

## **ETHOPLEX Standard Terms and Conditions**

**1. Service Orders:** Customer may submit service orders to ETHOPLEX to purchase telecommunication and related services under this Agreement (“Service Orders”). The Service Orders describe the telecommunication and related services that are available for purchase (“Services”). When fully executed by both Parties, the Service Orders and these Standard Terms and Conditions form the final written agreement between the Parties (“Agreement”). The Agreement can only be amended or modified in a written document that is signed by both Parties. All Services are offered subject to availability, and ETHOPLEX has the right not to accept a Service Order submitted by Customer. If a Service Order has been accepted by ETHOPLEX, ETHOPLEX will provide Services for the term agreed to in such Service Order (“Service Term”).

**2. Term:** The term (“Term”) of this Agreement is 12 Months commencing on the Effective Date. The Term will automatically renew for successive one year periods unless terminated by either Party upon written notice given at least thirty days prior to expiration of the then existing Term. Upon expiration of a Service Term for a particular Service, the Service Term will automatically renew for successive one year terms unless terminated by either Party upon written notice given at least thirty days prior to expiration of the then existing Service Term. When the Term of this Agreement expires, existing Services continue in effect for the remainder of their respective Service Terms and will continue to be governed by this Agreement.

**3. Cancellation, Modification or Expedition of Orders** “Cancellation”, “Modification” and “Expedite Charges” referenced hereunder are posted to the ETHOPLEX Website ([www.ethoplex.com](http://www.ethoplex.com)) and are subject to modification by ETHOPLEX effective upon posting to the ETHOPLEX Website.

(a) Cancellation. Customer may cancel a Service Order(s) if the request is received in writing by ETHOPLEX prior to the planned installation date, and ETHOPLEX shall have the right to assess a Cancellation Charge (a Service Order can only be cancelled one time; the execution of a new Service Order restarts the cancellation process). If the request to cancel is received after installation has begun, Customer must pay full termination liability as set forth in section 14 below.

(b) Modification. Customer may request in writing the modification of any Service Order(s). Such request shall result in a Modification Charge. If ETHOPLEX receives a written modification request for delay of installation less than 3 days prior to the planned installation date, Customer must pay, in addition to the Modification Charge, the monthly recurring charge (“MRC”) applicable to the delayed Service for the shorter of one billing month or the period from the original due date to the requested installation date. ETHOPLEX reserves the right to limit the number of requests to delay the planned installation date.

(c) Expedite. Customer may request an expedited installation date. If ETHOPLEX accepts the expedited installation date, Customer must pay an Expedite Charge.

(d) Third Party Charges. In addition to the charges set forth in (a), (b) and (c) above, ETHOPLEX may bill Customer for any third party charges it incurs in order to complete Customer’s request to cancel, modify, or expedite the Service Order(s).

## **4. ETHOPLEX Network, Access and Interconnection:**

(a) Responsibilities. ETHOPLEX will own and control the telecommunications equipment, cable and facilities installed and operated by ETHOPLEX for provision of the Services to Customer (“ETHOPLEX Network”). The ETHOPLEX Network will remain ETHOPLEX’s personal property regardless of where located or attached. ETHOPLEX has the right to upgrade, replace or remove the ETHOPLEX Network in whole or in part, regardless of where located, so long as the Services continue to perform. ETHOPLEX has the right to limit the manner in which any portion of the ETHOPLEX Network is used to protect the technical integrity of the Network. Customer may not alter, move or disconnect any parts of the ETHOPLEX Network and is responsible for any damage to, or loss of, the ETHOPLEX Network caused by Customer’s (or its end users’) breach of this provision, negligence or willful misconduct. ETHOPLEX has no obligation to install, maintain or repair any equipment owned or provided

by Customer, unless otherwise agreed to in a writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

(b) Letter of Authorization / Carrier Facility Assignment. If Customer intends to connect the Services to facilities that neither it nor ETHOPLEX owns, it must provide ETHOPLEX with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

**5. Installation:** ETHOPLEX will notify Customer when the Service has been successfully installed and is available for Customer's use ("Service Date"). Unless Customer notifies ETHOPLEX within two business days of the Service Date that the Service is not operational, the Service Term will commence. If Customer so notifies ETHOPLEX, the Service Date will occur and the Service Term will commence when the Service is operational. The Service Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use Service.

## **6. Charges, Billing, Taxes and Payment:**

(a) Services are billed on a monthly basis commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears. Any installation or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.

(b) ETHOPLEX may require a deposit prior to the provision of any new Service. ETHOPLEX also may require a deposit as a condition to its obligation to continue to provide Service(s) if Customer has failed to timely pay for Service(s) on two occasions during any six month period.

(c) ETHOPLEX will invoice Customer for applicable Taxes (defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. Customer will be liable for Taxes which were assessed by or paid to an appropriate taxing authority within the applicable statute of limitations period. If Customer fails to pay any Taxes properly billed, then as between ETHOPLEX and Customer, Customer will be solely responsible for payment of the Taxes, and penalty and interest.

"Tax" or "Taxes" mean any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated imposed, or sought to be imposed, on or with respect to purchases by Customer from ETHOPLEX for consideration under this Agreement or for ETHOPLEX's use of public streets or rights of way, which ETHOPLEX is required or permitted by law or a tariff to collect from Customer; provided, however, that the term "Tax" will not include any tax on ETHOPLEX's corporate existence, status, income, corporate property or payroll taxes.

If either Party is audited by a taxing or other governmental authority, the other Party agrees to cooperate reasonably by responding to the audit inquiries in a proper, complete and timely manner. ETHOPLEX will cooperate, at Customer's expense, with reasonable requests of Customer in connection with any Tax contest or refund claim. The Customer will ensure that no lien is attached to or allowed to remain on any asset of ETHOPLEX as a result of any Tax contest. Customer will indemnify and hold ETHOPLEX harmless against any liabilities, damages, losses, costs or expenses arising out of such Tax proceedings, including without limitation any additional Taxes, interest, penalties and attorney's fees.

If Customer claims an exemption for any Taxes, Customer must provide ETHOPLEX with a proper tax exemption certificate as authorized by the appropriate taxing authority. Customer must pay the applicable Taxes to ETHOPLEX until it provides ETHOPLEX with a valid tax exemption certificate. If applicable law exempts a Service under this Agreement from a Tax, but does not also provide an exemption procedure, then ETHOPLEX will not collect such Tax if Customer provides ETHOPLEX with a letter signed by one of its officers: (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold ETHOPLEX harmless from any tax, interest, penalties, loss, cost or expense asserted against ETHOPLEX as a result of its not collecting the Taxes from Customer.

(d) Payment for all undisputed amounts must be received by ETHOPLEX on or before the due date specified on the bill ("Due Date"). Any payment or portion thereof not received by the Due Date is subject to a late charge at the rate of lesser of 1% per month or the maximum rate allowed by law on the unpaid amount.

**7. Disputes:** If Customer disputes any charges, it must contact ETHOPLEX's dispute telephone line at 1 262-252-9000. All disputes must be submitted to ETHOPLEX in the manner specified above within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Withheld disputed amounts determined in favor of ETHOPLEX must be paid by Customer within five (5) business days following written, electronic or telephonic notice of the resolution, and will bear interest at the lesser of 1% per month or the maximum rate allowed by law from the Due Date until the date paid. In the event that a determination is made in favor of Customer, amounts that were disputed but paid by Customer will bear interest at the lesser of 1% per month or the maximum rate allowed by law from the date paid through the date of resolution.

#### **8. Service Levels / Service Outage Credits:**

(a) Service Level Agreement ("SLA"). The SLA for a particular Service, which specifies the applicable performance metrics and outage credit schedule, is contained in each Service Order. If no SLA is included with a Service Order, then credits for Service Outages (defined below) will be issued at 1/1440 of the applicable MRC per 30 minute outage for up to a 24-hour period, but if a Service Outage lasts greater than 24 hours, at 1/144 of the applicable MRC per 3 hour period.

(b) Service Outage Definition. A "Service Outage" is defined as either: (a) material noncompliance with a specific performance metric in a service level agreement; or (b) a complete loss of transmission or reception capability for a Service caused by ETHOPLEX's Network.

(c) Reporting and Tracking of Service Outages. If there is a Service Outage, Customer must contact ETHOPLEX's NOC at 414-892-2000, and ETHOPLEX will open a trouble ticket and provide Customer with a trouble ticket number for tracking purposes.

(d) Duration of Service Outage and Application of Credits. For the purpose of calculating applicable credits, a Service Outage begins when Customer reports the Service Outage to ETHOPLEX's NOC, and ends when the Service is restored. The duration of the Service Outage only includes outages that are caused by ETHOPLEX's Network and do not include outages caused by the equipment, acts or omissions of Customer, third parties, Force Majeure events, or outages occurring during scheduled or emergency maintenance. The duration of a Service Outage also does not include any time during which ETHOPLEX is not allowed access to the premises necessary to restore the Service. Credits for Service Outages are only issued if requested by Customer.

(e) Chronic Trouble Services. If two Service Outages have occurred on a particular Service during a 30-day period, and a third Service Outage occurs within thirty days following the second Service Outage, Customer may terminate the applicable Service without early termination liability provided that Customer supplies ETHOPLEX with a written termination notice no later than thirty days following the third Service Outage.

(f) Remedies. The remedies set forth in the service level agreement and in this Agreement constitute Customer's sole and exclusive remedy for Service Outages.

(g) Service Outages Not Caused by ETHOPLEX's Network. If ETHOPLEX responds to a service call initiated by Customer, and ETHOPLEX reasonably determines that the cause of the problem is not due to ETHOPLEX's Network, but is due to Customer's equipment or facilities, or a third party, Customer must compensate ETHOPLEX for the service call at ETHOPLEX's then prevailing rates.

## 9. Governmental Regulation - Changes:

(a) This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.

(b) ETHOPLEX may discontinue or impose additional requirements to the provision of Service, upon 15 days written notice, if necessary to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of ETHOPLEX providing the Service. Customer is not responsible for the termination liability set forth in Section 14 below if ETHOPLEX discontinues the Service under this subsection.

**10. Indemnification:** Each Party ("Indemnitor") shall indemnify, defend and hold harmless the other Party ("Indemnitee") from all losses or damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of Indemnitor. Customer shall indemnify, defend and hold ETHOPLEX harmless from all losses or damages arising from Customer's violation of third party intellectual property rights, all claims of any kind by Customer's end users, or any act or omission of Customer associated with any Service.

**11. Limitation of Liability:** Except for the Parties' respective obligations set forth in Sections 10 and 14 herein, neither Party is liable for any indirect, incidental, consequential (including without limitation lost profits), special or punitive damages arising out of or related to the provision of Services hereunder, including any claims made by or through third parties. ETHOPLEX's liability to Customer for direct damages (including without limitation Service Outage credits) may not exceed one month's MRC for the applicable Service. ETHOPLEX has no liability whatsoever for the content of information passing through its Network, Customer's transmission errors, or any failure to establish connections outside of the ETHOPLEX Network.

## 12. Termination by ETHOPLEX:

(a) Termination With Notice. ETHOPLEX may disconnect all Service(s) associated with a delinquent account upon ten (10) days written notice for Customer's failure to pay amounts due under this Agreement which remain uncured at the end of the notice period; or upon thirty (30) days written notice for: (i) Customer's breach of a non-economic, material provision of this Agreement or any law, rule or regulation governing the Services which remains uncured at the end of the notice period; (ii) Customer's insolvency, bankruptcy, assignment for benefit of creditors, appointment of trustee or receiver; and/or (iii) any governmental prohibition or required alteration of the Services.

(b) Termination Without Notice. ETHOPLEX may terminate or suspend Services without notice if: (i) necessary to protect ETHOPLEX's Network; (ii) ETHOPLEX has reasonable evidence of Customer's illegal, improper or unauthorized use of Services; or (iii) required by legal or regulatory authority."

(c) Post Termination. Any termination or disconnection shall not relieve Customer of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. ETHOPLEX retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Service(s) in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If ETHOPLEX terminates Service in accordance with this section, and Customer wants to restore such Service, Customer first must pay all past due charges, a reconnection charge and a deposit equal to 2 months' recurring charges. All requests for disconnection will be processed by ETHOPLEX in 30 days or less. Customer must pay for Services until such disconnection actually occurs."

**13. Termination by Customer:** Customer may terminate this Agreement and/or any Service Order hereunder upon thirty (30) days prior written notice, without incurring termination liability, for ETHOPLEX's (i) breach of any material provision of this Agreement, or any law, rule or regulation that affects

Customer's use of Service(s), which remains uncured at the end of the notice period and/or (ii) insolvency, bankruptcy, assignment for the benefit of creditors, appointment of trustee or receiver or similar event.

**14. Termination Liability:** If ETHOPLEX terminates this Agreement or any Service Order(s) pursuant to Section 12 above (other than subsections a(iii) and/or b(iii)), or if Customer terminates this Agreement or any Service Order(s) for any reason other than ETHOPLEX's material breach that remains uncured after written notice and a reasonable cure period, Customer must pay immediately to ETHOPLEX all MRCs associated with the terminated Service(s) for the balance of the term in such Service Order(s).

**15. Assignment:** Neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably conditioned, withheld or delayed, except that: (1) ETHOPLEX may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing; and (2) Customer may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, provided that any assignment by Customer pursuant to this exception is subject to the following conditions: (i) the proposed assignee satisfies ETHOPLEX's credit and deposit standards; (ii) Customer has fully paid for all Services through the date of assignment; and (iii) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

**16. Entire Agreement:** This Agreement, together with the Service Order(s) and applicable tariffs set forth the entire agreement with respect to the subject matter hereof, and supersede all prior agreements, promises, representations, and negotiations between the Parties. If there is a conflict, the Service Order shall prevail over this Agreement and any applicable tariff shall prevail over both. Modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by both Parties.

**17. Force Majeure:** Either Party shall be excused from performance if inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for sixty days or longer, the other Party may terminate the affected Services. Customer's invocation of this clause does not relieve Customer of its obligation to pay for Services actually received.

**18. Governing Law:** This Agreement is governed by and subject to the laws of the State of Wisconsin, excluding its principles of conflicts of law. If litigation is commenced to enforce this Agreement, the prevailing Party is entitled to reimbursement of its costs and attorneys' fees from the other Party.

**19. Headings:** Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.

**20. Notices:** Whenever written notice is required to be provided by this Agreement, ETHOPLEX must provide such notice to Customer's billing address, and Customer must provide such notice to ETHOPLEX at N115W19006 Edison Dr, Germantown, WI 53022. A notice is deemed given when delivered.

**21. No Waiver:** Either Party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.

**22. Public Releases, Use of Name:** Neither Party may issue a news release, public announcement, advertisement or other form of publicity regarding this Agreement or the Services provided hereunder without the prior written consent of the other Party. Customer may not use ETHOPLEX's name, logo or service mark without ETHOPLEX's prior written consent. ETHOPLEX may use Customer's name and logo in materials presented to analysts and investors.

**23. Representations and Warranties:** Each Party represents and warrants that it, and the person signing on its behalf, is fully authorized to enter into this Agreement. Customer represents and warrants that it will not resell the Services. ETHOPLEX represents and warrants that the Services will be performed by qualified and trained personnel. ETHOPLEX does not guarantee, represent or warrant that the Service(s) will be without interruption. ETHOPLEX MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE.

**24. Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

**25. Survival:** The terms and conditions of this Agreement will survive the expiration or termination of this Agreement to the extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

**26. Relationship of Parties; No Third Party Beneficiaries:** The Parties are independent contractors, and nothing herein creates or implies an agency, joint venture or partnership relationship between the Parties. This Agreement shall bind and inure to the benefit of ETHOPLEX, Customer, and permitted successors and assigns. The Parties do not intend to create any rights for the benefit of any third parties.