

SYSTEM SALES ORDER TERMS AND CONDITIONS

1. **EQUIPMENT.** DeltaCom, Inc. ("Deltacom") agrees to sell, and Customer agrees to buy, the telecommunications equipment ("Equipment") and sublicense the associated software (together, the "System") set forth on the System Sales Order (the "SSO"). The SSO together with these terms and conditions shall be collectively referred to as the "Agreement."
2. **PURCHASE PRICE AND PAYMENT.** The purchase price for the System shall be paid by Cashier's or Certified check as follows:

FOR SYSTEMS OVER \$50,000, 25% upon signing by Customer, 25% upon receipt of the Equipment from the manufacturer by Deltacom, 25% upon the delivery of the Equipment to the Premises, and 25% on or before the Installation Date.

FOR MULTI-LOCATION SYSTEMS OVER \$50,000, 25% of the total for all locations upon signing by Customer, 25% upon receipt of the Equipment from the manufacturer by Deltacom [on a per site basis](#), 25% upon the delivery of the Equipment to the Premises [on a per site basis](#), and 25% on or before the Installation Date [on a per site basis](#).

FOR SYSTEMS UNDER \$50,000, 25% upon signing by Customer and 75% on or before the Installation Date.

FOR MULTI-LOCATION SYSTEMS UNDER \$50,000, 25% of the total for all locations upon signing by Customer and 75% on or before the Installation Date at each location.

There shall be added to the purchase price amounts equal to any taxes, however designated, levied or based on such price or on the Agreement or the System, including state and local sales, use or equivalent or amounts in lieu thereof paid or payable by Deltacom in respect to the foregoing, unless Customer provides Deltacom with an appropriate exemption certificate. Such charges will be invoiced upon installation. The "Installation Date" of the System shall be the day (Monday through Friday) on which (i) Deltacom or its designee determines that the switching Equipment has been powered up and is activated, functioning and capable of providing basic service; or (ii) the Equipment is delivered or available for delivery and Customer fails to provide the suitable installation environment as required in Section 5, whichever is sooner. In certain instances where the SSO covers multiple Systems or multiple locations, or where the installation may be more complex, Deltacom may require progress payments based on milestones as set forth on the SSO or as otherwise agreed by the Customer.
3. **SECURITY INTEREST.** Deltacom reserves a purchase money security interest in the System in the amount of the unpaid balance of the purchase price until payment in full of the purchase price. A financing statement under the Uniform Commercial Code may be filed with the appropriate public authorities and Customer agrees to sign any forms presented to it by Deltacom necessary to protect Deltacom's security interest.
4. **INSTALLATION, TRANSPORTATION CHARGES AND RISK OF LOSS.** Customer shall pay for installation of the Equipment, plus all transportation, rigging and storage charges. Such charges will be invoiced upon installation. Customer shall bear all risk of loss or damage after the delivery of the Equipment to Customer's premises (the "Premises") set forth on the SSO. If Customer does not permit Deltacom to install the System, or requires Deltacom to remove the System, Deltacom, in addition to the remedies provided below, shall be entitled to retain all monies paid by Customer and recover additional monies, if necessary, to cover all costs incurred by Deltacom in preparation for and any actual performance under the Agreement, including storage costs and a restocking fee of twenty- five percent (25%) of the order total.
5. **INSTALLATION AND TRAINING.** Deltacom or its designee shall install the System at the Premises in accordance with the manufacturer's specifications. Upon installation of the Equipment, Deltacom shall provide its standard Customer training of Customer's employees in the operation of the Equipment. Customer shall provide: (i) floor plans, access, easements and consents necessary to install or service the System; (ii) necessary space for the System and accessible wiring locations that are safe and non-hazardous, and free of asbestos and other hazardous materials and hazardous substances per applicable federal, state and local laws, rules and regulations; (iii) dedicated electric source, circuits, power and isolated ground; (iv) suitable operating environment (including isolated ground, air conditioning, humidity, heat and security) per manufacturer's specifications which specifications will be provided to Customer by Deltacom upon request; (v) raceway, conduit, holes and wireways; and (iv) a secure room with locks for temporary System storage. In the event of breach of the foregoing, in addition to all other remedies, Deltacom may immediately suspend work until Customer has promptly corrected such condition(s) at Customer's expense. In the event Customer cannot or does not correct such condition, it will be Deltacom' option as to whether to recommence performance or terminate the Agreement. Any termination by Deltacom because of its opinion that an unsafe environmental condition exists will not be deemed a breach of the Agreement and no liability for such decision will attach. Deltacom will remove all litter generated during the work and will ensure that the installation area is restored to as good a condition as it was prior to installation but will not be responsible for removing old phones or cabling.
6. **WARRANTY.** Deltacom represents and warrants to Customer that the Equipment shall be free from defects in material and workmanship and substantially conform to the applicable specifications for such Equipment published by the manufacturer at the time of sale for the then current warranty period set forth by the equipment manufacturer and commencing on the Installation Date. The exclusions provided in Section 12 below shall apply. Deltacom's sole obligation in case of any breach of this representation or warranty shall be to repair or replace, at Deltacom's option, any defective item of Equipment. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE INCLUDING BUT NOT LIMITED TO PREVENTION, DETECTION OR DETERRENCE OF TOLL FRAUD, COMPUTER VIRUSES OR OTHER UNAUTHORIZED OR IMPROPER USE OF THE SYSTEM.
7. **LIMITATION OF LIABILITY.** Deltacom's liability for System malfunction OR Service malfeasance shall be limited to performing one of the remedies under the Warranty section, if applicable. Deltacom and Customer hereby agree that if such limitation is declared invalid by a court of competent jurisdiction, then Deltacom's liability shall be limited solely to a U. S. dollar amount equal to the purchase price of the System or the charges for the Service. THESE REMEDIES SHALL BE EXCLUSIVE AND SHALL BE THE CUSTOMER'S SOLE REMEDIES AGAINST DELTACOM SYSTEM MALFUNCTION. IN NO EVENT SHALL DELTACOM BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR SIMILAR DAMAGES, SUCH AS (BUT NOT LIMITED TO) "DOWNTIME", EXCESS COSTS OR LOST BUSINESS REVENUES RESULTING FROM SUCH PARTY'S BREACH OF ANY OF THE PROVISIONS OF THE AGREEMENT, A PRODUCT MALFUNCTION, SERVICE MALFEASANCE OR FROM UNAUTHORIZED OR IMPROPER USE OF THE SYSTEM INCLUDING BUT NOT LIMITED TO TOLL FRAUD OR COMPUTER VIRUSES, EXCLUDING, HOWEVER, ANY OF THE FOREGOING RESULTING SOLELY AND DIRECTLY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF DELTACOM.

8. **SOFTWARE LICENSE** Certain manufacturers require the issuance of their own software license, which may be separately issued to Customer and incorporated herein (the "Manufacturer License"). If no Manufacturer License is issued to Customer, then to the extent authorized by the manufacturers of the System, Deltacom grants Customer a non-exclusive license for the useful life of the System to use the software (including related documentation) solely to maintain and operate the System, provided Customer: (i) does not allow any aspect of the software to be disclosed to a third party without Deltacom's written consent and makes reasonable efforts to ensure that its employees are aware of this obligation; (ii) uses the System solely for Customer's internal business purposes; (iii) does not copy any part of the software without Deltacom's consent and does not attempt to develop any source code from the software; and (iv) returns to Deltacom or erases or destroys any software on any media being recycled or discarded and so certifies to Deltacom. Deltacom hereby grants a sublicense to Customer (i) to use the affiliated software, but only in conjunction with related Equipment, (ii) to make one (1) copy of the software for archival/back-up purposes, (iii) to transfer the affiliated software rights to a third party who acquires title to the Customer's Equipment, provided such transferee assents in writing to the conditions and limitations of the sublicense and pays any applicable transfer fee. Deltacom, on behalf of the manufacturer, reserves all other rights, title and interest to the software, and Customer shall not acquire any rights, title or interest in the software other than as specifically set forth in this Section. Customer will not reverse compile, disassemble, alter, add to, delete from, or otherwise modify the software, except to the extent that such modification capability is an intended feature of the System. Customer agrees to execute any additional documents relating to software as reasonably required by Deltacom or the manufacturer from time to time, to protect the respective rights, title and licensing interest of Deltacom or third parties to the software. Customer may only transfer the right to use the software to any end user who subsequently acquires the right to use the System, agrees to be bound by the terms of this license and agrees to pay any applicable fees
9. **INDEMNIFICATION; INFRINGEMENT** Each party shall indemnify the other only with respect to any third party claim alleging bodily injury, including death, or damage to tangible property to the extent such injury or damage is caused by the negligence of the indemnifying party, provided that such claim is reported promptly in writing to the indemnifying party. Unless otherwise provided in the Manufacturer License: **(a)** In the event of a claim or suit against Customer alleging (a) the System infringes any patent issued by or copyright registered in the USA, Deltacom shall defend Customer to the extent the claim or suit concerns such infringement, provided Customer give Deltacom prompt notice of such claim or suit and continuous cooperation in such defense. **(b)** In any claim or suit against Customer that is defended by Deltacom pursuant to paragraph (a) above, Deltacom shall control the defense, shall pay all litigation costs, including reasonable attorney's fees incurred by Deltacom in such defense, and shall indemnify Customer for all damages awarded by a court or settlement payments approved by Deltacom. **(c)** If, in any claim or suit against Customer that is defended by Deltacom pursuant to paragraph (a) above, as a result of a court order not subject to further appeal or a settlement approved by Deltacom, Customer is enjoined from using the System, Deltacom, at its option, may (i) procure for Customer the right to continue using the System, (ii) replace or modify the System to avoid infringement, or (iii) repossess the System in exchange for a refund of the depreciated value of the System. Deltacom's option selected under this clause shall be Customer's sole remedy for any prospective effects of any court order or settlement. **(d)** Deltacom's total cumulative liability under clauses (b) and (c) above shall be limited to the purchase price paid by Customer for the System together with payment of all litigation costs, including court awarded damages and settlement payments, as provided for in paragraph (b) above. **(e)** Notwithstanding any other provision of this Section, Deltacom shall not be obligated to defend and shall not be liable for costs or damages awarded in any claim or suit for infringement in which (i) the System was made pursuant to specifications supplied by the Customer, or (ii) the alleged infringement is based on use by the Customer, without the manufacturer's permission, of the System in combination with another item, where the alleged infringement arises from the combination or from practice of a method made possible by the combination, or (iii) the alleged infringement is based on the System as modified by Customer and/or any third party without Deltacom's written permission. **(f)** Customer's sole and exclusive remedy against Deltacom with regard to such a patent infringement claim shall be as set forth above.
10. **DEFAULT BY CUSTOMER.** Should Customer (a) default in the payment of any sum of money hereunder, or (b) default in the performance of any other of its obligations under the Agreement, then in any such event, Deltacom, at its option, may, upon written notice thereof, (1) terminate the Agreement, (2) whether or not the Agreement its terminated, take immediate possession of any and all of the items of Equipment which have not been fully paid for, wherever situated, and for such purpose enter upon any premises without liability for so doing and (3) sell, dispose of, hold, use or lease any items of Equipment which have not been fully paid for as Deltacom in its sole discretion may decide. Customer agrees to reimburse Deltacom for any and all expenses Deltacom may incur, including reasonable attorney's fees, in taking any of the foregoing actions. The remedies contained 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.
11. **FORCE MAJEURE.** Deltacom's performance shall be adjusted or suspended by Deltacom to the extent performance is beyond Deltacom's reasonable control for reasons including, without limitation, the following: strikes, work stoppages, fire, water, governmental action, acts of God (including, without limitation, earthquakes, rains, floods or lightning), or public enemy, delays of suppliers, subcontractors, power company, local exchange company, or other carrier.
12. **WARRANTY AND MAINTENANCE EXCLUSIONS** Except as provided in Section 17 for Customers selecting the Preferred Maintenance Agreement, the warranty and maintenance service provided under the Agreement excludes repairs or replacements caused by: (i) damage to the System due to fire, explosion, failure of electrical power, air conditioning or humidity control, power irregularities, power surges, Acts of God (including, without limitation, earthquakes, rains, floods, water damage or lightning), or any other cause not attributable to Deltacom; (ii) Customer's failure to follow applicable operation, maintenance, or environmental requirements described in any of the manufacturer's manuals, Deltacom's manuals, and other materials provided to Customer, including without limitation manufacturer's product bulletins; (iii) Customer's additions, alterations, modifications, enhancements or repairs to or disassembly of the System (itself or using a third party) without Deltacom's written consent; (iv) mishandling, abuse, misuse or damage to the System by Customer or a third party; (v) relocation of the System without Deltacom's written consent (other than telephone instruments relocated in accordance with the manufacturer's specifications); or (vi) failures or changes required resulting from the local exchange company, interexchange carrier, the power company or other transmission providers. Deltacom may, at its option, terminate its maintenance obligations or perform repairs necessitated by any excluded cause at Customer's request at Deltacom's then prevailing rates,
13. **GENERAL** **(a)** If Customer issues a purchase order for its own internal purposes, Customer agrees that only the terms and conditions of the Agreement apply and that any term contained in any purchase order submitted to Deltacom by Customer which is in conflict with or in addition to this Agreement shall be void. **(b)** Deltacom reserves the right to subcontract any and all of the work to be performed by it under the Agreement. **(c)** The Agreement is not assignable by Customer without the prior written consent of Deltacom. Any attempt to assign any of the rights, duties or obligations under the Agreement without such consent will, at Deltacom's option, be deemed void or a material default or accepted in Deltacom's sole discretion. The Agreement may be assigned by Deltacom, in whole or in part, and Customer agrees to execute all documents and consent necessary, required, or desirable for, or by, such assignment. **(d)** The waiver by either party of any default will not operate as a waiver of any subsequent default. **(e)** Customer will pay all of Deltacom's costs or expenses, including reasonable attorney's and collection fees, incurred in enforcing the Agreement. **(f)** Deltacom's obligation is contingent upon a credit report satisfactory to Deltacom. **(g)** The Agreement supersedes all prior or contemporaneous proposals,

communications and negotiations, both oral and written and constitutes the entire agreement between Deltacom and Customer with respect to the purchase of the System. Any representations, warranties or statements made by an employee, salesperson or agent of Deltacom and not expressed in the Agreement are not binding upon Deltacom. **(h)** 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. **(i)** The Agreement shall not be modified in any way except by a writing and executed by an authorized representative of the party against whom enforcement is sought. **(j)** No action, regardless of form, arising out of the Agreement may be brought by either party more than one year after the cause of action has accrued. **(k)** The Agreement is deemed made and GOVERNED BY THE LAW OF THE STATE OF ALABAMA except for its rules regarding the conflict of laws. **(l)** In the event of any conflict between the terms and conditions of the Agreement, Deltacom's form attachments, and any other attachment including Customer's request for proposal or similar document, the Agreement shall control over the form attachments, which in turn shall control over any other attachment. **(m)** The Agreement allocates the risks of the System's operation between Deltacom and the Customer, an allocation which is recognized by both parties and is reflected in the Cash Price and Service Fees set forth. Customer acknowledges that it has read the Agreement, has received and reviewed any and all documents referenced in it, understands it, and is bound by its terms. **(n)** All notices shall be in writing and shall be delivered or sent by registered or certified mail, return receipt requested, to the address indicated on the face of the SSO or to such other addresses as the parties shall specify by notice given pursuant hereto. **(o)** The individual executing the SSO on behalf of Customer does hereby represent and warrant that he or she is duly authorized by all necessary action to execute the Agreement on behalf of Customer. The Agreement may only be executed by a Deltacom Branch Manager or other authorized Deltacom management person, and is subject to final credit approval. **(p)** All notices to Deltacom shall be in writing and shall, except as provided below, 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, ATT: Assistant General Counsel. **(q)** Customer agrees that neither it nor any of its affiliates will solicit any of the Deltacom employees providing services pursuant to the Agreement with offers of employment during the term of the Agreement.

PREFERRED MAINTENANCE AGREEMENT ADDITIONAL TERMS AND CONDITIONS

If Customer has agreed to receive Preferred Maintenance Service as reflected on the SSO, Deltacom agrees to provide maintenance service for equipment and software listed on the SSO, subject to the terms and conditions as provided above except as modified as follows:

14. **TERM.** The Agreement shall begin on the day it is accepted by Deltacom and shall continue for an indefinite period, being automatically renewable on a month-to-month basis, but shall be terminated by either party by giving a thirty (30) days prior written notice of said termination of the Agreement. No contract will be renewed for Equipment which becomes obsolete or for which replacement parts become no longer available. Notwithstanding the foregoing all prepaid maintenance agreements shall extend only for term of prepayment.
15. **SCOPE OF MAINTENANCE.** Replacement parts will be furnished on an exchange basis, and replaced parts become the property of Deltacom. Deltacom will also provide maintenance consultation and advice. Additionally, Deltacom will provide continued Customer training as requested, provided that the Customer gives two weeks notice of this request for training. This service will be provided at no additional charge, not to exceed 3 visits or 12 hours of training per year. Additional training will be billable.
16. **CHARGES.** Maintenance charges are determined based upon the equipment listed on the SSO on the date that the Agreement is accepted by Deltacom. Further, a revised Equipment Itemization shall be prepared annually to reflect the Equipment being used by Customer on each anniversary date and shall be used in computing any increase or decrease in the Maintenance Payment in the following years. Deltacom may adjust rates from time to time to reflect changes in the cost of providing this service. Any increase to the rates shall provide the Customer an option to cancel the Agreement with thirty (30) days written notice.
17. **LIGHTNING/SURGE PROTECTION** Preferred Maintenance customers are relieved of liability for damage to the telephone system equipment cause by lightning and/or power surge. Damage caused by fire, wind, flood and earthquake is specifically excluded from coverage. Customer agrees to give Deltacom prompt notice of any damage to or loss of telephone system equipment.
18. **ACCESS TO EQUIPMENT** Deltacom shall have full and free access to all equipment to be serviced hereunder. Customer shall provide a safe place in which to perform such services.
19. **MAINTENANCE SERVICE AVAILABILITY**
Routine Service: The maintenance charge entitles the Customer to weekday Maintenance Service between the hours of 8:00 a.m. and 5:00 p.m. daily, Monday through Friday, except Deltacom observed holidays. Deltacom will respond within twenty-four hours to calls made during normal working hours. Requests for routine service outside of the above times shall be billed at Deltacom's then current hourly rates.

Emergency Service: Under this provision an emergency exists when an authorized employee of the Customer determines that a system malfunction exists which seriously affects or impairs the operation of the Customer or if 50% of the system is inoperable. Emergency service is available twenty-four hours a day, seven days a week. Deltacom will respond within two (2) hours. The authorized employee of the Customer shall exercise prudent judgment before reporting a service problem as an emergency. It is mutually understood and agreed that this Maintenance Agreement does not preclude Routine Service response intervals as provided above, for system or station malfunctions which do not seriously affect or impair the operation of the Customer.