

## Terms of Service

### 1. What is this document?

This document contains your Terms of Service (TOS). It is an agreement between you and Texoma Communications, LLC d/b/a TekWav (“TekWav”) explaining the rights and responsibilities of TekWav and you as a TekWav customer.

By ordering a service from TekWav or by using equipment provided by TekWav, you accept the terms and conditions contained in this agreement and agree to comply with its requirements. TekWav is also bound by this agreement, although TekWav has the right to update the terms of service and other policies with conditions at any time.

### 2. Definitions.

“Customer,” “I,” “you,” “your”: means a person, a company, or legal entity who subscribes to a service provided by TekWav.

“User”: Also refers to a person, company, or legal entity who subscribes to a service provided by TekWav, but also includes someone who also uses the same service.

“Service”: Any service provided by TekWav.

“Equipment”: Means any computer, Internet, networking, wired, or wireless hardware or device provided by TekWav for use by a customer.

“TekWav, we, us”:

Texoma Communications, LLC d/b/a TekWav  
314 N. Walnut Street  
Sherman, Texas 75090

### 3. Scope of this Agreement.

This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the United States of America and the state of Texas. In the event of a conflict between this Agreement and any applicable law, the law shall prevail.

If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. The Agreement, including the TekWav Acceptable Use Policy, which is incorporated as if fully set forth herein, embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. TekWav may amend the terms and conditions of this Agreement by giving you thirty (30) days’ notice, which may be in writing or may appear online at [www.tekwav.com](http://www.tekwav.com) or other website hereinafter designated by TekWav. This Agreement is subject to modification by any authorized regulatory agency. This Agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors, and permitted assigns.

#### **4. Your Responsibilities.**

You agree to purchase and pay for Internet Services from TekWav, in accordance with the terms and conditions of this Agreement.

#### **5. Customer Responsibility.**

By signing this TOS, you acknowledge that you accept this Agreement on behalf of yourself, your users and all persons who use the equipment and/or service through this equipment. You have the sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this agreement, and you bear the sole responsibility for any breach of the TOS by any other user, whether such breach is the result of the use of the Service and/or Equipment by you or another user. You agree to use your TekWav-supplied service from your own premises. You agree to provide TekWav with accurate and complete billing information, including your legal name, address, driver's license number and telephone number. If your address, phone number, name or other billing information changes, you will notify us within ten (10) days or your service may be suspended. By ordering and paying for a TekWav service, you affirm that you are 18 years of age or older and are able to enter into this agreement.

#### **6. What Happens if You Breach this Agreement?**

If you default or break this agreement, TekWav may, in its sole discretion, temporarily suspend or permanently close some or all of your service. Suspending or closing your service does not limit TekWav's remedies and does not render TekWav liable to you or any user for any alleged damages incurred as a result of a suspension or closing of service, or entitle you to any credit for amounts paid or owed for the Service. "Default" means failure on your part to comply with this agreement. This includes, but is not limited to, being delinquent on your payments and breaking the provisions of this agreement or associated policies. If you use your own equipment with service provided by TekWav in violation of any of the provisions of this agreement, TekWav will notify you and may take any such action as is necessary for the protection of the service for use by its other customers. This may include disconnecting your service. TekWav reserves the right to charge disconnect and/or reconnect fees for any discontinued service.

#### **7. TekWav's Responsibilities.**

TekWav agrees to provide you with the Service you have ordered and all special equipment necessary to provide the Service, provided that you comply with all the terms and conditions of this agreement. TekWav strives to provide uninterrupted service. However, like any other telecommunications service provided, the service may experience temporary slowdowns or interruptions caused by: overload, abuse, equipment modifications, upgrades, relocations, or repairs, and similar activities necessary for the proper operation and supply of the service, or natural or man-made disasters. TekWav will provide basic instructions on how to use the service during the time of your installation by our installer. You are also entitled to technical support for the TekWav-provided equipment or service via phone or e-mail. We cannot provide technical support for any hardware, software or operating systems not provided by TekWav. If a TekWav

technician or representative is asked to provide support or repair for software or hardware that is not supplied by TekWav, a \$50.00 labor charge will be applied to your next bill. If our technician is called out and the equipment at fault is not TekWav equipment, a \$50.00 labor charge will be applied to your next bill. If TekWav cannot be made to work at your location because of distance, hills, trees, or any other cause, you will be refunded 100% of any payments you have made to us, subject to this agreement. You must return the equipment in good condition, with no damage aside from ordinary wear and tear. TekWav has no other liability if it cannot provide service due to your geographic location.

#### **8. Force Majeure (Disasters, Etc).**

Neither you nor TekWav is liable for any delay or failure in performance of any part of this agreement caused by any force majeure event even beyond your, or our, control and without your, or our, fault or negligence. These events include, but are not limited to, a number of situations that could affect you and TekWav in performing your, or our, obligations: acts of civil or military authority, terrorist acts, nuclear accidents, government regulations, riots, strikes, embargoes, insurrections, extended power blackouts, natural disasters, epidemics, fires, severe weather conditions, environmental disturbances, war, explosions, legal and/or regulatory constraints.

If a Force Majeure condition occurs, the party injured by the other party's inability to perform has two options (detailed below). The injured party has 30 days to choose which one. If the injured party does not inform the other within 30 days of being notified of a Force Majeure situation, the second option goes into effect.

A. Option One: The injured party may terminate the agreement if such Force Majeure condition results in a delay or failure to perform which continues for more than 30 calendar days; or

B. Option Two: The injured party may suspend the service for a duration of the delaying cause and buy a similar service. After the emergency is over, this agreement and service will continue.

#### **9. Paying for your TekWav Service.**

The price you will pay TekWav is the monthly rate and other fees and charges such as equipment leases and applicable taxes as established from time to time by TekWav. TekWav reserves the right to modify the rates, fees and charges at any time. You have the right to be notified of price changes at least 30 days before the new rate takes effect. You acknowledge that you may incur additional charges while using the service. If you make purchases over the Internet, those transactions are between you and the seller, and TekWav bears no responsibility or liability for your use of the Services it provides.

#### **10. Payment.**

TekWav will charge your credit card periodically as agreed when you signed up for service. You will be sent a statement by postal mail, or to the e-mail address provided

when you signed up for service, before payment is due. Payment will be deemed made when received by TekWav. If a credit card payment is declined by the payment service, it will be retried in 5 days' time.

Payment may also be made by check. Checks may be made out to: TekWav and sent to: 314 N. Walnut Street, Sherman, Texas 75090.

If your account becomes overdue, you will receive a notice by postal service or by delivery to the e-mail address for contact you have designated to TekWav. At this time, TekWav may take steps to reduce the service supplied or temporarily suspend the service and apply any applicable disconnection and /or reconnection fee. If your account becomes more than 30 days overdue, TekWav may apply a late fee per month to the account. A service charge of up to \$20 will be assessed for each check that is returned to TekWav for insufficient funds. You will get your statement by postal mail or by delivery to the e-mail address supplied when you began service.

#### **11. Term.**

This agreement becomes effective on the date on which you order your TekWav service. Your first payment is due at the time your service is connected. This is also your start-of-service date. Your payments are due on the 15th day of every month. This agreement remains in effect for 12 months from your start-of-service date for all one (1) year agreements. At the end of the 12-month period, you must give 30 days' notice that you wish to discontinue service, or change to a month-to-month service plan. If no notice is given, the agreement will automatically renew for an additional 12 month period at the then-active rate for such service.

#### **12. Credit for Down Time.**

Although we intend to maintain your service at all times, you have the right to a credit against your account if, through our negligence, you lose service via TekWav for more than 24 hours. In such a case, we will credit you 1/30 of the monthly base charge for each 24 hour period from the time of notice of interruption until the service restoration. The 24 hours must be continuous. You cannot add up shorter periods. To receive credit, you must notify the TekWav office that your service is not working. Most types of outages do not qualify for credit. Please read the next section for your information.

#### **13. Events that Do Not Qualify for Credit.**

Most temporary service outages do not qualify for credit. You will not get credit for problems in the Service caused by your own or another's negligence or willful act (except as provided above) or for problems caused by weather or disaster-like situations. "Willful acts" include system failures caused by viruses, "hacking," "cracking," and other forms of remote malice. You will not get credit for loss of connectivity caused by technicians working to modify or repair TekWav' equipment. You will not get credit for loss of connectivity less than 24 hours long. TekWav may, however, issue credit on a case-by-case basis at TekWav's discretion. If you believe that TekWav has billed you in

error, you must contact us or call within 30 days of the invoice or statement date. Refunds or adjustments will not be given for any charges more than 60 days old.

**14. Deposit.**

TekWav may require a deposit to commence the supply of service.

**15. Closing your Account.**

To close your account, you must notify TekWav. To add or remove services, or close an account, you must identify yourself to TekWav's satisfaction. This is to protect unauthorized changes by other persons to your account. If you wish to cancel or close your account and terminate this agreement before it expires, an early termination fee of \$240 may be charged. This fee will reduce by \$20 each month of the term, for 12 month terms. If you wish to cancel a month-to-month service, you must provide 30 days' notice to the closure of your account. Services will still be charged during this time.

**16. Upon Termination of this Agreement or your account.**

You agree that upon termination of this Agreement:

You will pay TekWav in full for your use of the Equipment and the Service up to the effective date of termination of this Agreement or the date on which the Service and Equipment have been disconnected and returned to TekWav, whichever is later. You will not receive a refund if you terminate service part-way through a month. You will allow TekWav employees or contractors to access your premises to remove the Equipment. This may mean coming in your house and/or climbing on your roof. We agree to attempt to arrange a time that is convenient for you and a TekWav technician.

**17. Credit for closed accounts.**

If you cancel your TekWav service, we will refund that part of your latest payment which covers service up until your next invoice date excluding the 30 day notice period. Your setup and installation fees are non-refundable. You will always be refunded at the rate you paid. That is, if you got a discount, you will be refunded at the discount level, not at the standard level.

**18. Computer Equipment.**

You are responsible for your own equipment that you use with the TekWav service. For this agreement to be valid, your computer must meet minimum requirements (as determined solely by TekWav). It must be technically and operationally compatible with the Service. TekWav's responsibility for your Internet connectivity stops at the downstream end of the Equipment. You are responsible for providing equipment capable of received and transmitting electronic data through a standard port.

**19. Home Networks.**

You may access the Internet via TekWav from secondary computers on a home network within the limits of the Acceptable Use Policy. Your home network is not part

of your Internet Wireless service or Equipment. By accepting this agreement, you explicitly acknowledge that TekWav will not provide technical support for equipment or software that is not part of the TekWav Service or Equipment. Allowing someone to connect to your home network from outside your premises and use your TekWav service is strictly prohibited. If you do this, we may close your account. Giving someone outside your household or business your TekWav login name and password is strictly prohibited.

**20. Equipment supplied by TekWav.**

TekWav agrees to maintain the Equipment in working condition for the lifetime of this agreement. In case of Equipment failure, TekWav will troubleshoot, diagnose, repair, or replace the Equipment within 48 hours. All Equipment supplied by TekWav, except for any item that you buy and pay for in full, remains the property of TekWav. You may not mortgage, sell, transfer, lease, encumber, or assign all or part of the Equipment. If you lose or break the Equipment, or turn it over to someone else as described in the previous paragraph, you must pay TekWav the full retail cost of the repair or replacement. If TekWav spends money in the effort to get the equipment back, you must also pay those costs. You will not modify, tamper with, or move the Equipment. If you need the Equipment moved, you must contact TekWav and ask to have an TekWav technician or contractor move the Equipment for you. You may be charged for the callout, labor and materials required to move the Equipment. If Equipment, including network components, is moved or modified by anyone other than TekWav personnel (employed or contracted), and damage to the equipment results so that TekWav personnel or contractors are called out to your location to repair or replace it, you will be charged \$150.00 for the visit in addition to any other charges specified in the Terms of Service. You authorized TekWav and its employees, agents, contractors and representatives to enter your premises in order to install, maintain, inspect, repair, and remove the Equipment. TekWav agrees to arrange a mutually convenient time with you  
f o r t h e s e a c t i v i t i e s .

**21. Limitation of Liability.**

We will not be liable for interruptions in Services caused by your intentional act or negligence, failure of your hardware or software, failure of communications services, power outages, or other interruptions not within the complete control of TekWav, including, but not limited to: acts of God; acts of the public enemy; acts of the United States, a state or other political subdivision; fire, floods or other natural disasters; accidents; wars; labor disputes or shortages; and inability to obtain material, power,  
e q u i p m e n t o r t r a n s p o r t a t i o n .  
NOTWITHSTANDING ANY OTHER PROVISION OF THIS TERMS OF SERVICE AGREEMENT, TEKWAV'S LIABILITY REGARDING YOUR USE OF SERVICES OR EQUIPMENT, OR THE FAILURE OF OR INABILITY TO USE THE SERVICES OR EQUIPMENT, IS LIMITED TO THE CHARGES YOU INCUR FOR SERVICES DURING THE AFFECTED PERIOD. THIS MEANS WE ARE NOT LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS

OR LOST BUSINESS OPPORTUNITIES), PUNITIVE OR EXEMPLARY DAMAGES, OR ATTORNEY'S FEES.

You agree that TekWav will not be liable or responsible for any third-party claims or damages that arise from your use or another person's use of the Services or Internet access, further, You agree to indemnify and reimburse us for all costs and expenses related to the defense of any such claims, including attorney's fees. This provision will continue to apply after the Agreement ends.

**22. Entire Agreement.**

These terms and conditions together with the acceptable use policy and work order are the entire agreement between you and TekWav, which may only be amended as described above. These terms and conditions supersede any inconsistent or additional promises made to you by any of our employees or agents.

EXECUTED and EFFECTIVE this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**TEXOMA COMMUNICATIONS, LLC:**

**CUSTOMER:**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Texoma Communications, LLC  
d/b/a TekWav  
314 N. Walnut Street  
Sherman, Texas 75090

Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_