

## **Service Terms and Conditions**

### **I. Scope**

This document contains all of the service terms and conditions (ST&C) associated with services (“Services”) to be provided by FLTG to Customer. The other parts of the valid and enforceable contract are:

The Service Contract (SC). Usually a single page agreement containing a description of the Services purchased, pricing and term of service commitment which is executed by FLTG and the Customer; and

The Service Level Agreement(s). (SLA), containing terms and conditions specific to a particular Service, including a separate Service Level Agreement for (a) Dedicated Internet Access, (b) Collocation, (c) Voice Services and (d) Private Line Services.

### **II. Term**

The term of this ST&C will be coterminous with the SC. The term of the SC shall start on the day that services are started and the completion notice is issued.

### **III. CHARGES AND PAYMENT**

The non-recurring charges (NRCs) and monthly recurring charges (MRCs) payable by Customer for each Service are set forth on the SC and shall be paid after invoice as provided below. FLTG shall invoice Customer on a monthly basis for the MRCs for each Service, including taxes and other government fees and surcharges, all such taxes, fees and surcharges as specified on the FLTG website at [www.fltg.com](http://www.fltg.com). MRCs and NRCs are defined as the “Charges”. The first MRC invoice shall be sent following installation of Service and shall include the pro-rata amount for the partial initial month and the full amount for the next month. Subsequent MRC invoices shall be sent in advance of the month to which the invoice applies and payment amounts shall be received by FLTG from Customer not later than thirty (30) days following Customer’s receipt of the applicable invoice (“Due Date”). NRC invoices shall be sent following the installation of Service. In the event that Customer fails to pay any invoice amount on or before its Due Date, Customer shall pay, in addition to all other remedies available to FLTG hereunder, a late fee to FLTG in the amount of the lesser of one and a half percent (1.5%) per month or the highest rate allowed by law, which shall accrue from the Due Date.

### **IV. INSTALLATION AND CONSTRUCTION**

FLTG shall provide notice of completion (“Completion Notice”) in writing, when FLTG’s work is completed. In the event that FLTG cannot complete FLTG’s work within the time frames set forth in the Service Contract or otherwise agreed by the parties in writing due to a delay caused by Customer, a Force Majeure event or third party, then FLTG shall provide Completion Notices for the portions unaffected by such delay.

The Customer shall be deemed to have accepted the Service upon installation of Service, which shall be defined as the earlier of (a) delivery of the Completion Notice by FLTG to Customer, or (b) the date when Customer uses the Service 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 FLTG a failure notice ("Failure Notice") within such five (5) business day period. If a Failure Notice is served, FLTG 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 acceptably. FLTG shall also have the right at any time to test the Service and provide the results to Customer.

## **V. ACCESS, MAINTENANCE AND REPAIR**

FLTG shall have the sole obligation and right to maintain and repair the FLTG network and system used to deliver each Service, including without limitation, all fibers and optical equipment required for service delivery.

Customer shall not, by itself or through any agent, take any action which damages or interferes or could reasonably be assumed would damage or interfere with FLTG's network and system or the Services. If FLTG's network and system requires restoration, replacement or repair as a result of the negligence or willful misconduct of Customer, its employees, agents or contractors, FLTG shall have the right to take whatever action it deems necessary or appropriate to repair and restore Customer's Service or to prevent damage to FLTG's system, all at the sole cost and expense of Customer.

Should Customer not own the premises to which a Service is to be delivered it shall secure the written approval of the party owning the structure or land in or upon which the Service is to be delivered to FLTG's free and open access to complete its obligations hereunder. FLTG shall have access to the premises to which a Service is to be delivered to inspect FLTG's network and system during normal business hours upon twenty-four (24) hours notice to Customer, or immediately in the event of any emergency situation.

FLTG will be allowed access to the premises to which a Service is to be delivered for maintenance of FLTG's network and system, as required. FLTG will use commercially reasonable efforts to schedule maintenance ("Scheduled Maintenance") during the maintenance window (12a.m. – 6a.m.) or other time as agreed to by the Customer. No service credit will be given to the customer for Scheduled Maintenance.

FLTG shall respond to Customer within two (2) hours of proper notification, by Customer of any Service interruption and, if necessary, dispatch a technician to the location of the Service interruption. The technician shall assess the situation and use commercially reasonable efforts to remediate the problem within a commercially reasonable time frame. Customer may be eligible for credits in accordance with the applicable SLA.

## **VI. TITLE, USE AND TAXES**

FLTG retains all right, title and interest to FLTG's network and system. Nothing contained in the SC, any applicable SLA nor this ST&C shall constitute, create, or vest any ownership or

property rights in FLTG's network and system in Customer. FLTG shall have access to the premises to which Service is to be delivered for a period of sixty (60) days after termination of this ST&C in order to remove FLTG's network and system.

Any MRCs, NRCs or other fees referred to in the SC, any applicable SLA or this ST&C do not include taxes. Customer shall pay any and all existing or future sales, use, excise or other transfer or transactional taxes imposed or levied by any federal, state or local taxing authority on the charges and/or other payments made by Customer to FLTG hereunder ("Taxes"). Applicable Taxes shall be invoiced by FLTG to Customer unless Customer provides FLTG with a valid and applicable tax exemption certificate before such invoice is generated.

## **VII. GOVERNMENTAL APPROVALS, PERMITS, AND CONSENTS**

Customer represents and warrants that it shall use the Service, or cause the Service to be used, in full material compliance with all federal, state and local applicable government laws, statutes, rules, regulations, codes and ordinances and all applicable franchises, rights of way, leases, licenses, contracts and other material obligations to third parties with respect to or relating to the FLTG's network and system or the Service.

During the Term of the SC, FLTG shall obtain, or cause to be obtained, all approvals and consents that may be required from all federal, state, and local authorities regarding the ownership, installation, maintenance of the Services. FLTG represents and warrants that it is and shall continue to be in material compliance with any and all applicable government codes, ordinances, laws, rules and regulations relating to its delivery of Service to Customer hereunder.

The Parties acknowledge that the SC, any applicable SLA and this ST&C and some or all of the Services provided hereunder may be subject to review by certain federal, state, and local regulatory bodies. If any regulatory action by such bodies alters the terms and conditions of the SC, any applicable SLA and/or this ST&C materially and adversely for either party, the affected party may terminate the affected Service without liability for any termination charges upon thirty (30) days prior written notice to the other party.

## **VIII. REPRESENTATIONS AND WARRANTIES**

Each of the parties represents and warrants that it has full authority to enter into and perform the SC, any applicable SLA and this ST&C, that the SC, any applicable SLA and this ST&C does not conflict with any other document or agreement to which it is a party or is bound, and that the SC, any applicable SLA and this ST&C are fully enforceable in accordance with their terms, and that each is an entity validly existing and in good standing under the laws of the states in which they are authorized to do business.

## **IX. Warranty**

The quality of service provided hereunder shall be consistent with common carrier industry standards, government regulations and sound business practices. EXCEPT AS EXPRESSLY PROVIDED HEREIN, FLTG MAKES NO WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES IN CONNECTION WITH THE SC, ANY APPLICABLE SLA

AND THIS ST&C WITH RESPECT TO FLTG'S NETWORK AND SYSTEM OR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FLTG DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON FLTG'S BEHALF AND THE CUSTOMER MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY OF FLTG. THIS SECTION SURVIVES TERMINATION OF THE AGREEMENT.

## **X. TERMINATION**

Either party may terminate the SC, any applicable SLA and this ST&C without liability for any termination charges if any one of the following events should occur:

If the other party becomes insolvent or admits in writing its inability to pay debts as they mature, or makes an assignment for the benefit of creditors; or

If a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by the other party; or

If such a petition is filed against the other party by any third party and such application is not resolved favorably to such other party within sixty (60) days;

FLTG's sole remedy and Customer's sole liability, in the event of termination of the SC, any applicable SLA and this ST&C by written notice or for Customer's convenience shall be as follows: (a) Customer shall pay an early termination charge equal to all of the unpaid Charges for the Service to the end of the Term.

## **XI. LIMITATION OF LIABILITY**

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY AFFILIATED, CONNECTED WITH OR DOING BUSINESS WITH EITHER PARTY WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STRICT LIABILITY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES, PROFITS, CUSTOMERS AND/OR GOODWILL ARISING IN ANY MANNER FROM THE AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER, REGARDLESS OF THE FORESEEABILITY THEREOF. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ANY AND ALL PROPERLY DUE CHARGES. FLTG'S AGGREGATE LIABILITY FOR ANY AND ALL SUCH CLAIMS SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL MRCs AND NRCs PAID BY CUSTOMER HEREUNDER. THIS SECTION SHALL SURVIVE FAILURE OF AN EXCLUSIVE OR LIMITED REMEDY AND TERMINATION OF THE AGREEMENT.

FLTG'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY SERVICE PROVIDED TO CUSTOMER (INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE INSTALLATION, DELAY, PROVISION, TERMINATION,

MAINTENANCE, REPAIR, INTERRUPTION, OR RESTORATION OF ANY SUCH SERVICE) OR BREACH OF THE AGREEMENT, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, INCLUDING NEGLIGENCE, INDEMNITY OR STRICT LIABILITY, SHALL BE 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 FLTG'S NEGLIGENT ACTS OR OMISSIONS, OR FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF FLTG, THE AMOUNT OF PROVEN DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE CHARGE APPLICABLE UNDER THE AGREEMENT FOR THE PERIOD DURING WHICH SERVICES WERE AFFECTED.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of the SC, any applicable SLA and this ST&C, or to give notice or declare the SC, any applicable SLA and this ST&C or any authorization granted hereunder, terminated shall not constitute a general waiver or relinquishment of any term or condition of the SC, any applicable SLA and this ST&C, but such term or condition shall be and remain at all times in full force and effect.

## **XII. FORCE MAJEURE**

Neither Customer nor FLTG shall be liable for any failure or delay in performing its obligations hereunder (other than payment of any sums due hereunder), or for any loss or damage resulting therefrom, due to the following force majeure events ("Force Majeure Events"); fire, flood, strike or other labor difficulty, natural disasters, acts of God or public enemy, act of war, restraint or hindrance by any governmental or regulatory authority including, without limitation, unfavorable actions or failures to act of or by such authorities, war, acts of terrorism, insurrection, riot, injunction, or any other causes beyond the parties' reasonable control, or causes beyond the reasonable control of their suppliers.

## **XIII. PROPRIETARY INFORMATION**

Each party acknowledges that in the course of the performance of the SC, any applicable SLA and this ST&C it may have access to proprietary information ("Proprietary Information") of the other party. Upon receiving Proprietary Information the receiving party shall keep in strict confidence and not disclose to any person (with the exception of employees, officers, directors, representatives, and affiliates of the receiving party, to the extent each such person or entity has a need to know in connection herewith) any of the disclosing party's Proprietary Information except as otherwise provided by the terms and conditions of the SC, any applicable SLA and this ST&C.

## **XIV. INDEMNIFICATION**

Subject to the Limitation of Liability set forth in Section XI of this ST&C, each party agrees to indemnify, hold harmless, and defend the other party, its subsidiaries and affiliates, and their respective officers, directors, employees, attorneys, successors and assigns, from and against any loss, damages, claims, suits, or causes of action for damages, including reasonable attorney's fees, which may arise out of: (a) any injury to or death of any person

and damage to property related to activities arising out of the SC, any applicable SLA and this ST&C to the extent such injury, death or damage is caused by the negligent acts or omissions or willful misconduct of the indemnifying party or its principals, employees, agents, or invitees, or by its equipment; (b) the indemnifying party's violation of applicable federal, state or local statutes, regulations, ordinances or orders; or (c) the indemnifying party's breach of the SC, any applicable SLA and this ST&C.

## XV. ASSIGNMENT

Either party may assign, or in any other manner transfer its rights, privileges or obligations under the SC, any applicable SLA and this ST&C without the prior consent of the other party, provided that upon any such assignment, or transfer (a) the assignee or transferee shall expressly agree to be bound by all of the provisions of the SC, any applicable SLA and this ST&C, and (b) the assigning or transferring party shall remain jointly and severally liable for the performance of its obligations under the SC, any applicable SLA and this ST&C unless released in writing by the other party to the SC, any applicable SLA and this ST&C.

All notices, invoices and other communications from either party to the other hereunder shall be in writing and shall be deemed received (a) upon actual receipt when personally delivered, (b) upon acknowledgment of receipt if sent by facsimile, (c) upon the expiration of the third business day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (d) upon the expiration of one business day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier company, addressed to the other Party as follows:

As to FLTG: Finger Lakes Technologies  
Group, Inc.  
11 Framark Drive  
Victor, New York 14564  
Attn: Chief Financial Officer  
Facsimile: (315) 548-9499

As to  
Customer:

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In the event that the Customer Services are damaged for any reason, the Party discovering such outage or impairment shall notify the other Party of said damage by telephone at:

As to FLTG: Finger Lakes Technologies  
Group, Inc.  
11 Framark Drive  
Victor, New York 14564  
(800) 977-3584

As to  
Customer:

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## XVI. APPLICABLE LAW

The SC, any applicable SLA and this ST&C shall be governed by and construed in accordance with the laws of the State of New York, without reference to any choice of law rules.

## **XVII. BINDING EFFECT**

The SC, any applicable SLA and this ST&C shall be binding upon and inure to the benefit of the parties hereto, their permitted successors and permitted assigns.

## **XVIII. ENTIRE AGREEMENT**

The Agreement, including the ST&Cs, FLTG's Acceptable Use Policy ("AUP"), SLA and all other schedules referenced in the Agreement or at [www.fltg.com](http://www.fltg.com) and which are applicable to the Services purchased by the Customer, FLTG's applicable tariffs, and any attached schedules signed by both parties, represents the entire agreement of the Parties with respect to the subject matter hereof and supercedes all other agreements, written or oral, between the Parties relating to the Service. Any modification to the Agreement shall be in writing signed by authorized representatives of both Parties. In case of any conflict between the provisions of these ST&Cs and any schedule (including any additional terms), the provisions of the ST&Cs shall take precedence unless otherwise indicated in the signed attached schedule. This Agreement and any amendment of the terms hereof, may be signed in counterparts, each of which shall constitute one and the same instrument. Any hand written notation on this form or on any portion of the Agreement by Customer is rejected in its entirety unless expressly agreed to in writing by an FLTG authorized representative.

## **XIX. WAIVER**

No failure or delay on the part of either party in exercising any right, power or privilege hereunder and no course of dealing between the parties shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

## **XX. Use of Service**

The Customer shall not use FLTG Services in any manner other than that for which the Service was intended and shall refrain from using any service in any manner that would adversely affect FLTG's network or Service. Customer shall use the Service in compliance with all government rules, regulations, codes, ordinances, laws and regulations.

With respect to long-distance voice services, Customer shall not use more than 5,000 minutes of use per month per line. Upon Customer's violation of this limit, Customer agrees to FLTG's right, in its sole discretion and upon reasonable notice to Customer, to terminate long distance voice services provided by FLTG to Customer.

## **XXI. UNAUTHORIZED USE OF SERVICE**

Except as provided in the SC, any applicable SLA and this ST&C, Customer, and not FLTG, shall bear the risk of loss from fraudulent or unauthorized usage of Services provided to Customer. FLTG reserves the right, but is not required, to take any action and all action it deems appropriate to prevent or terminate fraud or abuse in connection with Customer's usage of Services.

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