



## **Retail Standard Terms and Conditions of Service**

These Standard Terms and Conditions of Service shall apply to any Service Order Form ("SOF") signed by a Customer and accepted by 1 STARVIEW, LP, d/b/a StarView, a Limited Partnership organized under the laws of Texas, whose business address is 3811 Bee Caves Road, Suite 101, Austin, Texas 78746 ("Provider" or "StarView") for the provision of certain telecommunications and related data (Internet) services.

As used in these Standard Terms and Conditions, StarView and Customer may be individually referred to as a "Party" or collectively as the "Parties," and the SOF, these Standard Terms and Conditions of Service, and any other addenda, exhibits and documents incorporated by reference into the SOF are referred to collectively as the "Agreement."

### **1.0 Service Descriptions**

The specific services (the "Services") to be provided to Customer are indicated on each SOF. Such Services may be provided using a combination of regulated and non-regulated service components. Each SOF is a separate and distinct obligation for Services.

### **2.0 Definitions**

2.1 Service Order Form: Service Order Form means a document signed by authorized representatives of both parties and itemizing the StarView and Services purchased by Customer.

2.2 Services: Services means VoIP, internet access, data transmission, voice transmission, private line or other communications services that StarView agrees to provide to Customer pursuant to a Service Order Form.

2.3 Taxes. All taxes arising in any jurisdiction, including without limitation all sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, property (for collocation customers), consumption or other taxes, fees, duties, charges or surcharges (however designated) which are imposed on or based upon the provision, sale or use of the Services, including such taxes imposed directly on StarView or for which StarView is permitted to bill Customer in connection with StarView's performance under the Agreement. Taxes do not include StarView's income taxes.

2.4 Tariffs: The tariffs, price lists, and generally applicable terms and conditions on file with a state or federal regulatory authority or publicly available on StarView's website in accordance with the regulations of a state or federal regulatory authority.

### **3.0 Terms of Service**

**3.1 Charges, Billing and Payment.** Charges for the services provided by StarView under the Agreement are set forth in the pricing sections of the SOF. Charges stated on the SOF do not include Taxes. Customer billing is based on specific Services ordered. StarView will bill customer monthly. Unless otherwise provided in the SOF, any recurring charges will be billed in advance and any usage charges will be billed in arrears. Payment of all charges and applicable Taxes is due on the due date set forth in Customer's bill (the "Due Date"). Payments are past due if not received by StarView by the Due Date. Any amounts past due shall be subject to a late payment charge accruing from the bill date at the rate of 1-1/2% per month until paid. In addition, in the event Customer fails to pay any bill by the Due Date; StarView may suspend all Services and may deny access privileges to StarView's portal. StarView may exercise its right to suspend service and/or deny access privileges immediately and without further notice, except as may be required under any applicable Tariff or related regulatory notice requirements. StarView shall have no obligation to restore the Services unless and until all overdue payments and any additional charges that may be imposed to restore service have been paid. Customer agrees to pay all costs incurred by StarView in collecting any unpaid amounts, including, without limitation, attorneys' fees. Customer further agrees that failure to pay all amounts by the Due Date is a material breach of the Agreement.

If Customer's preferred payment method is by credit or debit card all charges in excess of \$1,000.00 will be charged an additional 2.5% transaction fee. There is no transaction fee for ACH bank draft. If Customer's preferred payment method is ACH debit, then Customer hereby authorizes StarView to debit Customer's bank account each month for the amount of any and all monthly recurring fees owed by Customer to StarView. Customer shall provide the bank name, bank account number, and ABA routing number and shall ensure that such account is able to accept an ACH debit request from StarView. Customer shall sign any additional authorizations that StarView requests in order to comply with the NACHA Rules or the rules and procedures of StarView's ACH service provider

**3.2 Credit Requirements.** Customer will provide StarView with credit information as requested, and in StarView's sole discretion delivery of the Services may be subject to credit approval. StarView may require Customer to make a deposit or pre-payment as a condition to StarView's acceptance of any SOF, or as a condition to StarView's continuation of providing Services. If a deposit is required, StarView may request the deposit to be in cash or another acceptable form designated by StarView. The deposit will be held by StarView as security for payment of Customer's charges. Customer

acknowledges and agrees that StarView is authorized and directed, in its sole discretion, to draw upon any deposit to pay any late charges or other fees associated with StarView's delivery of the Services to Customer. Upon termination of Customer's Services, the amount of the deposit, if any, will be credited to Customer's account and any remaining credit balance after final bill reconciliation will be refunded to Customer within thirty (30) days. Failure to provide a required deposit will constitute a material breach of the Agreement and shall permit immediate discontinuance of Customer's Services without notice by StarView.

**3.3 Billing Disputes.** In the event that Customer disputes any charges, Customer must submit a written claim describing the disputed amount. Customer shall submit all documentation as may reasonably be required to support the claim at the time the dispute is submitted and thereafter. Payment may not be withheld for any amounts subject to a dispute. All disputes must be submitted to StarView prior to the Due Date. If Customer does not submit a claim as stated above, Customer waives all rights to file a claim thereafter. StarView will use commercially reasonable efforts to resolve all disputes within forty-five (45) days of receipt of the dispute and Customer agrees that StarView's resolution of any such dispute shall be final and binding upon Customer.

**3.4 Modification by Regulatory Authorities.** The rates, terms, and conditions for some Services provided pursuant to the Agreement may be subject to StarView's Tariffs or similar documents on file with a regulatory authority. Tariffs are subject to change at StarView's discretion and without Customer's consent, in accordance with requirements of the applicable regulatory agency. The Agreement shall at all times be subject to modification as necessary to incorporate any changes, revisions or modifications that the Federal Communications Commission or the applicable public utilities commission or other applicable regulatory authority may, from time to time, direct in the exercise of its jurisdiction, or to pass on the Customer any charges or fees a regulatory authority imposes on StarView or authorizes other carriers to charge StarView for services provided by StarView to Customer. In the event that actions of a regulatory authority result in a material modification to the Agreement, any adversely affected Party may terminate the Agreement, without liability, upon thirty (30) days notice to the other Party. Such notice shall be provided no later than sixty (60) days after the effective date such modification.

#### 4.0 Conditions of Service

**4.1 Installation Delay.** StarView will use commercially reasonable efforts to ensure the Services are installed and operational by the estimated service date stated in the SOF, if any; provided, however, that in no event shall StarView be liable to Customer for any delays arising from, or related to, delays with the Service installation.

**4.2 Internet Quality.** Customer acknowledges and agrees that StarView makes no guarantees for the quality of any service that traverses the Internet. Any quality issues or other impairments that arise from using the Internet are outside of StarView's control.

**4.3 Intent to Defraud.** Customer acknowledges and agrees that StarView, in its sole and absolute discretion, shall have the right to immediately refuse to provide or immediately discontinue the Services without advance notice, if the acts of the Customer or the conditions upon their premises are such as to indicate an intent to defraud StarView or to use the Services to defraud a third party, including but not limited to, providing false credit information, significantly misstating expected service volumes, using the Services for unlawful purposes, using the Services in a manner that violates the law, or using Services without intent to pay. Customer acknowledges and agrees that it shall be responsible for any and all charges attributable to Customer, even if incurred as a result of fraudulent or unauthorized use of the Services by third parties. Although StarView will endeavor to contact the Customer pursuant to the notice provisions prior to discontinuing the Services or portions thereof explaining the reasons for such action, Customer acknowledges and agrees that StarView shall have no liability to Customer for terminating the Services for its failure to have so notified Customer. StarView may, but is not obligated to, detect or report unauthorized or fraudulent use of Services.

**4.4 Acceptable Use Policy.** StarView's Acceptable Use Policy ("AUP") is a detailed description of the actions prohibited by Customer and other users of StarView's network. Customer acknowledges and agrees that StarView may amend, revise, or modify the AUP at any time, in its sole discretion and in any manner, effective upon posting of the modified AUP to its website. Following the posting of an updated AUP to StarView's website, Customer agrees that it and the Services shall thereafter be found by the then-current version of the AUP. The most current version of the AUP can be found at <http://starviewsolutions.com>.

**4.5 CPNI Privacy.** The Parties acknowledge and agree that during the normal course of business, StarView may have access to certain proprietary information, known as "Customer Proprietary Network Information" or "CPNI," that relates to the quantity, technical configuration, type, destination, location and amount of use of services to end-user customers using certain StarView Services. The StarView CPNI Security Policy, and any and all modifications and updates thereto, are hereby incorporated into the Standard Terms and Conditions and SOF by reference.

**4.6 Regulatory Provisions.** In addition to the rates, terms and conditions set forth in the Agreement, certain state or federal regulations may require additional or different terms and conditions for those service components subject to any such regulatory requirements.

**4.7 911 and E911 Service.** Customer acknowledges that for 911 services to function properly, the caller must be calling from the location associated with the number as provided by Customer during implementation, and that service address must be valid and accurate. Customer is prohibited in altering the Services in any way, and acknowledges and agrees that if the Services are altered in any way by Customer that 911 and E911 service may not function properly and Customer hereby agrees to indemnify StarView from any and all liability associated with the failure of 911 service to function properly.

#### 5.0 Term and Termination

**5.1 Term; Other Agreements.** The initial term shall be as provided in the SOF (the "Initial Term"). Alternatively, the SOF may specify that the Agreement is coterminous with another agreement for Services entered into between

StarView and Customer, in which event the Agreement shall have the same Initial Term as is provided in such other agreement. After the Initial Term, all Services ordered under the Agreement shall renew on a month-to-month basis, at the then-current month-to-month rates and subject to the then-current Standard Term and Conditions of Service, unless Customer renews the Services term.

**5.2 Termination for Breach.** StarView shall have the right to terminate the Agreement in the event Customer fails to pay any amount by the Due Date.

**5.3 Effect of Termination.** In the event Customer terminates the Agreement prior to the expiration of the Term for any reason, or in the event of termination of the Agreement due to a material breach by Customer, Customer agrees to pay 100% of the monthly service charges multiplied by the number of months remaining in the Initial Term or any applicable renewal term, as identified on the SOF, and any term-related discount applicable to the affected Service. Customer shall also pay any non-recurring installation charges that were previously waived or reduced.

## 6.0 Software Licenses

**6.1 Grant of License.** During the term and subject to the terms and conditions of this Agreement, StarView hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license to access and use the Software in object code form for its internal business purposes only. The license in the preceding sentence is limited to the number of Authorized Users for which Customer has paid in accordance with the applicable SOF. All rights in and to the Software not expressly granted herein are reserved to StarView.

**6.2 License and Use Restrictions.** Customer shall not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the Software; (ii) modify, create derivative works based upon, or translate the Software; (iii) transfer or otherwise grant any rights in the Software in any form to any other party, nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

## 7. Indemnification

**7.1 Indemnification.** Each party shall indemnify the other, the other's affiliates, and all of their stockholders, officers, directors, agents, and employees (each, an "Indemnified Party") at all times from and after the Effective Date against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, including reasonable legal expenses, arising out of or relating to any claim by an unaffiliated third party (i) alleging that the use in accordance with this Agreement of the Software or the Services (in the case of StarView) or the Customer Data (in the case of Customer) infringes or misappropriates any intellectual property or privacy rights of the unaffiliated third party, or (ii) that arises or is alleged to have arisen solely out of the gross negligence or intentional misconduct of the indemnifying party (each a "Third Party Claim"). Notwithstanding the foregoing, if the Software becomes the subject of such a claim of infringement then StarView may, at its option: (a) procure for Customer the right to use the Software free of any liability for infringement; (b) replace or modify the Software to make it non-infringing but with reasonably comparable functionality; or (c) if StarView determines that the previous two options are not available on a commercially reasonable basis, grant to Customer a credit for the unused portion of any prepaid access rights fees and refund any deposits paid by Customer for the affected Software. Furthermore, StarView has no liability for, and no obligation to indemnify Customer against, any Third Party Claim arising or alleging based in whole or in part on use of the Software other than as specified in this Agreement, or its documentation, including use with third party hardware and software products not specifically authorized by StarView.

**7.2 Indemnification Process.** The Indemnified Party shall promptly notify the indemnifying party in writing of any Third Party Claim, stating the nature and basis of the Third Party Claim, to the extent known. The indemnifying party shall have sole control over the defense and settlement of any Third Party Claim, provided that, within fifteen (15) days after receipt of the above-described notice, the indemnifying party notifies the Indemnified Party of its election to so assume full control. The foregoing notwithstanding, the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ counsel at its own expense to assist in the handling of such claim, except that the Indemnified Party's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (i) the indemnifying party fails or refuses to assume control over the defense of the Third Party Claim within the time period set forth above; (ii) the Indemnified Party deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment, temporary restraining order, or preliminary injunction against it; or (iii) representation of both parties by the same counsel would, in the opinion of that counsel, constitute a conflict of interest. The Indemnifying Party shall not settle any such Third Party Claim without the written consent of the Indemnified Party, except for a complete settlement requiring only the payment of money damages to be paid by the Indemnifying Party.

**7.3 Sole Remedy.** Indemnification pursuant to this Section is the parties' sole remedy for any third party claim against the other party in the nature of negligence, gross negligence, intentional misconduct, intellectual property infringement, or invasion of privacy.

## 8. Disclaimers and Limitations

**8.1 Disclaimer of Warranties.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, STARVIEW MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, THE SOFTWARE, PRODUCTS OR SERVICES PROVIDED OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SOFTWARE, PRODUCTS OR SERVICES. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, STARVIEW DISCLAIMS ANY WARRANTY THAT THE SOFTWARE, THE PRODUCTS AND SERVICES PROVIDED BY STARVIEW, OR THE OPERATION THEREOF ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. STARVIEW MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT

LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

**8.2 Disclaimer of Consequential Damages.** STARVIEW HAS NO LIABILITY WITH RESPECT TO THE SOFTWARE, SERVICES, OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) EVEN IF STARVIEW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8.3 Limitations of Remedies and Liability.** EXCEPT FOR ANY CLAIMS SUBJECT TO INDEMNIFICATION HEREUNDER, CUSTOMER'S SOLE REMEDIES FOR ANY BREACH OF THIS AGREEMENT BY STARVIEW ARE CORRECTION OF ERRORS AS SET FORTH HEREIN AND THE REPROCESSING OF ANY DATA THAT IS INCORRECT AS A RESULT OF THE BREACH AND THE APPLICATION OF ANY SERVICE LEVEL CREDITS AS DESCRIBED IN THIS AGREEMENT. EXCEPT FOR SERVICE LEVEL CREDITS APPLIED AS DESCRIBED ELSEWHERE IN THIS AGREEMENT, STARVIEW'S TOTAL LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO ALL FEES PAID TO STARVIEW BY THE CUSTOMER IN RESPECT OF USER LICENSES FOR THE SOFTWARE DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY.

## 9. General

**9.1 Force Majeure.** "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, and insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

**9.2 Assignment.** Customer shall not assign any of its rights under this Agreement, except with the prior written consent of StarView. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void.

**9.3 Governing Law; Venue.** The laws of the State of Texas (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Austin, Texas, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Austin, Texas; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

**9.4 Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, must be resolved by confidential binding arbitration in Austin, Texas in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties agree that the arbitrator has the power to award all costs of the arbitration, including reasonable attorney's fees and expenses, to the prevailing party. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the unsuccessful party shall pay to the successful party its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.

**9.5 Entire Agreement.** This Agreement and any Service Order Forms constitute the final agreement between the parties. In the event of any conflicts between this Agreement and a Service Order Form the order of precedence is the order set forth in this sentence, except to the extent that the conflicting document expressly states its intention to override a specific provision of the controlling document. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement. The parties can amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

**9.6 Notices.** Each party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this Agreement must give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, registered or certified U.S. Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid). Any party giving a Notice must address the Notice to the appropriate person at the receiving party (the "Addressee") at the

address listed on the SOF or to another Addressee or another address as designated by a party in a Notice pursuant to this Section. Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the notice has complied with this paragraph.

**9.7 Modification of Standard Terms and Conditions.** StarView may amend these Standard Terms and Conditions at any time by posting the amended terms and conditions on StarView's website and providing notice thereof to Customer. Customer will be deemed to have accepted the amended terms and conditions as part of the Agreement.

**9.8 No Joint Undertaking.** Nothing in the Agreement shall be construed as creating an associate, trust, partnership, agency, or joint venture between the Parties in any respect or with regard to any undertaking.

**9.9 Survival of Provisions.** Any obligations of the Parties relating to monies owed, as well as those provisions relating to confidentiality, limitations on liability and indemnification, shall survive termination of the Agreement.

**9.10 Waiver.** The failure of either Party to enforce against the other any term or condition of the Agreement shall be deemed not to be a waiver of such Party's right to enforce against the other Party the same or any other such term or condition.

## **10.0 Service Level Agreement**

If Customer's Services are unavailable for more than sixty (60) consecutive minutes in any one day, then StarView will issue a credit, upon written request from Customer received within fifteen (15) days of such outage, equal to the portion of the MRC for affected DS-0s associated with the service unavailability event in the following manner:

### **Duration of Event**

<60 minutes No Credit  
>60 min – 8hrs ½ Day Credit \*  
8hrs – 22hrs 1 Day Credit\*

\*a day is defined as 1/30th of one month. The maximum credit allowed in any given month cannot exceed one credit per day or partial day, or 100% of the monthly service charges billed for affected service.

A service unavailability credit will not be issued for service unavailability events caused by the following: (a) Negligent acts or omissions of the Customer, or any other issue caused by Customer; (b) outages caused by third party carriers or local exchange carriers; (c) the malfunction of equipment, applications, or systems not owned or controlled by StarView; (d) circumstances or causes beyond the control of StarView including but not limited to instances of Force Majeure; (e) scheduled service maintenance, alteration, or implementation; (f) failure of any components that StarView cannot correct because Customer has elected not to release services for testing or repair and continues to use the services on an impaired basis, or time attributed to the Customer's delay in responding to StarView's requests for assistance to repair a service unavailability event.