



TERMS AND CONDITIONS OF SERVICE

These terms and conditions apply to all telecommunications and related services (the "Services") provided by Fiber Technologies Networks, L.L.C. or its affiliates ("Fibertech") to its customer or its affiliates ("Customer") under the Service Contract ("Contract") into which this agreement is incorporated.

1. Term. The term of the Contract shall commence upon Acceptance Date of the initial Service, and shall continue in full force and effect for the time period indicated in the Contract ("Term"), unless terminated earlier pursuant to its terms. After expiration of the Term, the Contract shall automatically renew for successive renewal terms of one (1) year each, unless either Party gives written notice of such Party's intent not to renew the Contract at least thirty (30) days before the expiration of the then-current Term.

2. Completion. Fibertech shall provide notice of completion ("Completion Notice") in writing, when Fibertech's work is completed. The Customer shall be deemed to have accepted ("Accept(ed)(ance)") the Services on the "Acceptance Date", which shall be defined as the earlier of (a) the date Customer delivers an Acceptance Notice, or (b) delivery of the Completion Notice by Fibertech to Customer, where the Customer does not deliver a Failure Notice pursuant to this section, or (c) the date when Customer uses the services for purposes other than testing. Customer shall have five (5) business days from receipt of the Completion Notice to test the Service. In the event that non conformities are discovered, Customer may deliver to Fibertech a failure notice ("Failure Notice") within such five (5) business day period. If a Failure Notice is served, Fibertech shall correct the failure and send a new Completion Notice to Customer, and Customer shall have five (5) business days within which to re-test and may deliver another Failure Notice within such period. This procedure shall be repeated until the Service tests within the parameters set forth in the applicable Service Level Agreement ("SLA"). Fibertech shall also have the right at any time to test the Service and provide the results to Customer. In the event that the Customer orders multiple circuits under a single order, each circuit will be independent and will follow the acceptance process. In the event that completion is delayed by Customer more than thirty (30) days past the FOC Date, then the Service shall be deemed Accepted for purposes of commencement of the Term and billing, and

Fibertech shall work in good faith to finish installation once Customer has removed the impediments to installation.

3. Rates and Charges. The rates and charges for the Services shall be those set forth in the Contract or other appropriate addendum thereto. The rates and charges in the Contract apply only to the Services provided at the service address listed on the Contract. Each additional Customer location added after the execution of the Contract shall require its own Service Contract. In the event that Fibertech experiences significant costs in resolving a service interruption that is ultimately determined to be the fault of the Customer, Fibertech has the right to charge for those costs, in part or in whole.

4. Taxes and Surcharges. In addition to the rates and charges for the Service(s), Customer shall be responsible for payment of all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services, excluding income taxes payable by Fibertech. Customer shall be responsible for the payment of all surcharges in effect from time to time, including but not limited to USF, as required or permitted by applicable law, regulation or tariff and/or as specified on the Fibertech website at www.fibertech.com. If Customer provides Fibertech with an acceptable tax exemption certificate, Fibertech agrees to 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 certificate to Fibertech.

5. Billing and Payment. Billing for a service shall commence on the Acceptance Date of the Service as defined in Section 2. All bills are due and payable upon receipt. If Customer's bill is not paid within thirty (30) days after the invoice date listed on the bill (the "Due Date"), Customer shall also pay to Fibertech a monthly late charge amount equal to 1.5% of the unpaid balance due (or the maximum amount permitted under applicable law, whichever is less). Customer must provide Fibertech with written notice of any disputed charge(s) within one hundred and eighty (180) days after the invoice date listed on the bill or shall be deemed to have waived its rights to dispute the charges. If the dispute is filed on or before the Due Date for the respective invoice, Customer shall pay the invoiced amount minus the disputed amount by the Due Date. Customer shall have no right to withhold amounts not disputed by the Due Date, provided that



payment of an invoice shall not be deemed a waiver of Customer's rights to later dispute an invoice within the time period established in this Section. The dispute notice shall set forth in writing in reasonable detail the information concerning the disputed charges and reasons for the dispute. Fibertech and Customer shall attempt in good faith to promptly resolve any objection to the invoiced amount. If the dispute is subsequently resolved in favor of Fibertech, Customer shall pay the disputed amount previously withheld within ten (10) days of such resolution, including interest at the rate of 1.5% per month from the original due date. If the dispute is subsequently resolved in favor of Customer, Fibertech shall issue a credit on Customer's subsequent invoice for the disputed amount, including interest at the rate of 1.5% per month for the disputed amount that customer paid. If Fibertech initiates legal proceedings to collect any amount due hereunder and Fibertech substantially prevails in such proceedings then Customer shall pay reasonable attorneys' fees (in-house or outside counsel), expenses and costs incurred by Fibertech in prosecuting such proceedings and any related appeals.

6. Termination.

(a) A party may terminate the Contract on thirty (30) days' written notice if the other party materially breaches the Contract and such breaching party fails to cure the breach within such notice period, provided in the case of non-payment of any monies owed the notice and cure period for such breach shall be ten (10) days.

(b) Either party may terminate the 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.

(c) If Customer is in default of the terms of any other agreement between Fibertech and Customer, including but not limited to any payment obligation to Fibertech, then Fibertech, at its sole option, may consider such default as a default under this agreement and/or the Contract and provide notice of default in accordance with the terms of such agreement. Further, Customer acknowledges and agrees that any breach by Customer of

its obligations under this agreement or the Contract shall also be deemed a breach by Customer of its obligations under any other agreements it has entered into with Fibertech, and that any such breach shall authorize Fibertech to immediately suspend performance under, and/or terminate, said agreements with Customer for default.

(d) In addition to Fibertech's remedies under Section 5 and Section 6(a) hereof, Fibertech shall have the right, upon ten (10) days prior written notice, to immediately and without further notice suspend or terminate Services to Customer in the event of nonpayment by the Due Date of any charges not disputed in accordance with the provisions of Section 5.

7. Termination Liability. If the Contract is terminated anytime prior to the expiration of the Term (unless terminated by Customer pursuant to Section 1 or 6 above), then Customer shall pay to Fibertech, immediately upon demand, (a) all sums then due and owing plus (b) an amount equal to the recurring Monthly Charges (as listed in the Contract) multiplied by the number of months left in the Term. No termination liability will apply in the event the Contract is terminated by Customer pursuant to Section 1 or 6 above; provided, however, that in any such event Customer will be responsible for payment of all charges incurred prior to the termination date.

8. Compliance with Laws. Each party shall comply with all applicable laws, regulations, court decisions or administrative rulings regarding the provision or use of the Services, failure to do so shall constitute a material breach of the Contract.

9. Right of Way. At its sole cost and expense, Fibertech 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 easement (such as building entries and interior pathways).

10. Warranty. THE QUALITY OF SERVICE PROVIDED HEREUNDER SHALL BE CONSISTENT WITH INDUSTRY STANDARDS AND GOVERNMENT REGULATIONS. FIBERTECH MAKES NO OTHER WARRANTIES ABOUT THE SERVICES PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, 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 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. Unauthorized Use of Services.

Customer, and not Fibertech, shall bear the risk of loss arising from any unauthorized or fraudulent usage of Services provided under the Contract Documents to Customer. The Services are provided subject to Fibertech's Acceptable Use Policy ("AUP") which may be accessed at: www.fibertech.com/aup.

12. 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, WITHOUT LIMITATION, 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 CUSTOMERS RESPONSIBILITY FOR PAYMENT OF ALL APPROPRIATE CHARGES UNDER THE CONTRACT DOCUMENTS. THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT DOCUMENTS.

(b) FIBERTECH'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY SERVICE PROVIDED TO CUSTOMER (INCLUDING BUT NOT LIMITED TO 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 SERVICE LEVEL AGREEMENT; (ii) FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY CAUSED BY FIBERTECH'S NEGLIGENT ACTS OR OMISSIONS, OR FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF FIBERTECH, 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 CONTRACT DOCUMENTS FOR THE PERIOD DURING WHICH SERVICES WERE AFFECTED. IN NO EVENT SHALL FIBERTECH'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF THE CONTRACT DOCUMENTS EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO FIBERTECH THEREUNDER. THIS SECTION SURVIVES TERMINATION OF THE AGREEMENT.

(c) Fibertech also 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 Fibertech; 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.

13. Force Majeure. Except with respect to Customer's payment obligations, notwithstanding any other provision of the Contract Documents, neither Party shall be liable to the other Party for any delay or failure in performance of the 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. Any such delay or failure shall suspend the Contract until the Force Majeure ceases.

14. Relationship of Parties. Neither the Contract nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between Fibertech and Customer. The Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party shall have, or hold itself out as having, the power or authority to bind or create liability for the other by its intentional or negligent act.

15. Fibertech Facilities. Equipment furnished by Fibertech shall remain its property and shall be returned to Fibertech on expiration or termination of the Contract or as earlier requested by Fibertech, in good condition, reasonable wear and tear expected. Customer shall reimburse Fibertech for any loss of, or damage to, Fibertech's facilities or equipment on the Customer's



premises, except loss or damage caused by Fibertech's own employees, agents or contractors.

16. Notices. All notices or other communications under this agreement or the Contract 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 Fibertech at 300 Meridian Centre, Rochester, NY 14618 or to Customer at the address set forth in the Contract, or to either Party at such other address as may be designated in writing by such Party. Notice shall be deemed given upon receipt.

17. Entire Agreement. The Contract, these Terms and Conditions, the AUP, the SLA(s), and any Addendum attached thereto (collectively the "Contract Documents"), represent the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the Parties relating to the Service. Any modification to the Contract Documents shall be 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, Service Contract Term, renewal terms, locations and availability and other Service-specific terms contained in the Service Order. The 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.

18. 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 expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default.

19. CPNI. Under federal law, Customer has the right, and Fibertech 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 Fibertech 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 termination of Customer's Service and is valid until revoked by Customer. To remove this consent at any time, Customer must notify Fibertech in writing at 300 Meridian Centre, Rochester, NY 14618 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.

20. Assignment. Either Party may assign the Contract Documents without the written consent of the other party; provided, however, that no such assignment shall be valid if the assignee lacks the financial ability to carry out its obligations under the Contract Documents. Specifically, in the event of any assignment by Customer as permitted hereunder, the assignee must comply with Fibertech's credit and security requirements.

21. Governing Law. The Contract Documents shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of law principles. The Parties each hereby consent to personal jurisdiction in the state and federal courts in Monroe County, New York.

22. Partial Invalidity. If any provision of the Contract Documents shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render the Contract Documents or such individual agreement unenforceable, but instead such agreement(s) shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of such agreement(s), the Parties shall promptly engage in good faith negotiations to agree upon a substitute for such provision.

[End of Document]



SERVICE LEVEL AGREEMENT (PRIVATE LINE SERVICE)

This Service Level Agreement (“SLA”) sets forth the provisions and commitments relating to service quality between Fiber Technologies Networks, L.L.C. (“Fibertech”), and Customer. This SLA is hereby incorporated into to the Service Contract (“Contract”) between Customer and Fibertech.

1. Private Line Service. Fibertech’s Private Line Service (“Private Line Service”) provides DS-1, DS-3, Optical SONET (OC-n) circuits, optical wavelength circuits and Ethernet Private Line (“EPL”) for Customer’s use between two (2) demarcation points specified by the parties in a Service Order accepted by Fibertech and meeting the technical requirements described in this Service Attachment. This SLA applies to the End-to-End circuit between demarcation points. The End-to-End circuit does not include the Customer’s premises equipment, any third party equipment other than equipment furnished by Local Exchange Carriers as part of their access services, any Customer application on a covered circuit, or in-house wiring. Fibertech will use commercially reasonable efforts to maintain its overall network quality.

2. Service Non-Compliance. Subject to the provisions of Section 3 (d), instances of non-compliance with service standards will be credited to Customer as set forth below for the portion of the Service that the non-compliance affects.

3. Definitions.

(a) End to End Access. For the purpose of applying the provisions of this SLA, the term “End-to-End Access” shall mean access service that is provided when the connections at each end of a circuit are furnished by Fibertech facilities, and the circuit itself is furnished by Fibertech facilities.

(b) Mean Time To Repair (“MTTR”). For the purpose of applying the provisions of this SLA, the term “Mean Time To Repair” or “MTTR” shall mean the cumulative length of Outages per circuit in a billing month divided by the total number of Trouble Tickets for that circuit in the billing month.

(c) Network Availability. For the purpose of applying the provisions of this SLA, the term “Network Availability” shall mean the following:

$$\frac{\text{Total Minutes in Month} - \text{Outage Minutes in Month}}{\text{Total Minutes in Month}}$$

(d) Outage. For the purpose of applying the provisions of this SLA, the term “Outage” shall mean an unscheduled period in which the Service is interrupted and not usable for sixty seconds or more within a fifteen minute period, as verified by Fibertech. As a pre-condition to qualifying for any credits issued for any Outage, the Customer must open a Trouble Ticket. Outages exclude:

(i) Interruptions arising from the acts or omissions of the Customer or their agents or employees, or arising from non-compliance with the provisions of the Contract and incorporated agreements including without limitation this SLA, the Terms and Conditions of Service (“TCS”), and Fibertech’s Acceptable Use Policy (“AUP”) by Customer or any authorized user, or any Interruptions due to any party other than Fibertech, or for events happening on any other party’s network, including but not limited to data service providers or other carriers connected to, or providing service connected to, the service of Fibertech or to Fibertech’s facilities;

(ii) Interruptions of service during any period in which Fibertech is not given full and free access to the circuit and/or its facilities and equipment for the purpose of investigating and correcting interruptions;

(iii) Interruptions of service due to the failure or malfunction of non-Fibertech applications, equipment, or facilities, including but not limited to service connected to Customer-provided electric power;

(iv) Interruptions of service caused by *Force Majeure* events as defined in the TCS;

(v) Interruptions of service during any scheduled maintenance period.

(e) Trouble Ticket. For the purpose of applying the provisions of this SLA, the term “Trouble Ticket” shall mean the method defined by Fibertech for Customer to



notify Fibertech that it believes there has been an instance of non-compliance with the Service standards set forth in this SLA. In order for Customer to be eligible to receive credits for the non-compliance, the Customer must initiate a Trouble Ticket in a timely manner and release the circuit to Fibertech for testing.

5. Process. When Customer suspects an SLA non-compliance, the Customer must notify Fibertech and open a Trouble Ticket. The Customer must report the noncompliance with sufficient information within four (4) hours of the occurrence and make a request in writing for a credit from Fibertech within five (5) days of opening the Trouble Ticket as a condition precedent to receiving a credit.

6. Standards and Compliance.

(a) Network Availability Standard. The standards for Fibertech's provision of Private Line Service shall be: (i) 99.9% for single path circuit (unprotected); (ii) 99.99% for diverse path circuits (protected). Compliance with this standard shall be calculated after the Customer opens a Trouble Ticket with Fibertech and is based upon the service monthly billing period in which the Customer opens the Trouble Ticket.

Should Fibertech be unable to satisfy the Network Availability standard for a month, Fibertech will provide a credit in accordance with the following table:

Length of Service Unavailability Beyond Standard – Single Path	Credit
0 – 120 Min	10% of MRC
121 – 960 Min	20% of MRC
961 – 1800 Min	30% of MRC
1800+	50% of MRC

Length of Service Unavailability – Diverse Path	Credit
0 – 120 Min	15% of MRC
121 – 960 Min	30% of MRC
961 – 1800 Min	50% of MRC
1800+	75% of MRC

(b) Mean Time To Repair Standard. The standard for Fibertech's MTTR shall be four (4) hours from opening the Trouble Ticket. Compliance with this standard shall be calculated from Trouble Tickets opened during that billing month as set forth in the definition of MTTR above.

Should Fibertech be unable to satisfy the MTTR standard for any month, Fibertech will provide a credit equal to 10%

of the Customer's MRC for the affected Private Line Service.

7. Structure of Credits.

(a) The non-compliance credit structure is based on monthly billing calculations. All credits will be provided in one lump sum, as opposed to each individual service, and will be applied as set forth in Section 7(c) below.

(b) Limitation: If the Customer experiences Service non-compliances under more than one standard, Fibertech will issue a credit for the method that results in the larger credit amount. Fibertech will only issue a credit for one type of non-compliance on the same Private Line Service within the same month.

(c) All credits will be applied to the Customer's billing account as a line item on a bill delivered within two complete billing cycles following Fibertech's confirmation of the non-compliance. Fibertech will not issue non-compliance credits for more than six months in any twelve-month period.

(d) Maximum Credit. In no event may the credits provided for hereunder (either individually or on a cumulative basis) in any billing period exceed the total monthly recurring charges for that period for the service and facilities furnished by Fibertech.

8. Sole Remedy. The credits set forth in this SLA shall be Fibertech's sole liability and Customer's sole remedy in the event of any interruption and under no circumstances shall an interruption be deemed a breach of the Contract.

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SERVICE LEVEL AGREEMENT (INTERNET SERVICE)

This Service Level Agreement (“SLA”) sets forth the provisions and commitments relating to service quality between Fiber Technologies Networks, L.L.C. (“Fibertech”), and Customer. This SLA is hereby incorporated into to the Service Contract (“Contract”) between Customer and Fibertech.

1. Internet Service. Fibertech’s Internet Service (“Internet Service”) provides IP access and local loop access, if applicable, to the Fibertech IP Network with speeds up to 10 Gbps. The demarcation points for the service will be Fibertech’s IP port and Fibertech’s Point-of-Presence (“POP”) and the Customer’s location with a demarcation point specified by the parties in a Service Order accepted by Fibertech. This SLA applies to the End-to-End circuit between demarcation points. The End-to-End circuit does not include the Customer’s premises equipment, any third party equipment other than equipment furnished by Local Exchange Carriers as part of their access services, any Customer application on a covered circuit, or in-house wiring. Fibertech will use commercially reasonable efforts to maintain its overall network quality.

2. Service Non-Compliance. Subject to the provisions of Section 3(d), instances of non-compliance with service standards will be credited to Customer as set forth below for the portion of the Service that the non-compliance affects.

3. Definitions.

(a) End to End Access. For the purpose of applying the provisions of this SLA, the term “End-to-End Access” shall mean access service that is provided when the connections at each end of a circuit are furnished by Fibertech facilities, and the circuit itself is furnished by Fibertech facilities.

(b) Mean Time To Repair (“MTTR”). For the purpose of applying the provisions of this SLA, the term “Mean Time To Repair” or “MTTR” shall mean the cumulative length of Outages per circuit in a billing month divided by the total number of Trouble Tickets for that circuit in the billing month.

(c) Network Availability. For the purpose of applying the provisions of this SLA, the term “Network Availability” shall mean the following:

$$\frac{\text{Total Minutes in Month} - \text{Outage Minutes in Month}}{\text{Total Minutes in Month}}$$

(d) Outage. For the purpose of applying the provisions of this SLA, the term “Outage” shall mean an unscheduled period in which the Service is interrupted and not usable for sixty seconds or more within a fifteen minute period, as verified by Fibertech. As a pre-condition to qualifying for any credits issued for any Outage, the Customer must open a Trouble Ticket. Outages exclude:

(i) Interruptions arising from the acts or omissions of the Customer or their agents or employees, or arising from non-compliance with the provisions of the Contract and incorporated agreements including without limitation this SLA, the Terms and Conditions of Service (“TCS”), and Fibertech’s Acceptable Use Policy (“AUP”) by Customer or any authorized user, or any Interruptions due to any party other than Fibertech, or for events happening on any other party’s network, including but not limited to data service providers or other carriers connected to, or providing service connected to, the service of Fibertech or to Fibertech’s facilities;

(ii) Interruptions of service during any period in which Fibertech is not given full and free access to the circuit and/or its facilities and equipment for the purpose of investigating and correcting interruptions;

(iii) Interruptions of service due to the failure or malfunction of non-Fibertech applications, equipment, or facilities, including but not limited to service connected to Customer-provided electric power;

(iv) Interruptions of service caused by *Force Majeure* events as defined in the TCS;

(v) Interruptions of service during any scheduled maintenance period.

(e) Trouble Ticket. For the purpose of applying the provisions of this SLA, the term “Trouble Ticket” shall mean the method defined by Fibertech for Customer to notify Fibertech that it believes there has been an instance



of non-compliance with the Service standards set forth in this SLA. In order for Customer to be eligible to receive credits for the non-compliance, the Customer must initiate a Trouble Ticket in a timely manner and release the circuit to Fibertech for testing.

4. Process. When Customer suspects an SLA non-compliance, the Customer must notify Fibertech and open a Trouble Ticket. The Customer must report the noncompliance with sufficient information within four (4) hours of the occurrence and make a request in writing for a credit from Fibertech within five (5) days of opening the Trouble Ticket as a condition precedent to receiving a credit.

5. Standards and Compliance.

(a) Network Availability Standard. The standards for Fibertech’s provision of Internet Service shall be: (i) 99.9% for single path circuit (unprotected); (ii) 99.99% for diverse path circuits (protected). Compliance with this standard shall be calculated after the Customer opens a Trouble Ticket with Fibertech and is based upon the service monthly billing period in which the Customer opens the Trouble Ticket.

Should Fibertech be unable to satisfy the Network Availability standard for a month, Fibertech will provide a credit in accordance with the following table:

Length of Service Unavailability Beyond Standard – Single Path	Credit
0 – 120 Min	10% of MRC
121 – 960 Min	20% of MRC
961 – 1800 Min	30% of MRC
1800+	50% of MRC

Length of Service Unavailability – Diverse Path	Credit
0 – 120 Min	15% of MRC
121 – 960 Min	30% of MRC
961 – 1800 Min	50% of MRC
1800+	75% of MRC

(b) Mean Time To Repair Standard. The standard for Fibertech’s MTTR shall be four (4) hours from opening the Trouble Ticket. Compliance with this standard shall be calculated from Trouble Tickets opened during that billing month as set forth in the definition of MTTR above.

Should Fibertech be unable to satisfy the MTTR standard for any month, Fibertech will provide a credit equal to 10% of the Customer’s MRC for the affected Internet Service.

(c) Latency Standard. The standard for Fibertech’s Latency shall be an average round-trip latency of fifty (50) milliseconds or less within a metro area. The “Average Round-Trip Latency” is defined to mean, with respect to a given month, the average time required for round-trip packet transfers between the demarcation points for the Internet Service, excluding issues pursuant to Section 3(d) (i-v) .

Should Fibertech be unable to satisfy the Latency Standard for any month, Fibertech will provide a credit equal to 10% of the Customer’s MRC for the affected Internet Service.

(d) Packet Delivery Standard. The standard for Fibertech’s Packet Delivery shall be 99.9% or better. The “Average Packet Delivery” is defined to mean, with respect to a given month, the average percentage of packets transmitted between the demarcation points that are successfully delivered, excluding issues pursuant to Section 3(d) (i-v) .

Should Fibertech be unable to satisfy the Packet Delivery Standard for any month, Fibertech will provide a credit equal to 10% of the Customer’s MRC for the affected Internet Service.

6. Structure of Credits.

(a) The non-compliance credit structure is based on monthly billing calculations. All credits will be provided in one lump sum, as opposed to each individual service, and will be applied as set forth in Section 6(c) below.

(b) Limitation: If the Customer experiences Service non-compliances under more than one standard, Fibertech will issue a credit for the method that results in the larger credit amount. Fibertech will only issue a credit for one type of non-compliance on the same Internet Service within the same month.

(c) All credits will be applied to the Customer’s billing account as a line item on a bill delivered within two complete billing cycles following Fibertech’s confirmation of the non-compliance. Fibertech will not issue non-compliance credits for more than six months in any twelve-month period.

(d) Maximum Credit. In no event may the credits provided for hereunder (either individually or on a cumulative basis) in any billing period exceed the total monthly recurring charges for that period for the service and facilities furnished by Fibertech.



7. Sole Remedy. The credits set forth in this SLA shall be Fibertech's sole liability and Customer's sole remedy in the event of any interruption and under no circumstances shall an interruption be deemed a breach of the Contract.

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SERVICE LEVEL AGREEMENT (COLOCATION)

This Service Level Agreement ("SLA") sets forth the provisions and commitments relating to service quality between Fiber Technologies Networks, L.L.C. ("Fibertech"), and Customer. This SLA is hereby incorporated into to the Service Contract ("Contract") between Customer and Fibertech.

1. Colocation Service. Fibertech Colocation Service provides Customer with dedicated space ("Colocation Facility") of agreed upon size in Fibertech's data center facility. Additional Services include the following:

(a) Colocation Installation Assistance. Fibertech may provide upon request, and subject to individual quotation, installation support on a per man-hour basis, with a minimum of four (4) hours for the support of installation and/or relocation (as appropriate) of Customer Equipment and connection to power supply. More complex installations procedures shall be subject to individual quotations.

(b) Colocation On-Site Assistance. Fibertech may provide upon request optional maintenance and basic colocation assistance, where Fibertech is requested to attend Customer's equipment.

2. Service Order Form. The details of specific Service to be provided by Fibertech to Customer will be set out in a Service Order Form. The Service Order Form may include, but is not be limited by, the following items: 1) rack size, 2) lockable cabinet, 3) power, 4) physical configuration, 5) installation timeframes, 6) term, and 7) Charges for Service. If applicable, the Customer will be requested to furnish diagrams or schematics to assist Fibertech technicians to provide Service. Fibertech reserves the right to refuse to undertake activities that are, in Fibertech's sole discretion, either too complex or beyond the competencies of Fibertech staff or Fibertech subcontractors.

3. Permitted Equipment. Customer may not collocate in the Colocation Facility any equipment (including power-generating or power-storage equipment) other than the equipment listed on the Service Order Form (along with associated cabling and other ancillary equipment) without

prior written consent of Fibertech. If Fibertech determines that any equipment has been collocated in the Colocation Facility that has not been agreed to by Fibertech, Fibertech may, in its sole discretion, demand the disconnection of such equipment, in which event Customer shall be responsible for 1) the disconnection of such equipment, and 2) any and all damages sustained by Fibertech resulting from the presence of such equipment in the Colocation Facility.

(a) If Customer fails to remove equipment for which a removal demand has been made by Fibertech within ten (10) business days, Fibertech may, at its option, terminate this Agreement by sending notice to Customer (which termination shall be effective upon receipt of such notice) and Customer will be in Breach of this contract, as outlined in MFA.

4. Access and Security. Only individuals that Customer listed on Service Order and Colocation Implementation Form ("Authorized Customer Employees") shall have access to the Colocation Facility for the purposes of (i) installing, maintaining and monitoring the Equipment, and (ii) installing and maintaining the interconnection cabling; provided, however, that unless and until Customer provides separate access to the Customer equipment such access shall be subject to the following terms:

(a) If Customer needs to perform scheduled maintenance in the Colocation Facility on any non-business day, or between the hours of 5:00 p.m. and 8:00 a.m. on any business day, it shall notify the NOC in the manner stated above at least 72 hours in advance. Fibertech will, in Fibertech's sole discretion, inform Customer following such notice regarding whether Fibertech will require, and provide, an escort for such scheduled maintenance.

(b) If Customer needs to perform emergency maintenance in the Colocation Facility between the hours of 5:00 p.m. and 8:00 a.m. on any business day or at any time on a non-business day, it shall give notice to the NOC in the manner stated above one hour prior to entering the Colocation Facility. Any maintenance then performed shall be limited to that necessary to alleviate the emergency.



(c) Fibertech may designate contacts other than the NOC and/or a different telephone number for the notices described above; Customer will be notified promptly at the time of any such changes.

(d) With the written consent of Fibertech (which consent shall not be unreasonably withheld), Customer may modify the Authorized Customer Employees list.

(e) Prior to entering the Colocation Facility for the first time, each Authorized Customer Employee shall undergo training performed by a Fibertech employee as to the security procedures to be followed by the Authorized Customer Employees, which security procedures shall, except as otherwise stated herein, be the same security procedures that Fibertech employees (with authority to enter the Colocation Facility) must follow. Fibertech may, at its option, require Authorized Customer Employees to wear badges at Fibertech's place of business. Fibertech may take any other reasonable step, including, but not limited to, the installation of physical barriers, locks, security cameras or other devices, that Fibertech deems necessary to protect the Fibertech Property and the Fibertech Network, all without interfering with Customer's rights under this Agreement.

5. Compliance with Policies and Laws. Customer shall comply with Fibertech's policies and practices relating to fire and safety and with all federal, state and local laws, ordinances and regulations affecting the Colocation Facility.

6. Indemnification; Limitation of Liability. In addition to any other indemnification provisions contained herein, Customer shall indemnify and hold Fibertech and its affiliated corporations, agents, employees, officers, directors and shareholders (collectively, the "Indemnities") harmless from and against any and all liabilities, obligations, claims, causes of action, fines, penalties, losses, costs, expenses (including court costs and reasonable attorneys' fees), damages, injuries of any kind (collectively, "Liabilities") arising out of or resulting from this Agreement or the performance of or failure to perform and directly caused, in whole or in part, by acts or omissions, negligent or otherwise, of Customer, or its agents or employees, except to the extent that such Liabilities arise from the negligent or intentional misconduct of Fibertech or its employees or agents.

(a) Customer acknowledges that Fibertech is providing unmanned, unmonitored space. In no event will Fibertech be liable to Customer for special, indirect, incidental or consequential damages which Customer may incur or experience on account of entering into or relying on this Agreement, even if Fibertech has been advised of the possibility of such damages. Fibertech's sole liability hereunder shall be limited to actual damages incurred by Customer, which will not exceed six months' average Colocation Rent paid by Customer under this Agreement during the twelve months (or such number of months following the execution of this Agreement if less than twelve) preceding the month in which the damage or injury is alleged to have occurred.

(b) Fibertech assumes no liability for any damages to Customer Equipment when Fibertech's employee or agent is requested by Customer to open and Customer Equipment for any purpose, including but not limited to replacement of cards, memory, power supplies and/or disc drives or other components within a system.

7. Insurance. Customer will secure and carry at its own expense, throughout the period of this Agreement, a public liability policy with a company authorized to do business in the State where the Colocation Facility is located insuring Customer as its interests may appear against any claims (including claims related to Customer's use of the Colocation Facility) based on bodily injury (including death), such policy to insure against any claim up to One Million Dollars (\$1,000,000) in the case of one person receiving bodily injuries or, in the case of any accident involving bodily injury (including death) of more than one person, such policy to insure against any claim up to Two Million Dollars (\$2,000,000), and insuring Customer against any claims for damage to property up to an amount of Five Hundred Thousand Dollars (\$500,000). Customer will, upon request, provide Fibertech with certificates or other evidence of such insurance.

8. Customer shall not use the colocation space for any office purpose or for any purpose that violates this Service Appendix or MFA.

[End of Document]

ACCEPTABLE USE POLICY

This Acceptable Use Policy ("AUP") specifies the actions prohibited by Fiber Technologies Networks, L.L.C. ("Fibertech") to users of Fibertech services or facilities.

Lawful Purposes Only

All facilities and/or services provided by Fibertech may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.

Security of System and Network

Violations of any security protocol and/or measure and or device for the system or network are prohibited, and may result in criminal and civil liability. Fibertech will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Without limiting the generality of the foregoing, the following are examples of such security violations:

- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Interference with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks.
- Forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting.

Electronic Mail/Usenet

Sending unsolicited mail messages, including, without limitation, commercial advertising and informational announcements, is explicitly prohibited. A user shall not use another site's mail server to relay mail without the express permission of the site. Posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting, also known as "SPAM") is explicitly prohibited. Use of a false reply address ("Spoofing") is also prohibited.

Violations

INDIRECT OR ATTEMPTED VIOLATIONS OF THIS AUP, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A FIBERTECH CUSTOMER OR A CUSTOMER'S END USER, SHALL BE CONSIDERED VIOLATIONS OF THIS AUP BY

SUCH CUSTOMER OR END USER. Notwithstanding any provision herein or in any other agreement between the parties to the contrary, Fibertech may suspend services immediately (and avail itself of any remedy listed in this AUP, any agreement between the parties, or allowable under law) if any user, its customer or end user uses Fibertech's facilities or any Fibertech property for illegal purposes or in a manner that has a materially adverse impact on Fibertech's business operations, with such suspension to remain in effect until such activity or impact is alleviated.

Complaints Process

Complaints regarding any type of illegal use or abuse, or about any system or network security issues may be sent to info@fibertech.com.

For active security incidents, please immediately contact Fibertech's Network Operations Center at 1-800-497-5578 at any time.

Indemnity, No Liability

Fibertech takes no responsibility and assumes no liability for any content uploaded, transmitted, or downloaded by you or any third party, or for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography, or profanity that you may encounter. Fibertech is only the provider of the facilities and/or services, and shall not be liable for any statements, representations, or content provided by or encountered by our users in any online source.

You agree to indemnify, defend and hold harmless, Fibertech, its officers, directors, employees, agents, licensors, and suppliers from and against all losses, expenses, damages, and costs, including reasonable attorneys fees, resulting from your violation of this AUP.

Miscellaneous

Fibertech reserves the right to modify its AUP at any time, effective upon the earlier of either written notice to you or the posting of the modified AUP to Fibertech's web site: www.fibertech.com

Technology changes rapidly, and any activity not specifically prohibited herein but determined by Fibertech, in its sole discretion, to be harmful to other customers or the general operations of the system or network may be halted by Fibertech. Provided, however, that in no event shall Fibertech be liable for failing to halt any activity, whether or not specifically proscribed hereunder.

This AUP agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of law principles. If any provision of this agreement shall be found to be unlawful, void, or for any reason unenforceable, then the remainder of this agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[End of Document]