



TELEPHONE AND DATA CIRCUIT SERVICES TERMS AND CONDITIONS

1 PROVISIONS FOR TELEPHONE AND DATA CIRCUIT SERVICES

1.1 Telephone and Data Circuit Services

- 1.1.1 Telephone Services and Data Circuit Services is defined as Service work that GDS performs as defined and designated as "Telephone Services" and "Data Circuit Services," respectively, in the Proposal.
- 1.1.2 CUSTOMER acknowledges that GDS does not own or operate their own telephone or data circuit network; GDS is a reseller of Telephone and Data Circuit Services and GDS purchases telephone and circuit services from third party suppliers (collectively the "Supplier(s)") under strict contractual terms and conditions required of all resellers.
- 1.1.3 CUSTOMER acknowledges and agrees that GDS has no liability for any Supplier services and that GDS makes no warranties with respect to the availability of the Telephone Services or Data Circuit Services. CUSTOMER's sole remedy for a failure by GDS to provide Services during the contracted term for Telephone Services or Data Circuit Services, will be for the CUSTOMER to request an Outage Credit, as defined in Section 2 **below**.
- 1.1.4 The obligations of GDS and the terms for the sale and provision of Telephone Services or Data Circuit Services are subject to the terms of the agreements under which GDS purchases such Telephone Services or Data Circuit Services from its Suppliers (each an "Other Contract"). To the extent fulfillment of any obligation of GDS under this Contract is not permissible or possible under an Other Contract, the Other Contract will prevail, and such obligation will be suspended or modified to the extent required by the Other Contract.
- 1.1.5 911/E911 CUSTOMER ACKNOWLEDGEMENTS AND DISCLAIMERS:
 - 1.1.5.1 **911 AND E911: As used herein: "911" refers to the ability to route an emergency call to the designated entity authorized to receive such calls in a location in which the emergency center is not equipped to receive the CUSTOMER's telephone number and/or address; and "E911" refers to the ability to route an emergency call to the designated entity to receive such calls in locations which are so equipped and can receive the CUSTOMER's registered telephone number and/or address.**
 - 1.1.5.2 **ACKNOWLEDGEMENT OF NONTRADITIONAL 911 AND E911 SERVICES: CUSTOMER acknowledges that GDS's equipment and Services do not support 911 and/or E911 emergency dialing or access to other emergency services in the same way that traditional wireline 911, E911, and other emergency dialing and functions work. The differences are detailed herein and CUSTOMER agrees to notify any potential user of the Services who may place calls using CUSTOMER's Services of the 911, E911, and other emergency limitations, as well as the CUSTOMER dispatchable location registration and other obligations described herein.**
 - 1.1.5.3 ALTERNATIVE MEANS: GDS advises CUSTOMER to maintain an alternative means of accessing traditional 911, E911, and other emergency services.
 - 1.1.5.4 ELECTRICAL POWER: CUSTOMER acknowledges that the Services will not function in the absence of electrical power.
 - 1.1.5.5 INTERNET ACCESS: CUSTOMER acknowledges that the Services will not function if there is an interruption of end user's broadband or high-speed Internet access

service. CUSTOMER acknowledges that the malfunction or failure of equipment, software, or hardware necessary for end-to-end Internet functionality (e.g., routers, IP phones, analog gateways) can limit access to 911 and E911.

- 1.1.5.6 NON-VOICE SYSTEMS: CUSTOMER acknowledges that the Services are not set up to function with outdialing systems including, but not limited to, home security systems, medical monitoring equipment, TTY (teletype), TDD (telecommunications device for the deaf), TT (text telephone), and similar equipment, and entertainment or satellite television systems. End user has no claim against GDS for interruption or disruption of such systems by the Services.
- 1.1.5.7 REGISTRATION OF PHYSICAL LOCATION REQUIRED: Where applicable, Customer agrees to register the physical location of their equipment with GDS initially through the provisioning process and, for updates, by creating a customer support ticket via support-request@getgds.com or by calling our 24x7x365 Network Operations Center ("NOC") at 1+888-435-7986. CUSTOMER shall register street address and additional phone line-by-line information, including, as applicable, floor number, suite, apartment or office number, or similar detailed location information ("dispatchable location"). CUSTOMER shall update this detailed dispatchable location information immediately whenever the physical location of any device using the Service changes. When CUSTOMER changes its location, it may take 48 hours or longer for the location change to be reflected in GDS's records. During that time, CUSTOMER may not be able to reach the correct emergency services center or any emergency service provider by dialing 911.
- 1.1.5.8 Most post office box addresses are not eligible as validated 911 locations and CUSTOMER's registered dispatchable location shall not be a mail drop or similar address.
- 1.1.5.9 CUSTOMER acknowledges:
- (a) That GDS's only mechanism for routing 911, E911, or any other emergency calls directly to the correct emergency center (Public Safety Answering Point ("PSAP")) is the detailed physical dispatchable location information registered for the account at any given time;
 - (b) CUSTOMER agrees to assist GDS in validating a 911 registered dispatchable location address that has been rejected by the 911 provider;
 - (c) Neither 911, E911, nor any emergency calling service will be provided until CUSTOMER's dispatchable location(s) has(have) been validated. Dispatchable location validation may take longer than 48 hours for newly constructed buildings, particularly locations where GDS has not previously established service;
 - (d) That any location passed directly by GDS to the PSAP by GDS will be the most recent physical dispatchable location registered by CUSTOMER;
 - (e) That it shall be CUSTOMER's responsibility to update the detailed phone line-by-line dispatchable location information described in Section 1.1.5.7 above;
 - (f) If CUSTOMER moves to a new location and does not provide updated dispatchable location for a device, any 911 call made from that device may be sent to the PSAP nearest the last dispatchable location registered by customer, may transmit the wrong address, and may fail altogether;
 - (g) That if CUSTOMER fails to provide and/or update such information and GDS becomes aware of such failure, GDS may, but will not be required to, route the caller to a national emergency call center as a last resort. In such case, a trained agent at the emergency call center will ask for CUSTOMER's name, telephone number, and location and will then contact the local emergency center for such location in order to send help. CUSTOMER shall pay all costs incurred by GDS for calls that are routed to a national emergency call center; and
 - (h) CUSTOMER agrees to comply with all applicable laws now in effect and hereinafter enacted.

1.1.5.10 CUSTOMER acknowledges that it is the CUSTOMER's responsibility to provide and update dispatchable location information as detailed herein.

1.1.5.11 CUSTOMER also acknowledges that GDS 911 and E911 services have certain characteristics that distinguish them from traditional, legacy, circuit-switched 911 and E911 service. These characteristics may make GDS 911 and E911 services unsuitable for some customers. Because CUSTOMER circumstances vary widely, customers should carefully evaluate their own circumstances when deciding whether to rely solely upon GDS 911 and E911 service. CUSTOMER acknowledges that it is CUSTOMER'S responsibility to determine the technology or combination of technologies best suited to meet end CUSTOMER's emergency calling needs, and to make the necessary provisions for access to emergency calling services, such as maintaining a conventional landline phone or wireless phone as a backup means of completing emergency calls. The following characteristics are among those that distinguish GDS's 911 and E911 service from traditional, legacy, circuit-switched 911 and E911 service:

- (a) GDS's 911 and E911 service will not function if CUSTOMER's phone fails or is not configured correctly or if CUSTOMER's Service is not functioning for any reason, including, but not limited to, relocation of the end user's IP-compatible CPE, use by the end user of a non-native telephone number, an electrical power outage, broadband service outage, or suspension or disconnection of Service because of billing or other issues and delays that may occur in making a Registered Location available in or through the Automatic Location Information (ALI) database. If there is a power outage, CUSTOMER may be required to reset or reconfigure the equipment before being able to use the Service, including for 911 and/or E911 purposes.
- (b) Automatic Number Identification ("ANI"). The local emergency service operator receiving GDS 911 and/or E911 emergency service calls may not have a system configured for E911 services or be able to capture and/or retain ANI. This means that the operator may not know the phone number of the person who is making the GDS 911 and/or E911 call. The PSAP and/or emergency personnel may be unable to identify CUSTOMER's telephone number in order to call CUSTOMER back in the event that an emergency call is unable to be completed, is dropped or disconnected, or if a caller is unable to speak to provide the telephone number from which the caller is calling, and/or if the Service is not operational for any reason including, without limitation, the reasons and situations listed elsewhere in this acknowledgement and this Agreement.
- (c) Automatic Location information ("ALI"). Due to limitations at PSAPs, the local emergency service operator receiving GDS 911 and/or E911 emergency service calls may not have a system configured for E911 services or be able to capture and/or retain ALI when CUSTOMER or any caller at CUSTOMER's premises dials 911. A caller must state the nature of the emergency promptly and clearly, including the caller's specific physical dispatchable location, as PSAP and emergency personnel may not have this information. PSAP and emergency personnel may not be able to find a caller's dispatchable location if the call is unable to be completed, is dropped, or disconnected, or if the caller is unable to speak to provide the location from which the caller is calling and/or if the Service is not operational for any reason including, without limitation, those reasons and situations listed elsewhere in this acknowledgement and this Agreement.
- (d) Due to technical factors in network design, and in the event of network congestion on the GDS network, there is a possibility that a GDS 911, E911, or other emergency call will produce a busy signal or will experience unexpected answering wait times and/or take longer to answer than 911, E911, or other emergency calls placed via traditional, legacy, circuit-switched telephone networks.

1.1.5.12 USE OF SERVICE OFFSHORE AND OUTSIDE THE UNITED STATES: CUSTOMER acknowledges that should a caller using the Service from offshore or outside the United States call 911, E911, or other emergency services, the call may not connect. CUSTOMER shall notify all end users (e.g., employees, business

colleagues, guests and other persons who may be present at the location where CUSTOMER uses GDS Service) that 911, E911, and other emergency services may not be available at locations offshore and outside the United States and that 911, E911, and emergency services may be limited in comparison to similar services available onshore in the United States. This includes locations at sea outside the United States or within the territorial waters of the United States but that do not have access to 911, E911, and other emergency services comparable to those available within the terrestrial United States.

1.1.5.13 CUSTOMER OBLIGATION TO PROVIDE EMAIL/TEXT CONTACTS FOR SIMULTANEOUS NOTIFICATION: In order for GDS to provide simultaneous notification of 911 and E911 calls to CUSTOMER as required by law, CUSTOMER shall provide an email address and/or text number of a location on-site or off-site where CUSTOMER is likely to see GDS's simultaneous location. If CUSTOMER fails to provide such an email address and/or text number, GDS shall not be liable for any failure by GDS to provide such simultaneous notification to CUSTOMER

1.1.5.14 **911/E911 LIMITATION ON LIABILITY AND INDEMNIFICATION. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT NEITHER GDS GROUP NOR ANY OF ITS SUPPLIERS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, INSURERS, SUBSIDIARIES AND AFFILIATED (INCLUDING PARENT) COMPANIES, AND THEIR EMPLOYEES, REPRESENTATIVES, OFFICERS AND DIRECTORS SHALL BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO REACH 911, E911, OR ANY OTHER EMERGENCY TELEPHONE NUMBER USING GDS SERVICE OR TO ACCESS AN EMERGENCY SERVICE OPERATOR DUE TO THE 911, E911, AND OTHER EMERGENCY SERVICE DIALING CHARACTERISTICS AND LIMITATIONS OF GDS SERVICES, INCLUDING, BUT NOT LIMITED TO: A) CUSTOMER'S FAILURE TO REGISTER AND/OR UPDATE A DEVICE'S DISPATCHABLE LOCATION; B) CUSTOMER'S FAILURE TO PROVIDE INITIALLY TO GDS OR TO UPDATE ITS EMAIL ADDRESS AND/OR TEXT NUMBER FOR SIMULTANEOUS NOTIFICATIONS; AND/OR C) SUCH OTHER GDS SERVICE LIMITATIONS AS SET FORTH IN THIS CONTRACT. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GDS GROUP, ITS SUPPLIERS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, INSURERS, SUBSIDIARIES AND AFFILIATED (INCLUDING PARENT) COMPANIES, AND THEIR EMPLOYEES, REPRESENTATIVES, OFFICERS, AND DIRECTORS, AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO CUSTOMER IN CONNECTION WITH THE SERVICES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICE RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING BUT NOT RELATED TO THOSE RELATED TO DIALING OF 911, E911, OR OTHER EMERGENCY SERVICES OR FUNCTIONS.**

2 OUTAGE CREDITS

2.1 For telephone and data circuit services, GDS will pass through to the CUSTOMER the service availability that it receives from its suppliers, if any. In the event of failure or degradation of a telephone or data circuit services service, GDS will pass through and credit CUSTOMER's account with a rebate equal to the rebate that GDS receives from its suppliers, if any. Any such rebate shall also be considered an Outage Credit.

3 PAYMENT TERMS FOR TELEPHONE AND DATA CIRCUIT SERVICES

3.1 Telephone Services

3.1.1 Unless otherwise agreed in writing by the Parties or stated in a Proposal, GDS will invoice, and CUSTOMER will pay, monthly in advance for the Telephone Services provided by GDS, including all applicable federal, state, provincial, local and other taxes, including value added tax and fees, including, if applicable, any fees established by a regulatory authority (including fees associated with the Universal Service Fund) for the provision of telecommunication services, which may be attributable to the sale or use of Telephone Services.

3.2 Data Circuit Services

3.2.1 Unless otherwise agreed in writing by the Parties or stated in a Proposal, GDS will invoice, and CUSTOMER will pay, monthly in advance for the Data Circuit Services provided by GDS, including all applicable federal, state, provincial, local and other taxes,

including value added tax and fees, including, if applicable, any fees established by a regulatory authority (including fees associated with the Universal Service Fund) for the provision of telecommunication services, which may be attributable to the sale or use of Data Circuit Services.