



## FIRSTLIGHT STANDARD TERMS AND CONDITIONS

**TERMS AND CONDITIONS; CONTRACT.** These terms and conditions shall govern any Service Order entered into by Customer and FirstLight Fiber (“FirstLight”) when an applicable master form of agreement has not been executed by Customer and FirstLight. These terms and conditions and the Service Order shall be the contract for the ordered services (“Services”).

**BILLING AND PAYMENT.** Billing shall commence upon installation. The Customer is responsible for payment of all invoices within 30 days of the date of such invoice of all charges for services furnished hereunder. All past due invoice amounts are subject to a late charge of 1.5% per month of the balance due, or such lesser maximum charge as required by applicable law. Customer agrees to pay all costs and expenses of collection of any amounts due from Customer hereunder, including reasonable attorney’s fees. FirstLight will charge a fee, as allowed by law, for each check returned for insufficient funds. Customer must notice FirstLight no later than the date such invoice is due if Customer will withhold the disputed amounts, and failure to notice FirstLight within such time frame and withholding monies shall be a material breach of this Agreement. If Customer has previously made payment and later disputes all or a portion thereof, Customer must provide notice to FirstLight no more than sixty (60) days after FirstLight’s receipt of the payment in question. Customer waives all rights to dispute any payment previously made if notice is not provided to FirstLight within the aforementioned sixty (60) day period. In the event any portion of an invoice is disputed the Parties shall make good faith efforts to resolve such dispute within 30 days of receipt of Customer’s notice to FirstLight of such dispute. If the dispute is resolved in favor of FirstLight and FirstLight has not yet received payment, Customer shall make payment within ten (10) days of written demand or the date of an invoice for such payment and shall include interest from the original due date to the date of payment, calculated as provided for above. In the event the dispute is resolved in favor of Customer and Customer has previously made payment, the amounts resolved in favor of Customer shall be either i) paid to customer within ten (10) days of written demand, or ii) credited back to Customer on the next regularly scheduled monthly invoice from FirstLight, at Customer’s option, and shall include interest from the original due to the date of payment or crediting, as the case may be, calculated as provided for above.

**USE.** Customer may use the Services for any lawful purpose for which they are intended, provided that Customer may not resell, sublease or sublicense any dark fiber or collocation space provided hereunder. Customer shall not use the Services so as to interfere with or impair service over any of the facilities and equipment comprising the FirstLight network or equipment or of any third party. Customer shall at all times use the Services in full compliance with all applicable laws and FirstLight’s Acceptable Use Policy located at [www.firstlight.net](http://www.firstlight.net). Customer certifies and covenants that more than 10% of the traffic on the Service is interstate pursuant to the FCC’s “Mixed-Use Rule” or so-called “10% Rule”, unless expressly stated otherwise on the Service Order.

**SERVICE DATE AND TERM.** The contract created by these terms and conditions and a service order shall become effective on the date the service order is signed by both Customer and FirstLight and it shall continue in force until the end of the term designated in the Service Order (“Service Term”), which shall commence upon the provision of Service, and unless written notification is provided by Customer 30 days prior to expiration of the Service Term, the Services and contract shall automatically continue on a month-to-month basis. FirstLight shall use reasonable efforts to make Services available by Customer’s requested service date. FirstLight shall not be liable for any damages whatsoever resulting from delays in meeting any service dates. Such delays shall include, but not be limited to, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right of way approvals, and delays in actual construction work. If a Service is not provisioned due to any delay attributable to Customer, after 30 days, FirstLight may install the Service and commence billing and Customer shall be deemed to have accepted the Service.

**CLIENT RESPONSIBILITIES.** (a.) Access: Customer is responsible for securing, at its own cost, all authorizations for FirstLight to access any part or aspect of the premises where Services are to be delivered, including but not limited to easements, conduit and risers, so that FirstLight and its contractors may install, repair, maintain, inspect, replace or remove any and all facilities and equipment provided by FirstLight. Access to such premise shall be made available at a time

mutually agreeable to Customer and FirstLight. FirstLight shall also have the right to obtain access to its cable installed in Customer-provided conduit at any splice or junction box. (b.) Provision of Equipment Space, Conduit, and Electrical Power: Customer shall provide the necessary equipment space, conduit, HVAC service and electrical power required to terminate and maintain the facilities used to provide Service on the premises without charge or cost to FirstLight, which must be made available to FirstLight on a timely basis. Customer shall be responsible for assuring that premises is a safe place to work free from environmental hazards and any equipment space, conduit, other aspects of the premises are protected against fire, theft, vandalism or other casualty, and that the use thereof complies with all applicable laws and applicable leases or other contractual agreements. (c.) Governmental Authorizations: Customer shall be responsible to obtain and continue in effect all government authorizations necessary to permit Customer to use their Service and comply with its obligations under this contract.

**FRAUDULANT USE OF SERVICES.** Customer is responsible for all charges attributable to use of Customer's Service or facilities even if incurred as the result of fraudulent or unauthorized use of Service by any person, whether such use is authorized by, or known or unknown, to Customer, except Customer shall not be responsible for fraudulent or unauthorized use by FirstLight or its employees.

**TOLL FRAUD.** In the event that Customer installs its own terminal communications equipment, including but not limited to PBX, on its premises which may access FirstLight's toll services, it is expressly agreed and understood that the security of, and fraud controls within, such terminal equipment, are the sole responsibility of Customer. It is expressly understood that such terminal equipment may have the capability to allow calls to be originated from remote locations, routed through such equipment, and connected to FirstLight's toll service, in the same manner as a call originated from Customer's premises. Any arrangement, commonly known in the industry as "remote calling or remote PBX access," could create opportunities for outside third persons to have toll calls appear to originate on, and be charged as originating from such terminal equipment. The obligation to provide appropriate security to protect against unauthorized calls rests solely with Customer. It is expressly understood that the Customer is responsible for all charges attributable to use of Customer's terminal equipment even if incurred as a result of fraudulent or unauthorized use of the Customer's terminal communications.

**EQUIPMENT.** (a.) Title: Customer acknowledges and agrees that Customer has no right, title or ownership interest in any fiber, cable, space or other facilities and equipment provided by FirstLight. Customer shall neither create nor permit to be created any liens or encumbrances on any fiber, cable, space or other facilities and equipment provided by FirstLight. Upon termination of Service, FirstLight shall remove its equipment and shall have the right, but not the obligation, to remove all other facilities from any applicable premises. (b.) Maintenance: FirstLight shall use reasonable efforts to maintain the Services in accordance with applicable performance standards therefor. There are no additional charges for FirstLight maintenance services on FirstLight's facilities and equipment. However, FirstLight shall have no responsibility for the maintenance and repair of facilities and equipment, which it does not furnish, and Customer shall be obligated to pay FirstLight's standard charges when a Customer requests maintenance or repairs and such maintenance or repair need is attributable to facilities or equipment provided by Customer or a third party.

**DEFAULT.** If Customer shall fail to pay any undisputed amount required under this contract and such failure continues for ten days after written notice to Customer, or fails to comply with any other material provision of this contract and such noncompliance continues for thirty days after written notice to Customer, FirstLight, at its sole discretion may elect to: (i) terminate this contract whereupon in addition to all sums then due and payable, all future monthly or other charges hereunder shall become immediately due and payable and/or (ii) pursue any other remedies as may be provided by law or in equity.

**LIMITATIONS OF LIABILITY.** (a.) Liability for Service Interruptions: To the extent that any portion of the Service is unavailable, interrupted, or materially degraded, FirstLight and Customer agree that Customer's sole and exclusive remedy shall be the credit allowances for interruptions as provided below under the section entitled "Credit Allowances". (b.) Liability for Damages to Property: FirstLight shall not be liable for any damages whatsoever to property unless the damage is caused by FirstLight's willful misconduct or negligence. (c.) Liability for Services and Equipment Not Provided by FirstLight: FirstLight shall not be liable for any damages whatsoever associated with service or equipment which it does not furnish or for any act or omission of any other party furnishing to Customer facilities or equipment used for or with the Service. (d.) Liability for Force Majeure Events: Neither party shall be liable for any failure of performance or Service for reasons beyond its reasonable control including without limitation casualty, condemnation or loss of rights-of-way and any

other event generally recognized as an event of Force Majeure. (e.) Liability for Negligence or Fault of Customer: FirstLight shall not be liable for any interruptions or damages due to the fault or negligence of Customer or due to the failure or malfunction of Customer-provided equipment or facilities. (f.) Liability Regarding Governmental Authorization: FirstLight shall use commercially reasonable efforts to obtain and keep in effect all governmental authorizations necessary in order to provide Service hereunder. FirstLight shall be entitled to take, and shall have no liability for, any action necessary including termination to bring the Service into conformance with any governmental regulations or authorizations, and Customer shall cooperate fully and take such action as may reasonably be requested by FirstLight as part of such compliance. (g.) No Special Damages: In no event shall FirstLight be liable for special, indirect, consequential, exemplary, or punitive damages attributable to its performance or nonperformance of this Contract. (h) FirstLight's liability under any theory of damages shall not exceed an amount equivalent to the total fees paid in the prior twelve (12) month period to FirstLight by Customer under this contract.

**TERMINATION.** FirstLight may terminate this Contract without liability and Customer's payment obligation will expire if: (a.) The facilities used to provide Service are taken by exercise of condemnation or eminent domain, or (b.) The facilities shall in FirstLight's judgment, be made inoperable and beyond economically or technologically feasible repair. In the event of nonpayment of any bill rendered by FirstLight, or the non-payment of any required deposit, FirstLight may suspend Service until the bill rendered or the required deposit has been paid. In the event that Customer cancels the Service prior to expiration of the agreed upon term, Customer shall pay (i) all previously accrued charges, plus (ii) 100% of the monthly charges for any months remaining in Service Term, plus (iii) any and all installation fees that FirstLight waived, and (iv) any and all fees incurred by FirstLight from its suppliers as a result of the early termination including but not limited to termination charges for contracted services, equipment payoffs, etc. ("Early Termination Charges"). FirstLight requires a minimum of 30 days written notice before cancellation of the Service. Notice should be mailed to Finance Department, FirstLight, 41 State Street, Albany, NY 12207 or e-mailed to disconnects@firstlight.net.

**CREDIT ALLOWANCES.** A credit will be provided when the Service is interrupted continuously for more than 24 hours on POTS service or more than 30 minutes on other types of service excluding dark fiber and collocation service, except as specified below. An interruption period begins when Customer reports an interruption in service to FirstLight at 800-461-4863. Credit allowance does not apply to interruptions: (a.) caused by Customer; (b.) due to failure of power or equipment provided by Customer or third parties, (c.) during any period in which FirstLight is not given access to the Service or premises; (d.) due to scheduled or emergency maintenance and repair; and (e) due to an event of Force Majeure. All service interruptions will be credited for one (1) hour worth of monthly recurring charge for each one (1) hour period or fraction thereof after the initial 30-minute or 24-hour grace period as stated above. No more than one full day's credit will be allowed for any period of 24 hours and no more than one month's worth of monthly recurring charge in any given month. All requests for credit for service outages must be made in writing by the Customer to FirstLight no more than 30 days after issuance of the bill for the period in which the outage occurred.

**INDEMNIFICATION.** FirstLight shall be indemnified, defended and held harmless by Customer against all claims, suits, proceedings, expenses, losses, liabilities, damages or damages, including reasonable attorney fees (collectively "Claims") arising from the use of Service and to the extent legally permissible for: (i) damage to tangible property; (ii) bodily injury including death; (iii) infringement of a third party's intellectual property right; (iv) claims made by any client or customer of Customer with regards to the Service; and (v) any breach of a material obligation of this contract.

**ASSIGNMENT.** FirstLight may, without consent from Customer, assign any of its rights, privileges, or obligations under this contract. Customer shall not, without prior written consent of FirstLight (which consent shall not be unreasonably withheld) assign this contract.

**WARRANTIES.** FIRSTLIGHT MAKES NO AGREEMENTS, WARRANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO ANY SERVICES OR EQUIPMENT PROVIDED, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

**SEVERABILITY.** In the event that any term or provision of this contract shall be declared invalid, illegal, or unenforceable, in any respect, by any court or regulatory agency of competent jurisdiction, such invalidity, illegality, or

unenforceability shall not in any manner affect the validity or enforceability of any other term or provision of this Agreement. Failure by either party to enforce a provision of the agreement shall not constitute subsequent waiver of such provision.

**MISCELLANEOUS.** If, for any reason, FirstLight determines that Service cannot be provisioned as ordered, FirstLight reserves the right to amend this contract accordingly. In the event the amendment increases the cost quoted herein, the Customer will have the right to terminate the contract. If Customer terminates contract, Customer will be responsible for any charges reasonably incurred by FirstLight. Changes or modifications including, but not limited to, changes or modifications to the rates or terms of this contract may be made, modified, waived or amended only by a written instrument pre-approved and signed by a duly authorized representative of each party. It shall be binding upon each party's respective successors and assigns.

**JURISDICTION.** The rights and obligations of the parties under this contract shall be in all respects governed by, construed, and enforced in accordance with the laws of the State of New York, excluding its conflict of laws principles. Any action arising under the Agreement shall be brought in a federal or state court located in Albany County, New York. Customer waives any objection to forum or venue in these courts.

**CONFIDENTIALITY.** The Customer agrees that certain information being provided by FirstLight to Customer and/or its representatives in connection with this contract is non-public and confidential and proprietary in nature. The unauthorized disclosure of such confidential information to a third party may cause irreparable harm to FirstLight. Accordingly, Customer agrees not to disclose any such information to any third party without the express written consent of FirstLight. In the event of a breach of this provision, FirstLight shall be entitled to pursue any and all remedies available at law or in equity, including injunctive relief, and FirstLight shall be entitled to recover its reasonable attorneys' fees.

**INSURANCE.** Each party agrees to maintain insurance policies of the type and including coverage limits provided hereinafter:

- a). Workers compensation insurance in compliance with statutory requirements and employer's liability insurance with limits of \$1,000,000 for each accident (minimum) and \$1,000,000 for disease for each employee (minimum).
- b). Commercial general liability insurance, endorsed to provide coverage for contractual liability and products and completed operations. Automobile liability insurance, which shall include coverage for all owned, non-owned and hired vehicles. Each policy shall include coverage limits for bodily injury and property damage of \$1,000,000 combined single limit for each occurrence (minimum). Excess umbrella liability insurance to cover all risks covered by the general liability and automobile liability policies with a per occurrence limit of \$5,000,000.
- c). Each party shall endeavor to provide notice 10 days in advance of any cancellation or material change in a policy may become effective. Each party agrees to require all such policies of insurance to include clauses providing that each underwriter shall waive its rights of recovery, under subrogation or otherwise, against the other party and the other party's officers, directors, employees, contractors and agents. All policies shall be on an occurrence basis and shall be obtained only from insurers who are rated "A-VII" or better in the then most recent edition of Best's Insurance Reports. In the event Customer does not provide any or all of the insurances herein or any policy shall be cancelled, FirstLight reserves the right to procure such insurance and Customer shall promptly pay FirstLight for associated premiums upon invoicing by FirstLight.

**SURVIVAL.** All terms herein that by their nature are intended to survive termination, cancellation or expiration of this contract shall survive. Such provisions shall include, but be limited to, payment, indemnification, insurance, limitation of liability and choice of law and venue.