Data Plans and Features: Permitted Uses.** The Data Plans or Features are for individual use only and Customer may not offer them for resale or as a shared resource. Customer can use Deltacom's Data Plans and Features for accessing the Internet and for such uses as: (i) Internet browsing; (ii) e-mail; (iii) intranet access (including accessing corporate intranets, e-mail and individual productivity applications made available by Customer); (iv) occasional uploading, downloading and streaming of audio and video files; and (v) Voice over Internet Protocol (VoIP).

**Data Plans and Features: Prohibited Uses.** Customer may not use Deltacom's Data Plans and Features for illegal purposes or purposes that infringe upon others' intellectual property rights, or in a manner that interferes with other users' service, interferes with the network's ability to fairly allocate capacity among users, or that otherwise degrades service quality for other users. Examples of prohibited usage include: (i) server devices or host computer applications, including continuous Web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections, or peer-to-peer (P2P) file-sharing applications that are broadcast to multiple servers or recipients such that they could enable "bots" or similar routines (as set forth in more detail in (iii) below) or otherwise denigrate network capacity or functionality; (ii) as a substitute or backup for private lines or dedicated data connections; (iii) "auto-responders," "cancel-bots," or similar automated or manual routines that generate amounts of net traffic that could disrupt net user groups or e-mail use by others; (iv) generating "spam" or unsolicited commercial or bulk e-mail (or activities that facilitate the dissemination of such e-mail); (v) any activity that adversely affects the ability of other users or systems to use either Deltacom' services or the Internet-based resources of others, including the generation or dissemination of viruses, malware, or "denial of service" attacks; (vi) accessing, or attempting to access without authority, the information, accounts or devices of others, or to penetrate, or attempt to penetrate, Deltacom's or another entity's network or systems; or (vii) running software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle, or "keep alive" functions, unless they adhere to Deltacom's requirements for such usage, which may be changed from time to time. By way of example only, Customer may not use a Data Plan or Feature for web broadcasting, or for the operation of servers, telemetry devices and/or Supervisory Control and Data Acquisition devices. If Customer's usage on a Data Plan or Feature that does not include a specific monthly Megabyte allowance or is not billed on a pay-as-you-use basis, the plan is limited to 1G during the billing cycle and is deemed to be in a manner similar to those described in these terms and conditions. Usage in access of the 1G will, at Deltacom's option, be subject to overage charges and, during any billing period, Deltacom reserves the right to deny, disconnect, modify, and/or terminate service, without notice, to anyone believed to be using the service in any manner prohibited.

**Number** Customer acknowledges that except as required by law, it shall acquire no proprietary interest in the number (mobile directory number or MDN) assigned by Deltacom for Customer's use.

**Service Limitations** Customer's mobile device operates as a radio and Service is only available when Customer's mobile device is within range of an antenna providing Service. Coverage maps only approximate Deltacom's wireless coverage area outdoors; actual service area, coverage, and quality may vary and change without notice. There may be gaps in Service within the estimated coverage areas shown on coverage maps. Even within a

coverage area, a number of factors, such as: network changes, emergencies, traffic volume, transmission limits, service outages, technical limitations, signal strength, Customer's equipment, interconnecting carriers, terrain, structures, weather and other conditions (without limit) may interfere with actual service, quality, and availability. Calls may be interrupted, dropped, refused, or limited. Coverage maps may depict coverage in areas where networks are operated by Deltacom's affiliates and roaming partners; such coverage may change without notice. Deltacom is not responsible for those networks and some Services are not available on third-party networks or while roaming. Data transmitted over wireless devices may not be secure and may be intercepted by others unless Customer takes appropriate security measures. Deltacom may impose credit, usage, or other limits to Service, cancel or suspend Service, or block certain types of calls, messages, or sessions (such as international, 900, or 976 calls) at Deltacom's discretion. Deltacom may suspend Service without notice if Customer exceeds any credit limit. Service may not be transferred to another market except at Deltacom's discretion, and Deltacom may charge transfer fees. The supplier of Services to Deltacom shall have no liability whatsoever for Customer's losses, claims or damages for any cause whatsoever, including but not limited to any failure or disruption of Services provided hereunder, regardless of the form of action, whether in contract or in tort or otherwise. Customer shall not be deemed a third-party beneficiary of any contract between Deltacom and Deltacom's supplier.

**Mobile Devices** Customer will pay shipping charges based on the number of devices shipped to a single location. Customer's mobile devices must comply with Federal Communications Commission regulations and be compatible with Deltacom's supplier's network and Customer's Plan. At times Deltacom may change Customer's mobile device's software, applications or programming remotely and without notice. This could affect data stored on the mobile device, the way the mobile device is programmed, or the way the mobile device is to be used. Deltacom in no way guarantees that Customer's mobile device will be capable of being reprogrammed for use with another wireless carrier network after the service programming code is entered,

- or that another wireless carrier will accept Customer's mobile device for use on its network.

Customer may be eligible to replace their mobile device during the term of their agreement contingent upon the following:

- 1) Customer must pay an In-term Upgrade charge. The amount is determined by the number of months in to their current agreement.
  - a. Months 1 – 12: \$300
  - b. Months 13 – 24: \$200
  - c. Months 25 – 36: \$100
- 2) Customer must execute a new minimum 24-month term agreement with the new device. All device, service, and shipping fees will apply.

**Lost, Stolen or Damaged Devices** If Customer's mobile device is lost or stolen, it is very important that Customer notify Deltacom immediately for

Customer's own protection, so that Deltacom can temporarily suspend Customer's Service to prevent further usage. If Customer's bill shows charges to Customer's phone after the loss but before Customer reported it, and Customer wants a credit for those charges, Deltacom will investigate Customer's account activity. Customer does not have to pay the charges Customer disputes while they are being investigated to determine whether the charges resulted from usage by someone not authorized to use the phone. Customer may need to provide further information regarding the theft or loss if Deltacom asks for it. If a mobile device is lost, damaged, stolen or otherwise inoperable, Deltacom will replace the equipment with the same or currently offered compatible devices at no cost to Customer other than the deductible, with the following stipulations:

- Customer subscribes to the Device Insurance Plan
  - \$100 deductible per incident.
  - Up to two (2) replacements per MDN per year.
  - Activation fees do not apply to replacement activation.
  - Customer will return damaged devices pursuant to the instructions provided by Deltacom. If the damaged device is not returned within ten (10) days of receipt of the replacement device by Customer, Customer will be charged the full retail value of the replacement device instead of the deductible.
- If the Customer does not subscribe to the Device Insurance Plan, the customer is required to continue paying the device monthly recurring charge until the end of the initial contracted term. Customer may select a new device and execute a new agreement for services.

**30 Day Guaranty** If, within the first 30 days of Service, Customer experiences service outages or coverage issues, Customer may terminate its Simpli-Mobile Service and receive a refund of the amount Customer paid at the time of purchase for the mobile device and fees related to the Service, if any, but does not include a refund of any activation charges, voice minutes, shipping, taxes or handling fees. To receive a refund, Customer must contact Customer Care by phone (email notifications will not be accepted) to terminate Service. Customer Care will provide Customer with a return authorization number ("RMA number") and instructions on how and where to return Customer's equipment. Equipment received without an RMA number will not be accepted. Deltacom will terminate Customer's Service and credit Customer's account accordingly. Please note that in order to receive a refund, Customer must return the entire mobile device Kit to the address given to Customer by Deltacom within ten (10) days of terminating Customer's Service. The Kit includes the original packaging for the mobile device, the mobile device itself undamaged and in working condition, the charger, the battery, USB cables or cords, holsters, CD-ROMs, instruction booklets, and/or any other materials included with the mobile device in the original packaging. If Customer fails to return Customer's mobile device Kit to Deltacom within ten (10) days of terminating Customer's Service, Customer will be charged the full retail cost of the Mobile device Kit minus any amount that Customer originally paid to Deltacom for the mobile device.

If the mobile device is found not to be in its original condition, Deltacom may charge Customer to restore it to that original condition. Voice minutes will be billed on a pro-rata basis. Customer is responsible for shipping the mobile device back to Deltacom at Customer's expense.

**Early Termination Fee** If Customer terminates its Simpli-Mobile Service after the first 30 days of Service but before the expiration of Customer's current term, Deltacom will assess an Early Termination Fee. To terminate, contact Deltacom Customer Care by phone (email notifications will not be accepted). Deltacom Customer Care will terminate Customer's Service within 2 business days. In addition to the Early Termination Fee, Customer is responsible for all charges including voice minutes, and taxes until termination, but will not be charged any additional fees for the remainder of the Term. The Early Termination Fee is based on the current length of Service that Customer has been active with Deltacom. If Customer terminates during: Months 2-12 of the Term the Early Termination Fee is \$300; Months 13-24 of the Term the Early Termination Fee is \$200; and Months 25-36 of the Term the Early Termination Fee is \$100. Because damages resulting from early termination would be difficult to determine, the parties agree that the Early Termination Fee is a reasonable approximation of such damage and shall be considered a liquidated damage and not a penalty.

**Deltacom Facility Based Service Termination** Deltacom Simpli-Mobile Service is offered as an ancillary Service offered with the T-1 or higher Facility based Services, the termination of Deltacom's facility based Services will result in a termination of the Simpli-Mobile Service with Early Termination Fees applying.

**Suspension of Service** If a Simpli-Mobile Service is suspended on a customer account for non-payment, a re-activation fee will apply for the restoral of mobile services per device. Customer may request that devices be temporarily suspended on an account and reactivated without re-activation as long as the account is in good standing. If Deltacom allows Customer to temporarily suspend Customer's account, Customer may continue to pay monthly charges and Deltacom may extend the Term for the length of that suspension.

**Disclaimer of Emergency 9-1-1 services** SIMPLI-MOBILE SERVICE DOES NOT INTERACT WITH 9-1-1 AND OTHER EMERGENCY SERVICES IN THE SAME MANNER AS LANDLINE TELEPHONE SERVICES. DEPENDING ON CUSTOMER'S LOCATION, THE TYPE OF MOBILE DEVICES AND OTHER EQUIPMENT CUSTOMER USE, THE TYPE OF EQUIPMENT USED BY THE PUBLIC SAFETY ACCESS POINT OR OTHER APPLICABLE EMERGENCY SERVICES PROVIDER, AND THE CIRCUMSTANCES AND CONDITIONS OF A PARTICULAR CALL, CUSTOMER MAY NOT BE CONNECTED OR CUSTOMER'S PHONE NUMBER AND/OR LOCATION MAY NOT BE IDENTIFIABLE TO EMERGENCY SERVICE

PROVIDERS. EMERGENCY 9-1-1 SERVICE THAT IS COMPATIBLE WITH THE FCC TECHNICAL REQUIREMENTS IS, NONETHELESS, NOT AVAILABLE IN ALL AREAS, AND EVEN IN THOSE AREAS WHERE IT IS AVAILABLE, IT IS NOT ENTIRELY RELIABLE. MOREOVER, IF CUSTOMER'S MOBILE DEVICES ARE NOT GPS-ENABLED, EMERGENCY SERVICES PERSONNEL MAY HAVE MUCH LESS PRECISE LOCATION INFORMATION. THE INFORMATION AVAILABLE TO EMERGENCY SERVICE PROVIDERS MAY ALSO BE LIMITED IF CUSTOMER'S NUMBER OR NUMBERS ARE IN THE PROCESS OF BEING PORTED. CUSTOMER ACKNOWLEDGES THAT EMERGENCY 9-1-1 SERVICE IS NOT AVAILABLE IN ALL AREAS, IS NOT COMPLETELY RELIABLE AND IS FURTHER LIMITED WHEN USING NON-GPS ENABLED MOBILE DEVICES OR EQUIPMENT OR DURING THE NUMBER PORTING PROCESS. DELTACOM IS NOT LIABLE FOR ANY SERVICE LIMITS, FAILURES, OR OUTAGES, INCLUDING WITHOUT LIMIT, THE FAILURE OF ALERTS, 9-1-1 EMERGENCY, PRIORITY ACCESS, OR SECURE SERVICE CALLS TO BE CONNECTED OR COMPLETED, OR THE FAILURE TO PROVIDE ALERTS OR ACCURATELY LOCATE ANY 9-1-1 CALL. Location services, including 9-1-1 location services, emergency or other alert systems, priority access, and secure service calls may not be available in Customer's area and are subject to the Service Limitations discussed above.

#### **Managed Router Service Supplemental Terms and Conditions**

The following Managed Router Service Supplemental Terms and Conditions ("MRS T&C's") are in addition to the Standard AFS Terms and Conditions and Simpli-Business T&C's above, and to the extent of any conflict these MRS T&C's will apply.

**Managed Router Service Description.** Deltacom will perform the network monitoring services (the "MRS Services") described below as selected by Customer in the AFS or subsequent service order. Each service unit (each an "MRS Service Unit") shall mean a single, wide area network device (typically a router, FRAD, or switch), along with the circuit(s) connected to that device. There may be multiple MRS Service Units at a single Customer address or physical location. Deltacom will monitor Customer's Router Wide Area Network (WAN) port for each wide area network device. The MRS Services are as follows:

**Reactive network monitoring.** Deltacom monitors MRS Service Units on a 24/7 basis.

**Event notification.** Customer is notified after an event occurs via email or telephone (depending on the form of communication requested by Customer).

**Troubleshooting.** Deltacom will troubleshoot the communication link to identify the root cause of failure, including: the physical circuit, Permanent Virtual Circuit, and WAN router port.

**Dispatch.** Deltacom network: Deltacom will dispatch a technician 7x24x365 for any network-impaired devices.  
Customer Premise: If a circuit needs repair or maintenance performed at an MRS Service Unit location, Deltacom will dispatch the appropriate personnel based on access to Customer’s premises.

**Resolution.** Deltacom will ensure that the circuit event is resolved and closed. Customer will then be contacted via email or telephone and informed of the resolution.

**Service Level Agreement.** Deltacom shall perform the MRS Services in accordance with the Service Level Agreements (SLA) shown below. For each failure to meet the SLA as defined by the measurement below, Deltacom will provide a credit to Customer in an amount equal to fifty percent (50%) of the MRC for the impacted MRS Service Unit at each impacted location. Calculation of applicable credit will be provided based upon Deltacom’s records. Customers remain responsible for the full amount of their invoices for contracted services; credits will be issued on the next full billing cycle’s invoice after the verification of violation and credit calculations are complete. In order to be eligible for credits Customer must initiate a trouble ticket with Deltacom. Credits must be requested by the Customer within 24 hours of the trouble ticket being closed by Deltacom. The MRS Credit shall be Customer’s sole and exclusive remedy for Deltacom’s failure to meet the associated SLA(s). In no event shall Deltacom’s liability during any month exceed a total of one (1) month’s MRC per applicable Customer location even if multiple violations occur. MRS Credits shall not be available where Deltacom’s failure to meet the SLA results from (i) the negligence or acts of Customer or its agents or invitees, (ii) the failure or malfunction of power, facilities, equipment, systems or connections not under the control of Deltacom; (iii) Force Majeure events; or (iv) during any period in which Deltacom is not given full and free access to Customer’s Premises and devices for the purpose of investigating and correcting issues; or (v) a planned service outage, unscheduled emergency maintenance, scheduled maintenance, alteration or implementation as described herein.

<b>SLA</b>	<b>Measurement</b>
Time-to-response (Router PING monitoring)	Customer will be notified within 30 minutes of outage detection by Deltacom monitoring system
Time-to-repair (Priority 2) Circuit down, out of service	Circuit will be operational within 4 hours.
Hardware Replacement	Hardware will be replaced by COB

(if router is Deltacom-owned)	of next business day
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**Web Hosting Supplemental Terms and Conditions**

The following Web Hosting Supplemental Terms and Conditions ("Web Hosting T&C's") are in addition to the Standard AFS Terms and Conditions and Simpli-Business T&C's above, and to the extent of any conflict these Web Hosting T&C's will apply.

**Responsibility for Use** Customer is responsible for use of the Web Hosting Services and the maintenance of all passwords related to the Web Hosting Services. Customer is solely responsible and liable for any and all activities that occur in respect of Customer's use of the Web Hosting Services, including without limitation all activities of any users authorized by Customer or using Customer's passwords. Customer is also responsible for maintaining the confidentiality of all passwords related to Customer's use of the Web Hosting Services. Customer agrees to immediately notify Deltacom of any unauthorized use of the Web Hosting Services or Customer's passwords or of any other breach of security and to provide assistance to Deltacom, as requested, to stop, prevent or remedy any breach of security.

**Applicable Policies and Agreements** The Web Hosting Customer Acceptable Use Policy, which is available for review by Customer at [http://www.deltacom.com/terms\\_conditions.asp](http://www.deltacom.com/terms_conditions.asp) or any successor URL which may be located on the Deltacom website, governs the general policies and procedures for use of the Web Hosting Services. This policy may be updated or amended from time-to-time.

**Material and Product Requirements** Customer must ensure that all material and data placed on Deltacom's equipment is in a condition that is "server-ready," which is in a form requiring no additional manipulation by Deltacom. Deltacom will make no effort to validate any of this information for content, correctness or usability. In the event that Customer's material is not "server-ready", Deltacom has the option at any time to reject this material. Deltacom will notify Customer of its refusal of the material and afford Customer the opportunity to amend or modify the material to satisfy the needs and/or requirements of Deltacom. Use of the Web Hosting Services requires a certain level of knowledge in the use of Internet languages, protocols and software. This level of knowledge varies depending on the anticipated use and desired content of Customer's web site. Customer must have the necessary knowledge to create and maintain a web site. It is not Deltacom's responsibility to provide this knowledge or customer support.

**Bandwidth, Storage, and E-Mail Use** Customer agrees that use of the Web Hosting Services hereunder will not exceed the bandwidth, storage and

E-mail usage limits set out in the Agreement for the Web Hosting Services ordered by Customer. If Customer uses any bandwidth or storage space in excess of the agreed upon number of megabytes per month or if Customer exceeds E-Mail storage and attachment size limitations, Deltacom may, in its sole discretion, assess Customer with additional charges according to Deltacom's then current pricing policy, suspend the performance of the Web Hosting Services, or terminate this Agreement. In the event that Deltacom elects to take any corrective action, Customer will not be entitled to a refund of any unused pre-paid fees. Warning messages will be emailed to Customer as Customer exceed 80% and 90% of Customer's package's respective bandwidth and disk space limits. If payment for extra usage is not received within two weeks of the invoice date, the expiration date of the account will be adjusted according to the amount outstanding.

**Domain Names** As part of the Web Hosting Services, Customer will provide Deltacom with a registered domain name or names or Deltacom will register such domain name(s) selected by Customer, provided that such domain name is available for registration and does not violate any registrar's policies, or any law or regulation. Customer agrees to promptly reimburse Deltacom for any fees paid by Deltacom to any registrar with respect to the registration and maintenance of such domain name(s). In the event of any dispute or cause of action arising out of or related to Customer's domain name used in connection with the Web Hosting Services, upon Customer's request Deltacom will attempt to register with the registrar an alternative domain name chosen by Customer. Customer agrees to be bound by the terms the registrar's then current domain name policy and/or the policies of the national DNS registration authorities to which Customer became subject upon registration of a domain name. The inability to use a domain name shall not entitle Customer to a refund by Deltacom of any fees paid with respect to the registration of such unusable domain name. There is no charge for indefinite parking of domains on Deltacom servers or to transfer to another service provider. However, in the event a domain that was registered by Deltacom is transferred to another service provider, and requires manual intervention by Deltacom support staff to complete the transfer, there will be an administrative transfer cost charged for each domain plus applicable taxes. Domain Parking does NOT include any hosting services. Customer may not submit Customer's own DNS entries because Deltacom is NOT a Registrar and hosting services for domain names residing on the Deltacom system must be provided by Deltacom. Domain name payments are nonrefundable. Once a domain name is registered, the WHOIS database stores the information and is kept there for a period of one year, until the date of renewal. Payment with respect to domain names will NOT be refunded or credited to Customer's credit card. Customer is responsible for spelling a domain name correctly while registering it online. Deltacom will not provide refunds or credits for misspelled domain names.

**Miscellaneous Components** Customer acknowledges that the Web Hosting Services do not include, without limitation, content design, development, FTP

master maintenance, uploading and publishing, CommonGateway Interface scripts and other such executables and that all of the foregoing are Customer's responsibility. Customer may not compile or install binary files other than the ones provided by Deltacom. Deltacom does not make C compilers available and the PERL binaries provided will not have networking support (for example, socket ph, ftp.pl, etc.) Customer may use ftp to access Customer's home directory for the purpose of installing and editing Customer's web pages.

**Deltacom Property** Customer hereby acknowledges and agrees that all programs (in object code and source code form), data, services, processes, designs, technologies, materials and all other things comprising the Web Hosting Services are owned by and shall remain the sole property of Deltacom, its licensors or its suppliers and are protected by applicable copyrights, trademarks, patents, trade secrets and/or other proprietary rights and laws. Deltacom shall also maintain and control ownership of all Internet protocol ("IP") numbers and email addresses that may be assigned to Customer by Deltacom. Deltacom reserves, in its sole discretion, the right to change or remove any and all such IP numbers and email addresses at any time.

**Customer's Content** Deltacom does not claim ownership of information, materials, software or other content (collectively, the "Content") that Customer posts, uploads, inputs, provides, submits or otherwise transmits to Deltacom or any third party, using the Web Hosting Services. However, Customer agrees that by posting, uploading, inputting, providing, submitting or otherwise transmitting the Content to Deltacom or any third party, using the Web Hosting Services, Customer has thereby granted Deltacom a royalty-free, non-exclusive license to use, copy, distribute, transmit, display, edit, delete, publish and translate such content to the extent reasonably required by Deltacom for the purposes of rendering and operating the Web Hosting Services to Customer under this Agreement or to ensure adherence to or enforce the terms of this Agreement Customer expressly (a) grants to Deltacom a license to cache the Content, and (b) agrees that such caching is not an infringement of any of Customer's rights or any third party's rights.

**Investigation of Violations** Deltacom may investigate any reported violation of this Agreement, its policies and guidelines or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its interests, including without limitation, its systems, servers, facilities, customers and/or third parties. Deltacom will not access or review the contents of any e-mail or similar stored electronic communications except as required or permitted by applicable law or legal process.

**Actions** Deltacom reserves the right in its sole and absolute discretion to restrict or remove from its servers any content that it deems to be in violation of this Agreement, its policies or guidelines, third-party intellectual property rights or any laws. Deltacom may immediately take action,

including, but not limited to, (a) issuing warnings, (b) suspending or terminating the Web Hosting Services, (c) restricting or prohibiting any and all uses of content hosted on Deltacom's systems, and/or (d) disabling or removing: (i) any hypertext links to third-party web sites, (ii) any of Customer's content distributed or made available for distribution via the Web Hosting Services, or (iii) other content not supplied by Deltacom. It is Deltacom's policy to terminate Web Hosting Services to infringers. The above stated rights of action, however, do not obligate Deltacom to monitor or exert editorial control over the information made available for distribution via the Web Hosting Services and Customer acknowledges that Deltacom has no obligation to censor or monitor use of the Web Hosting Services by Customer, or any obligation to censor or monitor any content, material or other information sent, received or accessible through the Web Hosting Services. In the event Deltacom takes action due to such possible violation, Deltacom shall not be obligated to refund to Customer any fees paid in advance of such action.

**Disclosure Rights** To comply with applicable laws and lawful governmental requests, to protect Deltacom's systems and customers, or to ensure the integrity and operation of Deltacom's business and systems, Deltacom may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e., name, e-mail address, etc.), IP address and traffic information, usage history, and content residing on Deltacom's servers and systems. Deltacom also reserves the right to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. To the extent any inconsistency exists between any terms of Deltacom's Privacy Policy and Deltacom's right to disclose under this section, Deltacom's right to disclose under this section will prevail.

**Customer's Warranties and Representations to Deltacom** Customer warrants, represents, and covenants to Deltacom that (a) Customer is at least eighteen (18) years of age; (b) Customer possesses the legal right and ability to enter into this Agreement; (c) Customer will use the Web Hosting Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines; (d) Customer will be financially responsible for use of the Web Hosting Services; (e) Customer has acquired or will acquire all authorization(s) necessary for hypertext links to third-party web sites; (f) Customer has verified or will verify the accuracy of materials distributed or made available for distribution via the Web Hosting Services, including, without limitation, Customer's Content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted; and (g) Customer's Content does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

**WARRANTY AND DISCLAIMER** THE WEB HOSTING SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. DELTACOM

DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SERVICES, INCLUDING ALL WARRANTIES AND CONDITIONS OF MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. ALTHOUGH DELTACOM WILL USE COMMERCIALY REASONABLE MEASURES TO MAINTAIN THE SECURITY OF THE WEB HOSTING SERVICES, DELTACOM ASSUMES NO RESPONSIBILITY FOR THE EFFECTIVENESS OF THESE SECURITY MEASURES PROVIDED BY DELTACOM.