

DIGITAL SUBSCRIBER LINE (DSL) SERVICE

1.0 Description of Service

Digital Subscriber Line ("DSL") Service ("Service"), in conjunction with VTX provided or Customer-provided equipment ("CPE"), provides Internet access to Customers via ADSL, IDSL and SDSL connections between Customer premises and the VTX Network. CPE furnished by Customer must be VTX-approved or certified. VTX-provided CPE will be furnished with the equipment manufacturer's end-user warranty. VTX, as necessary, will assist Customer in obtaining any equipment repair or replacement during the warranty period.

Customer must provide VTX or its contractors with reasonable access to Customer's Premises in order to assure the timely and successful installation of Service and VTX-provided equipment. If additional inside wiring is required to provision Service or related CPE, Customer may be charged for such additional wiring. And, if such inside wiring requires greater than two (2) hours' labor, or involves complex inside wiring *e.g.* in an office building or Multiple-Dwelling Unit, the Customer may be required to obtain permission from a building manager/owner or hire an outside contractor at Customer's expense to complete the inside wiring installation.

VTX shall provision Customer's line with the best speed available, but if VTX cannot accommodate at least eighty percent (80%) of Customer's requested circuit speed, Customer may cancel Service without liability. If VTX line-testing discloses that SDSL cannot be implemented, VTX, upon Customer request as reflected in an SOA, will provision Customer's line with 144K IDSL, or Customer may cancel the SOA without liability. If Customer's line is found to be capable of circuit speeds exceeding Customer's requested speed, VTX, upon Customer request as reflected in an SOA, will provision Customer's line with a higher circuit speed.

Charges are dependent on the circuit speed furnished and VTX-provided CPE.

2.0 DSL Equipment and Maintenance

DSL Service will terminate into VTX-provided or VTX-approved CPE. If provided by VTX, the CPE will be billed as a one-time charge. VTX will maintain, manage and support the VTX-provided CPE, including all required configurations and initial operational usernames and passwords. Customer must provide continuous electrical service and may not relocate, alter or otherwise modify VTX-provided CPE, including the making of any software configuration changes. VTX will configure a single IP address on the single Layer-3 IP interface. Multiple Layer-3 interfaces may not be used to connect directly to any single DSL Service line.

3.0 DSL Service Demarcation

The demarcation point for Service at Customer premises is the physical network element to which the VTX-provided or Customer-provided CPE connects, namely, the LAN port cable provided by Customer. If Customer is unable to provide the cable, VTX will do so for an additional charge.

4.0 Service Provisioning

If the Service is furnished via copper facilities acquired from a serving Local Exchange Carrier and such facilities become unavailable for use, the Company may discontinue Service without liability or any further obligation to Customer.

5.0 Service Use

Service may only be used by Customer and its End Users.

6.0 Notices

Customer must notify VTX within five (5) days of acquiring any information in connection with Service, which information might adversely affect VTX including, but not limited to, any errors, "bugs," or Service problems encountered by Customer.

7.0 Disclaimers

VTX shall not be responsible for information content transmitted via Service involving Company host computers, 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 CPE 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 Users' own risk.

8.0 Term and Termination

- 8.1 Service Commencement: VTX will notify Customer when: (a) Service is installed (including VTX provided CPE), successfully tested, and available for Customer to use. Billing will begin on the Start of Service Date regardless of whether Customer uses Service on that date.
- 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, the term of Service will automatically renew for an additional one-year term.

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 shall return, at Customer's expense, any VTX-provided CPE 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 in anticipation of furnishing the Service.
- 9.2 If Customer terminates Service after the Start of Service Date, Customer shall be liable for all charges associated with the ordering and installation of Service, as well as all monthly recurring charges for the remainder of the Service term, unless the Customer's termination is for cause. In addition, Customer shall return, at its own expense, any VTX-provided CPE 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 VTX Acceptable Use Policy ("AUP") located at VTX Web page: www.vtxtelecom.com/terms.html. The AUP, which is incorporated by reference herein and made part of these terms, may be amended by VTX from time to time.

11.0 Pricing

Prices for DSL Service will be set forth in the applicable Service Order Agreement; and will vary depending on the type of connectivity, port speed, and required VTX-provided CPE to furnish the Service to Customer.

12.0 Service Level Agreement ("SLA")

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

13.0 Network Numbers/Domain Name Policies

- 13.1 The VTX Network Number and Domain Name Policies are set forth in its AUP located at 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 discretion with regard to the Internet routing of VTX-provided IP addresses.

14.0 Software License

- 14.1 Customer may 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 may 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, shall remain the exclusive property of VTX and/or its suppliers. Customer may 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 SHALL 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 SHALL 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, VTX'S ENTIRE LIABILITY (AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY) FOR CLAIMS ARISING UNDER OR IN ANY WAY RELATED TO SERVICE OR THE VTX NETWORK SHALL BE LIMITED TO THE LESSER OF DIRECT DAMAGES ALLEGED AND PROVED OR THE TOTAL AMOUNT PAID BY CUSTOMER TO VTX DURING THE PREVIOUS THREE (3) MONTHS FOR THE SERVICE. The foregoing limitations apply to all causes of action and claims of any kind arising out of or related to Service or the VTX Network and any Service Order, and Customer acknowledges and accepts the reasonableness of these disclaimers and limitations of liability.
- 15.2 VTX shall 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 shall 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 shall survive the termination of the Service Term.