

DOMESTIC BUSINESS COMMUNICATIONS SERVICE

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REGULATIONS AND CHARGES  
APPLICABLE TO DOMESTIC BUSINESS  
COMMUNICATIONS SERVICES FURNISHED BY  
**EQUANT INC.**  
BETWEEN  
POINTS IN THE UNITED STATES, AS  
SPECIFIED HEREIN.

THIS DOCUMENT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.  
NOTHING CONTAINED HEREIN WILL BE CONSTRUED AS BINDING ON  
EITHER EQUANT OR THE RECIPIENT.  
EFFECTIVE MARCH 8, 2004

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**I. GENERAL TERMS AND CONDITIONS**

**1.1 Application of Schedule**

This Schedule contains the regulations and charges applicable to the provision of Domestic Business Communications Service by Equant Inc., or its affiliates, (hereafter referred to as the Company), between points within the United States or its territories.

**1.2 Definitions**

In addition to capitalized terms defined elsewhere in the Schedule, the following capitalized words and phrases listed below will have the meanings given below. All other capitalized terms used but not otherwise defined in these General Terms and Conditions will have the meanings set out in the Schedule.

“**Affiliate**” means in relation to an entity, any other entity controlled by, under common control with, or controlling such entity, where "control" means an entity's (a) ownership, directly or indirectly, of equity securities entitling it to exercise in the aggregate at least 50% of the voting power of the entity in question; or (b) possession directly or indirectly, of the power to direct or cause the direction of the management and policies of or with respect to the entity in question, whether through ownership of securities, by contract or otherwise.

“**Agreement**” means the agreement between Equant and Customer for the Services which comprises (a) the Cover Agreement; (b) the General Conditions; (c) any Specific Terms and Conditions; (d) the Service Annexes identified in the Cover Agreement; and (e) all Orders.

“**Business Day**” means the normal Equant working hours for each day in each country where the Services are provided (except locally observed holidays in such countries).

“**Confidential Information**” means the contents of the Agreement and all information disclosed (whether in writing, or orally or whether directly or indirectly) by a Party to the other Party whether before or after the Effective Date of the Agreement and marked or indicated “CONFIDENTIAL”, including information relating to the disclosing Party's products and services, operations, customers and prospects, know-how, design rights, trade secrets, market opportunities or business affairs.

“**Cover Agreement**” means the cover pages of the Agreement, signed by the Parties, which lists all applicable Service Annexes. The Cover Agreement will be amended as additional Service Annexes are added to the Agreement.

“**Charges Schedule**” means the listing of fees and rates that Equant will charge Customer for all Services provided under the Agreement.

“**Effective Date**” means the date the Agreement first comes into effect, generally, the date indicated on the Cover Agreement, or if no date is stated, the latest date written on the signature blocks of the Cover Agreement.

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**“General Conditions”** means the General Terms and Conditions for the provision of Equant Services.

**“Force Majeure Event”** means a cause beyond the reasonable control of a Party affecting the performance of any of its obligations under the Agreement, including acts of God; fire, flood, or other catastrophes; acts of government; national emergencies, insurrections, riots, war or acts of war; and industrial disputes.

**“Intellectual Property Rights”** means patents, design rights, copyright, trademarks, trade names, trade secrets, know-how, in each case, whether registered or unregistered and any other intellectual property right whatsoever and wherever enforceable.

**“Order”** means any request for a Service issued by Customer or a User, using an Order Form. All Orders are subject to acceptance by Equant.

**“Order Form”** means Equant’s then-current standard order forms for the Services.

**“Parties”** means Equant and Customer, or individually as a “Party”.

**“Service Annex”** means individually and collectively, the Specific Conditions, and Service Descriptions, the Service Level Attachments (“SLAs”), and the Charges Schedule.

**“Service(s)”** means the service(s) to be provided by Equant to Customer under the Agreement that are described in the applicable Service Descriptions.

**“Service Descriptions”** means Equant’s standard descriptions of the Services.

**“Service Levels”** means the performance levels applicable to certain Services, detailed in the SLAs.

**“Service Level Attachment”** or **“SLA”** means the document(s) that describe(s) the applicable Service Levels, measurement procedures and available remedies.

**“Service Term”** or **“Term”** means, the term specified on each Order Form (which will be a minimum of 12 months) commencing on the date indicated therein.

**“Software”** means computer programs in object code, as applicable, provided or to be provided by Equant pursuant to the Agreement, and excluding any proprietary Software provided by Customer.

**“Specific Conditions”** means Equant’s terms and conditions for particular Services that are additional to the General Conditions.

**“Users”** means users of the Services under the Agreement, including Customer, who have been authorized by Equant in writing, and will include the entity or entities that are designated in an Order Form as the recipient of the Services.

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The terms defined above include the plural as well as the singular. Any reference to a "Clause" means a clause of the document in which it appears unless otherwise expressly stated. The words "include" and "including" will not be construed as terms of limitation. Use of the word "or" means and/or. The words "day", "month", and "year" mean, respectively, calendar day, calendar month and calendar year, unless otherwise expressly stated. Any amounts expressed in dollars or preceded by "\$" will refer to United States dollars. The headings used in any document are included for convenience only and may not be used in construing or interpreting that document.

### **1.3 Ordering of Services**

- 1.3.1 Equant's provision of the Services to Customer and Users is contingent upon the execution and acceptance of an Agreement and an Order Form for each Service.
- 1.3.2 Upon the Effective Date of the Agreement, Customer will provide Equant with a list of Customer personnel who are authorized to issue Orders to Equant. Equant may elect not to accept any Orders that are issued by non-authorized Customer personnel. Customer may add or delete names to/from the list, provided Equant has been notified in writing prior to the placement of an Order.
- 1.3.3 All revisions to a previously issued and accepted Order must be provided in writing and signed by duly authorized Customer personnel. Revisions issued verbally to Equant must be confirmed in writing within 3 Business Days. Customer will be charged for all costs incurred by Equant in preparation for the initially requested Services and those incurred in revising the Services.
- 1.3.4 No cancellations of Orders will be permitted unless otherwise stated in the Agreement or in writing and agreed in advance by the Parties.

### **1.4 Invoices, Payment and Taxes**

- 1.4.1 Charges for all Services are set out in the Charges Schedule, or in Order Forms. Charges will be invoiced and paid in dollars unless otherwise specified in the Cover Agreement.
- 1.4.2 Equant will commence invoicing of all Charges as of the date specified in the relevant Specific Conditions.
- 1.4.3 Equant will invoice all fixed recurring charges monthly in advance, all other recurring charges monthly in arrears, and all charges for one time Services on completion of the Service, unless otherwise specified in any Service Annex.
- 1.4.4 All invoices are due and payable within 30 days of the date of the invoice. Payment must be made by wire transfer to the bank account nominated by Equant. Customer may dispute an invoice within 30 days of the invoice date. Failing any notification of a dispute from Customer within the 30 day period, Customer will be deemed to have accepted the amounts stated on the invoice. In

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the event of a good faith, timely notified dispute on a portion of the invoice, Customer may withhold payment only of the disputed amount.

- 1.4.5 The amounts listed in the Charges Schedule do not include taxes, including VAT, sales, excise, gross receipts and withholding taxes, universal service fund fee, and any similar tax or any government imposed surcharge which may be applicable thereto and Customer agrees to pay all such applicable taxes., which will be invoiced to Customer in accordance with local law. Customer agrees to pay or reimburse Equant for all such taxes, excluding tax on Equant's income. In respect of withholding tax, Customer will pay such additional amounts as may be necessary, such that Equant receives the amount it would have received had no withholding been imposed.
- 1.4.6 Failure by Customer to pay any charges in accordance with the Agreement will entitle Equant to:
- (a) charge interest on a daily basis from the original due date at the rate of 1.5 percent per month or the highest amount chargeable by law; or
  - (b) suspend the Service to which the non-payment relates, having given 14 days notice of its intention to do so, and Customer having failed to remedy its payment default during that time.

The exercise of these remedies is without prejudice to Equant's other rights and remedies under the Agreement.

- 1.4.7 From time to time, Customer will provide financial information as Equant may reasonably request, to determine Customer's continued creditworthiness. Equant will treat all financial information furnished to Equant as Confidential Information.
- 1.4.8 If Equant reasonably determines that the Customer's creditworthiness is insufficient to cover the full payment of all Charges under the Agreement, Equant may require Customer to provide a financial guarantee in a form reasonably acceptable to Equant in order to continue the provision of the Services. If Customer fails to provide the requested guarantee within 20 days following such request, Equant may suspend the provision of the Services until such guarantee is provided.

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## 1.5 Intellectual Property Rights

- 1.5.1 All Intellectual Property Rights in the Services are either owned by or licensed to Equant. Nothing contained in the Agreement will be deemed to convey any title or ownership interest in any Intellectual Property Rights to Customer or Users, nor are any rights or licenses are granted by the Agreement with respect to any Intellectual Property Right, except as otherwise expressly provided in the Agreement.
- 1.5.2 Equant, at its expense, will defend any action brought against Customer based on a claim that any Service or part thereof infringes any Intellectual Property Right in any country where the Service is provided, if Customer promptly notifies Equant in writing when such action is brought against Customer and Equant has sole control of such defense. Equant at its sole option may settle or compromise the claim. In addition, Equant will pay all fees, costs or damages finally awarded in the action or constituting a settlement thereof, provided Customer gives Equant reasonable assistance in the defense or settlement. In the event that an injunction, whether temporary or permanent, is obtained against Customer prohibiting the use of a Service or any part thereof, by reason of such infringement, Equant will:
- (a) use reasonable efforts, at its own expense, to procure the right for Customer to continue using the Service, or replace or modify the Service so that it is no longer infringing an Intellectual Property Right; or
  - (b) only if Equant cannot achieve the solution referred to in paragraph (a) above, direct Customer to cease using the affected Service or to return the infringing equipment to Equant at Equant's expense, in which case the relevant Order will be automatically terminated.
- 1.5.3 Equant will have no obligation to defend Customer or to pay costs, damages or fees for any claim based on:
- (a) use of the Service or of any part thereof other than the current unaltered Service provided by Equant, if such infringement would have been avoided by the use of the current unaltered Service provided by Equant; or
  - (b) the combination, operation or use of a Service, or of any part thereof, with non-Equant services, equipment or software, if such infringement would have been avoided by not combining, operating or using such Service or part thereof with other such non-Equant service, equipment or software.

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**1.6 Software**

If required to enable Customer to use a Service, Equant, will grant to Customer and Users for the term of the Agreement, non-exclusive and non-transferable licenses to use Software strictly for such purpose. Customer agrees not to produce, copy (except for the purpose of retaining a back-up copy), alter, modify, or add to the Software or any part thereof, nor to attempt or to allow a third party to attempt to reverse engineer, translate or convert the Software from machine readable to human readable form, except as permitted by applicable law.

**1.7 Liability**

- 1.7.1 Neither Party will be liable for any indirect, incidental or consequential loss or damages, howsoever arising, including loss of use or data or lost time, revenue, profits, goodwill of clients or any business interruption of any kind even if advised of the possibility of such damages.
- 1.7.2 Except for completing any payment obligations, neither Party will be liable for any delay or for the consequences of any delay in fulfilling any of its obligations under the Agreement if such delay is due to a Force Majeure Event.
- 1.7.3 Equant will have no liability in contract, tort or otherwise for any claim of unauthorized access of Customer's or any Users' transmission facilities or equipment, or for unauthorized access to, or alteration, theft or destruction of Customer's or any Users' data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, except to the extent caused by Equant's willful misconduct or gross negligence.
- 1.7.4 EACH PARTY'S LIABILITY FOR DIRECT DAMAGES UNDER THE AGREEMENT, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, WILL BE LIMITED, FOR EACH EVENT OR SERIES OF CONNECTED EVENTS, AS FOLLOWS:
- (a) FOR FAILURE TO COMPLY WITH SERVICE LEVELS, TO THE AMOUNT OF CREDITS SET OUT IN THE RELEVANT SLA;
  - (b) FOR DAMAGE OR DESTRUCTION OF TANGIBLE PROPERTY, \$1,000,000;
  - (c) FOR ALL OTHER EVENTS, \$100,000 OR THE CHARGES INCURRED IN THE 12 MONTHS IMMEDIATELY PRECEDING THE CAUSE OF ACTION UNDER THE ORDER TO WHICH THE CLAIM RELATES, WHICHEVER IS THE GREATER.
- 1.7.5 THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED IN CLAUSE 1.7.4 DO NOT APPLY TO CLAUSES 1.5 OR TO CLAIMS FOR DEATH OR PERSONAL INJURY.

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1.7.6 EXCEPT AS EXPRESSLY SET OUT IN THE AGREEMENT, EQUANT MAKES NO WARRANTIES AND HEREBY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES OR ANY PART THEREOF.

1.7.7 This Clause 1.7 survives termination or expiry of the Agreement.

## **1.8 Term and Termination**

1.8.1 The Agreement commences on the Effective Date and will continue in full force and effect until all Orders have expired, unless terminated earlier in accordance with Clause 1.8.3.

1.8.2 Each Order has its own Service Term commencing on the date that both Parties have signed the Order and ending on the date of expiry of the Service Term. Each Service Term will be automatically renewed for successive 12 month periods unless otherwise terminated. A Party may terminate any Order by giving the other Party at least 90 days notice prior to the end of the Service Term.

1.8.3 Either Party may terminate the Agreement with immediate effect, by giving notice to the other Party, if:

- (a) the other Party commits any material breach of the Agreement, and does not remedy the breach (if it is capable of remedy) within 14 days of notice of the breach being given by the non-defaulting Party;
- (b) an order is made or an effective resolution is passed for the dissolution or winding up of the other Party except for the purposes of an amalgamation, merger or restructuring;
- (c) a lien holder takes possession or a receiver is appointed over the whole or a material part of the undertakings or assets of the other Party;
- (d) the other Party becomes insolvent or makes any special arrangements or any special assignment for the benefit of its creditors, or is the subject of a voluntary or involuntary filing under the insolvency or bankruptcy laws of any jurisdiction;
- (e) if all Orders have been terminated pursuant to Clause 1.8.4.

1.8.4 Either Party may terminate any Order with immediate effect by giving notice to the other Party:

- (a) if the other Party fails to make any payment relating to that Order when due and does not remedy this within 14 days following notice thereof;
- (b) as permitted in a SLA;
- (c) if a Force Majeure Event affecting the provision of Services under that Order continues for more than 30 consecutive days.

1.8.5 On termination of the Agreement, all Orders will immediately be terminated. The expiration or termination, for any reason, of the Agreement or of any Order, will not affect (a) the rights of either Party against the other which have accrued

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on or prior to the termination; nor (b) any provision expressed to survive the termination.

- 1.8.6 On termination of the Agreement for whatever reason, each Party will immediately return to the other Party all property of whatever kind and nature provided under the Agreement and belonging to the other Party, including Confidential Information.

## 1.9 Notices

Any and all notices required or permitted to be given under the Agreement will be in writing and will be sufficiently given when delivered (i) by hand, (ii) by registered mail, postage prepaid, return receipt requested, (iii) by facsimile transmission, addressed to the persons whose name and address appears on the Cover Agreement or such other address as may be notified by a Party to the other. Except in the case of delivery by hand, and save for evidence to the contrary, notices will be deemed to have been given on the day on which such communication ought to have been delivered in due course of postal or facsimile transmission.

## 1.10 Assignment

- 1.10.1 Either Party may at any time assign all or part of its rights or obligations under the Agreement to any of its Affiliates, provided that (a) the assignee is not a direct competitor of the other Party; or (b) the assignment would not cause the other Party to incur materially increased costs in connection with the provision of the Services or the Agreement.

- 1.10.2 Subject to Clause 1.10.1 and 1.13.3, neither Party may assign, or otherwise dispose of the Agreement or any part thereof without the written consent of the other Party, such consent not to be unreasonably withheld or delayed.

## 1.11 Governing Law

The Agreement and all matters regarding the interpretation or enforcement hereof, will be governed exclusively by the laws of the State of Georgia, without regard to its conflicts of laws provisions.

## 1.12 Dispute Resolution

- (a) **Pre-Mediation Application to Court.** No provision in the Agreement shall operate to prevent Equant from issuing any proceeding or making any application to the court that is necessary for the protection of Equant's property or to obtain injunctive relief.
- (b) **Dispute Escalation and Negotiation.** Equant and Customer agree that it is in both parties' best interests to initially attempt to settle disputes arising out of or in connection with the Agreement by unmediated negotiation. Therefore, the

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parties agree to assign the appropriate representatives to comply with the following escalation process, and such representatives will have all necessary authority to bind their respective principals to any settlement achieved in the negotiation.

Within one (1) Business Day of receipt of notice of a dispute (whether received internally or from Customer), Equant and Customer will assign a personnel to make good faith attempts to resolve the dispute. If these representatives cannot resolve the dispute within the next three (3) Business Days, each Party will immediately escalate to its next level representative for further attempts at dispute resolution. If the dispute is not resolved within five (5) Business Days from the date the notice of dispute was first received, Equant and Customer will then escalate to the appropriate Senior Representatives within their organizations. The Senior Representatives will meet and make good faith attempts to resolve the dispute between them within ten (10) Business Days therefrom. The joint written decision of those Senior Representatives shall be binding upon the Parties. If the Senior Representatives are unable to resolve the dispute within ten (10) Business Days of the commencement of negotiations, either Party may, upon notice to the other Party, submit the Dispute to non-binding mediation as set forth in subsection (c) below. If either Party fails to promptly assign the appropriate personnel at any stage of this process, the other Party will have the right to immediately proceed to binding arbitration.

**(c) Non-Binding Mediation.** Both parties will participate in good faith in any mediation initiated pursuant to subsection (b) above. Such mediation will be non-binding, will be conducted by a single mediator designated by the CPR Institute for Dispute Resolution (“CPR”) and will be in accordance with the then-current CPR “Model Mediation Procedure for Business Disputes” or any successor CPR procedure (the “Model Procedures”). The mediator will be well-versed in any technology relating to the subject of the Dispute. The fees and expenses of the CPR and the mediator and the cost of the mediation site will be borne equally by the Parties, but each Party will otherwise bear its own expenses with respect to the mediation. The mediation will be conducted at a neutral site in either Washington, DC, Atlanta, Georgia or New York City, New York (as noted in the Cover Agreement), selected by the mediator that is reasonably convenient to both Parties and the mediator. Each Party will be represented in the mediation by representatives having final settlement authority over the dispute. All information and documents disclosed in mediation by any Party will remain Confidential Information of the disclosing Party. No privilege or right of a Party with respect to information or documents disclosed by it in mediation will be waived or lost by such disclosure.

Any attempts to resolve disputes by the escalation process and negotiation, or by referral to mediation are made without prejudice to the Arbitration clause contained herein and either party’s rights to interim injunctive relief”

**(d) Arbitration.** All disputes arising in connection with the Agreement will be settled initially by internal dispute resolution and then, if necessary, exclusively

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by arbitration before a single arbitrator in either Washington, DC, Atlanta, Georgia or New York City, New York (as noted in the Cover Agreement), in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Each Party irrevocably consents to personal jurisdiction and to ex parte action should any Party refuse to participate in such proceedings. The arbitrator's award will be final and binding on all Parties and judgment on the award may be entered and the award enforced in any court having jurisdiction thereof.

### 1.13 General

- 1.13.1 **Status of the Parties:** The Agreement is not intended to create, nor will it be construed to be, a joint venture, association, partnership, franchise, or other form of business relationship. Neither Party will have, nor hold itself out as having, any right, power or authority to assume, create, or incur any expenses, liability, or obligation on behalf of the other Party, except as expressly provided in the Agreement.
- 1.13.2 **Third Party Beneficiaries:** Nothing in the Agreement will be construed as conferring any rights or benefits on any person or legal entity who or which is not a party to the Agreement.
- 1.13.3 **Sub-Contractors :** Equant will be entitled to sub-contract any of its obligations to a third party (each, a "**Sub-Contractor**"), except that it will not sub-contract any of its obligations to a third Party which may be reasonably considered as a competitor of Customer without Customer prior written consent. Equant will be responsible for the acts and omission of any Sub-Contractor.
- 1.13.4 **Invalidity:** Should any provision of the Agreement be declared invalid for any reason, such decision will not affect the validity of any remaining provisions which will remain in force and effect as if the Agreement had been executed with the invalid provision eliminated. In any such event, the Parties will work together and negotiate in good faith to replace the invalid provision with a provision of equivalent economic effect.
- 1.13.5 **No Waivers :** The failure of either Party to require the performance of any of the terms of the Agreement or the waiver by either Party of any default under the Agreement will not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach.
- 1.13.6 **Modifications of the Agreement:** The Agreement may not be modified, supplemented, or amended except by formal supplemental agreements signed by the authorized representative of each Party.
- 1.13.7 **Order of Precedence :** In the event of a conflict between the Cover Agreement, General Conditions, any Service Annex or any Order Form the order of precedence will be as follows, unless otherwise expressly stated in any Service Annex.

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- (i) Cover Agreement
- (ii) General Conditions
- (iii) Services Annexes
- (iv) Order Forms

- 1.13.8 **Entire Agreement:** The Agreement represents the entire agreement of the Parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations (innocent or negligent), and proposals, written or oral, relating to its subject matter. Neither Party will be bound by or liable to the other Party for any representation, promise, or inducement made by any agent or person in the other Party's employ which is not expressly stated in the Agreement.
- 1.13.9 **Basis of the Bargain; Failure of Essential Purpose.** Customer acknowledges that Equant has set its prices and entered into the Agreement in reliance upon the limitations of liability and damages and the disclaimers of warranties set out in the Agreement, and that the same form an essential basis of the bargain between the Parties. The Parties agree that such limitations and disclaimers will survive and apply even if the Agreement or any provisions of the Agreement are found to have failed of their essential purpose.
- 1.13.10 **Compliance with Laws.** The Parties will comply in all material respects with all laws, rules and regulations, now in effect or hereinafter enacted or adopted, of any applicable jurisdiction, related to all matters of the Agreement.
- 1.13.11 Each Party acknowledges the importance of the other Party's employees and agents to its successful operation, and hereby covenants and agrees that without the prior written consent of the other party, the a party will not hire, or make any offer of employment to any person employed or any agent retain the other Party (a) at any time during the term of the Agreement (including any extensions hereof) and (b) for a period of 12 months following the termination thereof. The Parties expressly acknowledge that the remedy at law for any breach by it of this covenant will be inadequate and therefore, in the event of any threatened or actual breach of such covenant, the breaching Party will be entitled to injunctive or other equitable relief in addition to any other remedies that it may have at law or in equity.

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## II. SPECIFIC TERMS AND CONDITIONS

### 2.1 Definitions

The definitions of terms set out below may conflict with the definitions of the same terms set out elsewhere in the Schedule. Such conflicting definitions are not inadvertent; rather, they are due to the nature of these Specific Conditions. To the extent that there is a conflict in definitions, the definitions provided in these Specific Conditions will prevail. All capitalized terms used but not defined in these Specific Conditions will have the meanings set out in the General Terms and Conditions.

“**Acceptance Test**” means the acceptance test or tests described in the relevant Service Descriptions.

“**Date of Acceptance**” means the date all Acceptance Tests are successfully completed.

“**CPE**” means hardware (including cables, connectors and software) at Locations, as may be supplied by Equant as part of the Network Services.

“**Location**” means each Customer or User site to be provided with Network Services, identified in Order Forms.

“**Losses**” means all claims, liabilities, demands, proceedings, losses, costs (including reasonable legal and other professional costs) and reasonable expenses of whatever nature.

“**Network**” means Equant’s network used by Equant for the provision of the Network Services, excluding Tail Circuits, public networks and CPE.

“**Network Services**” means all Equant data network services as defined by Equant.

“**Specific Conditions**” means these specific terms and conditions which together with the General Conditions, will govern the provision of Network Services under the Agreement.

“**Tail Circuit**” means a telecommunications circuit or other capacity and attached modems leased from a TO connecting Locations to the Network.

“**Target Date**” means the expected date for delivery and acceptance of Network Services, as set out in Order Forms.

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“TO” means operators authorized to own, lease and operate telecommunications circuits.

## 2.2 Provision of Services – Equant’s Obligations

- 2.2.1 Equant will provide all Network Services ordered by Customer or Users (using the Order Form) and accepted by Equant.
- 2.2.2 Equant will use reasonable efforts to have each Date of Acceptance occurs no later than the Target Date. Equant will notify Customer of the successful completion of the Acceptance Tests ("**Service Commencement Notice**"). . Customer will be deemed to have accepted a Network Service on the date on which Equant issues a Service Commencement Notice for that Network Service, unless Customer notifies Equant in writing of a material fault in the Network Service within 3 days of receipt of the Service Commencement Notice. In such event, the above acceptance process will be repeated.
- 2.2.3 Equant will provide the Network Services in accordance with the applicable Service Descriptions and will use reasonable endeavors to meet any applicable Service Level. In the event that a Service Level that is set out in an SLA is not met, then the applicable conditions of such SLA will apply.
- 2.2.4 Equant will provide the Network Services to Customer in accordance with the relevant telecommunication and data protection laws then in effect in each country where the Network Services are provided.
- 2.2.5 Equant will maintain safeguards at least equivalent to those generally prevailing in the telecommunications industry against the destruction, loss or alteration of Customer data while such data is held in or being transmitted through the Network.

## 2.3 Use of the Service – Customer’s Obligations

- 2.3.1 Customer will comply and have its Users comply with Equant’s Code of Conduct for IP Products and Services, a copy of which will be provided to Customer prior to the Date of Acceptance.
- 2.3.2 Customer will not use the Network Services to transmit, distribute, disseminate, publish, or store any material that:
- (a) is in violation of any applicable local, national, or international law or regulation;

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- (b) is defamatory, abusive, obscene, indecent, or harassing; or that threatens or encourages bodily harm, destruction of property, or infringement of the lawful rights of any party;
  - (c) violates the privacy of any party as protected by applicable local, national, or international law or regulation; or
  - (d) contains software viruses, trojan horses, or any computer code, files, or programs designed to disrupt, destroy, invade, gain unauthorized access to, corrupt, observe, or modify without authorization, data, software, computing or network devices, or telecommunications equipment.
- 2.3.3 Customer will not use the Network Services to access any computer, network, or data without authorization or in a manner which exceeds authorization including, any attempt to:
- (a) retrieve, alter, or destroy data;
  - (b) probe, scan or test the vulnerability of a system or network; or
  - (c) breach or defeat system or network security, authentication, authorization, confidentiality, intrusion detection, monitoring, or other security measures.
- 2.3.4 Customer will indemnify and hold harmless Equant and its Affiliates from and against any and all Losses caused by or arising from any breach by Customer or Users of Clauses 2.3.1, 2.3.2 and 2.3.3.
- 2.3.5 Customer will not directly connect or allow the direct connection of any CPE provided as part of any Network Service to any other network without having received Equant's prior written approval. Any breach of this provision will be a material breach of the Agreement.
- 2.3.6 Customer will ensure that Users that receive the Network Services will comply with the obligations of Customer under the Agreement.
- 2.3.7 Except as otherwise authorized under the Agreement, Customer will not resell or otherwise make available the Network Services to any third party. Any breach of this provision is a material breach of the Agreement.

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**2.4 CPE**

- 2.4.1 Equant warrants that it has the right to provide or procure the provision of CPE to Customer and Users and that Customer and Users will have the right to use CPE solely in connection with the Network Services for the Service Term of the relevant Order.
- 2.4.2 CPE will remain the sole and exclusive property of Equant, and neither Customer nor any User will obtain any property rights or interest in CPE.
- 2.4.3 The Parties will agree dates for the installation and connection of CPE and Equant will install and connect CPE at the Locations in accordance therewith.
- 2.4.4 Customer will provide all necessary assistance to enable Equant to complete the installation and connection of CPE.
- 2.4.5 Customer will not sell, assign, sub-let, pledge or part with possession or control of CPE or any interest therein, nor move the CPE from the Location, and will keep CPE free from distress, liens or claims of lien.
- 2.4.6 Customer will not change, remove or obscure any labels, plates, insignia, lettering or other markings that Equant or the manufacturer has placed on CPE.
- 2.4.7 Customer will neither use CPE nor permit CPE to be used contrary to any law or any regulation for the time being in force.
- 2.4.8 Customer will ensure that proper environmental conditions, as recommended by Equant or CPE manufacturers, are maintained and that the exterior surfaces are kept clean and in good condition.
- 2.4.9 Customer will not to make any modifications to CPE.
- 2.4.10 Upon termination of the Agreement, Customer will surrender possession of CPE in good order, repair and condition, reasonable wear and tear excepted, to Equant.
- 2.4.11 Customer will allow Equant reasonable access to the Locations where CPE is to be installed for work related to the installation, inspection, maintenance, and de-installation of CPE.

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2.4.12 Customer will be liable for any loss or damage to the CPE beyond wear and tear, excluding any loss or damage to CPE that was the fault of Equant, its subcontractors or agents. In the event that the CPE is damaged or destroyed by Customer or any User, Customer will inform Equant within 2 days of such damage. If the CPE is not capable of repair, Customer agrees to pay Equant for the replacement value of such CPE at then current prices. If the CPE is capable of repair, Equant will repair the CPE and Customer agrees to pay for the cost of such repair within 30 days from the date of invoice.

## **2.5 Disconnection of Services**

If Customer is authorized by the Agreement to disconnect a Service during its Service Term, (a) Customer will provide at least 60 days prior notice using the Equant prescribed disconnection form; (b) Customer will be liable to pay the early disconnection charges set out in the Charges Schedule; (c) Customer will remain liable to reimburse Equant for all contingent Tail Circuit charges including any cancellation penalties; (Equant agrees to mitigate any such charges by terminating any Tail Circuit leases with the TO as soon as practicable following notification of the disconnection by Customer); and (e) if Equant has provided CPE, Customer will be liable to pay Equant a lump sum equal to the depreciated value of CPE as of the date of disconnection, based on the original price paid by Equant for CPE plus 15% of such original price as a fee for administration and disconnection, except that no such sum will be payable by Customer if Equant is able (as reasonably determined by Equant) to re-deploy CPE.

## **2.6 Reservation of Rights**

Equant will be fully entitled to refuse, suspend, or discontinue the provision of Network Services to Customer or any User in any Location by providing to Customer as much prior notice as is appropriate under the circumstances, if Equant, in its reasonable discretion, determines that the provision of Network Services will in any way jeopardize Equant's ability or authority to provide Network Services (either to Customer, any User or generally) in any country. In the event of such refusal, suspension, or discontinuation of Network Services, the Parties will consult with each other in an attempt to find an alternative solution, if any, that would allow the provision of the relevant Network Services to that Location.

Equant reserves the right to control, direct, and establish procedures for the use of the Network Services and Customer agrees to follow these procedures. Equant also reserves the right to make operational changes to the Network Services as it may require in its sole discretion, but these will not adversely affect the Service Levels, nor result in increased charges to Customer.

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**III. CHARGES****3.1 Equant Frame Relay**

Equant Frame Relay for domestic service is comprised of Access Line Charge (ALC), Port Charge and Permanent Virtual Circuit (PVC) Charge. Rates are structured according to the type of service provided. The rates are for the full circuit. Local access facility charges are those of the PTT or telco; installation charges for such facilities may not be discounted.

The Company reserves the right to impose a management charge to cover the cost of any network change.

**3.1.1. Access Line Charges**

This is a fixed monthly charge for the local loop from the PTT that will be passed through to customers. The Company reserves the right to charge a 10% mark-up to cover administrative expenses.

**3.1.2 US Port Access Speed (Kbps) Recurring Charge:**

Charges Table (in USD):	
kbps	Port
64	195
128	312
256	484
384	632
512	772
768	983
1024	1193
1536	1466
45056	3463

US Port Installation Charge: \$500

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## US Port Modification/Move/Cancellation Charges:

Port Modification, Moves and Cancellation charges are one-time charges.

Level of Support	Charges
(1) Port Modification Charges:	
Port Upgrade	No Charge
Port Downgrade	100% of Port Installation
(2) Move Charges:	
Within Same Building	No Charge
To Another Location	100% of Port Installation
(3) Cancellation Charges:	
Cancel Before Start	\$400 per Port
Early Termination/Cancellation	100% of Port Installation

## 3.1.3 US Domestic PVC Charges

Charges Table (in USD):	
kbps	PVC
0	0
8	30
16	30
32	40
64	45
128	80
256	150
384	220
512	280
768	380
1024	480
1536	670
2048	840
3072	1120
4096	1370
5120	1610
6144	1830
7168	2040
8192	2240
9216	2440
10240	2660

The PVC charge is a monthly flat-rate charge, which is dependent on the Committed Information Rate (CIR) value of the PVC. US domestic PVCs come with a variety of Committed Information Rates (CIRs).

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## US PVC Modification/Move/Cancellation Charges:

PVC Modification, Relocation and Cancellation charges are one-time charges.

Level of Support	Charges
(1)PVC Modification Charges:	
PVC Upgrade	No Charge
PVC Downgrade	\$100 (Software Change Fee)
(2)Relocation Charges:	
Within Same Building	\$100 (Software Change Fee)
To Another Location	\$100 (Software Change Fee)
(3)Cancellation Charges:	
Cancel Before Start	\$100 (Software Change Fee)
Early Termination/Cancellation	\$100 (Software Change Fee)

Note: The PTT's charges for modification/relocation/cancellation are applicable when the customer's change request requires the PTT's intervention. In such cases, 100% of the PTT's charges will be passed on to the customer.

**3.2 Equant X.25**

The following Equant X.25 service categories are available:

- (1) Traffic Insensitive
- (2) Traffic Sensitive

The Company reserves the right to impose a management charge to cover the cost of any network change.

**3.2.1 Traffic Insensitive**

Volume insensitive pricing is priced based on location and speed.

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## Domestic Monthly Recurring Charges:

1. Monthly NUI Charge: US\$10
2. The monthly service charge is inclusive of port and transmission charges and is charged on a route basis (site pair), based on service bandwidth. The Monthly Port Charge applies to both international and domestic services at the same rate.

## US Domestic Port charges:

Speed	Monthly Port Charges
2.4	928
4.8	928
9.6	928
14.4	1416
19.2	1496
38.4	1988
48	2080
64	2432
128	3772
192	5004
256	6152

## Installation Charges:

1. US\$10 per Network User Identifiers
2. The installation charge is per customer site, based on access speed. The site's country location determines the appropriate zone. The installation charge applies regardless of international or domestic services.

Speed	Non Recurring Charges
2.4	2000
4.8	2000
9.6	2000
14.4	2000
19.2	2000
56	2000
64	2000
128	2000
192	2000
256	2000

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## 3.2.2 Traffic Sensitive

Domestic Monthly Recurring Charges:

The Monthly Service Charge is comprised of:

- (i) The Monthly Port Charge and
- (ii) The Monthly Usage Charge.

The Monthly Port Charge applies to both international and domestic services at the same rate.

US Domestic Port charges:

Site	Monthly US Port Charges
2.4	240
4.8	240
9.6	240
14.4	480
19.2	480
64	760
128	1000
192	1150
256	1300

US Domestic Monthly Usage Charges:

Monthly Usage Charge per Megabyte

	US
Router Per mbps	28

Installation Charges:

The installation charge applies regardless of international or domestic services.

Speed	Non Recurring Charges
2.4	2000
4.8	2000
9.6	2000
14.4	2000
19.2	2000
56	2000
64	2000
128	2000
192	2000
256	2000