

TERMS AND CONDITIONS APPLICABLE TO PRIVATE DATA SERVICES (the "Service")

- 1. Services Warranty.** Each level of Service has limits on the maximum throughput rate at which Customer may send and receive data at any time. Customer's access to the internet is not shared with other users and will be delivered to the Demarcation Point, as hereinafter defined, at the rate specified by the Service. However, once packet traffic passes the Demarcation Point out to the internet, the throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation: the number of users and/or computer stations using a single connection; computer, router and firewall configurations; internet network congestion; time of day; and the accessed website servers. THE ABOVE SERVICE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 2. Off-Net Services.** Off-Net Services may be provided to a Service Location under this Agreement that is outside of Midco's service area and/or a Service Location that is within Midco's service area but that is not readily accessible by Midco's network facilities. Customer understands and agrees that Midco, upon entering into a Service Order with Customer may, at Midco's discretion, utilize Off-Net services to deliver the Service. All Off-Net services are provided by third party service providers and may be subject to additional terms and conditions. For Off-Net services, the length of term for service at a particular Service Location will match the term Midco is able to secure with the Off-Net service provider. Fees for Off-Net services will include the cost of the Service, any fees imposed by the Off-Net provider, taxes, fees as well as any administrative or overhead expenses. Fees and expenses for Off-Net services may change without notice. Maintenance of Off-Net services is outside of Midco's control and maintenance outages may occur without notice. In the event Customer terminates Service at a Service Location where Off-Net services are being provided following Midco's acceptance of the applicable Service Order but prior to the end of the applicable term, Customer shall pay termination fees equal to one hundred percent (100%) of the monthly recurring charges remaining through the end of the term plus one hundred percent (100%) of any remaining, unpaid installation fees. Customer shall also pay any third party service provider ancillary fees incurred by Midco due to the early termination of Service by Customer.
- 3. Online Reporting.** Midco may provide Customer with a password-protected web portal to access online real time performance data regarding the circuit and reports containing historical network traffic information. Reports may vary based upon the Service.
- 4. Internet Domain Names.** The Service described in the Service Order may include certain internet domain name registration and maintenance services. Customer acknowledges that such services do not include any research or determination of any sort regarding whether Customer's selection of a domain name will infringe, dilute, or otherwise violate the scope of any third party's rights in a trademark, any other type of mark, trade name, or personal or legal entity name. Customer agrees to assume any and all risks associated with Customer's selection of an internet domain name. Customer may wish to consult an attorney familiar with copyright law, trademark law and the internet domain name registration process prior to selecting an internet domain name.
- 4. Acceptance Testing.** Upon completion of installation, testing and activation of each Service, Midco shall notify Customer that such Service is installed and functioning properly for Customer's use. Unless Customer transmits written notice to Midco within one (1) business day (or such other time period as noted in the applicable Service Order) that the Service is not installed and functioning properly, Customer shall be deemed to have accepted the Services as of the end of such period. In the event Customer notifies Midco within the time period stated above that the Service is not installed and functioning properly, then Midco shall, within five (5) business days after receipt of such notice, (a) commence efforts to correct any deficiencies to ensure that the Service is installed and functioning properly and deliver a new Service activation notice to Customer, or (b) confirm that the Service is correctly installed and functioning properly (along with supporting documentation). The procedure described above shall be repeated until the Customer expressly accepts such Services or is deemed to have accepted such Services as described herein. In the event Midco confirms proper installation and functionality of the Service in accordance with this Section, then the Service will be deemed accepted as of the fifth day following Midco's original installation notice and any further failure or refusal on the part of Customer to be ready to receive the Services shall neither relieve Customer of its obligation to pay the applicable charges and fees, nor constitute a breach or default under this Agreement by Midco. Acceptance of the Service by Customer pursuant to this Section shall not be deemed a waiver of any rights Customer may have with respect to the availability, serviceability, performance, operation or other attributes of the Service that are described elsewhere within this Agreement or the associated Service Order. Rates and charges for Service shall be set forth in the respective Service Order. Charges for additional services required for installation or use of such Services shall also be set forth on the applicable Service Order as agreed by the Parties. Billing to Customer for recurring charges with respect to Service will commence on the date on which Customer accepts or is deemed to have accepted such Services in accordance with this Section, or as otherwise stated in the Service Order. Non-recurring charges may be billed at the times designated by Midco.
- 6. Demarcation Point.** The Demarcation Point shall be the point of interconnection between the Service and Customer's provided equipment located at a Service Location. In some cases, the Demarcation Point shall be the User to Network Interface (UNI) port on Midco Equipment at a Service Location.
- 7. User Responsibility.** In order to utilize the Service provided by Midco, the Customer will need certain computer network equipment. It will be the responsibility of Customer to provide, operate, and maintain, all at Customer's expense, all such necessary computer network equipment. The Customer shall also be responsible for security related to the Customer's use of and access to the Service. No user access security will be provided by Midco. Midco shall not be liable in any manner to the Customer for Midco's failure or inability to detect or identify security breaches. Customer agrees to comply with Midco's Acceptable Use Policy; as such policy may be modified from time to time. The Midco Acceptable Use Policy can be accessed through the Midco website at www.midco.com. Customer shall not use the Service to provide access to online services that Customer hosts on Customer's computer system or to provide electronic services of any nature to any third party.
- 8. Charges & Payments.** In addition to the charges specified in the Agreement or Service Order, Customer may also incur charges for usage-based services and from third party service providers that are separate and apart from the amounts charged by Midco for Service. These charges may be billed monthly in arrears and may include, without limitation, purchasing or subscribing to other offerings via the internet. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility. In addition, Customer is solely responsible for protecting the security of credit card information provided to others in connection with such transactions.
- 9. Unauthorized Use.** Midco does not warrant or guarantee that it can prevent unauthorized use or misuse of the Service. Midco shall not be liable for any damages, including charges for Service under this Agreement that Customer may incur as a result of unauthorized use or misuse of the Service by Customer's employees, customers, contractors, agents, other third parties, or the public. Customer will remain responsible for all charges.
- 10. Network Integrity.** If Midco determines in its sole discretion that action is necessary to protect its network and/or resources, Midco may take actions it determines appropriate, including: circuit blocking, port blocking, email virus scanning, denying email access or transmission, and putting limits on bandwidth and email usage. The Parties further agree that none of their respective obligations to one another under the Agreement will be affected by any such action and no Party will have any obligation to the other Party for any claim, judgment or liability resulting from such action. Unless the circuit block was prompted and necessary due to Customer's action or inaction, Customer will be relieved of all obligations to make payments for charges relating to Service for the period of the circuit blockage.
- 11. Equipment Network Addresses.** In order to use the Service, Midco will provide to the Customer a non-portable TCP/IP network address(es). IP address space is a finite resource that is an essential requirement for all internet access services. Midco may provide Customer with routable IP addresses. Customer may be required to provide documented justification to receive any routable IP addresses. Any pre-existing Customer network address(es) may not be routable on the Midco network due to Midco network configuration.

12. Data Redundancy and Backup. Unless priced as a Customer Term in the Service Order and paid for by Customer, Midco shall not be responsible for the redundancy or preservation of Customer data. Customer shall be responsible for preventing data loss, preparing for a possible data loss, and the creation and regular maintenance of an archive backup not stored on Midco hardware. In the event backup services are listed as a Customer Term, Midco cannot guarantee the backup process or that all data will be recoverable in the event of any failure or loss.

13. ACKNOWLEDGEMENT. BY SIGNATURE HEREIN, I/WE ACKNOWLEDGE THAT I/WE ARE AUTHORIZED TO ORDER THE SERVICES DESCRIBED ABOVE AND TO BIND THE COMPANY TO THIS CONTRACT. I/WE HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF THIS SERVICE ORDER AND THE TERMS AND CONDITIONS COVERING THIS SERVICE ORDER AS POSTED AND UPDATED AT www.midco.com/legal.