

*Telecom★USA.*

**General Service Agreement  
For Residential Customers**

Effective Date - February 1, 2009



## **General Service Agreement for Residential Customers**

Thank you for choosing service from Telecom\*USA, Inc. or its successors ("Company").

**PLEASE READ THIS GENERAL SERVICE AGREEMENT CAREFULLY.** This governs the relationship between you and the Company and explains, among other things, the following:

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### **I. THE AGREEMENT**

Your agreement ("Agreement") with the Company consists of this General Service Agreement, the Company's website, and the current terms of any optional calling plan, promotion, and/or authorized written communications you have received from the Company. If you have not selected an optional calling plan, all of the Company's Basic Service(s) and Rates (described below) will apply. If you have selected an optional calling plan, only some of the Company's Basic Service(s) and Rates will apply.

BY ENROLLING IN, USING, OR PAYING FOR COMPANY SERVICES, YOU AGREE TO THE RATES, CHARGES, AND TERMS AND CONDITIONS IN THIS AGREEMENT. IF THIS AGREEMENT IS NOT ACCEPTABLE TO YOU, DO NOT USE THE SERVICES AND NOTIFY THE COMPANY IMMEDIATELY AT 1-800-444-5500.

The Company may change this Agreement at any time. Any changes to your Interstate Dial 1 rates will become effective only after the Company notifies you at least 15 days in advance of such change through one of the following means: (i) by postcard or letter; (ii) by a message

with your invoice; (iii) by calling and speaking to you or by leaving a message for you; or (iv) by e-mail, with your consent. Written notice to you will be sent to your last known address as reflected in the Company's records. Written notice is deemed received 3 days after deposit in the U.S. mail, postage prepaid, and properly addressed according to the address in the Company's records. At a minimum, changes to any other rates, charges (including rates and charges for international services), or terms or conditions in the Agreement will be published in the Company's website at least 15 days in advance of such change and will be incorporated by reference into this Agreement.

For purposes of the Agreement, "you" means the residential customer, defined as either (i) the person identified in the Company's account records as responsible for payment of all charges; or (ii) any other person with actual or apparent authority to represent that person or to use the service(s).

This Agreement covers your state-to-state and international services and charges. Rates and charges for international calls and any associated terms and conditions associated with such calls can be found by visiting our website at [www.TalkSmarterUSA.com](http://www.TalkSmarterUSA.com) or by calling Company Customer Service toll-free at 1-800-444-5500. To the extent permitted by law, this Agreement also covers the Company's local or intrastate service(s) and charges and the Company's dial around service(s) and charges, where the Agreement's provisions relating to these services and charges are not in conflict with applicable tariffs filed with state or federal agencies.

The rates and charges found in the Agreement are effective as of February 1, 2009 and are subject to change. For your most current rates and charges, the most current version of this General Service Agreement, or if you have questions about your services, please visit our website at <http://www.TalkSmarterUSA.com> or call us toll-free at 1-800-444-5500.

## **II. SERVICE**

### **A. Optional Calling Plans**

If you request an optional calling plan, that calling plan is described in a separate document that is either included along with this General Service Agreement or was sent to you when you initially selected the calling plan from the

Company. For the current terms of any optional calling plan, please visit our website at <http://www.TalkSmarterUSA.com> or call toll-free at 1-800-444-5500. The terms of your optional calling plan are incorporated by reference in this Agreement. Please note that, under an optional calling plan that has different per minute rates for different time periods, when a call is begun during one time period and then ends during another time period, the rate for the time period during which the call begins applies for the entire call.

## **B. Promotions / Bonus Offers**

Promotions and/or bonus offers may be communicated to you orally or in writing at the Company's discretion. For all promotions or bonus offers, your eligibility is limited as follows:

1. Only one bonus/affinity program at any one time will be associated with any account or customer.
2. Only one enrollment bonus will be awarded to any customer.
3. Sign-up bonuses or promotions are available only to new customers of the Company.
4. To receive on-going benefits of a bonus award or promotion, you must be a customer of the Company and in good standing at the time such award or promotion is scheduled to be granted.
5. The Company reserves the right to amend or terminate bonus programs and/or promotions upon appropriate notice to you.
6. If you are eligible to receive free minutes of calling under any Company promotion(s), you will not be eligible to receive, during any 12-month period, a total amount of free minutes of calling in excess of 1,500 minutes.

## **C. Basic Services and Rates**

Set forth below are the Company's basic rates for listed services. The rates in Paragraphs C.1-4 and C.7 below on pages 3-5 and 8 **may not apply if you have enrolled in an optional calling plan**, but the rates in Paragraphs C.5-6 and C.8 below on pages 5-9 will apply regardless of any optional calling plan in which you have enrolled.

### **1. Basic Interstate Dial 1**

This service allows you to place a long distance call from your home telephone by dialing 1 + area code + 7-digit

telephone number, if you have selected the Company for long distance service and if both your home telephone and the called number are located within the U.S. mainland, Alaska, Hawaii, or certain U.S. territories. There is a \$6.95 monthly charge for this service.

### Per Minute Rates

| <u>All Day Monday-Friday</u> | <u>All Day Saturday and Sunday</u> |
|------------------------------|------------------------------------|
| \$0.40                       | \$0.15                             |

When a call is begun during one time period and then ends during another time period, the rate for each time period applies for the portion of the call occurring during that time period.

## **2. International Services**

This service allows you to place a long distance call to an international location, if you have selected the Company for long distance service and your home telephone number is located within the U.S. mainland, Alaska, Hawaii, or certain U.S. territories. You may find international rates and charges on the Company's website at <http://www.TalkSmarterUSA.com> or by calling Company Customer Service toll-free at 1-800-444-5500. You may place a call to an international location from your home telephone by dialing 011 + country code + telephone number for countries other than Canada and certain Caribbean areas, or by dialing 1 + area code + telephone number for Canada and certain Caribbean areas.

## **3. Basic In-State Dial 1 Long Distance and Local Toll**

This Agreement applies to in-state long distance and local toll calls in those states that do not regulate rates through filings with the state public utility commission. Rates vary among such states and are subject to change, so please contact the Company for specific rate information. Current basic in-state Dial 1 rates in such states do not exceed \$0.50 per minute.

## **4. Basic Calling Card**

Making calls by using your Company-issued calling card allows you the convenience of billing to your account calls made while away from your home. You can access this

service by dialing a Company-provided toll free number assigned under this service plus the calling card number and a 4-digit security code, which you can select. You may originate calls from either touch-tone or rotary telephones. (Calls originating from rotary telephones will be completed with the assistance of operators and at an additional charge.)

State-to-State Per-Minute Rate: \$1.25

Per-Call Surcharge:

Direct Dial You place a Company-issued calling card call without using the Company's operator services: \$1.75

In those states referenced in Paragraph II.C.3 above on page 4, for Direct Dial in-state long distance and local toll calls made by using your Company-issued calling card, rates and surcharges vary by state and are subject to change. Please contact the Company for specific rate information.

Station-to-Station You use the Company's operator services to place a Company-issued calling card call to reach another number and the call is billed to your Company-issued calling card: \$2.25

Person-to-Person You use the Company's operator services to place a Company-issued calling card call to reach a specific person and the call is billed to your Company-issued calling card only if the specific person is available: \$4.90

## **5. Directory Assistance**

You may access Directory Assistance ("DA") by dialing 1 + area code + 555-1212. A charge will be applied to each call for information for any telephone number in the U.S. mainland, Alaska, Hawaii, the U.S. territories, and certain international locations. One request may be made on each DA call. The DA charge applies to each call regardless of whether or not the DA operator is able to furnish the requested telephone number.

Per-Call Charge: \$3.49

Additional Per-Call Charge for Call Completion.

You ask a live or automated Company operator to complete a call to the DA listing requested: \$0.35

Directory Assistance for International Location Calls: Service is accessed by dialing “00” which connects you with a Company operator who will assist you in obtaining directory assistance in countries outside of the U.S.

For all countries outside of the U.S. (except Canada): \$7.94

For Canada: \$2.49

## 6. Operator Assistance

The following rates and surcharges apply to long distance calls that are completed with the assistance of the Company’s automated or live operator services, except that the surcharges do not apply for calls to certain international locations that may be reached only with the assistance of operator services (see our website at [www.TalkSmarterUSA.com](http://www.TalkSmarterUSA.com) for a list of such international locations, or call Company Customer Service at 1-800-444-5500). These operator services options can be accessed by dialing “00” or by dialing 0 + the interstate long distance area code + the 7-digit number.

Per-Minute Rate for all calls identified in this section:

\$1.15

A Per-Call Surcharge of \$6.50 applies to each of the following types of calls:

Station-to-Station You place a call by using the Company’s operator services to reach another number and the call is billed to the originating number.

Station-to-Station Collect You place a call by using the Company’s operator services to reach another number and, if accepted by the called station, the call is completed and billed to the called number.

Station-to-Station — Third Party-Billed You ask the Company’s operator services to place a call for you to reach one number, but to bill the call to a third number which is neither the originating nor the called number. Charges may be billed, and the call may be completed, only if the operator obtains verbal acceptance from the third party.

Station-to-Station — Non-Company-Issued Card Calling You place a call by using the Company's operator services to reach another number, and you ask that the call be billed to your credit card or a local calling card issued by a local telephone company.

Person-to-Person — Non-Company-Issued Card Calling You place a call by using the Company's operator services to reach a specific person and ask for the call to be billed to your credit card or a local calling card issued by a local telephone company. If that person is available, the call is completed and billed to that credit card or non-Company-issued calling card.

A Per-Call Surcharge of \$12.50 applies to each of the following types of calls:

Person-to-Person You place a call by using the Company's operator services to reach a specific person and, if that person is available, the call is completed and billed to the originating number.

Person-to-Person Collect You place a call by using the Company's operator services to reach a specific person and, if the specific person is available and accepts the call, the call is completed and billed to the called number.

Person-to-Person — Third Party-Billed You ask the Company's operator services to place a call for you to reach a specific person, but to bill the call to a third number which is neither the originating nor the called number. Charges may be billed, and the call may be completed, only if the person is available and if the operator obtains verbal acceptance from the third party.

A Per-Call Surcharge of \$1.95 applies to the following type of call:

Coin-Sent Paid Calls You place a long distance call to a number at a location in the U.S. mainland, Alaska, Hawaii, or the U.S. territories and make the call from a public or semi-public payphone located in the U.S. mainland, Alaska, Hawaii, or the U.S. territories, which call is paid for by inserting coins during the progress of the call.

The following Per-Call Surcharges also may apply to calls using the Company's operator services and, if applicable, will be applied in addition to the above rates and surcharges:

Operator Dialed You use a live Company operator to dial the call. (This surcharge, however, does not apply to Company-issued calling card calls or to Non-Company-Issued Card Calling — Station-to-Station or Non-Company-Issued Card Calling — Person-to-Person as identified above.): \$1.55

Casual Calling Surcharge This surcharge applies: (i) to calls made when all the following 3 conditions apply: (1) when a call is completed over the Company's network and the caller does not have an active account with the Company ("Casual Calling"); (2) with a non-Company-issued calling card or a credit card; and (3) by using the Company's operator services; and (ii) to calls made when both of the following 2 conditions apply: (1) if either of the following apply: (a) after cancellation of your Company service resulting from you or your local telephone company providing assurances to the Company that you have switched carriers, your telephone line actually remains designated to the Company at the local telephone company's switch; or (b) the Company cancels your account and blocks your line from placing calls on the Company's network for a reason described in Section V.B below on pages 20-22 and you have not changed carriers within 120 days of the line being blocked, and then the Company lifts such block and allows you access to the Company's network; and (2) by using the Company's operator services: \$3.50

Different rates may apply for operator service-assisted calls considered local or intraLATA calls. Please contact the Company for specific rate information.

## **7. Rounding Policy**

For billing purposes, the length of each call is rounded to the next higher full minute. If the computed charge for a call includes a fraction of a cent, the fraction is rounded down to the nearest whole cent. If the computed charges for taxes and surcharges include a fraction of a cent, the fraction is rounded to the nearest whole cent.

## **8. Other Charges**

### **a. Federal Universal Service Fee (“FUSF”)**

This rate is determined quarterly by the Federal Communications Commission. The current rate may be found at: [www.TalkSmarterUSA.com/fusf](http://www.TalkSmarterUSA.com/fusf)

### **b. Carrier Cost Recovery Charge**

The Company imposes a monthly charge in order to recover expenses the Company incurs with regard to the national fund for Telecommunications Relay Service, national number portability, access charges, and federal regulatory fees and programs. This charge, assessed on your state-to-state and international charges, is \$1.49 per account per month for long distance customers who do not receive local subscribed services from the Company.

### **c. Payphone Use Charge**

Charges for calls that originate from any payphone in the U.S. or the U.S. territories and are carried over the Company’s network will include a \$0.55 charge. This charge will be in addition to applicable basic charges and surcharges.

### **d. Accounting Code Summary**

This feature provides you with 3-digit authorization codes, typically used by different callers in one household using the same telephone line. This feature is only available in areas where the Company has billing arrangements with a local telephone company that permits this type of billing. You will be charged \$2.50 per month per account if you select this feature.

### **e. Taxes**

1. The Company’s charges for services provided to you do not include:

- a.** applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts and value added taxes;
- b.** any tax imposed by an authority on the benefits of

a promotion offered by the Company involving services or goods of a third party;

- c.** other taxes;
- d.** tax-like charges to recover amounts the Company is required by a governmental or quasi-governmental authority to collect from others or pay to others in support of statutory or regulatory funds or programs;
- e.** other tax-like charges; and
- f.** a tax-related surcharge imposed on all charges (net of bad debts) for outbound service originating in, or inbound service terminating in, a jurisdiction which levies, or asserts a claim of right to levy:
  - 1.** a gross receipts tax, a license tax, or other tax-like charge on the Company's operations in that jurisdiction based on the Company's gross receipts, revenues or operations in that jurisdiction; or
  - 2.** a tax on interstate access charges incurred by the Company for access to telephone exchanges in that jurisdiction based on the amount paid for interstate access charges in that jurisdiction; and
- g.** a tax-related surcharge in addition to the other charges for service, based on billing availability, equal to 3.0% of the total interstate and international charges (including usage and nonusage) after the application of applicable discounts and credits, which allows the Company to recover a portion of the property tax that it pays to state and local jurisdictions.

**2.** All taxes, tax-like charges, and tax-related surcharges are referred to collectively as "Tax(es)." The Company may elect to impose and collect such Taxes, unless otherwise constrained by court order or direction. You agree to pay all Taxes imposed. If the Company has collected Taxes and a challenged Tax is found to have been invalid and unenforceable, the Company, in its sole discretion, will either reduce service rates for a fixed period of time in the future in order to flow-through to customers an amount equivalent to the amounts

collected, or it will credit or refund such amounts to affected customers (less its reasonable administrative costs), if the amounts collected were retained by the Company or if they were delivered to the jurisdiction and returned to the Company, or it will negotiate an arrangement with the jurisdiction to provide a future benefit for customers in that jurisdiction.

3. If you provide the Company with a duly authorized tax exemption certificate, the Company will exempt you in accordance with law, effective on the date the Company receives the certificate.

4. Taxes based on the Company's net income will be the Company's sole responsibility.

5. If you are required by the laws of any foreign tax jurisdiction to withhold income or profit taxes from a payment, within 90 days of the withholding, you will provide the Company with official tax certificates documenting remittance of the taxes. The tax certificates will be in a form sufficient to document qualification of the taxes for the foreign tax credit allowable against the Company's U.S. corporation income tax, and will be accompanied by an English translation. Upon receipt of the tax certificate, the Company will issue you a credit for the amounts represented thereby.

**f. Additional Surcharges**

The Company may adjust its rates and charges or impose additional rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from others or pay to others in support of statutory or regulatory funds, fees, or programs ("Governmental Charges"). Examples of such Governmental Charges include, but are not limited to, Universal Service funding, utility and other fees imposed on communications providers, and compensation payable to payphone service providers for use of their payphones to access the Company's service.

**g. Telecommunications Relay Service ("TRS") Discount**

TRS is comprised of several services including traditional relay services providing "translation services" between a

hearing-impaired or speech-impaired individual using a Text Telephone (“TTY”) and the spoken word of a hearing individual using a voice telephone. Other relay services such as Speech to Speech and Video Relay are also available. TRS is available any day at any time at no extra charge.

If you place a call via the Company’s National TRS Center, you will receive a 15% interstate discount off the Company’s basic rates. TRS calls are not eligible for any discounts or rates associated with optional calling plans and/or promotions. The TRS discount does not apply for calls placed to 900-type information service numbers.

### **III. RESTRICTIONS ON THE USE OF SERVICE**

**A.** The Company offers its services subject to availability of facilities, limitations of service offerings, and the provisions of this Agreement.

**B.** Services provided by the Company under this General Service Agreement for residential Customers will not be used:

1. For any unlawful purpose; or
2. For making telephone calls that terminate into electronic information services, pay-per-call services, or other domestic or international audiotext services; or
3. For international call-back offerings using uncompleted call signaling to any country, when that country has prohibited such an offering by statute or regulatory decision; or
4. For commercial, business, or non-residential purposes.

**C.** The Company may (a) deny, for any lawful reason, your request for service, or (b) limit or allocate the facilities available to or utilized by any service, if necessary, to manage its network in an efficient manner; meet reasonable service expectations; furnish service to existing and future customers based on forecasted customer requirements; or for any other lawful reason.

**D.** The Company may, without notice (consistent with governing laws or regulations), block traffic to or from specific countries, country codes, cities, city codes, local telephone exchanges (“NXX exchanges”), individual telephone stations, groups or ranges of individual

telephone stations, or calls using certain customer authorization codes, whenever the Company deems it necessary to take such action to prevent (1) the unlawful use of service; (2) nonpayment for service; (3) the use of service in violation of this Agreement; or (4) network blockage or the degradation of service furnished to you or other customers.

**E.** Due to the portable nature of the Company's calling card codes that are issued to the Company's customers, the Company reserves the right to block, without notice, any calling card code that the Company deems to have been used, or that might be used, for fraudulent purposes. The Company may also intercept calling card calls for the dual purposes of verifying customer information and fraud avoidance. The Company will provide subsequent written notification by mail, and/or voice notification, of such blocking or termination. The Company will unblock as soon as it determines it can do so without undue risk, and it will, upon request by an affected customer, assign new card authorization codes to replace any that were deactivated.

**F.** Whenever call blocking occurs on lines designated to the Company at the local telephone company's switch, customers or former customers will be unable to access the Company's network in order to make long distance and local toll calls, including, but not limited to, placing calls by dialing 1+ or 1010826 or by using any dial-around code belonging to the Company.

**G.** Calls may not be placed or received using 1010826 dialing, Collect, Sent Paid, or 3rd Party calling conventions whenever (1) there is no obligation on the part of the serving local telephone company to perform billing and collection on behalf of the Company; or (2) where an obligation exists on the part of the serving local telephone company to perform billing and collection on behalf of the Company, but the local telephone company fails to discharge the obligation properly; or (3) the serving local telephone company fails to furnish, or provides untimely or inadequate, billing name and address ("BNA") to the Company; or (4) the serving local telephone company fails to furnish timely or adequate telephone number installation and disconnect information to the Company. For the purposes of this paragraph, call blocking will occur whenever the Company is unable to recover at least 60% of its billable revenues from customers within a local telephone company service area during any monthly billing

period as the result of unavailable, untimely, or inadequate billing and collection or as the result of unavailable, untimely, or inadequate BNA or telephone number installation and disconnect information.

#### **IV. PAYMENT OBLIGATIONS**

**A.** You are responsible for payment of all charges for services furnished to you. This responsibility is not changed by virtue of any use, misuse, or abuse of your service undertaken or caused by third parties. You are responsible for payments made to anyone other than directly to TUSA or to an authorized TUSA payment agent. An authorized TUSA payment agent is a third party expressly authorized by TUSA to accept and forward payments to TUSA. You may determine the location of authorized payment agents in your area by calling 1-800-944-3664.

**B.** You must promptly notify the Company of any change in your invoicing address or, if applicable, in the credit card or bank account used for payment. You should notify the Company via Customer Service or via e-mail or U.S. mail to the following address: PO Box 3423, Cedar Rapids, IA 52406-3423.

**C.** Usage charges and any recurring monthly charges are billed after each billing period. In the event the Company changes its rates, recurring monthly charges affected by such change will be assessed at the new rate for the full billing period during which the new recurring charge rate became effective. Following service and/or optional calling plan cancellation, any recurring monthly plan fee charges or monthly fees will be assessed in full for the partial billing period.

**D.** The Company's bills for service are due upon receipt and subject to a late charge as applicable in your state. Amounts not paid within 21 days of the invoice date will be considered past due. If the Company becomes concerned at any time about your ability to pay for services, the Company may require that you pay its charges within a specified number of days and/or that you make such payments in cash or the equivalent of cash.

**E.** If your telecommunications payment history is not acceptable to the Company or if your telecommunications payment history is unknown or indeterminable, you may be required, at any time, to provide (i) pre-invoice payment based on usage incurred; (ii) a valid major credit

card account number from an issuer acceptable to the Company and authorization for the Company to charge usage to your credit card account; or (iii) agreement that your usage of the Company network and services will be subject to toll usage limits to be determined by the Company. Prior to your compliance with this request, the Company reserves the right to cease accepting and processing service orders. The Company may request subsequent additional pre-invoice payments for usage and may increase or decrease toll usage limits as it deems appropriate. The Company may refuse to furnish services if any charges owed by you to the Company or any Company affiliate are past due for service(s) provided to you.

**F.** When billing and collection for the Company service is performed on the Company's behalf by a local telephone company, the security deposit requirements and late payment provisions set forth in your service agreement with your local telephone company and/or in its local tariff will apply to your Company-provided service. In addition, where a local telephone company purchases the Company's customer receivables, late payment provisions imposed by the local telephone company will apply to your Company service.

**G.** If the Company hires a collection agency to collect, or attempt to collect, any charges owed the Company, you will be liable to the Company for an additional payment equal to 35 percent of the charges owed, where permitted by applicable law. If the Company incurs any fees or expenses, including attorneys' fees, in collecting, or attempting to collect, any charges owed the Company other than by hiring a collection agency, you will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

**H.** In the event payment is made by personal check and your check is not honored by the institution on which it was drawn, the Company will impose, and you will be required to pay, a \$15.00 fee, where permitted by applicable law, in addition to other remedies available to the Company.

**I.** If billing systems or other support are not available for a service, feature, surcharge, or other charge element at the time of service provision, the Company will bill for that service, feature, surcharge, or other charge element as soon as it is capable of doing so.

## **J. Handling of Certain Specific Credits**

**1.** If your account has been closed but has a credit balance remaining, the Company will transfer the credit to another of your accounts, if there is one. If you do not have another account and if the credit balance amount is \$10 or more, the Company will mail a check for the balance to you. If you do not have another account and if the credit balance amount is less than \$10, then the Company will mail a check for the balance to you upon your request, provided that you make your request within 12 months of your account being closed.

**2.** If your telephone line is designated to the Company at the local telephone company's switch and you have been certified in writing to be unable to access or use a manual directory because of a visual or other physical impairment, you are eligible to receive a credit which will be applied against the per call charge and any applicable operator assistance surcharges specified by the Company for domestic Directory Assistance calls made by dialing Area Code + 555-1212. Only one telephone number per location is entitled to this credit. A maximum of fifty directory assistance calls, including operator-assistance surcharges, per monthly billing period will be eligible for the credit. The actual credit for any one call to directory assistance (including operator-assistance surcharges) will not exceed \$5.00.

**3.** Promotional and other credits offered by the Company in the marketing of its services cannot be assigned, but must be used by the person to whom they were offered and who earned them in strict accordance with the terms of the offer.

**4.** In the event that you have been awarded a promotional credit for subscribing to the Company service and do not use the service within 12 months following the date of your service order, the Company reserves the right to cancel the credit from your account and collect the sum involved from you.

**5.** A credit allowance will be given, or the charge that would otherwise apply will be waived, when (a) you experience poor transmission or are cutoff during a call to Directory Assistance or (b) you are given an incorrect telephone number by a Directory Assistance operator. To obtain such a credit/waiver, you must notify the Company.

**6.** Except as provided in Paragraphs IV.J.2 and IV.J.5 above on page 16 pertaining to Directory Assistance, the following credit allowances for interruptions of the Company services will be made:

**a.** For all of the Company's domestic services for which charges are specified on the basis of per minute of use, or on usage of a fraction of a minute, and in which there may be interruption of an individual call, due to a condition in the Company's shared interexchange facilities or in shared access or termination facilities provided by other carriers, which interruption can be remedied by redialing the call:

**1.** A credit allowance will be made for that portion of a call that is interrupted due to poor transmission (for example, noisy circuit), one way transmission (one party is unable to hear the other), or involuntary disconnection caused by deficiencies in the Company's service. You may also be granted credit for reaching a wrong number. To receive a credit, you must notify a Company Customer Service representative and furnish information, including the called number, the service subscribed to, the difficulty experienced, and the approximate time the call was placed.

**2.** Where a call has been disconnected, you will be given a credit allowance equivalent to the charge for the initial minute of the call made to reestablish communications with the other party. If you reach a wrong number, you will be given a credit allowance equivalent to the charge for the initial minute of the call to the wrong number if you report the situation promptly to a Customer Service Representative. This credit allowance for reaching wrong numbers is limited to an aggregate total of \$100 over a 12-month period.

**b.** For interruptions in service due to the performance of the telecommunications network furnishing the Company service where such interruptions exceed an individual call and cannot be remedied by redialing the call, you will be given a credit allowance for an interruption subject to conditions related to location, timing, and other pertinent conditions. To receive a

credit, you must notify a Company Customer Service representative and furnish information, including the called number, the service subscribed to, the difficulty experienced, and the approximate time of the service interruption.

7. No credit allowances will be made for:
  - a. Interruptions caused by your negligence or the negligence of others authorized by you to use your service.
  - b. Interruptions due to the failure of power, equipment, systems, or services not provided by the Company.
  - c. Interruptions during any period during which the Company or its agents are not afforded access to the premises where access lines associated with your services are terminated.
  - d. Interruptions during any period when you have released the service to the Company for maintenance or rearrangement purposes, or for the implementation of your order.
  - e. Interruptions during periods when you elect not to release the service for testing or repair and continue to use it on an impaired basis.
  - f. Noncompletion of calls due to network busy conditions.
  - g. Interruptions not reported to the Company.

An interruption period begins when you report to the Company that the service has been interrupted and release it for testing and repair. An interruption period ends when the service is operative again. If you report the service to be inoperative but decline to release it for testing and repair, the service is deemed to be impaired, but not interrupted. If you elect to use another means of communication during the period of interruption, you must pay the charges for the alternative service used.

## **8. Fraud Credits**

- a. The Company will issue you full credit for invoiced charges for calls when the charges are determined

to result from a “theft of service” (for example, unauthorized usage following the involuntary theft or loss of a Company product or the establishment of service that you did not intentionally facilitate) involving (a) Company PCS, cellular, or pager services; (b) verified “Clip-on Fraud” associated with equal access services (1010XXX or 1+/0+/0-); or (c) theft of identity or theft of service. The Company will not issue credit for invoiced charges for fraudulent use resulting from your negligent or willful acts or those of an authorized user of your service. To qualify for credit, you must notify the Company in writing within 90 days of receipt of an invoice containing alleged fraudulent charges. In the event a PCS or cellular phone or pager is lost or stolen, you must notify the Company immediately. The Company will then credit you for all charges incurred during a 48-hour time period beginning with the first fraudulent call made.

- b. For fraudulent usage charges, that are established, to the reasonable satisfaction of the Company, to arise out of the compromise of a Calling Card, through no intentional or negligent act or omission by you, the Company will credit you the total amount of charges resulting from such fraudulent usage. To qualify for credit, you must notify the Company in writing within 90 days of receipt of an invoice containing the alleged fraudulent charges, and you must notify the Company by telephone immediately upon learning that a Calling Card has been compromised.

## **V. CANCELLATION OF SERVICE**

### **A. By the Customer**

1. You can cancel your long distance account at any time. To do so, please contact the Company’s Customer Service. Your long distance billing account will be canceled upon your request. While the Company will cancel your long distance billing account, you must contact a new long distance carrier of choice or your local telephone company to ensure you are no longer subscribed to the Company on your local telephone company’s network. Any calls received by the Company over its network during the period between the date of cancellation of your long distance billing account and your billing cycle end date will be rated and billed at your prior calling plan rates. After your billing cycle ends, any calls will be

rated and billed at Basic Interstate Dial 1 rates, with no monthly plan fee or minimum, for a period of up to 60 days from the date your long distance billing account was canceled. This period is designed to permit you ample time to select a new carrier. The Company will block all calls on the Company's network placed from your home telephone number between days 61 and day 120 following the date your Company long distance billing account was canceled. This long distance network block can be lifted upon request. If the Company receives calls over its network after the block is lifted on day 120, these calls will be assessed Casual Calling Rates contained in the Company's applicable FCC Tariff. The Company will also cancel your long distance billing account following notification of this change from your local telephone company. If for some reason, the Company does not receive a cancellation order from your local telephone company after you have switched carriers, and you continue to receive invoices from the Company for optional calling plan monthly fees and/or monthly minimum charge amounts, you should call the Company's Customer Service to request that your account be canceled.

2. If, within 90 days of signing up for the Company's service(s), you are dissatisfied, for any reason, with the long distance service(s) provided by the Company and wish to cancel such service(s) and return to your prior long distance carrier, you may receive a credit equal to any Primary Interexchange Carrier change and order processing charges you incur in returning to your prior carrier, up to \$5.00 per line, maximum of 5 lines. Such credits are limited to one such reimbursement per customer, for each of up to 5 lines per customer. In order to obtain such credits, you are required to call the Company's Customer Service and request a "Satisfaction Guarantee" credit.

## **B. By the Company**

1. The Company reserves the right to discontinue furnishing services, cancel your account, and/or block your access to the Company network, without incurring any liability, immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect the Company's personnel, agents, facilities, or services. Without limitation, the Company may take such actions if:

- a. You refuse to furnish information or furnish false information that (i) is essential for billing; or (ii) pertains to your creditworthiness, your status under federal and/or state low income programs, your past or current use of common carrier communications service, or your planned use of such service;
- b. You indicate that you will not comply with a request for security for the payment for services;
- c. The Company has received notice from your local telephone company that the local telephone company has cancelled your local exchange service;
- d. Your service usage charges exceed established parameters based on your history of usage, which may indicate an unlikelihood of payment or possible fraud;
- e. You have been given written notice by the Company of any past due amount (which remains unpaid, in whole or in part) for any of the Company's or an affiliated carrier's service to which you either subscribe or had subscribed or used;
- f. You either refuse to pay when billed for service or indicate to the Company or an entity billing on the Company's behalf that you do not intend to pay for service used by you;
- g. You use the service to transmit or receive a message, locate a person, or otherwise give or obtain information without payment for the service (i.e., signaling);
- h. You use, or attempt to use, service with the intent to avoid the payment, either in whole or in part, of the charges for the service by (i) using or attempting to use service by rearranging, tampering with, or making connections to service in an unauthorized manner; or (ii) using tricks, schemes, false or invalid numbers, false credit devices, or other fraudulent means or devices;
- i. You act, or fail to act, in a manner that hinders or frustrates any investigation by the Company or others having legal authority to investigate your legal obligations;

- j. Your telephone equipment fails to pass back to the Company the appropriate signal to start and stop billing for a call;
  - k. You were previously provided with notice of breach of contract, took corrective action, but thereafter engage in the same breach activity;
  - l. You subscribe to a Company-issued calling card service and have not used the service (with the exception of calls to Directory Assistance) for 24 months. In such case, the Company will deactivate the calling card to reduce the risk of fraud or abuse. If you wish to renew service, the Company will promptly provide a new card; or
  - m. The Company has made available service to you and you have failed to place the available service into actual and substantial use during the 90-day period immediately following its availability, or, if during any service term, you have not actually and substantially used the available service for any consecutive 90-day period. As used in this paragraph, "actual and substantial use" will mean a pattern of use that discloses an intent on your part to employ the service to transmit information of your choosing.
- 2.** The Company reserves the right to discontinue furnishing services, cancel your account, and/or block your access to the Company network, without incurring any liability, immediately upon written notice to you if:
- a. Any invoice charges remain outstanding and owed by you after the 21st day from the date of the invoice notifying you of the charges; or
  - b. You fail to comply with a request by the Company for security for the payment for services.
- 3.** The discontinuance of service(s) by the Company pursuant to these provisions does not relieve you of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

## **VI. LIABILITY**

- A.** Except for granting credit allowances for interruptions of service as provided for in Paragraph IV.J above on

pages 16-19, the Company will not be liable for: (i) any failure of performance due to causes beyond its control, including, but not limited to, acts of God, fires, floods or other catastrophes; national emergencies, insurrections, riots or wars, terrorist acts, strikes, lockouts, work stoppages or other labor difficulties; preemption of existing services to restore service in compliance with the FCC's Rules and Regulations; and any law, order, regulation or other action of any governing authority or agency thereof; or (ii) delayed installation of the Company's facilities or commencement of service.

**B.** With respect to any other factual allegation, legal claim, or dispute by you or by any others, for damages associated with the ordering (including the reservation of any specific number for use with a service), installation (including delays thereof), provision, termination, maintenance, repair, interruption, or restoration of any service or facilities offered by the Company, the Company's liability, if any, will be limited to credit allowances for interruptions of service as provided for in Paragraph IV.J above on pages 16-19. In addition to these credit allowances, if any, the Company's liability is limited as follows:

**1.** With respect to the routing of calls by the Company to public safety answering points or municipal emergency service providers, the Company's liability, if any, will be limited to the lesser of: (a) the actual monetary damages incurred and proved by you as the direct result of the Company's action, or failure to act, in routing the call, or (b) the sum of \$1,000.00.

**2.** With respect to the Company's offering of TRS, any service provided by the Company that involves receiving, translating, transmitting, or delivering messages by telephone, text telephone, a Telecommunications Device for the Deaf, or any other instrument over the facilities of the Company or any connecting carriers or through any TRS centers operated by the Company or its agents, the Company's liability will not exceed an amount equal to the Company's charge for a one minute call to the called station at the time the affected call was made.

**3.** With respect to the provisioning of, or any error or omission in, data, information, or content furnished in connection with any service provided by the Company, for example, Directory Assistance, the Company's liability

will be limited to the lesser of: (a) the amount of actual money damages proven by you to have been incurred as the proximate result of your reliance on such data, information, or content; or (b) \$100.

**C.** The Company's liability for willful misconduct, if established as a result of judicial, administrative, or arbitration proceedings, is not limited by this Agreement.

**D.** IN NO EVENT WILL THE COMPANY BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES) BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT.

**E.** The Company will be indemnified, defended, and held harmless by you and/or by others authorized by you to use the service against all claims of loss or damage arising from the use of service furnished by the Company, including:

**1.** Allegations or claims for libel, slander, invasion of privacy, or infringement of copyright arising out of the material, data, information, or other content transmitted via the Company service; and

**2.** All other allegations and claims arising out of any intentional act or omission by you or others using the service, in connection with any service provided by the Company.

**F.** THE COMPANY MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ABOUT ITS SERVICES AND DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT. THE COMPANY DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON THE COMPANY'S BEHALF AND YOU MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY BY THE COMPANY.

**G.** The Company will not be liable for any act or omission of any other company or companies furnishing a portion of the service, or from any act or omission of a third party, including those vendors participating in the Company offerings made to you, or for damages associated with service, channels, or equipment that it does not furnish, or for damages that result from the operation of customer provided systems, equipment, facilities or services that are interconnected with the Company services.

## **VII. PRIVACY**

### **A. Privacy Policy**

It is the Company's policy not to sell or rent its personally-identifiable customer information to unaffiliated companies or organizations. In the future, should the Company decide to sell or rent such information to those entities, it will provide notification and the opportunity for its customers to indicate that they would prefer the Company not sell or rent such information about them to such third parties. Such notice may be provided by amending the Agreement or any other comparably-effective means. The Company reserves the right to contact its customers regarding the Company's products and services.

### **B. Caller ID**

Due to federal rules, your telephone number (i.e., calling party number or "CPN") may be identified to a called party if that party has Caller ID capability. You can prevent this from occurring on an interstate call by dialing \*67 (or 1167 on rotary or pulse-dialing telephones) prior to placing the interstate call. If you have per-line blocking, you must dial \*82 (or 1182 for rotary or pulse-dialing telephones) prior to placing an interstate call to allow a called party to identify your CPN. Because these Caller ID-related services are provided by your local telephone company, you should contact your local telephone company for rate information for such services.

## **VIII. DISPUTE RESOLUTION**

THIS SECTION PROVIDES FOR RESOLUTION OF MOST DISPUTES THROUGH BINDING ARBITRATION.

**A.** If you have a dispute regarding your service or bill, please first call Company Customer Service at 1-800-444-5500.

**B.** Before initiating or participating in any arbitration or other resolution proceeding concerning any aspect of this Agreement or regarding the Company's products or services, you must notify the Company in writing of such a dispute and give the Company at least 60 days (from the time you first notify the Company in writing) to resolve the dispute. Such written notice should be mailed to: Telecom\*USA, P.O. Box 3423, Cedar Rapids, IA 52406-3423.

**C.** Any dispute arising out of or related to this Agreement or the Company's products or services that is not satisfactorily resolved within 60 days from the date you notify the Company in writing, regardless as to whether the dispute is based in contract, tort, statute, fraud, misrepresentation, or any other legal or equitable theory, must be submitted either to the American Arbitration Association ("AAA") or to JAMS ("JAMS"), for final and binding arbitration. The arbitration will be conducted pursuant to the AAA Arbitration Rules for the Resolution of Consumer-Related Disputes ("AAA Rules") or the JAMS Streamlined Arbitration Rules and Procedures and Minimum Standards of Procedural Fairness ("JAMS Rules"), respectively, as such rules are in effect on the date of commencement of the arbitration, and as such rules are modified by this Agreement. Either party may contact AAA in writing at: AAA Central Case Management Center, 13455 Noel Road, Suite 1750, Dallas, TX 75240-6636; or JAMS in writing at: 1101 17th Street, N.W., Suite 808, Washington, DC 20036. For more information regarding AAA or JAMS, you may visit their respective websites at <http://www.adr.org> or <http://www.jamsadr.com>.

**D.** Under the AAA Rules and the JAMS Rules, you may also have the right to take certain disputes to small claims court. Additionally, you may be able to seek relief from an appropriate governmental administrative agency (such as the Federal Communications Commission).

**E.** The arbitration will be based only on the written submissions of the parties and documents submitted to the arbitrator, unless the parties agree or the arbitrator orders otherwise.

**F.** The arbitration procedures set forth in this Dispute Resolution section are governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16 et seq. ("USAA"). Any controversy over whether an issue is arbitrable will be determined by the arbitrator. The award may be confirmed

and enforced in any court of competent jurisdiction. All post-award proceedings will be governed by the USAA.

**G.** For any arbitration in which you claim less than \$10,000, the Company will pay your filing fee with AAA or JAMS and all of AAA's or JAMS' other costs and fees. For claims between \$10,000 and \$75,000, you will pay a fee to the AAA or JAMS of no more than \$125, and the Company will pay all of the AAA's or JAMS' other costs and fees. If you elect an arbitration process other than a document ("desk") or telephone arbitration, you must pay your allocated share of any higher administrative fees and costs for the process you select. Except to the extent authorized by statute and awarded by the arbitrator, each party will bear the cost of preparing and presenting its own case.

**H.** Any in-person arbitration proceedings will be held at the location that AAA or JAMS selects in the state where you reside, unless otherwise mutually agreed upon by the parties.

**I.** Each dispute will be decided on an individual basis and will not be consolidated in any action with the disputes or claims of other consumers or customers. You agree that you may not bring any dispute or claim as a class action or as a private attorney general, and you agree not to act as a class representative or participate as a member of a class of claimants with respect to any dispute or claim relating to this Agreement or the services provided by the Company.

**J.** Any dispute or claim arising out of or relating to this Agreement or the services provided by the Company must be brought within two (2) years or within the period of time provided by an applicable statute after the date on which the basis for the dispute or claim first arises.

**K.** If for some reason the prohibition on class arbitrations set forth in subsection (I) above is deemed unenforceable, then the agreement to arbitrate will not apply. Further, if for any reason a claim proceeds in court rather than through arbitration, we each waive any trial by jury.

## **IX. MISCELLANEOUS PROVISIONS**

**A.** This General Service Agreement and the terms of any optional calling plan, promotion, and/or authorized

written communications you have received constitute the entire Agreement between you and the Company, and supersedes any and all prior agreements, oral or written, concerning the subject matter. If there is any inconsistency or conflict between the terms of any optional calling plan, promotion, and/or authorized written communications you have received and the provisions of this Agreement, the provisions of this Agreement will control.

**B.** If you either voluntarily cancel your Company account or if the Company cancels your service for any reason set forth above, the Company will have no obligation whatsoever to assist you in any respect in switching from the Company to another carrier.

**C.** Customers may not modify or assign this Agreement. In its sole discretion, the Company may assign this Agreement.

**D.** No waiver of this Agreement or any of its terms and conditions is valid.

**E.** This Agreement is binding upon you and the Company and upon, respectively, your and the Company's agents and heirs.

**F.** Each provision of this Agreement applies to the fullest extent permitted by applicable law. If any part or provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, then that part or provision will be ineffective only to the extent of such invalidity or unenforceability, without in any way affecting the remaining parts or provisions of this Agreement.

**G.** This Agreement is governed by and construed under the laws of the State of New York and applicable federal law, without regard to choice of law principles.

**H.** Any liability or obligation of a party to the other party under the provisions of Sections I, III, IV, VI, VIII, and IX, as applicable, will, in each case, survive cancellation or termination of this Agreement.

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