

DEDICATED INTERNET ACCESS SERVICE

1.0 Description of Service

Dedicated Internet Access ("DIA") Service ("Service"), which includes T1, DS-3, Ethernet, Fast Ethernet, Gigabit Ethernet and OC-n speeds, provides Internet access to the Customer via either a cross-connect or a local loop from the Customer Premises router to a port on the VTX Internet access network interface. For access via a local loop, the local loop will be provided by VTX between the VTX Internet access network interface and the Customer Premises router. Service may accommodate special routing access requests by the Customer and/or by VTX. If the Customer Premises router is located in a VTX collocation facility, access to Service will be provided to the Customer via a cross-connect, and access to the collocation will be available to Customer under the terms of the applicable VTX Collocation License Agreement.

2.0 DIA Equipment and Maintenance

Service must terminate into a VTX-approved router on the Customer Premises ("CPE"). A CPE router is required for the exchange of traffic between the VTX Network and the Customer, and may be furnished by Customer or provided by VTX at either no additional charge or for a monthly recurring fee, depending on the speed of Service. If provided by the VTX, VTX will maintain, manage and support all DIA Equipment, including all associated device configurations and operational usernames and passwords. Customer must provide VTX unrestricted access to VTX-provided DIA Equipment for purposes of testing, upgrading, and other maintenance activities. Customer will provide continuous electrical service to VTX-provided DIA equipment. VTX will not be responsible for management of VTX-provided DIA Equipment if Customer has modified the DIA Equipment, including making any configuration changes. Customers who choose to provide their own DIA routers will be solely responsible for all router maintenance, management, and support. In addition, Customer must provide a single Layer-3 (IP) interface on Customer provided DIA router for the termination of Service. VTX will configure a single IP address on the single Layer-3 IP interface. Multiple Layer-3 or Layer-2 interfaces may not be used to connect directly to any single DIA Service circuit.

3.0 DIA Service Demarcation

The point of demarcation for Service is the physical network location to which the Customer provided DIA router is connected or, if DIA Equipment is furnished by VTX, the LAN port at which interconnection takes place. Customer will provide VTX with access to Customer's premises, as necessary, to facilitate Service installation, testing and maintenance requirements.

4.0 Service Provisioning

If VTX, in its sole discretion, decides to provide the Service from a serving Local Exchange Carrier and subsequently ascertains that said facilities are unavailable for use, VTX may cancel the Service Order Agreement or Master Service Order Agreement without liability and without any further obligation to Customer.

5.0 Service Use

The Service Use is limited to Customer and its End Users.

6.0 Notices

Customer shall notify VTX within five (5) days of any information or notices served on Customer that might adversely affect VTX including, but not limited to, notices of any claims or proceedings that involve the Service. In addition, Customer shall promptly notify VTX of any errors, "bugs," or Service problems of which Customer becomes aware when using the Service.

7.0 Disclaimers

VTX exercises no control over, and therefore accepts no responsibility for information or content passing through the Company's host computers, VTX Network hubs and POPs (the "VTX Network"). EXCEPT AS EXPRESSLY SET FORTH IN SECTION 13 *INFRA*, VTX MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, FOR THE SERVICE OR EQUIPMENT IT PROVIDES, AND IT DISCLAIMS ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. VTX expressly denies any responsibility for the accuracy or quality of information obtained by Customer or its End-Users through the use of Service. The use of any information obtained via the VTX Network is at Customer's and End User's own risk.

8.0 Term and Termination

- 8.1 Service Commencement. VTX will notify Customer when: (a) Service is installed or connected, successfully tested, and available for Customer use; and (b) if VTX is installing DIA Equipment, that the DIA Equipment has been installed and is operational. Billing will begin on the Start of Service Date regardless of whether Customer is prepared to use Service. VTX shall not be liable for any damages of any nature resulting from delays in meeting requested or specified service dates or its inability to provide Service.
- 8.2 Term. The minimum term of Service is one (1) year beginning on the Start of Service Date. Unless one Party notifies the other in writing at least thirty (30) days prior to the expiration of the original or any renewal term of Service that it intends not to renew Service, Service shall automatically renew for the same term of Service period at the same pricing, terms and conditions.

9.0 Cancellation and Termination Charges

- 9.1 If Customer cancels Service after an order has been placed but before the Start of Service Date, Customer will (a) pay VTX one (1) month's monthly recurring charges for Service, plus any applicable service ordering and installation charges incurred by VTX in undertaking to provision Service, and (b) return, at Customer's expense, any VTX equipment in the same condition as when it initially was delivered and installed, reasonable wear and tear excepted, as well as any software or other materials provided by VTX.
- 9.2 If Customer terminates Service after the Start of Service Date, Customer must pay for all charges associated with the ordering and installation of Service, as well as the first month's recurring charges and for the monthly recurring charges for the remainder of the Service term, unless the Customer's termination is for cause. In addition, Customer will return, at its expense, any VTX equipment in the same condition as when it initially was delivered and installed, reasonable wear and tear excepted, as well as any software or other materials provided by VTX.
- 9.3 Customer agrees that the damages specified in Sections 9.1 and 9.2 are difficult or impossible to ascertain with certainty and, therefore, the damages specified therein are intended to serve as liquidated damages and not a penalty.

10.0 Acceptable Use Policy

Customer acknowledges that it has reviewed the Company's Acceptable Use Policy ("AUP") (located at <http://www.vtxtelecom.com/terms.html>). The said AUP, which may be amended by VTX from time to time, is incorporated by reference herein and binding on Customer.

11.0 Pricing

Pricing for the DIA Service is as set forth in the applicable Service Order and may vary depending on port speed, access costs or DIA Equipment costs required to deliver the Service to Customer. In addition, for burstable 10 Meg, DS3 Service, prices may vary based on monthly comparisons of a Customer's committed traffic ratios to its measured traffic ratios; *i.e.*, the amount of traffic that Customer actually sends to and receives from VTX during a monthly billing period is above a committed level of usage.

12.0 Service Level Agreement ("SLA")

Customer acknowledges that it has reviewed the Company's Service Level Agreement ("SLA") (located at <http://www.vtxtelecom.com/terms.html>). The said SLA, which may be amended by VTX from time to time, is incorporated by reference herein and binding on VTX and Customer.

13.0 Network Numbers and Domain Name Policies

- 13.1 The VTX Network Number and Domain Name Policies are set forth in its AUP located at the Web site: <http://www.vtxtelecom.com/terms.html>. In all instances, the VTX Domain Name and TCP/IP Addresses provided in connection with the Service remain the property of VTX. Upon the termination of Service, Customer's right to use VTX Domain Name and TCP/IP Addresses will be ceased. Unless otherwise mutually agreed in writing, Customer at all times is responsible for maintaining its own Domain Name when purchasing Service and for paying all charges associated with the Domain Name, including charges billed to Customer for Domain Name registration by third parties.
- 13.2 VTX will have sole and exclusive discretion with regard to the Internet routing of VTX-provided IP addresses.

14.0 Software License

- 14.1 Customer will not reproduce, modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine, or attempt to determine, source code from any VTX or third party software, nor will it permit or authorize any third party to do so. Title to such software, and all related technical know-how and intellectual property rights therein, will remain



the exclusive property of VTX and/or its suppliers. Customer must not take any action to jeopardize, limit or interfere in any manner with VTX's or a supplier's rights of ownership with respect to any licensed software.

- 14.2 VTX PROVIDES, AND CUSTOMER HEREBY ACCEPTS, ANY VTX OR THIRD PARTY SOFTWARE PROVIDED TO OR USED BY CUSTOMER IN CONNECTION WITH SERVICE "AS IS," WITH NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NOTHING HEREIN MAY BE INTERPRETED TO ENHANCE OR CREATE ANY WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE. VTX DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF THE DELIVERY, INSTALLATION, SUPPORT OR USE OF ANY SOFTWARE AND ASSUMES NO OBLIGATION TO CORRECT ERRORS IN ANY SOFTWARE. CUSTOMER UNDERSTANDS AND ACCEPTS ALL RESPONSIBILITIES FOR ANY SOFTWARE IN MEETING CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

15.0 Limitation of Liability

- 15.1 NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF CUSTOMER OR CUSTOMER'S END USERS OF THE VTX NETWORK AND SERVICE INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES FOR LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES OR SERVICE INTERRUPTIONS. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, CUSTOMER'S SOLE REMEDIES FOR ANY CLAIMS RELATING TO SERVICE OR THE VTX NETWORK ARE LIMITED TO CREDIT OUTAGE ALLOWANCES FOR WHICH THE CUSTOMER MAY BE ELIGIBLE.
- 15.2 VTX will not be liable for any action it takes to remove or restrict access to obscene, indecent or offensive content made available by Customer, nor for any action taken to restrict access to material made available in violation of any law, regulation or rights of a third party including, but not limited to, rights under the copyright law and prohibitions on libel, slander and invasion of privacy.

16.0 Indemnification

Customer will indemnify, defend and hold VTX and its officers, directors, employees, agents, affiliates and suppliers harmless from and against any claims, actions, demands, losses, damages and expenses, including attorney's fees, relating to any violation including, but not limited to, a breach by Customer, its End Users or other users of its account of their obligations with regard to the Service, the placement or transmission of any message, information, software or other materials on the Internet by Customer, its End Users or other users of its account, a violation of the AUP, or Customer's traffic being processed through the Company's switch, port or node. This indemnification will survive the termination of the Service Term.