

## TERMS AND CONDITIONS OF SERVICE

**These Terms and Conditions of Service are incorporated into, and constitute an essential part of, the Service Agreement (the “Agreement”) between Customer and ACCESS2GO. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Agreement.**

**1. Regulation.** The rates set forth in the Agreement are subject to the imposition of new regulations, modifications of existing regulations, new interpretation, application or enforcement of, or exercise of authority related to, any regulation or finding of any federal, state and/or local regulatory agency, legislative body, or court of competent jurisdiction, including, without limitation, the imposition of any charges, surcharges, and/or taxes in reliance on or as a result of the same (“Regulatory Change”). ACCESS2GO reserves the right, at any time to (i) to pass through to customer all charges, surcharges or taxes directly or indirectly related to such Activity, and/or (ii) modify the rates and/or terms and conditions of the Agreement to reflect the impact of such Regulatory Change, including, without limitation, the impact of any actions by third parties in connection with such Regulatory Change.

**2. Tariffs.** "Tariffs" shall refer to ACCESS2GO's applicable tariffs. The Agreement incorporates by reference the terms of each such Tariff to the extent Customer subscribes to Services provided by ACCESS2GO which are covered by any applicable Tariff. The Agreement may be superseded by a Tariff filed with the appropriate regulatory agency, which Tariff may contain such modifications of the provisions of the Agreement as ACCESS2GO deems appropriate. ACCESS2GO may modify its Tariffs from time to time in accordance with law and thereby affect Services furnished to Customer hereunder, except that the terms and conditions of the Agreement shall supplement, to the extent not inconsistent, Tariff terms and conditions. If any of ACCESS2GO's applicable Tariffs are cancelled during the Term of the Agreement, such cancelled Tariff(s) will be deemed to be incorporated by reference into the Agreement on the effective date of cancellation, as supplemented by any non-inconsistent product descriptions, definitions, prices and other terms and conditions contained in any price guide (“Price Guide”) or similar document posted by ACCESS2GO on an ACCESS2GO website accessible by Customer, such as [www.acc2go.com/tariff](http://www.acc2go.com/tariff), and may be modified by ACCESS2GO from time to time and thereby affect the previously tariffed Service furnished to Customer.

**3. Billing Disputes.** Only disputes made in good faith, in a timely manner and properly documented as required herein, as determined by ACCESS2GO in its sole discretion, will be considered by ACCESS2GO. To meet these requirements, Customer must provide ACCESS2GO with written notice of any disputed charge(s) within thirty (30) days of the original Due Date for such charges. Along with such notice, Customer shall set forth in detail all grounds for disputing each charge and provide all documents supporting each dispute. Customer shall not have the right to withhold any amount not properly disputed. ACCESS2GO and Customer shall attempt in good faith promptly to resolve any dispute within thirty (30) days of ACCESS2GO's receipt of notice of that dispute. If a dispute is not resolved, ACCESS2GO shall have the right to determine in good faith the merit of

each dispute and Customer's associated payment obligation. If ACCESS2GO determines that any amount withheld in dispute is owed, Customer shall pay that amount within ten (10) days of its receipt of written notice from ACCESS2GO of such determination, plus interest at the lower of 2.0% per month or the maximum rate permissible under applicable state law, calculated from the Due Date until the date payment is received by ACCESS2GO. Failure to pay such amount in full within such ten (10) day period shall be a breach hereof and shall entitle ACCESS2GO, in addition to its other remedies at law or equity, to terminate all Services to Customer without notice and without liability of any kind or amount. If ACCESS2GO determines that any amount withheld in dispute is not owed, ACCESS2GO shall issue a credit for that amount on the first invoice issued by ACCESS2GO for a full billing cycle after ACCESS2GO's determination is made. Customer's exclusive remedy for issues relating, whether directly or indirectly, to any disputes shall be in the forum and pursuant to the laws as set forth in the Agreement.

**4. Reinstatement.** Service will only be reinstated once all outstanding bills have been paid in full and any other cause for suspension or disconnection has been remedied in full. A reinstatement fee of \$500 will be charged to reestablish Service that has been suspended or disconnected. Notwithstanding the foregoing, Customer understands and agrees with respect to Service that has been suspended or disconnected that: (a) Customer is responsible for payment of all applicable Early Termination Charges for such Service; (b) ACCESS2GO may, in its sole discretion, impose new deposit requirements, connection fees and minimum term commitments and require that Customer execute a new Service Order as a prerequisite before Service will be reinstated; and (c) if Service has been suspended or disconnected for 48 hours and the cause for such suspension or disconnection remains uncured for such period, ACCESS2GO may, in its sole and absolute discretion, refuse to reinstate Service (and such refusal shall not alleviate customer from any and all applicable Early Termination Charges or other liabilities provided for in the Agreement).

#### **5. Service Interruption.**

(a) Outage Credits - General. In the event Customer experiences any interruption in its Service that it believes to be material, Customer shall immediately notify ACCESS2GO's Network Operations Center at (866) 822-2246 and request that ACCESS2GO open a trouble ticket to investigate. Before notifying ACCESS2GO, Customer shall ascertain that the interruption is not within Customer's control (e.g. Customer equipment, power, wiring, networking, etc.) and Customer shall be liable to reimburse ACCESS2GO for all costs incurred by ACCESS2GO in connection with an interruption that was within Customer's control. Customer shall retain each trouble ticket number opened on its behalf. Access2Go's mean time to repair ("MTTR") goal is two (2) hours. Notwithstanding the reporting of an interruption in its Service, Customer shall only be entitled to a credit where ACCESS2GO determines that each of the following conditions exist: (i) the interruption ("Outage") exists for a period of time of not less than two (2) continuous hours and renders the Service "unavailable" (as defined in the Specification) during that entire time period (and which is not a scheduled outage); (ii) a trouble ticket is opened by the Customer with ACCESS2GO at the commencement of the Outage; and

(iii) a request for credit is made in writing to ACCESS2GO within thirty (30) days of the date the trouble ticket was opened. Customer acknowledges that it is reasonable to base Customer's entitlement to credits on each of the conditions identified above and it is reasonable to limit Customer's recovery to the outage credit described below ("Outage Credit"). Customer waives all rights to damages or to other relief in the event of an Outage. The length of each Outage shall be calculated in hours and shall include fractional portions thereof. An Outage shall be deemed to have commenced upon verifiable notification thereof by Customer to ACCESS2GO. Each Outage shall be deemed to terminate upon restoration of the affected Service as evidenced by appropriate network tests by ACCESS2GO. All Outage Credits shall be credited on the next monthly invoice for the affected Facility and the total of all Outage Credits applicable to or accruing in a given month shall not exceed the amount payable by Customer to ACCESS2GO for that same month for such Facility. Except as provided in Section 7 below, the Outage Credits described in this Section of the Agreement shall be the sole and exclusive remedy of Customer in the event of any Outage.

(b) Outage Credits for Private Line and Local Access – Notwithstanding the foregoing, the Outage Credit formula that shall apply to Private Line Service and Local Access Service shall be as follows:

$$\text{Outage Credit} = [(\text{Hours of Outage} - 2 \text{ hours}) / 720 \text{ Hours}] \times \text{Monthly charge of Affected Facility}$$

Private Line and Local Access Outage Credits shall apply to the charges for the total mileage between end terminals of any Facility affected by an Outage: provided, however, that if any portion of the affected Facility remains beneficially used or useable by Customer between any intermediate terminals (where Customer has installed drop and insert capability) or end terminals, the Outage Credit shall not apply to that pro-rata portion of the mileage. The length of each Outage shall be calculated in hours and shall include fractional portions thereof.

(c) Outage Credits for Port Issues - Notwithstanding the foregoing, Outage Credits due to a malfunction and credits due to performance issues related to any Service that involves an ACCESS2GO network Port are set forth in ACCESS2GO's service level agreement ("SLA"). For a complete description of the SLA, the terms and conditions of which are incorporated by this reference as if copied herein, please refer to our website at [www.acc2go.com/sla](http://www.acc2go.com/sla).

**6. Credit.** Customer's execution of the Agreement signifies Customer's acceptance of ACCESS2GO's initial and continuing credit approval procedures and policies as a condition of ACCESS2GO providing Services. ACCESS2GO reserves the right to withhold initiation of full implementation of Services under the Agreement pending initial satisfactory credit review and approval thereof which may be conditioned upon terms specified by ACCESS2GO including, but not limited to, security for payments due hereunder in the form of a cash deposit via wire transfer, guarantee, irrevocable letter of credit from a financial institution, or other forms of security acceptable to ACCESS2GO,

in its sole discretion. In instances where Customer is required to provide ACCESS2GO with security in the form of a cash deposit, the cash deposit shall bear interest at the rate for telephone security deposits set by the Public Utility/Service Commission in the state where Customer is headquartered. In certain situations, ACCESS2GO shall require Customer to pre-pay for all Services provided by ACCESS2GO in cash, via wire transfer. Initial prepayment amount for service is one and one-half (1.5) months' estimated usage. Regardless of the initial prepayment amount, it shall be the responsibility of Customer to always maintain sufficient prepayment credit balance to cover weekends and holidays. If Customer expects usage of Service to increase, it must make appropriate adjustments to amount of prepayment. ACCESS2GO retains the right to suspend service without notice or liability to Customer if at any time Customer does not have sufficient prepayment credit balance to cover estimated usage at any time. Upon request by ACCESS2GO at any time, Customer agrees to provide financial statements or other indications of financial circumstances. As may be determined by ACCESS2GO, in its sole discretion at any time, if the financial circumstances or payment history of Customer is, or becomes unacceptable, ACCESS2GO may require a new or increased deposit, pre-payment, guarantee or irrevocable letter of credit at ACCESS2GO's discretion, to secure Customer's payments for the remainder of the Term and such deposit, pre-payment, guarantee or irrevocable letter of credit shall be provided within five (5) days of written request. Failure of Customer to provide the requested security pursuant to the Agreement shall constitute a breach of the Agreement and ACCESS2GO may suspend or terminate Services until such time as the required security is received.

**7. Non-Disclosure and Publicity.** Neither Party shall disclose to any third party the terms and conditions of the Agreement without the prior written consent of the other Party.

**8. Force Majeure.** 8.1 Except as provided in subparagraph 8.2 below, ACCESS2GO shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to acts of God, fire, explosion, vandalism, fiber optic cable cut, storm or other similar catastrophes, any law, order, regulation, direction, action or request of the United States government, or of any other government, including state and local governments having jurisdiction over either of the Parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more said governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; or strikes, lock-outs, work stoppages or other labor difficulties. 8.2 If any such failure of performance on the part of ACCESS2GO shall be for: (i) thirty (30) days or less, then the Agreement shall remain in effect but Customer shall be relieved of its obligation to pay for that portion of the Facilities and/or Services affected for the period of such failure of performance; or (ii) more than thirty (30) days, then Customer may terminate the provisions of the Agreement only insofar as they relate to the Facilities and/or Services so affected.

**9. Limitation of Liability.** IN NO EVENT SHALL ACCESS2GO OR ANY AFFILIATED PERSON OR ENTITY BE LIABLE TO CUSTOMER OR ANY AFFILIATED PERSON OR ENTITY FOR ANY LOSS OF PROFIT OR REVENUE

OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, RELIANCE, COST OF COVER, SPECIAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, INCURRED OR SUFFERED AS A RESULT OF UNAVAILABILITY, PERFORMANCE, NON-PERFORMANCE, TERMINATION, BREACH, OR OTHER ACTION OR INACTION UNDER THE AGREEMENT, EVEN IF CUSTOMER OR ANY AFFILIATED PERSON OR ENTITY ADVISES ACCESS2GO OR ANY AFFILIATED PERSON OR ENTITY OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. ACCESS2GO SHALL NOT BE RESPONSIBLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION, MAINTENANCE OR REMOVAL OF EQUIPMENT OF THE PROVISION OF SERVICES, AND CUSTOMER HEREBY INDEMNIFIES AND HOLDS HARMLESS ACCESS2GO FROM AND AGAINST ANY LIABILITIES INCLUDING ATTORNEY'S FEES ARISING OUT OF SUCH DAMAGE OR INJURY. CUSTOMER'S REMEDIES FOR CLAIMS UNDER THE AGREEMENT SHALL BE STRICTLY LIMITED TO OUTAGE CREDITS AS DESCRIBED HEREIN.

**10. Indemnification.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its directors, officers, employees, and agents, successors and assigns (collectively, the "Indemnified Party") from all claims (each, a "Claim") by any third party for damages, costs, expenses and liabilities, including reasonable attorney's fees and disbursements arising in connection with the Indemnifying Party's performance of its obligations and duties under the Agreement. The Indemnified Party shall promptly notify the Indemnifying Party of any such Claim.

**11. Disclaimer of All Warranties.** ACCESS2GO SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER OR THE FACILITIES AND EQUIPMENT FURNISHED PURSUANT TO THE AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**12. Equipment.** Any equipment provided to Customer by ACCESS2GO for use in conjunction with a Facility will be subject to the terms and conditions set forth in the Agreement. ACCESS2GO will "drop ship" the equipment to Customer via certified carrier with tracking technology. Customer is responsible to be present for receipt of delivery. Customer must unpack and place the equipment in a secure and environmentally controlled space that is within 50 feet of the LEC point of demarcation ("demarc"). Customer also agrees to provide the analog POTS line that will at all times remain plugged into the provided equipment. The number for the analog line shall be provided to ACCESS2GO's provisioning staff prior to turn up, and the line shall be in good working order on the date and time of the turn up. The cost and maintenance of the analog line is the Customer's responsibility. If at anytime during the applicable Service Order Term a equipment fails and is in need of replacing, ACCESS2GO will provide replacement equipment. The equipment failure shall be determined by the

ACCESS2GO's NOC working with the customer in conjunction of ACCESS2GO's technical staff. Once determined by ACCESS2GO, in its sole discretion, that the equipment is need of replacing, ACCESS2GO will ship overnight replacement equipment to Customer's site on the next business day if determined by noon CST. If ACCESS2GO installs or provides equipment on Customer's premises for the purpose of enabling ACCESS2GO to provide the Facility to Customer, Customer agrees to provide ACCESS2GO reasonable access into Customer's premises for the purpose of installation, demonstration, inspection, maintenance, repair and removal of the equipment, as well as ACCESS2GO's installers with a safe working environment. Additionally, Customer acknowledges that it will have no right, title or interest in any equipment that ACCESS2GO installs. ACCESS2GO and Customer agree that the equipment will not become a fixture and Customer shall keep the equipment free from all liens, charges and encumbrances. Customer agrees: (1) to use the equipment only for the purpose of receiving Services ordered from ACCESS2GO and no other purpose; (2) to prevent any connections to the equipment that are not expressly authorized by ACCESS2GO; (3) to prevent tampering, altering or repair of the equipment, or inside wiring, by any person other than ACCESS2GO's authorized personnel; (4) to assume complete responsibility for improper use, damage or loss of such equipment regardless of cause (including damage or loss caused by force majeure events), except to the extent caused by ACCESS2GO or its suppliers; and (5) to return the equipment in good condition, ordinary wear and tear resulting from proper use excepted, immediately upon discontinuance of Service. In the event the equipment is not returned in good condition, Customer agrees to pay ACCESS2GO an amount for each equipment device in accordance with the table located at [www.acc2go.com/equipment](http://www.acc2go.com/equipment).

**13. Internet Service and IP Addresses.** 13.1 Internet Services are designed exclusively for data Internet access. ACCESS2GO makes no representation, guarantee or warranty of any kind or nature regarding the suitability of ACCESS2GO's Internet Services for any use other than for data Internet access. ACCESS2GO SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE INTERNET SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO USE OF INTERNET SERVICES FOR VOIP OR VIDEO OVER THE INTERNET. 13.2 Customer may request that ACCESS2GO obtain IP addresses and assign Internet access space for the benefit of Customer during the Term (subject to availability). ACCESS2GO will route IP addresses on ACCESS2GO's Network. Customer hereby agrees and acknowledges that Customer does not have rights and ownership interest in any ACCESS2GO obtained IP Addresses, and upon termination of the Agreement, Customer agrees that all rights to access and right to use such IP Addresses shall terminate immediately.

**14. No Right To Intellectual Property.** The Agreement confers no right to use the name, service marks, trademarks, copyrights, or patents of either Party except as expressly provided herein. Neither Party shall take any action, which would compromise the registered copyrights or service marks of the other.

**15. Compliance With Law.** In conjunction with the Agreement, each Party shall at all times comply with all applicable federal, state, and local statutes, ordinances, regulations and orders of any commission or other government body.

**16. Notices.** All notices, demands, consents, requests, approvals, Customer name and address changes, billing inquiries and requests, or other communication which either Party is required or desires to give or make upon or to the other Party shall be in writing and will be effective when sent, if hand delivered or faxed (with confirmation of receipt); on the next business day if sent by a generally recognized overnight delivery service (subject to confirmation from the service); or on the date received if sent by United States certified or registered mail, return receipt requested. Such Notices will be sent to the addresses set forth in the Agreement on the signature page, unless either Party changes its address by giving written notice of such changes to the other Party in accordance with the Agreement. Customer acknowledges that rate change notices may be delivered by ACCESS2GO to Customer by email or facsimile and shall be deemed to be delivered when received by Customer.

**17. No Third Party Beneficiaries.** The Agreement is being executed for the sole and exclusive benefit of the Parties hereto and is not for the benefit of any third parties. The execution hereof shall not create any obligations or confer any rights on any person or entity other than the Parties hereto.

**18. Obligations of Customer.** Customer acknowledges that it is Customer's sole responsibility to supply immediate notice to ACCESS2GO if Customer changes any of its contact information. If at any time Customer's name or billing information changes from that which is set forth below, Customer shall have five (5) days to inform ACCESS2GO of such changes in accordance with the Notice provisions set forth in the Terms/Conditions.

**19. Relationship of Parties.** Neither the Agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between ACCESS2GO and Customer; the Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party, nor any agent or representative of either Party, shall have, or hold itself out as having; the power or authority to bind or create liability for the other Party by its intentional or negligent act and no claimed act of authority shall have any binding effect.

**20. Network Abuse.** Customer is prohibited from abusing the networks of ACCESS2GO and its underlying carriers. For a complete description of ACCESS2GO's network abuse policy, the terms and conditions of which are incorporated by this reference as if copied herein, please refer to our website at [www.acc2go.com/networkabuse](http://www.acc2go.com/networkabuse).

## **21. Termination of Services; Moves.**

21.1 The term of each Service Order shall be set forth in the Service Order. Customer may terminate any Service before expiration of the term of the applicable Service Order by providing ACCESS2GO with written notice at least sixty (60) days in advance. In such event, Customer shall pay ACCESS2GO a mandatory early termination charge (the "Early Termination Charge") equal to the monthly recurring charge and all associated fees and charges of the terminated Service provided by the number of months remaining in the term of the applicable Service Order. Customer hereby agrees: (a) the damages that ACCESS2GO will incur as a result of such termination will be impossible to ascertain; (b) the Early Termination Charge is reasonable and fairly represents the amount of damages that ACCESS2GO will sustain as a result of such early termination; (c) the Early Termination Charge establishes liquidated damages and shall not be construed as a penalty of any kind; and (d) Customer waives any right to ascertain ACCESS2GO's actual damages in the event of such early termination. Payment of an Early Termination Charge shall not relieve the Customer of its obligation to pay any charges incurred under the applicable Service Order prior to the effective date of such termination. Any written notice pursuant to this Section 21.1 must be sent by an authorized representative of Customer in the manner outlined in these T&Cs and must specifically describe the Service to be terminated and the reasons therefor. Customer must also reasonably cooperate with ACCESS2GO to identify the specific circuit(s) or Service(s) being terminated, and Customer agrees to email its disconnect notice to "disconnects@acc2go.com". Customer understands and agrees that billing will only cease when all information reasonably required by ACCESS2GO has been provided.

21.2 ACCESS2GO shall have the sole discretion whether to permit Customer to move a Service within the same serving wire center. If ACCESS2GO does permit Customer to move a Service within the same serving wire center, ACCESS2GO will provide Customer with a quote regarding the cost of such move which quote may contain both direct costs charged by ACCESS2GO's underlying carrier(s) or provider(s) in addition to all direct and administrative costs incurred by ACCESS2GO in connection with the move. Customer understands and agrees that ACCESS2GO may modify the rates and fees charged to Customer even if Service is moved within the same serving wire center. ACCESS2GO cannot guarantee that Customer may move a Service outside of the same serving wire center. Any request by a Customer to move a Service outside of the same serving wire center will be handled on an individual case basis, in ACCESS2GO's sole discretion. ACCESS2GO's inability to honor a move will not relieve Customer from obligation under the Agreement or in any applicable Service Order.

**22. Charges and Payment.** All charges shall be set forth in the applicable Service Order(s). Monthly recurring charges (MRCs) shall be invoiced by ACCESS2GO on a monthly basis in advance and nonrecurring charges shall be invoiced in arrears each month for the previous month's usage; provided, however, that ACCESS2GO shall have the right to bill Customer for any additional recurring and non-recurring charges incurred during any billing period for up to two (2) years following the close of that billing period. In addition, ACCESS2GO may, in its sole discretion, request a deposit amount equal to

the last monthly invoice or the projected amount of the invoice for the upcoming billing period. Customer shall make all payments for all amounts not properly disputed as required hereunder by the due date printed on the invoice (the "Due Date"). Customer shall advise ACCESS2GO in writing in the event that it does not receive an invoice for any billing period; provided, however, that the failure by ACCESS2GO to deliver an invoice during any billing period and/or the failure by Customer to provide the required notice shall not relieve Customer of its absolute obligation to make all payments required hereunder in a full and timely manner. In the event that the Start of Service Date for any Facility falls on any day other than the first day of any month, the first invoice to Customer shall consist of: (1) the pro-rated portion of the applicable monthly charge covering the period from the Start of Service Date to the first day of the subsequent month; and (2) the monthly charge for the following month. In addition to its other rights hereunder, in the event that any amounts are not paid in full by the Due Date, ACCESS2GO may: (1) impose a late payment charge of the lower of 2.0% per month or the highest legally permissible rate, and such late charge shall be payable upon delivery of ACCESS2GO's next invoice to Customer; (2) require security in the amount and form determined by ACCESS2GO, in its sole discretion, as a condition of the continued provision of all such Facilities and/or Services; and/or (3) suspend or terminate the Services immediately without notice and without liability of any kind or amount. ACCESS2GO reserves right to replace current facilities with new facilities, including but not limited to loops, IP ports and IOC components. In the event ACCESS2GO seeks collection of any amounts not paid in full by the Due Date, either informally or through formal legal action, Customer shall be liable for all costs of collection, including but not limited to reasonable attorney's fees and court costs (if applicable). Any applicable sales, use, commercial or other taxes or fees imposed with respect to Facilities provided by ACCESS2GO (other than taxes on ACCESS2GO's income), as well as any other fees or assessments imposed by any governmental or quasi-governmental authority (including any private company or the like acting on behalf of such governmental or quasi-governmental authority) and any fees or charges which have the effect of increasing ACCESS2GO's cost of providing such Facilities, shall also be payable by Customer in addition to the other charges set forth in this Agreement. ACCESS2GO shall have the right to adjust its rates and charges, impose additional rates, charges or surcharges or change any other term of this Agreement (collectively, a "Change"). A Change shall become effective thirty (30) days after written notice of the Change has been provided to Customer; provided, however, that Customer may terminate any Service adversely affected by the Change (such termination to be effective upon the date the Change would have taken effect) by giving written notice of termination to ACCESS2GO within ten (10) days of its receipt of notice of the Change from ACCESS2GO. If Customer does not terminate the adversely affected Service within ten (10) days of such notice, any Change shall be effective for the remainder of the Term. ACCESS2GO may, in its sole discretion, provide Customer with DNS support. If ACCESS2GO chooses to provide Customer with DNS support, ACCESS2GO shall charge Customer the sum of \$1 per month to provide DNS and \$2.50 per month to provide reverse DNS. The above DNS charges include loading of up to 10 DNS records. If Customer needs more than 10 there is a charge of \$5.00 per additional 10 DNS records. In addition, ACCESS2GO shall charge Customer the sum of \$50 for every DNS or reverse DNS change made by

ACCESS2GO in excess of one (1) change per calendar quarter. ACCESS2GO may, in its sole discretion, provide Customer with technical support. In the event ACCESS2GO provides Customer with technical support outside the scope of normal trouble shooting, ACCESS2GO shall charge Customer at a rate of \$250 per hour for same. ACCESS2GO shall charge Customer a fee of \$50 for every NSF check received by ACCESS2GO.

### **23. Specific Provisions Related to Voice Services.**

23.1 ACCESS2GO reserves the right, in its sole discretion, to examine Customer's voice calling usage pattern and adjust the rates or impose a surcharge if such usage pattern is not normal or customary under generally accepted industry standards for the type of voice Service being used ("Non-Customary Calling"). In the event ACCESS2GO adjusts Customer's rates due to Non-Customary Calling, Customer's sole and exclusive remedy shall be to terminate the remaining usage commitment (if any) under the applicable Service Order. In such event, Customer shall continue to be liable for any access loop monthly recurring charges through the remainder of the Service Order Term.

23.2 If 10% or more of Customer's completed calls during any billing cycle constitute calls with a duration of less than six seconds in length (each, a "Short Duration Call"), ACCESS2GO may charge each Short Duration Call during such Billing Cycle (including those Short Duration Calls under the 10% threshold) an additional \$0.01 surcharge per call. ACCESS2GO shall rate all such calls to the fourth (4th) decimal. In the event of any inconsistency between the provisions of this paragraph and an applicable pricing table set forth in an Attachment or a Service Order, the provisions in this paragraph shall control.

23.3 If the completion percentage of Customer's attempted calls is in excess of 50% (the "Non-Completed Call Percentage Threshold") for any given week on any given trunk group, ACCESS2GO may, in its sole discretion: (a) upon 30 calendar days email notice, disconnect any and all circuits providing the applicable Service; or (b) charge a surcharge equal to \$20 per DS-O for all circuits providing such Service.

23.4 All domestic calls will be rated in six (6) second increments with a six (6) second per call minimum and rounded to the third decimal place for each call charge. All international and calling card calls will be rated in six (6) second increments with a thirty (30) second per call minimum and rounded to the third decimal place for each call charge except Mexico, which will be rated in sixty (60) second increments.

23.5 For purposes of Section 23 and the subparagraphs thereunder, the following terms and definitions shall apply. "Time Point" or "TP" shall be the measurement method for call duration. TP-1 is the "request for service event"; TP-6 is the "answer detected event"; TP-7 is the "call disconnect event". Call duration shall be measured as follows: (a) for Carrier Toll-Free Transport (TDM) and CIC products (TDM and VOIP), call duration is measured Disconnect time (Time Point 7 minus Start time (Time Point 1)); or (b) for all other circuit switched and NOS products (TDM), call duration is conversation time and is measured Disconnect time (Time Point 7) minus Service Established time

(Time Point 6); or (c) for Voip Services, call duration is conversation time and is measured as Disconnect Time (BYE message) minus Service Established time.

23.6 The following minimum Facility utilization requirement (“Utilization Commitment”) shall apply to end user dedicated 1+ outbound service and end user Dedicated 8xx Inbound Service:

No ACCESS2GO port (“Port”) to which any dedicated access loop (“DAL”) is connected may have zero traffic utilization for thirty (30) consecutive days following the first three (3) calendar months after connection of the Port to the DAL.

A. If the Customer violates the foregoing Utilization Commitment, ACCESS2GO may, in its sole discretion and upon thirty (30) calendar days e-mail notice, disconnect the DAL from the Port. This will not excuse Customer from paying the monthly charge for such Loop or release Customer from any monthly usage commitment set forth in any applicable Service Order.

B. If in any applicable monthly or annual period, Customer’s total utilization is less than the Utilization Commitment, Customer shall pay ACCESS2GO an underutilization charge (“Underutilization Charge”) equal to the difference between the Utilization Commitment and Customer’s total utilization of the applicable Facility for such monthly or annual period. Such payment shall be in addition to any current usage or recurring monthly charges and shall be paid within thirty (30) days of Customer’s receipt of an invoice containing such Underutilization Charge(s). Customer hereby agrees that the Utilization Commitment and Underutilization Charge(s) are reasonable.

23.7 Customer is solely responsible for fraudulent calls or data transmitted utilizing the Services. For a complete description of ACCESS2GO’s fraud policy, the terms and conditions of which are incorporated by this reference as if copied herein, please refer to our website at [www.acc2go.com/fraud](http://www.acc2go.com/fraud).

**24. Recording of Calls.** ACCESS2GO hereby puts Customer on notice that any calls between Customer and ACCESS2GO personnel may be recorded for quality assurance and other commercially reasonable purpose. Customer hereby acknowledges and agrees that such calls may be recorded.

**25. Attorneys Fees and Costs.** In the event ACCESS2GO seeks to enforce any of the terms or conditions of this Agreement or protect any of its rights or privileges hereunder, either informally or through formal legal action, Customer shall be liable for all costs incurred by ACCESS2GO as a result thereof, including but not limited to reasonable attorney's fees and court costs (if applicable).

**26. Service Delivery.** ACCESS2GO will deliver Service to the network point of presence (POP) or demarc, and a Service is considered installed and working when it is

turned over clean at the POP or demarc, as applicable. Extension of Service beyond the demarc is the responsibility of Customer. If Customer elects to and use ACCESS2GO and ACCESS2GO chooses to extend the beyond the demarc, the Service will not be covered under ACCESS2GO's SLA. If ACCESS2GO extends Service beyond the demarc, the Service will be considered in working condition once accepted by Customer and ACCESS2GO will have no further obligation to maintain the Service. Any delay in extension of the Service beyond the demarc by ACCESS2GO will not delay the billing of the Service or Customer's liability for such billing.

**27. Firm Order Commitment.** No Firm Order Commitment ("FOC") issued by ACCESS2GO or its underlying carrier shall be considered guaranteed in any manner. In no way shall ACCESS2GO's inability or failure to deliver any ordered Service by the date of issuance of an FOC ("FOC Date") be considered a default under the Agreement and ACCESS2GO shall not be liable to Customer for any costs or damages of any kind that Customer may incur in anticipation of the FOC Date, including but not limited to lost revenue, lost profit, travel expenses, technician costs, etc.

**28. CPNI.** ACCESS2GO acknowledges that it has a duty, and Customer has a right, under federal and/or state law to protect the confidentiality of Customer's proprietary network information ("CPNI"). Such CPNI includes information about the telecommunications Services purchased by Customer from ACCESS2GO, Customer account activity (for example, telephone numbers) and charges incurred by Customer. With Customer's consent, ACCESS2GO may use this information for marketing purposes to offer Customer the full range of products and services available from ACCESS2GO that may be different from the type of Services Customer currently buys from ACCESS2GO. In addition to private line and other dedicated transport services, ACCESS2GO and ACCESS2GO affiliate's offer other services, including voice, collocation, hardware (by sale or lease) and managed services. A more complete description of ACCESS2GO companies and product and service offerings is available at [www.acc2go.com](http://www.acc2go.com) or Customer may contact its ACCESS2GO account manager. ACCESS2GO may also share Customer information with its affiliates, agents and partners to offer the services and products described above. ACCESS2GO requires Customer's consent for ACCESS2GO and its affiliates, agents and partners to use this information to offer the services and products described above. By signing the Agreement and taking no further action, Customer gives ACCESS2GO Customer's consent to use and disclose Customer CPNI as described above. Customer may refuse CPNI consent by signing the Agreement but then notifying ACCESS2GO in writing of Customer's decision to withhold Customer's consent. Customer's consent or refusal to consent will remain valid until Customer otherwise advises ACCESS2GO. Customer's decision to approve or disapprove use or disclosure of Customer CPNI as described in this section will not affect ACCESS2GO's provision of Service to Customer. A more complete description of ACCESS2GO's CPNI Policy is set forth at [www.acc2go.com/CPNI](http://www.acc2go.com/CPNI), the contents of which are hereby incorporated in these T&Cs as if copied herein verbatim.