

# BULLSEYE TELECOM, INC. VOICE SERVICES TERMS AND CONDITIONS

**1. SERVICES.** BullsEye Telecom, Inc. ("BullsEye ") agrees to provide the Services, in accordance with any effective tariffs that may be revised from time to time. For Services not provided in whole or part pursuant to a Tariff (the "Tariff"), such Services shall be provided in accordance with the terms and conditions of this Agreement. These Services are retail service and are not for resale or distribution by Customer. These Standard Terms and Conditions supplement any effective terms and conditions set out in the applicable Tariffs and the Service price lists of the applicable BullsEye local service provider (BullsEye LSP).

**2. RATES AND PRICING.** Customer is being provided each Service reflected in this Agreement, at the charges, recurring and nonrecurring, stated on the Pricing Schedule, as applicable, as specified for the specific Service. Billed charges will include in addition to the rate: any non-recurring charges; governmental taxes; tax and tax-related surcharges, including ad valorem taxes or surcharges; governmental fees or assessments, including surcharges and fees established or assessed by government, and any program-related requirements of BullsEye; applicable operator assistance charges, any local loop or Premise Access charges, and any charges of third parties required by Customer's Services which are passed through to Customer; each of which shall be payable by Customer. If BullsEye increases rates (excluding surcharges and fees) under this Agreement for any location covered by this Agreement, the Customer has up to ninety (90) days from the earlier of its receipt of the first invoice reflecting the rate increase, or prior written notification, if any, of such rate increase to elect (by written notice to BullsEye or by telephone notice by contacting BullsEye Customer Service subject to recorded Third Party Verification) to either: (i) terminate the Services for those locations effected by the rate increase, indicating which locations will no longer be covered by this Agreement due to the rate increase, (ii) negotiate a new Agreement with BullsEye for those locations effected by the rate increase, or (iii) accept the rate increase, in which case this Agreement will continue to govern for all locations. Failure to provide such notice within such ninety (90) day period shall be deemed Customer's acceptance of the rate increase. In the event the Customer elects to terminate its service with BULLSEYE TELECOM at each or any of the locations affected by a rate increase, this Agreement shall nonetheless continue in full force and effect for all other locations covered by this Agreement which were not effected by the rate increase. If any legal authority such as FCC, PUC or ILEC changes, modifies, repeals, or initiates any rules, orders, tariffs, or other legal requirements that impact BullsEye's ability to maintain this Agreement in whole or in part and in BullsEye's sole determination, BullsEye may terminate this Agreement without any liability to BullsEye. If customer takes advantage or abuses services such as leaving an Internet dial-up connection up all day we have the right to charge for the minutes, disconnect the line, or change line back to their previous service provider.

**3. CANCELLATION.** In the event the Customer should cancel any Service prior to activation, or prior to the completion of the

Term commitment made by Customer pursuant to this Agreement, then Customer shall be responsible: (a) for any BullsEye and local service provider's installation requirements, costs and charges and any such termination charges in the event service is cancelled prior to activation and (b) for any monthly recurring charges for circuits, loops or connecting equipment necessary for the Services in the event service is terminated prior to completion of the Term. To insure accurate billing of services, it is the customer's responsibility to notify BullsEye Account Management when any services that are provided by BullsEye are to be discontinued. Customer is responsible for the full payment of all services until the date the notification is provided to and received by BullsEye, or the actual date the service provided by BullsEye is discontinued, whichever is later.

**4. DIRECTORY LISTING.** Customer is responsible for local service directory and directory assistance listings. Customer acknowledges that BullsEye will, as a service to the Customer, seek to arrange for listing of Customer's telephone number in the local telephone directory, such listing to consist of one line of standard type. Since the directory is published by a third party with no contractual relationship with BullsEye, in the absence of its gross negligence or willful misconduct, BullsEye will not be liable to Customer, or third party, for any claims, damages or otherwise, due to any omitted listings from, or erroneous listings in the telephone directory. Customer agrees that Customer has the responsibility to contact its yellow pages representative independently concerning any advertising in the yellow pages directories. If Customer chooses to place an information services provider call or elects to make or receive calls via a carrier other than the BullsEye LSP or its affiliates, the Customer agrees that it shall be solely liable for such calls, and any or all charges related to such calls. This includes all charges initially billed to BullsEye and charges directly billed to Customer by the other information provider or carrier, and any applicable rebilling charge, in addition to any governmental program or other governmental charges that may apply and charges for the Service provided by BullsEye LSP and its affiliate to the Customer.

**5. QUALITY ASSURANCE.** If customer notifies BullsEye Telecom in writing or by suitable electronic communication that BullsEye has failed to meet any of the commitments in the Service Level Agreement ("SLA") (specifying in detail the commitment not met), and, after notice and the applicable cure period BullsEye has not remedied the problem in the time specified in the SLA, Customer has the option to move the lines at the Location affected by the breach to another provider with no termination fee. The Customer must send BullsEye written notification that they intend to move the lines to another provider. The notice shall be sent to BullsEye Telecom, Inc., Attention Contract Administration at 25900 Greenfield Road, Oak Park, Michigan 48237. The remaining lines continue in force and are subject to the terms and conditions of this Agreement.

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**6. OBLIGATION TO PAY.** Any credit limit established for Customer shall not be exceeded at any time, unless Customer has received the prior written consent of BullsEye. If Customer's charges do or are projected by BullsEye to exceed its credit limit, or if there is a change in Customer's credit rating, BullsEye may require a security deposit or other assurance(s) of payment as a condition to continuing to provide Services (except where such deposits or assurances are prohibited). Customer shall timely pay for all Services in United States dollars. Customer is responsible for payment of all charges incurred in connection with Services furnished to Customer's number, network addresses and authorization codes. BullsEye will invoice Customer periodically, generally once a month, for usage and other charges related to the Services. The due date for payment is indicated on the invoice and payment must be received on or before the due date. All billing disputes must be received by BullsEye in writing within thirty (30) days of the invoice date, and to be effective, must be made in good faith, with any itemization of the nature and amount of the dispute, and with Customer timely paying all undisputed amounts. Invoiced amounts not timely and appropriately disputed are final. Delinquent balances will be assessed a one and one-half percent (1.50%) per month interest delinquency charge, not to exceed the maximum amount permitted by law. A reactivation fee of \$30.50 per line applies to reactivate accounts suspended for non-payment. Customers suspended or cancelled due to non-payment may be required to give a deposit or be placed on recurring payment by credit card or electronic debit before being reactivated or reinstated.

**7. TERM AND TERMINATION.** Customer commits to purchasing and paying for the Services for the minimum term stated in the Agreement (the "Initial term"). The Initial Term shall commence as of the first billing cycle during which Services are provided to Customer. After the Initial Term and any successor term (Term), **this Agreement will renew automatically for an additional twelve (12) month period unless either party provides written notice of cancellation to the address listed below (in the case of notice from Customer) at least thirty (30) days (but not prior to ninety (90) days) before the new Term commences.** To insure accurate billing of services, it is the customer's responsibility to notify BullsEye Account Management when any services that are provided by BullsEye are to be discontinued. Customer is responsible for the full payment of all services until the date the notification is provided to and received by BullsEye, or the actual date the service provided by BullsEye is discontinued, whichever is later. All written termination notices under BullsEye's Customer Satisfaction Guarantee, or for non-renewal of a term plan, must be sent to or faxed via facsimile to 248-784-2501: " BullsEye Telecom, Inc., Attention Contract Administration, 25900 Greenfield Road, Oak Park, Michigan 48237". If Customer provides a notice of cancellation and continues to use a Service beyond the expiration date of the Term, the rates and charges applicable to Customer will be automatically converted to a month-to-month pricing plan. If this Agreement is cancelled prior to expiration of the Initial Term or the then current term either (I) by BullsEye for Customer's breach or (II) by Customer except in accordance with the customer service quality satisfaction assurance provision or due to a BullsEye breach,

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Customer is liable for a termination fee ("Termination Fee") equal to the sum of (a) twenty five dollars (\$25.00) per line multiplied by the number of months remaining on the contract, (b) all circuit charges as specified in this Agreement, (c) any cancellation charges for circuits or other Services from BullsEye or from third parties through BullsEye and (d) any applicable governmental program charges. Customer agrees that the Termination Fee and the cancellation charges each are based on an agreed term commitment by Customer, are reasonable, and are not a penalty. Customer is responsible for any termination fees, commitment fees or penalties that may be assessed to Customer by any predecessor carrier that was utilized by Customer prior to obtaining service from BullsEye.

**8. DEFAULT.** If Customer (I) fails to pay any outstanding charges within five (5) days after written notice of delinquency (including a past due invoice), or (II) fails to comply with any other material term or condition of this Agreement or fails to cure any other breach of this agreement within thirty (30) days after receipt of notice of such breach from BullsEye, Customer shall be in default and BullsEye may, at its option, take any or all of the following actions: (a) terminate the Services or any portion thereof; (b) temporarily suspend or block the Services; (c) remove Customer and Customer's equipment from BullsEye facilities and locations; (d) commence action to collect all sums then due or that subsequently become due to BullsEye; (e) require a deposit; and (f) take any additional steps permitted by law. In the event of termination, Customer shall be liable for all charges incurred as of the termination date, and for such additional charges and fees set out in this Agreement. If BullsEye fails to comply with any material term or condition of this Agreement, and fails to cure its breach of any materials term or condition of this Agreement within thirty (30) days after BullsEye's receipt of notice from Customer of such breach, Customer may terminate the circuit or Service, which is the subject of such failure or non-observance. The Customer shall have no further obligation to BullsEye for payment of charges (except for the continued use charges) for the terminated circuit or Service. Except as otherwise provided herein, this subsection states Customer's exclusive remedy for a breach by BullsEye. In the event BullsEye initiates litigation under this Agreement, Customer shall be responsible for the reasonable attorney's fees and other costs of collection incurred by BullsEye, unless Customer prevails in such litigation.

**9. WARRANTIES AND LIMITATION OF LIABILITY.** BULLSEYE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ITS FACILITIES, TRANSMISSION, EQUIPMENT, DATA OR SERVICE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FUNCTION LIMITATION OF LIABILITY. THE ENTIRE LIABILITY OF BULLSEYE FOR ALL CLAIMS OF WHATEVER NATURE ARISING OUT OF ITS PROVISION OF FACILITIES, TRANSMISSION, DATA, SERVICE OR EQUIPMENT, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE CORRESPONDING PROPORTION OF THE MONTHLY RECURRING CHARGES TO CUSTOMER FOR

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THE PERIOD OF SERVICE DURING WHICH ANY MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT (OR ANY OTHER EVENT OR ACTION GIVING RISE TO A CLAIM) OCCURS WITH RESPECT TO ANY TARIFFED SERVICE, EXCEPT FOR A REFUND OF ACTUAL CHARGES PAID FOR A NUMBER ASSIGNMENT, PUBLICATION, LISTING OR ADVERTISEMENT (OR WHERE LIABILITY CANNOT BE DISCLAIMED AS A MATTER OF LAW) BULLSEYE SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD PARTY WITH RESPECT TO (i) ANY PREMATURE OR INCORRECT PUBLICATION, LISTING OR ADVERTISEMENT OR ANY TELEPHONE NUMBER OR BUSINESS; (ii) ANY OMISSION OR FAILURE TO LIST OR PUBLISH NUMBERS IN ANY DIRECTORY OR LISTING; AND (iii) ANY DISCONTINUANCE OR CHANGE OF ANY NUMBER. IN NO EVENT SHALL BULLSEYE BE LIABLE FOR SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUE, PROFITS OR OTHER BENEFIT. BULLSEYE IS NOT LIABLE FOR ANY ACT OR OMISSION OF ANY OTHER PERSON OR PERSONS FURNISHING ANY PART OF THE SERVICE(S). THE REMEDIES SET OUT IN THIS AGREEMENT ARE THE EXCLUSIVE REMEDIES AVAILABLE TO THE PARTIES.

**10. MISCELLANEOUS.** Customer may not assign this Agreement or other of its rights or obligations herein without BullsEye's prior written consent, which consent shall not be unreasonably withheld. BullsEye shall not be liable under this Agreement to Customer for delays, failures to perform, damage, loss destruction of malfunction of any equipment, or any consequence caused by, or due to fire, earthquake, flood, water, natural disaster, third party labor disputes, utility curtailments, power failures, explosions, civil disturbances, governmental actions, third party shortages of equipment or supplies, unavailability of transportations, acts or omissions of third parties, or any other cause beyond its reasonable control, and any requirement for performance by BullsEye shall be extended for a reasonable period until such force Majeure event can be resolved, except that if such event continues for a period of forty-five (45) days or more, Customer can submit written notice to BullsEye that cancels any order for Services not yet delivered to Customer, or for which a substitute has not been made available by BullsEye. This form and any attachments agreed to by the parties, along with any applicable tariff sections represent the entire understanding between BullsEye and Customer with respect to the Services and supersede any prior written or oral offers or proposals provided by BullsEye or its representatives not specifically incorporated herein by reference. If either party fails, at any time, to enforce any right or remedy available to it under this Agreement, that failure shall not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party. In the event any of the provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the unaffected provisions of this Agreement shall remain in full force and effect to the extent practicable and consistent with the legitimate original expectation of the parties. BullsEye and

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Customer shall negotiate to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with such original expectations. Customer agrees that it will not affirmatively disseminate or disclose any of the material terms and condition of this transaction, other than those terms and conditions that are made available to the public by applicable law or regulation, for a period of two (2) years except for that information that is or becomes known or available publicly without any violation of this Agreement, is obtained through a third party without any obligation of confidentiality, or is disclosed pursuant to law or legal process, or is disclosed with permission of the other party. Michigan law shall govern this Agreement, and the parties agree that any related litigation shall be brought only in Michigan state courts located in Oakland County Michigan or the Federal court located in Detroit, Michigan. This Agreement may only be modified in writing signed by both parties. For contract issues please contact BullsEye Telecom, Inc., Attention Legal Department at 25900 Greenfield Road, Suite 330, Oak Park, Michigan 48237 or FAX to 248-784-2501.

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