



## GENERAL TERMS AND CONDITIONS

For Business Services Provided by Velocity Fiber, LLC

This General Terms and Conditions are included and incorporated into Velocity Fiber's Master Services Agreement, including all other terms, service addenda, other documents, and any other written sources requested or incorporated therein ("Agreement"). Velocity Fiber (Company) and Customer may be referred to as the "Parties".

### 1. DEFINITIONS

**Agreement:** The Agreement, all Schedules, and Amendment(s), which shall incorporate the Request for Proposal, Request for Proposal Response and any other documents, or other written sources incorporated or referenced therein that, together, are intended by the Parties to constitute the agreement between them.

**Billing Date:** Commences on the Service Start Date.

**Customer Demarcation Point:** The physical location at which Company terminates its equipment and makes the Services available for use by the Customer (also known as a "Demarc").

**Customer-Owned Equipment:** Any and all facilities, equipment or devices supplied by Customer, including Customer leased equipment through a third party, for use in connection with the Services.

**Devices:** Small form-factor pluggable (SFP) optical module transceivers.

**Effective Date:** The date this Agreement and/or Amendments become binding and enforceable is upon execution by both authorized representatives of the Parties as evidenced by the signatures and date on the Agreement below and any subsequent Amendment. If executed on different dates, then the latter date of execution becomes the Effective Date.

**Other Charges and Taxes:** Charge other than a Service Charge, including, but not limited to, an amount charged to the Customer for installation charges, USF fees, charges for service calls, maintenance and repair charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated), and other recurring or one-time charges.

**Party:** A reference to Velocity Fiber or Customer; and in the plural, a reference to both Velocity Fiber and Customer.

**Service(s):** All Services provided by Company to Customer and described more fully in the Schedules.

**Service Charge:** The fee for any Service as set forth in Schedules.

**Service Equipment:** Any and all WAN Facilities, equipment or devices provided by Company or its authorized contractors at the Service Location(s) that are used to deliver any of the Services.

**Service Start Date:** The date(s) on which Company first makes Service available for use by Customer. Company shall provide electronic notification of Service Commencement to the authorized technical person designated by the District that the Services are available for use, and the Parties agree that the date of electronic notification shall be called the "Service Start Date," and the Term of the Agreement and/or Schedules, and any Amendments commences upon the Service Start Date and not the Effective Date.

**Service Location(s):** The Customer location(s) where Company provides the Services.

**Service Outage:** A disruption or degradation of Service(s) that fail to meet performance specifications set forth in the Agreement or any Service Level Agreements.

**Service Term:** The duration of time (commencing on the Service Start Date) for which Services are ordered, as specified in the Schedules and Amendments.

**Term:** Is defined in the Master Services Agreement and/or Service Orders for each Customer.



## 2. **CHARGES AND BILLING**

Charges specified on each Service Order accrue on the Service Start Date. Company will invoice Customer in advance on a monthly basis for all monthly recurring Service Charges and fees arising under the Agreement; and all Other Charges will be billed monthly in arrears. Customer shall make payment to Company for all invoiced amounts within 30 days after the date of the invoice. Any amounts not paid to Company within such period will be considered past due.

If Customer disputes any portion of an invoice, Customer must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Customer's claim, to Company for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve the dispute. However, should the Parties fail to mutually resolve the dispute within 30 days after the dispute was submitted to Company, all disputed amounts shall become immediately due and payable to Company while negotiations or other permitted dispute resolution processes continue.

Any undisputed payment not made when due will be subject to a reasonable late charge not to exceed the lesser of 1.5% per month or the highest rate allowed by law on the unpaid invoice. If Customer's account is delinquent, Company may discontinue or terminate service. Company may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or Service Equipment that Customer fails to return in accordance with the Agreement. If Company is required to use a collection agency or attorney to collect any amount owed by Customer or on any unreturned Service Equipment, Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Company under the Agreement or at law or in equity.

## 3. **TAXES, FEES, AND OTHER GOVERNMENT-RELATED COSTS**

Customer is responsible for paying all applicable local, state, and federal taxes or fees (however designated) assessed in connection with Customer's Services. Customer will be responsible to pay any Service fees, payment obligations and taxes that become applicable retroactively. To the extent a sale is claimed to be subject to a tax exemption, Customer is responsible for providing Company with certification of tax-exempt status. Customer bears responsibility for such taxes until such time that Company receives the tax-exempt certificate.

Company will invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable fees regardless of whether Company pays the taxes directly or is required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. These obligations may include those imposed on Company by an order, rule, or regulation of a regulatory body or a court of competent jurisdiction, as well as those that Company is required to collect from the Customer or to pay to others in support of statutory or regulatory programs. Taxes and other government-related fees and surcharges may be changed with or without notice.

## 4. **TERMINATION**

If Customer is in breach of a payment obligation, and fails to make payment in full within 10 days after receipt of written notice of default, or has failed to make payments of all undisputed charges on or before the due date on 3 or more occasions during any 12 month period, Company may, at its option, terminate this Agreement, and suspend Service, and/or require a deposit, advance payment, or other satisfactory assurances as a condition of continuing to provide the Services. However, Company will not take any such action as a result of Customer's non-payment of a charge that is the subject of a timely billing dispute, unless the Parties have reviewed the dispute and Company has determined in good faith that the charge is correct and notified the Customer of such finding in writing. If either Party breaches any material term of this Agreement and the breach continues without remedy for 30 days after notice of



default, the non-defaulting Party may terminate for cause any Service materially affected by the breach. A Service may be terminated by either Party immediately upon notice if the other Party has become insolvent or involved in liquidation or has been adjudicated bankrupt or been involved in an assignment for the benefit of its creditors. (d) Termination by either Party of a Service does not waive any other rights or remedies that it may have under this Agreement.

Upon the expiration or termination of this Agreement, including any Amendment(s) hereto, in whole or in part, for any reason: (i) Company may disconnect the applicable Service; (ii) if Customer has terminated the Agreement, including any Amendment(s) hereto, in whole or in part, prior to the expiration of the Service Term for material breach by Customer, Company may assess and collect from Customer applicable Termination Charges; and (iii) Customer shall, permit Company access to retrieve from the applicable Service Locations any and all Service Equipment (however, if Customer fails to permit access, or if the retrieved Service Equipment has been damaged and/or destroyed other than by Company or its agents, normal wear and tear excepted, Company may invoice Customer for the full replacement cost of the relevant Service Equipment, or in the event of minor damage to the retrieved Service Equipment, the cost of repair, which amounts shall be immediately due and payable).

## 5. **LIMITATION OF LIABILITY**

NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT, WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT, PROVIDED, HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES AND FOR ANY EQUIPMENT OR SERVICE EQUIPMENT PROVIDED BY COMPANY OR FOR EARLY TERMINATION CHARGES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ENTIRE LIABILITY OF COMPANY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS, CONTRACTORS, AND/OR LICENSORS ("ASSOCIATED PARTIES") FOR LOSS, DAMAGES AND CLAIMS ARISING OUT OF THE DELIVERY OF THE SERVICES INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR THE SERVICE EQUIPMENT SHALL BE LIMITED TO A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON- INFRINGEMENT WITH RESPECT TO THE SERVICES AND SERVICE EQUIPMENT. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY DOES NOT WARRANT THAT THE SERVICES, AND SERVICE EQUIPMENT WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY, PACKET LOSS, JITTER, OR DELAY, OR THAT THE SERVICES AND SERVICE EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE SERVICES AND SERVICE EQUIPMENT WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.

COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES AND SERVICE EQUIPMENT FOR USE BY THIRD PARTIES. IN NO EVENT SHALL COMPANY, OR ITS ASSOCIATED PARTIES BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (i) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (ii) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (iii) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (iv) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.



## 6. **REGULATORY AND LEGAL CHANGES**

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement upon its execution are based on the law and regulatory environment as it exists on the date of execution of this Agreement. Company may, in its sole discretion, immediately terminate this Agreement, in whole or in part, in the event there is a material change in any law, rule, regulation, denial of funding from the E-rate Program, Force Majeure Event, or judgment of any court or government agency, if such change materially affects Company's ability to provide the Services herein or Customer's ability to meet any of its obligations under this Agreement. In the event that Company terminates the Agreement pursuant to this Paragraph, Customer agrees to pay all charges pursuant to the Termination Clause of the Master Services Agreement.

## 7. **FORCE MAJEURE**

Neither Party shall be liable to the other Party to perform its non-monetary obligations for any delay, failure in performance, loss, or damage to if and to the extent such failure is caused by an occurrence beyond its reasonable control, including, without limitation: expropriation or confiscation of facilities, compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or severe weather; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; fiber cuts caused by a third party without any negligence caused by Company and such third party is not a contractor, agent, or representative of Company; and failures of utilities, local exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, neither party will be liable for delays caused by the inaction of utilities, local exchange carriers, cities, municipalities, or other political subdivisions in granting access to rights of way, poles, or any other required items needed for the installation or operation of the WAN Facilities, provided, that the Party which has been so affected will (a) promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) thereof; and (b) resume its performance under this Agreement immediately upon the cessation of such cause(s). Except that a Force Majeure Event will not include the Customer's obligation to pay for services; an increase in prices; the denial, in whole or in part, of E-rate Program funding for any Service; or a change in regulation or law.

## 8. **ASSIGNMENT AND TRANSFER**

Neither Party shall assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld. The foregoing notwithstanding, Company may assign this Agreement to any related entity, or purchaser or successor in interest without Customer's consent. In addition, Company may assign its rights and obligations hereunder to any party that acquires from Company a part or all of the assets of Company without Customer's consent. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party.

## 9. **GOVERNMENTAL AUTHORIZATION**

This Agreement is subject to all applicable federal, state and local laws, and regulations, rulings, orders and other actions of any governmental entity or agency (collectively, "Rules"), including, but not limited to, the Communications Act of 1934, as amended, the rules and regulations of the Federal Communications Commission and any applicable state public service or public utility commission. If any such Rule adversely affects the Services or requires Company to provide such Services in a manner other than in accordance with the terms of this Agreement, then Company may, without liability to Customer, terminate the affected Service upon prior written notice to Customer.



10. **NOTICES**

All notices and other communications under this agreement will be in writing and will be delivered by hand or email transmission, by registered or certified mail, postage prepaid, or by commercial overnight delivery service. Notice to Customer shall be sent to Customer's billing address. Notice to Company shall be sent to Velocity Fiber, LLC, 13430 W. 98<sup>th</sup> Street, Lenexa, KS 66215 and attention to: Darren Bonawitz, CEO. Notice will be deemed to have been duly given (1) upon written confirmation of receipt (automatically-generated responses will not constitute confirmation of receipt), if delivered by email; (2) three business days after being mailed by registered or certified mail, postage prepaid; (3) the next business day, if sent by commercial overnight delivery service, unless, with respect to (2) and (3), tracking information indicates delivery on a different day; or (4) except in the case of a change of address of a Party, which shall take effect no sooner than 15 days after receipt of the notice.

11. **ENTIRE UNDERSTANDING**

The Agreement constitutes the entire understanding of the Parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the Parties' rights or obligations relating to the Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not expressly provided for in this Agreement are of no effect. Terms or conditions contained in any purchase order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect. Only specifically authorized representatives of the Parties may make modifications to this Agreement or this Agreement's form. No modification to the form or this Agreement made by a representative of Company who has not been specifically authorized to make such modifications shall be binding upon Company.

12. **CONSTRUCTION**

In the event that any portion of this Agreement is held to be invalid or unenforceable, the Parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the Parties, and the remainder of this Agreement shall remain in full force and effect.

13. **SURVIVAL**

The rights and obligations of either Party that by their nature would continue beyond the expiration or termination of this Agreement and any Amendment(s), including without limitation confidential information and data, representations and warranties, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement and any Amendment(s).

14. **CHOICE OF LAW AND VENUE**

The domestic law of the State of Kansas, without regard for its conflicts of law provisions, shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. The Parties agree that any action related to this Agreement shall be brought under the jurisdiction and venue of the state in which the Services are provided. The Parties agree that any claims, actions, disputes or controversies of any kind arising out of this Agreement or the circumstances and events giving rise to this Agreement shall be adjudicated in the State District Courts or United States District Court of the state in which the Services are provided. Each Party waives trial by jury with respect to any dispute arising under the Agreement.

15. **NO THIRD-PARTY BENEFICIARIES**



This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

16. **NO WAIVER**

No failure by either Party to enforce any rights hereunder shall constitute a waiver of such right(s).

17. **ARTICLE HEADINGS**

The article headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

18. **COMPLIANCE WITH LAWS**

Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

19. **COUNTERPARTS; DIGITAL SIGNATURES**

This Agreement and Amendment(s) may be executed in any number of counterparts, each counterpart will constitute an original, and all counterparts together will constitute one agreement. This Agreement may be signed by any means producing a reasonably legible signature, and a digital electronic signature or digital copy of a signed signature page will be effective as an original.