



## FIRSTLIGHT VENDOR TERMS AND CONDITIONS

**TERMS AND CONDITIONS; CONTRACT.** When referenced in a service order, purchase order or other agreement for procurement of goods or services by TVC Albany, Inc., d/b/a FirstLight Fiber (“FirstLight”), or an affiliate of FirstLight, from a vendor (“Vendor”), the following terms and conditions and the shall be the Contract for the ordered goods or services (“Services”). Each FirstLight and the Vendor are a “Party” and collectively “Parties.”

**TERM** This Contract is for a one year Initial Term. After the Initial Term, this Contract shall continue on a month to month basis unless either Party provides at least thirty (30) days’ notice of its intent to terminate or the Parties agree to a Renewal Term.

**AFFILIATES.** “Affiliate” shall mean an entity that now or in the future, directly or indirectly controls, is controlled by, or is under common control with, a Party to this Contract. For purposes of the foregoing, "control" shall mean the ownership of (i) greater than fifty percent (50%) of the voting power to elect the directors of the company, or (ii) greater than fifty percent (50%) of the ownership interest in the company. The Parties acknowledge and agree that FirstLight’s Affiliates may purchase Services under this Contract; provided, however, any such FirstLight Affiliate purchasing Services hereunder agrees that such Services are provided pursuant to and governed by the terms and conditions of this Contract. Any reference to FirstLight in this Contract with shall also be deemed a reference to the FirstLight Affiliates.

**INVOICE AND PAYMENT.** Invoices should be delivered monthly. Vendor may bill in advance for Services to be provided during the upcoming month, except for charges that are dependent upon usage of Services, which are billed in arrears. Billing for partial months is prorated based on a calendar month. All undisputed invoices are due forty-five (45) days after the date of invoice. Unless otherwise specified on the invoice, all payments shall be due and payable in U.S. Dollars. FirstLight shall not be responsible for payment of charges for Vendor services that were not invoiced more than six (6) months after the invoice month in which the charges would have been billed.

**INDEMNIFICATION.** FirstLight shall be indemnified, defended and held harmless by Vendor against all claims, suits, proceedings, expenses, losses, liabilities, damages or damages, including reasonable attorney fees (collectively “Claims”) for: (i) damage to tangible property; (ii) bodily injury including death; (iii) infringement of a third party’s intellectual property right; (iv) any breach of a material obligation of this Contract.

**INSURANCE** Vendor shall 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. c) 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. FirstLight, its subsidiaries and Affiliates, directors, officers, employees and agents shall be included as an additional insured on the Commercial General Liability, Automobile Liability and umbrella/excess liability insurance policies. Vendor shall endeavor to provide notice 10 days in advance of any cancellation or material change in a policy may become effective. Vendor 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 FirstLight and FirstLight’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.

**LIMITATIONS OF LIABILITY.** Liability for Force Majeure Events: Neither Party shall be liable for any failure of performance under this Contract for reasons beyond its reasonable control and any other event generally recognized as an event of Force Majeure. No Special Damages: In no event, shall FirstLight be liable for special, indirect, consequential,

exemplary, or punitive damages attributable to its performance or nonperformance under this Contract. FirstLight's liability under any theory of damages shall not exceed an amount equivalent to the total fees paid to Vendor by FirstLight in the prior twelve (12) month period under this Contract.

**TERMINATION.** FirstLight may terminate this Contract without liability if; i) Vendor becomes insolvent; files a voluntary petition in bankruptcy; proposes any dissolution or liquidation; has filed against it an involuntary petition in bankruptcy, or a receiver is appointed or takes possession of Vendor's property, and such petition is not dismissed or stayed within ninety (90) days of such filing, appointment or taking possession; makes an assignment for the benefit of creditors, or is adjudicated as bankrupt; or takes any similar action under the laws of any jurisdiction, or ii) there is a material breach of this Contract by Vendor which is not remedied within thirty (30) days after written notice describing the breach with particularity has been made. FirstLight may also terminate for convenience upon thirty (30) days written notice at which point FirstLight's sole liability shall be 100% for Services already performed and 25% of the remaining contract value during the Initial Term of the Contract. FirstLight's only liability for termination after the expiration of the Initial Term shall be for Services actually performed by Vendor.

**ASSIGNMENT.** FirstLight may, without consent from Vendor, assign any of its rights, privileges, or obligations under these Terms and Conditions. Vendor shall not assign this Contract, without prior written consent of FirstLight, which consent shall not be unreasonably withheld.

**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 Contract. Failure by either Party to enforce a provision of the Contract shall not constitute subsequent waiver of such provision.

**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 this Contract shall be brought in a federal or state court located in Albany County, New York. Vendor waives any objection to forum or venue in these courts.

**CONFIDENTIALITY.** The Vendor agrees that certain information being provided by FirstLight to Vendor 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, Vendor 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.

**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.