

# GENERAL TERMS AND CONDITIONS

## **AGREEMENT COMPONENTS; TERMS AND CONDITIONS**

The services referenced in the Agreement (“Service” or “Services”) are offered to Customer by Kloud Communications Inc. d/b/a VTX Telecom, and its affiliates (“VTX” or “Company”). The Agreement between Company and Customer sets forth the legal rights and obligations governing the Company’s offer, provisioning and delivery of Services and Customer’s receipt and use thereof. Customer shall contract for, and order, Service on a Company-designed Service Order Agreement (“SOA”), or Master Service Agreement (“MSA”).

The Agreement in its entirety shall consist of the terms and conditions in each SOA, or MSA; the Supplemental Product Terms and Conditions elsewhere on this website; these General Terms and Conditions; VTX’s Acceptable Use Policy (“AUP”), if applicable; and any applicable tariffs. In the event of an inconsistency between a term or condition contained in any component document(s) comprising the Agreement (but only to the extent of the inconsistency), including any incorporated attachments, appendices, exhibits or other documents, the order of precedence, from the most to the least controlling, shall be:

- (1) Applicable filed and effective tariff(s);
- (2) Any mutually agreed upon Addenda to the SOA, or MSA properly executed by authorized representatives of both VTX and Customer;
- (3) Applicable Supplemental Product Terms and Conditions, including Exhibits and Service Level Agreements (“SLAs”);
- (4) General Terms and Conditions and AUP; and
- (5) Terms of a SOA, or MSA, including any cancelled tariff terms and conditions, or any Promotions.

The offer, provisioning and delivery of Services are subject at all times to the receipt by Company of all required approvals or authorizations from regulatory agencies having jurisdiction over the Services or the Company. If Customer receives and uses Services without a SOA, or MSA as described herein, Customer nevertheless shall be deemed to have accepted, and therefore will be bound by, all the applicable terms and conditions relating to the Services received and used.

THESE GENERAL TERMS AND CONDITIONS, THE SUPPLEMENTAL PRODUCT TERMS AND CONDITIONS, AND VTX’S AUP WILL BE LOCATED ON A WEBSITE OR WEBSITES ACCESSIBLE AT ALL TIMES BY CUSTOMER AND, TOGETHER WITH VTX’S TARIFFS, MAY BE MODIFIED BY VTX AT ANY TIME AS PERMITTED OR REQUIRED BY LAW. FOR OTHER THAN VTX TARIFFS GOVERNED BY NOTICE REQUIREMENTS IMPOSED BY REGULATORY AUTHORITIES, THE COMPANY SHALL PROVIDE CUSTOMER WITH AT LEAST FIFTEEN (15) DAYS PRIOR NOTICE OF ANY CHANGES THAT WOULD MATERIALLY AND ADVERSELY AFFECT CUSTOMER SO THAT CUSTOMER MAY ELECT TO DISCONTINUE SERVICE AND AVOID THE EFFECTS OF THE CHANGES. COMPANY NOTICE MAY BE FURNISHED BY: (1) A POSTCARD OR LETTER; OR (2) FACSIMILE; OR (3) E-MAIL, IF CUSTOMER CONSENTS. FOR OTHER THAN VTX TARIFFS GOVERNED BY NOTICE REQUIREMENTS IMPOSED BY REGULATORY AUTHORITIES, THE COMPANY WILL PUBLISH CHANGES ON RELEVANT COMPANY WEBSITES AT LEAST FIFTEEN (15) DAYS IN ADVANCE OF THEIR TAKING EFFECT. CUSTOMER SHALL BE BOUND BY CHANGES AFTER THEY BECOME EFFECTIVE. IN NO EVENT WILL ANY CHANGE BE DEEMED TO AFFECT ANY EXISTING SLA. CUSTOMER ACCEPTS THE INCORPORATION INTO THE AGREEMENT OF APPLICABLE TARIFFS, SUPPLEMENTAL PRODUCT TERMS AND CONDITIONS, THESE GENERAL TERMS AND CONDITIONS AND THE AUP, AND ALL MODIFICATIONS MADE THERETO. CUSTOMER MAY OBTAIN A HARD COPY OF THE AGREEMENT (OR ANY OF ITS COMPONENTS) AT ANY TIME BY CONTACTING VTX AND REQUESTING IT.

### **1.0 DEFINITIONS** (Terms with initial caps not otherwise defined herein shall have the meanings ascribed in the Agreement.)

- 1.1 **Access Service Request**: That part of an Agreement that is executed by the Company and the Customer and, among other things, identifies the particular Access Service to be furnished and the location at which that Service is to be provided.
- 1.2 **Affiliate**: Affiliate means, with respect to either Company or Customer, any other entity which controls, is controlled by, or is under common control with the Company or Customer. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of Company or Customer management and policies, whether through the ownership of voting securities, by contract, or otherwise.
- 1.3 **Automatic Number Identification (ANI)**: Digits transmitted by the calling party’s carrier that indicate the calling party’s telephone number.
- 1.4 **Authorization Code(s)**: A code in numbers or letters employed by a Customer to gain access to a Company Service, such as Calling Card Services.
- 1.5 **Circuit**: An individual telecommunications facility included as part of Service.
- 1.6 **Communications Facilities**: Facilities the Company is willing to specially construct or otherwise acquire in order to provide Service(s) to the Customer.
- 1.7 **Company**: Kloud Communications Inc. d/b/a VTX Telecom; or any controlled affiliate providing an offered product.
- 1.8 **Customer**: The person, firm, corporation or other entity that orders or uses Service and is responsible for compliance with all Customer obligations set forth in the Agreement, including the duty to pay for Service.

- 1.9 Directory Assistance: A service that allows the Customer to acquire directory listings.
- 1.10 Domain Name: An address on the Internet that is comprised of a hierarchical sequence of names (labels) separated by periods (dots), e.g. vxtelcom.com, in computer networks using the Transfer Control Protocol/Internet Protocol.
- 1.11 End User or User: Any person or entity that receives or uses VTX Service, irrespective of whether such person or entity is authorized by the Customer to receive or use Service.
- 1.12 FCC: Federal Communications Commission.
- 1.13 Individual Case Basis: A service arrangement in which service rate, charges or terms and conditions are non-standard and based on the specific requirements of the Customer.
- 1.14 Master Service Agreement (MSA): An Agreement that is executed by the Company and the Customer; and, among other things, accommodates the execution of subsequent Service Order Agreements or Access Service Requests by the Company and the Customer.
- 1.15 Network: the telecommunications network of Company or Customer or a contracted third party, as the context of the provision requires or as contemplated.
- 1.16 Network Number: The part of an Internet address that designates the network to which the addressed node belongs.
- 1.17 Non-Recurring Charges: One-time charges for Service including, but not limited to, charges for specially constructed Communications Facilities, Service installation, e.g., "expedite charges," or special fees for which the Customer becomes responsible at the time a SOA, or MSA is accepted.
- 1.18 Off-Net Service: Service where one or both locations to be connected are not served by the Company's Network and, as a result, a portion of Service is provided by another service provider. Where the Company agrees to provide Off-Net Service, the terms, conditions and pricing of such Service will be provided on an Individual Case Basis ("ICB") subject to the terms and conditions of the underlying service provider. The Company will invoice Customer for Off-Net Service and will manage the provisioning of Service but shall not be liable for any service failures or deficiencies on the part of the underlying service provider.
- 1.19 On-Net Service: Service where both locations to be connected are served by the Company's Network and, as a result, Service is provided entirely by the Company.
- 1.20 Service or Services: A product or products offered and provided to Customer by the Company.
- 1.21 Service Order Agreement ("SOA"): An Agreement that is executed by the Company and the Customer and, among other things, identifies the Service to be furnished and the location(s) at which that Service is to be provided.
- 1.22 Supplemental Product Terms and Conditions: Terms and conditions additional to these General Terms and Conditions that apply to a Service ordered or used by Customer.
- 1.23 Recurring Charges: Monthly charges for Services or equipment.
- 1.24 Start of Service Date: The date that Company notifies Customer of the Service is available for use by Customer or some other mutually agreeable date.
- 1.25 United States: The 48 contiguous states and the District of Columbia, Hawaii, Alaska, Puerto Rico, the US Virgin Islands, as well as the off-shore areas outside the boundaries of the coastal states of the 48 contiguous states to the extent that such areas appertain to and are subject to the jurisdiction and control of the United States.
- 1.26 Voice Services: Voice Services consist of local and long distance voice services including, but not limited to, basic business lines, plain old telephone service ("POTS"), trunk services, and ISDN-PRI service, as set forth in applicable VTX tariffs, price lists or contracts. Voice Services do not include VTX IP-based services including, but not limited to, VoIP Termination, VoIP Origination, VTX Flex and Managed IP PBX Services.

## **2.0 LIMITATIONS ON SERVICE**

- 2.1 Availability of Facilities: Service is offered and furnished subject to the availability of all necessary facilities, including those acquired by VTX from other entities. VTX may decline to accept a request for Service if it determines that, based on its existing facilities at the time of the request and its current and forecasted need to provide other Services; it requires the available facilities for other Service needs. VTX therefore may limit its provisioning of Service, if necessary, in order to manage its network and operations in an efficient manner and to meet the reasonable service expectations of its existing and future customers based on current and projected available facilities capacity. In addition, VTX may restrict or allocate Service among Customers, when necessary, due to the facilities shortages or causes beyond the control of VTX.
- 2.2 Right to Alter Service: In its sole discretion and without liability to Customer, Company may: (a) alter the methods, processes or suppliers by or through which it provides the Service; (b) change the facilities used to provide Service; (c) substitute comparable Service for that being provided to Customer; or (d) in the case of Calling Plans and Unlimited International Plans, adjust, remove or modify the coverage areas and minutes allocation without prior notice in response to changes in international calling rates and/or service coverage. If necessary, due to the potential impact, the Company will furnish prior notice of any alterations, changes or substitutions to the affected Customers.

- 2.3 Choice and Ownership of Facilities: Except as expressly provided otherwise in a SOA, or MSA, the facilities used to provide Service will be of VTX's exclusive choosing. In no event will title to any of the facilities used to provide Service be vested in the Customer.
- 2.4 Interconnected Voice over Internet Protocol Services: VTX does not support the provision of Interconnected VoIP Services, as defined in FCC 47 C.F.R. § 9.3, by Customer or any third party via any VTX Voice Service.
- 2.5 Company's Right to Block or Discontinue Service Without Notice to Customer
- 2.5.1 Network Blockage or Degradation: The Company may discontinue furnishing the Service if Customer uses or misuses Service in a manner that results, or could result, in network blockage or other degradations that adversely affect the Service furnished to Customer or to other existing or prospective Customers of the Company.
- 2.5.2 Customer Violation of Agreement or Law: The Company may discontinue furnishing the Service if Customer uses, or threatens to use Service for any unlawful purpose or otherwise violates the terms of the Agreement.
- 2.5.3 Unlawful or Unauthorized Use: The Company may discontinue furnishing the Service, when it deems necessary to take such action in preventing unlawful or unauthorized use of the Service, by blocking traffic to or from certain countries, cities, NXX exchanges, or individual telephones; by blocking call origination; or by blocking calls using certain Customer authorization or access codes. The Company also may suspend the origination of domestic or international traffic associated with any or all Services if the Company deems such action necessary to prevent unlawful or unauthorized use of the Service due to the failure, in whole or in part, of any fraud detection system utilized by the Company to provide or support the Service.

### 3.0 WARRANTIES AND STANDARDS FOR SERVICES

- 3.1 The Company represents and warrants that it is duly licensed and authorized to provide Services and will remain so licensed and authorized by complying with all applicable federal, state, and local laws and requirements, and the Customer represents and warrants that it is duly licensed and authorized to receive and use Services and will remain so licensed and authorized by complying with all applicable federal, state, and local laws and requirements. Company and Customer represent and warrant that each is authorized to enter into the Agreement and perform its obligations thereunder. Company makes neither representations nor warranties, whether express, implied or statutory, regarding the Services, system equipment or Company-owned or provided equipment used by Customer, including any equipment with respect to which title may transfer to Customer (except to the extent set forth in any separate VTX sale transfer document). This exclusion includes, but not limited to, any implied warranties of merchantability, fitness of services or equipment for a particular purpose, or non-infringement of any third party rights. Additional limitations of warranty related to specific products will be set forth in applicable Supplemental Product Terms and Conditions or tariffs.
- 3.2 Limitations on Liability
- 3.2.1 Direct Damages: Even if advised of the possibility of losses or damages, Company shall not be liable, except as set forth herein, for any losses or damages resulting from: (a) its provisioning of Service to Customer; (b) any act or omission of Customer, those using the Customer's Service or third party entities furnishing products used in connection with Service; or (c) the loss or destruction of Customer data resulting from the use of Service. Company shall be liable to Customer for any property damage to Customer premises caused by its gross negligence or willful misconduct but in no event shall Company's liability be greater than an amount equal to the sum of the payments made by Customer to Company during the three months immediately preceding the event for which losses or damages are claimed. By entering into an Agreement and remaining as a Customer, Customer hereby manifests its acceptance of this limitation on direct damages as fair and reasonable.
- 3.2.2 Indirect or Consequential Damages: Neither Company nor Customer shall be liable to the other for any indirect, incidental, exemplary, punitive or other consequential damages, whether or not foreseeable, including, but not limited to, damages from the loss of data, business goodwill or profits, savings or revenue, harm to business, whether under contract, tort (including negligence), strict liability or any other theory of liability. A party's out-of-pocket costs for damages recovered by a third party shall be deemed to be indirect damages suffered by such party, except to the extent such damages are part of a claim for which indemnification is due under Section 4.
- 3.2.3 Service Interruptions: The Company's liability for Service interruptions, if any, shall be limited to credit outage allowances expressly provided for in the Agreement, including any applicable tariffs incorporated therein.
- 3.2.4 Delays: The Company shall not be liable to Customer for losses or damages resulting from its inability to provide Service or from any delay in meeting a scheduled Start of Service Date. If there is a delay in Service installation, Customer's exclusive remedy is set forth in Section 8.5, *infra*.
- 3.2.5 Force Majeure Events: In no event shall Customer have any claim or right against Company for any failure of performance due to causes beyond the Company's control, including, but not limited to: acts of God, fire, explosion, vandalism, cable cut, storm, flood or other similar occurrences; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over Company or of any department, agency, commission, bureau, corporation, or other instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; acts of terrorism; riots; wars; strikes; lock-outs, work stoppages or other labor difficulties; or supplier failures, shortages, breaches or delays.

3.2.6 Facilities, Services, Equipment or Systems of Others: The Company shall not be liable for the unavailability, or deficient performance, of any facilities, services, equipment or systems used in connection with the provision of Services that are under the control of Customer or any third party, even if the Company has acted as the Customer's agent in procuring such facilities, services, equipment or systems from third parties. Customer's rights with regard to the unavailability or deficient performance of such facilities, services, equipment or systems not provided by the Company shall be strictly as established by the supplying entity.

3.2.7 "On-Line" Services: All "On-line" Services are provided "as is." Customer acknowledges and agrees that communications and transactions conducted "on-line" may not be secure; that system failures may limit Customer's access to and use of "on-line" Services; and that "on-line" Services are not guaranteed to be error free. By subscribing to and using "on-line" Services, Customer manifests its acceptance of all the risks associated with the use of "on-line" Services, specifically, and the Internet, generally.

3.2.8 Customer's Failure to Fulfill Obligations: The Company shall not be liable to Customer or any third party for Customer's failure to fulfill its obligations, including, without limitation:

- a. obtaining, installing, and maintaining all necessary equipment, materials, and supplies for interconnecting Customer or third party facilities, services, equipment or systems to the Services;
- b. securing all licenses, permits, approvals, rights-of-way, access rights, including ingress and egress from buildings, and other arrangements necessary to install, receive, and use the Services; and
- c. ensuring that Customer or third-party facilities, services, equipment or systems interface are properly interconnected with the Services; that the signals delivered to the Company's Service are fully compliant with industry standards; and that such signals do not damage Company property or personnel, or degrade Service to other Customers of the Company.

3.2.9 Misuse of Customer's Service: The Company shall neither provide credit allowances nor otherwise be liable for the use, misuse or abuse of Customer's Service by the Customer, its agents, employees or any third parties including, without limitation, members of the public. If Company co-operates with Customer by recommending potential solutions to reduce or eliminate the unauthorized use of Customer's Service, Company undertakings shall not be deemed to be promises or guarantees by Company that the unauthorized use of Customer's Service will be reduced or eliminated, and in no event shall Company incur any liability in connection with those undertakings to Customer or any third party. In all instances, Customer shall be responsible for its facilities, services, equipment or systems interconnected with the Company's Service.

3.2.10 Billing Errors: The Company's obligation with respect to any errors resulting in Customer overpayments for the Service is limited to granting invoice credits equal to the dollar amounts erroneously billed. Under no circumstance will any billing error affect the Customer's obligation to pay for Services rendered and used.

3.2.11 Calls to Public Safety Answering Points (PSAPs) or 911: The Company shall not be liable for the misrouting of any calls made to PSAPs or to municipal emergency service providers.

## 4.0 INDEMNIFICATION

4.1 Company's Indemnification of Customer: Company will defend and indemnify Customer, its employees, directors, officers and agents, from and against any suit, proceeding or other claim brought by an entity (not a party to or an affiliate of a party to this Agreement) that is caused by, arises from, or relates to damage to real or tangible personal property or personal injuries (including death) arising out of the gross negligence or willful act or omission of the Company in the provision of Service provided by the Company.

4.2 Customer's Indemnification of Company: Customer will defend and indemnify the Company, its employees, directors, officers and agents, from and against any suit, proceeding or other claim brought by an entity that is caused by, arises from, or relates to: (a) damage to real or tangible personal property, personal injuries (including death) arising out of the gross negligence or willful act or omission of Customer in the use of the Service; and (b) representations regarding the nature of Customer's traffic and any use, operation or resale of the Service by Customer in contravention of this Agreement, including without limitation, claims of libel, slander, unauthorized use of copyright or trademark by Customer or the business activities and practices of Customer arising from Customer's use of the Service.

4.3 Intellectual Property: If a Service provided by the Company becomes, or if the Company reasonably believes a Service it is providing may become, the subject of a suit, proceeding or other claim by an entity (not a party to or an affiliate of a party to this Agreement) that the Service directly infringes the U.S. patent, trademark or copyright rights ("Intellectual Property") of such entity, the Company shall, at its own expense and option: (a) procure the right for the Company to continue to provide the Service; or (b) modify or replace the Service with a different service that has substantially similar functionality; or (c) discontinue providing or direct the cessation of any use of the Service and refund to Customer a pro-rated portion of any charges paid for the affected Service through the date of Service discontinuation or cessation. Notwithstanding the foregoing, the Company will have no obligation to defend or indemnify Customer, and Customer will defend, indemnify and hold harmless the Company for any suit, proceeding or claim arising out of: Customer's: (a) designs, specifications, modifications, or configurations; (b) combination of Customer hardware or software, or other materials, services or methods with the Service; or (c) use, operation or resale of the Service in contravention of its obligations and responsibilities.

4.4 Procedure: If an entity makes a claim against Company or Customer, the party in receipt of such claim ("Indemnified Party") will promptly notify the other party ("Indemnifying Party") in writing no later than sixty (60) days after receipt of such notification of a potential claim. The Indemnifying Party may assume sole control of the defense of such claim and all related settlement negotiations.

The Indemnified Party will provide the assistance, information and authority necessary to assist the Indemnifying Party in its obligations. Neither Company nor Customer may settle any such matter without the consent of the other as to any settlement that imposes an obligation on, or requires any admission by, the other party. Failure of the Indemnified Party to promptly notify the other will not relieve the Indemnifying Party of its obligations except to the limited extent such delay prejudices the Indemnifying Party. Additionally, if the Service as and in the manner provided by the Company is determined by a court of competent jurisdiction to have directly infringed an entity's Intellectual Property rights, or if such claim is settled, the Company shall indemnify Customer for its reasonable legal fees incurred to defend itself against such claim up to and including the time of final disposition or settlement of such claim and any payment required to be made by the Customer pursuant to such judgment or settlement.

4.5 These Customer and Company indemnifications will survive the expiration of this Agreement.

## 5.0 CUSTOMER OBLIGATIONS

5.1 Commencement of Relationship and Service Provisioning: The execution of an Agreement by Customer and acceptance thereof by Company establishes the respective rights and obligations of the parties. If there is no executed Agreement but Customer nevertheless uses Services, Customer is deemed to have consented to all terms of the Agreement, including documents and publications incorporated therein by reference, e.g., these General Terms and Conditions and applicable Supplemental Product Terms and Conditions relating to the Service(s) used by Customer. Customer shall allow Company, its agents or contractors reasonable access to Customer's premises to facilitate installation, maintenance, testing, repair, and termination of the Service, including the retrieval of Company property used to provide the Service.

5.2 Use and Maintenance of Customer-Provided Facilities, Services, Equipment and Systems: If Customer, its agent or contractor fails to operate and maintain Customer-provided facilities, services, equipment and systems interconnected with a Service, with the result that there is harm or imminent harm to Company, its Services, personnel or other customers, Company may require Customer, at its expense, to acquire, install and use protective equipment designed to eliminate such harm. If the protective equipment fails to eliminate the harm, the Company, following the delivery of written notice to Customer, may suspend or terminate the Customer's Service immediately without any liability or further obligation to Customer.

5.3 Customer's Use of Company Service Marks and Trademarks: Without the prior written consent of the Company, Customer may not: (a) use any service mark or trademark of the Company or its affiliates, including those licensed to the Company or its affiliates, and (b) refer to the Company or any of its affiliates in connection with any service or product, promotional offering, or publication of the Customer.

### 5.4 Customer's Consents

a. Use of Electronic Records: Customer consents to the use of electronic records by the Company in a form or forms chosen by the Company solely.

b. Use of Email, Telephone Numbers and/or Mailing Information: VTX may request Customer's e-mail address, telephone number, or mailing address for the purposes of identity verification, or conduct surveys, or to provide additional services (if they are opt-in to receive e-mail newsletters, announcement lists or special promotion events). Whenever VTX requests the identity of a customer, Company will clearly indicate the purpose of the inquiry before the information is requested. VTX maintains a strict "No-Spam" policy that means that Company does not sell, rent or lease its customer lists to third parties. VTX may, from time to time, contact Customer on behalf of external business partners about a particular offering that may be of interest to Customer. In those cases, Customer's personal information (e-mail, name, address, telephone number) is not transferred to the third party without Customer's consent or as permitted by VTX Privacy Policy.

5.5 Notice of Claims and Problems: Customer shall notify Company immediately upon its receipt of any information that might adversely affect the Company, including, but not limited to, notices of any claims or proceedings that involve the Service, and Customer shall notify Company promptly of any problem relating to the Service or its performance, and reasonably cooperate with the Company in repairing the Service problem.

5.6 Additional Services: Customer may request additional Service(s) from the Company, which Company, in its sole discretion, may agree to provide the Service(s) pursuant to an additional Agreement including, if applicable, any incorporated tariff(s).

5.7 Co-operation on Audits: If another carrier or regulatory agency seeks to audit traffic involving Services furnished under the Agreement, Customer will co-operate in any such audit investigation. In addition, to the extent any third party attempts to recover access fees, reciprocal compensation or other charges, surcharges or taxes from Company as a result of such audit investigation, Customer will indemnify and hold harmless Company for any and all costs and charges resulting from such third party action, although Customer may challenge any such charges assessed by a third party or any claim that its traffic is subject to access charges.

5.8 Compliance with FCC Registration Requirements: If required, Customer will timely prepare and filing quarterly the FCC Form 499-A to accurately reflect the Customer's operations.

5.9 Unless otherwise provided in a SOA, or MSA, Customer is fully obligated to satisfy the revenue and/or volume commitments upon which its Service rates and charges, discounts or credits are based.

5.10 911 Calling: Customer must ensure that no calls to a public safety answering point ("PSAP") or other emergency answering point can be made via a VTX Service from any location other than the particular Customer Premises where the Service is established.

## **6.0 REGULATORY/LEGAL COMPLIANCE**

- 6.1 Additional Charges Resulting from Regulatory Activity: Service rates and charges applicable to Customer under this Agreement are subject to the imposition of additional charges, surcharges or taxes that result from actions taken by federal, state, or local regulatory authorities, legislative bodies or courts of competent jurisdiction (collectively, "Regulatory Activity"). The Company may: (i) pass through to Customer, in whole or in part, any such charges, surcharges or taxes directly or indirectly relating to Regulatory Activity; or (ii) modify the rates, charges or other terms and conditions of this Agreement to accommodate the impact of Regulatory Activity, including, without limitation, actions taken by third parties in response to Regulatory Activity.

Jurisdictional Nature of Traffic: All traffic delivered by Customer, its agents or authorized users to the Company for local termination, and all traffic Company delivers to Customer, its agents or authorized users that originates in the same local calling area in which Customer's NPA-NXX is assigned or in which such traffic terminates with Customer, its agents or authorized users must either be local traffic or traffic entitled to be treated as local traffic under applicable federal, state and local laws, administrative and regulatory requirements, and any other authorities having jurisdiction over such traffic. With respect to such traffic, Company will assign local telephone numbers to Customer or route Customer's traffic for termination as local calling. Neither Customer nor any of its agents or authorized users may remove or in any way alter Automatic Number Identification ("ANI") or Calling Party Number ("CPN") information associated with any traffic delivered pursuant to this Agreement. Customer will cooperate or, as necessary, assure the cooperation of others within its control to obtain or verify any regulatory certifications or other information needed regarding the jurisdictional nature of the Customer's traffic.

- 6.2 Payment of Additional Charges: Customer shall promptly pay Company all access charges, reciprocal compensation, or any other charges, surcharges or taxes that, in accordance with FCC regulations or decisions, or those of any applicable state regulatory authority, or industry practices, are associated with Customer traffic delivered, or facilities utilized, pursuant to this Agreement, including, but not limited to, any retroactive charges (collectively, "Additional Charges") not already reflected in the rates charged by the Company for Service. Although the Company has no obligation to challenge Additional Charges imposed by third parties, it may do so and, if successful, will refund to Customer any Additional Charges previously paid by Customer. Within two (2) billing cycles of any rate increase involving Additional Charges, Customer, upon giving written notice to Company, may transition any Service affected by a rate increase to another carrier over a mutually agreeable period of time not to exceed sixty (60) days. During a transition period, Customer must pay any Additional Charges billed to or remitted by the Company through the final transition date. Notwithstanding any other provision of this Agreement, if, within the designated two (2) billing cycles, Customer fails to furnish written notice to Company of its intent to transition affected Service to another carrier, Customer shall be deemed to have waived its right to do so.
- 6.3 Avoidance of Switched Access and Other Charges: Customer may not use Service to originate or terminate voice calls in a manner that bypasses switched access or other applicable charges. If Customer does so, it will constitute a material breach of this Agreement and will entitle Company to discontinue Service and terminate the Agreement for cause immediately upon the delivery of written notice to Customer. In addition, Customer shall indemnify, defend and hold harmless the Company and its Affiliates, their employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred as a result of Customer's breach of this obligation. Notwithstanding any other provision of this Agreement, the damages for any breach of this Customer obligation shall not be capped or limited. The Company at any time may audit Customer traffic to assure compliance with its obligation not to bypass switched access or other applicable charges.

## 7.0 BILLING AND PAYMENT ARRANGEMENTS

- 7.1 Customer's Responsibility for Payment: Customer shall pay Company for Services at the applicable recurring, non-recurring, and usage rates and charges established from time to time by the Company. Service requested by Customer via a SOA, or MSA, shall identify the type and quantities of Service desired, the location(s) at which Service is to be provided, the requested term of Service, and such other information required by the Company to provision and to invoice the requested Service.
- 7.2 Applicable Rates and Charges: Except as expressly provided otherwise in a SOA, or MSA, the rates and charges for Service shall be effective during the Initial Term of Service and during any automatic renewal term except that, for non-international Service rates and charges not specifically established in a SOA, or MSA, the Company may modify the applicable rates and charges on not less than fifteen (15) days prior notice to Customer. For international Service, the Company may modify the applicable rates and charges upon five (5) days prior notice to Customer, i.e. the revised international rates and charges will become effective on the sixth (6th) day following the date of receipt of notice by Customer. Customer acknowledges that the termination of international long distance wireless calls may be billed at higher rates, as set forth elsewhere in the Agreement.
- 7.3 Service Start Date; Invoicing; and Payment Deadline: Company will notify Customer when Service is available for use. The date of such notice shall be the Start of Service Date, and Customer's obligation to pay for Service shall begin on that Date. Service invoicing will occur on a monthly basis. Unless otherwise specified in the Agreement, all invoices are due and payable within twenty (20) days of invoice date ("Payment Deadline").
- 7.4 Non-recurring Charges: Non-recurring Charges are due and payable on the Start of Service Date or as otherwise billed by the Company.
- 7.5 Monthly Recurring Charges: Monthly Recurring Charges are fixed in amount, not dependent on usage, and billed in advance. When Service commences other than on the first day of a monthly billing period or terminates on other than the last day of a monthly billing period, the charge for Service will be determined by prorating the monthly recurring charge by the number of days that Service was furnished during the monthly billing period.
- 7.6 Usage Charges: Usage Charges are billed in arrears.
- 7.7 Other Charges Not Included in Service Rates or Charges:
- 7.7.1 Surcharges and Other Service Related Fees:
- a. Federal Universal Service Fund Surcharge: The Federal Universal Service Fund Surcharge is a charge shown as a percentage rate and applied by the Company on all invoiced interstate and international charges for services subject to

the Universal Service Contribution Factor established by the FCC to support Universal Service programs. The Surcharge, which is identical to the Contribution Factor established by the FCC and revised regularly on a quarterly calendar year basis, may not be waived under any circumstance, is not eligible for discounting or promotions, and is applied to the Customer's total net interstate and international charges, specifically, the charges remaining after the application of all available discounts and credits.

- b. Long Distance Access Charge: The Long Distance Access Charge ("LDAC") is a monthly charge assessed on a per-line basis and applied to lines presubscribed to the Company's interstate long distance services or to lines not presubscribed to the Company's interstate long distance services but nevertheless employed by Customers selecting the Company as their service provider.
- c. Access Recovery Charge: The Access Recovery Charge ("ARC") is a monthly charge designed to recover increased network costs for access circuits used to provide Service to Customers, including but not limited to increases due to FCC or other governmental or regulatory actions or judicial determinations made in connection with incumbent local exchange carrier charges for such circuits. The ARC is calculated as a percentage of the Customer's total Monthly Recurring Charges. VTX reserves the right to add, change or delete Access Recovery Charges upon notice to Customer.
- d. Federal Regulatory Recovery Charge and Property Tax Allotment Surcharge: The Federal Regulatory Recovery Charge and Property Tax Allotment Surcharge is a monthly charge that allows the Company to recover costs imposed by: (i) federal regulation including, but not limited to, funding Telecommunications Relay Service for the hearing-impaired and national number administration; and (ii) state and local governmental authorities for taxes imposed on property owned by the Company.
- e. Other Service-Related Fees: Monthly surcharges to recover other costs that Company incurs in furnishing the Service including, but not limited to, those relating to special access and payphone charges, will be assessed and charged to Customers.

7.7.2 Taxes: Service rates and charges are exclusive of all taxes, fees, tax-related surcharges and tax-like surcharges, including, but not limited to, the Subscriber Line Charge and those charges set forth in Section 7.7.1. Customer shall be responsible for, and must pay, all taxes, including, without limitation, sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, consumption and other taxes, fees, duties, charges or surcharges, however designated, and imposed directly on the Company based on the provision, sale or use of Service. If Customer believes it, or the Services it receives and uses, are exempt from any tax, Customer will provide Company with a properly executed exemption certificate in a form acceptable to the Company that evidences the exemption claimed. In no event will Customer be responsible for any income taxes levied on Company or any underlying carrier's net income. Customer's obligation to pay applicable taxes (and all other charges due and owing for Service) shall survive the expiration of the Agreement.

7.7.3 Set-up, Installation and Disconnect Fees: Customer shall pay all applicable set-up, installation, and disconnect fees, which will be invoiced on a Non-Recurring Charge basis and are non-refundable. The schedule of installation fees contemplates installations in normal locations under normal working conditions during regular business hours. Any installations under other circumstances including, but not limited to, installations in hazardous locations or made on an expedited basis outside of standard installation intervals will be subject to additional charges.

7.7.4 Charges Imposed By Other Suppliers: If an entity other than the Company (e.g., another carrier or supplier) imposes charges on the Company in connection with the provisioning of Service to Customer, e.g., for expedited installations, such charges will be invoiced by Company on a pass-through basis and paid by Customer.

7.7.5 Local Telephone Company Billing Option Fee: If Customer elects to be billed by the Company for charges of Customer's local telephone service bill (and the Company is not the Customer's local telephone service provider), Customer will be charged a fee to recover the charge imposed on the Company by the billing of Customer's local telephone service provider. Customer who selects the Company as his/her/its local exchange carrier will be billed pursuant to the applicable tariffs of the Company.

7.8 Payment for Additional Service: Customer will be invoiced and required to pay charges associated with any additional Service provided to Customer including, but not limited to, Service upgrades or relocations.

7.9 Late Payment Fee on Past Due Amounts: Except as expressly provided otherwise in a SOA, or MSA, invoices not paid in full within twenty (20) days of the invoice date will be past due and subject to an additional charge equal to the lesser of a 1.5% per month late payment fee or the maximum monthly rate permitted by law on past-due balances.

7.10 Credit Balances on Closed Accounts: If a Customer whose account for Service has been closed, and with a credit balance owing, the Company will transfer the credit balance to another account of the Customer, if there is one, or it will mail a check for the credit balance owed to the Customer if the Company believes it has a valid and current address of the Customer. If the Company is not certain the validity and correctness of the Customer's current address, it will include a notice in the final invoice mailed to the Customer's last known address according to the Company's records, asking the Customer to verify the address so the Company can mail a check for the credit balance owing, or it will write to the Customer at that address and request Customer's verification of its current address. Verification may be achieved by either the Customer called from a designated telephone number or in writing, to a specified address. Upon receiving verification, a check for the credit balance owing will be mailed to the Customer. If the final invoice or the notification letter is returned to the Company by the post office as undeliverable, or if no Customer response is received within thirty (30) days of



the mailing of the final invoice or the notification letter, the Company may apply a closed account maintenance charge of \$2.50 per month beginning in the second monthly billing period following the month in which the account was closed. This charge will apply until either the Customer requests a refund in writing or the credit balance owed is exhausted.

- 7.11 Treatment of Credit Balances: If a Customer whose account for Service has credit remaining by the time when account being closed, VTX will transfer that balance to the Customer's another account with VTX if there is one, or the Company will mail a check for the balance to the Customer's last known address shown in VTX's billing records. If a mailed check covering a credit balance is not cashed within ninety (90) days of its issuance, VTX will apply a Closed Account Maintenance Fee of \$2.50 per month beginning in the monthly billing period immediately following the one in which the ninety (90) day period for presentment expires. This Fee will continue to apply until the credit balance is exhausted or the Company is required under applicable law to dispose otherwise of the balance, whichever first occurs.
- 7.12 Recovery of Collection Costs: Unless otherwise prohibited by law, Customer shall reimburse Company for any costs incurred by the Company in undertaking any collection activity, including, but not limited to, the reimbursement of reasonable attorneys' fees.
- 7.13 Invoicing De Minimis Amounts: The Company may invoice the Customer on other than a monthly basis or, alternatively, excuse the Customer from its monthly payment obligation if only a de minimis amount is due and owing. In such instances, the Company may bill the Customer every other month or, alternatively, not invoice the Customer until the amount due and owing reaches a level the Company deems sufficient to justify invoicing costs.

## **8.0 AGREEMENT TERM, TERM RENEWAL, AND TERMINATION/DEFAULT**

- 8.1 Termination of Agreement by Either Party; Renewal: The initial term of Service shall be as set forth in the SOA, or MSA ("Initial Term") and shall begin on the Start of Service Date. If no Initial Term is set forth in an SOA, or MSA, the initial term of Service shall be three (3) year. If neither the Customer nor the Company cancels or terminates the Agreement before the end of the Initial Term or any renewal term, the Agreement, unless otherwise provided in a SOA, or MSA, shall automatically renew for an identical term pursuant to the rates, terms and conditions contained in the Agreement. Unless Company has provided notice of its intent to terminate the Agreement, the Company, from time to time, will advise Customer in writing of the automatic renewal of the Agreement (and the term of service) if Customer takes no action prior to the expiration of the Agreement. If Customer notifies Company of its intent to terminate the Agreement, the actual termination of the Agreement (and Service) will not occur until thirty (30) days after receipt of the Customer's notification. If Customer has chosen to subscribe to Service for a minimum term or for a minimum committed usage amount, and Customer terminates the Agreement (and Service) before the end of the Initial Term or any renewal term before satisfying the minimum, or if the Agreement (and Service) is terminated by the Company for cause, the actual termination of the Agreement (and Service) will not occur until thirty (30) days after the receipt of notice, and Customer shall be subject to any applicable termination charge or committed usage amount shortfall charge. If the term of the Agreement is month-to-month, either party may terminate the Agreement (and Service) by providing the other party with written notice of termination at least thirty (30) days prior to the intended termination date.
- 8.2 Customer Default/Cancellation/Change Before Start of Service Date: Except as otherwise expressly provided in a SOA, MSA or associated service order document, e.g., Access Service Request, if Customer, without any express right to do so, cancels, changes or breaches the Agreement after its execution but prior to the Start of Service Date, Customer shall pay Company an amount equal to: (a) all Non-recurring Charges incurred by Company up to the date of cancellation; plus (b) two (2) months of the forecasted Monthly Recurring Charges or monthly commitment level payments.
- 8.3 Customer Default/Termination After Start of Service Date: Except as required by law or regulation, or except as otherwise expressly provided in an SOA, or MSA, if, after the Start of Service Date, Customer fails to pay any amount required under the Agreement when payment is due, Company may suspend any and all Service provided by VTX to Customer pursuant to this Agreement or any other service agreement, if payment is not received from Customer within a time period established in a notice of suspension letter sent to Customer. (If Service is suspended for nonpayment, Customer may be assessed reconnect fees and/or be required to pay a deposit equal to two month's charges prior to any reconnection of the Service.) If, following the suspension of Service, Customer fails to pay all amounts required under the Agreement within ten (10) days of the date of a notice of termination letter sent to Customer, the Company will terminate all Customer Service(s) (and the underlying Agreement(s)).

If, after the Start of Service Date, Customer fails to comply with any other material term of an Agreement, and such failure continues for thirty (30) days after written notice thereof from Company to Customer, Company will terminate Service(s) (and the underlying Agreement(s)).

Upon termination, Customer, at its expense, will receive written notice from Company establishing a time period within which it must remove all its equipment from VTX premises. Any equipment not timely removed shall be deemed to have been abandoned by Customer and shall become the property of VTX to do with as it sees fit.

In the event of such termination for cause, Customer will be required to pay, in addition to all other amounts due and owing Company, applicable early termination charges equal to: (a) one-hundred percent (100%) of any Monthly Recurring Charges due for Service during the remainder of the Initial Term or any renewal term; plus (b) for long distance and local voice Service (and other Services with usage-based charges), seventy-five percent (75%) of the Customer's average monthly usage for the three (3) month period immediately prior to the monthly billing period in which Service is terminated (or such lesser period if fewer than three (3) months of Service was utilized), times the number of months remaining in the Initial Term or any renewal term of Service; provided, however, that

for Services with usage-based charges, if Customer has made an annual or other revenue commitment, the early termination charge assessed in subpart (b) above shall be an amount equal to the difference between the Customer's commitment over the remaining Initial Term or any renewal term and the Service actually used by Customer up to the date of Service termination. In addition, early termination charges will apply if: (i) the Company discontinues the furnishing of Service pursuant to Article 12.1, *infra*; or (ii) Customer terminates Service, in whole or in part, for its convenience. Early termination charges shall be immediately due and payable upon Customer's receipt of Company invoices containing such charges.

The Company may institute immediate action to enforce the payment of charges due and owing it, including the pursuit of all remedies available in law or equity. Customer will be responsible for paying any collection and attorney fees reasonably incurred by the Company in seeking payments owed by Customer.

- 8.4 Construction or Acquisition of Communications Facilities: If Company specially constructs or acquires Communications Facilities in order to provide Service(s) to Customer, and Customer cancels or breaches the Agreement after its execution but prior to the Start of Service Date, Customer shall reimburse Company or any third party, as appropriate, for all costs incurred in undertaking to specially construct or acquire such Communications Facilities. If Company specially constructs or acquires Communications Facilities in order to provide Service(s) to Customer, and Customer terminates or breaches the Agreement after the Start of Service Date, Customer shall pay Company or any third party, as appropriate, all remaining unpaid charges owed for the specially constructed facilities. In addition to these remedies, Customer will not be eligible for any "Company Satisfaction Guarantee" or any other early termination waiver program or promotion.
- 8.5 Installation Delays: If there is a delay in Service installation, Customer may cancel Service without liability only if the delay is due solely to the Company and lasts more than ninety (90) days beyond the scheduled Start of Service Date; provided, however, that in no event may Customer cancel Service without liability if the Company has incurred costs in specially constructing or acquiring Communications Facilities to provide Service to Customer.
- 8.6 Customer Default/Nonpayment/Limitation on Remedies. With respect to any termination or planned termination for the nonpayment of monies due and owing VTX, Customer agrees that: (i) such action would not result in irreparable harm to Customer; and (ii) Customer's remedies shall be limited to those provided in the Agreement or to seeking damages at law, but in no event will include seeking or obtaining equitable relief in any form in any forum.
- 8.7 Termination Not Exclusive Remedy: Any remedy provided to the Company shall not be construed to be an exclusive remedy and shall not deprive the Company of its ability to pursue other available remedies. The parties agree that the Company's damages in the event of Service cancellation or termination would be difficult or impossible to ascertain and, therefore, the early cancellation or termination charges in the Agreement are intended to serve as liquidated damages rather than penalties.

## 9.0 CUSTOMER CREDIT HISTORY; SECURITY DEPOSITS; OTHER ASSURANCES OF PAYMENT

- 9.1 Customer Credit History: Company may seek and acquire credit and related Customer information from reporting agencies furnishing such information for the purpose of ascertaining Customer's credit and payment history. Company will use the information acquired to make a determination of the financial conditions pursuant to which it will provide Service to Customer.
- 9.2 Deposits and Other Assurances of Payment: Applicants for Service or existing Customers whose financial condition is neither known nor acceptable to the Company may be required at any time to provide the Company with a deposit, bond or other financial assurance of payment as a condition of the initial or continued receipt of Service. A deposit may be in cash or equivalent, up to an amount equal to the applicable installation charges, if any, or up to three (3) month's actual or estimated monthly recurring and usage charges for the Service(s) requested or provided. Company also may request a deposit, bond or other financial assurance relating to potential charges assessed by third parties, if Company deems such is necessary or advisable. Other forms of financial assurance include, without limitation, advance payments, third party guarantees, pledges or other grants of security interests in Customer assets. Any financial assurance required by the Company may be adjusted as a result of changing conditions, including Customer's Service usage volumes and patterns. In addition, the Company may require an applicant or Customer to pay its Service invoices within a lesser period of time than the standard and to make its payments in cash or by wire transfer in the equivalent of cash. The Company will pay simple interest at the rate of three percent (3%) per annum for the period during which it holds a Customer's cash deposit, unless a different rate of interest is established and applicable in the jurisdiction in which Service is provided. The Company may refund a deposit at any time to Customer by crediting it, with accrued interest, against the Customer's account. The Company may refuse to accept a request for Service, cease processing a Service request, or suspend or terminate Service if Customer refuses or fails to comply with any Company request for a security deposit or other assurance of payment.

## 10.0 BILLING DISPUTES

Withholding of Payment; Deadlines to Challenge Invoiced Charges: Customer may withhold payment of any disputed charge in an amount not to exceed twenty (20) percent of the total amount billed on the invoice containing the disputed charge if Customer: (1) pays all undisputed charges on or before the Payment Deadline; and (2) notifies the Company on or before the Payment Deadline of the dispute and furnishes with its notification information sufficient to allow the Company to investigate Customer's claim. Customer also may dispute any invoiced charge after the Payment Deadline (and without right of withholding any payment) by notifying the Company in writing and furnishing information sufficient to allow the Company to investigate Customer's claim, provided Customer's notification is received by Company within one hundred twenty (120) days of the date of the invoice on which the disputed charge occurs. In all instances involving a disputed charge, the parties will cooperate in good faith to resolve the dispute within thirty (30) days of the

Company's receipt of the Customer's notification. If a dispute is not resolved within that period, either Company or Customer may seek alternative dispute resolution in accordance with the Dispute Resolution Process set forth in Section 11. If any disputed amount for which payment has not been made by Customer is determined to have been a correct or proper charge, interest, not to exceed the lesser of 1.5% per month or the maximum rate allowed by law, may be charged on the unpaid amount, calculated from the date of the Payment Deadline. Any payment made by Customer of an invoiced charge on or before the Payment Deadline shall not foreclose the Customer from later challenging the charge so long as the challenge is timely made and communicated to Company with information sufficient to allow the Company to investigate the claim. All invoiced charges shall be deemed to be correct and indisputable one hundred twenty (120) days after the date of the invoice on which they appear. With respect to any termination or planned termination for the nonpayment of monies due and owing VTX, Customer acknowledges and agrees that: (i) such action would not result in irreparable harm to Customer; and (ii) Customer's remedies shall be limited to those provided in the Agreement or to seeking damages at law, but in no event will include seeking or obtaining equitable relief in any form in any forum.

## 11.0 DISPUTE RESOLUTION PROCESS

- 11.1 The parties agree to use the dispute resolution procedures set forth in this Section 11 with respect to any controversy or claim arising out of or relating to the Agreement or its breach, except that VTX may elect to litigate, or bring before the applicable agency in the case of subsection (iii), the following types of controversies or claims: (i) action seeking a temporary restraining order or injunction, (ii) a suit to compel compliance with this dispute resolution process, (iii) disputes relating to the lawfulness of rates, terms, conditions or practices concerning Services are subject to the Communications Act of 1934, as amended, or the rules and regulations of the FCC, a state public utility commission or other administrative agency, (iv) Customer's non-compliance with publicity provisions, or (v) billing or payment disputes or collections matters.
- 11.2 Either party may submit a dispute to binding arbitration for resolution by a single arbitrator with a professional arbitration service mutually agreeable to the parties after furnishing the other party ten (10) days prior written notice. If the parties cannot agree on an arbitration service, the arbitration will take place pursuant to the American Arbitration Association ("AAA") Commercial Arbitration Rules and Mediation Procedures. The parties shall bear equally the costs of arbitration, including the fees and expenses of the arbitrator. Each party shall bear the cost of preparing and presenting its case, which will be heard at a mutually agreeable site in Los Angeles County, California, or as otherwise expressly provided in a SOA, or MSOA.
- 11.3 This Section 11 and the arbitrator's authority to grant relief shall be subject to the Federal Arbitration Act, 9 U.S.C. §§ 1-16, et seq. ("FAA"), the provisions of this Agreement, and the AAA Code of Ethics for Arbitrators in Commercial Disputes. The arbitrator shall have no power or authority to make any award that provides for punitive or exemplary damages or damages otherwise limited or excluded in the Agreement. The arbitrator's decision shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction. The FAA shall govern all post-award proceedings.

## 12.0 DISCONTINUANCE FOR CAUSE BY COMPANY

- 12.1 Fraud or Other Threats: The Company, without notice and without incurring any liability, may discontinue the furnishing of Service if: (a) it determines such action is necessary to (i) prevent or protect against fraud, tricks, tampering, schemes, false or invalid numbers, false credit devices, electronic devices, or any other fraudulent means or devices, (ii) protect its personnel, agents, facilities or services, or (iii) protect against actual or potential adverse financial effects; (b) the Customer fails or refuses to furnish information regarding the Customer's creditworthiness, its past or current use of Company Services, the jurisdictional nature or characteristics pertaining to its use or planned use of Service; (c) the Customer provides false information to the Company regarding the Customer's identity, address, creditworthiness, past or current use of Service, or the jurisdictional nature or characteristics pertaining to its use or planned use of Service; (d) the Customer indicates it will not comply with a request for security for the payment for Service or will not pay any amounts due and owing the Company; or (e) if Customer becomes insolvent, makes assignments for the benefit of creditors, files for bankruptcy or reorganization, fails to discharge an involuntary petition for bankruptcy within the time permitted by law, or otherwise abandons Service.
- 12.2 Service Non-use: The Company, without incurring any liability, may discontinue the furnishing of Service: (a) without notice, if Customer has not used Service (other than the Company's Calling Card Service) for six (6) consecutive months; (b) without notice, if Customer who accesses Service via an authorization code has not used Service (with the exception of calls to Directory Assistance) for ninety (90) days; or (c) with written notice delivered to the billing address of a Customer of Calling Card Service, if Customer has not used the Service (with the exception of calls to Directory Assistance) for six (6) consecutive months.
- 12.3 Condemnation or Loss of Facilities: The Company, with notice to Customer, may suspend or terminate Service following the condemnation of any material portion of the facilities used to provide Service or if a casualty renders all or a material portion of such facilities inoperable and beyond feasible repair.
- 12.4 Customer's Obligation To Pay: The discontinuance of Service pursuant to this Section 12 does not relieve the Customer of its obligation to pay the Company for Service furnished up to the time of discontinuance. If Service is discontinued by the Company for cause before the Customer has fulfilled its Initial or any Renewal Term, or during any Service plan to which special charges apply, Customer will be obligated to pay the Company as if it had terminated Service for its convenience.

## 13.0 TELECOMMUNICATIONS SERVICE PRIORITY PROVISIONING AND RESTORATION OF SERVICE

Telecommunications Service Priority Provisioning and Restoration of Service: The provisioning and restoration of Service in emergencies shall be undertaken in accordance with Section 64.401 of the FCC's Rules and Regulations, 47 CFR Sec. 64.401, which establishes a prioritization for such undertakings.

#### **14.0 SERVICE INSPECTION, TESTING AND ADJUSTMENT**

- 14.1 Inspection: Upon reasonable notice, Company may conduct inspections of Service to determine whether Customer is satisfying its obligations under the Agreement. Company may interrupt Service at any time, without penalty, if it determines the Customer is non-compliant with any Agreement requirement. No outage allowance credit will be given for any Service interruption occurring during an inspection.
- 14.2 Testing and Adjustment: Upon reasonable notice, Customer shall make Service available to Company for such testing and adjustment as the Company deems necessary to maintain the furnishing of Service at satisfactory levels.

#### **15.0 COMPANY FACILITIES AND EQUIPMENT FURNISHED TO CUSTOMER**

- 15.1 Company Facilities and Equipment: The Company will use reasonable efforts to maintain facilities and equipment furnished to Customer as part of Service. Without the prior written consent of the Company, Customer may not rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company in the course of provisioning Service, nor may it permit others to do so.
- 15.2 Title to Facilities and Equipment: Company facilities and equipment used to provide Service shall remain the sole and exclusive property of Company or its assignee(s). Said facilities and equipment at all times shall be and remain personal property notwithstanding any attachment or embedding in realty. Company will endeavor to affix identifying plates, tags or labels on its facilities and equipment disclosing Company's ownership thereof. Customer shall not tamper with, remove, or conceal such identifying plates, tags or labels. Upon reasonable notice, Company may access its facilities and equipment on Customer's premises and replace or remove said facilities or equipment at any time.
- 15.3 Use of Company-Provided Facilities and Equipment: Customer will operate Company-provided facilities and equipment in accordance with instructions provided by the Company or its agent.
- 15.4 Return of Company-Provided Facilities and Equipment: Within thirty (30) days of the termination of Service, Customer will return to the Company all Company-provided facilities and equipment within Customer's control. Said facilities and equipment shall be in the same condition as when originally delivered to Customer, normal wear and tear is acceptable. If Customer fails to return such facilities and equipment, Customer, upon demand, will reimburse Company for the replacement cost of the facilities and equipment, plus any costs reasonably incurred by the Company in seeking to recover its property.
- 15.5 Costs Incurred to Provision Services: Customer will be responsible for all costs incurred in accommodating the provisioning of Service at its premises, including, without limitation, those pertaining to electricity, HVAC, and security.

#### **16.0 SYSTEMS SECURITY**

- 16.1 Customer Use of Company Systems: If Company grants Customer the access to its systems and data in order to maintain the Service, Customer must:
- a. Access Company systems and data only to the extent of necessary administration and management for the Customer's Service. Any access beyond the necessity as described above may subject Customer to civil or criminal penalties.
  - b. Not disclose or use data acquired as a result from accessing Company systems, except as necessary to assure the proper operation of the Service. Customers must take all reasonable and necessary steps to prevent revealing the data to those whom do not need to know them.
  - c. Not disclose, provide or otherwise make available, in whole or in part, Company-confidential, -proprietary or likewise documentation or related materials except to those whom having the need to know in connection with the furnishing and use of Services. All such documentation shall remain the property of the Company and may not be copied, reproduced or otherwise disseminated without the prior written consent of the Company.
  - d. Take all reasonable precautions to maintain the confidentiality of Company documentation or other information acquired in the course of subscribing to and using the Service. Such precautions shall include the protection of Personal Identification Numbers (PINs) and passwords selected by, and known only to, the Customer and its authorized users, Company telephone and dial-up access number(s) assigned to Customer by the Company, and any other aspect of access and sign-on methodology. Customer must follow normal logoff procedures prior to leaving a terminal unattended and, as necessary, report any known or suspected attempt by others to gain unauthorized access to the Service.
- 16.2 Security Access Devices: Customer must notify the Company immediately if a security access device assigned to Customer for dial-up access is lost, stolen or misplaced.
- 16.3 Security of Passwords and Authorization Codes: For Services that require the use of passwords for access, a user ID and password will be provided to each authorized user of the Customer's Service. Customer accepts its sole responsibility for maintaining the security

of such user IDs and passwords, and Company shall have no liability resulting from any Customer failure to maintain the security of this user information.

- 16.4 Security of Web Hosting User IDs: Customer shall be responsible for the use of all user IDs associated with Customer's Web Hosting Service, whether used under any name or by any person, and for ensuring full compliance with the Agreement by all authorized users of Customer's user IDs. This responsibility includes maintenance of the confidentiality of Customer passwords. If Customer breaches its security obligation, Customer will be liable for any unauthorized use of the Web Basics Hosting Service until such time as Customer notifies the Company's Customer Service Department.

## 17.0 ALLOWANCES FOR SERVICE FAILURES

- 17.1 Credit for Service Failures: Except as expressly provided otherwise in applicable tariffs, Product Terms and Conditions (including Service Level Agreements), or in a SOA, or MSA, the Company will credit Customer for Service failures as provided herein. If Customer reports an interruption of Service but refuses to release the Service or any component thereof to Company for inspection, testing and repair, the Service will be deemed to be impaired instead of interrupted.
- 17.2 Application of Credit Allowances for Services Invoiced on a Usage Basis: For Services for which charges are specified on the basis of per minute of use, or on usage of a fraction of a minute, credit will be made for that portion of a call that is interrupted due to poor transmission or involuntary disconnection caused by Service deficiencies. To receive credit, Customer must notify the Company and furnish information, including the called number, the Service subscribed to, the difficulty experienced, and the approximate time the call was placed.
- 17.3 Application of Credit Allowances for Services Invoiced on a Monthly Recurring Charge Basis: For determining credit allowances for Services invoiced on the basis of Monthly Recurring Charges, a month shall be deemed to consist of thirty (30) days. No credit allowance will be given for interruptions of less than one (1) hour from the time the interruption is either reported or known to the Company. A prorated credit of one-thirtieth (1/30) of the applicable Monthly Recurring Charges will be awarded whenever a Service interruption lasts for a period between one (1) and twenty-four (24) hours. If Service is interrupted for a period of more than twenty-four (24) hours, credit will be given in an amount equal to one-thirtieth (1/30) of the applicable Monthly Recurring Charges for each twenty-four (24) hour period or fraction thereof that the Service remains interrupted. Credit allowances awarded shall not exceed the applicable Monthly Recurring Charges for Service during a monthly billing period. Only those Service components involved on the interrupted portion of the Service will be credited.
- 17.4 Particular Circumstances: For a Service failure that cannot be remedied by applying Sections 17.2 or 17.3, Customer will be given a credit based on the particular circumstances surrounding a failure. To receive credit for a Service failure, which under no circumstance will exceed an amount equal to the lesser of five hundred dollars (\$500) or the actual damages suffered by Customer as the proximate result of the failure, Customer must notify the Company in writing and furnish information about the failure, including the particular problem experienced and the approximate time and length of the service failure. A Customer receiving credit under this subsection shall not be eligible to receive any other credit as a result of the Service failure.
- 17.5 Limitations on Credit Allowances: No credit allowances shall be made for Service interruptions:
- a. Due to the negligence or willful misconduct of Customer or Customer's agents or contractors, or for noncompliance with any provision of the Agreement, including applicable tariffs, by the Customer or any other entity providing services, facilities or equipment interconnected with Service;
  - b. Due to the negligence or willful misconduct of a third party;
  - c. Due to the failure or malfunction of non-Company provided equipment, systems or services;
  - d. During any period in which the Company is not given access to Service or Service components for the purpose of repairing and restoring Service;
  - e. During a period in which Customer continues to use the Service on an impaired basis;
  - f. During any period in which Customer has released Service to the Company either for maintenance or for the implementation of a Customer request to change Service;
  - g. Due to circumstances or causes beyond the control of the Company.
- 17.6 Use of Alternative Service Provided by Company: If Customer uses an alternative Service provided by the Company or another provider during a Service failure, Customer must pay all applicable charges for the alternative Service.

## 18.0 SPECIAL CONSTRUCTION

Upon Customer's request, Company may specially construct Communications Facilities under terms and conditions, including charges, consent by the parties. The Special Construction of Communications Facilities may be undertaken whenever:

- a. Company facilities needed to provide the Service are not presently available;
- b. Requested facilities differ from the type regularly used by Company to furnish the Service;

- c. Requested facilities are in quantities greater than normally employed by Company;
- d. Facilities are requested for availability on an expedited basis;
- e. Requested facilities are temporary and will be used until permanent facilities are available; or
- f. Requested facilities involve extraordinary costs not normally incurred by Company to furnish the Service.

## 19.0 **NON-ROUTINE INSTALLATION/MAINTENANCE; FALSE CALLOUT/NTF CHARGES**

- 19.1 Non-routine Installation/Maintenance: Per Customer's request, Company may install or maintain the Service outside the Company regular business hours. In such cases, charges will base on actual labor plus any other costs that incurred. If such installation or maintenance extends beyond the Company regular business hours, additional charges will apply. If hazardous conditions are presented where installation or maintenance is requested by Customer, and Company chooses to perform the installation or maintenance, additional charges will apply.
- 19.2 False Callout/No Trouble Found (NTF) Charges: Customer may be charged when a reported Service interruption results in the dispatch of a Company technician and: (a) the technician is denied the right to access the Customer's premises; (b) no trouble is found by the technician; or (c) the cause of the interruption was not due to Company facilities, equipment or systems used to provide Service.

## 20.0 **CUSTOMER'S USE OF TELEPHONE SUBSCRIBER INFORMATION**

- 20.1 Use of Telephone Subscriber Information: Subject to certain conditions, a Customer may use or sell telephone number and billing information for billing and collection, routing, screening and completion of the originating telephone subscriber's call or transaction or to offer a product or services directly related to the products or services previously acquired by the originating telephone subscriber from the Customer.
- 20.2 Prohibition on Using or Selling Telephone Subscriber Information: The Customer may not use or sell a telephone number or billing information unless the Customer first notifies the originating telephone subscriber and obtains the affirmative consent of each subscriber for such use or sale. Additionally, the Customer may not disclose, except as permitted above, any information derived from the ANI, charge number service, or Toll Free Service for any purpose other than
  - a. Performing the services or transactions that are the subject of the originating telephone subscriber's call;
  - b. Ensuring network performance security and the effectiveness of call delivery;
  - c. Compiling, using, and disclosing aggregate information; or
  - d. Complying with applicable laws or legal processes.

## 21.0 **NETWORK NUMBERS/DOMAIN NAME POLICY**

- 21.1 Network Number and Domain Name Policy: If Customer acquires Service that utilizes Network Numbers or Domain Names, Customer will comply with Network Number and Domain Name policies established by the Company.
- 21.2 Use of Domain Names: Upon termination of Service, the usage by Customer of all Company Domain Names and TCP/IP Addresses that belong to Company will be ended. IP assignments are not guaranteed and may be modified by Company or the American Registry for Internet Numbers (ARIN). Company has sole discretion with respect to the Internet routing of Company provided IP addresses. Unless otherwise agreed in writing, Customer shall be responsible for maintaining its own Domain Name when purchasing Company Internet Services and for paying all charges associated with its Domain Name, including charges billed to Customer by third parties for Domain Name registration.

## 22.0 **INFORMATION PROVIDER DATA**

For Customer serving as a Service Bureau, it must promptly furnish to the Company, and keep current on a continuing basis, the name, address, and Customer Service telephone number(s) of the Information Providers to whom it provides the service. When an Information Provider directly subscribes to Company Service, the Provider must promptly furnish to the Company, and keep current on a continuing basis, its name, address, and Customer Service Telephone number(s).

## 23.0 **LINE SERVICE**

No provider of pay-per-call services subscribing to the Service shall use any automatic dialing device that delivers a recorded message to the called party, unless the device releases the called party's telephone line promptly but in no event should longer than the current industry standards allowed.

## 24.0 **ANSWER SUPERVISION/CALL ACCEPTANCE**

Customer must provide Answer Supervision when Service is connected to switching equipment or Customer-provided communications systems. The Customer's equipment or systems must allow for the measurement of chargeable time beginning with the delivery of the

Customer's call to the switching equipment or to the equipment connected to the communications system and ending with the termination of the call by the calling party. If Customer's communications system fails to promptly return to Company an idle (on-hook) state upon completion of the call, the Customer will be held responsible for all charges that result up until the time the Customer's communication system signals the Company's network that the call has been terminated or until such time as the Company's own system terminates the call. If Customer or its communications system rejects, fails to answer, or fails to signal calls routed via the Company's network, Customer shall be liable for any and all charges imposed on Company by third parties as a result of such Customer act or omission.

## **25.0 RESTRICTIONS ON PROVIDERS OF PAY-PER-CALL SERVICES**

Providers of pay-per-call services subscribing to Service, including 900 Service, must comply with all requirements of: (a) Title I and II of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102-556) (TDDRA); and (b) all requirements imposed by the regulations of the Federal Communications Commission and Federal Trade Commission pursuant to those Titles. The Company, following written notice to provider, shall terminate programs that utilize 900 Service if the programs are not in compliance with these requirements. The provider shall be afforded a period of not less than seven (7) days or more than fourteen (14) days to bring a program into compliance. Any programs not in compliance at the expiration of the specified period will be immediately terminated.

## **26.0 INTERCONNECTION WITH OTHER CARRIERS**

- 26.1 Interconnection with Other Carriers: Service may be connected with services or facilities of another carrier or carriers. Such interconnection may be made at a Company terminal or entrance site, at a terminal of another carrier, or at the premises of a Customer or an authorized user of the Customer's Service. Interconnected Service furnished by the Company in no event will be deemed to be part of a joint undertaking with another carrier or carriers.
- 26.2 Special Interface Equipment: Unless otherwise agreed, any special interface equipment or facilities necessary to achieve compatibility between the Service and the interconnected facilities or services of another carrier will be provided at Customer expense. The Company may undertake to acquire the necessary special equipment or facilities as the agent for Customer.
- 26.3 Interconnection Terms and Conditions: Service may be connected with the facilities or services of another carrier under the terms and conditions of the other carrier's tariffs or contracts applicable to such connections.

## **27.0 CUSTOMER PROPRIETARY NETWORK INFORMATION**

- 27.1 Customer Proprietary Network Information: To inform Customer of Company or affiliate products that may be of interest to Customer, the Company may wish to use information derived from its provision of Service to Customer, particularly information referred to as Customer Proprietary Network Information ("CPNI") under Part 64, Subpart U, of the Commission's Rules and Regulations, 47 CFR Sec. 64.2001 et seq. CPNI includes, among other things, the identity and quantity of Services to which Customer subscribes, information on how the Services are used, and billing information pertaining to the Services. Federal law restricts the use of CPNI for purposes other than providing the Service to which Customer subscribes, without Customer approval.
- 27.2 Customer Approval of CPNI Use by Company: Customer may signify approval or denial of the use of its CPNI by Company or an affiliate of the Company; by so indicating in a Letter of Agency, SOA, MSA or other document executed by Customer, or by updating its Customer information and election. A Customer's approval will remain in effect until Customer notifies the Company its intention of no longer wants the Company to use its CPNI to market other products of the Company or its affiliate to Customer. To revoke its approval, Customer may contact Company at any time, at no cost to Customer, by dialing 1-888-889-5109 or other means as posted on Company Customer Support web page at <http://www.vtxtelecom.com/customer-support.html>.

## **28.0 TERMINAL EQUIPMENT**

- 28.1 Customer Responsibility: Unless the parties otherwise agree, Terminal Equipment, such as teleprinters, handsets or data sets at the premises of the Customer and between such premises and the Company's Service, shall be furnished and maintained at the expense of the Customer.
- 28.2 Required Characteristics of Terminal Equipment: The characteristics of Terminal Equipment at either end of a circuit or channel shall be such that its connection to the circuit or channel complies with the minimum protection criteria set forth below and does not interfere with Services furnished to other Customers. Additional protective equipment, when required, shall be provided and maintained at Customer's expense.
- 28.3 Required Characteristics for Services using LEC Voice Grade Facilities: When Services using Local Exchange Carrier voice grade facilities are terminated in Customer-provided Terminal Equipment, channel derivation devices or communications systems, the Customer shall comply with the following minimum protective criteria:
- a. When Services furnished under this Agreement are used in common with Local Exchange Carrier services, the power of the signal applied to Local Exchange Carrier lines must be limited in order to prevent excessive noise and crosstalk. Because a single valued limit for all applications cannot be specified, the Company will, for each application, specify the power of the signal in the band above 300 Hertz, which may be applied by the Customer Terminal Equipment at the point of termination.

- b. To protect Services from interference at frequencies that are above the band of service provided, the Company will specify the acceptable signal power in the following bands to be applied by the Customer Terminal Equipment or communications systems at the point of termination to ensure that the input to Local Exchange Carrier lines does not exceed the following limits:
  - i) the signal applied by the Customer Terminal Equipment to the interface at no time shall have energy solely in the 2450 Hertz to 2750 Hertz range. If the signal is in the 2450 to 2750 Hertz range, it must not exceed the power present at the same time in the 800 to 2450 Hertz band;
  - ii) the power in the band from 3995 Hertz to 4005 Hertz shall be at least 18 dB below the power of the signal as specified above for the 2450 Hertz to 2750 Hertz range;
  - iii) the power in the band from 4000 Hertz to 10,000 Hertz shall not exceed 16 dB below one milliwatt;
  - iv) the power in the band from 10,000 Hertz to 25,000 Hertz shall not exceed 24 dB below one milliwatt;
  - v) the power in the band from 25,000 Hertz to 40,000 Hertz shall not exceed 36 dB below one milliwatt; and
  - vi) the power in the band above 40,000 Hertz shall not exceed 50 dB below one milliwatt.

28.4 Customer Terminal Equipment in the spectrum 300 Hertz: Where Customer Terminal Equipment or communications systems apply signals having components in the spectrum 300 Hertz, excluding ringing signals, the currents and voltages (including all harmonics and spurious emission) at the interface shall not exceed the following limits:

- a. the maximum root-means-square (rms) value, including DC and AC components, of the current per conductor will not exceed .035 ampere;
- b. the magnitude of the peak of the conductor or ground voltage shall not exceed 70 volts;
- c. the conductor voltage shall be such that the conductor ground voltage limit in Section 28.4.2 preceding is not exceeded. If the signal source is not grounded, the voltage limit in Section 28.4.4 preceding applies to the conductor-to-conductor voltage; and
- d. the total weighted rms voltage within the band from 50 Hertz to 300 Hertz shall not exceed 100 volts. The total weight rms is the square root of the sum of the products times the square of the rms voltage of the individual frequency components.
- e. The weighting factors are as indicated:

<u>For Frequencies Between</u>	<u>Weight Factor</u>
50 Hertz and 100 Hertz	f <sup>2</sup> /104
100 Hertz and 300 Hertz	f <sup>3</sup> /106.6

## 29.0 LOCAL NUMBER PORTABILITY

29.1 Port-In of Telephone Numbers. Prior of placing any Service Orders with VTX to facilitate Customer's provisioning of communications service to its End Users or its Carrier Customer's End Users (collectively referred to herein as, "End Users"), Customer shall obtain and have in its possession a Letter of Authorization ("LOA") for each End User authorizing Customer and its Carrier Customer, including any designated agent, to act on the End User's behalf for the purpose of ordering, changing and/or maintaining such End User's communication services. For the purposes of local number portability performed by VTX hereunder, VTX is designated as Customer's and its Carrier Customer's agent to act on End User's behalf. Customer or its Carrier Customer shall be responsible for obtaining an End User's authorization (in accordance with state and federal law or regulation pertaining to such authorizations) prior to requesting a change in the End User's provider of communications services. In requesting a change in the End User's service provider ("Port-in Order" or "LNP"), Customer shall, upon request, provide a copy of the End User's LOA directly to VTX prior of placing the Port-in Order with VTX. Consequently, VTX shall have no obligation to provide Services related to the Port-in Order until provided such LOA. Furthermore, Customer shall be responsible for providing to VTX all information needed to process a Port-In Order.

29.2 Authorization Dispute. Should an End User dispute or a discrepancy arise regarding the authority of Customer or its Carrier Customer to act on behalf of an End User, if Customer has not already done so, Customer is responsible for providing written evidence of such authority to VTX within three (3) business days. If there is a conflict between the End User designation and Customer's written evidence of authority, VTX shall honor the designation of the End User and change the End User back to the previous service provider. If Customer does not provide the LOA within three (3) business days, or if the End User disputes the authority of the LOA, then Customer must, by the end of the third business day:

- a. notify VTX to change the End User back to the previous service provider;
- b. provide to the previous service provider any End User information and billing records Customer or its Carrier Customer has obtained relating to the End User;
- c. notify the End User and VTX that the change has been made; and
- d. remit to VTX \$100.00 "slamming charge" as compensation for the change back to the previous service provider.

29.3 Third Party Request for End User Information. Upon receipt of a request by a third party carrier for Customer Proprietary Network Information ("CPNI"), including but not limited to Customer Service Records ("CSRs"), related to an End User telephone number, VTX may, in its sole discretion: (i) instruct the third party carrier to contact Customer directly, or (ii) release any requested CPNI in its



possession to the third party carrier. Upon receipt of a request from a third party carrier for CPNI, including, but not limited to, CSRs, Customer, in compliance with applicable laws, regulations and industry guidelines and standards, shall, within twenty-four (24) hours of its receipt of the request, provide the requesting third party carrier with: (i) all requested information in Customer's possession, or (ii) a valid and complete explanation why Customer is unable or unwilling to provide the requested information. Customer shall provide VTX with a copy of its response to the third party carrier at the same time it responds to the third party carrier.

29.4 Port-Out of Telephone Numbers. Upon receipt of a request from a third party carrier to port-out an End User telephone number, VTX may do so without Customer consent if, in its sole discretion, it concludes porting out such telephone number is consistent with applicable laws, regulations, and industry guidelines and standards. In addition, Customer may be subject to a charge for each End User telephone number ported out within one (1) year of its being ported in by VTX.

29.5 Indemnification Relating to Local Number Porting. Customer shall indemnify and hold harmless VTX, its employees, officers, directors, subcontractors and agents from and against all liability, loss, cost, damage, expense or cause of action of any nature whatsoever arising out of Customer's failure to fulfill its obligations under Sections 29.1–29.4.

### **30.0 ASSIGNMENT**

Customer may not sell, transfer or assign the Agreement, in whole or in part, without the prior written consent of the Company. Any such assignment without Company's prior written consent shall be void. In the event the Agreement is assigned by Customer in accordance with the foregoing to any other party, whether by assignment, operation of law or otherwise, which party, prior to the assignment, has an agreement (the "Prior Agreement") with the Company or any of its affiliates for the provision of Service, the Service being provided shall continue to be governed by this Agreement, and the other Service provided shall continue to be governed by the prior Agreement, each without reference to the other except that the Company may require a deposit or additional financial assurances as provided in the Agreement.

### **31.0 NOTICES**

Notice required of Customer under the Agreement shall be in writing and delivered by certified mail; return receipt requested, to VTX Telecom, 1191 Huntington Drive, #2, Duarte, CA 91010 Attn: Senior Vice President and General Counsel, with copy to Legal Administration. A notice shall be effective on the date of its receipt by the Company.

### **32.0 INTERNATIONAL SERVICE**

Service provided to Customers in the United States will be governed by, and subject to, existing and future applicable terms and conditions established on VTX website. Service between the United States and an international location, or Service between two international locations ("International Services") shall be subject to the applicable terms and conditions, if any, for the countries, provinces or municipalities listed under the heading "International Services" set forth at [www.vtxtelecom.com/terms.html](http://www.vtxtelecom.com/terms.html), ("International Service Terms"), which are hereby incorporated into and made a part of this Agreement. With respect to the furnishing and receipt of International Services, the applicable International Service Terms will supplement and supersede any contrary or inconsistent terms in these General Terms and Conditions, or elsewhere.

### **33.0 MISCELLANEOUS PROVISIONS**

33.1 Relationship Among the Company, Customer and Third Parties: The Agreement does not render the Company or the Customer, the agent or legal representative of the other, nor does it create a partnership or joint venture between the Company and the Customer. Neither the Company nor the Customer shall have any right or authority to bind the other in any manner whatsoever. The Agreement confers no rights or authority of any kind on third parties.

33.2 Severability: Any provision found unlawful by a court or regulator having jurisdiction shall be deemed to be severed from the Agreement, but such severance shall have no effect on the enforceability of the remaining provisions of the Agreement.

33.3 Choice of Law and Venue: Except as expressly provided otherwise in a SOA, or MSA, the Agreement is made pursuant to, and shall be construed and enforced in accordance with, the substantive law of the State of California, without reference to its principles of conflicts of laws, and Customer explicitly consents to the exclusive jurisdiction and venue of the State Courts in Los Angeles County, California.

33.4 Non-exclusive Dealing: The Agreement is non-exclusive. Nothing shall prevent Customer or Company from entering into similar arrangements with, or otherwise providing Services to, any other person or entity.

33.5 No Publicity: Customer may not issue a news release, public announcement, advertisement or other form of publicity concerning the existence of the Agreement or the Service provided without the prior written consent of the Company. Failure to comply with this obligation shall allow the Company to immediately terminate the Agreement, in addition to seeking any and all other remedies available in law or equity.

33.6 Survivability: The terms and conditions contained in the Agreement that, by their sense and context, are intended to survive the performances of the parties shall survive the completion of those performances and the Agreement's termination. These include, without limitation, the making of payments due under the Agreement.

- 33.7 No Waiver: No waiver of any of the provisions of the Agreement shall be binding unless made in writing and signed by the waiving party. The failure of either party to insist on the strict enforcement of any provision of this Agreement shall not be deemed to constitute a waiver of the provision, and all terms and conditions shall remain in full force and effect.
- 33.8 Right of Offset: If Customer defaults on any payment obligation owed the Company under any agreement for more than thirty (30) days and Company has funds that are owed the defaulting Customer, Company, upon notification to the defaulting Customer, may offset that which it is owed by first applying such funds to the full balance due by the defaulting Customer. Any amount remaining following the offset shall be remitted to Customer in the normal course of business.
- 33.9 Complete Agreement: The Agreement, incorporating all the applicable documents referenced herein, represents the entire agreement between the parties with respect to Service, and supersedes all other prior agreements between the parties, whether written or oral. The Agreement may be modified only by writings executed by authorized representatives of the parties, Company changes made to referenced URL sites, Company changes to applicable tariffs, or as otherwise specifically provided for between the parties. In no event shall the Agreement or any component thereof be modified, amended or affected in any way by e-mail correspondence between or among the parties' employees, agents or representatives.