



TERMS AND CONDITIONS OF SERVICE

(TELECOMMUNICATIONS SERVICES)

These Terms and Conditions of Service ("Terms and Conditions") apply to all telecommunications and related services (the "Services") provided by Empire Access Corporation or its affiliates ("Empire Access") to its customer or its affiliates ("Customer") under the Service Contract into which these Terms and Conditions are incorporated.

1. Term. Unless the Service Contract states otherwise, the term of the Service Contract commences upon Acceptance Date of the Services and continues for the time period indicated in the Service Contract unless terminated early in accordance with these Terms and Conditions (the "Term"). Empire Access shall notify Customer when Services have been delivered to Customer and Customer shall have 5 days to accept Services or to give Empire Access notice that it does not accept Services, otherwise Services are deemed to be accepted. At expiration, the Term will automatically renew for successive renewal terms of one (1) year each, unless either Empire Access or Customer gives written notice to the other of its election not to renew the Term at least thirty (30) days before the expiration of the then-current Term.

2. Rates and Charges. The rates and charges for the Services are as set forth in the Service Contract. All rates and charges set for in any quote are subject to final approval by Empire Access. Empire Access will invoice Customer for all non-recurring charges and monthly recurring charges at the time of service installation, with monthly recurring charges billed at the beginning of the month and usage charges billed at the conclusion of the month. All bills are due and payable upon receipt. If Customer does not pay the amount due within 30 days of the invoice date, Customer shall pay a late fee of 1.5% per month on the unpaid balance.

3. Taxes and Surcharges. In addition to the rates and charges for the Service(s), Customer shall pay all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services (other than income taxes payable by Empire Access, for which Empire Access is responsible). Customer shall also pay all surcharges in effect from time to time, including USF, as required or permitted by applicable law, regulation or tariff and/or as specified on the Empire Access website at www.empireaccess.com. If Customer provides Empire Access with a valid tax-exemption certificate, Empire Access shall exempt Customer from the collection of taxes to the extent warranted by such certificate(s). No exemption will be available to Customer for any period prior to the date that the Customer presents a valid exemption certificate to Empire Access.

4. Termination.

(a) Either party may terminate the Service Contract upon written notice to the other party if (i) the other party dissolves or becomes insolvent or bankrupt, or (ii) any bankruptcy, reorganization, insolvency or similar proceeding is instituted by or against the other party and not dismissed within thirty (30) days, (iii) the other party makes an assignment for the benefit of creditors; (iv) the other party suspends the transaction of its usual business or consents to the appointment of a trustee or receiver; or (v) a trustee or receiver of the other party is appointed.

(b) Empire Access may terminate the Service Contract and its provision of Services on written notice to Customer if Customer fails to timely pay amounts due or materially breaches any other obligation under the Service Contract. In the event of termination under this section, Customer shall pay to Empire Access the amounts due for termination liability in accordance with section 5 of these Terms and Conditions.

(c) Customer's breach of any other agreement between Empire Access and Customer, including any payment obligation to Empire Access, is a material breach of the Service Contract and a basis on which Empire Access may terminate the Service Contract under these Terms and Conditions. Likewise, Customer's breach of the Service Contract is a material breach by Customer of all other agreements it has entered into with Empire Access and a basis on which Empire Access may terminate any of those agreements under these Terms and Conditions. In the event of termination under this section, Customer shall pay to Empire Access the amounts due for termination liability in accordance with section 5 of these Terms and Conditions.

(d) Customer may terminate the Service Contract before expiration of the Term, but only by (a) providing Empire Access with written notice to that effect at least thirty (30) days prior to the effective date of termination, and (b) paying to Empire Access the amounts due for termination liability in accordance with section 5 of these Terms and Conditions.

5. Termination Liability. If the Service Contract is terminated before expiration of the Term, then except as provided in the next sentence, Customer shall pay to Empire Access, immediately upon demand, (a) all sums then due and owing under the Service Contract, (b. Residential) an assessed early termination fee of \$500.00, (b. Commercial) an amount equal to the recurring Monthly Charges (as listed in the Service Contract) multiplied by the number of months left in the Term. Despite the preceding sentence, Customer will not be liable for termination liability in the case of (a) non-renewal of the Term by Empire Access or Customer in accordance with section 1 of these Terms and Conditions, or (b) permitted termination by Customer under the SLA, but in either such case Customer shall pay all charges incurred prior to the effective date of expiration or non-renewal of the Service Contract.

6. Compliance with Laws. Each party shall comply with all applicable laws, regulations, court decisions and administrative rulings regarding the provision or use of the Services, and its failure to do will be a material breach of the Service Contract.

7. Right of Way. At its sole cost and expense, Empire Access shall be responsible for all public rights of way, public licenses, and public easements. At its sole cost and expense, Customer shall be responsible for securing all private rights of way, private licenses, and private easements (such as building entries and interior pathways).

8. Warranty. THE QUALITY OF SERVICES PROVIDED HEREUNDER SHALL BE CONSISTENT WITH COMMON CARRIER INDUSTRY STANDARDS AND APPLICABLE GOVERNMENT REGULATIONS. EMPIRE ACCESS MAKES NO OTHER WARRANTIES ABOUT THE SERVICES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND CUSTOMER MAY NOT RELY ON ANY STATEMENT TO THE CONTRARY BY ANY PERSON. THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE CONTRACT DOCUMENTS.

9. Unauthorized Use of Services. Customer, and not Empire Access, shall bear the risk of loss arising from any illegal, unauthorized or fraudulent use of Services provided to Customer under the Contract Documents. The Services are provided subject to Empire Access's Acceptable Use Policy in effect from time to time ("AUP"), which may be accessed at: www.empireaccess.com.

10. Limitations of Liability.

(a) IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES

INCLUDING DAMAGES FOR LOSS OF REVENUE, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THE CONTRACT DOCUMENTS AND/OR THE PERFORMANCE OR NONPERFORMANCE THEREUNDER. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY TO PAY ALL CHARGES THAT COME DUE UNDER THE CONTRACT DOCUMENTS. THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE CONTRACT DOCUMENTS.

(b) EMPIRE ACCESS'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY SERVICE PROVIDED TO CUSTOMER (INCLUDING THE MAINTENANCE, INSTALLATION, DELAY, TERMINATION, INTERRUPTION, OR RESTORATION OF ANY SUCH SERVICE) OR BREACH OF THE CONTRACT DOCUMENTS, WHETHER IN AN ACTION FOR OR ARISING OUT OF CONTRACT, TORT, INDEMNITY OR STRICT LIABILITY, IS LIMITED AS FOLLOWS: (i) FOR A SERVICE QUALITY CLAIM (INCLUDING INTERRUPTION IN SERVICE), THE OUTAGE CREDIT UNDER THE SLA; (ii) FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY CAUSED BY EMPIRE ACCESS'S NEGLIGENT ACTS OR OMISSIONS, OR FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF EMPIRE ACCESS, THE AMOUNT OF PROVEN DIRECT DAMAGES; AND (iii) FOR ALL OTHER CLAIMS NOT OTHERWISE COVERED ABOVE, THE AMOUNT OF PROVEN DIRECT DAMAGES NOT TO EXCEED THE AMOUNT OF CHARGES APPLICABLE UNDER THE SERVICE CONTRACT DOCUMENTS FOR THE PERIOD DURING WHICH SERVICES WERE AFFECTED. IN NO EVENT SHALL EMPIRE ACCESS'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF THE SERVICE CONTRACT DOCUMENTS EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO EMPIRE ACCESS THEREUNDER. THIS SECTION WILL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

(c) Empire Access shall not be liable for any damages arising out of or relating to: interoperability, interaction, access or interconnection problems with applications, equipment, services, content or networks not provided by Empire Access; Service interruptions or lost or altered messages or transmissions (except to the extent credit allowances are specified in the applicable SLA); or unauthorized access to or theft, alteration, loss or destruction of Customer's, users' or third parties' applications, content, data, programs, information, network or systems.

11. Force Majeure. Except with respect to Customer's payment obligations, notwithstanding any other provision of the Contract Documents, neither Empire Access nor Customer shall be liable to the other party for any delay or failure in performance of the Service Contract to the extent such delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, government requirement, civil or military authority, Act of God, inability to secure materials or labor or any other causes beyond its reasonable control (each, a Force Majeure). Any such delay or failure shall suspend the Service Contract until the Force Majeure ceases.

12. Relationship of Parties. Neither the Service Contract nor the provision of Services shall be deemed to create any joint venture, partnership or agency between Empire Access and Customer, which are independent contractors and shall not be deemed to have any other relationship by virtue of the Service Contract or the provision of Services. Neither Empire Access nor Customer shall have, or hold itself out as having, the power or authority to bind or create liability for the other, intentionally, negligently or otherwise.

13. Empire Access Facilities. Equipment and facilities furnished by Empire Access are and remain its property and Customer shall return all such equipment and facilities to Empire Access on expiration or termination of the Service Contract or as earlier requested by Empire Access, in



good condition, reasonable wear and tear excepted. Customer shall reimburse Empire Access for any loss of, or damage to, Empire Access's equipment or facilities on the Customer's premises, except loss or damage caused by Empire Access's own employees, agents or contractors.

14. Notices. All notices or other communications under the Contract Documents shall be in writing and shall be given by personal delivery, by certified mail, return receipt requested, or by nationally recognized overnight courier (with signature for receipt), addressed Empire Access at 34 Main Street, PO Box 349, Prattsburgh, NY 14873, or to Customer at the address set forth in the Service Contract, or to such other address as either party may later designate in writing. Notice shall be deemed given upon receipt.

15. Entire Agreement; Interpretation. The Contract Documents, including any Addendum attached thereto, represent the entire agreement of the parties with respect to their subject matter and supersede all other agreements or understandings, written or oral, between the parties relating to the Service. Empire Access is bound by modifications to the Contract Documents only if in writing signed by authorized representatives of both parties. In case of any conflict between the provisions of these Terms and Conditions and any other document, the provisions of these Terms and Conditions shall take precedence unless otherwise indicated in a writing signed by both parties, except that specific information in a Service Contract shall prevail as to that Service with respect to price, Term, renewal terms, locations and availability and other Service-specific terms contained in the Service Contract. The Service Contract, and any amendment of the terms thereof, may be signed in counterparts, each of which (including fax or PDF versions) shall constitute an original and all of which together shall constitute one and the same instrument. As used in the Contract Documents, with respect to any matter or thing, "includes," "including" and other words of like import mean "including without limitation" such matter or thing.

16. Waiver. No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the party to which it is attributed. No consent by a party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to or waiver of any subsequent breach or default.

17. CPNI. Under federal law, Customer has the right, and Empire Access has a duty, to protect the confidentiality of information about the amount, type, and destination of Customer's service usage ("CPNI"). Customer hereby consents to the sharing of Customer's CPNI or other personal information with Empire Access and its affiliates, agents and contractors, solely for the purpose of developing or bringing to Customer's attention any products and services, or in the event of any merger, sale of some or all of the company assets or acquisition as well as in any insolvency, bankruptcy or receivership proceeding in which CPNI or other personal information would be transferred as one of the business assets of the company. This consent survives the expiration or termination of the Contract Documents and is valid until revoked by Customer. To remove this consent at any time, Customer must give notice to Empire Access at 34 Main Street, PO Box 349, Prattsburgh, NY 14873 Attn: Customer Service and provide the following information: (1) Customer name, (2) Service billing address, (3) Telephone number including area code, and (4) Service account number. Removing consent will not affect the Customer's current Service.

18. Assignment. Customer may not assign its rights or delegate its duties under the Contract Documents without the prior written consent of Empire Access. A change of control event



affecting Customer is deemed an assignment of the Contract Documents that requires the prior written consent of Empire Access.

19. Governing Law. The Contract Documents will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws. The parties each hereby consent to personal jurisdiction in the state and federal courts in Steuben County, New York.

20. Telephone Numbers. In no event shall Empire Access be liable for (i) any telephone numbers published or distributed by Customer prior to Acceptance of Service at all locations covered under the Contract Documents; or (ii) for any directory publishing error.

21. Partial Invalidity. If a tribunal having jurisdiction holds any provision of the Contract Documents to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render the Contract Documents unenforceable in their entirety, but instead the Contract Documents will be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of such agreement, the parties shall promptly engage in good faith negotiations to agree upon a substitute for such provision.

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