



General Terms and Conditions for Services

Updated October 25, 2023

Please read these Terms carefully. These general terms and conditions for services (“Terms”) create a binding contract between you (“Customer”) and Telestream, LLC and its affiliates (“Telestream”), for Customer’s purchase of professional services from Telestream (“Services”) pursuant to a statement of work (“SOW”), quote for Services, or purchase order for Services accepted by Telestream. If a written agreement is not already in place between Customer and Telestream which covers SOW-based services by Telestream for Customer, then the SOW, quote for Services, or purchase order for Services accepted by Telestream will be governed by these Terms, which are incorporated into and made a part of the SOW, quote, or purchase order by this reference.

1. APPLICABILITY; ENTIRE AGREEMENT

Except as set forth in the first paragraph above, these Terms are the only terms that govern the provision of Services by Telestream to Customer. These Terms, together with any quote, SOW, and accepted purchase order entered into with Customer in connection with these Terms (collectively, this “Agreement”), comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, and communications, both written and oral. In the event of any conflict between the terms and provisions of these Terms and those of any SOW, quote, or purchase order, the following order of precedence will govern: (a) first, these Terms; (b) second, the applicable SOW; (c) third, the applicable quote; and (d) fourth, the applicable purchase order accepted by Telestream, excluding any Customer terms and conditions. Except as set forth in the first paragraph above, these Terms prevail over any of Customer’s terms and conditions regardless of whether or when Customer has submitted its request for proposal, purchase order, or other such terms. Provision of services to Customer does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms. All such additional or different terms and conditions are expressly rejected by Telestream.

2. SERVICES

Telestream shall provide the Services to Customer on a non-exclusive basis as described in more detail in the applicable quote, SOW, or purchase order, and in accordance with these Terms. Telestream may use subcontractors to perform all or part of the Services. Telestream is not responsible for providing any Services to Customer beyond those expressly set forth in the applicable quote, SOW, or accepted purchase order.

3. PRICES; VALIDITY OF QUOTATIONS

The price(s) for the Services and the currency of payment are as stated on the face of the quotation, SOW, or invoice issued by Telestream to which these Terms are attached. Quotations supplied by Telestream are valid for 30 days unless a different validity period is stated on the quotation. Customer agrees to reimburse Telestream for all reasonable travel and out-of-pocket expenses incurred by Telestream in connection with the performance of the Services.

4. PERFORMANCE DATES; CHANGE ORDERS

Telestream shall use reasonable efforts to meet any performance dates specified in the quotation, SOW, or purchase order, and any such dates shall be estimates only. If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. Telestream shall, within a reasonable time after such request (and, if such request is initiated by Customer, not more than ten (10) business days after receipt of Customer’s written request), provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Services arising from the change; (c) the likely effect of the change on the Services; and (d) any other impact the change might have on the performance of this Agreement. Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a “Change Order”). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

5. CUSTOMER’S OBLIGATIONS

Customer shall: (a) cooperate with Telestream in all matters relating to the Services and provide such access to Customer’s premises, and such office accommodation and other facilities as may be reasonably requested by Telestream, for the purposes of performing the Services; (b) respond promptly to any Telestream request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Telestream to perform Services in accordance with the requirements of the Agreement; (c) provide such Customer materials and information and Telestream may reasonably request to carry out the Services in a timely manner and ensure that such Customer materials and information are complete and accurate in all material respects; and (d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start. If Telestream’s performance of its obligations under these Terms is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Telestream shall not be deemed in breach of its obligations under these Terms or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

If Customer does not perform a material obligation in connection with the Services within 30 days of the applicable deadline, then Telestream may in its sole discretion terminate the SOW or purchase order upon 30 days written notice to Customer. In addition, 180 days after such notice, Telestream in its sole discretion may invoice Customer for the full amount of the terminated Services.

6. INTELLECTUAL PROPERTY

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, “Intellectual Property Rights”) in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Telestream in the course of performing the Services, including any items identified as such in an SOW (collectively, the “Deliverables”), shall be owned by Telestream. Upon receipt of full payment for the Services, and except for any Confidential Information of Customer or Customer materials, Telestream hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

7. PAYMENT TERMS; INVOICES

In consideration of the provision of the licenses, equipment and Services provided by Telestream under this Agreement, Customer shall pay all invoiced amounts due to Telestream within 30 days of the date of the applicable invoice. Unless specified otherwise in the applicable quote or SOW, all payments shall be in US dollars and made by check or wire transfer. In addition to any other right Telestream might have, if Telestream does not receive payment by the applicable due date, then at Telestream’s discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. In addition, Telestream may suspend its provision of Services until all payment has been made in full.

Invoicing is as follows: (a) for projects valued at or less than \$25,000 USD, the invoice will issue upon receipt of the applicable purchase order; (b) for projects valued at great than \$25,000 USD, the invoice will issue as set forth in the applicable quote or SOW.

8. TAXES

Unless otherwise indicated on the relevant quotation, SOW, or invoice issued by Telestream, any and all sales, use, value added (VAT) and similar taxes imposed on Telestream or which Telestream has a duty to collect in connection with the sale, supply, delivery, or use of any Product will appear as separate items on the invoice, and Customer shall be responsible for their payment. If sales to Customer are exempt from such taxes, Customer shall furnish Telestream with a certificate of exemption prior to commencement of any Services.

9. CONFIDENTIALITY

All non-public, confidential or proprietary information of Telestream, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by Telestream to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by Customer without the prior written consent of Telestream. Confidential Information does not include information that is: (a) is or becomes generally available to the public other than as a result of Customer's breach of this Agreement; (b) is obtained by Customer on a non-confidential basis from a third party that, to Customer's knowledge (after reasonable inquiry), was not legally or contractually restricted from disclosing such information; or (c) Customer establishes by documentary evidence, was in its possession prior to Telestream's disclosure hereunder. Customer shall use the Confidential Information only to make use of the Services and Deliverables. Telestream shall be entitled to injunctive relief for any violation of this Section 9.

10. EXPORT RESTRICTIONS

Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of products and Services and technology, and will obtain all required U.S. and local authorizations, permits, or licenses.

11. WARRANTY

Telestream shall perform the Services provided under the SOW in a workmanlike manner. Customer's sole and exclusive remedy for breach of warranty shall be, at Telestream's option: (a) re-performance of the Services; or (b) termination of the SOW or the applicable Service(s) and reimbursement by Telestream to Customer of the portion of the Service fees paid to Telestream for such non-conforming Services.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, ALL OF WHICH ARE EXCLUDED, INCLUDING WITHOUT LIMITATION, THOSE OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA, ACCURACY, NON-INFRINGEMENT, TITLE, OR REASONABLE CARE AND SKILL.

12. LIMITATION OF LIABILITY

UNLESS APPLICABLE LAW PRESCRIBES OTHERWISE, IN NO EVENT SHALL TELESTREAM, ITS AFFILIATES, SUCCESSORS, ASSIGNS, SUPPLIERS AND SERVICE PROVIDERS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT TELESTREAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL THE COLLECTIVE AGGREGATE LIABILITY OF TELESTREAM, ITS AFFILIATES, SUCCESSORS, ASSIGNS, SUPPLIERS AND SERVICE PROVIDERS ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED (A) THE AGGREGATE AMOUNTS PAID OR PAYABLE TO TELESTREAM FOR THE SPECIFIC QUOTE, SOW, OR ACCEPTED PURCHASE ORDER THAT IS THE SUBJECT OF THE CLAIM GIVING RISE TO SUCH LIABILITY, OR (B) IF NO SUCH AMOUNTS HAVE BEEN PAID OR ARE PAYABLE, \$10,000.

13. TERM AND TERMINATION

The applicable quote, SOW, or purchase order will set forth the term of the Services. As set forth in the applicable quote, SOW, or purchase order, upon occurrence of any renewal Services term, the fees for the Services during any renewal term may be subject to change upon notice to Customer by Telestream.

In addition to any remedies that may be provided under the Agreement, Telestream may terminate these Terms and any related quote, SOW, or purchase order, with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under the Agreement and such failure continues for 10 days after Customer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of the terms of the Agreement, in whole or in part; (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors; or (d) assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under the SOW, without the prior written consent of Telestream, or in the event of a sale of all or substantially all of Customer's assets, or transfer of a controlling interest in Customer to an unaffiliated third party. Upon termination, in addition to any invoiced amounts still owing, Customer shall promptly pay Telestream for all work Telestream has performed up to the effective date of termination at the agreed-upon prices, fees and expense reimbursement rates, plus a reasonable margin. If Customer wishes to re-engage Telestream after a termination by Telestream under Section 13(b), the parties must enter into a new SOW before Telestream will perform any additional Services. Section 1 and Sections 5 through 22 survive the termination or expiration of the Agreement.

14. WAIVER

No waiver by Telestream of any of these Terms is effective unless explicitly set forth in writing and signed by Telestream. The waiver by either party of any right provided under these Terms or an SOW will not constitute a subsequent or continuing waiver of such right or of any other right under these Terms or an SOW.

15. FORCE MAJEURE

Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performing any term of these Terms or an applicable SOW when and to the extent such failure or delay is caused by or results from acts beyond the affected party's control, including without limitation, acts of God, flood, fire, earthquake, pandemic, epidemic, explosion, labor disputes, supply chain shortages, delays of common carriers, government order, law or action, national or regional emergency, telecommunication breakdowns, power outages or shortages, or other such events or circumstances. The obligations and rights of the affected party will be extended for a period of time equal to the period of time during which such event prevented its performance.

16. ASSIGNMENT

Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under these Terms, without the prior written consent of Telestream, and any purported assignment, delegation or transfer in violation of this Section 16 is null and void. Subject to the foregoing, these Terms are binding upon and inure to the benefit of the parties' hereto and their respective successors and permitted assigns.

17. ATTORNEYS FEES

Telestream shall be entitled to recover its reasonable costs and attorneys' fees, both at trial and on appeal, in any litigation based on these Terms in which Telestream is the prevailing party.

18. GOVERNING LAW; VENUE

All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California, in each case located in the County of Sacramento, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

19. SEVERABILITY

In the event that one or more terms of these Terms herein or in a related SOW becomes or is declared to be invalid, illegal or unenforceable by any court of competent jurisdiction, each such term will be null and void and deemed deleted from the Terms or SOW. All remaining terms of the Terms or SOW will remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of the SOW is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate the SOW by written notice with immediate effect to the other party.

20. RELATIONSHIP OF THE PARTIES

The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. AMENDMENT AND MODIFICATION

These Terms may be modified only upon written notice from Telestream and Customer's affirmative assent (including without limitation, by Customer's electronic clickthrough or written signature) to any such written revision or modification of these Terms. An SOW may be modified only by a written document executed by an authorized representative of each party.

22. NOTICES

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each a "Notice") will be in writing and addressed to the parties at the addresses set forth in the quote or SOW or to such other address and contact personnel that may be designated by the receiving party in writing. All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email (with confirmation of transmission), or by certified mail, or registered mail (in either case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon confirmed receipt of the receiving party, and (b) if the party sending the Notice has complied with the requirements of this Section 22.