



## Standard Terms and Conditions for Duet Voice and Data Service

**1. Service.** These Standard Terms and Conditions for Duet Voice and Data Service (these "Terms and Conditions") apply to all service orders for Duet Voice and Data Service (each, a "Service Order") submitted by a Duet Voice and Data Service subscriber (each, a "Customer") to, and accepted by, MegaPath Corporation ("MegaPath"). These Terms and Conditions govern MegaPath's provision of, and Customer's subscription to, the converged voice and data communications services provided by MegaPath as "Duet Voice and Data Service(s)," as set forth in the applicable Service Order(s) entered into between MegaPath and Customer from time to time for such services. These Terms and Conditions, together with the documents expressly referred to herein and in each Service Order, including without limitation MegaPath's Service Level Agreement for Duet Voice and Data Service, MegaPath's Acceptable Use Policy, MegaPath's Ancillary Terms and Rates for Duet Voice and Data Service and MegaPath's Duet Voice and Data Service E911 Service Capabilities Description, each in the form then posted on MegaPath's Web site from time to time, are hereinafter referred to, collectively, as the "Service Agreement." In the event of a conflict between these Terms and Conditions and a given Service Order, the Service Order shall prevail. Your use of the services covered hereby constitutes your understanding of and agreement with the terms of the Service Agreement. The Duet Voice and Data Service, together with listed optional services compatible therewith ("Optional Services"), are hereinafter referred to collectively as the "Services." The equipment, products or materials to be sold, licensed or leased to Customer, depending upon MegaPath's then-current provisioning protocols, pursuant to a Service Order, including any terminating or protocol conversion equipment or service unit in support of Service, are hereinafter referred to as the "Equipment." References herein to MegaPath's Web site shall refer to [www.MegaPath.com](http://www.MegaPath.com) (or such identified successor site).

**2. Term.** Unless otherwise expressly set forth on a Service Order for a given location, each order for Duet Voice and Data Service shall carry an initial minimum term commitment of twelve (12) months from the Effective Service Commencement Date, as defined below (the "Initial Term"), and shall thereafter renew automatically on a month-to-month basis for successive monthly periods, unless and until terminated in accordance with these Terms and Conditions. Optional Services shall be provided on a month-to-month basis. Termination of Duet Voice and Data Service prior to expiration of the Initial Term may subject Customer to early termination fees, as described below. The billing period for each Service commences upon delivery by MegaPath of such Service; provided, however, if delivery of a Service is prevented or delayed by Customer, the billing period and term will commence on the date MegaPath notified Customer that MegaPath stood ready to deliver such service (e.g., if Customer does not grant access to MegaPath or its contractors to perform inside wiring upon such date and time proposed by MegaPath, then billing shall commence upon the date of circuit installation) (the "Effective Service Commencement Date"). Subject to the termination rights and obligations of the parties set forth herein, and the other express provisions of these Terms and Conditions, the Service Agreement (and each Service Order thereunder) shall continue in full force and effect until terminated in accordance with these Terms and Conditions. Termination of the Service Agreement, a Service Order or Service, as the case may be, shall not relieve the parties of their respective obligations accruing prior to the effective time of termination.

**3. Billing and Payment.** Customer is responsible for the payment of all charges for Services furnished by MegaPath under the Service Agreement at rates set forth on the applicable Service Order(s) and, for certain services not included in the Service package, at the rates set forth in the Ancillary Terms and Rates for Duet Voice and Data Service, posted from time to time on MegaPath's Web site. Except as expressly set forth herein, all fees and charges are nonrefundable.

Customer shall pay all of MegaPath's invoices for all charges in connection with the Services and Equipment provided hereunder, including, but not limited to, interest on delinquent payments, charges for returned or "bounced" checks (at the depository bank's rate), collection agency fees and expenses incurred following a payment default by Customer and in connection with MegaPath's pursuit of settlement of an account delinquency, reasonable attorneys' fees and expenses in connection with enforcement of the Service Agreement (provided,

MegaPath may recoup such attorneys' fees and expenses only if MegaPath prevails, in whole or in part, in any action, claim, suit, hearing or dispute for which such counsel was engaged), and termination charges described herein. All payments shall be made to MegaPath at the address indicated in each invoice. Customer is also responsible for paying taxes and surcharges as described below. Recurring service charges are billed monthly, in advance; provided, however; service charges for an initial partial month of service will be pro-rated and, at MegaPath's election, may be billed on the first recurring monthly bill. For each month after the initial partial month of service, the full monthly fee is due for any part of a billing month in which the applicable service is provided (except as otherwise provided herein). Charges incurred by Customer for services based upon actual usage may be billed by MegaPath on a subsequent bill. Non-recurring charges, such as charges for service calls, technical assistance, configuration requests, repairs or inside wiring, will be billed as incurred. MegaPath may require prepayment or a security deposit as a condition to providing certain one-time services or if Customer is delinquent in its payment obligations, and MegaPath reserves the right to recoup any prepayments or security deposits at any time.

MegaPath may add line items to your monthly invoice for specific applicable local, state and federal taxes that it collects and remits to governmental entities in connection with your services. MegaPath incurs certain other variable expenses as a result of local, state and federal regulation, including its payments to governmental entities and agents and to underlying network service providers and its internal costs of compliance associated with taxes and regulatory fees and programs, such as 911 access to emergency services; state disability access and universal service programs; franchise fees; FCC and state regulatory fees; rights-of-way fees; charges from the FCC's numbering plan and local number portability administrator; and utility, gross receipts, CST, telecommunications, excise or other taxes not recovered by MegaPath through a separate line item. Because these expenses fluctuate, MegaPath charges a single, separate monthly Regulatory Recovery Surcharge (calculated as a variable percentage of Subscriber's recurring billing for the period) to recover these costs rather than include them in its base rates. Subscriber agrees to pay all invoiced taxes and surcharges. The Regulatory Recovery Surcharge is not itself a tax or fee required by the government. If this fee were bundled into the base rates, those rates would need to be set at higher amounts to accommodate potential variation.

Payment in full is due upon receipt of invoice. Payments not made within 30 days of the date of invoice will accrue interest from the invoice date to the date of full payment at a rate that is the lesser of (i) 1.5% per month or (ii) the highest rate permitted by applicable law. If Customer has provided MegaPath with credit card information for billing purposes, then MegaPath may debit Customer's credit card for all amounts due hereunder (with recurring charges to be debited at the commencement of the applicable billing period).

If Customer disputes any charges, Customer must notify MegaPath within 60 days following the date of the disputed charge or such claim shall be waived. All items not in dispute must be paid when due. The parties shall cooperate with each other in good faith to promptly resolve any disputes. Notwithstanding the foregoing, if Customer has not brought its account current to MegaPath's satisfaction within 10 days of MegaPath's written notice to Customer of Customer's delinquency, MegaPath may terminate the Service Agreement and all Services or suspend Service without further notice. If any Service, or the Service Agreement, is terminated by MegaPath for reasons other than Customer breach, or by Customer because of a material failure in Service, MegaPath shall issue a ratable credit or refund to Customer for any monthly recurring Service charges which may have been prepaid by Customer for periods of Service after the effective date of such termination. Suspension of Service by MegaPath because of Customer breach of, or as permitted under, the Service Agreement shall not suspend Service fees nor entitle Customer to a credit for the period of the suspension.

MegaPath reserves the right to modify pricing for any Service then being provided on a month-to-month basis upon 30 days' prior written notice, in which case Customer may terminate such Service without penalty following such notice upon written notice to MegaPath

received prior to the next billing cycle or effective date of such change, unless MegaPath elects to waive the application of such price modifications, in which case Customer's cancellation notice shall be deemed revoked. Customer shall be deemed to have accepted such modified pricing upon delivery of such Service following the effective date of such modification; MegaPath's continued provision of such Service 5 business days following its receipt of any written notice of termination shall constitute MegaPath's waiver of the application of the proposed modified terms to Customer and revocation of Customer's cancellation notice. Nothing in this Section 3 shall be deemed to conflict with or impair MegaPath's right to occasionally, from time to time, upon publication on MegaPath's Web site, adjust the charges set forth in the Ancillary Terms and Rates for Duet Voice and Data Service.

Customer agrees that MegaPath may utilize any type of credit report on Customer in order to perform a credit review as part of Customer's qualification process. As a result of such credit check, MegaPath reserves the right to deny credit privileges or set appropriate credit limits, including, but not limited to, requiring Customer to provide payment in advance or a security deposit. In the event that an order for relief is entered against Customer by any bankruptcy court, the Service Agreement shall be deemed to be an executory contract for bankruptcy purposes. In connection therewith, as a condition to the continuation of Service to Customer as a debtor-in-possession, MegaPath reserves the right to require a deposit from Customer representing no less than two months' Service charges (as averaged over the prior six months of Service, or based on the contracted monthly recurring charge for fixed rate contracted Services if less than six months, as the case may be), and may terminate or suspend Service with or without further notice in the event such payment terms are not complied with by Customer.

**4. Service Relocation.** Customer's use of the Services is location-specific to the site indicated in the Service Order for deployment of the Services (the "Premises"). If Customer elects to relocate the Premises after installation of facilities, Customer must submit a new Service Order for the new location and shall pay any installation and activation charges associated with delivery of Service to the new location. If Customer intends to vacate or relocate the Premises, Customer must provide MegaPath with notice terminating all Services to the installed location in accordance with these Terms and Conditions; any such action does not relieve Customer of any early termination fees which may be owing hereunder.

**5. IP Addresses.** MegaPath's ability to assign "IP addresses" is subject to restrictions on availability. MegaPath may require a "justification letter" and other supporting documents in order to secure the number of IP addresses requested by Customer. MegaPath reserves the right to deny requests for a number of IP addresses which MegaPath deems to be excessive. Customer has no property rights in the IP addresses assigned by MegaPath and cannot acquire such rights through usage, publication, announcement or otherwise. All IP addresses remain property of MegaPath, and Customer's right to use any given IP address shall terminate upon termination of the associated Service.

**6. Delivery of Service.** In support of Service, MegaPath shall install an end user circuit at the telephone company's recognized "minimum point of entry" or "local loop demarcation point" (the "MPOE") at the Premises. MegaPath's basic installation responsibilities shall be limited to establishing connectivity between the MPOE and the MegaPath wide area network ("WAN") interface (the path over which available bandwidth shall be measured), testing of the circuit connection, and WAN-side installation of the supporting Equipment, if such Equipment has been obtained from MegaPath, subject to the other terms of the Service Agreement. Subject to the next sentence, basic installation shall also include, if requested by Customer and deemed reasonable by MegaPath, running limited inside wiring from the MPOE to an Equipment location at the Premises requested by Customer. Notwithstanding the foregoing, basic installation shall not include inside wiring in excess of 50 feet, inside wiring which would take more than 15 minutes to install, wiring across more than 1 floor of space at the given location, or any other extraordinary wiring or installation services, all as determined by MegaPath or its authorized contractors, all of which shall be billable at MegaPath's then current rates on a time and materials basis, if requested by Customer and performed by MegaPath at its election. MegaPath shall not be responsible for wiring or configuring Customer's local area network. Additional service and maintenance (e.g., service calls, circuit downgrades/upgrades, non-basic inside wiring, etc.) are billable at MegaPath's then current rates on a time and materials basis. Customer shall be responsible for the early termination charges referred to in these Terms and Conditions if Customer cancels its order during the inside

Rev.01.02.12

wiring process, following circuit installation, rather than authorizing and incurring charges for any non-basic wiring which may be required. Performance by MegaPath, at Customer's request, of any non-recurring services (e.g., non-basic installation, wiring or repairs, etc.) shall constitute conclusive evidence of Customer's agreement to be responsible for any charges associated therewith.

In order to facilitate configuration of Equipment and ensure its compatibility with MegaPath's network, MegaPath reserves the right to require Customer, as a condition to receiving Service, to purchase or lease, as indicated in the Service Order, certain Equipment (of a make and model deemed appropriate by MegaPath for Service) from MegaPath. MegaPath shall not be responsible for the operation or maintenance of any Customer provided equipment. Equipment leased to Customer under a Service Order shall remain property of MegaPath and be returned to MegaPath by Customer in good condition, reasonable wear and tear excepted, upon termination of Service pursuant to MegaPath's return materials authorization procedures, or, at MegaPath's option, Customer shall allow MegaPath personnel to remove all MegaPath-owned equipment from the Premises. All title to Equipment sold to Customer under a Service Order shall remain with MegaPath until payment of the full, invoiced purchase price associated with such Equipment, as indicated on the Service Order. Title to all facilities (except such Equipment sold to a Customer under a Service Order) shall remain with MegaPath. The electric power consumed by any Equipment on the Premises of Customer shall be provided by and maintained at the expense of Customer.

MegaPath warrants to Customer that any Equipment purchased from MegaPath hereunder, and all inside wiring installed in support of Service, shall be free from defects in materials and workmanship for a period of one (1) year from the date of installation. This warranty is limited to the original Customer and is not transferable. If any Equipment or wiring shall become defective during the warranty period, MegaPath shall, at its option, repair or replace such materials with comparable materials (which may be reconditioned), provided it is reported (in the case of defective inside wiring) or reported and promptly returned (in the case of defective Equipment) to MegaPath during the warranty period in accordance with MegaPath's return materials authorization procedures. This warranty shall be void if, in MegaPath's determination, malfunction is the result of such Equipment or wiring having been abused, misused, repaired, modified or tampered with by, or accidentally damaged by, a party other than MegaPath or its authorized contractors. Any such repair or replacement will not extend the original warranty period. If MegaPath determines that the Service failure is attributed to defective Equipment, then this warranty shall be satisfied by the shipment by MegaPath of replacement Equipment to the Premises and shall not include on-site re-installation which, if requested, shall be billable at MegaPath's then current rates on a time and materials basis. All returned Equipment shall become property of MegaPath. Otherwise, Customer shall be solely responsible for any loss, theft, failure or damage of or to the Equipment and wiring while in Customer's possession or installed at the Premises. If Equipment or wiring malfunction is reported after expiration of the warranty period or is the result of a warranty exclusion, and Customer requests repair assistance from MegaPath, Customer shall be responsible for all applicable repair costs, including on-site assistance, if required, and Equipment purchase costs, at MegaPath's then current rates on a time and materials basis. In the unlikely event that MegaPath determines that it cannot repair or replace the Equipment or wiring within a commercially reasonable period of time, then MegaPath may provide Customer with immediate written notice of termination of the affected Service, Service Order or the Service Agreement, in MegaPath's discretion, without liability to either party.

The date and approximate time for circuit delivery shall be conveyed by MegaPath to Customer prior to installation. Other on-site work will be scheduled over time blocks offered by MegaPath. Customer shall allow MegaPath reasonable access and right-of-way to the Premises, as reasonably determined by MegaPath to be appropriate to the provision and maintenance of Services, and hereby grants to MegaPath and its contractors a revocable license to enter onto the Premises for said purposes. Customer represents and warrants that Customer has the right to grant access to the Premises. Customer shall be responsible for clearing its Premises of hazardous materials prior to MegaPath's initiation of any on-site work and providing a safe environment for MegaPath to perform service. Customer will reasonably cooperate with MegaPath's on-site work for Customer. Customer is responsible for securing any licenses, permits, easements, rights-of-way or other third party consents necessary for on-site work. If Customer fails to do so and MegaPath is required to remove wiring or Equipment, Customer shall bear

the costs of disconnection and removal. If Customer (i) cancels a scheduled on-site service call on less than 48 hours notice or (ii) does not provide access at the scheduled time, then MegaPath may charge Customer a \$100 "no access" fee. MegaPath shall use commercially reasonable efforts to install the Equipment and wiring and provide the Services as promptly as practicable, but MegaPath shall not be liable for any delays in commencement of Service. MegaPath shall not be responsible for removing any wiring upon termination of any given Service. MegaPath is not liable for any defacement of, or damage to, the Premises resulting from the furnishing of Service or the attachment of equipment and facilities furnished by MegaPath at such Premises or by the installation or removal thereof, when such defacement or damage is not the result of gross negligence or willful misconduct of MegaPath. In order that MegaPath may remain at the forefront of technology service offerings, MegaPath reserves the right, at any time and from time to time, to substitute any Customer's Service technology with another level of technology that provides equal or better service to Customer.

## **7. Service Cancellation.**

(A) Cancellation of Service Order by Customer Prior to Initiation of Service. Customer may cancel a Service Order prior to the Effective Service Commencement Date; provided, however, that Customer shall be responsible for the return of any Equipment furnished by MegaPath under the Service Agreement and for a cancellation charge equal to all direct costs, if any, incurred by MegaPath from the incumbent local exchange carrier responsible for circuit order and delivery during the period between the date of the Service Order and receipt of written notice of cancellation. Customers requesting cancellation pursuant to this Section must submit written notice to the MegaPath Customer Service Department at MegaPath's principal business address or e-mail address for customer support listed on its Web site. At MegaPath's election, Customer shall either permit MegaPath to enter the Premises at a mutually convenient time for the purpose of removing the subject Equipment or shall ship such Equipment back to MegaPath in accordance with MegaPath's return materials authorization procedures, at MegaPath's cost. MegaPath shall issue a refund to Customer for the purchase price paid by Customer for the returned Equipment within sixty (60) days of the Equipment's return to MegaPath, provided such Equipment is in good condition, reasonable wear and tear excepted, and in working order upon receipt by MegaPath.

(B) Termination of Service by Customer After Initiation of Service. Subject to Section 7(C), Customer may terminate Service on or after the Effective Service Commencement Date upon thirty (30) days' written notice to MegaPath. Customer shall remain liable for all outstanding non-recurring charges and 50% of the remaining recurring charges due and owing under the Service Agreement as of and through the effective termination date.

(C) Customer's Service Termination Liability. In the event that Customer discontinues Duet Voice and Data Service for any reason, except as permitted by Section 7(D), Section 7(E) or Section 12 of these Terms and Conditions, on or after the Effective Service Commencement Date and prior to the end of the Initial Term, or in the event that MegaPath terminates Duet Voice and Data Service for reasons attributable to Customer under Section 7(F) below, Customer shall pay termination fees equal to the sum of (a) all outstanding recurring charges and non-recurring charges due and owing under the Service Agreement as of and through the effective termination date, plus (b) all remaining recurring charges that would have been assessable and due through the end of the Initial Term for the cancelled Duet Voice and Data Service. This Section 7(C) sets forth reasonable liquidated damages from early termination of Service by Customer, in which case MegaPath's losses would be difficult or impossible to ascertain. Such liquidated damages are not a penalty. If Duet Voice and Data Service is terminated pursuant to this Section 7(C) prior to expiration of the Initial Term, MegaPath shall have the option to re-purchase the Equipment furnished by MegaPath to Customer hereunder at its current value, which shall be calculated as the full purchase price paid by Customer, depreciated on a straight-line basis over the Initial Term period. The foregoing option shall be exercisable upon written notice by MegaPath delivered to Customer within sixty (60) days of Service termination. At MegaPath's election, Customer shall either permit MegaPath to enter the Premises at a mutually convenient time for the purpose of removing the subject Equipment or shall ship the Equipment back to MegaPath in accordance with MegaPath's return materials authorization procedures, at MegaPath's cost. MegaPath shall issue a check to Customer or credit Customer's account, at MegaPath's election, for the refund amount owing to Customer under this Section 7(C) within sixty (60) days of the Equipment's return to MegaPath,

provided such Equipment is in good condition, reasonable wear and tear excepted, and in working order upon receipt by MegaPath.

(D) Termination of Service by Customer for Material Service Failure. Upon written notice to MegaPath, Customer may terminate Duet Voice and Data Service in the event that MegaPath fails to meet all the objectives stated in the Duet Voice and Data Service Level Agreement, as reasonably determined by Customer and verified by MegaPath pursuant to the terms of the Service Level Agreement, for any three (3) months out of a consecutive six (6) month period during the term of the Service Agreement, provided such termination notice is delivered within 30 days of the latest Service failure giving rise to such right. In the event of such a termination, or a termination by Customer of Service permitted under Section 12 of these Terms and Conditions, Customer shall not be liable for the early termination charges described in Section 7(C), but shall remain liable for payment of all outstanding recurring charges and non-recurring charges due and owing under the Service Agreement as of and through the effective termination date. If Customer terminates Duet Voice and Data Service in accordance with this Section 7(D) prior to expiration of the Initial Term, MegaPath shall have the option to re-purchase the Equipment furnished by MegaPath to Customer hereunder at its current value, which shall be calculated as the full purchase price paid by Customer, depreciated on a straight-line basis over the Initial Term period. The foregoing option shall be exercisable upon written notice by MegaPath delivered to Customer within sixty (60) days of Service termination. At MegaPath's election, Customer shall either permit MegaPath to enter the Premises at a mutually convenient time for the purpose of removing the subject Equipment or shall ship the Equipment back to MegaPath in accordance with MegaPath's return materials authorization procedures, at MegaPath's cost. MegaPath shall issue a check to Customer or credit Customer's account, at MegaPath's election, for the refund owing to Customer under this Section 7(D) within sixty (60) days of the Equipment's return to MegaPath, provided such Equipment is in good condition, reasonable wear and tear excepted, and in working order upon receipt by MegaPath.

(E) Termination of Service by Customer for Policy Changes. In the event MegaPath makes any material changes to its Duet Voice and Data Service Level Agreement or Acceptable Use Policy from the versions posted as of the date hereof on MegaPath's Web site which would reasonably be determined to have the effect of materially limiting Customer's use of the Services subscribed to hereunder or materially diminishing any Service credit remedies, Customer may terminate the affected Services upon written notice to MegaPath effective upon expiration of the then current billing period without incurring any early termination fees which might otherwise be assessable. Otherwise, Customer's continued use of the Services following any of such changes shall constitute Customer's acceptance thereof. In the event of such a termination, Customer shall not be liable for the early termination charges described in Section 7(C), but shall remain liable for the payment of all outstanding recurring charges and non-recurring charges due and owing under the Service Agreement as of and through the effective termination date. If Customer terminates Duet Voice and Data Service in accordance with this Section 7(E) prior to expiration of the Initial Term, MegaPath shall have the option to re-purchase the Equipment furnished by MegaPath to Customer hereunder at its current value, which shall be calculated as the full purchase price paid by Customer, depreciated on a straight-line basis over the Initial Term period. The foregoing option shall be exercisable upon written notice by MegaPath delivered to Customer within sixty (60) days of Service termination. At MegaPath's election, Customer shall either permit MegaPath to enter the Premises at a mutually convenient time for the purpose of removing the subject Equipment or shall ship the Equipment back to MegaPath in accordance with MegaPath's return materials authorization procedures, at MegaPath's cost. MegaPath shall issue a check to Customer or credit Customer's account, at MegaPath's election, for the refund owing to Customer under this Section 7(E) within sixty (60) days of the Equipment's return to MegaPath, provided such Equipment is in good condition, reasonable wear and tear excepted, and in working order upon receipt by MegaPath.

(F) Termination of Service by MegaPath. MegaPath may suspend or discontinue Service (or refuse to provide additional Service), or terminate any given Service Order or the Service Agreement, as the case may be, without liability to MegaPath, under the following circumstances:

(i) For nonpayment: MegaPath may, upon written notice to Customer with ten (10) days to cure, suspend or terminate Service, as aforesaid, when there remains an unpaid balance for Service that is overdue.

- (ii) For returned checks: If Customer's check or draft is returned unpaid for any reason, Service shall be subject to suspension or termination, as aforesaid, if the full amount for which the returned check or draft was written is not wire transferred to an account specified by MegaPath within seventy-two (72) hours of written notice and return by MegaPath to Customer of the "bounced" check or draft.
- (iii) For any violation of law or any of the provisions governing the furnishing of Service: Service shall be subject to suspension or termination, as aforesaid, (a) for any violation by Customer or its end users (1) of any law, rule, regulation or policy of any government authority having jurisdiction over or relating to the use or provision of Service, (2) of any provision of MegaPath's then-current Acceptable Use Policy, as posted on MegaPath's Web site, or any other Service-affecting policy furnished in writing to Customer or posted on MegaPath's Web site, (b) by reason of any order or decision of a court or other government authority having jurisdiction which prohibits MegaPath from furnishing such Service due to acts or omissions attributable to Customer or its end users, (c) for any material violation of the Service Agreement (other than a payment default or other breach separately covered by this Section 7) affecting MegaPath's ability to provide Service or its network integrity, (d) for abnormal toll usage not covered adequately by a security deposit, or (e) for excessive filing of non-valid Service credit requests under the Service Level Agreement, unless the violation has been cured by Customer to MegaPath's reasonable satisfaction prior to the expiration of any prior notice period given under this paragraph (iii). With respect to this paragraph (iii), MegaPath will (A) provide Customer with three (3) business days' prior written notice before suspending Service unless exigent circumstances (i.e., network integrity, specific violations of MegaPath's Acceptable Use Policy, or legal compulsion) do not permit or the violation does not lend itself to curative action, in MegaPath's reasonable determination (in which case notice need not be prior), and (B) provide Customer with three (3) business days' prior written notice of the violation and an opportunity to cure same, if, in its discretion, the circumstances so permit, before terminating the Service following a suspension.
- (iv) For other causes: Customer shall be subject to suspension or termination of Service, as aforesaid, in the event of suspected fraud or other unlawful use of Service by Customer or its end users, or fraud or material misrepresentation by Customer in any submission of information required in a Service Order or any other information submitted to MegaPath. With respect to this paragraph (iv), MegaPath will (a) provide Customer with three (3) business days' prior written notice before suspending Service unless exigent circumstances (i.e., network integrity, specific violations of MegaPath's Acceptable Use Policy, or legal compulsion) do not permit or the violation does not lend itself to curative action, in MegaPath's reasonable determination (in which case notice need not be prior), and (b) provide Customer with three (3) business days' prior written notice of the violation and an opportunity to cure same before terminating Service following a suspension.
- (v) For Bankruptcy: In the event of any Customer filing of bankruptcy, reorganization, or receivership, an assignment for the benefit of creditors, or failing to discharge an involuntary petition therefor within the time permitted by law, or abandonment of Service, MegaPath may immediately terminate or suspend Service.
- (vi) As a result of engineering changes: MegaPath may, upon forty-five (45) days' written notice to Customer (or such sooner time as may be permitted by law), terminate any Service due to engineering changes in the MegaPath network, a reduction in MegaPath's service area, a cessation of a given Service offering, or the lack of available facilities or equipment from MegaPath's supporting suppliers. If MegaPath terminates Duet Voice and Data Service in accordance with this Section 7(F)(vi) prior to expiration of the Initial Term, MegaPath shall have the option to re-purchase the Equipment furnished by MegaPath to Customer hereunder at its current value, which shall be calculated as the full purchase price paid by Customer, depreciated on a straight-line basis over the Initial Term period. The foregoing option shall be exercisable upon written notice by MegaPath delivered to Customer within sixty (60) days of

Service termination. At MegaPath's election, Customer shall either permit MegaPath to enter the Premises at a mutually convenient time for the purpose of removing the subject Equipment or shall ship the Equipment back to MegaPath in accordance with MegaPath's return materials authorization procedures, at MegaPath's cost. MegaPath shall issue a check to Customer or credit Customer's account, at MegaPath's election, for the refund owing to Customer under this Section 7(F)(vi) within sixty (60) days of the Equipment's return to MegaPath, provided such Equipment is in good condition, reasonable wear and tear excepted, and in working order upon receipt by MegaPath.

- (vii) Cancellation of Service by MegaPath Prior to Initiation of Service. MegaPath may cancel a Service Order prior to the Effective Service Commencement Date, upon written notice to Customer, if MegaPath determines that it is unable to effect installation or provide Service without undue cost or burden, without liability to either party, and, in the event of any such cancellation, MegaPath shall refund any service activation charges prepaid by Customer for the cancelled Service. If MegaPath cancels a Service Order in accordance with this Section 7(F)(vii), at MegaPath's election, Customer shall either permit MegaPath to enter the Premises at a mutually convenient time for the purpose of removing any Equipment which may have been furnished under the Service Order or shall ship the Equipment back to MegaPath in accordance with MegaPath's return materials authorization procedures, at MegaPath's cost. MegaPath shall refund to Customer the purchase price paid by Customer for such Equipment within sixty (60) days of the Equipment's return to MegaPath, provided such Equipment is in good condition, reasonable wear and tear excepted, and in working order upon receipt by MegaPath.

Upon MegaPath's termination of Service to Customer under any of the foregoing subsections (i), (ii), (iii), (iv), or (v) of this Section 7(F), MegaPath may, in addition to all other remedies that may be available to MegaPath at law or in equity or under any other provision of the Service Agreement, assess and collect from Customer a termination charge for the Services so terminated and exercise its Equipment repurchase option in accordance with Section 7(C) hereof.

(G) Resumption of Service. If Service has been discontinued hereunder, and Customer requests that Service be restored, MegaPath shall have the sole and absolute discretion to restore such Services only after satisfaction of such conditions as MegaPath determines to be required for its protection. Nonrecurring charges (such as staging, installation, etc.) may apply to restored Services.

**8. Warranty and Limitation of Liability.** MegaPath agrees to guarantee the performance of Duet Voice and Data Service to the extent of the Service Level Agreement as in effect from time to time for such Service, as posted on the MegaPath Web site. EXCEPT AS OTHERWISE EXPLICITLY SET FORTH HEREIN, ALL EQUIPMENT AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S OR AN END USER'S USE THEREOF IS ENTIRELY AT CUSTOMER'S AND THE END USER'S RISK. EXCEPT FOR THE WARRANTIES EXPLICITLY SET FORTH HEREIN, AND THE DUET VOICE AND DATA SERVICE LEVEL AGREEMENT, MEGAPATH HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESSED, IMPLIED OR STATUTORY, OR ARISING BY CUSTOM, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT MEGAPATH DOES NOT EXERCISE CONTROL OVER THE CONTENT OR INFORMATION PASSING THROUGH THE INTERNET IN CONNECTION WITH THE SERVICES, NOR DOES MEGAPATH TAKE ANY RESPONSIBILITY FOR THE ACCURACY, QUALITY OR NATURE OF THE INFORMATION OBTAINED THROUGH THE SERVICES. UNDER NO CIRCUMSTANCES SHALL MEGAPATH OR ANY OF MEGAPATH'S AFFILIATES OR SUPPLIERS BE HELD RESPONSIBLE FOR ANY DAMAGES OR LOSSES SUFFERED BY CUSTOMER OR AN END USER AS A RESULT OF MEGAPATH'S NEGLIGENT PERFORMANCE OR DELIVERY OF SERVICES OR CUSTOMER'S OR AN END USER'S DIRECT OR INDIRECT USE OF OR SUBSCRIPTION TO ANY OF MEGAPATH'S PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF INFORMATION OR INTERRUPTIONS IN

SERVICE, OR DAMAGES ALLEGED TO HAVE RESULTED FROM DELAYS IN PROVIDING PRODUCTS OR SERVICES OR BECAUSE OF THE INADEQUACY OR LIMITED IMPLEMENTATION OF ANY SECURITY FEATURES, SERVICES OR EQUIPMENT SOLD, PROVIDED, ADMINISTERED OR ARRANGED BY MEGAPATH), EVEN IF MEGAPATH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT SERVICE (INCLUDING EMERGENCY 9-1-1 CALLING) MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED OR UNSCHEDULED MAINTENANCE, AND FOR OTHER REASONS WITHIN AND OUTSIDE OF THE CONTROL OF MEGAPATH, AND THAT NO COMPENSATION SHALL BE DUE OR OWING FROM MEGAPATH TO ANY PARTY AS A RESULT THEREOF. MEGAPATH RESERVES THE RIGHT TO SUSPEND SERVICE WITHOUT NOTICE IN THE EVENT OF ANY EXIGENT CIRCUMSTANCES AFFECTING MEGAPATH'S ABILITY TO PROVIDE SERVICE OR IN THE EVENT THAT MEGAPATH DETERMINES THAT, FOR TECHNICAL REASONS, AN IMMEDIATE SUSPENSION OF SERVICE IS REQUIRED IN ORDER TO PREVENT CUSTOMER'S OR AN END USER'S USE OF SERVICE FROM ADVERSELY AFFECTING THE EFFECTIVENESS OF THE SERVICE FOR OTHER CLIENTS OF MEGAPATH OR TO PRESERVE NETWORK INTEGRITY OR PREVENT NETWORK ABUSE, IN EACH CASE, WITHOUT LIABILITY TO ANY PARTY. IN NO EVENT SHALL MEGAPATH'S LIABILITY FOR ANY CLAIMS HEREUNDER (INCLUDING, WITHOUT LIMITATION, DAMAGES TO PERSON OR PROPERTY SUSTAINED AS A RESULT OF MEGAPATH'S GROSSLY NEGLIGENT PERFORMANCE OF INSTALLATION OR REPAIR WORK AT THE PREMISES) EXCEED THE AMOUNT OF SIX (6) MONTH'S OF CONTRACTED MONTHLY RECURRING SERVICE CHARGES UNDER THE SERVICE AGREEMENT.

The parties confirm that the Service Agreement is a commercial transaction between willing commercial contract parties. **Customer agrees that Services provided hereunder by MegaPath are not consumer transactions and are not subject to consumer protection laws, and Customer expressly represents and warrants that it is not a consumer within the meaning of those laws.**

**9. Indemnity.** Customer shall defend, indemnify and hold MegaPath, and its suppliers, affiliates, principals, officers, directors, agents and employees (each, a "Representative"), harmless from and against any claim, loss, cost, damage or expense, including, but not limited to, reasonable attorneys' fees and expenses and court costs, arising out of or resulting from: (a) the acts or omissions of Customer, its end users, and their Representatives, including, without limitation, a breach of the Service Agreement or MegaPath's Acceptable Use Policy; (b) claims of libel, slander, infringement of intellectual property rights, or any other injury to a person or property arising in whole or in part from the data, information or content transmitted by Customer, or end users accessing Customer's subscribed Services, over MegaPath's Services, and (c) any and all claims, loss, demands, suits, or other actions, or any liability whatsoever, whether suffered, made, instituted or asserted by Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the Service and not due to the gross negligence or willful misconduct of MegaPath.

**10. Confidentiality.** Customer shall not use MegaPath's name, trademarks, trade names or other proprietary identifying symbols, nor disclose any MegaPath proprietary information (including pricing agreed to under the Service Agreement), without the prior written approval of MegaPath. Except as permitted by law, the express terms of the Service Agreement, or MegaPath's Privacy Policy (a copy of which is posted on MegaPath's Web site), MegaPath shall not use or publicly disclose any Customer information other than for the limited purpose of delivering or facilitating the provision of Service to Customer. Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure or use of confidential information and that each party may seek, without waiving any other rights or remedies, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

**11. Customer Responsibility.** Customer is responsible for protecting all account passwords, for any authorized or unauthorized use made of Customer's subscribed Services, and for its end users' misuse of the Services and violation of the Service Agreement. Customer shall comply with the rules appropriate to any network to which Customer may gain access via the Services. Customer may not resell the Services (or

any part thereof) unless MegaPath consents in writing. Customer shall use the Services only for lawful purposes and in a manner consistent with the terms of the Service Agreement and MegaPath's Acceptable Use Policy as in effect from time-to-time, as posted on MegaPath's Web site. Any failure to do so shall be deemed a breach of the Service Agreement. Customer acknowledges that posting a changed Acceptable Use Policy or Service Level Agreement on MegaPath's Web site will be sufficient notice to Customer of changes thereto. Customer acknowledges that it is responsible for complying with the eligibility requirements established by MegaPath in order to receive any rebate or credit which may be offered by MegaPath or for which Customer may become eligible, from time to time. Unless Customer advises MegaPath otherwise in writing, Customer grants MegaPath permission to send Customer periodic notices on MegaPath products and services, promotional and special offers and/or industry news. Customer shall not allow any facility or equipment of MegaPath to be rearranged, removed, disconnected, or repaired without MegaPath's prior written consent, nor will Customer permit any liens or encumbrances to be placed on any MegaPath equipment or facility. Customer is responsible for any damage, including without limitation personal injury or damage to MegaPath facilities and equipment, caused by Customer-provided equipment. MegaPath's services may not be connected to the services of other communications providers without MegaPath's express written permission.

**12. Force Majeure.** MegaPath shall not be liable for any delay or failure of performance of any part of the Service Agreement to the extent that such failure or delay is caused by Customer or an event of "force majeure," including but not limited to, fire, flood, explosion, war, strike, embargo, governmental regulations, acts of civil or military authority, acts of God, acts of terrorism, acts or omissions of vendors and suppliers, or other causes beyond MegaPath's reasonable control. For the duration of the excused performance, the duties of MegaPath shall be abated and shall resume without liability thereafter. In the event of the occurrence of a force majeure event which causes a material interruption in Service and continues unremedied by MegaPath for 30 days, Customer may terminate the Service Agreement or the affected Service upon written notice to MegaPath without liability to either party and shall only remain liable for charges accrued through the last date of service prior to the occurrence of the force majeure event, subject to Section 7(D) of these Terms and Conditions.

**13. Governing Law.** The Service Agreement shall be governed by the laws of the State of Connecticut (without regard to its principles of conflicts of laws) and applicable federal laws. Actions to enforce the Service Agreement shall be brought only in a state or federal court located in the State of Connecticut. Each party irrevocably waives the right to a jury trial in connection with any legal proceeding relating to the Service Agreement.

**14. Notices.** All notices, requests, and demands hereunder shall be given in writing and shall be deemed to have been given on the date of delivery, if delivered in person, on the next business day, if sent by nationally recognized overnight courier (charges prepaid), on the third business day after deposit in the U.S. mail, if sent by certified or registered mail, return receipt requested, or upon receipt of electronic confirmation, if sent by electronic mail, facsimile or other electronic means that provides evidence of receipt, addressed to the party at the latest address provided by the receiving party to the sending party in writing. Notwithstanding the foregoing, (i) notices and claims sent by Customer under the Service Level Agreement shall be sent in the manner set forth in such agreement, and (ii) customer service and billing issues shall be sent via e-mail to the respective URL addresses listed on MegaPath's Web site, from time to time, for those purposes (currently, support@dsl.net and billinghelp@dsl.net).

**15. Miscellaneous.** The Service Agreement supersedes any and all prior agreements or understandings, oral or written, with respect to the Services and comprises the full and final agreement of the parties with respect to the provision of Services. The Service Agreement may be modified only by written instrument, executed or electronically acknowledged by both parties' authorized representatives, or, to the limited extent expressly authorized hereunder, by posting of revised terms on MegaPath's Web site. To the extent MegaPath permits a change order to be processed with respect to the Services being provided to Customer hereunder (e.g., if, during the term, Customer requests additional e-mail boxes), the Services, as revised, shall remain subject to the applicable terms of the Service Agreement, unless MegaPath specifies otherwise, in which case such modified terms shall apply to the extent of any conflict (e.g., to account for any higher-priced or additional services). The Service Agreement may be executed in counterparts, and transmitted via facsimile transmission, with all such counterparts constituting one and the same instrument, or may be

accepted via MegaPath's electronic service order process. Customer acknowledges and agrees that MegaPath shall have the right to rely upon any Service Order or signature submitted to or placed with MegaPath on Customer's behalf under the Service Agreement or to the Service Agreement as being valid and binding upon Customer. Nothing in the Service Agreement shall be construed as creating an employer-employee or agency relationship, a partnership, or a joint venture between the parties.

MegaPath's performance hereunder may become subject, in whole or in part, to applicable governmental regulations or tariffs filed by MegaPath with governing regulatory authorities in respect of the Services. In the event of a conflict between the terms of any governing tariff or regulation and the Service Agreement, the governing tariff or regulation shall control to the limited extent of such conflict.

Customer may not transfer, assign or delegate any right or obligation with respect to the Services, and any attempted transfer, assignment or delegation shall be void and of no effect unless MegaPath has given express prior written consent. MegaPath's rights and obligations under the Service Agreement may be assigned or delegated without restriction. The Service Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

The failure by either party to take action to enforce compliance with any of the terms or conditions of the Service Agreement, or to give notice of any breach, shall not constitute a waiver or relinquishment of such right, unless otherwise provided herein. Waivers shall only be valid if in writing, and a waiver expressly made in writing on one occasion will be effective only in that specific instance and only for the precise purpose for which given. Without limiting the foregoing, a delay or failure in billing by MegaPath for any given Service provided hereunder shall not operate as a waiver or estoppel of its right to be paid for those Services. No provision of the Service Agreement is intended, nor shall any be interpreted, to provide any person not a party to the Service Agreement with any remedy, claim, liability, reimbursement, or cause of action or create any other third party beneficiary rights. Each provision of the Service Agreement is severable from the whole, and if any one provision is declared invalid or unenforceable, the other provisions shall remain in full force and effect. Termination of the Service Agreement shall not terminate or render void any provisions, which, by their logical context, would reasonably be expected to survive termination of the Service Agreement (including, without limitation, Sections 3, 7, 8, 9, 10, 13 and 15 of these Terms and Conditions). Services may be delivered to Customer or supported in whole or in part by MegaPath or MegaPath's affiliates, and/or their respective authorized contractors and third-party suppliers. References herein to "days" shall mean calendar days, unless referred to as a business day. References herein to a "business day" shall mean a weekday other than a Federal holiday.